Assessing the First Decade of the World's Indigenous People (1995-2004)

VOLUME I: The South East Asia Experience

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Tebtebba Foundation

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Acronymns

ACDA	Alliance of Community Development Advocates
ADB	Asian Development Bank
ADO	Ancestral Domains Office
ADSDPP	Ancestral Domain Sustainable Development and Protection Plans
AEV	Aboitiz Equity Ventures
AFFLA	Agro-Forestry Farm Lease Agreement
AFP	Armed Forces of the Philippines
AI	Amnesty International
AIM	Asian Institute of Management
AIP	Annual Investment Plan
AIPP	Asia Indigenous Peoples Pact
AITPN	Asian Indigenous and Tribal Peoples Network
AITT	Assembly of Indigenous and Tribal Peoples in Thailand
AIWN	Asia Indigenous Women's Network
AMAN	Aliansi Masyarakat Adat Nusantara
AO	Administrative Order
ARMM	Autonomous Region in Muslim Mindanao
AusAID	Australian Agency for International Development
AWP/B	Annual Work Plan and Budget
BENECO	Benguet Electric Cooperative
BHWs	Barangay Health Workers
BIR	Bureau of Internal Revenue
BITO	Bakun Indigenous Tribes Organization
BNRMP	Barangay Natural Resource Management Plan
BOO	Build-Own-Operate
BOT	Build-Operate-Transfer
BP	Bank Procedure
BT	Build-Transfer
CAA	Community Aid Abroad
CADCs	Certificates of Ancestral Domain Claims
CADT	Certificate of Ancestral Domain Title
CALCs	Certificates of Ancestral Land Claims
CAR	Cordillera Administrative Region
CARL	Comprehensive Agrarian Reform Law
CASCADE	Caraballo and Southern Cordillera Agricultural Development Programme
CAT	Covention Against Torture
CBD	Convention on Biological Diversity
CBFM	Community-Based Forest Management
CBFMA	Community-Based Forest Management Agreement
CBs	Consultative Bodies
CDA	Cooperative Development Authority
CDP	Commune Development Planning Process

CEB	Cordillera Executive Board
CECAP	Central Cordillera Agriculture Programme
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CERDP	Community Empowerment for Rural Development Project
CGM	Consultative Group Meeting
CHARM	Cordillera Highland Agricultural Resource Management Program
CHR	Commission on Human Rights
CHT	Chittagong Hill Tracts
CIDA	Canadian International Development Agency
CIP	Commune Investment Program
CIPRAD	Coalition for IP Rights' Advocates
CLOA	Certificate of Land Ownership Award
CNI	Commission on National Integration
COA	Commission on Audit
COAC	Center for Orang Asli Concerns
CONTO	Coordinating Centre of Non-governmental and Tribal Development Organizations
COP	Conference of Parties
CORD	Catholic Organization for Relief and Development
CPA	Cordillera Peoples Alliance
CPLA	Cordillera Peoples' Liberation Army
CRA	Cordillera Regional Assembly
CRC	Convention on the Rights of the Child
CSC	Civil Service Commission
CSD	Commission on Sustainable Development
CSDM	Center for Sustainable Development in Mountain Areas
CSW	Commission on the Status of Women
DA	Department of Agriculture
DANIDA	Danish International Development Agency
DAO 2	Department Administrative Order No. 2
DAR	Department of Agrarian Reform
DAU	Dana Alokasi Umum
DBM	Department of Budget and Management
DDCIF	Demand-Driven Community Investment Fund
DENR	Department of Environment and Natural Resources
DepEd	Department of Education
DESAMA	Didipio Earth Savers Multipurpose Association
DFA	Department of Foreign Affairs
DFID	UK Department for International Development
DILG	Department of Interior and Local Government
DLR	Department of Land Reform
DOE	Department of Energy
DOF	Department of Finance
DOH	Department of Health
DOLE	Department of Labor and Employment
DPMB	District Program Management Board

DPMU	District Program Management Unit
DSWD	Department of Social Welfare and Development
EC	European Commission
ECC	Environmental Compliance Certificate
EED	Evangelische Entwicklüngdienst, e.V
EKCLEP	East Kalimantan Local Communities Empowerment Program
ELA	Executive-Legislative Agenda
EO	Executive Order
EPIRA	Electric Power Industry Reform Act
EPSA	Electric Power Supply Agreements
ER	Energy Regulation
ESIAs	Environmental and Social Impact Assessments
ESSC	Environmental Science for Social Change
ESSP	Education Sector Support Program
ESP	Education Strategic Plan
FAO	Food and Agricultural Organization
FFSs	Farmer Field Schools
FGDs	Focus Group Discussions
FLGLA	Forest Land Grazing Lease Agreements
FPE	Foundation for the Philippine Environment
FPIC	Free and Prior Informed Consent
FPP	Forest Peoples Programme
FUNDAR	Center for Analysis and Research
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
GBHN	Garis Besar Haluan Negara
GMOs	Genetically-Modified Organisms
GNP	Gross National Product
GTZ	Gesselschaft fur Technische Zussamenarbeit
HADP	Highland Agricultural Development Project
HDI	Human Development Index
HGU	Hak Guna Usaha
HPI	Human Poverty Index
HPT	Highland Peoples Taskforces
IAD	Integrated Area Development
ICCPR	International Covenant on Civil and Political Rights
ICCs	Indigenous Cultural Communities
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIMOD	International Center for Integrated Mountain Development
ICRAF	International Centre for Research in Agro-forestry
ID	Institut Dayakologi
IFAD	International Fund for Agricultural Development
IFMA	Industrial Forestry Management Agreement
IKAP	Indigenous Knowledge and Peoples

IKP	Indigenous Knowledgeable Peoples
IKSPs	Indigenous Knowledge Systems and Practices
ILO	International Labor Organization
IMC	Inter-Ministerial Committee
IMF	International Monetary Fund
IMPECT	Inter-Mountain Peoples' Education and Culture in Thailand Association
IMR	Infant Mortality Rate
INDISCO	Inter Regional Programme to Support Self Reliance of Indigenous and Tribal Communities through Cooperatives and other Self Help Organizations
IPRA	Indigenous Peoples Rights Act
IPGREN	Indigenous Peoples Global Research and Education Network
IPPK	Kontribusi Ijin Pemungutan dan Pemanfaatan Kayu
IPs	Indigenous Peoples
IRA	Internal Revenue Allotment
IRR	Implementing Rules and Regulations
ISF	Integrated Social Forestry
ISI	Indian Social Institute
ITPs	Indigenous and Tribal Peoples
IWGIA	Indigenous Work Group for Indigenous Affairs
JaPHAMA	Jaringan Pembela Ha-hak Masyarakat Adat/ Network for the Defense of Indigenous Peoples' Rights
JICA	Japan International Cooperation Agency
KAMP	Kalipunan ng mga Katutubong Mamayan ng Pilipino
KASAPI	Koalisyong Katutubo at Samahan ng Pilipinas
KAT	Komunitas Adat Terpencil
KII	Key Informant Interviews
KIRED	Kasibu Inter-tribal Response for Development
LGC	Local Government Code
LGUs	Local Government Units
LHC	Luzon Hydro Corporation
LRA	Land Registration Authority
LRC-KSK	Legal Rights and Natural Resources Center, Inc.-Kasama sa Kalikasan
LTS	Land Tenure Security
MAFF	Ministry of Agriculture, Forestry and Fishery
MDC	Municipal Development Committee
MDC	Municipal Development Council
MDF	Municipal Development Fund
MDGs	Millennium Development Goals
M&E	Monitoring and Evaluation
MEYS	Ministry of Education, Youth and Sports
MHO	Municipal Health Office

MLMUPC	Ministry of Land Management, Urban Plan and Construction
MMA	Ministry of Muslim Affairs
MMR	Maternal Mortality Rate
MMSEA	Mainland Montane Southeast Asia
MOOE	Maintenance and Other Operating Expenses
MPR	Majelis Permusyarawaratan Rakyat
MPSA	Mineral Production Sharing Agreement
MRD	Ministry of Rural Development
MTPDP-IP	Medium Term Philippine Development Plan for Indigenous Peoples
NAMRIA	National Mapping and Resource Information Authority
NASSA	National Secretariat for Social Action
NCCA	National Commission on Culture and Arts
NCCP	National Council of Churches in the Philippines
NCIP	National Commission on Indigenous Peoples
NCSC	National Committee for Supporting the Commune/Sangkat
NEA	National Electrification Administration
NEDA	National Economic Development Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NFN	Northern Farmers' Network
NGOs	Non-Government Organizations
NHRC	National Human Rights Commission
NHSP	National Health Security Policy
NIPAS	National Integrated Protected Areas System
NKOK	National Khoi-San Consultative Council
NMHC	Northern Mini-Hydro Corporation
NORAD	Norwegian Agency for Development Cooperation
NPC	National Power Corporation
NSO	National Statistics Office
NTFP	Non-Timber Forest Products Project
NVERD	Nueva Vizcaya Environment and Rural Development
NWT	National Wealth Tax
NZAID	New Zealand Agency for International Development
OD	Operational Directive
ODA	Official Development Assistance
OHCHR	Office of the High Commissioner for Human Rights
ONHRC	Office of the National Human Rights Commission
OMA	Office for Muslim Affairs
OMACC	Office for Muslim Affairs and Cultural Communities
ONCB	Office of the Narcotic Control Board
ONCC	Office for Northern Cultural Communities
OP	Operational Policy
OPAIPA	Office of the Presidential Adviser for Indigenous Peoples' Affairs
OSCC	Office for Southern Cultural Communities
OWP	One World Project

PAFID	Philippine Association for Intercultural Development
PANAMIN	Presidential Assistance on National Minorities
PANLIPI	Legal Assistance Center for Indigenous Peoples
PAP	Poverty Alleviation Program
PAWB	Protected Areas and Wildlife Bureau
PD	Presidential Decree
PDAF	Priority Development Assistance Fund
PDB	Program District Board
PDC	Provincial Development Council
PEO	Provincial Engineering Office
PHO	Provincial Health Office
PHR	Physicians for Human Rights
PKK	District Women's Organization
PLANT	Pambansang Lupon ng Nakatatanda sa Tribu
PMES	Participatory Monitoring and Evaluation System
PNP	Philippine National Police
POs	Peoples' Organizations
PPA	Power Purchase Agreement
PPDO	Provincial Planning and Development Office
PPFU	Provincial Program Facilitation Unit
PPLs	Field Extension Workers
PPSDAK	Pemberdayaan Pengelolaan Sumber Daya Alam Kerakyatan
PROPENAS	Program Pembangunan Nasional (National Development Program)
PS	Personal Services
PTGs	Primitive and Backward Tribal Groups
PTIPAD	Presidential Task Force on Indigenous Peoples' Ancestral Domain
PT KEM	PT Kelian Equatorial Mining
QSHS	Quality and Standard of Health Services
RA	Republic Act
RBA	Rights-based Approach
RIPP	Regional Initiative on Indigenous Peoples' Rights and Development
RNRMN	Ratanakiri Natural Resource Management Network
RNSP	Ratanakiri Network Support Project
RPT	Real Property Tax
RTD	Right to Development
RUPES	Rewarding Upland Poor for Environmental Services
SEDP I	Socio-Economic Development Plan
SEF	Special Education Fund
SFMPs	Sustainable Forest Management Plans
SHGs	Self-help Groups
SIDA	Swedish International Development Agency
SONA	State of the Nation Address
SPDA	Southern Philippine Development Authority
SR	Special Rapporteur

SRA	Social Reform Agenda
SRV	Socialist Republic of Vietnam
STF	Seila Task Force
TA	Technical Assistance
TEEP	Third Elementary Education Project
TFD	Task Force Detainees
TGHK	Tata Guna Hutan Kesepakatan
TLAs	Timber Licensing Agreements
TRICORD	Tribal Cooperative for Rural Development
TVET	Technical, Vocational Education and Training
TVI	Toronto Ventures International Resource Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNDRIP	UN Declaration on the Rights of Indigenous Peoples,
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	UN Framework Convention on Climate Change
UNFDAC	United Nations Fund for Drug Abuse Control
UNFPA	United Nations Fund for Population Activities
UNPFII	United Nations Permanent Forum on Indigenous Issues
UN-WGIP	UN Working Group on Indigenous Populations
UP-CIDS	University of the Philippines – Center for Integrative and Development Studies
USAID	US Agency for International Development
USDOE	US Department of Energy
VRH	Veterans Regional Hospital
WALHI	Indonesian Forum for the Environment
WB	World Bank
WCC	World Council of Churches
WGDD	Working Group to elaborate on a Draft Declaration on the Rights of Indigenous People
WHO	World Health Organization
WMC	Western Mining Corporation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

Overview

Victoria Tauli-Corpuz and Mauricio B. Malanes

A Common Misfortune

Indigenous peoples in Asia, as elsewhere in the world, share a common misfortune. This is their long history of having been pushed to the edges or peripheries of society. Non-government organizations and development agencies have a common jargon for this—marginalization.

This marginalization is not only geographical, as in having been driven to the fastnesses of the forests or into the tough terrains of mountainous regions so the dominant majority could occupy the choice plains and valleys. The marginalization is also political, as in not being fairly represented, if not totally unrepresented at all in a country's political structure.

Similarly, the marginalization is socio-cultural and psychological in which the ways of life, traditional knowledge and cultural

heritage of indigenous peoples have been and continue to be relegated to the background. One reason is that indigenous culture and traditional knowledge have been considered by the dominant culture as unscientific and backward, if not dismissed as superstition. The result is psychologically damaging to the self-esteem of indigenous peoples, as this fans further their inferiority complex. Ultimately, this makes indigenous peoples less assertive of their rights, a situation that marginalizes them further.

Although common, marginalization is experienced by various indigenous peoples in different degrees. Some are more marginalized than others. While marginalization is by and large borne out of a history of colonization, in many cases the dominant populations in countries which declared independence or kicked out the colonizers are the ones who are equally marginalizing the minority or the indigenous peoples. The Yunnan-based Center for Biodiversity and Indigenous Knowledge reports about the marginalization of the "ethnic minorities" of Southwest China, which can be traced to the dominant Han culture and civilization, which has been seeking to assimilate other minority cultures.

Thailand has never been colonized. But Sakda Saenmi of the Inter-Mountain Peoples' Education and Culture in Thailand Association (IMPECT) quotes activist Chupinit Kesmanee, who laments that many indigenous and tribal peoples in Thailand have no citizenship and titles to their land. Worse, Kesmanee claims indigenous peoples are being displaced as their mountain home settlements are being declared by government as natural parks and forest reserves.

But an interesting case is Bhutan, the country which first propounded the idea of gauging progress not through Gross National Product, but through what it called Gross National Happiness. Francoise Pommaret and Dawa Lhamo of the Institute of Language and Culture Studies of the Royal University of Bhutan note how the Bhutanese have had no economic story of land grabbing or spoliation of one social group by another. Since the King had abolished serfdom in the mid-1950s, lands from large estate owners were redistributed to the serfs. It has to be noted, however, that there are around 105,000 Nepali-speaking Bhutanese who have lived in Southern Bhutan were sent to detention centers and sought asylum in Nepal, India and other countries in the early

1990s. Those who were sent to Nepal are still refugees for almost 15 years. Many of these are descendants of Nepali who were brought by contractors to Bhutan in the late 19th century. Most of them had their lands expropriated by the government. Up to now, their demand to be returned to their homeland, Bhutan has been refused by the Bhutanese government.

In Bhutan, what are called "small socio-cultural groups" also suffer some levels of marginalization. But Pommaret and Lhamo attribute this to geographic factors. Those considered poor, for example, are basically those in the rural areas, who solely depend on agriculture. And this cuts across various ethnic lines, not just the "small socio-cultural groups." In fact, small socio-cultural groups such as the Layaps and the Lunanaps are not poor. They are considered among the wealthiest because of a flourishing trade of goods from China across high valleys. They also have plenty of yak products, which they sell in the lower valleys of Bhutan.

Still, other small socio-cultural groups form part of what are described as "disadvantaged and vulnerable groups" in Bhutan's Vision 2020 document. These disadvantaged and vulnerable groups are those that have less or difficult access to drinking water, energy, schooling, health facilities, communication, sanitation and other services. But again, such disadvantage and vulnerability are not the monopoly of the small socio-cultural groups.

In other Asian countries, colonization greatly helped marginalize indigenous peoples, alienating them not only from their lands but from their culture, which had long bound them together as communities or peoples. Reporting about the indigenous peoples in North-East India, Walter Fernandes, Gita Bharali and Vemedo Kezo of the North Eastern Social Research Center point how the British deliberately used immigration to uproot indigenous peoples from their communities, thus becoming impoverished in the process. They cite how the British displaced the Adivasi from Jharkland and its neighboring regions and brought them to Asam to work in tea plantations.

The non-recognition of the rights of indigenous peoples of the Chittagong Hill Tracts in Bangladesh can be traced to the partition of India in which the British violated the Independence Act of 1947 and included the Hill Tracts within Muslim-dominated Paki-

stan. The Hill Tracts then had 97.5 percent non-Muslim population. With the annexation, however, Bengali Muslims were deliberately transferred into the Hill Tracts, making the original indigenous peoples the minority in their own land, report Raja Devasish Roy, Sanjeeb Drong and Mangal Kumar Chakma.

Bangladesh became independent in 1971 after nine months of war against Pakistan. But the people of the Hill Tracts have a long way to go in their search for an autonomous region with its own legislature, which, they hope, will finally correct decades of injustice and discrimination.

In Nepal, a long history of imposing upon diverse indigenous peoples one language (Khas-Nepali), one religion (Hindu) and one culture (Hindu) proved problematic. Sanjaya Serchan and Om Gurung of the Nepal Federation of Indigenous Nationalities or NEFIN point that the attempt of "high" caste groups to create an "asali Hindustan" or the true and pure land of the Hindus had courted resistance and conflict. The homogenization and assimilation efforts of the ruling high castes had destroyed the rich multi-ethnic, multi-cultural, multilingual and multi-religious reality of the country. But the subjugated peoples, including indigenous peoples, had resisted these homogenization efforts, which were done in the name of nation-building.

In Cambodia as early as the 13th century, many tribal peoples from the uplands became the slaves of the lowland Khmer, report Moul Phath and Seng Narong, quoting a Chinese emissary. Men were captured to do manual labor, while the women were sought for sex and to do domestic work. The practice of keeping slaves persisted until the period of the French protectorate. When the French ruled, most highlanders in Ratanakiri Province were employed in the rubber plantations and in construction projects. The authors note how the French organized these enterprises through village chiefs to minimize contact between colonial authorities and the natives.

In his report, "Vietnam: Bringing Ethnic Minorities into Mainstream Development," Luong Thu Oanh did not include how colonialism affected the lives of ethnic minorities in Vietnam. But a millennium of Chinese rule in Vietnam, the succeeding colonial rule by the French, and the interference by the Americans in supporting North Vietnam against a Ho Chi Minh-led South Vietnam

for fear of the spread of communism in the 1960s until the early 1970s had undoubtedly affected the lives of the various indigenous peoples or what are called ethnic minorities in that country.

Indonesia and the Philippines had their own share of Western colonization, which greatly marginalized and demeaned indigenous peoples. In their report, "Indonesia: Recognizing Masyarakat Adat," Albertus Pramono and Bernardinus Steni reiterate how Europeans during colonial times had considered indigenous peoples as "uncivilized," "barbaric," "primitive," even non-human.

In the Philippines, indigenous peoples were able to maintain much of their ways of life, despite more than 300 years of Spanish colonization. They were not as Hispanized as the Filipino majority in the lowlands, thus enabling them to maintain their distinct cultural heritage.

In her report about how the Philippines implemented the International Decade of the World's Indigenous People, Aida Priscilla T. Cadiogan traces how government gave different labels to indigenous peoples at different periods in the country's history. She notes how the current problem of indigenous peoples in relation to their land and resources could be traced to the Regalian Doctrine, which the Spaniards imposed during their more than 300 years of colonial rule. Under the Doctrine, all lands of conquest, which could extend to as far as the eyes of the Spaniards could see, belonged to the Spanish crown.

When the Americans took over as the new colonizers of the Philippines in 1898, they sought to assimilate them into mainstream society, both through hard (using the military) and soft (using education and Christianization) methods what they referred to as "non-Christian tribes." The "non-Christian tribes," also referred in other chronicles as "pagans," were later called "national minorities," "tribal Filipinos" and "cultural communities." They are currently called "indigenous cultural communities/indigenous peoples," a label used by what was considered a landmark legislation—the Indigenous Peoples Rights Act or IPRA of 1997.

As she reports how indigenous peoples were treated at various periods, Cadiogan also notes how indigenous peoples were able to regain some of their rights in recent years through their own struggles.

So whatever they were called in various stages of their countries' history, indigenous peoples were generally considered inferior, or worse, "barbaric" and "uncivilized." Such perception by Western colonizers, which is usually shared by the dominant ethnic groups within a country, was the premise of Manifest Destiny, the justification used by Theodore Roosevelt to colonize the Philippines. It is the Destiny of the USA to "civilize" or assimilate other people perceived as "uncivilized." This was also the basis for colonizers or dominant ethnic groups with who believe that their civilizations are more advanced and their role is to annex or invade the territories of their colonial subjects. They felt compelled that they have to assimilate the barbarians into their civilization which is more advanced or modern. The processes of "civilizing," annexation and assimilation, all the more marginalized indigenous peoples, who became alienated not only from their own culture (or their own civilization) but from their ancestral or aboriginal territories.

Reversing history of injustice

The international community led by the United Nations in recent decades finally recognized how decades, if not centuries, of marginalization and the lack of rights of indigenous peoples have contributed to their persistent poverty. Such recognition could be attributed to the efforts of indigenous peoples' leaders and representatives, who have brought their issues into the international arena since the 1950s and 1960s. Their sustained efforts to open up spaces in the United Nations so they can raise their complaints and get this body to formulate international standards which will respect their collective rights has increased through the years. This has resulted into several gains which include the following: a) the declaration of an International Decade of the World's Indigenous People; b) the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); c) the establishment of a UN procedure called the UN Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous People; and d) the establishment of the UN Permanent Forum on Indigenous Issues. All these are meant to help reverse a long history of injustice and

discrimination of the world's more than 370 million indigenous peoples,

The UN declared the period covering 1995 up to 2004 as the International Decade of the World's Indigenous People. Its mandate was to "strengthen international cooperation" in solving problems, which indigenous peoples face in such areas as human rights, the environment, development education and health. The Decade's theme was "Indigenous People: Partnership in Action."

Within the Decade, the UN had sought two main objectives. One was the adoption of the Draft Declaration on the Rights of Indigenous Peoples. The other objective was to establish within the UN a permanent forum on indigenous peoples.

Broadly, the UN within the Decade also aimed to further develop international standards and national legislation, which protect and promote the human rights of indigenous peoples. It also sought to further implement recommendations concerning indigenous peoples at all high-level conferences.

To meet these objectives, the UN General Assembly in 1995 adopted a "Program of Activities" for the Decade with three specific objectives. One was for specialized agencies of the UN system and other intergovernmental and national agencies to develop activities that benefit indigenous peoples. These activities must also educate both indigenous and non-indigenous societies about the cultures, languages, rights and aspirations of indigenous peoples. And these activities must promote and protect the rights of indigenous peoples.

Walking the Talk

The declared Decade has come and gone. So it was time to assess how far the UN, other international agencies, and governments had walked the talk as far as implementing the goals and objectives set for the Decade that begun in 1995.

The Nepal-based International Center for Integrated Mountain Development (ICIMOD), the Philippine-based Tebtebba or the Indigenous Peoples' International Center for Policy Research

and Education, and the International Fund for Agricultural Development (IFAD) in 2005 thus agreed to assess the impact of the Decade.

They sought to determine how the Decade improved the status of indigenous peoples in the world, particularly in the 10 chosen Asian countries. They were equally interested in finding out tangible, positive changes, which the Decade contributed in influencing nation states to address the issues and needs of indigenous peoples. Since there were impacts at the global level as well, it was deemed important to include this. There was no specific research done on this, but the main author of this overview paper will include some of these global gains.

Each of the three organizations, which assessed the Decade, expects the assessment to help enable them to become more effective and efficient in addressing indigenous issues and concerns. The assessment can help how the three organizations can collaborate and reinforce each other in effectively carrying out their mandates.

Both ICIMOD and IFAD are mandated to address rural poverty via environmentally sustainable approaches. The assessment is important because the two organizations' geographical areas of work are home to large numbers of indigenous peoples. ICIMOD alone covers the Hindu Kush-Himalayan region, which has approximately 100 million indigenous peoples.

For Tebtebba, the assessment can help the Philippine-based international organization in understanding other indigenous peoples' perspectives, issues and concerns. From this understanding, it can embark on relevant and appropriate policy advocacy and campaigns that matter most for indigenous peoples.

For its part, IFAD strategically stresses the need to make the poor more resilient. Its focus on indigenous peoples is also aimed at helping achieve the Millennium Development Goals. One-third of IFAD's investment projects are in regions with large numbers of indigenous peoples. One-fifth of IFAD's total investment in Asia has been aimed to benefit indigenous peoples.

Table 1. Populations of indigenous peoples in the countries assessed

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

Source: Assessment Synthesis Report on the First International Decade of the World's Indigenous People in Asia, 1995-2004. Kathmandu: International Center for Integrated Mountain Development, 2007.

Evaluating Changes

The assessment of the Decade has two aims. It sought to document and evaluate changes at the level of the United Nations and to analyze how far these have translated into policy and programmatic changes at national levels. But the assessment mainly aimed to analyze the successes and failures of the Decade at the national level in individual countries.

The assessment was divided into broad but inter-linked parts (ICIMOD: Assessment Synthesis Report, 2007):

- Policy analysis – analysis of local, national, regional, and international policies and frameworks;

- Program analysis – documentation of successes, failures, and lessons from projects;
- Situational analysis – to capture the broader contextual environment including the role and influence of civil society, the judiciary, research institution, media, and public discourse.

Specifically, the assessment sought three outcomes, thus:

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

A Collaborative Effort

ICIMOD, Tebtebba and IFAD embarked on the assessment by collaborating with partners in 10 countries in South Asia and Southeast Asia. Many of these partners were indigenous organizations and several indigenous persons were hired and provided guidance to do the research, themselves. Some were involved in research on indigenous issues and in lobbying for their rights at local, national, and international levels. In places where there are no indigenous organizations or persons to take on the task, non-indigenous support organizations or consultants were taken in to do the work.

The partner organizations in this project were the following:

South Asia:

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

Southeast Asia:

- Cambodia – Moul Phath (Independent Consultant)
- Indonesia – Albertus Hadi Pramono (Independent Consultant working closely with AMAN [Aliansi Masyarakat Adat Nusantara)
- Philippines – Tebtebba
- Thailand – Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT)
- Viet Nam – Center for Sustainable Development in Mountain Areas (CSDM)

The partner organizations combined primary and secondary research in collecting data and information for the assessment. For their primary research, these organizations consulted indigenous peoples, researchers, universities, nongovernment organizations and donor agencies. They also consulted some government representatives through workshops and individual interviews and discussions. In South East Asia there were consultation workshops organized by the partner organization and Tebtebba, where government representatives, indigenous peoples and other NGO representatives were able to participate. These were done in Viet Nam, the Philippines, Thailand, Cambodia and Indonesia. These workshops were held to share and validate the findings of the research results with the participants and to also raise their awareness on the issues of indigenous peoples. In South Asia there were no consultations held with the governments at the national level although there were some local consultations.

Through these consultations, researchers were able to generate feedback, comments, and suggestions from key people from various government institutions and organizations, including indigenous peoples' organizations. After the drafts of the studies came out and the consultation were done a culminating event was held. This was a regional conference held in November 2006 in Kathmandu, Nepal. In the conference researchers presented their findings of the assessment and deliberated and put forward recommendations. ICIMOD in 2007 published a synthesis report, capturing some features of the country reports. But Tebtebba offered to publish the ten country reports, including the two budget analyses done in the Philippines and India.

For their secondary research, the researchers reviewed various documents and reports from the UN, other international agencies, governments (particularly laws and policies), nongovernment organizations, the media, and from academic literature.

Coverage of Assessment and Country Reports

The assessment done in South Asia and China focused on specific regions with large numbers of indigenous peoples, although in terms of the policy reviews these were done at the national level. Thus, for India, assigned researchers did a separate report for Northeast India. For Bangladesh, researchers focused largely on the Chittagong Hill Tracts. For China, the focus was the four provinces of Southwest China. Otherwise, the researchers would have been overwhelmed by the wide coverage of the assessment, considering the vast territory of India and China, for example.

Each of the country reports followed a common methodology and areas of focus based on the objectives of the assessment. But each report represents diverse styles and levels of critique of policies and programs. The depth and breadth of the critique and analysis for each country obviously depended on how sufficient the data and information, which the researchers were able to gather.

Other researchers were lucky to have more data than others. So researchers in other countries were able to write case studies other than the main country reports. In the Philippines, for example, researchers were able to write two case studies besides the main country report. Researchers Aida Priscilla T. Cadiogan and Clint Bangaan of Tebtebba were able to write a case study noting how government and private corporate policies had affected the lives of indigenous peoples in Bakun town in northern Philippines through the implementation of mini-hydroelectric projects.

Bernabe Almirol, another Tebtebba researcher, also did a case study analyzing how the budgetary allocations of the provincial government of Nueva Vizcaya in northern Philippines affected the delivery of basic social and infrastructure services in indigenous communities.

India, the most populous country in South Asia, also has three reports. Besides the assessment report covering North-East India, Joseph Marianus Kujur and T.A. John of the New Delhi-based Indian Social Institute (ISI) did another assessment report. Their report covers the situation of what are called "Scheduled Tribes," including constitutional provisions concerning them, socio-economic indicators, and analysis of relevant policies.

Ritu Dewan of the University of Mumbai's economics department also submitted "India and Assam: Budget Analysis through Tribal Perspective." The report tracked the share of tribals from budget outlays from Central Plans done since 2000 up to parts of 2007.

Indonesia also has two reports. Aside from "Indonesia: Recognizing Masyarakat Adat" authored by Albertus Hadi Pramono and Bernardinus Steni, is another report, which Rukka Sombolinggi, an Indonesian, and Leah Enkiwe-Abayao, a volunteer research consultant of Tebtebba and assistant professor of History at the University of the Philippines Baguio, co-authored. Their report zeroed in on the impacts of development programs on indigenous peoples in East Kalimantan.

Although guided by a common framework and the objectives of assessing the Decade, the authors were free to develop their own writing styles. But as ICIMOD noted in its 2007 synthesis

report, the individual ideological or political perspectives of the individual researchers and the socio-political context of each of the country they researched all helped influence the outcome of their reports.

These reports are incorporated in this publication which is divided into two volumes: Volume I - The South East Asia Experience and Volume II - The South Asia Experience.

Visible Impacts at the International Level

The impacts of the Decade were highly visible at the international level. Within the Decade, for example, a United Nations Permanent Forum on Indigenous Issues was established in 2000. This section will focus on the gains achieved at the global level.

UN Permanent Forum on Indigenous Issues. In 1992, just before the Draft Declaration was adopted by the Sub-Commission, a meeting of indigenous leaders from all over the world was held in Guatemala to discuss the strategy for the work at the global level. This was the meeting which planned how to get the UN to declare the Decade for Indigenous Peoples and to establish a permanent forum on indigenous peoples in the UN. While the leaders agreed that the main priority is to get the UN to adopt the UN Declaration on the Rights of Indigenous Peoples, they also agreed that more spaces should be opened up within the UN to address indigenous peoples concerns. Thus, part of the work within the UN during the Decade was to get the Permanent Forum established.

The main author of this Overview Chapter was in this meeting and was centrally involved in bringing into existence the Forum. Subsequently, she became a member of the Forum and chaired the Forum from 2005-2009. The Forum was established in 2000 through a UN Economic and Social Council Resolution 2000/22, after sustained lobbying within the UN for many years. It is now the highest body within the UN which addresses indigenous peoples' issues. It holds a two-week session each year and the first

session was in 2002. There are 16 members, eight of whom are chosen by indigenous peoples' organizations from seven regions (Asia; Africa; Arctic; Central and South America and Caribbean; North America; Pacific; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia) and eight were chosen by governments from the five UN Regions (Asia, Africa, Latin America, Western Europe and other States, Eastern Europe).

Draft UN Declaration on the Rights of Indigenous Peoples. Indigenous peoples, lamented that the Draft Declaration on the Rights of Indigenous Peoples was not adopted during the Decade. After the UN Working Group on Indigenous Populations (UN-WGIP) finished the draft of the Declaration in l993 this was submitted to the Sub-Commission for the Prevention of Discrimination and Protection of Minorities. The Sub-Commission adopted this draft and sent it to the Commission of Human Rights for elaboration and adoption. It took the Commission Working Group on the Draft Declaration more than ten years before it finally adopted this and sent it to the General Assembly. Thus, it was only adopted by the General Assembly in 2007, way beyond the time frame under assessment. The UN Human Rights Council adopted the Draft in 2006. Since it was one of the first decisions of the Council (which was the successor of the Commission on Human Rights) there was a great expectation that this will be easily adopted by the General Assembly. Unfortunately, this was not meant to be.

But from an optimistic view, indigenous peoples have noted how the Draft Declaration has been adopted as a framework by many international organizations in addressing indigenous peoples' issues. UN Treaty Bodies, like the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child and the UN Human Rights Committee and other regional multilateral bodies like Inter-American Court on Human Rights invoked the Draft in some of the decisions they made. Several UN agencies, bodies and programmes cited the Draft as a framework for their policies on indigenous peoples. For example the UNDP (United Nations Development Programme) invoked this when it developed and adopted its Policy of Engagement with Indigenous Peoples. The UNDP cited that this is one of their re-

sponses to the call of the International Decade of the World's Indigenous People to UN bodies and agencies to increase their level of work on indigenous peoples. The World Bank used the draft as a basis for their revision of their original policy on indigenous peoples. Three years after the end of the First Decade, in 2007, the UN Declaration on the Rights of Indigenous Peoples was adopted.

UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous People. Indigenous peoples also hailed the creation of the post of this UN Special Rapporteur in 2001. The first Special Rapporteur was Prof. Rodolfo Stavenhagen. He visited at least one of the 10 countries covered by this assessment—the Philippines. Cadiogan reports how Prof. Stavenhagen, after a 10-day visit in December 2002, came up with "a moving report that reflected the human rights situation of indigenous peoples in the country." His visit to the Philippines was his second visit since he was appointed in his post. It is not easy to get a Special Rapporteur to conduct an official visit to a country because he has to be officially invited by the government of that country. This visit to the Philippines happened because Tebtebba offered to facilitate the process of getting the Philippine government to invite him and to work out his schedules which the government, eventually, had to agree to.

Stavenhagen strongly recommended to various actors—including the National Commission on Indigenous Peoples (NCIP), the Commission on Human Rights, the Philippine judiciary and the executive branch, the academe, UN agencies and NGOS—to enhance their work to promote and protect the human rights of indigenous peoples in the country. He made specific recommendations addressed to the NCIP such as the need to review and reform the processes used to obtain free, prior and informed consent from the indigenous peoples. This was a common complaint of the indigenous peoples he met in the regions as well as in the national consultation held between him and indigenous representatives.

When the results of his visit were presented at a debriefing session with government agencies in Manila, the Chair of the NCIP

stated that she concurred with all his findings and recommendations. Unfortunately, the Philippine government's responses to his recommendations were still very inadequate. an affirmation that the government was still generally "insensitive" to the problems that indigenous peoples face, writes Cadiogan. One significant gain in this whole endeavor is that there is an official UN report on the situation of indigenous peoples in the Philippines which has become a main reference for UN bodies and agencies and also for other stakeholders.

UN Voluntary Fund for the International Decade of the World's Indigenous People. Due to the lobby of indigenous peoples the UN in 1995 set up a Voluntary Fund for Indigenous for the International Decade of the World's Indigenous People. The Fund has since been accepting and administering voluntary contributions from governments, inter-government and nongovernment organizations, and other private institutions and individuals to fund projects during the Decade. The Fund also supports the activities of the Coordinator of the Decade. Administered by the Secretary General and the Coordinator of the Decade, the Fund provides small amounts of money for indigenous peoples' organizations to implement human rights projects and promote human rights awareness at the community level. The members of the Board of Trustees of this fund are indigenous peoples. The main author of this Overview Chapter is a member of the Board of Trustees. It ceased to exist after the Decade was over.

The Secretary General reported in June 2004 that the Fund supported 176 projects proposed, evaluated and implemented by indigenous organizations in several countries, including Bangladesh, India, Nepal and the Philippines. Ranging from US$5,000 to $10,000, grants from the Fund had supported human rights training sessions, publications on human rights, and activities aimed at strengthening indigenous peoples' organizations.

The impact of the Fund is actually part of the assessment of the Decade. Most countries have pointed that despite the Fund, awareness of the Decade and its goals was very limited.

Indigenous Fellowship Program. In 1997, the United Nations Office of the High Commissioner for Human Rights (OHCHR) established the Indigenous Fellowship Program. This seeks to give young indigenous women and men the opportunity to gain knowledge in international human rights in general, and about indigenous rights in particular. Ultimately, the program seeks to enable indigenous women and men to help protect and promote the human rights of their people. The program has so far accepted more than 75 indigenous fellows from 37 countries. Most of them are actively promoting the rights of their peoples in their countries and in the UN system.

After further evaluating the impact of the fellowship program, the OHCHR found that most fellows had the conviction and the capacity to promote human rights awareness to their people. But they were constrained by several factors, one of which was lack of funds to support them or their organizations when they go back to their home countries. Thus, several of these fellows are not working directly for indigenous organizations or movements in their home countries. There are several, though, who ended up working with UN bodies, indigenous peoples' organizations and networks. The Voluntary Fund gives some priority to projects or organizations of former fellows but because the grants are small, these are not sustainable.

Inter-Agency Support Group on Indigenous Issues. Set up in January 2002, this Support Group is now composed of more than 30 representatives of various UN agencies, programmes and funds. It was established mainly to support the work of the UN Permanent Forum on Indigenous Issues. This is a very important inter-agency coordination and complementation mechanism. The members share with each other the work that they do on indigenous peoples and they discuss how they can complement each other and coordinate so that the benefits can be maximized by indigenous peoples. Before the establishment of the Permanent Forum, there is no such mechanism existing. Since the Forum brings together these various bodies during its two-week sessions it made sense that they self-organize so that their work related to indigenous peoples can be enhanced. The members now are not

just limited to UN bodies. There are other multilateral bodies like the European Commission, the Asian Development Bank, the Inter-American Development Bank, the European Commission, the International Organization of Migration, among others who are also members. In some regions and countries inter-agency coordination for indigenous peoples' issues have been established also.

International Day of the World's Indigenous Peoples. The UN General Assembly Resolution 49/214 which established the International Decade also declared 9 August as the International Day of the World's Indigenous People, marking the first meeting in 1982 of the Working Group on Indigenous Populations. The current assessment found that the 9 August celebration has significantly helped people become aware about the Decade, at least in the various places where it has been observed. The celebration of this day has intensified after the Second Decade of the World's Indigenous People was established between 2005-2014. The existence of the UN Permanent Forum and the Inter-Agency Support Group on Indigenous Issues has helped raised the profile of this day in the UN system and internationally. In several countries inter-agency bodies organize joint activities to celebrate the day.

Studies on Indigenous Peoples. During the Decade, experts of the Sub-Commission on the Promotion and Protection of Human Rights undertook several studies on indigenous peoples. Among these experts were Erica-Irene Daes and Miguel Alfonso Martinez. Daes in 2001 who did studies on "indigenous people and their relationship to land" and "indigenous peoples' permanent sovereignty over natural resources." Earlier in 1994, she prepared "draft principles and guidelines on the heritage of indigenous people," which was based on a study on the subject she submitted to the Sub-Commission in 1993.

After a 10-year study, Martinez in 1999 finally released the final report of his study "Treaties, Agreements and Constructive Agreements Between States and Indigenous Populations." This was a landmark study for indigenous peoples in North America, many of which have forged treaties between themselves and their colonizers. Critics, however, said the report's findings failed to acknowledge that there are indigenous peoples in Asia or Africa. Indigenous peoples from these regions challenged Miguel Alfonso

Martinez several times on this conclusion. He agreed that there are indigenous peoples in the Philippines but he still did not concede for the other countries. For this reason the study did not gain much support from the indigenous peoples in Asia, Africa and the Arctic.

OHCHR Evaluation. The Office of the High Commission for Human Rights in 2004 surveyed various governments and organizations to evaluate their perception about the impact of the Decade and 50 responded.

The survey showed 36 percent noted positive changes during the Decade, citing better access to development projects, improved information on indigenous rights, strengthened local indigenous organizations, and increased indigenous participation in local governance. But 44 percent felt there the Decade had no positive effect at all at the community level. A small percentage said the situation of indigenous communities had worsened.

On whether there had been any improvements at the national level, 52 percent noted positive changes, referring to the recognition of indigenous identity and other indigenous rights, better indigenous representation in political institutions, the multiplication or strengthening of indigenous organizations, and the creation of national indigenous institutions. But 44 percent felt much needed to be done yet, saying few or no changes had occurred at the national level and that indigenous peoples should be more involved in political decisions. Some noted a regression in national policies.

At the international front, 68 percent showed that the Decade had brought positive changes such as better access to diverse international activities, and the exchange of experience and contacts with other indigenous organizations and representatives. Fourteen percent also said they did not know of the Voluntary Fund for the Decade and some complained that there was unequal access to international meetings.

No Cause to Celebrate Yet

Many positive developments happened at the UN system during the Decade. But the Secretary General on the Preliminary Review of the Decade acknowledged that indigenous peoples in many countries continue to be among the poorest and most marginalized. Human welfare and poverty indicators confirmed this. "Although the political will of individual states is essential for the recognition of the rights and identity of indigenous peoples, many have contended that the UN system itself did not go far enough in implementing the objectives of the Decade," ICIMOD noted in its 2007 Assessment Synthesis Report of the Decade.

The UN system was unable to meet the objectives of the Decade for three main reasons, the details of which were presented at the 2003 Asian Consultation on Vienna Plus 10 held in Bangkok. Firstly, the UN system was unable to organize itself sufficiently well internally to implement the Decade. For instance, the Decade was proclaimed in December 1993, but the General Assembly adopted a Program of Activities only in December 1995. And a coordinator for the Decade was identified only in 1997.

Secondly, financing was lacking. The Voluntary Fund for the Decade did not receive enough financial support. From January 1995 to October 1999, the Voluntary Fund received only US$1.1 million, 70 percent of which only three countries contributed, according to UN records.

Lastly, the UN system itself lacks cohesion. Many of them operate in silos and do not coordinate at all. So the right hand does not know what the left hand is doing. For so long, the indigenous peoples' issues especially in relation to rights have been handled, in the main, by the Office of the High Commissioner on Human Rights and the ILO. Many UN agencies, programmes or funds do not give attention to indigenous peoples' issues. They deal with this concern if there are strong pressures from indigenous peoples or NGOs or even some influential individuals within their institutions for them to do so. Cited as active in working on indigenous peoples' issues include the OHCHR, IFAD, ILO, and, in some countries, UNDP and UNESCO.

The Decade and Impact at the National Level

As with the various agencies within the UN, some countries were more aware of the Decade than others. Luong Thu Oanh of the Center for Sustainable Development in Mountain Areas, for example, reports that the Socialist Republic of Viet Nam did not officially declare the 1995-2004 International Decade for the World's Indigenous People at the country level. But despite this, Oanh stresses that Vietnam must be part of the assessment because key policies and related mechanisms affecting ethnic minorities had transpired during the Decade.

In Southwest China, scholars and government officials interviewed for the assessment were totally unaware of the Decade. This raises questions about the potential for international instruments to play positive roles in improving recognition of ethnic minorities' rights and their welfare in the Chinese context, says the Center for Biodiversity and Indigenous Knowledge.

Also despite the Decade, other countries had denied and continue to deny the existence of indigenous peoples. One example is Bangladesh, which the authors of the country's assessment report say, had continued to follow a racial discriminatory policy inherited from the Pakistani regime. In spite of this denial, however, we see the Bangladesh government applying to the UN Voluntary Fund for the International Decade to get funds to hold activities for indigenous peoples. Thus, in the debates on the UN Declaration on the Rights of Indigenous Peoples, when the Bangladeshi government uses this argument, the indigenous peoples ask them why they apply to get grants from the fund.

In Nepal, indigenous nationalities were able to convince the government to set up an International Year for the World's Indigenous People's Committee after the UN declared the year in 1993. But the committee did not organize a single program for indigenous peoples during the year. It was indigenous nationalities themselves, who formed a committee to initiate programs for the UN-declared International Year for the World's Indigenous People.

The various levels of awareness of the Decade are almost similarly reflected in the other countries covered by the assessment. It

could be said that the Decade hardly made a dent in some countries, in terms of creating awareness on indigenous peoples' rights.

During the Decade, the 10 countries, in various degrees, embarked on policy and program reforms affecting the lives of indigenous peoples' rights and development. These changes varied from one country to the other. But these changes could be attributed to changes in political systems and regimes, the strength of indigenous peoples' movements, and the push from some international multilateral and bilateral agencies for policy reforms and program support.

Generally, awareness of the Decade in the various countries was low. Those who were aware of the Decade were indigenous representatives and activists, who had the opportunity to participate in various UN-sponsored meetings and trainings. Other indigenous activists and representatives who had actively engaged with governments for the concerns and rights of indigenous peoples were also very much aware of the Decade. But this awareness was more concentrated in the cities or in communities with large numbers of indigenous peoples. At the grassroots level, the average indigenous person's awareness of the Decade was so low. Only those who are members of indigenous peoples' organizations or networks are the ones who would have that knowledge.

Reports from many countries disclosed that the workshops and meetings held for the present assessment were often the first time that indigenous peoples, including some people in governments, learned of the Decade.

Lack of awareness of the Decade could be attributed to several factors. One was lack of funds for awareness-raising drives. Second, governments who are suppose to be the ones who should disseminate decisions taken by the General Assembly could not care less. But it was also pointed that even some indigenous activists are not conscientiously updating their constituencies on such developments.

Still, there were positive impacts. The heightened awareness of indigenous peoples' issues at the international level had gradually, if not slowly, percolated into the national level. The creation of the UN Permanent Forum on Indigenous Issues enabled indigenous representatives to come together and created spaces for

them to dialogue with their governments. In the process, indigenous peoples strengthened their own solidarity and network, thus raising their confidence to assert their rights. Activists are more active in putting more pressure on their governments to account for social injustices and human rights violations against indigenous peoples and to provide redress for these. Most of the times, though, victims or their families hardly get any redress.

It is important to note that some countries, which had long been denying the existence of indigenous peoples, had begun acknowledging not only indigenous peoples' existence but also their contributions. On Indigenous Peoples' Day in 2000, the then Prime Minister of Bangladesh, Ms. Sheikh Hasina, for example, told the *Sanghati* magazine that the country was home to two million indigenous peoples. On the same occasion in 2003, the current Prime Minister Begum Khaleda Zia also acknowledged the "significant contribution" of indigenous peoples to the liberation war and to the country's welfare, the same magazine reported.

Regional and National Networks and Programmes

That various national and regional indigenous peoples' network and institutions emerged or increased their activities in the course of the Decade also showed increased level of solidarity among indigenous peoples in Asia. Other UN bodies and programmes the UNDP, through its Asia-Pacific Bureau, established the Regional Initiative on Indigenous Peoples' Rights and Development (RIPP) which was based in Bangkok at the UN Center.

The regional and national networks and institutions which were formed or further strengthened are as follows:

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

- Bangladesh Adivasi Forum - Bangladesh;
- Cordillera Peoples Alliance - Cordillera region, Philippines;
- Kalipunan ng mga Katutubong Mamayan ng Pilipino (KAMP) - Philippines;
- Koalisyong Katutubo at Samahan ng Pilipinas (KASAPI) - Philippines;
- Indigenous Knowledge and Peoples (IKAP) - China, Burma, Cambodia, Laos, Vietnam and Thailand (or what are collectively called Mainland Montane Southeast Asia or MMSEA);
- Aliansi Masyarakat Adat Nusantara (AMAN, Indigenous Alliance of the Archipelago) - Indonesia;
- Indigenous Peoples' Forum - Cambodia;
- Nepal Federation of Indigenous Peoples (NEFIN) - Nepal;
- Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education) - Global;
- Thirteen Tribes Forum and Thai National Assembly of Tribal Peoples - Thailand;
- Tribal Women's Network - Thailand.

These networks and organizations are proofs of the enhanced capacities of indigenous peoples to self-organize and make better impacts at the national, regional and international levels. Tebtebba and AITPN have acquired consultative status with the UN Economic and Social Council within the Decade, which means they can enjoy the privileges of NGOs with such status. Some have since been helping provide information on situations of indigenous peoples, which became part of the proceedings and reports of the UN system; thus, making these more widely available to more people. Tebtebba has been cited on this regard. Tebtebba has also been actively engaged in participatory research, policy and situation analysis of indigenous peoples, policy advocacy, and education and training at the national, regional and global levels. Its work in deepening the research and analysis on free, prior and informed consent and blazing the path in pushing for this as a right for indigenous peoples at the national and global levels was instrumental in the gains achieved around this area.

Each of the other networks and organizations cited above had made their mark in their own chosen field and mandates, be it at the national, regional or global levels. The Indigenous Alliance of the Archipelago or AMAN of Indonesia, for example, has done significant policy advocacy and program work, including strengthening indigenous forest and resource management. In a short time since it was established in l999, it expanded very fast because many indigenous communities wanted to become members of the network. The Nepal Federation of Indigenous Nationalities or NEFIN played a prominent role in organizing programs, rallies and processions to help other indigenous peoples in Nepal become more aware of their rights. The Asian Indigenous Women's Network or AIWN has embarked on important activities to engender the indigenous peoples' movements and organizations and build up women's organizations. It was during this time when training activities were held to share with the members the draft UNDRIP and the significance of this on women. It held the Second Asian Indigenous Women's Conference in May 2004. This process led towards the formulation of a modest programme of action which was aimed at strengthening the indigenous women's networks and organizations in Bangladesh, India, Nepal, Thailand, Indonesia, Philippines and Taiwan. It was during this conference that work among indigenous women in Viet Nam and Cambodia were also agreed upon. AIPP has further consolidated itself and has become a key player on indigenous peoples issues within the region.

It has to be noted that many of these organizations, networks or institutions sustained their existence because of support from donors both from governments and non-government bodies. Donors include bilateral donors like DANIDA (Denmark), the United Kingdom DFID (Department for International Development), etc. There are also church-related donors such as Bread for the World and EZE/EED (Evangelische Entwicklüngdienst, e.V), MISEREOR in Germany or CEBEMO or ICCO in the Netherlands , Christian Aid in the UK which have provided resources for indigenous peoples' organizations. Non-church related donors like NOVIB in the Netherlands, For Foundation, Heinrich Boell Foundation, among others also provided support. Such support has allowed these organizations or institutions to do their training and

education on indigenous peoples' rights, organizing and to do policy advocacy work during the Decade.

But despite the work of these indigenous organizations and networks, their impact remains limited as far as influencing national development and political agendas. The processes done at the national level to present the results of these researches were, in fact, one of the first ones which brought indigenous representatives and government officials together.

Similarly, better solidarity and unity, although quite ideal, have yet to be achieved, considering undercurrents of what ICIMOD calls "issues of exclusion and inclusion" among various networks. But, as had been suggested, awareness of these undercurrents and transcending them may yet lead to better working relations and ultimately, better impact.

Media's Role. The role played by the media in covering the issues and concerns of indigenous peoples during the Decade could not be ignored. But while media coverage of indigenous issues increased compared to earlier decades, there were still limitations because of several factors.

In Bangladesh, for example, the mass media did their role in covering evictions of indigenous peoples, killings of indigenous leaders protesting against eviction, and other human rights violations in the Chittagong Hill Tracts. In fact, media coverage of indigenous issues increased in recent years and more and more journalists have become more aware of indigenous issues, even giving more space to support the CHT Peace Accord. But a form of censorship continues to stifle the free flow of information as the Bangladeshi government has since banned foreign and local journalists and tourists to visit the Hill Tracts.

The Bangladeshi government also has its own journalists organized into a press club, newspapers and magazines, book publishing outfits and radio-television networks to counter whatever has been coming out from the Hill Tracts.

The situation in Bangladesh was almost the same in the other countries, although some governments had been more repressive than others in terms of press freedom.

There were also other factors such as the role business plays in media coverage. The coverage of indigenous peoples displaced from mining and other development projects, for example, could be well-covered by alternative media outfits, but not in commercial media outfits in which mining companies were among the big advertisers.

That most media outfits are mainly event-oriented was another factor in the lack of depth and breadth of media coverage of indigenous peoples. Indigenous activists, for example, become prominent news sources only when a dramatic event such as a regime change occurs. Ideally, coverage and reportage of indigenous peoples' issues should continue even after a critical event such as a massacre or forced displacement of communities. But this was not the case as the media had to jump from one big event to another.

The domination of the media by non-indigenous people was another factor. A high illiteracy rate among indigenous communities and the use of foreign or mainstream languages had also barred indigenous peoples from entering the media profession.

But there were some good news during the Decade. Many indigenous peoples' organizations embarked on their own publications and radio outfits using their own languages.

Still, the various country reports showed that much needed to be done in improving media coverage. One area of capacity-building support indigenous peoples identified was to sensitize journalists to indigenous issues and to train indigenous peoples themselves on how to influence the media.

The Judiciary. The judiciary, if independent from the executive branch, could play an important role in upholding indigenous peoples' rights. In the Philippines, the judiciary was tested in 1998 when two prominent figures—a retired Supreme Court justice and a lawyer—filed a petition seeking to declare as unconstitutional the newly enacted Indigenous Peoples Rights Act of 1997 or IPRA. Despite its flaws, the IPRA, which based most of its framework from the Draft Declaration on the Rights of Indigenous Peoples and other UN human rights instruments, has been billed as a model law.

Philippine indigenous communities were only relieved when the Supreme Court in December 2000 finally dismissed the petition to declare the IPRA as unconstitutional. The petitioners on 22 December 2000 moved that the high court reconsider their petition, but the Supreme Court en banc resolved to deny the motion on 21 September 2001.

The Philippine Supreme court could not be totally regarded as independent because the presidential office would appoint to the high court people, who would tend to bow to the interests of the executive office. But the Constitution at least provides that the judiciary should be independent from the two other government branches—the executive and the legislative. Not in other countries such as Bangladesh where the judiciary has yet to be separated from the executive.

On a positive note, the judiciary could be tapped to support indigenous peoples' desire to legitimize or mainstream their customary laws and indigenous justice system. There were some cases, for instance, where the judiciary could work in favor of indigenous peoples' rights and interests as shown in some countries such as India and, surprisingly, Bangladesh. The Bangladesh high court upheld customary law in a dispute over the succession of the Bohmong circle in the Chittagong Hill Tracts.

But there was much to be desired in many countries where the judiciary might have helped inquire into human rights violations in indigenous communities but the perpetrators have gone unpunished. The judiciary in many countries was also helpless in intervening for indigenous communities where governments had granted mining permits and leases to multinational mining companies to extract mineral resources.

Land and Resources

The common thread of indigenous peoples' survival is their land and natural resources. They live off their land and resources so cutting them off from their lands and resources would be tantamount to genocide. This form of genocide or what some indig-

enous peoples' organizations call "development aggression" had become the common threat to the very lives, security and health of indigenous communities in Asia.

The 10 country reports all cited many indigenous communities alienated from and dispossessed of their rights to their ancestral territories and resources. And the common culprits were multinational mining corporations, logging firms, plantation projects and even government-supported projects such as big dams and ecological parks or forest reserves and national parks or protected areas.

Asian governments had allowed wide swaths of indigenous peoples' territories for extractive industries such as mining as a result of neo-liberal economic policies in which multinational companies were invited and provided incentives to invest on these industries. Multinational mining firms, for example, were given incentives such as tax holidays, full repatriation of profits and big areas to explore and mine. In the Philippines, under the Mining Act of 1995 the mining corporations are allowed to displace the people in the communities which they plan to mine (easement right). In balance, though, the Act says that the free, prior and informed consent of the indigenous peoples affected should be obtained before the company can explore and extract the minerals.

While most, if not all, of the 10 countries share the consequence of neo-liberal economic policies, one cause of land alienation and dispossession stands out in a few countries such as India, Bangladesh and Indonesia—immigration. Often supported also by government policy, immigration into indigenous communities had been encouraged to make the original inhabitants the minority in their own ancestral territories. Once "minoritized" and eventually divided, these indigenous communities would become more vulnerable and powerless to defend and uphold their rights.

With their long experiences of alienation and dispossession, indigenous peoples all the more pushed for their right to determine what development form was best for them. This is what they call the right to self-determination. Side by side with this, Asian indigenous peoples had been advocating for the recognition of their collective rights.

Some countries had tried to experiment on policies and programs, which would supposedly encourage indigenous community participation in managing resources such as forestry. But some country reports reveal that programs such as community forestry had done more harm than good. It was shown that in Nepal community forestry could displace indigenous peoples from the very land they occupy. The land maybe legally accessible to Nepal indigenous communities, but they have been forced to use it for permanent forestry instead of traditional purposes.

As a result of the advocacy of indigenous peoples, many Asian governments had passed laws and instituted policies governing land and resources. Some of these laws and policies, although full of loopholes and limitations, sought to address the issues raised by indigenous peoples. But some typifies the classic case of the government giving something from its right hand only to be taken by the left hand.

A mining law in Indonesia, for example, has one provision, which includes a clause on "community development" and the recognition of indigenous rights. But it is not clear how this clause can be implemented. In fact, it was noted that the State has practically transferred its constitutional duty of protecting the rights of vulnerable groups to the private sector.

Another case is the Philippines, which boasts of its Indigenous Peoples Rights Act or IPRA. Whatever gains indigenous peoples attained from the IPRA, these could be wiped the Mining Act of 1995, which was mentioned earlier.

In many countries, indigenous peoples virtually have no rights to their lands and forests, which are owned by the State. This was particularly so among indigenous peoples in Thailand. The hill tribes or indigenous peoples thus suffer from double jeopardy because, besides having no rights to their forest settlement, they are also not granted citizenship and are thus denied other rights accorded to Thai citizens. In Southwest China, ethnic minority villagers now have to pay the government for use of timber from the forests, which they have successfully protected for decades.

Also in Southwest China, ethnic minorities have difficulty securing their rights over their resources because of the vested interests of officials in various agencies. "Since various government agen-

cies at different levels all have their own interests in relation to development projects, and because power relationships within the government system are complex, how ethnic minorities can use policy, regulatory and legal means to secure their rights over natural resources and to realize their rights in development planning is a complex question," reports the Center for Biodiversity and Indigenous Knowledge in its assessment report.

In Viet Nam all lands are owned by the State and allocated to households for forestry and farming, a situation that looks ideal. But many indigenous peoples called "ethnic minority groups" lack the ability to invest so they are excluded from a large share of land allocation.

One of the enemies of indigenous peoples in other countries is right in their own communities. This is what the report from India calls "indigenous landlordism" in which many cases of communal lands had been privatized through government bank loan policies and programs, which promote cash crops. These policies and programs had been manipulated by schooled local indigenous elites to their own advantage.

Language and Literacy

In the course of their history, Asian indigenous communities had lost some of their local languages as foreign colonizers or more dominant ethnic groups imposed their languages. These imposed languages became the main language of communication and instruction in schools and offices. In the name of nation-building, Asian countries had also pushed for one-national-language policies.

It turned out that imposed or borrowed languages had made learning difficult for indigenous children, thus contributing to higher dropout rates. Some governments had tried to respond to this dilemma by adopting the advocacy for bilingual instruction. But the advances on this vary from one country to the other.

Similarly, the 10 country reports acknowledge that even with bilingual instructions, various local languages have disappeared or

in the brink of disappearing. They all admit that once this happens, the diversity or varied nuances of culture and traditional knowledge attached to a certain local language would also eventually vanish.

Some countries are aware of the consequences of the loss of local languages. To their credit, some countries have initiated efforts to preserve local languages. The government-run Radio Nepal, for example, broadcasts five-minute news bulletins in various languages.

Translating Awareness into Laws, Policies and Programs

In terms of translating awareness on indigenous rights into laws, policies and programs, the Philippines has often been cited as a model of some sort. For one, the country was the first to recognize the rights of indigenous peoples in its 1987 Constitution. Such recognition was the constitutional basis of the Indigenous Peoples Rights Act of 1997. But whether the Philippines has truly implemented the spirit of what has been provided for in both the Constitution and the IPRA is another matter. Still, the Philippines has been credited for its legislative advances in terms of instituting recognition of indigenous peoples' rights.

On the other hand, most states had difficulty recognizing even the term "indigenous" and much more so with "peoples." So they would settle for tribal, hill tribes, ethnic minorities, small socio-economic groups, highlanders, adivasi, and so on.

Many states also have been reluctant to accept the notion of self-determination and the recognition of collective rights. They just could not appreciate that self-determination simply refers to the right of indigenous peoples to be able to identify what is best for their own development and welfare. They look at self-determination for indigenous peoples as a threat to national sovereignty and territorial integrity.

Still, there have been windows of opportunities of engagement with governments. At the international level, the creation of the UN Permanent Forum on Indigenous Issues has prompted

states to engage with indigenous peoples. It also helped that many states are signatories to international conventions and treaties, which impact directly or indirectly on the rights of indigenous peoples. But, as will be explained in the next sections, there is still a long way before states will truly comply with their obligations to these international conventions and treaties.

At the national level, Asian governments, in various degrees, have responded to the needs and concerns of indigenous peoples, who, in some countries, are categorized as part of "vulnerable groups" or sectors. These responses include policies and programs seeking to help alleviate the poverty and marginalization of these vulnerable sectors, which include indigenous peoples.

Similarly, as a result of at least four factors, various national laws and policies were enacted to safeguard and uphold rights of indigenous peoples. Firstly, changes in political regimes had created new political spaces through which indigenous peoples could engage with their governments. Secondly, more and more Asian governments had stressed on equity and social inclusion in development, thus involving concerned sectors or stakeholders, including indigenous peoples. Thirdly, more governments had found it urgent to resolve identity-related conflicts arising from socio-economic and political marginalization. Finally, the long and persistent struggles of indigenous peoples and how they had been articulating their issues and concerns both at the national and international arenas finally paid off.

Trends in decentralized and participatory governance also paved the way for indigenous peoples to put forward their policy advocacies. This led to indigenous peoples' participation in natural resources management such as in community-based forestry management. But there were still problems. In the Asian context, prerogatives of economic growth driven by economic liberalization and globalization led to policies, which proved disastrous to indigenous peoples. This could be seen in various laws on mining, forestry and even marine resources.

Between 1995 and 2004 NGOs, indigenous peoples' organizations, international development agencies, including the UN, and governments launched programs and projects to help empower indigenous peoples and to provide or enhance their liveli-

hoods. But these programs and projects could not be totally attributed to the declaration of the Decade. The specific programs implemented in relation to the Decade were largely the initiative of indigenous peoples' organizations, NGOs and which managed to gather support from bilateral and multilateral donors and agencies. There have been a few private philantrophic donors who also supported some indigenous peoples' organizations to do more programme and project work in their communities.

International Conventions and Treaties

Most Asian states are signatories to various international human rights instruments such as the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child, among others. Among the 10 countries surveyed, except for Bhutan, all the rest ratified these legally – binding international laws. Some of them have even translated these into national legislation. If the rights contained in these conventions and treaties were respected, protected and fulfilled then indigenous persons can enjoy these rights as well. Unfortunately, the reality is very different. Which means that much more work needs to be done to get governments to adhere to their obligations to these international laws. Table 2 shows which States signed some of these international treaties.

Table 2. International Conventions and Signatories from 10 Countries Assessed

Convention	Some Salient Features	Signatories
ILO Convention 107 (1957)	• Provides for adopting certain proposals to protect and integrate indigenous and other tribal and semi-tribal populations in independent countries; • It considers that the problem of marginalization and oppression of indigenous peoples will be solved if they are integrated into the dominant society. • Highly criticized by many indigenous peoples which led to its revision.	Bangladesh India
ILO Convention 169 (1989)	• It removed the integrationist and assimilationist content of ILO 107. • Recognizes that indigenous peoples have the right to "decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly." (Art.7)	None of the 10 countries assessed signed this Convention

ILO Convention 111 (1958)	• Protects indigenous peoples' rights to practice traditional occupations, including shifting cultivation and nomadic herding.	All except Bhutan and Thailand signed this Convention
International Convention on Elimination of all Forms of Racial Discrimination (1963)	• Calls on States to condemn racial discrimination and pursue a policy of eliminating racial discrimination and promoting understanding among all races.	All of the 10 countries signed this.
International Covenant on Economic, Social and Cultural Rights (1966)	• A multilateral treaty committing the 155 states that are party to it to work towards granting economic, social, and cultural rights to individuals.	Except Bhutan, the nine other countries signed this.
International Covenant on Civil and Political Rights (1966)	• Seeks to solve the disagreement between capitalist and communist nations over the aforementioned declaration (as capitalist nations favored the first-generation "civil and political rights" and the communist nations preferred the second-generation 'economic, social and cultural rights')	All the countries assessed, except Bhutan, signed this.

In spite of the fact that 10 states are not implementing in any satisfactory way these treaties it does mean that these are useless. The indigenous activists and leaders—who participated in training programs, conferences and related activities organized for the Decade which were initiated and organized by indigenous organizations like Tebtebba and bodies like the OHCHR—have come to appreciate more the relevance and potential of these various conventions and treaties in terms of protecting their rights.

The 10 Asian Countries and their Constitutions

How indigenous peoples are labeled in the Constitutions of their countries apparently shows how they are treated by their governments.

The Constitution of Bangladesh, for example, refers to indigenous peoples as "backward sections of citizens." Such label invites both good and bad consequences. On the one hand, the label suggests that as "backward sections of citizens," indigenous peoples in Bangladesh need more attention so they can move forward with the rest of the population. On the other hand, the label tends to deride the status of indigenous peoples.

Despite such labels, Bangladesh's Constitution offers some opportunities through which indigenous peoples can engage with the government. The Constitution, for instance, provides for partial autonomy in governance for the Chittagong Hill Tracts. So after a Peace Accord was signed in 1997, a Ministry of Chittagong Hill Tracts Affairs, Chittagong Hill Tracts Regional Council, three Hill District Councils, and a Land Disputes Commission were set up. But these bodies for partial autonomy have yet to deliver their functions and fulfill their mandates.

The 1993 Constitution of Cambodia also has no special provisions for indigenous peoples. But it has two articles, which indirectly cover the rights of indigenous peoples. Article 31 recognizes and respects human rights as defined in internationally accepted human rights standards. Article 32 provides that Khmer citizens are all equal before the law "regardless of their race, color, sex,

language, beliefs, religions, political tendencies, birth origin, social status, resources, and any position."

In China all ethnic groups, including the dominant Han, are considered indigenous. The government instead uses "ethnic minorities." Before the term used was "minority nationalities." This has been downgraded to ethnic minorities, however, which is deliberate political decision to counter the assertion by these peoples of their right to self-determination. On balance, the government participates in tackling issues affecting indigenous peoples. Minorities also have equal constitutional rights and are represented in the People's Congress and in the State Ethnic Affairs Commission.

Similarly, China has a Minority Area Autonomy Law, which grants certain rights to ethnic minorities. But the law has proved ineffective for lack of political power and representation held by ethnic minorities. Power still rests solely in the Communist Party system, which does not require leaders to be from ethnic minorities. At the People's Congress, the ethnic minority representatives are government employed officials. Although these officials belong to ethnic minorities, it was pointed that it would have been better if other ordinary minority villagers, not already employed officials, become the representatives.

The government of India neither uses indigenous. It instead refers to indigenous peoples as "Scheduled Tribes" as stipulated in Article 342 of the country's Constitution. These tribes since 1950 have been "scheduled" in specific areas and are thus recognized as Scheduled Tribes only in those areas. The Constitution protects the rights of Scheduled Tribes, but these tribes have yet to be fully empowered and emancipated. For example, the problem of community land not being recognized by the state law system remains a fact of life in Northeast India. They are also referred to primitive and backward tribal groups (PTGs). There are several tribes or peoples who are not included in the government list of Scheduled Tribes. Those who got excluded are working to get themselves into the list but this is not happening.

The 2001 Constitution of Indonesia is considered better than the 1945 Constitution. At least the new Constitution adopts many of the Universal Declaration of Human Rights and requires the State to protect the basic rights of its citizens, including indigenous

peoples. But the Constitution attaches conditions to the recognition of indigenous peoples' existence and rights. For instance, Article 18B(2) provides for the recognition and respect of indigenous peoples and their traditional rights but the recognition must be "in accordance to societal development and the principles of the Unitary State of the Republic of Indonesia…" The country, which faces secessionist and autonomy movements, is overly cautious about granting indigenous peoples rights. This leads to a situation that has proved more detrimental to indigenous peoples.

Nepal at the time of this assessment was in the thick of reconstruction and political transformation because of regime change. But indigenous peoples have since been using this time to push for their representation in the new regime. Currently, the interim government follows an "ad hoc" Constitution, which provides for the recognition and respect of rights of everyone—women, marginalized peoples, and indigenous peoples or *Janjatis*. The interim government has also pledged to create a federal system, which can ensure wider representation from the people. As provided for by Article 25.3 of the still-to-be-amended 1990 Constitution, Nepal reserves seats for indigenous peoples in education and government employment. But for a long time this has only been good on paper.

In the Philippines, indigenous peoples are now currently referred to as "indigenous cultural communities/indigenous peoples" in the 1987 Constitution and in the Indigenous Peoples Rights Act of 1997 or IPRA. The Constitution protects the rights of indigenous cultural communities to their ancestral lands. The Constitution also recognizes, respects, and protects the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions, which shall be considered in formulating national plans and policies.

The Constitution of Thailand does not specifically refer to indigenous peoples. But Article 46 provides that people who have settled down as a community shall have the right to conserve and revitalize their traditions, wisdoms, art, and culture. They shall also participate in managing, maintaining, and making use of the natural resources and environment through ecological and sustainable ways. But there are no implementing rules or enabling

laws to implement Article 46. That many indigenous peoples or highlanders are not given citizenship status also makes this article inutile.

Indigenous peoples in Vietnam are also referred to as "ethnic minorities" in the 1992 Constitution. Among other items, the Constitution, particularly Article 5, maintains a policy of "equality, solidarity and mutual assistance among all nationalities, and forbids all acts of national discrimination and division." The State likewise commits itself to "a policy of comprehensive development and gradually raising the material and spiritual living conditions of the national minorities."

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	Article 9 "Principles of State Policy"
Cambodia	x	Khmer Leu (Upper or Highland Khmer) highland people/ethnic minorities. From 2004, indigenous peoples	Articles 31 and 32 (1993 Constitution of Cambodia)
China	x	Ethnic minorities	Equal rights and other specific rights
India	x	Tribes (scheduled tribes), adivasi	Article 342 (affirmative action), Vth and VIth Schedules, Article 371, PESA 1996

Indonesia	x	Masyarakat hukum adat (community of custory law), traditional people/ masyarakat adat	Articles 18B and 281 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 1992 Constitution

Source: Assessment Synthesis Report on the First International Decade of the World's Indigenous People in Asia, 1995-2004. Kathmandu: International Center for Integrated Mountain Development, 2007.

Multilateral and Bilateral Agencies

The 10 countries assessed are recipients of one or more among various multilateral and bilateral agencies. These include the World Bank, Asian Development Bank, United Nations Development Program or UNDP, International Fund for Agricultural Development or IFAD, and other agencies such as United Nations Educational, Scientific and Cultural Organization or UNESCO, Danish International Development Agency or DANIDA, and the Norwegian Agency for Development Cooperation or NORAD.

During the Decade, these agencies either formulated institutional policies or revised existing ones for their work in indigenous communities. Many of these policies, however, have yet to be further revised to be more appropriate for and friendly to indigenous peoples.

The 10 country reports assessed the policies of these multilateral and bilateral agencies as applied to the indigenous communities where they supported various development projects.

Among other measures, the World Bank's policy of undertaking "free and prior informed consultation" instead of "free and prior informed consent," for example, has been widely criticized. This was more so because the policy directly links to the issue of land rights of indigenous peoples.

Generally, the good news was that there was a marked improvement among multilateral and bilateral agencies in terms of developing policies for engagement with indigenous peoples. Thanks to indigenous peoples themselves, who, in various parts worldwide, have risen up in protest against disastrous projects such as big dams and other development projects funded by these multilateral and bilateral agencies.

But some indigenous respondents interviewed for the assessment of the Decade claimed that these policies were not always followed.

Policy and Poverty

Poverty Reduction. "Policy reduction," which was later replaced with "poverty alleviation," became a catch-phrase within the Decade. Almost every government in Asia has talked about reducing poverty after the International Monetary Fund and the World Bank in 1999 embarked on what they called "poverty reduction strategy papers." Intended to help governments detail country-based strategies to reduce poverty, these strategy papers also seek to connect national public conduct, donor support and the development results required to meet the United Nations' Millennium Development Goals or MDGs.

The strategy papers contain the macroeconomic, structural and social policies and programs a country needs to follow over a number of years to encourage broad-based development and to reduce poverty. The strategy papers also include external financing needs and related sources of funding. Indigenous peoples are covered by the strategy papers as they belong to the poor and vulnerable sectors.

These strategy papers became the bases of drafting national policies in various countries in relation to achieving the Millennium Development Goals. In some countries, indigenous peoples were able to intervene in helping draft these policies. But there was much to be desired in the final policies that came out. In Bangladesh, for example, the national poverty reduction strategy paper acknowledges the presence of 'adivasi' or indigenous peoples, but it had no separate allocations for indigenous peoples in the last two national budgets.

In Viet Nam, the participation of ethnic minorities in drafting the national strategy paper was insignificant. In Nepal, indigenous peoples complained that many of their inputs were disregarded.

Programs and Projects. It was noted that during the Decade, non-UN international development agencies have supported more projects than UN agencies. These included the World Bank, Asian Development, and the development assistance arms of various rich countries. Again, one of the feedbacks of indigenous peoples in relation to these programs and projects was that they did not

always take into account the particular needs and cultures of indigenous communities.

Some development projects funded by these agencies have helped provide livelihoods and helped increase incomes and speed up transportation of goods and people in indigenous communities. But according to feedbacks, whatever benefits brought about by the projects were wiped out by neo-liberal economic policies being advanced by the GATT-WTO. One example was the Cordillera Highland Agricultural Resource Management Program or CHARM in northern Philippines, which the ADB and IFAD jointly funded.

The CHARM helped increase incomes and helped improve the social well-being of many recipients. But the government, as prescribed by the GATT-WTO, allowed the importation of temperate vegetables, almost killing a local vegetable industry supporting thousands of farmers.

Moving Forward

Indigenous peoples in Asia can learn vital lessons that emerged from the assessment. One of these is the need for indigenous peoples to keep on engaging with their governments, putting to maximum use and advantage whatever spaces opened for engagement. Another is for indigenous peoples in Asia to continue sustaining, if not improving, the solidarity they developed in the course of the Decade and the decades before.

The assessment also provided various ways by which indigenous peoples in the 10 countries could move forward as they continue their struggles in the Second International Decade of the World's Indigenous People. When the researchers and participants of the assessment finally met in Kathmandu, Nepal in November 2006 to finalize their work, they were able to push for various recommendations, which can help future actions. These recommendations included the following (also contained in ICIMOD's *Assessment Synthesis Report, 2007*):

For Thematic Areas

Health

- Provide more support for culturally appropriate and functioning health-care centers 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 organizations, 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.

For the UN and International Agencies

- Provide financial and technical support for indigenous peoples and indigenous peoples' organizations to develop, implement, and monitor programs and projects.
- Build the capacity of indigenous peoples and indigenous peoples' organizations 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' organizations.
- Promote culturally-sensitive poverty alleviation and/or development programs.
- Set up activities on sharing and learning for non-indigenous persons, governments, civil society, and media on indigenous issues in order to raise awareness and recognition of cultural diversity (particularly about indigenous peoples).
- Build networks among indigenous peoples (mountain, coastal, and so on) which also reach the grassroots, and strengthen existing ones.
- Ensure stronger emphasis on the self-determination of indigenous peoples.

For States

- Collect disaggregated data to develop and refine indicators of poverty and development for indigenous peoples.
- Develop contextual definition of the term "indigenous peoples" at national levels.
- Stop development-induced displacement and rehabilitation.
- Stop the militarization 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.

- Recognize traditional and ancestral land rights.
- Prevent the "commodification" of cultures in the name of tourism.
- Pursue activities from a gender-sensitive perspective.

Conclusion

On the whole, it can be said that the International Decade of the World's Indigenous People helped raise the awareness of the dominant society, States and the international community of the situation of indigenous peoples in the 10 Asian countries which were subjects of this research project. It is fair to say that the gains were more on the global level than the regional or national levels. One of the key gains is the great advance in the efforts to establish the minimum international human rights standards which will help in promoting the dignity and survival of indigenous peoples. These are the processes around the drafting and negotiations of UNDRIP. While the UNDRIP has not been adopted during this period the processes towards the eventual adoption in 2007 were set in motion.

It was within this period also when policies on indigenous peoples were developed, adopted or revised by some UN bodies and agencies. Even some bilateral donors developed their own policies on indigenous peoples. While the money allotted for indigenous peoples were not very big, it is without any doubt, that contributions from public and private funds which went directly to indigenous peoples helped increase the visibility of indigenous peoples.

Furthermore, spaces were establishes which gave access to indigenous peoples to the international arena. The UN Permanent Forum on Indigenous Issues is one of the major achievements of the Decade. Without this space it would have been harder to build upon the gains achieved within the ten year period. The UN Commission on Human Rights Working Group on the Draft Declaration was another space which was used by indigenous peoples

to network among themselves and to jointly contribute in getting the UNDRIP finalized.

There are also gains at the national level in the 10 countries subjected to this assessment. While these may not be very significant, these are baby steps towards bigger achievements. Most of these were due to the increasing strengths of indigenous peoples' movements and the support they gathered from those who understood and sympathized with their situation. The Decade is one factor which led to the establishment of more indigenous peoples' formations within the countries. The existence of the Forum and the UN Working Group on the Declaration as well as the UN Working Group on Indigenous Populations provided the venues for indigenous activists and leaders from all the parts of the world to come together. One cannot underestimate the role these spaces played in cementing unities among indigenous peoples who are very diverse. Such unity building is crucial to get the different States to agree to set up the Forum and eventually adopt the UNDRIP.

Clearly much more work needs to be done to substantially change the situation of indigenous peoples. This includes getting the States to comply with their human rights obligations and to regulate the behavior of corporations which are also contributing in the expropriation of indigenous lands, territories and resources. All of the 10 States in Asia have to show more political will to protect, respect and fulfill the individual and collective rights of indigenous peoples in their territories. One decade is not enough to do this and thus a Second Decade has been declared again by the UN General Assembly. It is our hope that when an assessment of this Second Decade is done there will be greater changes compared to what has been seen so far.

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Analysis of Laws and Policies in the Philippines Concerning Indigenous Peoples within the International Decade of the World's Indigenous People (1995-2004)

Aida Priscilla T. Cadiogan

I. Introduction

Indigenous peoples worldwide are distinct peoples bound by their common worldview that their lands and resources that they have occupied and used since time immemorial have been given and entrusted to them by one Supreme Being for everyone to use, cultivate, sustain and live on. Therefore, these lands are communally-owned and communally-managed. More often than not, this concept of land is contradicted by laws and policies introduced by governments and other entities which has been the basic cause of conflicts among the indigenous peoples, governments and other actors, as we have seen in many cases worldwide. In the Philippines, this contradiction is clearly captured in the words of a renowned leader of the *Igorots* in the Cordillera, Macli-ing Dulag, Village Chief in Kalinga, as he defended his people in a protest against the Chico River Dam Project in the 1970s, when he said:

You ask if we own the land. And mock us. 'Where is your title?' When we ask the meaning of your words, you answer with taunting arrogance, 'Where are the documents to prove that you own the land?' Title. Documents. Proof (of ownership). Such arrogance to speak of owning the land, when you shall be owned by it. How can you own that which will outlive you? Only the race owns the land because only the race lives forever...

Land defines the very existence of indigenous peoples and has always been a central issue to their struggle for self-determination, or the right to freely determine their political status and freely pursue their economic, social and cultural development. This paper will mainly look at the laws and policies concerning the indigenous peoples' rights to their lands and resources, and in relation to the program of activities of the UN-declared International Decade of the World's Indigenous People (1995-2004).

With the main objective of strengthening international cooperation for the solution of problems faced by indigenous peoples, the United Nations (UN) General Assembly declared on December 21, 1993 the first International Decade of the World's Indigenous People from 1995 to 2004 through Resolution 48/163. On December 23, 1994, the UN General Assembly adopted the short-term program of activities for 1995 through Resolution 49/214. A year later on December 21, 1995, it adopted the comprehensive program of activities through Resolution 50/157. The General Assembly also authorized the establishment of the Voluntary Fund for the International Decade of the World's Indigenous People for the purpose of financing programs and projects during the Decade. In the Philippines, the Department of Foreign Affairs (DFA) was in charge of implementing the Decade's programs.

This study is part of the Assessment of the First International Decade of the World's Indigenous People, a research covering the Philippines and four other countries in Southeast Asia, namely, Cambodia, Indonesia, Thailand, and Vietnam. This study on the Philippines included policies, programs, and projects implemented within the Decade which are mostly on land and resources.

A. Objectives

1. General

This paper aims to look at the key policies regarding the indigenous peoples' rights to their lands and resources, and programs of the Philippine government including some programs by financial institutions which have had an effect on indigenous peoples in the country.

2. Specific

The study has the specific objectives of analyzing: (1) key national laws and policies, regional and international conventions and treaties, and other new mechanisms that address the issues and concerns of indigenous peoples in the Philippines; and (2) identified programs and projects of the Decade by donor institutions, the UN, partner governments and non-government organizations (NGOs), and civil society organizations.

B. Methodology

1. Framework of Analysis

This policy analysis includes policies and programs implemented in the Philippines by both the Philippine government and other institutions during the UN-declared International Decade of the World's Indigenous People (1995-2004). Programs include those that directly targeted indigenous peoples as beneficiaries, as well as those that indirectly benefited them. The analysis is focused on implementation (how the agencies implemented their programs/projects) and their impact on indigenous peoples in the Philippines.

2. Data Gathering

This study is basically a review of existing documents and other materials that were gathered from relevant agencies, institutions, and organizations. Specifically, the researcher used existing evaluations by other writers and other documents that provide an analysis of the same issues.

The researcher also conducted interviews to clarify contentious issues in the documents. The results and findings of the study were validated in a national consultation attended by key agencies and partner organizations.

II. Background

A. The Indigenous Peoples

Indigenous peoples in the Philippines were referred by government with different names at different periods in Philippine history. The American colonial government referred to them as the "non-Christian tribes" when the Philippine Commission created the Bureau of Non-Christian Tribes in October 1901. Placed under the Department of Interior, the Bureau was tasked to investigate the non-Christians of the Philippines to ascertain their tribes, territories, social organization, language, beliefs, manners and customs.

Later, the Bureau was given more power and was elevated into an independent body in 1957 as the Commission on National Integration (CNI) through Republic Act (RA) 1588. The name of the agency reflected the integrationist policy of the government which sought to integrate the indigenous groups into mainstream society. The main programs of the CNI were scholarships for indigenous peoples who were then referred to as "cultural minorities." The indigenous peoples were later referred to as "national minorities," "tribal Filipinos," and "cultural communities" which was a more acceptable term.

The current term being used by the government, which had also been used in the UN system, is "indigenous cultural communities/indigenous peoples" (ICCs/IPs). This term is also what is used in the landmark legislation, the Indigenous Peoples Rights Act (IPRA) of 1997. Indigenous peoples/indigenous cultural communities as defined in IPRA refer to "a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and uti-

lized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who have been displaced from their traditional domains or who may have resettled outside their ancestral domains."[1] This definition reflects the innate nature of the indigenous peoples' attachment to their land and territory and also reflects the possible changing identities that may be brought upon by changes in territory, religion and culture like in Mindanao and the Islam religion and culture.

There are different estimates on the number of indigenous peoples in the country since there has been no systematic census to get their actual number. The present census system uses mother tongue as basis which may not reflect accurate figures. The estimates say that there are about 110 to 140 ethno-linguistic groups in the Philippines with an estimated population of about 12 to 15 million. The indigenous population is about 15 to 20 percent of the country's total population of 80 million. They are scattered in more than 50 of the country's 78 provinces and of the total indigenous population, the NCIP estimates that 61 percent live in Mindanao, 33 percent are found in Luzon, and about six percent live in the Visayas. They are collectively known as the *Lumads* (non-Islamized groups) in Mindanao, Igorots in the Cordillera in northern Luzon, and *Tumandoks* in the Visayas. The indigenous peoples in the Philippines are very diverse in their social, cultural, political and linguistic features but most of them live in rural, interior areas and depend mostly on swidden and wet rice cultivation, hunting, fishing, trading, handicrafts, and increasingly as paid laborers in the urban and town centers. They are usually part of the most vulnerable sectors of society with the highest poverty incidence in some areas.

Indigenous peoples have had a long history of struggle for the recognition of their rights to their ancestral territories which they have occupied since time immemorial. Like the struggle for survival of most indigenous peoples worldwide, the central issue in the Philippines has been about land. The indigenous peoples believe that uprooting them from their land denies them their right to live and their identity. Even before the declaration of the International Decade for the World's Indigenous People by the United Nations in 1993, indigenous peoples in the Philippines have long started their path towards the recognition of their rights in the mid-1970s when the Igorots in the Cordillera successfully resisted the implementation of the Chico River Dam project and the Cellophil Resources (logging) Corporation in their territories. The struggle continued in the 1980s when, through their leaders and advocates, they lobbied for the recognition of indigenous peoples' rights in the Philippine Constitution in 1987, and later, through the enactment of the Indigenous Peoples' Rights Act in 1997.

We travel back to the Philippines' colonial history in order to trace the roots of how indigenous peoples were treated through the years. The indigenous peoples lived in the Philippines with their own concepts and practices long before the colonizers came. The arrival of the Spanish and American colonizers brought with them their own concepts of land use and ownership which were different from the native occupants. We must trace the historical context of laws and policies on land and resources in order to understand the conflicts that they have brought to indigenous peoples in the Philippines.

B. Pre-IPRA Land Laws and Policies

1. Spanish Period

Starting from the Regalian Doctrine which was the basis for declaring that the Crown of Spain owned all lands, the Spanish colonial government in the 16th century would introduce numerous laws that essentially undermined customary concepts of land use, rights, and ownership. Such laws called for the titling of lands on the basis of "long and continuous possession"[2] such as the Royal Decrees of October 15, 1754, the Royal Cedula Circular of 179, the Royal Decrees of 1880, and the Spanish Mortgage Law

of July 1893. The Maura Law[3] of 1894 reiterated the Regalian Doctrine that "all *pueblo* lands were protected lands and could not be alienated because they belonged to the King."[4] Article 4 of the law declared that any land not titled in 1880 "will revert back to the state."[5]

2. American Period

The American colonial regime adopted the Regalian Doctrine. The Treaty of Paris in 1898 provided that "'all immovable properties which in conformity with law, belong to the Crown of Spain' were to be ceded and relinquished to the new colonial master."[6] This would be followed by the Torrens system of land titling according to the Public Land Act of 1902 and the Philippine Commission Act 178 of 1903, which declared that "all unregistered lands would become part of the public domain, and that only the State has the authority to classify and exploit the same."[7]

In Mindanao, the implementation of the Public Land Act of 1902 facilitated the development of large plantations and other forms of capitalist production. The enactment of the subsequent laws resulted in the establishment of homestead and resettlement areas. These laws further paved the way to corporations wanting to put up plantations and settle landless farmers from Luzon and the Visayas into Mindanao. Some Muslim communities were displaced and forced to move into the areas occupied by the non-Islamized natives who were then pushed into the interiors of Mindanao. The overall result was a systematized and institutionalized dispossession of land and territories from the native populations. The US colonial rule did not completely alter the existing property systems in Mindanao, however, it facilitated the concentration of land among the US companies and emerging local elite. Furthermore, the massive migration of farmers from outside Mindanao created conflicts between the natives and the settlers, and was strongly expressed in conflict on access and control over land and resources.[8]

The Mining Law of 1905 gave way to mining activities by Americans, while the Forest Law of 1905 granted logging concessions. The Torrens titling system was institutionalized in Land Registration Act of 1905.[9]

Not even the US Supreme Court's landmark decision on the Cariño[10] case could reverse the trend. The decision could have protected the vested rights of ICCs over ancestral domains that they have occupied since time immemorial but the decision was never executed and the native title to the land was never recognized by the State. More laws were enacted which resulted in: (a) the appropriation of Mindanao and all lands considered unoccupied or unreserved; (b) the classification of areas occupied by indigenous peoples as public land and forest reserves;[11] and (c) restrictions that free patents shall not include mineral deposits.[12] These laws included Public Land Acts of 1913, 1919 and 1925, Public Land Act 2874 of 1918,[13] Proclamation No. 217 of 1929, Mining Act of 1935, and Commonwealth Act 137.[14] These laws meant infringement on indigenous peoples' rights over their lands and rendered them "squatters in their own land."

During the Philippine Commonwealth era, the 1935 Constitution retained the colonial view of land as embodied in Section 1, Article XIII, which stated that:

> *All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to the citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to existing right, grant, lease, or concession at the time of the inauguration of the Government established under the Constitution.*[15]

3. Post-Colonial Period

The post-colonial policies for Mindanao-Sulu area further institutionalized the dispossession and marginalization of the indigenous population. The migration of people from Luzon and Visayas was aggressively pursued by the government from 1949 to 1963 through various laws and programs. This situation led to further displacement and dispossession of several Muslim and Lumad communities and resulted in the formation of majority-minority classification of the Mindanao populations. The shift in government

policies from the Import-Substitution Policy in the 1950s to an export-oriented development strategy in the 1960s led to the massive expansion of the logging industry and agricultural plantations in Mindanao.[16]

In 1975, the Revised Forestry Code provided that all lands having a slope of 18 degrees or more were inalienable and non-disposable for agricultural and settlement purposes, and were classified as public forest land belonging to the State. But the Regional Forestry Master Plan recorded that 57 percent of the pine forest area in the Cordillera has a slope greater than 50 degrees. Thus, with this law, the indigenous peoples who have traditionally settled on the slopes in the Cordillera were suddenly reduced to being squatters in their own land.[17]

Nonetheless, there were also legislations that seemed to favor the indigenous peoples during this period. Among these laws were Republic Act 3872 (Manahan Amendment, 1964), Administrative Order No. 11 (Bureau of Forestry, 1970), Presidential Decree 410 (Ancestral Land Decree, 1974), Presidential Decree 1529 (Property Decree, 1978), and Presidential Decree 1998 (1985).[18]

To carry out the policies and to address indigenous peoples' concerns, the government established, dissolved, or merged agencies over the years. The former Bureau of Non-Christian Tribes of the early American period which became the CNI in 1957 was abolished in 1978 by then President Ferdinand Marcos. As replacement, he created the Southern Philippine Development Authority (SPDA) and the Mountain Province Development Authority (MPDA) which took over the government programs for indigenous peoples in southern and northern Philippines. These agencies later became the Ministry of Muslim Affairs (MMA) and the Presidential Assistance on National Minorities (PANAMIN), with the latter having the authority to design, implement, and maintain settlements among the indigenous peoples. The Bureau of Forest Development was prohibited from issuing any type of forest concessions in provinces which had ethnic minority residents as of the last census, unless otherwise certified by PANAMIN.[19]

However, the situation of the indigenous peoples worsened during the time of PANAMIN. It did not look into their real problems, distorted many concepts about indigenous peoples, and

treated the indigenous peoples as art and museum artifacts rather than important partners in national development.[20] It was later abolished when its then-Secretary Manuel Elizalde, Jr. left the country before the collapse of the Marcos regime.

The government created the Office for Muslim Affairs and Cultural Communities (OMACC) by virtue of Executive Order 969. The name dropped the term "minorities" and reflected the shift towards a more acceptable terminology. The OMACC was designed to cater both the Muslims and non-Muslims in the country. But the agency did not last long when it was lorded over by representatives of the Muslim sector such that the other tribal communities were relegated to the background.[21] The government then realized that an agency catering to both the Islamized groups and the other cultural communities did not work well as envisioned.

The State's lack of clear policy on indigenous peoples and ancestral domains was further reflected in the performance of similar agencies that were created after PANAMIN, like the OMACC which was also abolished in January 1987 by the Aquino government. Former President Corazon Aquino created separate offices, namely, the Office for Muslim Affairs (OMA), the Office for Northern Cultural Communities (ONCC), and the Office for Southern Cultural Communities (OSCC) which were attached to the Office of the President. Unfortunately, these agencies also did not make a big difference for the indigenous peoples except for some scholarship programs and issuance of certificates of membership.

4. Post-Marcos Era to 1993

After the Marcos dictatorship was ousted in 1986, the Philippine government under the Aquino administration introduced major policy changes on indigenous peoples as contained in the 1987 Constitution. The new constitution provided for the following State policies:

- The recognition and protection of the rights of ICCs within the framework of national unity and development (Section 22, Article II);
- The protection of the rights of ICCs 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 programs (Section 5, Article XII);

- The recognition of prior rights, homestead rights of small settlers, and the rights of ICCs to their ancestral lands in the disposition or utilization of other natural resources (Section 6, Article XIII);
- The recognition, respect, and protection of the rights of ICCs to preserve and develop their cultures, traditions, and institutions which shall be considered in the formulation of national plans and policies (Section 17, Article XIV).

The Aquino government went on nationwide consultations with various sectors on how to achieve peace and restore democracy. Consultations with indigenous peoples showed that the non-recognition of ancestral domains and their basic rights as indigenous peoples remained as a major cause of violence in the rural areas.[22]

The government under President Fidel Ramos, as a result of previous efforts by government, later came up with the Social Reform Agenda (SRA) in June 1994 that was intended to address the problems of the basic sectors of society and to eradicate poverty. The SRA contained the Sector-Specific Flagship Program for indigenous cultural communities (ICCs) which contained the government's commitments to certify the Ancestral Land Bill (House Bill No. 595) as an urgent priority; to review all policy issuances pertaining to ICC concerns; full and immediate implementation of DAO 2 of 1993; interfacing of political/legal structures of governance with ICC traditional socio-political structures; and creation of appropriate mechanisms for an integrated area development (IAD) program for priority ICC settlements.[23] This period saw the recognition of the rights of indigenous peoples as part of a national agenda and opened up spaces to address specific concerns of the indigenous peoples at that time. As a result of this space, the struggle for the recognition of indigenous peoples' rights further gained wider support from civil society and some progressive minds within the government to work towards the enactment of a law on ancestral lands and domains.

Among the special laws that recognized ancestral land rights were the Organic Act of the Autonomous Region in Muslim Mindanao (ARMM) or RA 6734, and the Organic Act for the Cor-

dillera Autonomous Region (CAR) or RA 6766 passed in 1989. The Organic Act for the ARMM was approved in a plebiscite by only six provinces while the Organic Act for CAR was rejected twice in 1990 and in 1997 by the people in the region in two plebiscites after a vigorous campaign was launched by militant groups and other support advocates against the Organic Acts for CAR.

Other relevant laws from the post-Marcos era to 1993 included the Department of Environment and Natural Resources (DENR)'s programs on forest resources, Comprehensive Agrarian Reform Law (CARL) of 1988, the National Integrated Protected Areas System (NIPAS) Act of 1992, and Department Administrative Order (DAO) No. 2.

a. DENR's Programs on Forest Resources

In the 1980s, the DENR implemented several agro-forestry stewardship and lease agreements such as the Agro-Forestry Farm Lease Agreement (AFFLA), the Industrial Forestry Management Agreement (IFMA), the Forest Land Grazing Lease Agreements (FLGLA), and the Integrated Social Forestry (ISF) contracts. These were lease agreements between individuals or organizations and the DENR to utilize a portion of public lands for specific purposes for a period of 25 years.

The individual stewardship contracts under ISF were later fused in 1992 into a collective stewardship contract called the Community-Based Forest Management Agreement (CBFMA). Some indigenous groups in Mindanao and in the Cordillera Region availed of these stewardship and lease contracts. These forms of resource use resulted in varied forms of intense competition over land access and control that resulted in antagonism and even violence among the indigenous groups, especially in Mindanao such as in the case of the Manobos in Bukidnon.

In addition to these forms of forest use, the government issued logging concessions to private corporations in the form of Timber Licensing Agreements (TLAs) which covered areas of ancestral domain claims of indigenous peoples. Aside from severe environmental destruction, indigenous peoples have also been deprived of their lands and livelihood as a result of logging activities such as

those of Cellophil Resources Corporation in Abra in northern Philippines and the Surigao Development Corporation in Mindanao.

b. Comprehensive Agrarian Reform Law (CARL)

CARL or Republic Act 6657 was enacted in 1988 to enable qualified beneficiaries under the program to acquire land from landowners. Implemented by the Department of Agrarian Reform (DAR), it covers all public and private agricultural lands as provided in Proclamation 131 and Executive Order 229 regardless of tenurial arrangement and commodity produced. The rights to lands distributed under CARL are embodied in a Certificate of Land Ownership Award (CLOA). This is a form of title that can be equated to a patent, which eventually may be registered under the Torrens system. The rights are vested by virtue of a grant from the State.

The provisions of CARL are in conflict with the indigenous peoples' concept of ancestral domain ownership because it provides that there is a transfer of existing rights of ownership from landowners (covering public and private lands) to identified beneficiaries. In ancestral domain ownership, however, it has the basic assumption that the indigenous peoples have possessed and cultivated the area since time immemorial and the domain or land has always been the private ownership of a particular group.

The beneficiaries of CARL are landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:[24] (1) agricultural lessees and share tenants; (2) regular farm workers; (3) seasonal farm workers; (4) other farm workers; (5) actual tillers or occupants of public lands; (6) collective or cooperatives of the above beneficiaries; and (7) others directly working on the land.

In this order of priority, there is no specific reference to indigenous peoples working on the land. They are also not "actual tillers of public lands" because the land they are claiming is not public land but their ancestral domain. The DAR tried to address these issues with Administrative Order 4 of 1996 which provided regulations governing the issuance of CARL Beneficiary Certificates (CBCs) to ICCs/IPs pursuant to Section 9 of the law. However, the conceptual problem resurfaces because it covers "public agricul-

tural lands" occupied by ICCs. If indigenous peoples were applying for the CBCs within their ancestral domain, it would be a concession that the land is public.

c. National Integrated Protected Areas System (NIPAS) Act and Department Administrative Order 2 of 1993

In 1992, Republic Act No. 7586 or the National Integrated Protected Areas System (NIPAS) Act mandated the DENR to prescribe rules and regulations governing ancestral lands within protected areas.[25] The creation of national parks or integrated protected areas has led to the displacement of indigenous peoples mainly because such programs do not recognize the forest management systems of indigenous peoples as viable ways of forest and wildlife conservation. The model of conservation introduced by laws on integrated protected areas give more importance to wildlife than to forest dwellers who are mostly indigenous peoples while the management of forests and biodiversity is transferred from the forest dwellers to government agencies. There have been increasing concern by indigenous peoples that the identification of protected or reserved areas does not take into consideration the presence of inhabitants living there, most of whom are usually indigenous peoples.

In the Philippines, the Protected Areas and Wildlife Bureau (PAWB) of the DENR claim that after the enactment of IPRA, the government recognizes indigenous peoples' rights but the problem lies on the poor implementation or interpretation on the ground in implementing the NIPAS law. The DENR and the NCIP have drafted a joint circular to harmonize management plans of protected areas and ancestral domains. However, the government agencies have no funds to conduct consultations regarding the draft circular and it has still remained a draft with the NCIP. The circular is expected to give minimum requirements for the management of ancestral domains especially when protected areas and ancestral domains overlap.

In many cases, most of the areas designated as integrated protected areas or national parks especially in indigenous peoples' territories are also declared as ecotourism areas. In the Philip-

pines, these ecotourism areas do allow indigenous peoples to undertake livelihood projects to augment their income. However, situations abound where they continue to be marginalized because they lack the resources and support to become more self-determined. Most cases involve livelihood activities such as handicraft production and some agro-forestry activities but most indigenous peoples do not have the needed capital to play major roles in these economic activities. They do not have control over the market for their handicrafts and agro-forestry products, thus they end up as primary small producers of handicrafts or as workers in large scale industries run by a capitalist. As a marginalized sector, the indigenous peoples also serve as guides for ecotourists, park rangers, cultural performers to be paid and watched by tourists, and display objects to be displayed and photographed.

The DENR subsequently issued Department Administrative Order No. 2 (DAO 2) in January 1993 which provided for the procedure for the issuance of Certificates of Ancestral Domain/ Land Claims (CADCs/CALCs). The CADCs/CALCs recognized the claims but made no commitment as to whether the claims of indigenous peoples are in fact true or valid.

DAO 2 was the only legal instrument available for the indigenous peoples in the 1990s to reclaim their ancestral lands and territories, although they differed in views and opinions regarding the policy. Some civil society groups contended that the resources involved in registering the claims were simply not worth the effort because DAO 2 did not address the main problem of indigenous peoples' claim based on possession of their lands since time immemorial. Other groups contended that CADCs and CALCs were not equivalent to a Torrens title and did not address the clamor of indigenous peoples for control and ownership of their ancestral lands and resources. But there were groups that welcomed this development as an avenue for seeking redress for their lost ancestral lands and resources.[26]

Despite DAO 2's positive elements, an assessment of its implementation in Mindanao showed that there were problems such as: (1) inadequate financial and technical assistance in producing the required proofs of claims; (2) limited dissemination of correct information on the DAO 2 provisions; (3) manipulation of claims by local officials who had vested interests in the land; (4) incom-

patibility with either tribal political structure or other government programs; and (5) the emergence of "fake" indigenous organizations who laid bogus land claims.[27]

In June 1997, then DENR Secretary Antonio Cerilles suspended the issuance of CADCs through DAO 2 until the enactment of IPRA in October 1997.

As of 1998, the DENR had awarded 181 CADCs to 74,408 beneficiaries and covering 2.5 million hectares of lands (see Appendix A). This benefited only about 0.69 percent of the 12 million indigenous peoples in the country. In Mindanao where 61 percent of the indigenous population is located, only 85 CADCs were issued to 28,500 beneficiaries (or 0.39 of the indigenous peoples) covering 970,900 hectares.[28] This data tends to show that the implementation of DAO 2 has been very limited and insignificant and that most indigenous groups did not avail of CADCs through DAO 2.

Moreover, a 1999 study by the Environmental Science for Social Change (ESSC) showed that mining applications overlapped with 53 percent of 145 CADCs covering 2,275,171 hectares, and 38 percent of the entire area defined as cultural zones. The overlap between the CADC and mining applications also represent about 13 percent of the total area covered by mining applications. This overlapping claims and zones have intensified the conflict on land use and control within the contested areas.[29]

III. Policies and Programs During the Indigenous People's Decade (1995-2004)

This is the main section of the paper which discusses specific laws, programs, and projects implemented by both the Philippine government and other institutions during the Indigenous People's Decade. The discussion covers the Mining Act of 1995; IPRA of 1997 and related issues; programs and projects implemented by various Philippine government agencies; programs of international funding institutions, foreign governments, and the UN; programs of international non-government organizations (NGOs); and programs of local NGOs and People's Organizations (POs).

A. Philippine Mining Act of 1995

After the slump of the mining industry in the Philippines in 1985 mainly due to the mounting protests of indigenous peoples and the depletion of mineral resources after the extraction boom in the 1960s and 1970s, the government set its sights in encouraging foreign investments in mining. This came at a time when the Philippine government started to liberalize the economy and created a favorable investment scenario for foreign investors. This situation led to the enactment of the Philippine Mining Act of 1995 with the support of the Asian Development Bank (ADB).

The Mining Act of 1995 has liberalized further the entry of foreign mining corporations into the Philippines, mainly into the ancestral territories of indigenous peoples. The law provides the most attractive incentives to mining companies: five to 10 years tax holidays; lease over lands with a areas up to 81,000 hectares for 25 to 50 years; full ownership and full repatriation of profits and capital; rights over the surface, water and timber; and the right to ease the inhabitants of areas to be mined. The old mining law allowed only up to 40 percent foreign capitalization and 60 percent must be owned by Filipinos.

Its enactment resulted to a massive influx of foreign mining corporations such as the Toronto Ventures International Resource Development (TVI), the Climax Arimco Mining Corporation of Canada, Western Mining Corporation of Australia, Newcrest Mining Company, and Newmont of the USA in applying for mining claims mostly in areas of indigenous peoples in northern Luzon and Mindanao. There had been cases where the resistance of indigenous peoples resulted to the pull out of mining companies from their ancestral lands. The Subanen people of Zamboanga rallied against Rio Tinto Zinc and the B'laans also of Mindanao against Western Mining Corporation resulted to a temporary pull-out by the companies from the indigenous communities although they still retain their mining claims and can be used again at a more favorable time in the future.

The Mining Act of 1995 was challenged by a constitutionality suit filed by the La Bugal B'laan Tribal Association in the case of La Bugal B'laan Tribal Association, Inc. et al. vs Victor O. Ramos, Sec-

retary of the DENR, et al. (G.R. 127882, December 1 2004) or the La Bugal case. The petitioners in this case were composed of indigenous organizations and NGOs challenged the constitutionality of the Mining Law and its Implementing Rules and Regulations (IRR) and the FTAAs executed by the government with Western Mining Corporation (WMC). The WMC is a 100 percent foreign-owned corporation while the Constitution of the Philippines provides that the state owns all of the country's natural resources and only Filipino citizens or corporations that are at least 60 percent owned by Filipinos may explore, develop or utilize these resources. The petitioners contended that the FTAA with WMC and other FTAAs sanctioned by the Mining Law and its IRR are in the nature of a service contract prohibited under the Constitution. The Supreme Court reversed its earlier ruling and declared the Mining Law, its IRR and the FTAA of WCM as constitutional. The Supreme Court, among other points, acknowledged the intricacies of international trade and that the Constitution should "be read in broad life-giving strokes" and "not be used to strangulate economic growth," but rather to grant the president and Congress sufficient discretion to enable them to attract foreign investment and expertise to the Philippines.

However, even with the increase in mining applications after the law was enacted, the expectation that the Mining Act of 1995 would revitalize the mining industry was not realized due mainly to the mounting protests from various stakeholders, especially the indigenous peoples in whose territories most of the mining applications were situated. For the mining industry, the reason for the failure to realize the expected boom in the mining industry were (a) the questions regarding the legality of the Mining Act as illustrated in the LaBugal case, and (b) the increasing conflicts on land use due to the presence of multilayered policies and laws.

B. Indigenous Peoples Rights Act of 1997 (IPRA)

1. Background

IPRA's legal bases are found in the 1987 Philippine Constitution, specifically the State policies on indigenous peoples and ancestral domains. Moreover, IPRA is anchored on international treaties and conventions, notably the International Labor Organiza-

tion (ILO) Convention 169 and the UN Draft Declaration on the Rights of Indigenous Peoples.[30]

The enactment of IPRA came after a long and arduous struggle by indigenous peoples and civil society. It took a decade to pass it and the lobby for its enactment was a very long process. First filed in 1987 during the 8th Congress, it was finally enacted in October 1997 during the 10th Congress. IPRA was Senate Bill No. 1728 sponsored by Senator Juan Flavier in 1996. The bill was a consolidation of four proposed Senate bills referred to the committees on Cultural Communities, Environment and Natural Resources, Ways and Means, and Finance. The Senate almost totally adopted the comprehensive version of Senate Bills 1476 and 1486 which was a result of six regional consultations and one national consultation with indigenous peoples nationwide.[31]

NGOs and POs who lobbied for the enactment of IPRA saw that one difficulty lay in IPRA's attempt to interface two different world views regarding rights to land and resources—that of the indigenous peoples on one hand, and that of the State on the other. Other difficulties had to do with prejudice against indigenous peoples, the resources needed to consult with 110 known indigenous groups in the Philippines, and differences between NGOs and POs on how to deal with the State.[32] Nevertheless, they persevered because of their advocacy and belief in the justness of their cause to restore the indigenous peoples' rights to their ancestral land and domain, and their right to self-determination. Government itself recognized that passing the IPRA was an important factor in achieving peace, and in the success of the Social Reform Agenda (SRA) and Poverty Alleviation Program (PAP).

The work done by NGOs and POs to support the enactment of the IPRA took utmost courage, vigilance and perseverance to pass the bill. The work finally bore fruit when the Senate finally passed the IPRA in September 1997 and then President Fidel Ramos signed it into law on October 11, 1997.

2. The National Commission on Indigenous Peoples (NCIP) as Implementing Agency

Under IPRA, the NCIP is the primary agency under the Office of the President mandated to implement the law. It has seven

commissioners belonging to indigenous groups, who are appointed by the President of the Philippines for a fixed term of three years. They are to be appointed specifically from the following ethnographic areas: (a) Region 1 and the Cordilleras; (b) Region II; (c) the rest of Luzon; (d) Island groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; (e) Northern and Western Mindanao; (f) Southern and Eastern Mindanao; and (g) Central Mindanao. At least two of the seven Commissioners shall be women.[33]

The NCIP is responsible for the formulation of policies and implementation of plans and programs to promote and protect the rights and well-being of the indigenous peoples.[34] It has quasi-judicial power to facilitate and decide on disputes that may arise in the course of IPRA's implementation. The Ancestral Domains Office (ADO) is particularly responsible for the identification, delineation, and recognition of ancestral land and domain. The Regional and Field Offices are the implementing arms in the municipal and provincial levels.[35]

The NCIP is the medium through which ICCs/IPs can seek government assistance, and through which such assistance may be extended. Based on NCIP's assessment of the conditions of ICCs/IPs, it can formulate policies and implement programs for the economic, social and cultural development of the ICCs/IPs. It also monitors the implementation of these programs. The NCIP can review existing laws and policies, and submit to Congress appropriate legislative proposals intended to carry out the policies under IPRA.

To carry out its functions, the NCIP could engage the services of experts from other government agencies or private organizations, and enter into contracts with them.

3. Contentious Issues in IPRA

Considered the first and most comprehensive law on indigenous peoples in Asia, IPRA has been hailed internationally and locally as landmark legislation. It is also a striking example of a legal instrument that incorporates customary laws on property relations, while at the same time, operates on a constitutional mandate to recognize and promote indigenous peoples' rights. A

salient feature of the law is that it codifies a wide range of indigenous peoples' rights, foremost of which are: (a) the right to ancestral domains and lands; (b) the right to self-governance and empowerment; (c) social justice and human rights; and (d) the right to cultural integrity. However, there are two major contentious issues regarding the law.

a. Right to Ancestral Lands and Domains

The most controversial aspect of the law is the right of indigenous peoples to their ancestral lands and domains, defined in the IPRA "to include all areas generally belonging to the indigenous groups, owned, occupied or possessed by themselves or through their ancestors, communally or individually since time immemorial."

While the law, in principle, provides for legal ownership and titling of ancestral domains and land, this shall be carried out "within the framework of national unity and development in accordance with the Constitution and applicable norms and principles."[36] This implies that on one hand, IPRA upholds the rights of indigenous peoples to their ancestral lands and territories. But on the other hand, it also recognizes State ownership and control over untitled land and natural resources including all other property rights to ancestral domain that have existed prior or vested upon the effectivity of IPRA.

This may result in competing and overlapping claims over a certain area of land. For example, the existing contracts, licenses, concessions, leases and permits, logging concessions, and mining permits for the exploitation of natural resources within an ancestral domain may continue to take effect until they expire. The presence of multiple rights over the same land area will tend to increase the conflict on land and resource access and control in the implementation of IPRA.[37]

Under the IPRA, the right of indigenous peoples to their ancestral domains and lands is formally established through the issuance of a corresponding CADT or CALT, by virtue of a native title. Such titles used to be issued by the Ancestral Domain Management Office (ADMO) of the DENR by virtue of DAO 2. With IPRA, this function was transferred to the NCIP. Under this transfer, the

holders of CADCs had the right to apply for the issuance of CADT without going through the delineation process as indicated by IPRA's Implementing Rules and Regulations (IRR). Unlike DAO 2 which merely provided for a legal recognition, the CADTs and CALTs issued under IPRA could be powerful legal instruments in addressing indigenous groups' collective right to land and resources.

The delineation and recognition of ancestral lands and domain requires a procedure[38] which include the following requisite steps: (1) a petition for delineation; (2) delineation proper including census of all community members; (3) preparation of maps; (4) preparation of investigation report; (5) notice and publication; (6) endorsement of the Ancestral Domains Office (ADO) to the NCIP; (7) issuance of the CADT; and (8) registration of the CADT with the Register of Deeds.[39]

The delineation process is highly contentious because indigenous peoples had to go through a long and tedious process that requires financial and manpower investments. For instance, the conduct of technical survey requires sophisticated equipment and adequate funds due to the size and coverage of the claim. The settling of boundary conflicts with contiguous areas could take time and delay the delineation process. Prior to the survey, the submission of proofs of claims is also cumbersome for indigenous peoples who are financially and technically incapable of producing the said evidence.

Adding to the complication was when CADC holders applied for a CADC-Community-Based Forestry Management Agreement (CBFMA)[40] with the DENR, instead of applying for a CADT with the NCIP. Records of the ADMO of the DENR showed that as of February 2002, there were 44 cases of pending applications for CADC-CBFMA in Mindanao covering 84.8 million hectares.[41] This shows that while IPRA was being implemented, the DENR was processing applications for CADC-CBFMA by several indigenous groups.

b. Free and Prior Informed Consent (FPIC)

Another contentious issue of the IPRA is the provision on Free and Prior Informed Consent (FPIC). The law requires any individual or company, whether government or private, that is interested in

setting up a development project within the ancestral or lands or domains, to first secure an FPIC from the indigenous community through a process set by the NCIP. "The ICCs/IPs shall have the right to accept or reject a certain development intervention in their particular communities."[42]

But the NCIP issued Administrative Order (AO) 3 on October 13, 1998 that exempted from the coverage of IPRA's provision on FPIC all leases, licenses, contracts and other forms of concessions within the ancestral domains that exist prior to the promulgation of the IRR. It also declared that all written agreements with or resolutions by indigenous communities prior to the IRR can be considered as FPIC. In addition, it allowed the NCIP to issue a temporary clearance to individuals and companies pending resolution of conflicts within ancestral domain areas.

Indigenous peoples' organizations and advocates criticized AO 3 for being onerous and for selling out to the interests of the mining industry. They argued that: (1) property rights seem to be interpreted in favor of the mining interests; (2) the short period of 37 days to secure FPIC is insufficient; (3) allowing temporary clearances and any form of written agreements to be considered as "consent" is fraudulent; and (4) the idea of doling out gifts in the form of showcase development projects before and during the conduct of an FPIC is divisive and deceptive to indigenous communities.[43]

The earlier FPIC guidelines have been revised by a recent draft Administrative Order which provides for a special FPIC process that requires only 47 days in contrast to the 90 days under the regular FPIC process, and requires only the leaders and landowners to be consulted instead of a consensus by the whole community. The special FPIC process covers, among others, the exploration of mineral and energy resources within ancestral domains, feasibility studies for those requiring regular FPIC process and research on indigenous knowledge systems, and public works and other projects for the delivery of socio-economic services including projects of charitable institutions and NGOs. The special FPIC process has been criticized by IPOs and NGOs for shortening the regular process which is in itself, an insufficient period (90 days) to be able to complete the process of obtaining FPIC. It is believed that the revised guideline was made as a concession to mining and energy

companies, and to attract foreign investors as part of the program of the government. The NCIP gives the final approval for an FPIC application on the basis of the "community's recommendation," a process that may be manipulated by private groups and individuals[44] with vested interests in the ancestral domain areas.

4. Challenges in the Implementation of IPRA

Since the formation of the NCIP, it has been bogged down in its operations by several factors. The three major challenges that hampered the full implementation of IPRA are discussed below.

a. Law Suit on the Constitutionality of IPRA

On September 25, 1998 (less than a year after the IPRA was enacted), retired Supreme Court Justice Isagani Cruz and lawyer Cesar Europa filed a petition with the Supreme Court seeking to declare IPRA as unconstitutional. They contended that IPRA violated the state's ownership of public lands and natural resources by granting indigenous peoples' rights over these lands.

The Supreme Court dismissed the petition on December 6, 2000 for its failure to reach the required majority vote of eight, thereby upholding the constitutionality of several questioned provisions of IPRA. The decision was reached with a 7-7 vote: seven Justices voted to grant the petition, and seven Justices voted to deny the petition, with one Justice voting that the petitioners have no standing to sue.

It is interesting to note that some of the Justices who voted to dismiss the petition expressed substantive points that essentially upheld State ownership of land and natural resources. They stated in their treatises that IPRA merely gave the indigenous peoples surface rights over their ancestral domain, and that the resources beneath the surface are still owned by the State.

A motion for reconsideration was filed by Cruz and Europa on December 22, 2000 but the Supreme Court en banc resolved to deny the motion on September 21, 2001, thereby affirming the decision of a divided court ruling on the constitutionality of IPRA. The implementation of IPRA came to a standstill for the period

that the case was filed until it was finally upheld in 2001. This led, in part, to the delay in the execution of the NCIP's mandate.[45]

b. Existence of Multiple Property Rights Under Various Laws and Policies

The Philippines has a layered structure of land laws and resource use policies that has created many overlapping and competing property rights. There are several cases where ancestral domains overlap with NIPAS, CBFMAs, and mining and logging permits which are part of the DENR's mandate.

To clarify jurisdiction over contentious ancestral domain claims, the NCIP initiated a dialogue with the DENR that produced in 2003 a joint memorandum circular entitled "Harmonization of the Implementation of the IPRA and the Environment and Natural Resources (ENR) Laws and Policies." However, not many concrete actions and measures have been introduced to effectively and promptly address multiple property claims.[46] These led to conflicting land and resource claims in some areas. They have created disagreements within indigenous communities regarding land function categories (such as land having economic, ecological and social security functions), and on spatial and territorial boundaries. These caused delay in the delineation process and the subsequent approval of CADT applications. But even for those who had been granted CADTs, overlapping claims undermined the CADT holders' effective control over their approved ancestral lands and territories.

Disputes in indigenous communities also stem from (1) the use and disposal of certain rights—such as inter-transfer and/or intra-transfer of rights; and (2) allocation of certain aspects of property rights—such as selling or mortgaging use rights on certain parts of communally-bounded ancestral domain by an indigenous person to a non-indigenous person, or a person outside the community.

c. Bureaucratic Administrative and Technical Challenges

The implementation of IPRA has also been hampered by administrative and technical problems in government bureaucracy. During the short-lived Estrada Administration, the problems included: (1) disagreements regarding appointments of NCIP Commissioners; (2) the creation of a Presidential Task Force on Indigenous Peoples' Ancestral Domain (PTIPAD) tasked to study issues concerning NCIP and its operations; and (3) the subsequent withholding of funds for NCIP projects and operations which immediately paralyzed its operations. The PTIPAD was eventually dissolved after submitting its recommendations, but two new bodies were created—the National Anti-Poverty Commission on Indigenous Peoples (NAPC-IP) and the Presidential Task Force on Indigenous Peoples (PTFIP) whose tasks duplicated the duties and functions of the NCIP. Apparently the NCIP became an arena of conflict to secure positions and political influence.[47]

During this period, there was tension between the DENR and the NCIP concerning the surveying process of ancestral domain claims. The DENR then refused to transfer the funds allocated for such purpose, which was mandated by the IPRA.[48] There were also problems within the NCIP that greatly affected the processing of ancestral claims, such as insufficiency of funds due to a limited budget appropriation, and limited skills in dealing with different sectors and actors.[49]

In 2001, the Arroyo Administration created the Office of the Presidential Adviser for Indigenous Peoples' Affairs (OPAIPA) which was mandated to review the performance, qualifications and fitness of NCIP officers and staff and to institute a process of staff development to answer the lack of capacity and technical skills of the NCIP staff that time. A new set of Commissioners was appointed in 2001 and in 2004. All these efforts rekindled hopes for the successful implementation of IPRA.

On September 27, 2004, President Gloria Arroyo issued Executive Order 364 transforming the DAR into the Department of Land Reform (DLR). The EO placed NCIP under the supervision and control of the DLR and placed the NCIP Chairperson as an ex-officio Undersecretary of the DLR for Ancestral Domain Reform. The intent of the issuance is to facilitate the implementation of the

President's agenda for asset reform under her social justice and basic needs package.

Many indigenous organizations and advocates reacted strongly to this new issuance with the general sentiment that EO 364 is a violation of IPRA. The groups together with the NCIP conducted a national consultation regarding EO 364 on October 19, 2004 where they passed a resolution asking the President to immediately recall the issuance of EO 364. They argued that EO 364 was against the intent of indigenous peoples and would further delay the full implementation of IPRA. As a result of this resolution, the President issued EO 379 on October 26, 2004 amending EO 364. It specifically provided for the NCIP to be an attached agency of the DLR and that the NCIP Chairperson shall not suffer diminution in rank. The NCIP recognized this act as evidence of the President's concern for the indigenous peoples and willingness to listen to all sectors for the benefit of the majority.[50]

On January 16, 2004, President Arroyo issued Executive Order 270, the National Policy Agenda on Revitalizing Mining in the Philippines, which provided for the promotion of responsible exploration, development, and utilization of mineral resources to enhance economic growth. The issuance further stated that mining should be done in a manner that adheres to the principles of sustainable development and with regard to justice and equity, sensitivity to the culture of the Filipino peoples, and respect for Philippine sovereignty. However, EO 270 was silent on the resources inside the ancestral domain areas. The NAPC-IP Council, in coordination with the NCIP, called for its amendment to provide provisions on mineral resources within ancestral domains.

In response to this call, President Arroyo issued EO 270-A on April 20, 2004 amending EO 270. The amendment stipulated the protection of the rights of indigenous peoples and ICCs with the "streamlining of procedures of concerned government agencies and instrumentalities relating to the grant of mining tenements…," and that the "rights of affected communities, including the rights of indigenous cultural communities, especially the free and prior informed consent, shall be protected." The NCIP has participated in the drafting of the Mineral Action Plan in consonance with EO 270.

5. Summary of Accomplishments in the Implementation of IPRA

a. Accomplishments under the NCIP

The NCIP focused its programs on the five key areas of the law, namely: (1) right to ancestral domains and lands; (2) right to self-governance and empowerment; (3) social justice and human rights; (4) right to cultural integrity; and (5) NCIP as an institution.

On the recognition of the rights of indigenous peoples to their ancestral lands and domains, the NCIP has worked on the delineation of ancestral domains and issuance of CADTs. However, the size of the estimated area of ancestral domain claims is not clear with the existence of multiple property rights. During the court hearings on the constitutionality of IPRA, Justice Artemio V. Panganiban revealed that a solicitor general gave an estimate of the ancestral domain to cover 80 percent of the mineral resources and between eight and 10 million hectares of land in the country. But the NCIP estimated that only 4,830,000 hectares or 16 percent of the country's total land area can be considered ancestral domain of the indigenous peoples.[51] This reflects the fact that the size of the ancestral domain claims is highly contested due to the existence of multiple property rights.

Under DAO 2, the DENR has issued 181 CADCs covering 2,532,000 hectares.[52] (Refer to Appendix A for summary of CADCs issued.) These CADCs could be converted into CADTs under the IPRA if the holders decide to do so. Towards the end of the Estrada administration, the first set of NCIP Commissioners approved 605 CALTs and 10 CADTs, which were neither registered with the Registry of Deeds nor released to the claimant-owners. There were reports of irregularities in the processing of these applications as well as the use of paper ordinarily available to anyone in printing the CALTs and CADTS. This has tainted their validity and raised concerns on their genuineness. The release of these titles was suspended with the takeover of the new Commissioners under the Arroyo Administration. The new Commissioners appointed by President Arroyo promulgated AO 1 in 2002 to determine with finality the validity of the CADTs and CALTs approved by the first Commission.

By 2004, the NCIP still had the same problems experienced during the first year of IPRA's implementation. But these problems did not hinder the implementation of its projects and programs. The NCIP harnessed its potential on networking, coordinating and converging with other government agencies, non-government organizations, donor communities and concerned entities. Twenty-nine CADTs have been issued, and 18 of these were issued in 2004. Forty-eight CALTs were also approved CALTs, four of which were approved in 2004 (Refer to Appendix B or details). The formal recognition of ancestral lands and domains through the issuance of CALTs/CADTs is in line with the priority thrust of the Arroyo Administration.

Since the NCIP has limited resources to support the delineation process, it has coordinated with other agencies, Local Government Units (LGUs), the church sector, NGOs and other support groups of IPs/ICCs to generate support and resources for the delineation of their ancestral domains.[53] However, the approval of CADT applications leaves much to be desired.

In Mindanao, for example, there are 301 pending applications for CADT covering 3.1 million hectares as of 2004. The area covered by these applications represents 30 percent of the land area of Mindanao (with a total land area of 10,199,886 hectares). Eighty-four applications (28%) comprise the applications for the conversion from CADC to CADT while the remaining 217 (72%) belong to direct applications for CADT. About 50 percent of areas covered by the applications are concentrated in Region XII and Region XIII while Region IX has the lowest number of applications.

From the 301 applications, only seven CADTs were issued by the NCIP representing 64 percent of the total CADTs released throughout the country, and two percent of the total applications received by the NCIP offices in Mindanao.[54] Of these, five CADTs (71%) belong to the applications for conversion from CADC to CADT while the remaining two CADTs (29%) are direct applications for CADT. With this pace of implementing IPRA provisions on ancestral domain claims, it will take more than 40 years to complete the recognition and delineation of the remaining 286 CADT applications in Mindanao.

The issuance of CADTs in Mindanao has been slow and insignificant considering the number of applications filed so far. The slow pace of implementation was mainly due to overlapping and competing property rights, boundary disputes, inadequate funding, internal bickering within indigenous groups, bureaucratic and administrative obstacles, and the limited capability and inexperienced staff of the NCIP. In addition, most of the indigenous communities and elders have limited and poor access to the legal system, and are highly incapable and financially constrained to go through the claim-making process to obtain titles.[55]

In 2003, the NCIP came up with the Medium Term Philippine Development Plan for Indigenous Peoples (MTPDP-IP) with the assistance of the ILO to operationalize the IPRA. This has been NCIP's guide from 2003 to date. In addition to the recognition of ancestral lands and domains, the NCIP assisted communities in preparing their Ancestral Domain Sustainable Development and Protection Plans (ADSDPP) and issued guidelines for securing FPIC.

In implementing programs to enforce the right to self-governance and empowerment, it has conducted training seminars and has implemented livelihood and other development projects in indigenous communities. Programs implemented to enforce the respect for cultural integrity include the issuance of guidelines for the conduct of research involving indigenous peoples and implementation of projects involving customary laws and indigenous knowledge systems and practices (IKSPs). To strengthen NCIP as an institution, it has engaged in various activities for institutional development. The Development Agenda of NCIP since its first year of implementation until 2004 is shown in Table 1 next page.

Table 1. Development Agenda of the NCIP, 1998-2004

Year	Ancestral Domains	Self-Governance	Cultural Integrity	Basic Services	NCIP as an institution	Others
1998	Recognition of AD through delineation & titling; sustained dev't. of AD resources	Capacity-building for Self-determination and empowerment	Promotion of the Integrity of ICC culture and traditions	Upliftment of social conditions of IPs		Entrepreneur Capacity-building
1999	-same-	-same-	-same-	Social upliftment of IP communities' infrastructure		Enterprise/ cooperative development in IP communities
2000	Recognition & Protection of Ancestral Domain/Lands	Self-governance and empowerment	-same-	Coordination & management of IP socio-economic activities	Formulation, implementation of policies, plans & programs for ICCs/IPs, inc. advocacy and linkage with other entities	Legal protection and promotion of IP rights
2001	Creation of ADO	Office of Human Rights and Empowerment	Education and Culture Division	Health Development Services		Legal Affairs Office

2002	Asset Reform	Increasing opportunities for social justice, economic reforms & participation in governance			Human Resource Development and Capability/ Institution-Building	Protection and security of IPs
2003	Fast tracking of delineation, titling, & systematize formulation of ADSDPPs	FPIC as an instrument of empowerment	Cultural Mapping		Revitalize NCIP Organization, focus on public relations, information, resource mobilization, building constituency and pursuit of intelligent Policy Dialogues	Consultative Body, Fair Representation mechanism for quick response, & exercise quasi-judicial power, contextualize IP dev't. plan under Human Security Framework
2004	Land Security	Model IP Development	Communi-ties and	Through Peace	Enforcement & of IP Human	Enhancement Rights

Sources: NCIP Annual Accomplishment Reports, 1998-2004; PANLIPI. "Initial Assessment of the Extent and Impact of the Implementation of IPRA, December 2005." (Unpublished Report).

These key areas of implementation were clustered into three core programs of the NCIP,[56] namely:

(1) Land Tenure Security. This became the main focus of the NCIP's development agenda and is basically a recognition of the indigenous peoples worldview that land is life;

(2) Establishing Model Indigenous Peoples' Communities Through Development and Peace. In recognition of the indigenous peoples' capability and capacity to undertake and sustain the development of their ancestral domains, the NCIP has formulated guidelines in drafting the ADSDPP. This program assures the full participation of indigenous peoples in realizing their goals and aspirations for their ancestral domains; and

(3) Enforcement and Protection of Human Rights. Customary laws have been used to resolve conflicts which are the key to the recognition of the indigenous peoples' rights to practice their indigenous systems. Legal assistance is extended to the indigenous communities to ensure that they have equal representation in the eyes of the law. Orientation on basic human rights became the highlight of this program.

These core programs are further translated to key result areas as shown in Table 2.

Table 2. NCIP Core Programs and Key Result Areas

Core Programs	Key Result Areas
Land Tenure Security	• Survey and Delineation • Issuance of CADT and CALT • Cultural Mapping
Establishing Model IP Communities through Peace and Development	• ADSDPP • Development of People and Communities through delivery of basic social services • Protection and Enhancement of Cultural Heritage of IPs
Enforcement and Protection of Human Rights of IPs	• Adjudication of conflicts through customary law • Procedures for FPIC when needed • Legal Assistance

Sources: PANLIPI (2005); NCIP Accomplishment Reports, 1998-2004.

The NCIP's projects under each specific development agenda are shown in Table 3 to give us a picture of its accomplishments. It shows that from 1998 to 2004, the NCIP focused on provision of basic services to indigenous communities. This is in response to the problem of indigenous communities being among the poorest sectors in Philippine society. The development of NCIP was also given priority, with policy formulation as one with the highest number of projects implemented, followed by projects on self governance.

The program on the development of people and communities is being implemented in coordination with other government agencies such as the Department of Health (DOH), Department of Education (DepEd), Cooperative Development Authority (CDA), the Department of Social Welfare and Development (DSWD), Commission on Human Rights (CHR), National Mapping and Resource Information Authority (NAMRIA), Department of Agriculture (DA), Department of Interior and Local Government (DILG), University of the Philippines - Center for Integrative and Development Studies (UP-CIDS), DENR, and LGUs.

Table 3. Summary of Accomplishments of the NCIP According to Number of Programs and Projects Implemented, 1998-2004. **No. of Programs and Projects Implemented**

Development Agenda for IPs	1998	1999	2000	2001	2002	2003	2004	Total
Ancestral Domains:	**35**	**102**	**281**	**2**	**167**	**60**	**127**	**774**
Support of Ancestral Domains	1	64	281	2	167	60	127	702
Environmental Protection/ AD Development	34	38						72
Cultural Integrity:	**4**	**44**	**129**	**123**		**13**	**19**	**332**
Cultural Development	4	44	129	123		13	19	91
Self Governance:	**374**	**166**	**482**	**6**	**1,146**	**53**	**252**	**2,479**
Political Empowerment	82	166	205	6	1,146	53	132	1,790
Political Stability	292		277				120	689
Basic Services:	**1,067**	**49**	**633**	**8**	**629**	**202**	**782**	**3,370**
Infrastructure	213	49					20	282
Social Services	627		633	8	629	202	736	2,835
Livelihood	227						26	253
NCIP as Institution:			**92**	**1,203**	**1,787**	**76**	**72**	**3,230**
Policy Formulation			52	1,203	1,787	76	17	3,135
Legal Protection and Promotion of IP Rights			40				55	95
TOTAL	**1,480**	**361**	**1,617**	**1,342**	**3,729**	**404**	**1,252**	**10,185**

Source: NCIP Annual Accomplishment Reports, 1998-2004; PANLIPI (2005).

The NCIP has also tapped the support of international organizations in implementing its programs such as the International Labor Organization Inter-Regional Programme to Support Self Reliance of Indigenous and Tribal Community Through Cooperatives and Other Self-Help Organization (ILO-INDISCO), United Nations Development Programme (UNDP), International Fund for Agricultural Development (IFAD), Asian Development Bank (ADB) and the World Bank (WB) through the Department of Agrarian Reform (DAR), DA, and International Centre for Research in Agroforestry (ICRAF). Support and coordination has also been tapped from the academic community and local NGOs such as the Foundation for the Philippine Environment (FPE), Philippine Association for Intercultural Development (PAFID), Legal Assistance Center for Indigenous Peoples (PANLIPI), and others.[57]

As stated in their 2004 Accomplishment Report, the NCIP recognizes the present constraints and issues hampering the implementation of IPRA provisions, particularly its program on Land Tenure Security (LTS). Regarding high costs of registering obtained titles, the NCIP has proposed an executive order that will exempt indigenous peoples from registration fees prescribed by the Land Registration Authority (LRA) with the recognition that indigenous peoples are among the most underprivileged sectors in society. The proposal is still under study by the executive department.

The NCIP still needs immediate assistance from all sectors at the local and international levels to be able to fully implement the provisions of IPRA. It has completed project proposals to tap external resources to fund its programs and projects.

There is also a need to strengthen its capacity to implement the provisions of IPRA especially those pertaining to: (1) the identification, delineation and mapping of ancestral lands and domains; (2) the conversion of CALCs/CADCs in to CALTs/CADTs; (3) the facilitation of a community-driven development and protection of ancestral lands and domains; (4) the delivery of basic services; (5) and the provision of support services for the operationalization of indigenous systems of governance. Since 2002, it has implemented skills training programs to strengthen the capability of NCIP officers and staff.

The issues and obstacles it faces in implementing the IPRA, particularly the provisions on LTS, have to be addressed immediately to prevent further conflicts in indigenous communities.

6. Assessment of IPRA Implementation by Indigenous POs/NGOs and other Institutions

The Philippines is undoubtedly the only country in Asia that has a law on indigenous peoples. However, the implementation of the law from the viewpoint of indigenous organizations, NGOs and other institutions, five years after its enactment, has not done much to improve the situation of the indigenous peoples in the country.

The network of KAMP (National Alliance of Indigenous Peoples' Organizations) and the Cordillera Peoples Alliance reported that the IPRA is flawed in three aspects, to wit: a) it continues to uphold the Regalian Doctrine carried over from the Spanish colonial government; b) IPRA does not repeal oppressive land laws, and c) it has proven to be a problem rather than a solution to the historic problems of indigenous peoples based on the experiences of indigenous communities in the Philippines.[58] Some examples of these include a Mineral Production Sharing Agreement (MPSA) signed between TVI Pacific and the government that covers around 508 hectares within the 6,500-hectare area of the Certificate of Ancestral Domains Claim (CADC) acquired by the Subanen people in Sitio Canatuan, Siocon, Zamboanga del Norte in Mindanao, and a mining license granted to the Western Mining Corporation for areas that cover the territory of the B'laan, the Bong Banwu Salnaong in particular, where ancestral domains claim have been already filed. About 256 Tagbanua families on Calauit Island in Palawan province have been reclaiming their ancestral lands for over 10 years after they were relocated from their territory that has been declared as a sanctuary of African animals by virtue of a Presidential Decree. In Surigao del Norte in Mindanao, many families were displaced from their homes and fields and their agricultural lands were destroyed due to open-pit mining operations in Taganito and Tinabigan. They have made appeals to the NCIP but their demands have not been met.

The Legal Rights and Resources Center (LRC) gave their legal opinion that the IPRA is a heavily compromised law mainly due to

three reasons: a) the IPRA inherited a huge but largely inefficient bureaucracy from the dissolved Office of Northern Cultural Communities (ONCC) and Office of Southern Cultural Communities (OSCC) which were the government agencies responsible for indigenous affairs prior to IPRA and NCIP; b) it does not offer any fundamental solution to the conflict between customary law and state law; and c) "IPRA is an analgesic," it merely directs attention away from the significant issues confronting indigenous peoples.[59]

Based on the reports submitted by several indigenous organizations and NGOs on the situation of the human rights and fundamental freedoms of indigenous peoples in the Philippines to the UN Special Rapporteur (SR) on Indigenous Peoples' Rights in his country visit in 2002, the SR came up with his report submitted to the Philippine government. On the implementation of IPRA, the SR reported that some analysts have pointed to weaknesses in the law which may lead to contradictory or ambiguous interpretations that do not fully favor indigenous peoples' rights. The SR also noted that the major concern is not so much on the text of the law itself but on the difficulties of its implementation, despite the adoption of the Implementing Rules and Regulations including a series of administrative orders issued by the NCIP and executive orders by the President. As an example, the law provides for the application of claims by interested ICCs/IPs for ancestral land titles but some lands are not considered subject to claims when other private land claims exist, and the law has a special provision exempting the City of Baguio from ancestral claims. This has confused the indigenous peoples as to the possible benefits for them of IPRA.

The SR further noted in his report that the implementation of IPRA, or any law for that matter, depends not only on political will, but also on the institutional effectiveness of the government agencies that are responsible for it. The NCIP, as the primary government agency for indigenous concerns, has not yet been able to live up to the expectations and aspirations of indigenous peoples on the full implementation of IPRA. As seen in the reports from various agencies and NGOs, the SR noted in his report that this is due, in part, to insufficient funding of the NCIP, bureaucratic obstacles, and the inexperience of NCIP itself that have resulted to delays in implementation.

On the other hand, the SR recognized the importance of having created Task Force 63, chaired by the President, to deal with emergency issues regarding indigenous peoples, although it was short-lived. He also noted with optimism that NCIP has been doing its part to consolidate its specific role and leadership in promoting and protecting indigenous peoples' rights within the framework of the current Administration, and should be able to establish itself firmly as the lead agency on indigenous concerns in coordination with other government agencies, particularly the DENR.

Despite the flaws and limitations of IPRA, indigenous peoples cannot deny the fact that it is a law that recognizes their rights which is an initial step towards their struggle to have their rights be recognized and protected. The indigenous peoples can critically use the law but with the understanding that first and foremost, they have mainly themselves to rely on in confronting their issues and problems, and in their struggle to promote and protect their rights as indigenous peoples.

7. Accomplishments Under the Office of the Presidential Adviser on Indigenous Affairs (OPAIPA)

The OPAIPA was created by the Office of the President under President Gloria Arroyo through EO 1 dated 20 February 2001 to ensure the effective implementation of IPRA. According to PANLIPI's report on its initial assessment of the implementation of IPRA, the NCIP was placed under the supervision of OPAIPA from 2001 to 2002. The OPAIPA, under its appointed Presidential Adviser, Former Philippine Ambassador to the Vatican, Howard Dee, established seven tracks to fulfill its mandate for 2001 to 2002.[60] They are as follows:

(1) **Renewing or Revitalizing NCIP.** This was intended to renew the NCIP with a new functional organizational structure and staff it with motivated and skilled personnel imbued with a new sense of purpose to bring justice and service to indigenous communities. The OPAIPA conducted a performance evaluation and institutional audit of the NCIP with the assistance of a special team headed by the Department of Budget and Management (DBM), Civil Service Commission (CSC), Commission on Audit (COA) and the Ateneo Human Rights Center. It recommended the issuance

of an Executive Order to authorize the new commission to undertake a thorough reorganization assisted by the Asian Institute of Management (AIM);

(2) Reconstituting the New Commission. The goal was to reconstitute the commission of seven commissioners through a democratic process of ethnographic regional consultations with the indigenous tribal leaders, for appointment by the President. The process of consultation and screening resulted in the appointment of seven commissioners in August 2001 with Atty. Evelyn S. Dunuan as Chairperson and as commissioner for the Cordillera Administrative Region;

(3) Designing Process Systems. The OPAIPA completed the process systems and procedures that served as guidelines covering the vital functions of the NCIP in fulfilling its mandate. The two processes which served as prototype for CADT processing and for the issuance of FPICs were both adopted by the Commission;

(4) Responding to Cases of Injustice and Oppression. A multi-agency task force was created with the aim of protecting indigenous communities from harassment, illegal eviction, armed raids and intrusion, and other forms of injustice. The task force was able to initiate action on twenty-five cases reported to OPAIPA;

(5) Mainstreaming Government Services. This track aimed to mainstream the delivery of government services to indigenous communities. It included meetings and consultations with different agencies to identify their respective roles, programs and activities in promoting the development of indigenous peoples. This resulted in the identification and continued development of indigenous peoples' program components among line agencies including NAPC, DSWD, DOH, DENR, DepEd, DA and DND.

The DND made representations in the exemption of indigenous peoples from recruitment and to declare their communities as sanctuaries of peace. The DOJ, together with the Ateneo Human Rights Center, instituted a "Free the IPs Project" to release indigenous peoples who were unjustly charged for crimes and are in jail. It worked out with DOH a technical training of indigenous medics while it developed a special curriculum for indigenous peoples with DepEd. The training of indigenous peoples in sustainable agriculture and extension service was implemented with

the DA, while it worked for the inclusion of indigenous communities in the KALAHI and CIDSS program with the DSWD and NAPC.

(6) Sourcing External Funding for NCIP. The mobilization of Official Development Assistance (ODA) funds and other resources in support of the development of indigenous communities was the aim of this track. As a result, the OPAIPA was able to negotiate an increase in the budget allocated by UNDP for the sustainable development and management of ancestral domains, funds for scoping programs with the ILO, and grant facility for poverty reduction in indigenous communities through the ADB;

(7) Strengthening the Legal Framework for IPRA Implementation. This was worked out at the levels of the Supreme Court, Congress, other executive agencies, the academe, the international community and at the bar of public opinion. Under this track, OPAIPA recommended extensive education, information and public relations campaign to engender understanding of the legal framework and the moral underpinnings of the rights of indigenous peoples and to defend IPRA.

In the implementation of its mandates, OPAIPA worked effectively with multi-sectoral support primarily from indigenous peoples' organizations (IPOs) like the *Pambansang Lupon ng Nakatatanda sa Tribu* (PLANT), Coalition for Indigenous Peoples Rights' Advocates (CIPRAD), Solidarity of Indigenous Peoples (KASAPI), and the NCIP. It also worked with NGOs such as PANLIPI, Episcopal Commission on Indigenous Peoples, Ateneo Human Rights Center, PAFID, Anthrowatch; government agencies such as the DENR, NAPC, OPAPP; and the academe.

With NCIP as the primary agency, other government agencies also implemented programs and projects that promote the rights of indigenous peoples either in direct implementation of IPRA or in pursuance of their mandates where indigenous peoples benefit in the same way as other members of the population. These programs and projects are discussed in the next section.

C. Programs and Projects Implemented by Various Government Agencies to Promote and Protect Indigenous Peoples' Rights

The Philippines' Medium Term Philippine Development Plan for Indigenous Peoples (MTPDP-IP) for the period 2004 to 2008 has stated in its assessment of programs for 2004 that there are very few government programs and projects being implemented that are specifically focused on indigenous peoples. These programs are those of the NCIP and certain projects of the NCCA and the DSWD. The other existing government programs and projects are lumped with other general categories of beneficiaries.[61]

Historically, indigenous peoples remain "invisible" in government program designs even for the delivery of basic services. This is not a good scenario considering that many indigenous communities in the Philippines have been driven away by various forms of aggression to the most remote rural areas where there is a harsh environment and government presence is almost not felt.

The earlier MTPDP of 2001-2004 reflected the government's program to address indigenous concerns. Containing the anti-poverty and overall development framework of the government at that time, the plan aimed to expand and equalize access to economic and social opportunities, inculcate receptivity to change, and promote personal responsibility. It recognized the need to protect the vulnerable sectors of society in "conquering poverty and transforming Philippine society so that each Filipino can enjoy a better and dignified quality of life."[62]

Based on the MTPDP 2001-2004, the indigenous peoples' sector forms part of the basic sectors that are the main focus of the anti-poverty program of the government. In order to win the battle against poverty, the plan stated that it is crucial for government efforts to carry a social bias as balance to economic growth. These efforts focus on the following core strategies, namely: (1) asset reform program or the redistribution of physical resources and assets, particularly land and credit; (2) human development services, particularly basic education, health, shelter, water and electricity; (3) social protection of the poorest and most vulnerable sectors and communities through social welfare and assis-

tance, local safety net, social security, and insurance; (4) participation of the poor in governance; and (5) security and protection against violence, including in the home.

The implementation of these strategies can be assessed further by looking at how the various government agencies implemented their programs and projects in response to the needs of the basic sectors including indigenous peoples and as part of the implementation of IPRA.

I. Programmes and Projects of the Philippine Government

In the Philippines, locally-funded government programs are continuing activities that are implemented nationwide or within a specific geographic area, or implemented for a short period to address a specific issue. In some cases and especially on programs and projects that deliver basic social services, funding may also come from local NGOs or private corporations. In the choices of projects to implement, the line agencies are not aware of any link between the projects and the government's mandate to implement the program of activities for the Indigenous People's Decade.

The implementation of a government program depends upon its urgency in meeting the government's priority plans. A program is considered a top priority when it is part of an agency's priority thrusts in response to its mandate under the Medium-Term Philippine Development Plan. The same holds true when a program is part of the State of the Nation Address (SONA) commitments of the President. In such a case, the heads of agencies are quick to adopt the SONA commitments and are given the utmost priority in implementation. This is carried through by immediate budget preparations and such priority is reported to the Department of Budget and Management (DBM) to ensure that the necessary funding is included in the General Appropriations Bill.

However, budget proposals from agencies are usually subject to reduction during budget deliberations. When this happens, the agency head ensures that priority programs are implemented either through the use of some agency funds allotted for priorities

identified by the agency head, or through complementation among agency units to support the priority activity.[63]

It is government practice that a unit of the agency concerned serves as coordinator in program implementation. A high-ranking official as focal person ensures agency commitments when inter-agency cooperation is necessary, while the heads of field offices supervise implementation. The accomplishment of the priority activity is an important factor in the annual performance evaluation of the agency's key personnel.

Table 4 shows the various government agencies' programs and projects according to key areas of implementation of IPRA. It shows that 90 percent of the projects are nationwide in scope (i.e., intended to benefit every Filipino), while only eight percent are specific to indigenous groups as beneficiaries. These projects are those implemented by the National Commission on Culture and Arts (NCCA) to individual communities, tourism projects sponsored by the DOT, specific language study conducted by the DepEd, and projects for the *Badjao*s by the DSWD. The other nine projects are for indigenous peoples in general.

From the total number of projects listed, only 16 percent are implemented pursuant to IPRA. Many projects designed after the enactment of IPRA were not purposely to enforce the provisions of the law except some projects carried out by CHR, DepEd, NCCA, NAPC and NSO. The prevailing practice is that projects focused on indigenous peoples are usually prioritized only if the department has a mandate in a particular area of intervention.

Table 4. List of Government Programs Undertaken by Various Government Agencies According to Key Areas of Implementation of IPRA

Table 4A. Ancestral Domains and Sustainable Development of Ancestral Domains

PROJECTS OPEN TO ALL BUT BENEFITING IPs	PROJECTS DIRECTLY for IPs	LEAD IMPLEM-ENTING AGENCY
Ginintuang Masaganang Ani	*Itbayat* Integrated Agricultural Development Project Central Cordillera Agricultural Programme (CECAP) Caraballo and Southern Cordillera Agricultural Development Programme (CASCADE) Cordillera Highland Agricultural Resources Project (CHARM-P)	Department of Agriculture (DA)
Community-Based Forest Management Program Timber License Agreements National Integrated Protected Areas System Forest land Grazing Lease Agreement		Dept. of Env. and Natural Resources (DENR)
Kapit Bisig Laban sa Kahirapan	P10 Million Land Tenure Fund	NAPC

Table 4B. Right to Self Governance and Empowerment

PROJECTS OPEN TO ALL BUT BENEFITING IPs	PROJECTS DIRECTLY for IPs	LEAD IMPLEM-ENTING AGENCY
Financial Assistance to Cooperatives Entrepreneurial Development		Cooperatives Development Authority (CDA)
	Birth Registration Program Census	National Statistics Office (NSO)
Program for Countryside Economic Empowerment and Development		Tech. and Livelihood Resource Center (TLRC)

Table 4C. Right to Cultural Integrity

PROJECTS OPEN TO ALL BUT BENEFITING IPs	PROJECTS DIRECTLY for IPs	LEAD IMPLEMEN-TING AGENCY
Literacy cum Livelihood Skills Training Effective and Affordable Secondary Education (Project EASE Balik Paaralan Para sa Out-Of-School Adults (BP-OSA) Special Education Program (SPED) Self-Instructional Program Indigenization of the Curriculum Literacy Service Contracting Scheme (LSCS) Little Red Schoolhouse Project (LRSP)	Equitable Non-Formal Learning System for IPs IP dialogue IP forum Action Research Research on *Magbikin* Dialect Development of culture-sensitive IP Curriculum	Department of Education (DepEd)
	Community-Based Enterprises-*Yakan* Cloth Weaving	DTI
	Philippine Cultural Exchange Program Cultural Tourism Program for IPs in Puerto Princesa	DOT

NCCA Grants Program Conservation of Cultural Heritage Culture and Development Culture and Education Promotion of Culture and Arts	3rd *Kasagyaan Ka't Palawan* Grand Tribal Festival Teaching of *Pis Siyabit* Weaving-part of School of Living Traditions (SLT), Sulu *Kankanaey* SLT, Benguet *Ati* Cultural Festival in Antique	National Commission on Culture and Arts (NCCA)
	Identification of cultural objects and natural history specimen Impact assessment on cultural resources Conservation laboratory Issuance of excavation/exploration permits	National Museum

Table 4D. Human Rights and Human Development

PROJECTS OPEN TO ALL BUT BENEFITING IPs	PROJECTS DIRECTLY for IPs	LEAD IMPLEM-ENTING AGENCY
HR Protection Program/HR Promotion Prog. Barangay HR Action Center Sectoral HR Training Project Study on Impact Eval'n of CHR Services Philippine HR Plan Information Technology-based Monitoring of HR violations	Measuring Democracy, Human Rights and Governance (METAGORA) Project	Commission on Human Rights (CHR)

Doctors to the Barrios (DTTB) Program GMA 50 Adolescent and Youth Health Program		Department of Health (DOH)
Sustainable Local Solid Waste Mgt. Barangay Data Base Management System Strengthening of Brgy Peace and Order Councils Updating/Completion of the Comprehensive Land Use Plans of LGUs Local Tourism Development Small and Medium Enterprise Development		Department of the Interior and Local Government (DILG)
Support for Employment Generation Enforcement of RA9213 on the Elimination of the Worst Forms of Child Labor Support for Employment Generation Employment Facilitation Employment Preservation Employment Enhancement		Department of Labor and Employment (DOLE)
Decongestion of Metro Manila		DLR
National Arterial, Secondary and Local Roads and Bridges Flood Control and Drainage Projects		Department of Public Works and Highways (DPWH)

Comprehensive Integrated Delivery of Basic Services (CIDSS) Self-Employment Assistance-*Kaunlaran* (SEA-K) Integrated Development Project Crisis Intervention Unit (CIU) Therapy Center for Abused and Exploited Children Senior Citizen Centers Child Care and Placement Services Social Integration for Indigenous Peoples Social Services for Children in Need of Special Protection	Liberating the IPs from Indignity –*Badjao* Families Mainstreaming the *Badjao* Families in a resettlement village	Department of Social Welfare and Development (DSWD)
NHA-Administered Resettlement Program Resettlement assistance program for LGUs Slum Upgrading Sites and Services Development Core Housing Medium Rise Housing Community Based Housing Program Program for Families affected by Calamities Emergency housing		National Housing Authority (NHA)

Small Reservoir Irrigation Project		National Irrigation Administration (NIA)
Health Passport		Philippine Health Insurance Corporation
Community-Based Capability Program		Office of the Presidential Adviser on the Peace Process (OPAPP)

Sources: Government Documents from various agencies; PANLIPI, "Initial Assessment of the Extent and Impact of the Implementation of IPRA, December 2005.

Out of the 22 government agencies included in the study, only the NAPC has allotted funds for Land Tenure as part of the enforcement of the rights to ancestral domains under IPRA. This fund was secured by NAPC from the Office of the President but was assigned to the NCIP. Two other agencies implemented seven projects involving the development of ancestral domains.

Most programs implemented by DENR are not exclusive to indigenous peoples but they offer opportunities for indigenous peoples to participate. In fact, some indigenous communities have already participated in some of the projects such as the Community Based Forestry Management (CBFM), under the Industrial Forest Management Agreement (IFMA), NIPAS, and the Forest Land Grazing Lease Agreement. The DENR believes that programs like the CBFM that encourages self-governance have been successful in building communities including indigenous peoples.

With the enactment of Republic Act No. 7160 or the Local Government Code (LGC) of 1991, many LGUs have become more capable of providing basic services. Aside from their authority to generate income, LGUs have a 40 percent share in the Internal Revenue Allotment (IRA) from the national government. The IRA sharing scheme is as follows: provinces and cities both have 23 percent share, municipalities get 34 percent, and barangays have a share of 20 percent.

As frontliners in service delivery, *barangays*/villages are mandated to provide their constituents with basic services like agricultural support services, health and social welfare, maintenance of the barangay justice center, and other infrastructure facilities. Under the LGC, each barangay is required to have a Barangay Development Plan which shall contain the priority programs and projects and will be the basis of the programming of funds and budgeting.

The IRA share of the barangays is divided among the 41,882 barangays based on population (60%) and equal sharing (40%). A barangay is also entitled to a share from the following revenues: (a) real property tax (RPT) collection from the province and city; (b) community tax collections when collected by the barangay; (c) development of the national wealth; (d) proceeds on tax on sand, gravel and other quarry services; and (e) tobacco excise tax. The barangay's share in national wealth is 35 percent of the 40 per-

cent share of the province or highly urbanized (or independent) component city where it belongs. If the natural resources are located in two or more barangays, their respective shares are computed on the basis of population (70%) and land area (30%).

The participation of indigenous peoples in the formulation and planning of government programs and projects is better assured during barangay development planning than during the planning process done by national agencies. National agencies claim that their programs and projects are the result of consultations with concerned stakeholders but the level of consultations done vary among the agencies. At most, representatives of stakeholders from selected areas, usually through the provincial, municipal or barangay councils, participate in consultations by national agencies. The results of these consultations are then considered as representative of the interest of the whole sector of stakeholders in the country. On the other hand, stakeholders in barangay development planning including the indigenous peoples have a better chance of participating in the planning process according to LGC procedures.

Most programs and projects of national agencies serve the general public, with the exception of those being implemented by the NCIP, NCCA, NAPC-IP, and the OPPAP. Therefore, the impact of such programs and projects on indigenous peoples depends on such factors as location where the program is implemented, ranking of indigenous peoples in an agency's list of beneficiaries, coordination among the agencies (and with indigenous communities, NCIP, and NGOs), and the type of delivery system. With the mandate of NCIP to implement the IPRA and be responsible for the development of indigenous communities in the country, it must play this role with conviction and be able to harness the resources from other government agencies for the benefit of indigenous peoples.

The enactment of IPRA brought a lot of hope to the indigenous peoples in the Philippines. But the NCIP as lead agency became effective only in 2001. After a span of seven years since IPRA's enactment, indigenous peoples and their advocates feel that not much has been achieved to fully implement the provisions of the law and to secure their rights to their ancestral lands and territories.

For its part as lead agency responsible for implementing the programs for the National Decade for Filipino Indigenous People (1995-2005), the DFA's efforts were not sustained and was limited only to an official proclamation in 1995 as an offshoot of the UN declaration. Such proclamation was not disseminated properly and was not even known by majority of the people even in government. The government did not carry through its mandate to implement the program of activities.

Thus, the Philippines government was not able to implement many of its programs for indigenous peoples as mandated by IPRA or according to National Decade for Filipino Indigenous People.

2. Foreign-Assisted Government Programs and Projects

Table 5 shows that there are 211 on-going foreign-assisted programs and projects as of 2004. These are being implemented by 21 agencies (see Appendix C). Ninety-one percent (or 193) of these are implemented in specific regions while only eight percent (or 18) are implemented nationwide.

Programs on agriculture, natural resources management, and agrarian reform make up 40 percent (or 86) of these programs, followed by projects on social development at 35 percent (or 73). This is followed by programs on economic development at 13 percent (27), and integrated area development programs/projects at only two percent (5).

There are foreign-assisted projects that are implemented mainly in indigenous territories which may not really have been intended to benefit the indigenous peoples. Some of these programs include the Northern Mindanao Community Initiatives and Natural Resource Management Project and the Western Mindanao Community Initiatives Project of the DAR; the Central Cordillera Agriculture Programme (CECAP), Cordillera Highland Agricultural Resources (CHARM) Project, Upland Development Program and the Mindanao Rural Development Program all implemented by the DA; the Third Elementary Education Project (TEEP) and the Secondary Education Development and Improvement Project by the DepEd; and the Forestry Sector Project, San Roque Multi-Purpose Project, Southern Mindanao Integrated Coastal Zone Man-

Table 5. Summary of the Number of Ongoing Foreign-assisted Programs and Projects, By Region.

PROGRAM/ PROJECT TYPE	EXTENT/AREA OF PROGRAM/PROJECT IMPLEMENTATION (Nationwide or Regional)																	
	Na-tion wide	NCR	CAR	1	2	3	4	5	6	7	8	9	10	11	12	13	ARMM	TOTAL
Agriculture, Natural Resources Management and Agrarian Reform	3	0	5	4	4	2	6	5	2	4	3	7	9	11	8	9	4	**86**
Social Development	15	0	2	1	3	0	4	3	3	3	2	8	5	4	6	5	6	**61**
Infrastructure	0	0	1	3	2	6	4	1	1	1	0	0	0	0	0	0	1	**20**
Economic Development	0	0	0	0	0	0	0	0	0	0	9	3	3	3	3	3	3	**27**
Integrated Area Development	0	0	1	0	0	2	1	1	0	0	0	0	0	0	0	0	0	**5**
Sub-total	**18**	**0**	**9**	**8**	**9**	**10**	**15**	**10**	**6**	**8**	**14**	**18**	**17**	**18**	**18**	**18**	**15**	**211**

Sources: Various reports from ADB, IFAD, European Commission and NEDA; J.E. Austria, "Scoping Report on the Programs and Projects Benefiting Indigenous Peoples and Analysis of selected Delivery Systems."

agement Project and the Mindanao Community-Based Forest Resources Management Project of the DENR. These programs were funded by IFAD, ADB, European Commission (EC), Japan Bank for International Cooperation (JBIC) and other foreign funding agencies.

Programs and projects funded by foreign sources obtain their funds out of the Official Development Assistance (ODA) as embodied in *Republic Act 8182*, the Official Development Assistance Act of 1996. The law provides that ODA is a loan or a combination of loan and grant which is jointly managed by the National Economic and Development Authority (NEDA), the COA, and Congress.

Programs and projects that are funded by the ODA loans require a counterpart contribution from the government while those funded out of ODA grants may not necessarily require a government counterpart. It is stipulated in the ODA Act that counterpart funds necessary to implement each ODA project are included in the Annual Expenditure Program submitted by the President to Congress for its approval. Any request for funds to cover cost overruns is also submitted to Congress for appropriation.

The ADB is one of the major sources of ODA funds for the Philippine Government. The ADB did a program evaluation of its country assistance extended to the Philippines for the period 1986-2002.[64] The evaluation found out that only 31 percent of 36 projects completed and postevaluated since 1986 were generally successful compared with the ADB-wide average of 51 percent, although there were some improvements in the 1990s.

The reasons for the high rate of project failure in the Philippines were: (a) frequent internal and external shocks; (b) poor project design; (c) project implementation bottlenecks; (d) absorptive capacity constraints; (e) excessive time needed, particularly for actions requiring legislation; (f) complicated land acquisition and procurement policies and procedures; (g) inadequate project personnel in both number and capability; and (h) lack of institutional and financial capacity especially of the LGUs to undertake projects.

It was recommended that ADB's support focus on a steady, relatively modest and selective lending program. The recommended

areas to be considered include microcredit to support income generating activities for the poor, as well as education and health facilities, potable water supplies, road transport in rural areas, and the development of lagging regions, particularly in Mindanao or Southern Philippines. Emphasis was also given to its continuing involvement in policy reform, capacity building and institutional strengthening through nonlending activities, and deepening ADB's relationships with the broader society including NGOs, women's groups and ethnic groups.

D. Programs and Projects Implemented by International Funding Institutions, Foreign Governments, and the UN

1. International Funding Institutions and Foreign Governments

International banking institutions which extend development assistance to the Philippines include the ADB, JBIC, the International Monetary Fund (IMF) and the World Bank (WB). International financial institutions and foreign governments who extend development assistance to the Philippines work closely together to improve the ODA portfolio through annual joint portfolio reviews and regular technical working group meetings.

As an example, the ADB works closely with the WB and JBIC as cofinancing partners for technical assistance (TA) and loans to reduce the burden of project financing on the government budget. The country program of ADB for the Philippines has been developed with those of other development partners, bilateral and multilateral agencies, NGOs and the private sector. The guiding principle in both programming and implementation has been to move from coordination to actual cooperation in order to optimize delivery of existing programs and achieve a multiplier effect by combining resources. Examples of this kind of arrangement are the innovative agreements with Germany's *Gesselschaft fur Technische Zussamenarbeit* (GTZ), and other collaborations in implementing the Supreme Court's Action Plan for Judicial Reform.

However, the record of the loans extended by international financial institutions to the Philippines has been dismal especially

in terms of the economic debacle that the country has been in for the past century. The WB granted its first loan to the Philippines in 1957 to remedy the deficit created by the unequal trade relationship between the United States and the Philippines brought about by unequal trade agreements between the two countries like the Bell Trade Act and the Laurel Langley Agreement. Subsequent government policies after the first WB loan were directed towards compliance to conditions imposed by the loan agreements such as full and immediate decontrol of foreign exchange, lifting all restrictions on foreign exchange receipts in the 1960s. Policies complying with IMF, WB and the ADB loan conditionalities were carried over to the next administrations of Presidents Marcos, Aquino, Ramos, Estrada and up to the current Arroyo administration. Bankruptcy of government persisted and got even worse while loans from the IMF-WB and other financial institutions continue to determine the economic strategy of the government and to direct a development policy that is still anchored on export-oriented industries and foreign investment.[65]

This development policy requires the expansion of areas devoted to export products and increase the exploitation of primary resources such as rivers, minerals, forests and agricultural lands. The indigenous peoples, whose lives depend on these dwindling natural resources, continue to lose both their rights to their land and their sources of livelihood to the increasing commercial exploitation of the country's remaining resources. In large areas in Mindanao (excluding data from the regions of Caraga and ARMM), foreign direct investment (FDI) from 1998 to 2002 was at least 1.2 billion pesos, and about 75 percent of these were invested in exploiting mines, land, forests and rivers. As of 2003, there are 125 foreign-owned/affiliated corporations in Mindanao alone.[66] The ADB, for the period of 2000-2003 released $235 million in loans for various projects and programs in Mindanao. The ADB is one of the major creditors of the Philippines and presently, has 45 loans under implementation in the country.[67]

Governments of other countries have their own programs which their own development agencies implement in the Philippines. Assistance have come from Australian Agency for International Development (AusAID), Canadian International Development Agency (CIDA), European Commission (EC), Finnish Gov-

ernment, German Technical Cooperation (GTZ), German Financial Cooperation (KfW), Japan International Cooperation Agency (JICA), New Zealand Agency for International Development (NZAID), Swedish International Development Agency (SIDA), US Agency for International Development (USAID), and US Department of Energy (USDOE).

The case of the European Commission/European Union is presented here to illustrate the kind of assistance that foreign governments extend to indigenous peoples in the Philippines.

The European Commission's development cooperation support in the Philippines started in 1976 and has amounted to about 390 million Euros of grant assistance through both governmental and non-governmental channels, and spread over all parts of the country. There are about 64 percent of ongoing bilateral projects in the field of integrated rural development, environmental protection, and more recently in the health sector.

The EC's strategy for the Philippines focus on the following categories of assistance: (a) development cooperation which concentrates mainly on poverty alleviation as well as health and environment, and (b) economic cooperation which aims at increasing two-way trade and investment flows based on mutual interest.

As seen in its strategies, the EC's development assistance does not include specific assistance for indigenous peoples. Rather it focuses on poverty alleviation in general. However, the EC has a long history of cooperation with indigenous peoples mostly in Latin America, and it has many projects that had directly or indirectly supported indigenous peoples based on the EC's (now EU) position that "active cooperation with indigenous peoples is essential for poverty elimination, sustainable development, human rights and democracy."[68] Between 1998-2000, the EC/EU has provided 21.9 million Euros for projects worldwide directly affecting indigenous peoples as target groups. This figure does not include the large range of projects and programmes which impact on indigenous peoples in an indirect way.[69]

The EC/EU has also developed its policy on indigenous peoples in 1998 (EC Policy Paper, 1998). This shows that concern for indigenous peoples have been integrated in several EC/EU Policy Instruments such as Country Strategy Papers, development coop-

eration documents, policy orientation papers, and thematic instruments of development cooperation. Moreover, the development of these documents had been done through consultations with various indigenous organizations and support advocates. For instance, the indigenous peoples were involved in the formulation of the EC Working Document in Support for Indigenous Peoples, and in two resolutions of the EU (Council Resolution 1998 and Council Resolution 2002) which set the framework for EU support to indigenous peoples embedding it firmly in EC political and policy agenda.

The EC/EU Policy on Indigenous Peoples includes the following essential points: (a) concern for indigenous peoples to be integrated into all levels of development cooperation; (b) indigenous peoples' issues to be included in policy dialogue with partner countries; (c) encourage full participation of indigenous peoples in democratic processes of their country; (d) recognizes diverse concepts of development and right to choose own development path; (e) indigenous peoples have the right to object to projects negatively affecting their livelihoods; (f) EC respects cultural identities and choices in shaping social, economic and cultural development of indigenous communities; and (g) EC strives to empower indigenous peoples and integrate their concerns into EC policies, programmes and projects.

2. UN Agencies

Most UN agencies and programs have reached the Philippines like the Joint United Nations Programme on HIV/AIDS (UNAIDS), UN Population Fund (UNFPA), UN Educational and Scientific Organization (UNESCO), World Health Organization (WHO), UN Children's Fund (UNICEF), UN Fund for Women (UNIFEM), Food and Agriculture Program (FAO), UN Habitat for the proposed Development of Poor Urban Poor Communities Project, the UN Voluntary Fund for Indigenous Populations, the Voluntary Fund for the International Decade of the World's Indigenous People, UNDP, IFAD, and ILO (See Appendix D to see the strategies and activities used by development partners in the Philippines). It shows, for instance, that ILO, UNDP, and IFAD in its recent strategy framework for 2004 have specific policies and programs for indigenous

peoples, although other partners like UNFPA, UNICEF, have supported projects that benefited indigenous peoples.)

This paper specifically discusses the (1) UN Voluntary Fund for Indigenous Populations, (2) the Voluntary Fund for the International Decade of the World's Indigenous People, (3) IFAD, and (4) ILO. These programs implemented specific programs in response to the program of activities for the International Decade.

a. The UN Voluntary Fund for Indigenous Populations

The UN Voluntary Fund for Indigenous Populations was established based on the General Assembly (GA) Resolution 40/131 dated December 13, 1985. The purpose of the fund was to provide financial assistance to representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on the Promotion and Protection of Human Rights. This mandate has been expanded twice in the last 10 years. The first expansion was based on GA Resolution 50/126 dated December 21, 1995 which decided that the fund's mandate will include the provision of travel grants to allow participation to the open-ended inter-sessional Working Group of the Commission of Human Rights to elaborate on a Draft UN Declaration on the Rights of Indigenous Peoples. The second expansion came on December 19, 2001 upon the formation of the UN Permanent Forum on Indigenous Issues (UNPFII) based on GA Resolution 56/140 that further expanded the mandate to provide travel grants to indigenous peoples to participate in sessions of the UNPFII. The Board of Trustees of the Fund is composed of five indigenous experts.

In the Philippines, this fund has been availed of by two indigenous organizations based in the Cordillera, namely the Cordillera Peoples Alliance (CPA) and Tebtebba Foundation, and one IPO based in Mindanao, the Lumad Mindanaw Peoples' Federation. These organizations have availed of this voluntary fund for a number of years from 1992 to 2004. The Fund was able to open up new opportunities and venues for these organizations to participate in international processes on indigenous concerns, and has likewise helped greatly in their projection of their issues and in their work on advocacy and networking.

b. The Voluntary Fund for the International Decade of the World's Indigenous People

The establishment of a Voluntary Fund for the Decade of the World's Indigenous People was by virtue of GA Resolution 56/140 in December 21, 1993, upon the declaration of the International Decade of the World's Indigenous People. This voluntary fund was established to financially assist projects and programmes during the Decade. In a report by the UN Secretary-General,[70] the Fund has provided support for 176 projects worldwide up to 2004 which had been proposed, implemented and evaluated by indigenous organizations. In addition, the Fund has provided financial assistance to the first year of the Indigenous Fellowship Programme in 2000 as well as several workshops, seminars and other activities to promote the objectives of the Decade.

Several indigenous organizations in the Philippines have availed of the Fund from 1997 to 2004. A total of six organizations in the Philippines implement projects using this Voluntary Fund, namely: the Cordillera Peoples Alliance, Mamalo Descendants Organization, Apo Sandawa Lumad nong Panghiusa sa Cotabato, Inc., DINTEG or the Legal Rights Center in the Cordillera Region, the Alliance for Genuine Development-Mindanao, and the organization of the Tumanduk people.

In 2003, the Chairperson of the Board evaluated the effectiveness of the Fund[71] in terms of its impact on the Decade. The following points were noted:

- the Fund has raised awareness and has educated both indigenous and non-indigenous communities on the situation, cultures, languages, rights and aspirations of indigenous peoples;
- it ensured the continued and increased participation of indigenous peoples at the grassroots level; provided the venues for them to raise their issues at the international level; allowed networking with other indigenous organizations and NGOs; facilitated relations with governments and other UN bodies; and helped develop their leadership capabilities;
- it helped in the promotion and protection of the rights of indigenous peoples;

- it helped in the implementation of the recommendations pertaining to indigenous peoples in all high-level conferences, including the proposal to establish a permanent forum for indigenous people in the UN system;
- it helped in the adoption of the draft UN Declaration on the Rights of Indigenous Peoples.

c. International Fund for Agriculture and Development (IFAD)

The work of IFAD in the Philippines started in 1978 and has since committed a total of US$125.7 million in financing 10 projects related to agricultural development. IFAD had a role in efforts to reduce poverty in the Philippines, from its first project that financed year-round irrigation to improve agricultural productivity in the Cagayan Valley in Northern Luzon, to its most recent project which emphasizes financial services in support of the development of microenterprises. Its goals are to enable poor rural people to improve their incomes and food security and as a result, to provide better food, education and health care for their families.

IFAD supports the government in achieving the goals of the Medium Term Development Plan for 2004-2010 mainly through its support in microfinance, with the aim of tripling loans to self-employed people, microenterprises and to remote areas. The strategy of IFAD in the Philippines has evolved from the government's own strategic initiative contained in the SRA and from IFAD's own strategic framework and key strategies for Asia and the Pacific Region. Lessons learned from past operations in the country have sharpened the focus of IFAD's activities to concentrate on the most deprived marginal upland and coastal areas which is home to many of the country's poorest people. The target groups at present include indigenous peoples and beneficiaries of agrarian reform in the uplands, coastal fisherfolks, landless people, and women in general, who are among the poorest of the poor.[72]

It was only recently that IFAD included indigenous peoples in its strategies with the evolution of IFAD's Strategic Framework in Asia-Pacific for 2002-2006. Its regional strategy on the reduction of rural poverty is aimed at: (1) increasing the productivity of staple food in less favored areas; (2) reforming property and tenure rights

of various marginalized minorities and IPS; (3) expanding the capabilities of the poor and vulnerable through greater access to self-help, local accumulation, new skills and technologies; and (4) changing unequal gender relations to increase women's ownership and control of assets, and their effective participation in the management of community affairs.[73]

Some of the key innovative features of IFAD operations in the country focus on securing access to land in ancestral domains for indigenous peoples, putting in place land use planning, and helping indigenous peoples achieve better management of natural resources. The projects funded by IFAD for indigenous peoples in the Philippines include the following:

- Northern Mindanao Community Initiatives and Resource Management Project. This project began in 2001 with IFAD funds of US$14.81M and a total cost of $21.57M;
- Western Mindanao Community Initiatives Project. This project started in 1998 with IFAD funds of $14.79M and total cost of $18.15M;
- Cordillera Highland Agricultural Resource Management Project (CHARM Project). Approved in 1995 and terminated in 2004, it has a funding of $9.24M from IFAD and a total funding of $64.83M; and
- Highland Agricultural Development Project (HADP). This project ran from 1986-1992 with IFAD funds of $4.6M and a total funding of $26.9M.

In 2005, IFAD supported an impact assessment of the CHARM Program. The assessment illustrates the impact of such projects on indigenous peoples.[74] Based on the villagers' perceptions regarding the impact of CHARM projects and activities, the study found that among, others: (1) the project led to more productive subsistence, increased food security and uplifted their bodily and social well-being; (2) the beneficiaries regarded CHARM as their main safety net that cushioned them against the full adverse impact of the economic crisis brought by the increased legal and illegal importation of temperate vegetables; (3) the Barangay Natural Resource Management Plan (BNRMP), as a plan and process, contributed much to empower the villagers by providing them with

the skills and knowledge necessary to collectively plan for their village; and (4) the project may have contributed in fostering a stronger sense of community and collective responsibility among the indigenous beneficiaries.

However, these positive impacts of the CHARM Project on the beneficiaries, especially on increased productivity, have been negated by the entry of imported temperate vegetables in the country as part of the provisions of the Agreement on Agriculture (AoA) of the World Trade Organization (WTO) which the Philippines joined in 1994. This was the case in a farming village that was a beneficiary area of the CHARM project presented in the findings of a study of the impact of globalization and liberalization on poor rural producers done in 2005.[75] The supposed benefits introduced by the CHARM project to the farmers in the area have not been felt because of the sudden decrease in prices of their vegetable produce as a result of increased importation of vegetables. The impact of vegetable importation was seen to be more evident at the level of goal achievement and at the actual living conditions of the farmer beneficiaries of CHARM. The study also noted that "at the farm level, the farmers are already serving as actual 'safety nets' to the impacts of globalization" where the full realization of CHARM's project goal is not immediately seen. This is a clear example how various programmes and policies of the government contradict each other where the positive results of a government project are negated by an over riding government policy.

d. International Labor Organization (ILO)

The ILO was the first international body to address indigenous issues in a comprehensive manner. Its work started in the early 1920s and it has continued to promote the rights of IPs/ICCs. Its activities for indigenous peoples are classified into two areas: (1) the promotion and supervision of Convention No. 169 relating to indigenous and tribal peoples; and (2) provision of technical assistance to improve indigenous and tribal peoples' social and economic conditions.

The ILO promoted Convention 169 (C169) towards its ratification by the Philippine government by conducting workshops nationwide involving various stakeholders. Within the period 1990

to 1998, a number of important steps were taken to promote C169. These included the official transmission of the text of C169 by the Department of Labor and Employment (DOLE) to the legislature, holding of first national conference on C169, translation and dissemination of C169 in three major local languages (*Ilocano, Tagalog* and *Cebuano*), presentation of resolutions to the government by indigenous peoples and advocates for the ratification of C169, until the holding of the first Senate hearing on its ratification.

However, the process was put on hold until the resolution by the Supreme Court of the petition challenging the constitutionality of certain provisions of the IPRA. The efforts were renewed in 2001 after the Supreme Court dismissed the constitutionality suit. In the current campaign for the ratification, it was included among the priority concerns indicated in the MTPDP-IP after inputs were made by multi-sectoral entities including the NCIP. The campaign for the ratification of C169 is spearheaded by a multi-sectoral group composed of NGOs, indigenous organizations, government agencies, and individual advocates.[76]

ILO also implemented the Interregional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO Programme) in the country. This program assisted indigenous peoples in designing and implementing their own development projects. ILO-INDISCO staff participated as facilitators in the process of project development and implementation. The main project themes of the INDISCO Programme include employment and income generation, advancing the status of indigenous women, managing the environment and natural resources, preserving indigenous culture, and strengthening local organizations.

The ILO-INDISCO Program started in the Philippines in 1994 and it introduced a new concept of community development partnership in twelve pilot project sites among the indigenous peoples in the country. The Program first introduced a community-driven and participatory approach to the federation of indigenous peoples in Bukidnon in Mindanao. Five years after the launching of the pilot scheme, the program has brought significant changes in the lives of indigenous peoples in most of the project sites. It managed to instil a sense of community ownership of the projects through

its innovative approach that emphasized collective responsibility and discouraged the "dole-our mentality." Many of the partner communities are well on their way to sustained decent work, higher family income, and increased sense of responsibility over the environment and natural resources within their ancestral domains, and greater gender awareness.

The most significant effect of the INDISCO project was that it fostered better appreciation of indigenous knowledge systems and practices to ensure the cultural survival of ICCs. The positive impact of the project shows the validity of the approach employed by the program, where the partner communities are allowed to take greater control of the project and learn from their mistakes as well as from their successful ventures.[77]

The project of ILO-INDISCO in Bakun, Benguet in Northern Philippines[78] is illustrative of its success and was attributed to its adherence to community-driven approaches in all stages of the project. The project was the Ancestral Domain Management implemented by the Bakun Indigenous Tribes Organization (BITO) within the ancestral domain of the *Bago* and *Kankanaey* communities of Bakun. The community was issued a CADT in 2004 pursuant to the provisions of the IPRA. This project was a continuation of the ILO-INDISCO-supported initiatives through a funding assistance from the government of Netherlands.

The project used ILO-INDISCO strategy of giving indigenous peoples the opportunity to plan, implement, monitor and evaluate programs using their traditional institutions. Every aspect of project implementation was characterized by community-driven, culturally-sensitive and participatory processes and followed a "bottom-up" instead of the traditional "top-down" approach. The project activities accomplished included the institution-building, capability-building, preservation and promotion of indigenous culture, income and employment generation, sustainable environment and natural resources management, and advancement of the status of indigenous women.

ILO-INDISCO made some consultations with the community and came up with the indicative budget for the project. Based on the indicative budget, the community prepared its project plan and submitted the same to ILO-INDISCO. When the final proposal was approved, a mobilization fund was released to BITO.

The supervision of the project was done by ILO-INDISCO but this also introduced a new approach and did not follow the traditional approach of finding failures or backlogs and using the same as reasons to suspend or delay scheduled fund releases. The new approach to supervision was more constructive in nature wherein the community members themselves looked into the reasons for their backlogs or failures and for them to come up with solutions to the identified problems. BITO refers to this approach as "facilitative supervision," an approach that made them feel that they are fully responsible for the success or failure of the project. It also made the members feel that they are the collective owners of the project. This appreciation and their strong respect and adherence to their traditional values and beliefs system encouraged the people to exert more of their efforts to the project.

In addition, the project was also successful in ensuring that the initiatives it supported will be sustainable as shown by the fact that more than two years after the project has ended, more community projects and activities spearheaded by BITO are underway.

B. International NGOs Supporting Indigenous Peoples' Projects in the Philippines

Many international NGOs have supported projects for indigenous peoples but only a few are discussed here since it is based on the NGO partners' willingness to divulge their funding partners and the presence of their Philippine offices. Some of the international NGO partners that have had significant support to local partners especially on development work with indigenous peoples are included in the next discussion.

1. Christian Aid

Christian Aid is the official development and relief agency of 40 sponsoring protestant churches in the United Kingdom and Ireland. As an ecumenical agency, their Christian roots influence their choice of organizations with which they work. Thus, they tend partner with national ecumenical bodies like national councils of churches. Christian Aid seeks to support organizations that share its own analysis of poverty and its gospel values of justice,

compassion and solidarity. In almost every country where it works, programmes were initially set up through contact with the World Council of Churches (WCC) or a national ecumenical body. It contributes to poverty-eradication by supporting local organizations that strengthen local communities towards self-reliance and enable the poor to improve their quality of life. Its advocacy, campaign, and education work is mainly in the UK, Ireland, and countries of the South. It publicizes the stories of the poorest communities and raises funds to support the poor through all levels of work of the organization.

Christian Aid started its work in the Philippines in the early 1970s initially through the priority project list of the WCC. After the declaration of Martial Law in 1972, it began establishing bilateral relationships with local organizations including the Protestant churches' National Council of Churches in the Philippines (NCCP), the National Secretariat for Social Action (NASSA) of the Roman Catholic Church, and the Task Force Detainees (TFD). Presently, Christian Aid works with approximately 20 local organizations on a variety of issues including local governance, agrarian reform, and rural development. It supports partner organizations and the marginalized sectors to enable them to engage in local processes of local governance and to access resources devolved to the regions by the national government. It also coordinates with ecumenical development agencies for a more effective mechanism to respond to emergencies such as typhoons, floods and earthquakes. The yearly budget given by Christian Aid to its Philippine partners amount to more or less about 500,000 pounds. In 2001-2002 the budget for the Philippines was 492,707 pounds.[79]

Christian Aid supported a research on mining in the Philippines in 2004 carried out by Philippine Indigenous Peoples Links (PIPLinks), a UK-based NGO. The research looked at the impact of the Philippine mining industry on immediate communities in the mining area and on the national economy. It took eight years of research work in affected communities from Luzon to Mindanao and presented two case studies—one of a mining company that has operated in Luzon since 1936, and another on a new company attempting to mine gold in Mindanao. The research revealed that the benefits to the national economy are not clear and negative effects appear to be at least as likely as the positive ones. It was

clear, however, that communities near the mines in the Philippines suffered worse because of environmental degradation, economic stagnation, and human rights violations with only a small group benefiting from the few jobs available and the occasional company-sponsored community program. It recommended that mining in the Philippines must be within the context of human rights and a truly sustainable development.[80]

2. Oxfam Organizations

The international Oxfam organizations are autonomous, non-profit development agencies that work to overcome poverty and social injustice through the empowerment of partner organizations and communities. They aim to achieve sustainable development and livelihoods, and to strengthen civil society in any part of the world, irrespective of nationality, race, political system, religion or nationality. The members of the group are Oxfam America, Oxfam Belgium, Oxfam Canada, Community Aid Abroad (CAA) in Australia, Oxfam New Zealand, Oxfam Hongkong, NOVIB in the Netherlands, Oxfam Quebec, and Oxfam United Kingdom and Ireland.

Oxfam, through CAA of Australia, started work in the Philippines in 1984 by funding NGOs working for environment, community development, disaster relief, and resource management in Luzon and Mindanao. During the Marcos regime, CAA initially worked with politicized groups which advocated respect for human rights and freedom from dictatorship. It organized communities and later focused its attention to promoting economic and social development in local communities. In 1997, it commissioned a report on poverty in East Asia, and committed to focus on the minority situation of ICCs in the Philippines. In 2000, it developed a four-year program that advocated to work specifically on indigenous peoples, Muslim communities, disaster-prone communities, and women's issues.

Oxfam Hongkong joined CAA in 2001 to fund the Indigenous Peoples Program from 2001 to 2004 and aimed to support indigenous peoples to overcome conditions of marginalization, forced displacement, development aggression, and inadequate services from the government. This was done mainly by advancing the

indigenous peoples' struggle to secure ownership rights, regain and control the utilization of their ancestral domains, strengthen their indigenous culture towards self-determination, self-governance and better access to basic social services. The Indigenous Peoples' Program included a gender action program to ensure that issues of gender equality were taken seriously in programming. At the end of the Indigenous Peoples' Program and the Gender Action Plan in 2004, the CAA conducted two evaluations and a series of workshops with partners in 2005. It continued to work for another year in order to strengthen its two longest NGO partners in the Philippines, PAHRD and Panagtagbo, through a program of final withdrawal activities. Oxfam Australia continues to work today with its NGO partners in the areas of capacity-building, building up networks and institutional structures, and advocacy and lobbying skills.[81]

3. NOVIB

NOVIB is the Dutch Organization for International Development Cooperation that cooperates with local organizations across the world to ensure that poor people have access to basic rights by means of structural poverty alleviation and emergency aid. NOVIB sees microfinance as an instrument to eradicate poverty and empower the poor. It believes that income generating activities are often better served by locally-adapted financing approaches such as loans, guarantees, and other securities. NOVIB has funded mostly income-generating projects in the Philippines with projects implemented in indigenous communities.[82]

4. German Protestant Church Development Service (EED/EZE)

The Church Development Service, an Association of the Protestant Churches in Germany (EED) has a special program in the Philippines on biodiversity, traditional knowledge and food security for indigenous peoples. This program was developed due to the long-term involvement of many of the EED partners in the Philippines in development work with indigenous peoples. Among the 30 partners in the country, about half of them work with indigenous peoples in areas that span the Cordillera in the north,

Zambales in Central Luzon, parts of Southern Tagalog and Palawan, and down to the Lumad areas in Mindanao. The special program is being conducted by eight EED partners in the Philippines known as the Philippine Task Force on Indigenous Peoples (PTFIP).

The EED's mission statement in 2004 stated that:

> *EED understands development as a process towards liberation from hunger, poverty and diseases, and from unjust power structures which violate peoples' dignity and rights and prevent them from control of their vital resources. EED is engaged in an ongoing process in which specific development perspectives for the South and North are continuously being reformulated. They represent the framework for international cooperation, public relations activities and the advocacy work of EED.*[83]

One of the key agenda of EED in its advocacy program is the preservation of biodiversity and traditional knowledge as the basis for sustainable development with special concern on the implications of genetically-modified organisms (GMOs). EED has joined the advocacy of the One World Project (OWP) which invites partners from the South to share their perceptions, experiences, and involvement in issues of food sovereignty and sustainable agriculture. The OWP also defines the advocacy strategy in the North with the participation of the members of the EED political dialogue in Germany and the European Union (EU). The PTFIP brings in the perspectives and concerns of the indigenous peoples and two of the Task Force members are part of the EED-OWP.[84]

5. *Tebtebba* (Indigenous Peoples' International Centre for Policy Research and Education)

Tebtebba or the Indigenous Peoples' International Centre for Policy Research and Education is an indigenous organization borne out of the need for heightened advocacy to have the rights of indigenous peoples worldwide be recognized, respected and protected. It established its office in the Philippines in 1996 where it sought to promote a better understanding of the indigenous peoples throughout the world, their worldviews, their issues and concerns.

Since its establishment in 1996, Tebtebba has strongly participated mainly at the international level in networking, advocacy and campaigns for indigenous peoples' rights. It has promoted collaboration and coordination among indigenous peoples at national, regional and international processes and political arenas towards united positions and campaign strategies, and to engage governments, multilateral bodies and civil society to understand, support and adopt indigenous peoples' positions and perspectives in areas of sustainable development, indigenous peoples' rights, gender, trade, and globalization.

The efforts of Tebtebba at the international level focused on the UN Working Group on Indigenous Populations (UNWGIP), the Commission on Human Rights Open Ended Inter-sessional Working Group to elaborate on a Draft Declaration on the Rights of Indigenous People (WGDD), the establishment of the UN Permanent Forum on Indigenous Issues (UNPFII), the World Trade Organization (WTO), the Commission on the Status of Women (CSW), the Commission on Sustainable Development (CSD) and the World Summit on Sustainable Development (WSSD), the UN Framework Convention on Climate Change (UNFCCC), the Conference of Parties (COP) and the Ad Hoc Open-ended Working Group on Article 8(j) of the Convention on Biological Diversity (CBD), dialogues on the policies on indigenous peoples of various agencies and institutions like the World Bank, the European Union, the International Fund for Agriculture and Development (IFAD), and the UNDP among others.

The regular participation of Tebtebba in the meetings of these UN bodies and other global institutions, jointly with other indigenous peoples worldwide, entails articulating indigenous concerns and trying to influence debates and negotiations on issues that affect indigenous peoples. They took part, for example, in the WTO Ministerial meeting in Seattle in December 1999 where the indigenous participants formulated the Indigenous Peoples' Seattle Declaration. The Declaration defined the indigenous peoples' concern over how the WTO is destroying the environment, including the cultural and biological diversity of which they are a part of. They have actively participated in the UN Commission on Human Rights where the Draft Declaration on the Rights of Indigenous Peoples had been negotiated up to its adoption by the

Human Rights Council and in the recent negotiations for its adoption by the UN General Assembly. The adoption of the Draft Declaration was one of the main objectives of the International Decade for the World's Indigenous People which was not accomplished.

These efforts have been continuous and sustained especially throughout the Decade of the World's Indigenous People (1995-2004), and have bore fruits like the establishment of the UNPFII in 2000 which was a "key outcome of the International Decade of the World's Indigenous People," the revision of the Policy on Indigenous Peoples of the World Bank in 2004, and the recent adoption of the Declaration on the Rights of Indigenous Peoples by the Human Rights Council and its endorsement for adoption by the UN General Assembly.

Tebtebba has actively participated in the establishment of the UN Permanent Forum on Indigenous Issues. The idea of a permanent forum for indigenous peoples started in the late 1980s. This was borne out of a situation where gross violations of the individual and collective rights of indigenous peoples was worsening and the existing UN mechanisms were seen as inadequate to promote and protect these rights. Indigenous peoples worldwide started to work towards the creation of a UN body with adequate mandate and powers by having yearly meetings outside the sessions of the UN Working Group on Indigenous Populations (WGIP) in Geneva. Further discussions were done in a series of workshops and conferences especially after the UN General Assembly came up with the resolution which proclaimed the International Decade of the World's Indigenous People in 1993. Subsequently, the UN Commission on Human Rights (CHR) adopted a resolution in 1994 which requested the WGIP to prioritize the discussion of this forum in its next sessions which it did and also endorsed the convening of workshops to discuss the possible establishment of a permanent forum for indigenous people.

The significant workshops and conferences included the first workshop in Copenhagen in 1995, the first International Indigenous Peoples' Conference for the creation of a permanent forum in 1997, a second workshop in Chile also in 1997, the second International Indigenous Peoples' Conference in Panama, and

the Open-ended Intersessional and hoc Working Group on a Permanent Forum for Indigenous People both held in 1998. All these workshops discussed the details of a permanent forum including its scope, mandate, relationship with other UN bodies, activities, membership, and financial and secretarial implications. The substantial debates on the nature of the forum between indigenous peoples and governments went on for a period of three years (1998 to 2000) with the difficult issues of funding and membership size taking the longest time.[85] It took seven years from the time the idea of a permanent forum came up and after countless debates and discussions that the UN PFII came into being after the Economic and Social Council (ECOSOC) adopted by consensus Resolution 2000/22 supporting the CHR Resolution in July 2000.

It has also undertaken participatory action researches on indigenous peoples and sustainable development, conflict transformation and peace building, policies of international financial institutions and other donor agencies, biological and cultural diversity and protection of indigenous knowledge, the impact of globalization on indigenous peoples, developments on women and gender, and the economic, political and cultural systems of indigenous peoples. In addition, it has conducted education and training activities to increase the knowledge and capacity of indigenous peoples to assert their rights and fundamental freedoms and implement their vision and perspectives of self-determining development.

In conflict transformation and peace building, one of the key conferences organized by Tebtebba in 2000 was the "International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples." The papers presented at the conference reflected that many of the conflicts in indigenous communities that have occurred in the last 10 to 20 years arose from the competition over the control of ancestral lands and resources between indigenous peoples and states and/or transnational corporations. The conference also led to the formation of the Indigenous Peoples' Global Research and Education Network (IPGREN) to document aggression, conflicts and abuses committed against indigenous peoples and explore ways to redress such injustices.

The involvement of indigenous peoples and Tebtebba in the WSSD stems from the recognition that indigenous peoples play a vital role in sustainable development. Its involvement started in 2002 at various preparatory meetings for the WSSD. The major activity on this concern was when it organized the Indigenous Peoples' Summit on Sustainable Development in 2002 prior to the WSSD in the City of Kimberley in South Africa. The National Khoi-San Consultative Council (NKOK) of South Africa was the co-organizer of the Summit. One of its major aims was to situate the work of indigenous peoples within the area of sustainable development and other areas of global significance beyond the WSSD with the basic premise of the interconnection of the struggle for fundamental human rights, work on the environment, and the advocacy work being done in the economic, financial and trade arenas.

The participants to the Summit formulated the Kimberley Declaration that embodied the reaffirmation of indigenous peoples to their important role in the achievement of sustainable development, their ideals of self-determination, cultural integrity and environmental sustainability. They also formulated a sentence that they successfully lobbied for adoption in the WSSD Johannesburg Political Declaration which read, "we reaffirm the vital role of indigenous peoples in sustainable development." The presence of indigenous peoples at the WSSD was important since it increased awareness on indigenous issues through the consideration by governments and other international institutions of the indigenous peoples' agenda, and the importance of their inclusion in official documents.

A pioneering effort of Tebtebba was when it organized and hosted the 10-day official visit to the Philippines of the UN Special Rapporteur (SR) on Indigenous Peoples' Rights, Dr. Rodolfo Stavenhagen, in December 2002. This was the first time that the indigenous peoples in the Philippines used the SR mechanism of the UN. The position of the SR was created in 2001 through a resolution (E/CN.4/RES/2001/57) of the Commission on Human Rights to look into the situation of human rights and fundamental freedoms of indigenous people and recommend proposals and appropriate measures to prevent and remedy violations of these rights. The SR's visit to the Philippines was made possible by an

official invitation from the government and after thorough planning sessions with indigenous organizations and Tebtebba as the official local NGO partner.

After the 10-day visit, the SR came up with a moving report that reflected the human rights situation of indigenous peoples in the country. The main finding of the report is that indigenous peoples have been ignored by mainstream Philippine society for a long time and the State had limited action to improve the standards of living or to combat the high rates of poverty and low rates of human development of ICCs/IPs in the country. The implementation of the provisions of IPRA is proceeding at a slow pace and the indigenous peoples are losing confidence in the ability or willingness of government agencies to proceed actively with its effective implementation. The major issues confronting indigenous peoples, as contained in the SR report, remain to be development aggression, or the process where many indigenous communities resist being forced or pressured into development projects that destroy their traditional economy, community structures and cultural values; poverty and insufficient provision of basic social services notwithstanding the fact that the IPRA provides a clear legal framework that entitles indigenous peoples in the country to the provision of basic social services; and increasing militarization and cases of human rights violations such as arbitrary detentions, persecution and killings of community leaders, destruction of property, forced disappearances and rape.

The SR report stated that indigenous peoples have brought their grievances before government authorities at the barangay, municipal and national levels that include the police, NCIP and the national Commission on Human Rights (CHR), and some have even brought their cases to the courts. However, it was seen in many reports that these actions resulted to insufficient remedial measures taken by government authorities in response to such complaints. This has led to a situation where most indigenous communities and organizations would rather concentrate on building their own local organizations in order to address their concerns rather than relying on the ability of government agencies and the judicial system to effectively address their issues.

The SR came up with recommendations to various stakeholders for the better promotion and protection of the human rights

of indigenous peoples in the country, such as to the NCIP, the national CHR, the Philippine judiciary and the executive branch of government, the academe, UN agencies and NGOs. Unfortunately, the response of the Philippine government to the SR report did not deal with the issues raised by the indigenous peoples through the UNSR. This was an affirmation of the government's insensitivity to the problems faced by indigenous peoples and that they have to rely mainly on themselves in confronting their issues and problems.

The experience of hosting the UNSR official visit has shown how such a UN mechanism can be used to bring the UN closer to the people and to advance further the struggle of indigenous peoples for the promotion and protection of human rights. It has also imparted valuable lessons for Tebtebba and the indigenous peoples in the Philippines, the most important being the realization that this mechanism of the UN system can be used by indigenous organizations in articulating their issues, concerns and aspirations. The SR mission offered a rare opportunity by being able to gather several stakeholders like the academe, church, human rights and indigenous organizations, including government and military authorities to discuss the problems of indigenous peoples. It has also encouraged the indigenous organizations and NGOs to document and systematize their experiences to be used even beyond the SR visit in their own advocacy work and campaigns.[86]

The work of Tebtebba in 2004 continued to strengthen its influence in indigenous concerns in the international arena and at the same time, further deepened its involvement in the national and local indigenous movements and successfully linked developments in the indigenous world at the local to the national and global levels. Among the significant work done to push these agenda were the continuing involvement in lobby and advocacy work in the UN bodies, particularly, in lobbying the German government to ratify ILO Convention 169 and explored with ILO Philippines on how they can support the work for the ratification of ILO Convention 169 in the Philippines; advocacy and capacity-building in implementing the Convention on Biological Diversity (CBD); developing standards, guidelines and the operationalization of Free, Prior and Informed Consent (FPIC) especially as part of IPRA implementation; trainings on Indigenous Peoples' Rights and Interna-

tional Humanitarian Law in Mindanao and Luzon, women trainings and CEDAW study session for some Asian countries; organizing the first National Indigenous Women's Conference in the Philippines and the second conference of the Asian Indigenous Women's Network (AIWN); publication of several books on conflict resolution and the experience on engaging the UNSR on Indigenous Peoples' Rights; strengthening linkages with government agencies in the Philippines such as the NCIP and the Regional Development Council in the Cordillera region and with multilateral agencies and bodies like the UNPFII and IFAD; and lastly, undertaking various researches on indigenous issues in cooperation with other partners like the assessment of the first International Decade of the World's Indigenous People in five Asian countries, a pilot project on data disaggregation on indigenous peoples in Nueva Vizcaya, and an introductory book project on Lumads of Mindanao.

6. Other International NGOs

Other international NGOs that have supported projects for indigenous peoples in the Philippines include the Catholic Organization for Relief and Development (CORD-AID, formerly CEBEMO), and other Catholic organizations such as CAFOD and Caritas, ICCO or the Dutch Interchurch Organization for Development Cooperation, Brodelick of Belgium, Amnesty International (AI), Indigenous Working Group for Indigenous Affairs (IWGIA) of Denmark, and MISEREOR of Germany.

International NGOs have sustained their efforts throughout the Decade in supporting projects in the Philippines with indigenous peoples as the target beneficiaries through their partner NGOs and IPOs based in the country.

C. Programs and Projects Implemented by Local NGOs and POs

There are many local NGOs and POs in the Philippines implementing their own programs in selected communities. They source funds mainly from their international partner NGOs, funding agencies from other countries, international funding institutions, embassies, and the UN. Some funds are also available from local

NGO funding institutions such as the FPE, Philippine Business for Social Progress (PBSP), and the Ayala Foundation. NGOs also access ODA funds through modes such as (1) donor Governments providing funds directly to local NGOs through their existing local NGO facilities, (2) funds being coursed through the government for availment by NGOs, or (3) international NGOs directly providing funds to local NGOs.

From the data gathered on project implementation by NGOs and POs (see Appendix E), 66 NGOs and POs are implementing different programs, projects and services. There are specific NGOs and POs that are working with IPS as their partners in development, either exclusively or with other sectors. Out of the 66 NGOs and POs included in the study, 53 NGOs and POs (80%) implemented programs in indigenous areas or with indigenous peoples as beneficiaries. A few of these NGOs and POs like the Cordillera Peoples Alliance (CPA), PANLIPI, and Tebtebba Foundation have directly stated in their program strategies that they have specific programs implemented as part of the program of activities for the International Decade for the World's Indigenous People, as adopted by the UN.

Twenty-five programs (47%), the biggest number, are on ancestral domains and natural resources management, followed by eight programs (15%) on enterprise and livelihood development. There were seven programs (13%) on capacity-building, six (11%) on the promotion and protection of indigenous peoples' rights and on social services, and three (6%) on agricultural development.

In terms of area of implementation, the Cordillera Administrative Region which is dominantly populated by indigenous peoples has the most number of projects with 22 (41%), followed by Region IV in Luzon with 18 projects (40%), and Region XIII in Mindanao with 13 projects (24%). Other regions in Mindanao like Region XI and XII have nine (17%) and six (11%) projects, respectively.

Among the local NGOs and POs in the Philippines that have worked specifically for indigenous peoples' concerns, there are a number whose work with indigenous peoples will be included in the discussion in this paper because of their significant contribution in promoting and protecting the rights of indigenous peoples.

1. Cordillera Peoples Alliance

The Cordillera Peoples Alliance (CPA) was organized in June 1984 after about 300 representatives from 23 organizations all over the Cordillera held a peoples' congress. The congress was borne out of the struggles of the Igorot people in the late 1970s and 1980s against the implementation of mega development projects in their territories and galvanized by the death of a popular leader of the anti-Chico River Dam struggle and village chieftain, Apo Macli-ing Dulag in 1980. Popular resistance at that period inspired the formation of a militant mass movement for the defense of ancestral land and self-determination within the framework of a wider national democratic struggle. From 1984 to 1986, the CPA had the distinction of being at the forefront of the struggle for indigenous peoples' rights. It launched various militant campaigns such as on ancestral land right, anti-militarization, *Kaigorotan* unity and consciousness, and genuine regional autonomy.

In 1986, after the ouster of then President Ferdinand Marcos, and during the administration of President Corazon Aquino, the CPA had high expectations that the new government would finally recognize indigenous peoples' rights. The celebration of Cordillera Day on the death anniversary of Macli-ing Dulag was a big event in 1986 with high hopes for the new democracy. The CPA had initial efforts to work with government due to the opening up of a new democratic space, like meeting with then President Corazon Aquino in Malacañang. However, in the formation of the Constitutional Commission to craft a new constitution for the new government, the CPA had no representative to the body. This was the beginning of a series of President Corazon Aquino's reneging on her promises. Her administration manifested a pattern of betrayal of the indigenous people's interest. The Aquino government's total war policy unleashed the Armed Forces of the Philippines (AFP), the pseudo-advocates of indigenous issues, and other political forces, such as the Cordillera Peoples' Liberation Army (CPLA) led by Fr. Conrado Balweg, against the indigenous activists. The formation by the government of the Cordillera Executive Board and Cordillera Regional Assembly (CEB-CRA) in 1987 by virtue of Executive Order 220 composed of political appointees, traditional politicians and former activists accomplished nothing significant in its 12 years of existence from 1987 to 2000. The two bodies were

abolished in 2000 by Congress when it refused to allocate more funds for their operations.

Prior to the enactment of the Organic Act for the Cordillera Autonomous Region (CAR) or RA 6766 in 1989, the CPA conducted a Regionalization and Beyond campaign in 1985 on indigenous peoples' rights and regional autonomy as the form of self-determination in the region. A second Organic Act was passed in 1995. The two Organic Acts were seen by the CPA as having represented the collusion of the government with the CPLA to coopt the earlier gains of the mass movement and exposed the insincerity of the government in recognizing indigenous peoples' rights to land, resources and genuine autonomy. The CPA campaigned for the rejection of the two Organic Acts to establish a Cordillera autonomous region. The Organic Acts were resoundingly rejected during the two plebiscites in the region in 1990 and 1997. However, this did not mean a rejection of the concept of regional autonomy, rather, it was a rejection of a bogus Regional Autonomy offered in the Organic Acts. There can be no genuine regional autonomy when the rights of the indigenous peoples are violated by transnational corporations and local interests that consider the people's ancestral land as a resource base for exploitation and profit-making.[87]

Alongside these campaigns, the CPA led other campaigns in alliance with church groups, NGOs, academe, national environmental groups, and international solidarity supporters such as those against open-pit mining, bulk water projects, siltation of river systems by corporate mines, and other mega-development projects like the San Roque Dam project. While the campaigns and the people's struggles have not always been successful in stopping projects, like in the construction of the San Roque Dam, there were other significant gains such as the organization of the people and a raising of their political awareness on the nature of the State and the need for a wider struggle for national democracy and self-determination. Recent campaigns include the continuing anti-mining struggle and to expose extrajudicial political killings in the country wherein as of October 2006, there has been more than 760 political killings and disappearances, and 96 of those killed were indigenous people, with 33 killed in the Cordillera during the administration of President Gloria Arroyo alone.

While the IPRA was passed in 1997 as a result of the efforts of various lobby groups, NGOs and POs, the CPA had a different position by rejecting IPRA and exposed the law as a deceptive instrument of the State and the ruling classes against the people. Actual experiences from the local communities proved that CPA's position to reject IPRA was, in a way, correct. However, this did not mean that they could not unite with other groups and political forces based on other urgent issues affecting indigenous peoples. They did this by entering the process of forming the Consultative Bodies (CBs) as provided in the IPRA. With this move, they were able to link up and raise CPA's credibility among other indigenous groups and forward CPA's advanced position on various indigenous issues, but at the same time contributed towards sanitizing and raising the credibility of the NCIP and the CB process, especially as it was the CPA, the militant political center of the Cordillera peoples' movement, which was involved.

2. Legal Rights and Natural Resources Center – *Kasama sa Kalikasan* (LRC)

The LRC started its operations on February 1988 as a policy and legal research and advocacy institution. Its main advocacy was towards the recognition and protection of the rights of indigenous peoples, rural communities and other long-term occupants of forests and the uplands.

The LRC believes in the strategic and progressive use of law by understanding the basic premises of the law wherein laws may be invoked by community as well as those who wish to encroach on their territories, their being normative and not above human beings, and that most legal forums favor the elite. The progressive use of law also means a recognition that the legal arena is not the only solution and should not be separated from its social context. The use the of law in its advocacy work is done through a collective understanding of various identities, cultures, communities, ecologies and their dynamics and it must involve the relevant players in communities and support organizations.[88]

The main strategies and work of the LRC since its establishment include the critiquing of policies and laws affecting indigenous peoples and natural resources, lobbying legislative bodies

especially Congress, conducting paralegal trainings and policy briefings, filing of cases in courts where these are appropriate, spearheading national campaigns and supporting local campaigns, engaging the media, and networking and alliance building with local, national and international organizations.

Among its significant work towards the recognition and promotion of indigenous peoples' rights were its lobby work in Congress towards the enactment of IPRA together with other NGOs, POs, and advocates; collaboration work to defend the constitutionality of the IPRA at the Supreme Court; questioning in court, representing indigenous POs, the constitutionality of some provisions of the Philippine Mining Act of 1995; and assisting various indigenous POs in asserting their vested rights to their ancestral domains.

3. Philippine Association for Inter-Cultural Development (PAFID)

PAFID was founded in 1967 as an "association of people interested in the problems of cultural minority groups," following a series of regional conferences organized by the National Council of Churches in the Philippines (NCCP) in Sagada, Mountain Province, Zamboanga Province in Mindanao, and at Siliman University in Dumaguete City in the Visayas.[89] The conferences gathered anthropologists, lawyers, academics, missionaries, members of different indigenous groups and other advocates to report and assess the problems faced by indigenous communities. From its beginnings, it has now become an institution with over 140 members engaged in the development of indigenous social organizations, ancestral domain management, community-based natural resources management planning, community mapping, agro-forestry, technical services, and policy advocacy through its three regional offices. Its operations and activities are generously funded by grants received through partnership agreements with various international and national development agencies and organizations.

The different programs and projects being implemented by PAFID[90] for indigenous peoples in the Philippines include the following:

a) The National Land Tenure Program for indigenous peoples in the Philippines has been in implementation for the past 18 years with the aim of assisting indigenous communities to regain and secure their ancestral lands and domains. The program has secured more than 500,000 hectares of ancestral domains including waters through the issuance of available tenurial instruments. It has already assisted various indigenous communities in the identification, survey and delineation of about one million hectares of traditional lands and more than one million hectares of ancestral domains in about 100 indigenous communities composed of at least 25,000 families. The program has assisted its partner communities in diverse issues ranging from reestablishing land occupation of ancestral lands, securing access to natural resources, and gaining legal recognition of legal claims.

b) The Health and Literacy Program implemented the Appropriate School for the Hanuno Mangyan in Oriental Mindoro jointly with the Provincial Government and the De La Salle University. Sanitation programs were implemented in partnership with various communities such as potable water systems that have greatly reduced the incidence of waterborne diseases, provision of health services and the development of local volunteer literacy workers to give trainings on health and livelihood through the Agta-Dumagat Comprehensive Development Project in Aurora Province.

c) The Biodiversity Conservation program through Sustainable Management of Agta/Dumagat Ancestral Domain in Aurora intends to enhance the capacity of the Agta and Dumagat communities to manage their ancestral domains. The project recognizes the communities' primary role as repositories of resource management systems evolved by the people and with sensitivity that threats and damage to the local ecosystems have resulted into an alarming decrease in population that has put the indigenous populations on the road to extinction, together with other endangered traditional species.

d) The project on mapping ancestral domains in Northern Mindanao in partnership with IFAD has the overall goal to bring about full recognition of the rights of indigenous communities over their ancestral domains. The government, through the DENR, has already recognized some ancestral domain claims in Northern Mindanao, however, the boundaries of these domains have not been properly identified and delineated which has caused extreme frustration within the communities whose claims have been recognized and in other communities whose ancestral domain claims have been either rejected or ignored for nearly a decade. The mapping project will support the initiatives of nine indigenous organizations in the Caraga region who are negotiating for the legal recognition of their ancestral domain claims. The project is complementary to the other three IFAD projects in the Philippines in the Cordillera, Western Mindanao and Northern Mindanao.

e) The program on Capacity Building for a Community-Based Health Program for indigenous peoples in South-Central Bukidnon is an ongoing two-year project that aims to strengthen the capabilities of indigenous communities to improve their health and living conditions by enhancing culturally-appropriate measures in the promotion of curative and preventive health.

f) A project funded by the UNDP, the Indigenous Peoples Participation in Watershed and Forest Conservation and Management in Bukidnon, intends to secure and develop the ancestral domain of the indigenous Talaandig community by reinforcing the role of indigenous peoples as natural resource managers. The partner indigenous organization for this project established nurseries and formed its own forest guards. The community has also completed the survey and delineation of their ancestral domain.

The different programs and projects of PAFID are mainly to assist indigenous communities in the management of their ancestral domains, especially in delineation and technical survey which the NCIP or other government agencies cannot fund. These projects are aimed towards further securing the ancestral lands and domains of indigenous peoples based on the provisions of IPRA.

4. PANLIPI

PANLIPI or the *Tanggapang Panligal ng Katutubong Pilipino* (Legal Center for Indigenous Filipinos) is an organization of lawyers and indigenous advocates established in 1985 to provide legal and development assistance to indigenous communities in the Philippines. One of its major programs is the Developmental Legal Assistance Program which aims to create the supportive legal and policy environment for the protection and promotion of indigenous peoples' rights, greater access by indigenous peoples to legal resources, capability in government and other institutions to respond effectively to indigenous concerns, formation of community-based indigenous paralegals, and strengthen indigenous socio-political institutions for governance.[91]

Its most significant work to date was in 1995 when it painstakingly spearheaded the legislative advocacy with other NGOs and POs at the 8th to the 10th Congress for the enactment of the Indigenous Peoples Rights Act (IPRA) which has been considered a landmark legislation on the rights of indigenous peoples. It also spearheaded the work towards defending the constitutionality of the IPRA when it was questioned at the Supreme Court.

G. International Treaties and Conventions

The Philippines is a state party to about 23 international human rights instruments under the UN system. Among these instruments which can affect indigenous peoples are the following core human rights instruments:

1) Universal Declaration of Human Rights (UDHR);
2) International Covenant on Civil and Political Rights (ICCPR);
3) International Covenant on Economic, Social and Cultural Rights (ICESCR);
4) Convention on the Rights of the Child (CRC);
5) Convention Against Torture (CAT);
6) Convention on the Elimination of Discrimination Against Women (CEDAW);

7) Convention on the Elimination of Racial Discrimination (CERD);

8) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

9) UN Declaration on the Right to Development (RTD).[92]

The observance of these human rights standards broadens the choices and opportunities of the poor and vulnerable sectors of society like the indigenous peoples. However, these international human rights instruments have not been extensively used by indigenous peoples because of the cumbersome and tedious processes required and the framework in which they work on. The treaty bodies assigned to these international instruments receive complaints from cases of human rights violations of individual persons and do not include violations of collective rights which is what indigenous peoples have been subjected to for years. Their collective rights, such as their rights to their ancestral lands, their right to their culture and identity, and their right to self-determination, are constantly violated as well as their basic civil and political rights as seen in numerous reports of arbitrary detention, torture, and killings.

Among the different treaties, it is only the CERD and its Committee which accepts complaints from groups or collectivities and from individuals. In addition to the cumbersome and tedious processes, the complainant must have exhausted all possible remedies at the domestic front before the complaint is brought to the treaty bodies. Indigenous peoples in the Philippines hardly use domestic courts because they do not have the access and financial means to do so.[93] The same is true in using these international instruments where the average indigenous person does not have the knowledge and the means to access them.

On the part of the government, ratifying treaties and conventions is not sufficient to ensure that the rights guaranteed under the treaties are actually promoted and protected in practice. The government must also submit their reports on time so that the treaty bodies and committees can regularly review the implementation of the treaties in the country. While it is true that the Philippines has one of the highest ratification records in Asia, together with Timor Leste and Cambodia, it also has one of the highest

numbers of overdue reports to the treaty bodies. The Philippines had 14 overdue reports to five treaty bodies, namely: 2nd and 3rd periodic reports to ICESCR due in 1995 and 2000, 15th to 19th periodic reports to ICERD due in 1998 to 2006, 2nd to 4th periodic reports to CAT due in 1992 to 2004, two initial reports to two Optional Protocols to the CRC due in 2004 and 2005, and the initial report on the Convention on the Rights of Migrant Workers due in 2004.

Aside from the human rights treaties and conventions, the Philippines is also a signatoree to other treaties like the Convention on Biological Diversity (CBD), Convention on Climate Change (UNFCCC), Convention on Wetlands, otherwise known as the "Ramsar Convention," and other conventions on environment and development. Among these treaties, the CBD is considered to be of relevance to indigenous peoples especially today that there are significant overlap between areas of highland biological diversity and the ancestral territories of indigenous peoples. The collective rights of indigenous peoples run counter to some specific provisions and principles of the CBD such as on conservation of biodiversity and on protected areas.

In a critique of some specific provisions of the CBD presented at a national workshop, it was noted that the CBD is state-based and not rights-based by reaffirming a unilateral state sovereignty without stating a full recognition of indigenous peoples' rights. The convention uses "indigenous and local communities (ILCs)" instead of indigenous peoples, hence it ignores their status as peoples. On the other hand, the CBD has good objectives of conservation, sustainable use and access and rights of other parties such as ILCs which governments must implement. In the Philippines, it is good to note that the government has acknowledged the IPRA in implementing its CBD obligations.[94]

The Philippines is one of the first countries to submit its first National Report on its implementation of the CBD and has also submitted its second National Report. The reports contain the Philippines' commitments to the CBD where the significant initiatives are: (1) the National Biodiversity Strategy and Action Plan approved in 1997, the NIPAS and NIPAP; (2) laws on access and benefit sharing like Executive Order 247 in 1996 later amended by the Wildlife Act in 2001 and the revised guidelines of the Pro-

tected Areas and Wildlife Bureau (PAWB) of the DENR, and the Traditional and Alternative Medicine Act of 1997 and other guidelines of the Bureau of Food and Drugs, DENR, DA and the NCIP; and (3) the IPRA which implements Article 8(j) of the CBD on traditional knowledge.

There are other existing mechanisms at the UN which indigenous organizations and NGOs have explored and have used such as the Special Rapporteurs for specific themes and countries which was used by Tebtebba as discussed earlier. In addition, the UN Declaration on the Rights of Indigenous Peoples was finally adopted by the UN General Assembly on 13 September 2007 in its 61st Session. Even with the limited use by indigenous peoples and the limitations of these international instruments and mechanisms, their existence are still relevant by offering additional venues and opportunities for vulnerable sectors such as the indigenous peoples at the international level.

IV. Conclusion

A. Development and Implementation of Policies and Laws Concerning Indigenous Peoples Until the Enactment of IPRA

The enactment of laws and policies in the Philippines by governments during the colonial period and carried over to the succeeding governments, especially on land tenure and utilization of natural resources, has run counter to the basic concepts and practices of indigenous peoples in the utilization of their lands and resources.

The development of policies and laws by the Philippine government that affect indigenous peoples' rights to their ancestral domains, lands and resources clearly reflect a overlapping layered structure of laws and policies. This layered structure and the pluralist character of IPRA created different levels of property systems within the ancestral land and domain that resulted in various forms of conflict within indigenous communities and with other stake-

holders outside of indigenous communities. These property rights comprise the following: (1) right of the State to control the land and other resources; (2) rights allocated to business groups prior to the enactment of IPRA; (3) land claims of non-indigenous groups who acquired land from indigenous peoples or in indigenous areas in various forms (obtaining tax declarations, deeds of sale and transfer of land titles through fraudulent means, free patents, etc.); (4) rights earned on the basis of the issuance of a CLOA from DAR and stewardship certificates (e.g., ISF) from DENR; and (5) rights of the indigenous peoples to their ancestral domain as embodied in a CADC, and later in a CADT.

Despite these conflicting views on property rights, and despite the limitations and imperfections of IPRA, it is still possible for the indigenous peoples in the Philippines to secure control over the ancestral domain by using the law itself. The design and content of IPRA manifest that an interface of customary law and state law is possible but the successful outcome of the implementation process of the laws and policies largely depends on the positive interaction of various internal and external factors to assure land and resource tenure security for the country's indigenous peoples.

B. Implementation of Programs and Projects with Indigenous Peoples as Beneficiaries and Pursuant to IPRA

In the implementation of IPRA by the government, only 17 percent of the total number of projects implemented benefit indigenous peoples directly. The other projects are implemented to benefit the general population. Most government agencies implement their programs, projects and services in accordance with the development agenda of the national government. Since every administration has its own development agenda, the programs and projects that focus on indigenous peoples take different levels of attention.

The initial years of the NCIP saw its focus not on its key development areas, but continued the work of the merged offices of ONCC and OSCC particularly in delivering basic services with regard to health and education. The shift from its previous function to the functions mandated by IPRA was a great leap for the agency

that even the staff were overwhelmed with the new and larger mandate that made it difficult for them to assume their roles and responsibilities effectively.

Compared with government, NGOs and POs have more programs, projects and services which are intended for specific indigenous communities. This holds true for international funding institutions and NGOs and local NGOs and POs. Among the foreign governments and the UN agencies, it is only ILO, IFAD and UNDP who have specific programs and projects intended for indigenous peoples, and there are more international NGOs who have programs and projects for indigenous peoples. The ADB and World Bank have developed their policies in engaging with indigenous peoples but since these were developed in recent years, the monitoring and evaluation of their actual implementation has to be seen in the future. Even in terms of awareness of the International Decade of the World's Indigenous People, NGOs and POs both at the local and international levels were more aware of its declaration and its program of activities, thus there were more NGOs and POs who have incorporated the Decade's program into their own programs.

Locally, NGOs and POs implement more programs (80%) for indigenous peoples as compared with government (8%) even though NGOs are mere support groups and advocates. Programs and activities provided by NGOs are mostly in view of empowering the indigenous peoples. Their programs included all aspects of implementing the key development areas of IPRA.

The need to have a strategic framework for indigenous peoples' development was made clear at the early stages of IPRA implementation and was responded to by NCIP's preparation of the MTPDP-IP. There is a need for more social marketing of the MTPDP-IP to provide direction to the initiatives of the different government agencies in the development of indigenous peoples.

C. Recommendations

1. Review of Policies and Laws

Certain policies governing the use of land and resources in the country are contrary to IPRA. Various tenurial instruments such as

CBFM, TLAs, ISF and other laws such as NIPAS and Mining Act that directly affect indigenous peoples must be reviewed and amended to respect the indigenous Peoples' rights to their land and resources. The legislative bodies must review and amend, when possible, existing laws and policies that cause multiple conflicts and claims after their implementation.

2. Harmonization of Programs

The programs of government must be harmonized in order to maximize resources. Harmonization also helps in better coordination and leads to convergence and success of interventions involving indigenous peoples. In addition, it will mitigate and prevent conflicts on land tenure and resource management. In the end, harmonization will lead to more effective realization of the policies and programs that are intended to enforce and implement indigenous peoples' rights.

3. People-centered and Culturally-responsive Projects

Projects, plans and activities must be people-centered, culturally-responsive and culturally-sensitive to avoid the alienation of indigenous peoples when such projects are brought to their communities. These plans and programs can only be meaningful if they reflect the actual conditions and needs of the indigenous peoples.

4. Strengthening the NCIP

NCIP, as the lead implementer of IPRA, must be strengthened to provide the necessary leadership and commitment so that all stakeholders could provide their share in the development of the indigenous peoples in the Philippines. Sufficient budgetary allocation for the implementation of IPRA must be ensured, especially on the delineation of ancestral domains and the development of viable ancestral domain management plans.

5. Networking

Networking between and among indigenous peoples, and with other NGOs and advocates must be increased for the indigenous peoples to have a greater voice in asserting their rights amidst the situation of laws and policies that are in conflict with their basic concepts and practices.

6. Use of Traditional Institutions

The use of traditional institutions, indigenous structures and practices that have been shown to be effective mechanisms in managing and sustaining development activities in indigenous communities must be encouraged.

Endnotes

[1] Chapter II, Section 3 (h), Republic Act 8371 (1997), Indigenous Peoples' Rights Act (IPRA), Republic of the Philippines.

[2] Lynch (1982), cited in Molintas (2004), p. 283.

[3] Constantino (1998), cited in Molintas (2004), p. 283.

[4] Onofre D. Corpuz (2001), "An Economic History of the Philippines," In *Indigenous Peoples, Ethnic Minorities and Poverty Reduction,* Manila: ADB.

[5] Lynch (1982), cited in Molintas (2004), p. 283.

[6] Lynch (1982), cited in Molintas (2004), p. 284.

[7] Gaspar (2000), cited in Molintas (2004), p. 284.

[8] Aida T. Vidal (2004), *Conflicting Laws, Overlapping Claims: The Politics of Indigenous Peoples' Land Riughts in Mindanao*, (Davao City: AFRIM, Inc.), pp. 55-56.

[9] Jose Mencio Molintas (2004), "The Philippine Indigenous Peoples' Struggle for Land and Life: Challenging Legal Texts," *Arizona Journal of International and Comparative Law,* 21 (1), p. 284.

[10] Mateo Cariño, an Ibaloi from Benguet, filed a case on his rightful possession of land used as a US Military Base when the Americans came. In this case of Cariño vs. Insular Government, the US Supreme Court stated that: "It may rightly be assumed, therefore, that although Spanish laws embodied the theory that all lands were held by the Crown, it did not assume to convert all the native inhabitants of the Philippines to trespassers, as in these decrees, the natives were recognized as owning some land irrespective of any royal grant…Every assumption is and ought to be against

the government in a case like the present. It might perhaps be proper and sufficient to say that when as far back as testimony or memory goes, the land has been held under a claim of private ownership, it will be presumed to have been held that way since before the Spanish conquest and never to have been public land" (Cariño vs. Insular Government, 212 US 449 (1909), Decision penned by Judge Oliver Wendell Holmes).

[11] Molintas (2004), p. 285.

[12] Tauli (1983), cited in Molintas (2004), p. 285.

[13] Molintas (2004), p. 285.

[14] Cariño (1984), cited in Molintas (2004), p. 285.

[15] The Philippine Constitution of 1935, cited in Molintas, (2004), p. 285.

[16] Vidal (2004), p. 56.

[17] June Prill-Brett (1994), "Cultural Issues, Development and Cooperation in the Philippines."

[18] Molintas (2004), p. 286-287.

[19] NCIP (National Commission on Indigenous Peoples) (2006), *History of NCIP*, www.ncip.gov.ph.

[20] J.E. Austria (undated), "Scoping Report on the Programs and Projects Benefiting Indigenous Peoples and Analysis of Selected Delivery Systems," p. 6.

[21] Ibid.

[22] J.E. Austria, *Supra* note 19.

[23] Republic of the Philippines. (17 June 1994). The Social Reform Agenda, p. 5.

[24] Section 22, RA 6657 (1988) CARL.

[25] Section 13, Republic Act 7586 (1992), National Integrated Protected Areas System (NIPAS) Act, Republic of the Philippines.

[26] Vidal (2004), p. 21.

[27] PARFUND (Philippine Agrarian Reform Foundation for National Development) (1996), Proceedings of the Mindanao-Wide Lumad Consultation, 24-26 January.

[28] DENR (Department of Environment and Natural Resources) (2002), *Accomplishment Report of CADCs and CADTs, 1994-1998*, cited in Vidal.

[29] ESSC (Environmental Science for Social Change) and the Bishops-Businessmen's Conference for Human Development (1999), "Mining Revisited: Can an Understanding of Perspective Help?", cited in Vidal.

[30] CIPRAD (Coalition for Indigenous Peoples' Rights and Ancestral

Domains) (1999), "Guide to R.A. 8371."

[31] (Sen.) Juan M. Flavier (1996), Sponsorship Speech: Indigenous Peoples' Rights Act.

[32] M.V.P. De Guzman (1998), "Working with Congress for the Enactment of IPRA: The NGO-PO Experience."

[33] Part III, Rule VII, IRR (1998), RA 8371 (1997) IPRA.

[34] Section 1, Part IV, Rule VI, IRR (1998), RA 8371 (1997) IPRA.

[35] Part VI, Rule VI, IRR (1998), RA 8371 (1997) IPRA.

[36] Section 1, Rule I. IRR (1998), RA 8371 (1997) IPRA.

[37] Vidal, supra note 23.

[38] Sections 51-64, RA 8371 (1997) IPRA.

[39] Ibid. Section 52.

[40] CBFMA is a production sharing agreement entered into between the community and the DENR to develop, utilize, manage and conserve a specific portion of the forest consistent with the principles of sustainable development and pursuant to DAO 96-29 on Community Resource Management Framework.

[41] DENR Regional Offices, Mindanao (2002), *Accomplishment Reports*.

[42] Section 3, Part III, Rule III, IRR (1998), RA 8731 (1997) IPRA.

[43] ADB (Asian Development Bank) (2002), *Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Philippines*.

[44] Vidal, supra note 23.

[45] Marvic Leonen (2000), "Weaving Worldviews: Implications of Constitutional Challenges to the Indigenous Peoples' Rights Act of 1997," *Philippine Natural Resources Journal* 10 (1), June, Quezon City: Legal Rights and Natural Resources Center, Inc.-Kasama sa Kalikasan/Friends of the Earth-Philippines (LRC-KSK).

[46] Vidal, supra note 23.

[47] Vidal, supra note 23.

[48] Reuben Lingating, Cited in Vidal (2004).

[49] Pascua (n.d.), Cited in Vidal (2004).

[50] NCIP (2004), *Accomplishment Report*.

[51] Vidal, supra 23.

[52] NCIP (2001), *Accomplishment Report*.

[53] NCIP (2004), *Accomplishment Report*.

[54] NCIP Regional Offices in Mindanao and NCIP Central Office (2004).

[55] Vidal, supra note 23.

[56] PANLIPI (2005), "Initial Assessment of the Extend and Impact of the Implementation of IPRA," p. 19-20.

[57] NCIP (2004), *Accomplishment Report*.

[58] Windel Bolinget (2002), Report presented at the meeting with the UNSR on IPs' Rights, December 4, 2002, Baguio City. Cited in Rovillos and Corpuz, "Special Rapporteur on Indigenous Peoples' Rights," *Tebtebba* 5 (1).

[59] Atty. Marvic Leonen (2002), Reported at the National Consultation on Indigenous Peoples' Rights, December 10, 2002, Quezon City, cited in Rovillos.

[60] Howard Dee (2002), "Beginning of a New Covenant with the Indigenous Peoples of the Philippines, Challenges, Threats, Opportunities: Report to the President." Cited in PANLIPI.

[61] NCIP (National Commission on Indigenous Peoples) (2003), *Medium-Term Philippine Development Plan for Indigenous Peoples, 2004-2008*, Manila.

[62] NEDA (National Economic Development Authority) (2000), *Medium-Term Philippine Development Plan, 2001-2004*, Manila.

[63] J.E. Austria (undated). "Scoping Report on the Programs and Projects Benefiting Indigenous Peoples and Analysis of Selected Delivery Systems."

[64] ADB (Asian Development Bank) (2003), *Country Strategy and Program Update, 2004-2006*, Manila, Philippines.

[65] Victoria Tauli-Corpuz and Erlyn Ruth Alacantara (2004), *Engaging the UN Special Rapporteur on Indigenous People: Opportunities and Challenges*, Baguio City, Philippines: Tebtebba Foundation.

[66] Arnold Padilla cited in Tauli-Corpuz and Alcantara.

[67] ADB cited in Tauli-Corpuz and Alcantara.

[68] EC Delegation to the Philippines (2006), "European Commission Co-operation with Indigenous Peoples." March.

[69] Commission of the European Communities (2002), "Report from the Commission to the Council: Review of progress of working with indigenous peoples," Brussels, (COM(2002) 291.

[70] UN ECOSOC (2004), "Report of the Secretary-General on the preliminary review by the Coordinator of the International Decade of the World's Indigenous People on the activities of the UN system in relation to the Decade. Information received from the UN Secretariat." Report No. E/2004/CRP.11. 25 June.

[71] Victoria Tauli-Corpuz (2003), "Evaluation of the Voluntary Fund for the International Decade of the World's Indigenous People, 1997-2003." Official UN Document.

[72] IFAD (2006), "IFAD in the Philippines," www.ifad.org. accessed 12 March.

[73] IFAD (2002), "The IFAD Regional Strategy Paper for Asia and the Pacific."

[74] Albert P. Aquino and Roberta V. Gervacio (2005), "Poverty and Well-being Impacts of the Cordillera Highland Agricultural Resource Management Project, Northern Philippines: A Participatory Impact Assessment," IFAD.

[75] Victoria Tauli-Corpuz, Jim Maza, and Ruth Sidchogan-Batani (2005), "Impact of Globalization and Liberalization on Poor Rural Producers: Evidence from the Field, The Case of the Philippines."

[76] ILO (2006), Report on the Promotion of ILO C.169 in the Philippines.

[77] Robby Tulus (2006), "Cooperatives and Peace in Post-Disaster Environments and Among Indigenous Peoples, A Case Study on the Role of Co-ops in Conflict Regions of Mindanao (Philippines) and Kalimantan (Indonesia)."

[78] Austria. *Supra* note 58.

[79] Christian Aid, Asia Team (2002), "Asia Regional Policy and Strategy Paper, 2002-2007," London.

[80] Geoff Nettleton, A. Whitmore, and J. Glennie (2004), "Breaking Promises, making profits: Mining in the Philippines," UK.

[81] OXFAM (2005), Annual Report 2004. OXFAM, Australia.

[82] NOVIB (2006), "What we do in microfinance?." www.novib.nl. Accessed 26 April.

[83] EED (Evangelischer Entwicklungsdienst) (2004), "EED Mission Statement."

[84] EED Philippine Partners' Task Force on Indigenous Peoples' Rights (2004), *Our Harvest in Peril: A Sourcebook on Indigenous Peoples' Food Security*, EED-TFIP, Quezon City, Philippines.

[85] Victoria Tauli-Corpuz (2000), "The Birth of the UN Permanent Forum on Indigenous Issues," *Tebtebba* 2 (1-4).

[86] Raymond Rovillos and Victoria Tauli-Corpuz (2002), "Special Rapporteur on Indigenous Peoples' Rights: Philippine Mission," *Tebtebba* 5.

[87] Cordillera Peoples' Alliance. "The Cordillera Mass Movement." Paper presented at the National Consultation, Assessment of the 1st International Decade of the World's Indigenous People," 7 November 2006, AIM-Igorot Lodge, Baguio City, Philippines.

[88] LRC-KSK-FoE. "IPRA and the Continuing Struggle of Indigenous Peoples." Paper presented at the "Assessment of the International Decade

of the World's Indigenous People" Philippines National Consultation, AIM Training Center, Camp John Hay, Baguio City, November 7, 2006.

[89] PAFID (2006), "About PAFID," http://wwp.iapad.org/pafid.html, accessed 14 November 2006.

[90] PAFID (2006), "PAFID: Programs/Projects," http://wwp.iapad.org/pafid/programs.html, accessed 14 November 2006.

[91] PANLIPI. "PANLIPI's Law and Policy Advocacy Towards the Realization of Indigenous Peoples' Self-Determination and Development." Paper presented at the "Assessment of the International Decade of the World's Indigenous People" Philippines National Consultation, AIM Training Center, Camp John Hay, Baguio City, November 7, 2006.

[92] Commission on Human Rights (CHR). "Human Rights Advisories 36-37: On applying the Rights-Based Approach (RBA) to development and governance." http://www.chr.gov.ph accessed on 16 April 2006.

[93] Victoria Tauli-Corpuz and Erlyn Ruth Alcantara (2004), *Engaging the UN Special Rapporteur on Indigenous People: Opportunities and Challenges*, Baguio City, Philippines: Tebtebba Foundation, 2004, p. 5.

[94] Joji Cariño, "Convention on Biological Diversity and Indigenous Peoples' Concerns," (2005) Paper presented at the "Philippine Workshop on the Implementation of the CBD," 3-6 May 2005, Baguio City, Philippines, in Indigenous Peoples & the Convention on Biological Diversity: The Philippine Report, Baguio City: Tebtebba Foundation.

Bibliography

Aquino, Albert P. and Gervacio, Roberta V. (2005), "Poverty and Well-being Impacts of the Cordillera Highland Agricultural Resource Management Project, Northern Philippines: A Participatory Impact Assessment," IFAD.

ADB (Asian Development Bank) (2003), *Country Strategy and Program Update, 2004-2006*, Manila, Philippines.

_____ (2002), *Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Philippines*, Manila, ADB.

_____ (2000), "Mindanao Gets Priority In ADB Assistance for 2000-2003," http://www.adb.org/Documents/News/2000/nr2000031.asp.

Austria, J.E. (undated), "Scoping Report on the Programs and Projects Benefiting Indigenous Peoples and Analysis of Selected Delivery Systems."

Bolinget, Windel (2006), "A Historic Statement to the Resolute Cordillera

Peoples' Struggle," http://bulatlat.com/news/4-12/4-12-cordillera1.html accessed 3 July 2006.

Cariño vs. Insular Government, 212 US 449 (1909), Decision penned by Judge Oliver Wendell Holmes.

Christian Aid, Asia Team (2002), "Asia Regional Policy and Strategy Paper, 2002-2007," London, Christian Aid.

CIPRAD (Coalition for Indigenous Peoples' Rights and Ancestral Domains) (1999), *Guide to R.A. 8371,* Quezon City, PANLIPI.

Citizens' Council for Human Rights (CCHR) (2006), "Challenges to the Philippines as Member of the United Nations Human Rights Council," http:/www_____ accessed 6 August 2006.

Commission of the European Communities (2002), "Report from the Commission to the Council: Review of progress of working with indigenous peoples," Brussels. http://www.ec.europa.eu accessed 13 July 2006.

Commission on Human Rights (CHR). "Human Rights Advisories 36-37: On applying the Rights-Based Approach (RBA) to development and governance." http://www.chr.gov.ph accessed 16 April 2006.

Cordillera Peoples' Alliance. "The Cordillera Mass Movement." Paper presented at the National Consultation, Assessment of the 1st International Decade of the World's Indigenous People," 7 November 2006, AIM-Igorot Lodge, Baguio City, Philippines.

Corpuz, Onofre D. (2001), "An Economic History of the Philippines," In *Indigenous Peoples, Ethnic Minorities and Poverty Reduction,* Manila: ADB.

De Guzman, M.V.P. (1998), "Working with Congress for the Enactment of IPRA: The NGO-PO Experience," In Guide to RA 8371.

Dee, Howard (2002), "Beginning of a New Covenant with the Indigenous Peoples of the Philippines, Challenges, Threats, Opportunities: Report to the President," Presidential Adviser on Indigenous Peoples Affairs.

DENR (Department of Environment and Natural Resources) (2002), *Accomplishment Reports*. Regional Offices, Mindanao.

_____ (1998), *Accomplishment Report of CADCs and CADTs, 1994-1998*.

EC (European Commission) Delegation to the Philippines (2006), "European Commission Co-operation with Indigenous Peoples."

ESSC (Environmental Science for Social Change) and the Bishops-Businessmen's Conference for Human Development (1999), "Mining Revisited: Can an Understanding of Perspective Help?"

EED (Evangelischer Entwicklungsdienst) Philippine Partners' Task Force on Indigenous Peoples' Rights (2004), *Our Harvest in Peril: A sourcebook*

on Indigenous Peoples' Food Security, Quezon City: EED-TFIP.

_____ (2004), "EED Mission Statement."

Flavier, Juan M. (1996), Sponsorship Speech: Indigenous Peoples' Rights Act.

Gatmaytan, A.G. (1992), "Land Rights, and Land Tenure Situation of Indigenous Peoples in the Philippines," 5 *Philnajur* 36.

Gutierrez E. and Borras, S. (2004), "The Moro Conflict: Landlessness and Misdirected State Policies.

IFAD (International Fund for Agriculture and Development), (undated) "IFAD in the Philippines." www.ifad.org accessed 12 March 2006.

_____ (2002), "The IFAD Regional Strategy Paper for Asia and the Pacific," IFAD. www.ifad.org accessed 10 August 2006.

ILO (International Labor Organization) (2006), "Report on the Promotion of ILO C.169 in the Philippines."

Leonen, Marvic (2000), "Weaving Worldviews: Implications of Constitutional Challenges to the Indigenous Peoples' Rights Act of 1997," *Philippine Natural Resources Journal* 10 (1), June, Quezon City: Legal Rights and Natural Resources Center, Inc.-Kasama sa Kalikasan/Friends of the Earth-Philippines (LRC-KSK).

Medrana, Jack (2002), "Indigenous Peoples and the WSSD," *Tebtebba*, 5 (1).

Molintas, Jose Mencio (2004), "The Philippine Indigenous Peoples' Struggle for Land and Life: Challenging Legal Texts," *Arizona Journal of International and Comparative Law,* 21 (1).

Monteclaro, June Vee D. (2005), "Court Declares Mining Law Constitutional," http://www.asialaw.com/default.asp?page=14&SS=12284&SID=461685 accessed 12 October 2006.

NCIP (National Commission on Indigenous Peoples) (2006), *History of NCIP*, www.ncip.gov.ph.

_____ (2004), *Accomplishment Report*, Quezon City.

_____ (2004), Regional Offices in Mindanao and NCIP Central Office.

_____ (2003), *Medium-Term Philippine Development Plan for Indigenous Peoples, 2004-2008*, Manila.

_____ (2001), *Accomplishment Report,* Quezon City.

NEDA (National Economic Development Authority) (2000), *Medium-Term Philippine Development Plan, 2001-2004*, Manila.

Nettleton, Geoff; Whitmore, A. and Glennie, J. (2004), "Breaking Promises, Making Profits: Mining in the Philippines," UK.

NOVIB (2006), "What we do in microfinance?" www.novib.nl. Accessed 26 April 2005.

Office of the UN High Commissioner for Human Rights (1997), Committee on the Elimination of Racial Discrimination "Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Philippines, CERD/C/304/Add.34," http://www.hri.ca/fortherecord1997/documentation/tbodies/cerd-c-30 accessed 15 January 2006.

Ofreneo, Rene (1980), *Capitalism in Philippine Agriculture,* Quezon City: Foundation for Nationalist Studies.

OXFAM (2005), *Annual Report 2004*, OXFAM, Australia.

Padilla, Arnold (2002), "War for Exploitation of Mindanao's Resources," www.ibon.org/news/if/11.htm> IBON Foundation.

_____ (2006), "PAFID: Programs/Projects."

PANLIPI (2005), "Initial Assessment of the Extent and Impact of the Implementation of IPRA."

PARFUND (Philippine Agrarian Reform Foundation for National Development) (1996), "Proceedings of the Mindanao-Wide *Lumad* Consultation," 24-26 January.

Philippine Association for Intercultural Development (PAFID), "Programs/Projects" http://www.iapad.org/pafid/programs.html accessed 14 November 2006.

_____(2006), "About PAFID," http://www.iapad.org/pafid.html. Accessed 14 November 2006.

Prill-Brett, June (1994), "Cultural Issues, Development and Cooperation in the Philippines."

Republic Act 8371 (1997), Indigenous Peoples' Rights Act (IPRA), Republic of the Philippines.

Republic Act 7586 (1992), National Integrated Protected Areas System (NIPAS) Act, Republic of the Philippines.

Republic Act 6657 (1988), Comprehensive Agrarian Reform Law, Republic of the Philippines.

Rovillos, Raymond and Victoria Tauli-Corpuz (2002), "Special Rapporteur on Indigenous Peoples' Rights," *Tebtebba* 5 (1).

Rules and Regulations Implementing RA 8371: The Indigenous Peoples' Rights Act (IRR:IPRA).

Sadain, Mehol K. (2000), "The Historical Antecedents of the Moro Rebellion in the Southern Philippines," Speech delivered during the launching of "Under the Crescent Moon: Rebellion in Mindanao,"

Ateneo de Manila, Quezon City, April 15.

Tauli-Corpuz, Victoria and Alcantara, Erlyn Ruth (2004). Engaging the UN Special Rapporteur on Indigenous People: Opportunities and Challenges, Baguio City, Philippines: Tebtebba Foundation.

Tauli-Corpuz, Victoria and Raymond de Chavez, "Strengthening Local-Global-Local Linkages," *Tebtebba* 8 2005.

Tauli-Corpuz, Victoria (2004), "Evaluation of the Voluntary Fund for the International Decade of the World's Indigenous People, 1997-2003." UN Official Document.

_____ (2004), "Tebtebba in 2004," *Tebtebba* 7 2004.

_____ (2000), "The Birth of the UN Permanent Forum on Indigenous Issues," *Tebtebba* 2 (1-4).

_____ (2001), "Resisting Racism and Racial Discrimination," *Tebtebba* 3 (1-2).

Tauli-Corpuz, Victoria; Maza, Jim; and Sidchogan-Batani, Ruth (2005), "Impact of Globalization and Liberalization on Poor Rural Producers: Evidence from the Field, The Case of the Philippines."

Tebtebba Foundation (2004), *Annual Reports 2000-2004*.

_____ (2005), *Indigenous Peoples & the Convention on Biological Diversity, Capacity Building & Advocacy Series No. 1: The Philippine Report*, Baguio City: Tebtebba Foundation.

_____ (2005), *Program Brochure*.

Tulus, Robby (2006), "Cooperatives and Peace in Post-Disaster Environments and Among Indigenous Peoples, A Case Study on the Role of Co-ops in Conflict Regions of Mindanao (Philippines) and Kalimantan (Indonesia)," www.ilo.org accessed 27 July 2006.

UN ECOSOC (United Nations-Economic and Social Council) (2004), "Report of the Secretary-General on the Preliminary Review by the Coordinator of the International Decade of the World's Indigenous People on the Activities of the UN System in relation to the Decade, Information Received from the UN Secretariat," Report No. E/2004/CRP.11.

University of Minnesota Human Rights Library (2006), "Ratification of International Human Rights Treaties – Philippines," http://www1.umn.edu/humanrts/research/ratification-philippines.html accessed 15 January 2006.

Vidal, Aida T. (2004), *Conflicting Laws, Overlapping Claims: The Politics of Indigenous Peoples' Land Rights in Mindanao*, Davao City: Alternate Forum for Research in Mindanao (AFRIM).

Appendix A. Summary of Certificate of Ancestral Domain Claims (CADCs) issued by DENR under DAO2 at the national level (in hectares).

Region	CY 1994	CY 1995	CY 1996	CY 1997	CY 1998	TOTAL
CAR	0	0	265,980.00	107,318.00	205,068.00	576,366.00
I	0	0	5,293.00	0	28,705.00	33,998.00
II	108,360.00	0	139,882.00	0	113,979.00	362,221.00
III	0	0	64,696.00	31,962.00	0	96,658.00
IV	0	4,748.00	89,673.00	65,225.00	223,247.00	382,893.00
V	0	0	39,417.00	38,758.00	16,187.00	94,362.00
VI	0	0	0	8,860.00	13,397.00	22,257.00
VII	0	0	4,373.00	0	0	4,373.00
IX	0	0	22,182.00	30,560.00	19,437.00	72,179.00
X	0	81,389.00	0	52,651.00	50,138.00	184,178.00
XI	0	89,974.00	81,629.00	130,781.00	96,189.00	398,573.00
XII	0	9,084.00	22,221.00	0	21,410.00	52,715.00
XIII	312.00	8,001.00	14,071.00	0	240,878.00	263,262.00
TOTAL	**108,672.00**	**193,196.00**	**749,417.00**	**466,115.00**	**1,028,635**	**2,546,035**

Source: DENR, Accomplishment Report,1999.

Appendix B. Approved Certificates of Ancestral Domain Titles (CADTs), 2002-2004.

Location	Tribe/s	No. of Individual Beneficiaries	No. of hectares
1. Bakun, Benguet	Bago, Kankanaey	17,218	29,444.3449
2. Kibungan, Benguet	Kibungan-Kankanaey	15,472	22,836.8838
3. Sugpon, Ilocos Sur	Kankanaey, Bago	3,300	6,339.4170
4. Nagtipunan, Quirino	Bugkalot	15,374	139,691.6194
5.Pastolan,, Hermosa, Bataan	Aeta	759	4,355.9312
6. Karahume, San Isudro, SJDM, Bulacan	Dumagat	363	1,817.1515
7. Sta.Cruz, Occidental Mindoro	Iraya-Mangyan	639	5,365.1100
8. Cajidiocan, & San Fernando, Sibuyan, Romblon	Mangyan-Tagabukid	1,846	7,718.8365
9. Coron, Palawan	Tagbanua	1,358	24,520.7600
10. Puerta Galera, Oriental Mindoro	Iraya-Mangyan	2,888	5,700.8271
11. Ocampo, Camarines Sur	Agta/Tagbangan	5,622	5,099.3430
12. Kabangkalan City, Karol-an, Negros Occidental	Bukidnon-Karolanos	4,140	3,981.2502
13. Siocon, Zamboanga del Norte	Subanen	1,144	8,213.5020
14. Pilas, Mahayag, Zamboanga del Sur	Subanen	3,161	4,530.0800

15. Milalitra, Talakag, Bukidnon	Talaandig	4,922	11,105.5667
16. Kitaotao, Sinuda, Bukidnon (FEMATTRICS)	Matigsalog-Manobo	24,405	102,324.8186
17. Quezon, Bukidnon (QUEMTRAS)	Manobo	1,398	1,595.2926
18. New Bataan, Compostela Valley	Mandaya, Mansaka	8,443	92,413.8676
19. Boston, Davao Oriental	Mandaya	3,529	19,151.4437
20. Monkayo, Compostela Valley	Manobo, Dibabawon, Mandaya	2,189	30,468.2250
21. Bentangan, Carmen, Cotabato	Arumanen	715	5,680.6261
22. Brgy. Llomavis, Kidapawan City (MADADMA)	Obo-Manobo	679	3,177.2000
23. Lanuza, Surigao del Sur	Manobo	1,065	11,811.6247
24. Bamban, Tarlac	Agta	2,979	10,684.2295
25. Atok, Benguet	Kankanaey & Ibaloi	15,634	20,017.6498
26. Calinog, Iloilo	Panay-Bukidnon/Sulod	1,526	1,748.8972
27. Makilala, North Cotabato	Bagobo-Tagabawa	596	2,973.1096
28. Dumingag, Zamboanga del Sur	Subanen	6,985	20,097.9340
29. Buhi, Camarines Sur	Agta/Agta-Tabangnon	2,020	1,278.0000
TOTAL		**150,099**	**604,143.6629**

Source: NCIP, Accomplishment Report, CY 2004.

Appendix C. List of foreign-assisted programs and projects in the Philippines implemented by the government.

LEAD IMPLEMENTING AGENCY	NAME OF PROGRAM/PROJECT/ SERVICE	TYPE (SECTOR/ SUBSECTOR)	COVERAGE/ LOCATION
Department of Agrarian Reform	Agrarian Reform Communities Development Project (ARCDP)	Agriculture, Natural Resources Management and Agrarian Reform	Regions 1, 2, 4, 5, 10, 11 & 13
	Agrarian Reform Communities Project (ARCP)		Regions 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13 & ARMM
	Agrarian Reform Infrastructure Support Project (ARISP II)		Regions CAR, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,& 13
	Western Mindanao Community Initiatives Project (WMCIP)		Region 9
	Development of Agrarian Reform Communities in Marginal Areas (DARCMA)		Regions 7 & 10
Department of Agrarian Reform	Mindanao Sustainable Settlement Area Development (MINSSAD	Agriculture, Natural Resources Management and Agrarian Reform	Regions 10, 11 & 13
	Solar Power Technology Support to Agrarian Reform Communities (SPOTS)		Regions 9, 11 & 12

Appendix C. (Cont.) List of foreign-assisted programs and projects in the Philippines implemented by the government.

	Support to Agrarian Reform Communities in Central Mindanao (STAR-CM)		Region 12 & ARMM
	Northern Mindanao Community Initiatives and Natural Resource Management Project (NMCIREMP)		Region 13
	Belgian Integrated Agrarian Reform Support Programme (BIARSP)		Regions 7 & 9
Department of Agriculture	Central Cordillera Agricultural Programme (CECAP)	Agriculture, Natural Resources Management and Agrarian Reform	Ifugao, Mt. Province, Kalinga and Abra
			Nueva Vizcaya, Nueva Ecija and Benguet
	Caraballo and Southern Cordillera Agricultural Development Programme (CASCADE)		Abra, Benguet and Mt. Province
	Cordillera Highland Agricultural Resources Project (CHARM-P)		Compostela Valley, Davao del Sur, Sarangani and South Cotabato
	Upland Development Program (UDP)		
	Mindanao Rural Development Program (MRDP) (Adaptable Program Loan)	Agriculture, Natural Resources Management	North Cotabato, Sultan Kudarat, Agusan del Sur, Maguindanao, Compostela Valley

	Infrastructure for Rural Productivity Enhancement Sector Project (InfPRES)	Agriculture Infrastructure	Zamboanga del Sur, Zamboanga del Norte, Basilan and Tawi-Tawi
	Fisheries Resources Management Project	Agriculture, Natural Resources Management	Lingayen Gulf, Calauag Bay, Tayabas Bay, Honda Bay, PPC Bay, Ragay Gulf, San Miguel Bay, Lagonoy Gulf, Sorsogon Bay, Sapian Bay, Carigara Bay, San Pedro Bay, Ormoc Bay, Sogod Bay, Davao Gulf, Panquil Bay, Gingoog Bay, Butuan Bay
DA	Grains Sector Development Program	Agriculture, Natural Resources Management and Agrarian Reform	Nationwide
DA-ARMM	Livelihood Enhancement and Peace (LEAP) Program	Economic Development	ARMM

Appendix C. (Cont.) List of foreign-assisted programs and projects in the Philippines implemented by the government.

Department of Education (Dep Ed)	Third Elementary Education Project	Social Development/ Education	Batanes, Abra, Apayao, Kalinga, Mt. Province, Benguet, Ifugao, Aurora, Masbate, Romblon, Eastern Samar, Biliran, Antique, Capiz, Leyte, Southern Leyte, Guimaras, Negros Oriental, Surigao del Sur, Agusan del Sur, Zamboanga del Sur and North Cotabato
DepEd	Secondary Education Development and Improvement Project (SEDIP)	Social Development/ Education	Ifugao, Benguet, Antque, Guimaras, Agusan del Sur and Surigao S, Romblon, Masbate, Negros Oriental, Leyte, Biliran, Zamboanga del Sur and North Cotabato Abra, Mt. Province, Kalinga, Apayao, Sulu, Tawi-Tawi, Maguindanao, Batanes, Aurora, Capiz, Eastern Samar and Basilan
	Child-Friendly School System (CFSS) Project		Nationwide

Department of Environment and Natural Resources (DENR)	Enhancement of Rural Livelihoods in Mindanao Uplands	Agriculture, Natural Resources Management and Economic Development	Selected provinces in Mindanao
	Coastal and Marine Biodiversity Component - Mindanao Rural Development Program (CMBC-MRDP)		R-12 (Panil Sangay Seascape, Sultan Kudarat) ARMM (Bongo Island, Maguindanao)
DENR	Forestry Sector Project (FSP)		Benguet, Ifugao, Ilocos Norte, Pangasinan, Nueva Vizcaya, Bataan, Pampanga, Tarlac Puerto Princesa City, Coron, Palawan, Camarines Norte, Masbate, Iloilo, Negros Oriental, Cebu, Bohol, Leyte, Samar, Zamboanga del Norte, Zamboanga del Sur, Zamboanga Sibugay, Bukidnon,, Davao del Norte, North Cotabato, Sultan Kudarat, Agusan del Norte, Surigao del Norte, Surigao del Sur,, Sulu, Maguindanao
	San Roque Multi-Purpose Project (SRMPP)		
	Southern Mindanao Integrated Coastal Zone Management Project (SMICZMP)		
	Camiguin Coastal Resource Management Project		
	Mindanao Community-Based Forest Resources Management Project		

Appendix C. (Cont.) List of foreign-assisted programs and projects in the Philippines implemented by the government.

	Protection of Productive and Life Sustaining Natural Resources through Improved Environmental Management and Enforcement – Eco Governance (SOAg)		
			9 Barangays in Itogon, Benguet
			Region 11 (Malalag Bay – Balasiao Watershed, Davao del Sur) Region 12 (Sarangani Bay – Mt. Matutum Watershed, Gen. Santos City, Sarangani and South Cotabato)
			Camiguin Island
			Zamboanga del Sur, Bukidnon, Davao del Norte, Davao del Sur, Sarangani)
			Nationwide

Department of the Interior and Local Government (DILG)	Integrated Rural Accessibility Planning III	Social Development	Nationwide
	Social Safety Net for Poor Women Vendors in Mindanao Cities	Economic/Social Development	Mindanao cities
	Clark Area Municipalities Development Project	Integrated Area Development	Mabalacat, Pampanga and Bamban, Tarlac
	Subic Bay Municipal Development Project		Dinalupihan, Hermosa and Morong, Bataan Olongapo City
	Rural Water Supply and Sanitation Project	Infrastructure	Regions 1, 2, 3,& 4
Department of Finance (DOH)	Community-Based Resource Management Project (CBRMP)	Agriculture and Natural Resources Management	Regions 5, 7, 8 and 13
	Credit Union Empowerment and Strengthening (CUES)	Economic and Social Development	Mindanao
	Micro-enterprise Access to Banking Services – Mindanao (MABS-M)		Mindanao
	Local Government Finance and Development Project	Social Development	Regions 2, 4, 5 and 10

Appendix C. (Cont.) List of foreign-assisted programs and projects in the Philippines implemented by the government.

Department of Health (DOH)	Sentrong Sigla Movement (SSM)	Social Development/ Health	Nationwide
	Early Childhood Development Project		Regions 6, 7 and 12
	Food Fortification Project		Nationwide
	Women's Health and Safe Motherhood		
	Health Sector Reform		
	Child Survival Programs		
	Friendly Care Foundation		
	Well-Family Midwife Clinics		
	LGU Performance Program (LPP)		
	Hospital Development Program		
Department of Public Works and Hghways (DPWH)	Agno and Allied Rivers Urgent Rehabilitation Project	Infrastructure	Agno Fiver Watershed (Pangasinan and Benguet)
	Pinatubo Hazard Urgent Mitigation Project		Pampanga, Zambales and Tarlac
	Subic-Clark-Tarlac Expressway Project		Pampanga, Tarlac and Zambales

Department of Trade and Industry (DTI)	PCs for Public High Schools Project	Social Development	Nationwide
	Growth With Equity (GEM)	Economic Development	Mindanao
Department of Tourism (DOT)	Sustainable Environmental Management Project in Northern Palawan	Agriculture, Natural Resources Management	Northern Palawan
Development Bank of the Philippines (DBP)	Development of Poor Urban Communities Sector Project	Social Development	Nationwide
Land Bank of the Philippines (LBP)	Mindanao Basic Urban Services Sector project	Social Development	Mindanao-wide
Local Water Utilities Administration (LWUA)	Provincial Towns Water Supply I/II	Infrastructure	Regions 1, 2, 3, 4, & 5
National Commission on the Role of Filipino Women (NCRFW)	Institutional Strengthening Project Phase 2	Social Development	Nationwide

Appendix C. (Cont.) List of foreign-assisted programs and projects in the Philippines implemented by the government.

National Irrigation Administration (NIA)	Southern Philippines Irrigation Sector	Agriculture/ Infrastructure	ARMM, Caraga Region, Region 6 and Region 7
	Casecnan Multi-Purpose Irrigation and Power Project		R-3 (Nueva Ecija, Bulacan and Pampanga)
	Central Luzon Irrigation Project		Central Luzon
	Lower Agusan Development Project (Irrigation Component)		Agusan del Sur and Agusan del Norte
	Water Resources Development Project		Tanay, Rizal Gen. Nakar, Quezon Zamboanga del Sur
Palawan Council for Sustainable Development (PCSD)	Palawan Tropical Forest Protection Programme	Agriculture, Natural Resources Management	Palawan
Philippine Economic Zone Authority (PEZA)	Special Economic Zones Environment Management Project	Integrated Area Development	Regions CAR, 3, 4 & 6

Southern Philippines Council for Peace and Development (SPCPD)	Support to the Expanded Programme of Assistance for Delivery of Basic Services, Livelihood and Enterprise Development, Skills Training and Capacity Building for Moro National Liberation Front Soldiers, Their Families and Communities	Economic/Social Development	Mindanao
Special Zone of Peace and Development (SZOPAD	SZOPAD Social Fund Project	Economic/Social Development	Regions 4 (Palawan), 9 and ARMM
	Strengthening the Foundation of Lasting Peace and Development in the Southern Philippines		Mindanao
Technical Education and Skills Development Authority (TESDA)	Technical Education and Skills Development	Economic/Social Development	Nationwide
	Expansion of Dual Education and Training Project		Nationwide

Source: UNDP in the Philippines; IFAD in the Philippines; ILO-UNDP-NCIP. Austria J.E., "Result of Scoping Activities Undertaken on Existing Programs and Projects Benefitting Indigenous Peoples in the Philippines." (Draft Report)

Appendix D. Development Partners Strategies and Coordination in the Philippines

Sector/ Thematic Area	Development Partners' Strategies/Activities
Agriculture and Rural Development	ADB: Helps the Govt. Modernize agriculture and accelerate rural development with support in agrarian reform communities, irrigation systems improvement, upland agriculture productivity and rural microfinance. AusAID: Helps improve key livelihood areas of rural income. Belgium: supports agrarain reform communities (ARCs). CIDA: supports sustainable agricultural enterprises development through private sector participation. EC: supports area-based, sustainable rural development and agrarian reform. GTZ: supports land reform and rural development. IFAD: supports community-based agricultural resource management, rural microenterprise, livestock development and irrigation. JBIC: supports agrarian reform, irrigation and rural roads. JICA: funds agricultural research, development and extension work, rural infrastructure development and system management, and supports ARCs. Netherlands: supports agrarian reform and sustainable agriculture. Spain: helps ensure food security, supports microfinance, aquaculture and agroforestry. USAID: supports grains sector development and microfinance facilitation. UNDP: Promotes asset reform, indigenous communities and microfinance. WB: Promotes priority policy and market reforms in agriculture, rural credit, agrarian reform and land administration.

Energy	ADB: supports in implementing and full restructuring and privatization of the power sector as prescribed in the EPIRA in order to create competitive power and support economic development with affordable electricity tariffs. AusAID: supports the restructuring of the power sector. JBIC: funds electric power development, natural gas infrstructure, renewable energy (wind, geothermal), and transmission. JICA: supports sustainable energy resources development and rural electrification. KfW: supports special program for renewable energy. Spain: promotes renewable energy. USDOE: supports power restructuring and privatization and promotes renewable energy for rural electrification. WB: supports reforms and priority investments to improve rural electrification in partnership with the private sector, and promotes renewable energy where cost effective.
Transport	ADB: assists in the formulation of policy frameworks and provide financing for the development of secondary national roads, and intermodal transport (ports and airports) with the overall objective of improving access to/within Southern Philippines. Also supports activities to improve right-of-way and land acquisition, resettlement, and undertaking cadastral surveys. JBIC: transportation and raod traffic infrastructure development such as mass rail transit, highways, seaports and airports.

Appendix D. (Cont.) Development Partners Strategies and Coordination in the Philippines

	JICA: improvement of the national road network and rural roads, establishment of the national aviation network, port facilities and sea transportation network development, maritime traffic safety, and traffic alleviation in Metro Manila. Kuwait Fund: support to the transportation sector. Saudi Fund: support to infrastructure development in the regions in Southern Philippines.
Water Supply, Sanitation, Housing and Rural and Urban Development	ADB: supports the preparation of water supply, sanitation, housing and urban devt.projects through public and private sector infrastructure investments, and provides assistance for devt.and capacity building of relevant institutions and agencies but not limited to water utilities and regulatory bodies. AusAID: contributes to the improvement of the rural and urban poor's access to water and sanitaion services. CIDA: helps improve access of the poor to housing, water and sanitation. GTZ: supports provision of drinking water, water mgmt, sanitation and waste mgmt by suuporting cost-effective pilot facilities for sewage treatment and sustainable waste-water disposal strategies developed at national, regional and local levels. JBIC: supports flood control, water supply and solid waste management. JICA: supports improvement of rural water supply system, water resources devt and mgmt, urban devt.policy, and low-income housing development. KfW: supports rural water supply, water districts, drinking water and solid waste management. Spain: helps in urban development planning, and urban and rural water supply. WB: assists water utilities, mobilizes private resources for water and sanitation; improves urban envt by investing in drainage, waste water treatment, solid waste and air pollution reduction; helps build financial and institutional capacity of LGUs; supports community infrastructure upgrading, and developing national urban strategy.

Education	ADB: strenghtens policy reforms, builds capacity and provides quality improvement in basic and higher education and skills training. AusAID: supports basic education, technical education and skills development, and human resources development through overseas study scholarships; helps improve the quality of basic education and to increase access for disadvantaged and remote chilldren, particularly theose from indigenous and Muslim communities in southern and central Mindanao and ARMM. GTZ: supports dual training and education. JBIC: helps in improving quality and access to primary and secondary education; provides cofinancing for ADB and WB secondary and elementary education projects. JICA: helps in improving primary and secondary education; supports physical infrastructure development such as school buildings and teaching equipment; supports science and mathematics education, and provides teaching materials and equipment. KfW: supports dual training and education and maritime education. NZAID: provides post graduate study awards and short term training in New Zealand (inlcuding study tours, potentially in-country and regional study/training. Spain: supports vocational training and heritage conservation training. UNDP: supports sustainable human development. UNICEF: supports the Education-for-All initiative. WB: supports basic education, nonformal education, early childhood development and out-of-school youth; prepares education policy notes.

Appendix D. (Cont.) Development Partners Strategies and Coordination in the Philippines

Health	ADB: helps improve primary healthcare, including maternal and child healthcare, and supports the reforms and activities in the Philippines health sector reform agenda, particularly local health systems development. AusAID: provides capacity building for effective health service delivery at the local level, in particular, provides universal immunization, pre-natal care, child-growth monitoring in nine provinces and one city in Mindanao. CIDA: helps ensure access of the poor to health and nutrition services like nationwide tuberculosis eradication program, maternal and child health in the Autonomous Region of Muslim Mindanao (ARMM), health insurance through cooperatives, provision of relief and rehabilitation for evacuees in Mindanao, and improved reproductive health care programs and services. EC: supports reproductive health and population management programs. GTZ: supports family and reproductive health, development of a social health insurance, pharmaceutical and local health systems development, family planning and HIV/AIDS prevention, and the equipping of hospitals through establishment of nationwide maintenance units. JICA: supports health and medical care administration, rural health promotion and infectious disease control. KfW: supports immunization programs, social marketing, family planning and HIV/AIDS prevention; provides cold chain equipment, hospital equipment, and essential drugs. Netherlands: supports nutrition planning. Spain: supports health sector reform, upgrading of health facilities, National Tuberculosis Program and Manila Eye Hospital. UNAIDS: supports HIV/AIDS prevention. UNDP: supports community-based approaches to HIV prevention.

	UNFPA: supports family planning and reproductive health. UNICEF: helps in providing health nutrition for women and children. USAID: supports family planning and tuberculosis control and expands the role of the private sector to support these services. WB: supports the health sector reform agendaf, early childhood development, women's health, and conducts study of the orivate provision of health services.
Private Sector and Small and Medium Enterprises (SME) Development	ADB: supports private sector devt.by increasing the private sector's participation and competitiveness, improving the policy environment in which the private sector operates, and enhances infrastructure support; continues to promote devt.of SMEs. AusAID: contributes to governance reform programs by supporting measures to improve the enabling environment for private sector development, and helps to improvethe property rights environment for private sector development which is important to stimulate investment for broad based economic growth. CIDA: helps in building private sector capacity to create jobs, primarily by SMEs and cooperatives. GTZ: supports private sector development, SME development and industry training. ILO: supports income-generating projects and building of cooperative organizations. JICA: supports SME development. KfW: provides financcing for micro, small and medium enterprises. USAID: helps in improving competition policies in infrastructure, and supports SME development. WB: helps in strengthening the business environment, improving domestic mobilization of long term resources, and improving the infrastructure; supports SME devt. and conducts study on private-public partnership to meet infrastructure needs.

Appendix D. (Cont.) Development Partners Strategies and Coordination in the Philippines

Finance and Banking	ADB: supports the development of the financial/capital market, particularly the nonbank sector by enhancing market efficiency, strengthening governance, and addressing weak and fragmented regulatory and supervisory framework for the nonbank sector. AusAID: supports corporate governance reform, specifically reform of the Philippine Stock Exchange, and to protect the Government's financial position. EC: focuses on efforts to create a business-friendly environment of law, tax and public policy. JICA: enhances economic management capabilities, focusing on customs administration. UNDP: supports poverty monitoring and coordination of anti-poverty programs. WB: supports reforms to strengthen public finance/expenditure, procurement and financial management.
Environment and Natural Resources Management	ADB: supports environmental manangement by improving the environmental quality of urban centers, continues to support improvements in managing solid and medical waste; helps in the protection and management of natural resources by supporting the use of community-based, demand-driven, participatory approach to prevent deforestation and degradation of forestland, and promoting sustainable and integrated management of caostal resources and related ecosystems. CIDA: supports watershed, lowland and coastal resources management. ILO: supports Ancestral Domain Management and indigenous knowledge. GTZ: supports environmental policy, protection and sustainable use of natural resources like coastal resources, fisheries, forestry and watershed. JBIC: funds air quality improvement programs (in partnership with ADB), and supports community-based management of forestry, fisheries and coastal resources.

	JICA: provides environmental management capacity building, supports prevention of mining pollution, solid waste management, and forest conservation. KfW: finances SME investments in pollution reduction, including improvement in occupational health and safety, waste minimization and clean technology in industrial processes. Netherlands: supports biodiversity conservation, watershed and natural resources management, and climate change. NZAID: supports resource management at the community level including ecotourism and coastal resources. Spain: supports up-hill agriculture. SIDA: helps in ensuring sustainable use of natural resources, biological diversity conservation, waste management, and air and water pollution management. UNDP: helps in strengthening, rationalization and implementation of environment and natural resources policies, frameworks and plans; supports in streamlining environment and natural resources services, strengthening sustainable development planning and implementing capacity. WB: supports commuinity-based resource management, coastal marine biodiversity conservation, river basin management, Laguna de Bay institutional strengthening and community participation; and conducts Country Environmental Analysis.
Gender and Development	ADB: promotes gender concerns in most loan and TA operations and will build projects with special design features and strategies to facilitate and ensure women's involvement and access to program/project benefits. AusAID: aids in participatory monitoring of gender projects.

Appendix D. (Cont.) Development Partners Strategies and Coordination in the Philippines

	CIDA: supports NCRFW and global Environment Facility (GEF) and microfinance services for women. EU: helps in fostering gender equality. JICA: supports social and economic empowerment of women. NZAID: supports the DSWD's National Family Violence Prevention Programme; ensures that gender considerations are built in for all projects. UNICEF: helps in the prevention of violence against women; supports girl child education, health and nutrition, and protection. UNIFEM: supports the expansion of gender and development budget. WB: assists women's health programs; ensures gender dimension in projects; and conducts study on gender issues in Mindanao.
Governance	ADB: provides advisory and capacity building assistance to national and local governments to ensure that operations are implemented with high degree of transparency and accountability; will support strengthening of ODA monitoring and facilitation, development of local government financing mechanisms for development, promoting good local governance in ARMM, and setting up of local prosuctivity and performance measurement system, and judicial reform to strengthen independence and accountability. AusAID: supports policy development and capacity building for LGUs to improve public sector capacity for governance and management for nationally determined development outcomes; supports peace building activities and post-conflict recovery in conflict-affected areas especially in Mindanao. CIDA: promotes effective, transparent and accountable governance through national and local capacity building, support for the judiciary, and fighting corruption.

	EU: promotes good governance and transparency in the management of public affairs, and stengthens institutions and rule of law. ILO: supports the implementation and policy implications of the Indigenous Peoples' Rights Act (IPRA) of 1997. GTZ: supports institutional strengthing of national agencies and LGUs. JICA: provides capacity building for central and local government administration, and supports improvement in police function. Netherlands: assists in local government planning and child justice system. NZAID: supports activities that enhance quality and sustainability of governance, currently providing support for GOPs Programme on Rationalizing and Improving Public Service Delivery. SIDA: contributes to the democratization process and to encourage greater respect for human rights. Spain: supports trade unions and in general, supports social participation, development of institutional structrures, good governance, conflict prevention and the promotion of peace. UNDP: supports public reform, strengthens citizenship and citizens' oversight in governance, supports the mainstreaming of human rights, and gender and globalization concerns in governance. USAID: assists in combating money laundering and corruption in government, supports reforms in the financial and fiscal sectors, trade, savings and securities, and openness and competition. WB: supports the strengthening of public finance/expenditure, procurement and financial management, provides LGU capacity building, supports judicial reform and civil service reform, and conducts Decentralization study (joint with ADB).

Sources: Asian Development Bank. "Country Strategy and Program Update, 2004-2006." Manila, Philippines: November 2003.; AusAid: "Aid Activities in the Philippines." www.ausaid.gov.au. Downloaded: 12 April 2006.; Spain's Official Development Assistance. www.mae.es. Downloaded: 27 April 2006.; SIDA. "What does SIDA do in the Philippines?" www.sida.se. Downloaded: 27 April 2006.

Appendix E. Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

NAME OF NGO/PO	PROJECT/SERVICE		COVERAGE/ LOCATION
	TITLE/SERVICES	TYPE	
1) ABS-CBN Foundation, Inc. (ABS-CBN)	Women Loan/Family Enterprise Loan/Tricycle Loan	Microfinance	Open to areas where poverty incidence is high. (Nationwide)
2) Agro-Forest Builder of Hinimbangan Foundation Inc.	Lake Mainit Upland Resource Management and Biodiversity Conservation (IP area)	Natural Resources Management	Kitcharao, Agusan del Norte
3) Alliance of Peasants in the Cordillera Region (APIT TAKO)	Conservation, Sustainable use and Propagation of indigenous and locally-adapted seeds and technologies using traditional practices	Natural Resources Management	Cordillera Region (IP areas)
4) Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)	Sustainable Agriculture Program-200-Village Project (information system, documentation and advocacy)	Natural Resources Management	Nationwide
5) Anthropology Watch (Anthrowatch)	Sierra Madre Cultural Mapping and Survey	Survey and Mapping	Sierra Madre, Luzon (IP area)
	Lakbay K-Tribo	Advocacy	Nationwide (IP area)

	Sibuyan Mangyan Ancestral Domain Delineation	Ancestral Domains Management	Sibuyan Island, Romblon (IP area)
6) Associates for Integral Development Foundation, Inc.	Lowland and Upland Conservation for Lake Mainit Influence Areas	Natural Resources Management	Jabonga and Kitcharao, Agusan del Norte (IP area)
7) Association of Fisherfolk of Davao City	Coastal and Marine Resources Conservation and Management for Fishing Families	Natural Resources Management	Bunawan District, Davao City (IP area)
8) Aromanon Sinimburan Tindeg Bansa Inc.	Erumanen Menuvu Community Resource Development	Natural Resources Management	Aroman, Carmen, Cotabato (IP area)
9) Ateneo Human Rights Center (AHRC)	Adhikain Para sa Karapatang Pambata	Legal Services	Nationwide
10) Bakun Indigenous Tribes Organization	Management of the Bago-Kankanaey Tribes Ancestral Domain	Ancestral Domains Management	Bakun, Benguet (IP area)
11) Budyong Rural Development Foundation, Inc. (BRDFI)	Protected Area Conservation and Livelihood Enterprise Through Vending and Souvenir Working Shop	Natural Resources Management	Puerto Princesa City

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

12) Bukidnon Integrated Network of Home Industries	Biodiversity Protection	Natural Resources Management	Dahilayan, Manolo Fortich, Bukidnon (IP area)
13) Center for Alternative Development Initiatives (CADI)	Installation of Sustainable Integrated Area Development (SIAD) in various provinces of the Philippines	Development Planning	Various provinces nationwide
14) Community Health Education, Services and Training in the Cordillera Region (CHESTCORE)	Health trainings to Community Health Workers (CHWs); networking and advocacy with health professionals and students towards CBHP; low-cost primary care clinic for urban poor.	Health Care and Services	Cordillera Region (CAR) Abra, Apayao, Baguio City, Benguet, Ifugao, Kalinga, Mountain Province (IP areas)
15) Community Organizer Multiversity (CO MULTI-VERSITY)	Upland Agricultural Productivity	Agricultural Development	Mindoro (IP area)
	Agricultural Productivity		Basilan (IP area)
	Balance Land Use	Natural Resources Management	Quezon
	Inter-Municipal Resource Management and Coalition Building	Networking	Tacloban City and Antique
	Community-Based Child Labor Elimination	Social Services	Montalban, Rizal

16) Cordillera Peoples Alliance	Information, education, campaign and networking on the rights of indigenous peoples in the Cordillera	Recognition of indigenous peoples' rights	Cordillera Region (CAR) (IP areas)
17) Cordillera Women's Education & Resource Center	Organizing and consolidating women's groups at the grassroots level; education and training to raise awareness and enhance the capabilities of women organizations; support programs on research, documentation and publication, and networking and advocacy.	Capacity building of IP women's organizations and research and documentation of women's issues.	Cordillera Region (CAR) Abra, Apayao, Baguio City, Benguet, Ifugao, Kalinga, Mountain Province (IP areas)
18) Ecumenical Foundation for Minority Development (EFMD)	Pinatubo Rehabilitation and Indigenous Micro-Enterprise Project	Microenterprise	San Marcelino, Castillejos, Subic and Olongapo City, Zambales
19) Environmental Legal Assistance Center	Community-Based Coastal Resource Management in Ulugan Bay	Natural Resources Management	Palawan (with IP areas)
20) Evelio B. Javier Foundation, Inc.	Sibuyan Island Ecotourism Development	Ecotourism	Sibuyan island, Romblon

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

21) Foundation for Philippine Environment (FPE)	Community-Based Biodiversity of Buasao Watershed and Mt. Poswoy	Natural Resources Management (NRM)	Kalinga (IP area)
	Banao Watershed Community-Based Resource Management Project (CBRMP)	NRM	Abra (IP area)
	Bolos CBRMP	NRM	Cagayan Valley
	Fisherfolk Integrated Self-Help for Empowerment and Regeneration	Economic Development	Palawan
	Biak-na-Bato National Park Conservation Project	NRM	
	Bulusan Volcano National Park CBRMP PAMB Capacity Building and CBRMP for Mt. Banahaw-San Cristobal	Capacity building/NRM	Quezon Province
	Guiuan Community-Based Coastal Resources Management Project	NRM	

	Mt. Talinis and Twin Lakes Biodiversity Conservation Project Northwest Panay Biodiversity Conservation Project	NRM	Panay Province
	Paranas Community-Based Forest Management Project	NRM	
	North Negros Forest Reserve Community-Based Biodiversity Conservation Project	NRM	
	Pulangi Watershed Integrated NGO/PO Community-Based Resource Management Project	NRM	Bukidnon
	Lake Mainit Biodiversity Conservation Project	NRM	Caraga (IP area)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

	Arakan Community-Based Resource Management Project for Forest Corridor Development	NRM	Davao (IP area)
	Advocacy for the Conservation and Management of Ligawasan Marsh Towards Sustainable Development Project	NRM	Maguindanao
	Matutum Integrated Conservation and Development Project	NRM	
	Dinagat Island Community-Based Resource Management Program	NRM	Dinagat Island
	Biodiversity Conservation Project for Mt. Malindang Natural Park	NRM	
	Bridge Funding for Multi-Partnership Protected Area (PA) Establishment of the NE Cagayan Biodiversity Corridor Program	NRM	Cagayan Valley

	Collaborative NGO Support on Ancestral Domain Management Integrated Biodiversity Conservation and Sustainable Management of Ancestral Domains in the Zambales Mountain Range Small Grants for short term initiatives: 18 projects 25 projects 11 projects 13 projects	NRM/Ancestral Domain Management NRM/ADM Capacity building/ Advocacy/research	Zambales Nation-wide Luzon Visayas Mindanao
22) Innabuyog-Gabriela (Alliance of Women's Organizations in the Cordillera Region)	Campaign on Indigenous Women's Rights, Participation in Political Processes, Solidarity Work and Networking	Capacity building/ advocacy/research	CAR provinces (IP area)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

23) Institute of Primary Health Care - Davao Medical School Foundation (IPHC-DMSF)	Socio-Economic and Ecological Development (SEED)	Development Planning	Davao City and Davao del Sur, Davao del Sur (with IP areas)
	Socio-Political Economic and Ecological Development for Surigao (SPEED for Surigao)	Development Planning	2 rural communities in San Miguel and 1 community in Tago, Surigao del Sur
24) Jaime V. Ongpin Foundation, Inc. (JVOFI)	Water System	Social Services	Happy Hallow, Baguio City (IP area)
	Leadership Training	Capability Building	Happy Hallow, Baguio City
	Micro-Lending	Microfinance	Happy Hollow, Baguio City
25) Kabang Kalikasan ng Pilipinas (KKP)	Protection of Tubbatahha Reef	Natural Resources Management	Tubbatahha, Palawan
	Rescuing the Turtle-Island Territories		Turtle Islands, South Philippines
	Mt. Guiting-guiting Biodiversity Project		Sibuyan Island, Romblon (IP area)

26) KADUAMI-RDC (Regional Development Center in Northern Luzon)	Socio-Economic Projects towards poverty reduction	Enterprise and Livelihood, Capacity-Building	Seclected communities in the Cordillera Region, Regions 1 and 2 (with IP areas)
27) Kaisa Para sa Kaunlaran, Inc. (KAISA)	Housing program for Mangyan communities	Social Services	Baco, Naujan, San Teodoro, Socorro Bongabong, Bulalacao, Gloria, Pinamalayan and Victoria, all in Oriental Mindoro (IP area)
28) Kapwa Upliftment Foundation, Inc. (KAPWA)	Barangay Integrated Area Development Planning	Integrated Area Development	Barangays inside Mt. Apo Natural Park and SITRIBA CADT Claim (IP area)
29) Katutubong Samahan ng Pilipinas (KASAPI)	Capacity-Building and Networking of member IP organizations	Capacity-Building	Selected IP areas in Mindanao and Luzon
30) Lake Sebu Ancestral Domain Community Association (LASADCA)	Sustainable Agro-Forestry Enterprise Program in Lake Sebu (SAFE-LAKE)	Ancestral Domains Management	Lake Sebu, South Cotabato (IP area)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

31) Leaf Foundation, Inc. (LFI)	Profiling and Development Planning	Development Planning	Caraga Region (with IP areas)
	Agroforestry Training and Development Center (ATDC)	Capability Building	
	Community Enterprise Development/Assistance to Cooperative/POs	Enterprise and Livelihood Development	
	Livelihood Enhancement in Agroforestry		
	Enhancing CSO Participation on Local Government	Capability Building	
	Monitoring and Evaluation of Reforestation Projects	Project Monitoring and Evaluation	
	Community-Based Forestry Management Program	Natural Resources Management	
	Scholarship Grant to Poor Students	Social Services	
	Health and Education		

32) Legal Rights and Natural Resources Center-Kasama sa Kalikasan-Friends of the Earth (LRC-KSK-FOE)	Legal and policy research and advocacy on IP rights, land tenure, natural resource management and community and local initiatives	Protection of IP rights and Natural Resource Management	Nationwide (with IP areas)
33) Lupi Biodiversity Conservation and Devt. Assn., Inc.	100 has Biodiversity Conservation in Mt. Isarog Natural Park Project	Natural Resources Management	Naga, Calabanga, Tinambac, Goa, Tigaon and Pili, Camarines Sur (with IP areas)
34) Maguindanaon Development Foundation, Inc. (MDFI)	Ligwasan Marsh Integrated Conservation and Resource Management Project	Natural Resources Management	North Cotabato (with IP areas)
35) Mahintana Foundation, Inc. (MFI)	Rehabilitation Assistance	Social Services	10 barangays in Polomolok, Tupi and T'boli, South Cotabato (IP areas)
36) Mindoro Indigenous Peoples	Biodiversity Conservation and Ancestral Domains Program	Natural Resources Management	8 communities in Mindoro (IP areas)
37) Montanosa Relief and Rehabilitation Services (MRRS)	Relief and Rehabilitation Services and Projects in Natural and Man-made Disasters	Economic / Social Development	Cordillera Region, Regions 1 and 2 (with IP areas)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

38) Montanosa Research and Development Center (MRDC)	Programs in Sustainable Agriculture	Natural Resources Management	Cordillera Region (IP area)
39) Nagkakaisang Tribu sa Palawan (NATRIPAL) and Palawan Network of NGOs, Inc.	Program on Bioprospecting: Enforcement and Monitoring of EO 247 Implementation	Natural Resources Management	Palawan (IP area)
40) National Federation of Indigenous Peoples' Organizations in the Philippines (KAMP)	Capacity-Building, Campaigns, Solidarity Work and Networking to promote and protect IP rights	Capacity-Building	Nationwide (IP areas)
41) New Lands Resources Developers Cooperative, Inc.	Marine Habitat Conservation and Ecotourism along the Pacific Coast	Natural Resources Management	Santa Margarita, Baggao, Cagayan
42) Organisasyon Dagiti Nakurapay nga Umili ti Syudad (ORNUS)	Research, Capacity-Building, Campaigns for the protection of the Rights of IPs in the urban setting	Capacity Building and Advocacy	Metro Baguio (IP area)
43) Palawan Center for Appropriate Technology (PCART)	Watershed Conservation and Management and Microhydro Power Development for Electrification and Livelihood	Natural Resources Management	Roxas, Palawan (with IP areas)

44) PANLIPI	Legal Assistance for the recognition of the rights of indigenous peoples to their ancestral domain, culture and traditions, and other basic rights	Promotion and Protection of IP Rights	Nationwide (IP areas)
45) Peace and Equity Foundation (PEF)			
46) Philippine Assn for Intercultural Development, Inc. (PAFID)	Biodiversity Conservation through Sustainable Management of Agta/Dumagat Ancestral Domain in Aurora	Natural Resources Management	Aurora (IP area)
	National Land Tenure Program for Indigenous Peoples in the Philippines Health and Literacy Program Training and Capacity-Building for IPs in South-Central Bukidnon Watershed and Forest Conservation and Management	Land tenure Social Development Social Development Natural Resources Management	CAR, Regions 2, 3, 4, 9, 10, 12 & 12 (IP area) Oriental Mindoro, Bataan, Nueva Vizcaya, Aurora, Cagayan, Tarlac, Olongapo, Bukidnon (IP areas) Bukidnon (IP areas)
47) Philippine NGO Council for Food Security and Fair Trade (KAISAM-PALAD)	Provision of grant/credit	Microfinance	Cordillera (Credit) (IP area) Quezon (Grant)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

48) Philippine Rural Reconstruction Movement (PRRM)	Barangay Development Planning	Development Planning	Ifugao (IP area)
	Ifugao Sustainable Rural District Development Program	Development Planning	
	Ecodevelopment Tourism	Ecotourism	
	Save the Ifugao Terraces Movement	Preservation of Cultural Heritage	
49) Sabang Sea Ferry Service Cooperative	Ferryboat Services and Hardware Trading Business	Economic Development	Sabang, Palawan
50) Sabang Tourism Network Multi-Purpose Cooperative	Wildlife And Habitat Protection For Low Impact Eco-Tourism In The Puerto Princesa Subterranean River National Park and Consumers Coop Store Project	Ecotourism	Puerto Princesa City
51) Sagip Isla Sagip Kapwa	Watershed Conservation and Management and Microhydro-Power Development for Electrification and Livelihood Project	Natural Resources Management	Barangay Binosawan, Rapu-rapu, Albay
52) Saloy Farmers Multi-Purpose Cooperative	Water Catchment Management and Water Resource Utilization for Small Agri-Processing and Electrification	Natural Resources Management	Davao City

53) Shontoug Foundation, Inc.	Economic Productivity	Economic Development	Benguet (IP area)
	Neighborhood Early Childhood Care and Development	Social Development	Benguet (IP area)
54) Sibol ng Agham at Teknolohiya (SIBAT)	Sustainable Agriculture Program: Seed Conservation and Diversified and Integrated Farming Systems	Natural Resources Management	Selected areas nationwide (with IP areas)
55) SILDAP	Education and Training Program for Indigenous Peoples (community theater, radio programs, School of Living Traditions, and School for Peace) Biodiversity Conservation Program	Social Development/ Capacity Building Natural Resources Management	Central Mindanao (IP area)
56) Southern Christian College	Sustainable Agriculture and Biodiversity Conservation Program Extension program on mobile institutes and scholarships	Natural Resources Management Social Development (education)	Central Mindanao (IP area)

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

57) Social Rehabilitation and Development Foundation, Inc.	Community-Managed Water Resource Utilization and Biodiversity Protection for Micro-Hydro Generation	Natural Resources Management	Bukidnon (IP area)
58) SOCSARGEN NGOs and POs	Community-Based Natural Resources Management Program Rehabilitation of the silted Malapatan Cove	Natural Resources Management	South Cotabato, Sarangani and General Santos (IP areas)
59) Southeast Asia Regional Institute for Community Education (SEARICE)	Seeds of Survival (SOS)	Agricultural Development	Arakan Valley, President Roxas, Cotabato Lambayong, Sultan Kudarat (IP areas)
60) Swisscontact	DAR-ADB Gender Mainstreaming in Agrarian Reform Community Projects	Gender and Development	Nationwide
	EU-DA CASCADE Product Development Program	Economic Development	Nueva Ecija, Nueva Vizcaya and Benguet (IP areas)
	SC-USAID Mindanao BDS Market Development Program	Economic Development	Mindanao

61) Tanggapang Panligal para sa Katutubong Pilipino	Mt. Guiting-guiting Biodiversity Project	Natural Resources Management	Sibuyan Island, Romblon (IP area)
62) Tebtebba Foundation	Research, Training/Education, Advocacy for IP Rights	Promotion and Protection of IP Rights	Nationwide and International (IP areas)
63) Three Diamonds MPC Biodiversity Conservation Project	Three Diamonds MPC Biodiversity Conservation	Natural Resources Management	Brgy. Pallagao, Baggao Cagayan (IP area)
64) Tribal Cooperation for Rural Development (TRICORD)	Cooperatives, Rural Finance and Sustainable Agriculture Programs	Economic Development	Nueva Vizcaya (IP areas)
65) Upland Development Institute (UDI)	Building Civil Society Participation in Cordillera Schools for Environment and Community Concerns	Capability Building	Cordillera (IP area)
	Binodngan Program	Advocacy and Research	
	Research and Advocacy in Defense of the Land and the Environment	Advocacy and Research	

Appendix E. (Cont.) Programs, Projects and Services being implemented by Local Non-Government/ Peoples' Organizations

	Sustainable Agriculture and Environment	Agricultural Development	
	Communication Network for Cordillera Communities	Social Development	
	School of Indigenous Peoples Advocates of Cordillera	Social Development	
	Green Skills Training Program	Social Development	
	Indigenous Peoples Participation in Governance	Social Development	
	Sustainable Community Managed Livelihood Projects	Economic Development	
	Popular Health/Community-Managed Health Program	Social Development	
66) Voluntary Service Overseas (VSO)	Technical and Organizational Skills for Civil Society Action for the Displaced and At-Risk Communities in Mindanao (TOSCADAR).	Social Development	Mindanao (with IP areas)

Sources: Tebtebba Foundation. "Indigenous Peoples and the Convention on Biological Diversity." Capacity Building and Advocacy Series No. 1: The Philippine Report.2005; ILO-UNDP-NCIP; NGO Program brochures; "Result of Scoping Activities Undertaken on Existing Programs and Projects Benefitting Indigenous Peoples in the Philippines." (Draft Report); FPE Annual Report 2004; Program Brochures of various NGOs/POs.

2

Sharing Benefits with Indigenous Peoples: A Case Study of the Hydroelectric Power Plants in Bakun, Benguet, Philippines

*Aida Priscilla T. Cadiogan and Clint Bangaan**

I. Introduction

Indigenous peoples worldwide are known for their customary laws and management practices that protect and sustain their environment, natural resources, and territories. Such practices are acknowledged worldwide and further validated by observations that most areas with abundant natural resources are found in the territories of indigenous peoples. However, these territories have become targets of exploitation with the incursion of so-called development projects such as dams, mines, large-scale agricultural production, and hydroelectric power plants.

The hydroelectric power plants in Bakun are interesting studies since these are "mini" hydroelectric power plants which mean that they have a generation capacity of less than 10 megawatts. As

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such, they are deemed to have only minimal destructive effects on the environment. The development of mini-hydroelectric power plants could also be seen as a good practice in developing sustainable hydroelectric power in the Philippines. After all, providing electric energy to isolated villages in mountainous and hilly areas by extending grid systems is not economical.

Moreover, Bakun is also populated by indigenous peoples, namely, the *Kankanaey* and *Bago* groups, which have "preserved" their community through their customary laws and practices. Hence, it is important to look into the dynamic involving the community and the operators of the hydroelectric power plants in the context of sharing benefits and conserving the natural resources in the area.

The operation of hydroelectric power projects in Bakun falls within the first International Decade of the World's Indigenous People or the First Indigenous People's Decade (1995-2004) because it started as early as 1990. As such, it is a valid subject for study even though the First International Decade of the World's Indigenous People's program of action has nothing to do with the hydroelectric power plants in Bakun.

This study is part of the project entitled "Assessment of the First International Decade of the World's Indigenous People," a project supported by the International Fund for Agriculture and Development (IFAD). This assessment project is being implemented by Tebtebba Foundation in five countries in Southeast Asia, namely, the Philippines, Cambodia, Indonesia, Thailand, and Vietnam. The assessment for the Philippines involves three researches: a policy and program analysis; a budget analysis; and a case study focusing on sharing with indigenous peoples the benefits derived from the utilization and development of natural resources located within their territories. This research is the third in the said list of researches.

A. Research Objectives

The research objectives of this case study are as follows:

1. To look into Philippine laws and other agreements that serve as framework for sharing with host communities the benefits derived from the utilization of natural resources;

2. To assess the effects of the benefits shared by two hydroelectric companies that have implemented their hydroelectric power projects with the Kankanaey and Bago groups in some barangays[1] of Bakun. This is done by looking into:
   a. The level of implementation of laws and agreements regarding the provisions for benefits; and
   b. Perceptions on such benefits
3. To look at the level of participation of the indigenous peoples in the planning and implementation of the projects, and in defining the benefits shared by the companies with the host community.

B. *Methodology*

For the case study or situational analysis in the Philippines, the topic assigned to the research team was "access to resources and sharing of benefits with the host communities, and its legal aspects." Starting in the 1990s, new laws which mandate resource developers to share benefits with host communities have been enacted in the Philippines. After a thorough review of cases which might fit the topic, the municipality of Bakun was chosen as the case study. One of the considerations was that hydroelectric plants have been in operation for several years in the area so that some effects could already be seen in terms of benefits shared with the community.[2] In addition, the case could illustrate a "good practice" in providing energy to isolated communities based on existing arrangements surrounding the operations of the mini-hydroelectric plants.

This research started in June 2006 with a review of related materials on the subject. The research team then formulated the specific guide questions. The research proper came in July 2006 with the preparation and distribution of letters of protocol to government agencies and non-government organizations that served as sources of data. The research team conducted the interviews and gathered secondary data during the four-week field work which was spread across the months of July to October 2006.

For primary data gathering, the researchers interviewed members and officers of the Bakun Indigenous Tribes Organization (BITO) which is the indigenous peoples' organization in the area. They also interviewed members of the community at large as well as public officials at the municipal and the *barangay*/village level. The study made use of key informant interviews (KII) and focus group discussions (FGDs) as research techniques.

The secondary data used were contained in various documents accessed by the researchers from the local government of Bakun, national government agencies, the hydroelectric companies, and non-government organizations (NGOs).

Since there is no baseline data to compare the present data available, the assessment did not look deeply into the changes in basic socio-economic indicators.[3] The assessment used qualitative comparisons when available.

II. Profile of Bakun

A. Topography

Bakun is one of the 13 municipalities of Benguet, a province located in the Cordillera region in Northern Luzon, Philippines (see Figure 1 and Figure 2). Located at the northwestern tip of the province of Benguet, Bakun is 336 kilometers north of Manila, 86 kilometers away from Baguio City, and is accessible by land transportation. Bakun is bounded on the north by the municipalities of Cervantes (Ilocos Sur)[4] and Mankayan (Benguet); on the south by the municipality of Kibungan (Benguet); on the east by the municipalities of Buguias and Mankayan (Benguet); and on the west by the municipalities of Sugpon and Alilem (Ilocos Sur).

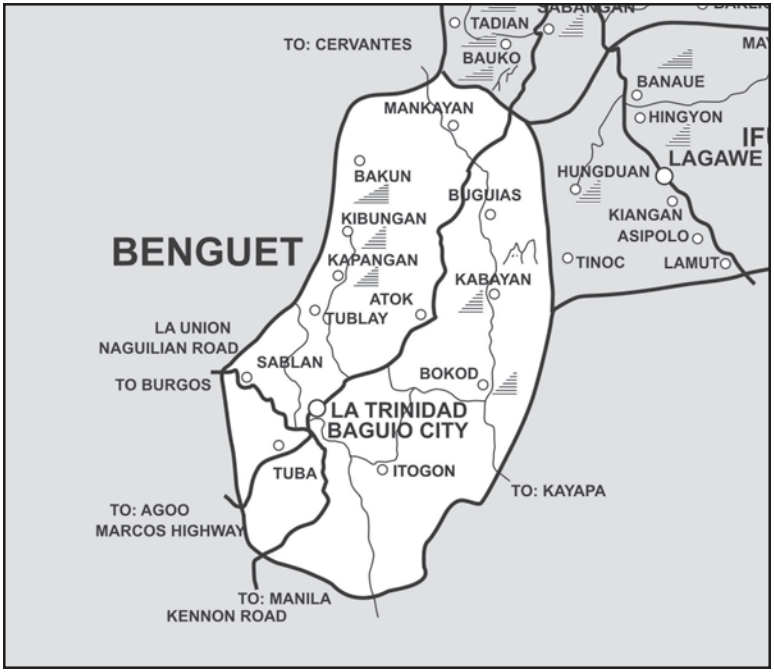
Based on the Municipal Accomplishment Report for 2003, Bakun has a total land area of about 30,678.7 hectares. The municipality is basically an agricultural community where temperate vegetables are grown extensively on a little more than 40 percent (40.7%) of the total land area (12,492.2 hectares). Of this area,

only 1,143 hectares are irrigated while 1,634 hectares are rainfed.

Fifty-one percent (51%) of the total land area is classified as forest land (15,647.2 hectares) which includes timberland, industrial area, rivers and creeks. About 7.5 percent (or 2,302.6 hectares) is pasture land while the remaining half a percent (0.5%) (or 143.9 hectares) is classified as institutional land used as government lot, cemetery, and church area. Only a third of a percent (0.3) (or 92.9 hectares) is classified as residential land.

Figure 1. Map of Cordillera Administrative Region (CAR)

Figure 2. Map of Benguet



B. Demographic Profile

The municipality has a total population of 14,148 as of the 2003 data from the Municipal Health Office. The population growth rate is placed at more than 15 percent while the population density is 3.13 persons per hectare or 2,342 persons per square kilometer. The average household size is about six persons.

The major ethno-linguistic groups in Bakun are the Kankanaey and Bago groups. The Kankanaey group comprises the majority of the population while the *Bago* group, found near the boundaries with the Ilocos provinces, comprises the minority. The major dialects spoken are Kankanaey and *Ilocano*.

There are seven barangays in the municipality, namely, Ampusongan, Bagu, Dalipey, Gambang, Kayapa, Poblacion, and

Sinacbat. Table 1 shows the number of sitios, population size, number of households, and land area of the seven barangays.

Table 1. Basic Demographic Data of the Seven Barangays of Bakun

Barangay	No. of Sitios	Population	No. of Households	Land Area (hectares)
Ampusongan	29	2,226	433	4,391.1419
Bagu	11	802	197	5,161.2451
Dalipey	22	2,156	463	3,701.2500
Gambang	28	4,261	745	3,856.6169
Kayapa	21	1,445	273	5,901.6835
Poblacion	18	1,861	389	3,031.0949
Sinacbat	21	1,397	303	4,635.6997
TOTAL	**150**	**14,148**	**2,803**	**30,678.7410**

Source: Annual Accomplishment Report, CY 2003, Municipal Health Office, Municipality of Bakun.

The municipality is generally mountainous with rolling to very steep slopes and with grades of 25 percent up to more than 85 percent. Its elevation ranges from 200 meters above sea level in barangays Bagu and Kayapa to 2,500 meters above sea level in Mount Osdong of Barangay Gambang, the highest elevation.

There are still areas of undisturbed highland vegetation covering the hills, mountainsides as well as the mountain tops. Pine forests dominate the scenery and are mainly found in slopes of approximately 2,000 feet above sea level, although these areas have been frequently hit by forest fires especially during the dry months of March and April.

At lower elevations along the borders with Sugpon and Alilem (Ilocos Sur) and with Kibungan (Benguet), the vegetation is dominated by lowland wood. This vegetation is the fountain head and watershed of the Bakun River, Bagu River, and Gambang River. Bakun River and Bagu River are tributaries of the bigger Amburayan River, while Gambang River is a tributary of the Abra River.

C. Basic Social Services

There are 25 public elementary schools, two public secondary schools and one private school offering elementary, secondary, and Bible College in Barangay Gambang. The literacy rate for the municipality is claimed to be 100 percent based on the Municipal Report for 2003. From the same report, school participation rate is at 96 percent with 2,658 schoolchildren enrolled in the elementary school level.

Health services are provided by the Municipal Health Office (MHO), six rural health centers, and six sub-clinics. The medical and health personnel include a medical doctor, two nurses, seven midwives, a dentist, a sanitary inspector, and 83 Barangay Health Workers (BHWs). There are two functional drug stores called *Botica sa Barangay*[5] located in Ampusongan and Gambang, and another pharmacy located in Ampusongan.

Domestic water supply is mainly provided by many springs within the municipality through a community waterworks system. At present, there is electricity in Ampusongan, Poblacion, Gambang, Dalipey, and Sinacbat. There are eight communication facilities—a public calling office for telephone calls, a telegraphic facility operated by the local Post Office, two privately owned SMART calling centers, and four radio communication systems each operated by the municipal government, Philippine National Police (PNP), Inter-Municipal Health radio network, and the Northern Mini Hydro Corporation.

D. Economic Resources and Indicators

The major source of livelihood in Bakun is upland wet farming. Temperate vegetables like cabbage, potato, carrot, radish, sweet peas, lettuce, bell pepper, celery, pole beans, cucumber and Chinese cabbage are grown in large scale in areas near the roads. These vegetables are high value crops and are the major sources of income.

Other minor upland farm crops grown by farmers include *camote* (sweet potato), eggplant, *sayote*, pineapple, peas, ginger,

peanuts, corn, cassava, squash, sitting beans, pepper, and onion. Fruit trees are also grown in swidden farms, backyard gardens, and in tree farms. Sugar cane, tiger grass, and rhubarbs are planted along the perimeter of their swidden farms and gardens. Rice is also grown in the warmer zones mostly along the rivers with two croppings per year. The first rice cropping is from January to July during which farmers plant the *Kintoman* variety (red fancy rice). The second cropping which has a shorter growth period is from July to November. Upland farming of rice is also practiced once a year in areas with elevations lower than 500 feet above sea level.

In addition to agriculture, residents are engaged in other occupations such as mining, gathering of bamboo and rattan, lumber sawing, and carpentry. They also engage in small scale industries like bamboo craft, blacksmith, furniture making, baking, and loom weaving.

The total labor force of Bakun stands at more than 47 percent (47.6%) with an employment rate of a little more than 86 percent (86.4%), including farmers according to the Municipal Report for 2003. Based on the same report, the total dependency ratio is more than48 percent (48.6%). The poverty incidence, as measured in the Social Reform Agenda report in 1997, is at a little more than 54 percent (54.4%).[6]

E. Indigenous Worldview, Socio-Political Institutions, and System of Land Ownership

Even in this age of globalization and advanced technology, the Kankanaey and Bago people in Bakun continue to be highly spiritual. They believe and worship the Supreme Being they call *Kabunian*; they believe in deities and spirits that guard their land, forests, rivers, caves, and every place within their territory. They have developed their values and ethics from these belief systems which they carry up to this day.

The *papangoan* or council of elders is the recognized authority in making major decisions for the communities in Bakun. The papangoan is composed of selected men and women who have demonstrated wisdom and experience as members of the com-

munity. This body has the power to hear, review, judge, and settle disagreements, controversies, and conflicts in the village. It decides upon corresponding penalties and fines to offenders during the hearing sessions, called *tongtong*.[7] This institution has played a crucial role in maintaining a harmonious and peaceful life in the community.

The local justice system in Bakun, also called the tongtong, is based on consensus and is believed to have been used by the first settlers in the municipality. This system covers all aspects of behavior and its ruling process is participatory where no particular person or persons are assigned beforehand to make a decision. Instead, decisions are reached by consensus. This system came from their ancestors and was passed on from one generation to another. Thus, it has been accepted as partly sacred and unchanging. The tongtong can be credited for the almost zero crime rates for a long time.

As discussed by Malanes in his book, the Kankanaey and Bago groups of Bakun have evolved their own time-tested indigenous knowledge, systems, and technologies on resource management that have been proven to be sustainable, just like the systems of other indigenous peoples in the Cordillera and other parts of the world. These indigenous knowledge and technologies are deeply rooted in the indigenous peoples' regard for their land and resources as part of their heritage which they pass on to the next generations. Thus, the present generation is responsible for protecting and caring for these land and resources. This is contrary to the view of the "Western" world which considers the land and all its wealth as commodities that can be quantified in monetary terms.

In terms of land ownership, the Kankanaey and Bago people practiced usufruct ownership of *payew* (rice fields), *nem-a* (swidden farms), *muyong* (woodlots), and residential lots by a family or clan. Forests and watersheds are mainly communally owned and managed. This means that no single person, family, or clan could claim exclusive right to their use. Rather, there is an understanding that each one is responsible for the preservation and protection of the forests. Lands are generally considered communal and under usufruct ownership by whoever will use the land. However, once abandoned, the land becomes communal again.

With the enactment of Commonwealth Act 141 or the Public Land Act in 1902, the municipal government at that time campaigned for the registration of lands used by families for tax declaration purposes. They learned that unregistered lands would be considered owned by the State. Individual ownership of land in Bakun was further reinforced with the entry of development activities like logging in the 1950s to the 1980s, and hydroelectric power plants in the early 1990s up to the present.

The prevailing practice at present is that houses and residential lots are declared for taxation purposes. Most of the residential lands were inherited in the traditional way but some residential lands were acquired through the free patent system of the government. Residential areas in Bakun could be sold but it must be sold to the nearest relative or clan members. In cases when these parties could not afford or are not interested, other people in the community could buy the property.

Payew or rice farms which are mostly located in terraced areas carved by their ancestors are intended for the present and future generations. Therefore, one cannot just dispose and sell a terraced rice farm because he must always consider the ancestors who toiled to carve the rice terraces. In cases when a terraced farm owner needed money and had to sell or mortgage the land, he could do so, but only to a close relative and never to an outsider. This assures the one who mortgaged the land that he could take it back when he is able to.

Irrigation systems are considered communal property where a group of farmers in contiguous areas commonly own and manage an irrigation system that provides water to their farms. The irrigation system is repaired and cleared of vegetation at least once a year or whenever repair is needed. This maintenance activity usually takes a number of days, and affected farmers are expected to help. Otherwise, they are sanctioned by the group.

Bakun has mineral deposits of gold and copper in the *barangays* of Gambang, Dalipey and Ampusongan. The indigenous peoples in Bakun believe that *Kabunian* is the sole gold keeper, and that "gold is to be taken only when needed." Thus, extracting gold is not a full time activity. Family members have developed small mines for gold extraction. They do this when they need to buy basic

household necessities and farm tools. The group, family, clan or individual who first finds a mineral deposit and actually mines it has the rights to what is extracted. The owner may share or transfer these rights to his immediate relatives, clan, or family members. Over many generations, the Kankanaey and Bago people have devised ways and systems on how to divide and share gold finds.

The municipality was granted the first ever Certificate of Ancestral Domain Title (CADT) issued by the National Commission on Indigenous Peoples (NCIP) by virtue of the Indigenous Peoples Rights Act (IPRA) on July 18, 2002. The CADT covers an area of around 29,444.3 hectares and 17,218 individuals from the *Bago* and Kankanaey groups. However, disagreements between the local government and constituents have delayed the registration of the CADT with the Register of Deeds to complete the titling process. Local officials, through the *Sangguniang Bayan* (the Municipal Council), rejected the CADT through the filing of Resolutions 185-2005 and 12-2006. In these resolutions, the local government claimed that the CADT excluded some 1,000 hectares of Bakun's total land area. They claimed that lapses had been committed in the processing and issuance of the domain title.

However, this was refuted by the affected indigenous peoples saying that the local government officials have not been authorized by the people to represent them in objecting to the issuance of CADT. They claimed that the local government never consulted them before passing the resolutions that rejected the CADT. The people of Bakun expressed that their opposition to the two resolutions filed by the Municipal Council was intended to assert their rights as landowners and not to downgrade the capability of their municipal officials.[8]

III. Results of the Study

The development of hydroelectric power plants in Bakun started in 1990 when the Northern Mini-Hydro Corporation (NMHC) was formed by the Aboitiz Group to develop the hydroelectric power potential in the area. In December that year, the NMHC (now known as HEDCOR)[9] started the construction of the two-megawatt Lower Labay and the five-megawatt Ferdinand L. Singit (FLS) power plants in Barangay Sinacbat (see Figure *3*).[10]

Figure 3. The Fernando L. Singit Power Plant in Barangay Sinacbat

When the Mini Hydroelectric Power Incentives Act was passed the following year, NMHC/HEDCOR and National Power Corporation (NPC) signed the Electric Power Supply Agreements (EPSA) which paved the way for the construction of additional mini-hydroelectric power plants. Then in 1992, NMHC/HEDCOR constructed the 3.6 megawatt Lon-oy Power Plant in Barangay Poblacion (see Figure 4 and Figure 5). This plant is the third hydroelectric power plant in Bakun, and has the highest "head" (the length of the waterfalls, or the distance from the water source to

the landing) at 210 meters.[11] The three interconnected mini-hydroelectric power plants make up the Bakun Grid which generates a total of 11 megawatts of electricity. As one of the three grids in the power operations of NMHC/HEDCOR, it contributes about

Figure 4. The Lon-oy Power Plant in Barangay Poblacion, Bakun.

Figure 5. The Lon-oy Power Plant in Barangay Poblacion, Bakun.

33 percent to the company's total capacity of 35 megawatts generated by all of its mini-hydroelectric power plants in the province of Benguet.

In 1997, another plant was constructed. This was the 70-megawatt Bakun AC power plant located along the boundary of Benguet and Ilocos Sur, specifically in Barangay Kayapa in Bakun and in the Municipality of Alilem in the province of Ilocos Sur.

Bakun illustrates the case of a community that hosts activities that utilize natural resources, and in this case, generating hydroelectric power for the province of Benguet. It also illustrates how a host community shares in the benefits derived from the utilization of natural resources within its area.

This research (1) looks into Philippine laws and other agreements that serve as framework for sharing with host communities the benefits derived from the utilization of natural resources; (2) assesses the effects of the benefits shared by two hydroelectric companies with the Kankanaey and Bago groups in Bakun; and finally (3), it analyzes the level of participation of the indigenous peoples in the planning and implementation of the projects.

A. Laws and Policies on Development of Hydroelectric Power Plants and Provisions for Sharing Benefits with Host Communities

1. Laws and Policies

The private sector has played an important role in hydropower development in the Philippines. The first hydropower plant was established by missionaries in Baguio City in 1913. This plant was the Camp John Hay Hydroelectric Power Plant with an installed capacity of 560kW.[12]

The private sector continued the development of water resources for power generation until the enactment of Commonwealth Act 120 which created the National Power Corporation (NPC) in 1936. This law nationalized the hydroelectric power industry and reserved for the use of NPC all streams, lakes and rivers in the country where power may be developed, subject to existing rights. Many years after, this law was followed by Presi-

dential Decree (PD) 1645 in 1979 which mandated the National Electrification Administration (NEA) to develop the country's small-scale hydropower potentials, or the mini-hydro projects.[13]

However, the expected increase in power demand and the large amount of investment requirements for power generation led the Philippine government to again involve the private sector. Government offered the private sector an opportunity to earn rates of return which are competitive with the rates of return in similar business activities. Specifically, Executive Order (EO) 215 issued in 1987 allowed the participation of the private sector in power generation activities. This was followed by Republic Act (RA) 6957 or the Build-Operate-Transfer (BOT)/ Build-Transfer (BT) Law that was passed in 1990 to complement EO 215 in authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector. The BOT/BT Law was later amended in 1994 through RA 7718 or the Build-Operate-Transfer (BOT)/ Build-Transfer (BT), Build-Own-Operate (BOO) Law. These laws paved the way for NPC to offer specific hydroelectric power projects with capacities ranging from five to 50 megawatts (5-50 MW) to the private sector under a BOT scheme.[14]

The private sector participation in hydroelectric power generation was further boosted when Congress enacted the Mini Hydroelectric Power Incentives Act in 1991 or RA 7156. This law grants incentives to private individuals and corporations who engage in the development of mini hydroelectric power. The incentives include exemption from income taxes for seven years from the start of commercial operations, exemption from payment of tariff duties and value-added tax on importation of all machinery and equipment, and granting of tax credits for the purchase of machinery and equipment from domestic manufacturers, among others.[15]

The latest law related to energy development was passed in 2001—the Electric Power Industry Reform Act (EPIRA) or RA 9136. It mandates the privatization of the NPC and the restructuring of the electricity industry with the separation of the different components of the power sector namely, generation, transmission, and distribution. The EPIRA aims to encourage greater competition and to attract more private sector investments in the power industry.[16]

2. Provisions on Sharing of Benefits with Host Communities

R.A. 7638. The principle that hydropower companies should provide direct benefits to the community (i.e., the municipality, province, and region) hosting energy development has basis in law. For instance, Republic Act 7638 otherwise known as the Department of Energy Act of 1992 was enacted to:

> *devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and the people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: provided, however, that the other provinces, cities, municipalities or regions shall not be deprived of their energy requirements …*[17]

R.A. 7638 specifically provides for benefits in terms of "electrification fund, prioritization of load dispatch, reduction in the cost of electricity, skills development, employment preference, development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund."[18]

R.A. 7160. The 1991 Local Government Code (LGC) or RA 7160 stipulated the payment of National Wealth Tax (NWT) to local government units (or LGUs) as their share in utilization of national wealth located in their administrative jurisdiction. The LGUs are then expected to share these as direct benefits for the residents.

"National wealth" is defined in the Code as covering minerals, forest resources, fishing resources (pelagic and marine), and water resources. The NWT is computed as:

> *either one percent of the gross sales or receipts from the utilization and development of the national wealth within their respective areas, or 40 percent of gross collection in the preceding fiscal year from mining taxes, royalties, forestry and fishery charges derived by any government agency or government-owned or –controlled corporation*[19]

The allocation for LGUs from the NWT is further distributed to the province (20%), component city/municipality (45%), and barangay (35%). For energy development projects, the law provides that the

proceeds from the share of local government units pursuant to this chapter shall be appropriated by their respective sanggunian to finance local development and livelihood projects: Provided, however, that at least eighty percent (80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located.[20]

Apart from the local government's share in national wealth, they also get a share of the Internal Revenue Allotment (IRA). It is stipulated in the Code that local governments receive their annual share in nationally collected taxes in the form of IRA to cover expenses for functions devolved to them. The share was initially set at 30 percent in 1992. This was increased to 35 percent in 1993, and further increased to 40 percent since 1994.[21] The nationally collected taxes include income taxes, estate and donors' taxes, value-added tax, other percentage taxes, and taxes imposed by special laws such as customs duties, travel tax and others.[22] It is important to look into the IRA because it is reported that the NWT is already part of it.

B. Memoranda of Agreement (MOAs) and Provisions Sharing Benefits with Host Communities

1. The MOAs

As part of the power companies' commitment to help develop the community that hosts their operations, they entered into a MOA with the host municipality and host barangays. There are basically two MOAs in place.

The first is the MOA between the NMHC/HEDCOR and the Municipality of Bakun entered into on January 15, 1991 by virtue of EO 215 of 1987. This MOA was subsequently amended on December 20, 1993 when the parties agreed to include provisions of new laws like the 1991 LGC (effective 1992) and the Mini Hydroelectric Power Incentives Act (RA 7156) of 1991 which also became effective in 1992.

The second was the one signed in 1997 by the Province of Benguet, Municipality of Bakun, NPC, and the Luzon Hydro Corporation (LHC).[23] The MOA stipulated that the NPC would acquire the land on which the LHC would construct the power station on a Build-Operate-Transfer (BOT) scheme and based on a Power Purchase Agreement (PPA) between NPC and LHC. The result was the 70-megawatt Bakun AC power plant located at the boundary between Benguet and Ilocos Sur, specifically in Barangay Kayapa in Bakun and in the Municipality of Alilem in the province of Ilocos Sur. This is said to be the first and only BOT hydroelectric power plant project in the country as of today. The same parties entered into a Supplemental Agreement on March 22, 2005.

These power companies promote what they call "Cleanergy" which is their response to the need for developing energy technologies that have little or no adverse effect on the environment, as well as the use of sources that are locally available and are constantly replenished (like water).

2. Provisions on Sharing of Benefits with Host Communities

The two MOAs stipulated various benefits to be provided by the power companies and the NPC to the municipality of Bakun and its host barangays.

Benefits based on the First MOA. Under the first MOA, NMHC/HEDCOR agreed to give the host community a *share in its net sale* of power sold to BENECO or NPC. The municipality gets two percent while the barangays where the mini hydroelectric plants are specifically located get one percent. It was also stipulated in the MOA that NMHC/HEDCOR shall pay *real property taxes (RPT)* to the proper taxing authority. This provision was also based on the provisions of the Taxation Code of the Philippines.

Moreover, the first MOA stipulated *voluntary benefits* to be given by the power company to the host community. These include: (a) assistance in the maintenance of roads leading to the plants; (b) technical support for community development and livelihood projects; and (c) assistance in any "energization" program of BENECO in all barangays of Bakun.

The amendments to the first MOA made in December 1992 include payment of business tax and privilege tax to the local government (based on selected provisions of the LGC) as well as incentives granted to power companies engaged in the development of mini hydro power plants (based on the Mini Hydro Power Incentives Act of 1991).

Benefits based on the Second MOA. The second MOA signed in 1997 which was made effective at the start of 1998 stipulated benefits from the operation of the Bakun AC Power Plant. The plant has portions located in Barangay Kayapa and utilizes the Bakun River. The benefits are in the form of taxes based on the LGC, namely: the payment of Real Property Tax and National Wealth Tax (NWT). The sharing scheme for the NWT is 20 percent for the province, 45 percent for the municipality, and 35 percent for the barangay. Benefits also include the payment of Business Tax, Privilege Tax, and Franchise Tax.

Aside from benefits that would come from the power generators, the NPC, being a signatory to the MOA, also has duties to the host community. Under RA 7638 (the DOE Act), the EPIRA (Part V, Rule 29), and DOE Circular 2000-10-011, the NPC is obligated to provide some benefits to the host community such as giving an *advance financial assistance of P16 million (Philippine Pesos)* to the Municipality of Bakun prior to the project's operation. The allocation of the amount is as follows:

- P5 million – Electrification of three (3) barangays of Dalipey, Gambang and Sinacbat; and sitios of Ba-oy, Dada and Moling; any balance is to be allocated to development and livelihood projects;
- P5 million – To improve the access road from the Sinipsip Junction to Ampusongan;
- P2 million – To open a new access road from sitio Pilpil to barangay Kayapa;
- P4 million plus any balance from the allocation for electrification under the first item – For the development of livelihood projects to be determined by the Benguet Provincial Development Council and the Bakun Municipal Development Council.

During the project's operation, the NPC shall undertake the electrification of barangays Bagu and Kayapa; sitios of Beyeng, Lobo, and Taliling of Barangay Poblacion; and sitios Namagtuey and Cabototan of Barangay Ampusongan, which shall be undertaken within the framework of the Electrification Benefits under Energy Regulation 1-94 (ER 1-94).

In addition, under *ER 1-94* and Section 5(i) of RA 7638), the NPC shall also provide the following benefits:

- **Electrification Fund** equivalent to P0.0025 per kWh of the total electricity sales of the Power Station. The Electrification Fund as provided by law shall be used in the:

  > *electrification of the host municipality or city and may be accomplished through a public service cooperative or PSC…The PSC, or in its absence, the relevant franchise holder shall use the electrification fund exclusively to defray the cost of necessary capital expenditures associated with electrification such as distribution lines, transformers, and substations, and subsidiarily, associated operating expenses such as repairs and maintenance. Priority in extending expenditure shall be given to the extension and upgrading of distribution lines, provided however, that the PSC or in its absence, the relevant franchise holder shall retain each year twenty percent (20%) of the amount it received for the year to defray the cost of repairs and maintenance of its existing distribution lines and substations.*[24]

- **Development and Livelihood Fund** equivalent to P0.0025 per kWh of the total electricity sales of the Power Station to establish and maintain a development and livelihood fund. The Fund:

  > *shall be applied in an equitable, preferential manner for the exclusive benefit of the community and people affected, the host LGU or region…in accordance with the following scheme: five percent to the barangays hosting the official resettlement/relocation sites of the community and the people affected, 15 percent to the host barangay, 25 percent to the host*

municipality or city, 25 percent to the host province, and the remainder to the host region.[25]

- **Reforestation, Watershed Management, Health and/or Environmental Enhancement Fund** equivalent to one-half of one centavo (P0.0005) per kWh of the total electricity sales of the energy-generating facility shall be set aside by the power producer.

The second MOA also stipulated voluntary benefits to be provided by the LHC which include the following:

- Comply with requirements and conditions of the Environmental Compliance Certificate (ECC);
- Assist in the maintenance of the existing road from Sinipsip Junction to Poblacion in Bakun, in coordination with the local government of Bakun;
- Study at its own cost the viability of improving the bridge along the road from Sinipsip to Ampusongan;
- Donate to the local government of Bakun a Kia Ceres to be used for official purposes, and a bulldozer for maintaining the existing road from Sinipsip Junction to Poblacion;
- Extend interest-free loan assistance of P100,000 to each cooperative in Barangays Poblacion and Kayapa, and assist in the establishment of other community cooperatives;
- Provide Barangay Kayapa with a radio transceiver for its use in emergency situations;
- Provide financial assistance to the local government of Bakun in the amount of P200,000.00 for information, education, and communication (IEC) campaign for the social acceptance of the project;
- Provide financial assistance to the local government of Bakun in the amount of P60,000.00 as additional counterpart fund to support four farmers to go to Japan for a year of training in environmental conservation and watershed management; and
- Provide an annual financial assistance to the local government of Bakun in the amount of P1.3 million as part of direct benefits to the host community.

The process of coming up with the first MOA was initiated by the people in the community after various consultations and meetings. The amended MOA and the second MOA were negotiated mainly by the local government of Bakun, with the understanding that the local government represented the people of Bakun.

The next section discusses the actual benefits derived from the operations of hydroelectric power plants in Bakun, as well as the perceptions of the host community regarding such benefits.

C. Actual Benefits Provided by the Hydroelectric Power Companies

Based on the documents from the hydroelectric power companies, the local government of Bakun, and information from relevant websites, the actual benefits received are shown in the following discussion. The social and economic benefits are viewed against existing laws as well as stipulations in the MOAs. There are benefits that have been given based on the law and agreements. But there were also those that were not specifically stipulated in the MOA.

1. Actual Benefits Based on Stipulations in the MOAs

The NMHC/HEDCOR gave voluntary donations to Bakun as stipulated in the first (and amended) MOA. In compliance with the provisions, the company paid two percent of its net sale to the local government treasurer of Bakun. This amount was equivalent to P30.8 million for the period 1993 to December 31, 2004. It also paid the Barangay Treasurers of Sinacbat and Poblacion one percent of its net sale which was equivalent to P15 million for the same period.

Moreover, NMHC/HEDCOR provided assistance for the maintenance of roads leading to the hydroelectric power plants. Specifically, the company extended the road from Sitio Masalin to the Labay Plant in Barangay Sinacbat, and improved the road from Sitio Dada to Poblacion.

To support community development and livelihood projects, NMHC/HEDCOR provided an interest-free loan of P100,000 to each of the two cooperatives in Poblacion and Ampusongan. The company also conducted seminars and training on cooperative development, and provided fruit tree seedlings (mango, citrus, and coffee) to interested farmers in Bakun.

As stipulated in the second MOA, the LHC and NPC also gave their share of voluntary donations. In October 2002, the companies provided financial assistance in the amount of P350,000 for the maintenance and repair of the existing road from Sinipsip to Poblacion. They also donated one bulldozer to the local government of Bakun to be used in maintaining the same road.

As part of LHC's support for community development and livelihood projects for 2004, it gave an interest-free loan of P100,000 each to Kayapa and Poblacion. In April 2004, the company gave P950,000 for social and economic alleviation projects. The amount was distributed as follows:

- P150,000 for Barangay Kayapa;
- P100,000 for Barangay Poblacion;
- P50,000 for the Municipality of Bakun; and
- P50,000 each for Barangays Sinacbat, Dalipey, Gambang, and Ampusongan.

LHC also donated one service vehicle (a Kia Ceres), to the local government of Bakun, and P60,000 more to support farmers' training in Japan in 2004.

These forms of voluntary assistance are part of the annual total financial assistance of P1.3 million stipulated in the second MOA. Variously intended for road maintenance, watershed management, and social and economic alleviation projects, all these form part of the community's direct benefits for hosting the power stations. Paying directly to the local government of Bakun, LHC has shared total cash assistance worth P6.4 million from 2001 to 2004.

2. Actual Benefits Based on Existing Laws

Other benefits stipulated in the MOAs are also based on existing laws such as the 1991 LGC. Based on such laws and as included in the first MOA, NMHC/HEDCOR paid Real Property Taxes

in the amount of P36.1 million for the period 1993 to 2004; Business Tax in the amount of P3 million for the period 1991 to 2004; and Privilege Tax in the amount of P27.9 million for the period 1992 to 2004. Real Property and Business Taxes are paid directly to the local government treasurer while the Privilege Tax is paid to the Bureau of Internal Revenue (BIR) and later distributed to the LGU as part of the Internal Revenue Allotment (IRA).

For its part, LHC paid P4.4 million as Real Property Tax for the period 2002 to 2004. It also paid the amount of P3.2 million to the local government of Bakun as part of the municipality's 45 percent share in National Wealth Tax for 2004. The 35 percent share of the barangays from NWT totals P2.5 million for the same year.

In the Supplemental Agreement made for the second MOA in March 2005, the 35 percent share of the barangays shall be distributed equally among the seven barangays (and not just to the two host barangays). This means a share of P366,377 for every barangay.

3. Actual Benefits Not Stipulated in the MOAs

The NMHC/HEDCOR has extended other social and economic assistance to the community in Bakun although these have not been stipulated in the MOA nor are they mandated by law. These came in the form of medical and dental missions conducted in Barangays Ampusongan and Poblacion; college scholarships for eight students with a total amount of P262,837 from 2001 to 2004; financial assistance to high school students in the amount of P58,000 from 2003 to 2004.

The company also donated eight units of computer to Bakun National High School having a total value of P169,440.26 from 2001 to 2004; and supported the honoraria of a computer teacher for P50,000 in 2005. The company also provided livelihood assistance for one group of farmers engaged in tilapia farming in the amount of P79,831 in 2005.

In summary, benefits shared by the companies to the community were a combination of those stipulated in the MOAs and mandated by law, as well as voluntary donations beyond those specified in the MOAs. The significant monetary benefits paid by NMHC/HEDCOR to the municipality of Bakun and the host

barangays came from the voluntary donations in the total amount P45.9 million over a period of 11 years (1993-2004). They also came from real property taxes paid to the municipal treasury amounting to P36.1 million for the same 11-years period, and privilege tax paid to the Bureau of Internal Revenue (BIR) in the amount of P27.9 million within a 12-year period (1992 to 2004).

The LHC on the other hand, which only started operations in 1998, contributed significant amounts to Bakun in the form of real property taxes with a total amount of P4.4 million for a three-year period (2002 to 2004). It also paid the municipality's share in the national wealth taxes in the amount of P5.8 million within the same period. The ER 1-94 funds paid amounted to P6.6 million over a period of seven years (1998 to 2004).

D. Perceptions on Benefits

The perceptions of the people of Bakun regarding the benefits provided by the hydroelectric power companies as are summed up in the following discussion.

1. Benefits from Taxes and Donations in the Form of Infrastructure Projects

The amounts paid by NMHC/HEDCOR and LHC in terms of local and national taxes and the voluntary donation of two percent and one percent of its net sale could be seen as outright benefits shared to the host communities. However, this scheme of sharing profits is a very small percentage of the net sale of the power companies.

Prior to the implementation of the project, the power company conducted a feasibility study for the project in the late 1980s and negotiated with the local government officials as representatives of the people regarding its implementation. The initial point of negotiations proposed by the local officials of Bakun was for five percent and three percent sharing. However, the power company rejected this and they settled at two percent and one percent.[26] This was not mandated by law and was part of the voluntary donation of the power company.

The share of Bakun in national taxes is the Internal Revenue Allotment (IRA) which is the largest source of revenue for the municipality. All of these payments are included in the general fund for the municipality, and are not reported separately by the local government. As discussed earlier, the utilization of such funds could be seen by the people in the various infrastructure projects like roads in the barangays. The voluntary donation, on the other hand, is paid to the municipal and barangay treasurers and is reflected as grants or aid and not as income. This donation is later included in the total revenue of the local government and is included in the annual budget that the local government shall manage.

Despite the meager amount used for development projects, the general sentiment of the people in the two host *barangay*s, Poblacion and Sinacbat, is best summed up by the statement of Lambert Tabao-ec, the Barangay Captain of Poblacion:

> *Dakkel iman nan ginmawisan ya naalamidan nan kalsada mi gapu isnan tulong di HEDCOR ya Luzon Hydro…Siya nan makwani mi ay mangilaan nan umili isnan ginmawisan nan ikakan nan ili mi gapu isnan companya ay nay. Wada ninoblaan nan ipugao amamed san ma-al-alamidan nan planta ya conveyor, ngem syempre temporary lang.*[27]
>
> (Our roads have significantly improved because of the help extended by HEDCOR and Luzon Hydro. We say then that this is how the general public has benefited from the entry of the company and its project. It was able to create employment during the construction of the power plants, the dams and the conveyor, although it was temporary.)

The people in Sinacbat agree with this statement that NMHC/HEDCOR has helped a lot in improving their barangay through the concreting of roads and supporting livelihood projects, although the assistance extended is still small. Majority of the roads leading to the municipality and the barangays need a lot of improvement since there are only a few areas with concrete roads and tire paths. The roads are still prone to landslides during the rainy season.

The farmers in the area help in improving the roads through free labor assistance, or their traditional system of *gobo* or *abono*.

Sometimes, they even contribute cash so the critical portions of the road can be improved.

The main livelihood in the community is the production of temperate vegetables; hence, the farmers look at improved roads (see Figure 6 and Figure 7) as a priority project to facilitate the transport of their vegetables to the main markets in Baguio City and La Trinidad, the capital town of Benguet.

Figure 6. Tire path from Ampusongan to Poblacion.

Figure 7. Tire path from Ampusongan to Poblacion.

The presence of the power companies has also increased the opportunity for implementing infrastructure projects needed by the host communities. According to barangay officials, requests for projects submitted to HEDCOR get more favorable results than those sent to the local government. These requests include small infrastructure projects such as concreting of pathways, tire paths of roads, improvement of bridges and barangay halls, and assistance for school facilities and equipment such as computers.[28] The local government itself recognizes that the presence of the power companies has helped through donation of computers, vehicles, and other equipment, including the salaries of some teachers and the municipal doctor.

In addition, there is a general sentiment among the residents that the hydroelectric projects greatly benefited the few owners of the lots that were directly affected by the project. Some of the negotiations regarding the price of the lot and other affected resources were made just between the company and the lot owners. This is made possible by the system of ownership of land prevailing in Bakun where ownership is claimed by families who improve and occupy the land by way of cultivation or building of houses. They then pay the taxes on these lands and claim them as privately-owned. Therefore, they can also sell these lands and the proceeds will go to the families who improved and occupy the land.

2. Social Development, Livelihood Assistance, and Other Community Benefits

Aside from implementing infrastructure projects in Bakun, the power companies have also provided financial assistance for social and economic development projects. The people interviewed in Sinacbat, Poblacion, and Ampusongan recognize that the livelihood assistance provided by the power companies gave them additional income. The youth sector also gained from the financial assistance given for community activities such as the municipal fiesta and sports program. They also received scholarships and school facilities. However, they also feel that they need more assistance in terms of training for more sustainable livelihood opportunities that would help them on a long-term basis. For ex-

ample, they want to conduct feasibility studies on appropriate and sustainable livelihood alternatives that will give them additional source of income without destroying their environment and resources.

As reflected in the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) of Bakun, there is a need to provide other sources of livelihood aside from vegetable farming. The people engage in commercial production of temperate vegetables for their livelihood. It is thus difficult to discourage them from expanding into the forest areas because there are no other sources of income. They would like to look at new technologies that will enable them to support their growing population and increasing needs without having to expand their farms into the forest areas.

3. Employment Opportunities and Increased Income for the Indigenous Peoples of Bakun

The people have also expressed that the hydroelectric power plants in Bakun have provided them with employment opportunities from the construction phase to their actual operation. The three existing power plants of NMHC/HEDCOR have 46 employees at its present operational stage. Most of the employees come from Bakun, except for 10 employees who are mostly technical personnel like engineers and the like.

Aside from the increase in income brought about by other livelihood assistance given by the power companies, the landowners whose lands have been appropriated by the power companies were well compensated thus giving them increased income. The construction of roads has also resulted in an increase in the areas for vegetable farming (see Figure 8) and to the consequent increase in income for the farmers.

Figure 8. The vegetable farms along Dalipey-Sinacbat Road.

E. Issues Raised

Meanwhile, issues have also been raised by the people regarding the benefits shared by the two hydroelectric companies. The issues are discussed below.

1. Non-Payment of Some Taxes and Problems in Availing of Funds

Notwithstanding receipts from payment of above-mentioned taxes by the two companies, certain payments have not been made. NMHC/HEDCOR has not paid the NWT and ER-1-94 Funds; both LHC and HEDCOR have not paid the franchise tax; and the BIR has not released the local government's share in privilege tax.

Non-payment of National Wealth Tax and ER-1-94 Funds by NMHC/HEDCOR. The local government of Bakun has not yet received its full share of the NWT due to NMHC/HEDCOR's non-payment. The reason given was that the MOA with NMHC/HEDCOR was signed in 1991. Since this was prior to the implementation of the Local Government Code which is the basis for the share in national wealth tax, the company is therefore not bound by the new law.[29] When the MOA was amended in 1993, they included stipulations from the Mini Hydroelectric Power Incentives Act (specifically, deducting the two percent Special Privilege Tax from the Net Sale as donation to host communities), and the Local Government Code (specifically on the payment of the Real Property Tax). But amendments did not include the payment of the National Wealth Tax.

Also, NMHC/HEDCOR has not yet paid the ER 1-94 Funds stipulated in the Rules and Regulations Implementing Section 5(i) of Republic Act No. 7638 Otherwise Known as the Department of Energy Act of 1992 for the same reason that the MOA was signed prior to the enactment and implementation of the said law.

It seems that the amendments to the MOA signed in 1993 contained only selected stipulations from the Local Government Code and the Mini Hydroelectric Power Incentives Act. Only provisions that were advantageous to the power companies were included. For instance, the net sale which is the basis for computing the donation of two percent for the municipal government and one percent for the barangays, is computed only after the two percent Special Privilege Tax had been deducted. The companies should have included all provisions of the law that benefit both the companies and the host community.

LHC, on the other hand, paid the NWT and the ER 1-94 funds based on the operation of the Bakun AC Plant in 1997. These are stipulated in the MOA with Bakun.

Non-payment of Franchise Tax by both LHC and NMHC/HEDCOR. The two companies have not yet paid the franchise tax as stipulated in the Taxation Code of the Philippines. According to representatives of the two companies, it is the Benguet Electric Cooperative (BENECO) that holds the franchise for energy distribution in the province; therefore, it should be the one to pay the

franchise tax. This issue still has to be clarified by the LGU with the BIR and the Department of Finance (DOF).

Problems in Accessing the ER 1-94 Funds. The ER 1-94 funds in the form of Electrification Fund, the Development and Livelihood Fund, and the Environment Enhancement Fund paid by the LHC and held in trust for the LGU by the DOE have not been made available to the community as of 2004.

As provided in ER 1-94, the accessing the said funds may be made through a public service cooperative, or a relevant franchise holder for electrification, and the power producer. This is done by submitting work programs for reforestation, watershed management, health, or environment enhancement. As for the development and livelihood fund, the power producer shall administer the fund and shall submit proposals for development and livelihood programs to the DOE after consultation with the affected parties. All of these programs shall be approved by the DOE based on their guidelines on fund utilization and disbursement.

Based on the DOE report and according to Bakun's local government representatives, the DOE has not approved the program proposals for the development and livelihood fund submitted to them. The reforestation projects that have been implemented in the past by the Saguday Foundation, Inc. and by ARDEMS with a total project cost of P3.7 million were funded mostly by LHC and by the Cordillera Highland Agriculture and Resource Management (CHARM) Programme of the Department of Agriculture (DA) (see Figure 9). The projects were also not part of the utilization of the ER 1-94 funds.

According to stipulations in the second MOA, the financial assistance given by the NPC prior to the project's operation in the amount of P16 million shall be deducted from future payments under ER 1-94. This financial assistance is separate from the annual financial assistance of P1.3 million being given by LHC to the local government of Bakun which is also provided for in the MOA.

Figure 9. Reforestation Project in Poblacion, supported by Luzon Hydro Corporation.

On top of all these, the local government's share of the Special Privilege Tax has not been released yet by the BIR since 1999 and up until the time when this research was being conducted.

2. Non-reduction of Electricity Cost and Slow "Energization"[30] of Host Communities

Section 294 of the LGC states that "at least 80 percent of the proceeds derived from the development utilization of hydrothermal, geothermal and other sources of energy shall be applied solely to lower the cost of electricity in the LGU where such source of energy is located." With this provision in the law, the cost of electricity in Bakun could very well be reduced using at least some of the payments made by the power companies to the local government. The people in Ampusongan even expressed the need for an agreement that would ensure that the residents of Bakun will have subsidized electricity cost as the guardians of the water sources used by the power plants. The said provision, however, was not included in the MOAs.

The "energization" of the communities in Bakun proceeded at a slow pace while some areas were "energized" using funds from sources other than those from the power producer (NMHC/HEDCOR) or the power distributor (BENECO). As stipulated in the MOA between NMHC/HEDCOR and Bakun, the power producer

> *agrees to extend its assistance for the energization of all the barangays which will be directly affected as determined by the Municipality.*

This was later changed in the amended MOA and was stated as:

> *NMHC agrees to extend reasonable assistance in any energization program of the BENECO in all of the barangays of the Municipality which will be directly covered by such energization programs undertaken by the BENECO.*

As of 1994, NMHC/HEDCOR and BENECO reported that it was able to provide electricity to 672 out of 822 households in barangays Poblacion and Ampusongan. In 2002, only about two or three sitios in three barangays have been supplied with electricity. As of 2006, some sitios in five barangays have been provided with electricity. Provision of electricity in some sitios in Poblacion and Ampusongan were completed with funds coming from the Priority Development Assistance Fund (PDAF) of Congressman Samuel Dangwa of Benguet Province.

In the MOA with LHC and NPC, it is stipulated that the NPC:

> *during the project's operation, shall undertake electrification of Barangays Bagu and Kayapa, sitios of Beyeng, Lobo and Taliling of Barangay Poblacion, and sitios of Namagtuey and Cabototan of Barangay Ampusongan within the framework of the Electrification Benefits under ER 1-94.*

But this has not been fully implemented to date.

3. Non-Disclosure of the Actual Amount of Energy Produced and Sold by the Power Companies

The basis of the computation of the two percent municipal share and the one percent share of the host barangays stipulated in the MOA is NMHC/HEDCOR's net sale of the energy produced. The MOA defined this as "the amount billed to and paid for by either BENECO or the NPC or both or any other buyer for the purchase of that increment of electricity generated exclusively by the plant."

On the part of the LHC, the computation of the national wealth tax as defined in the LGC is "equivalent to one percent of the gross revenue of the power plant." Moreover, the payment of the ER 1-94 funds as provided in the law is based on the "total electricity sales of the Power Station."

Considering these stipulations, the people and the local government of Bakun would like to know and understand the basis of these computations. Unfortunately, the local government claims that the power companies do not provide them with financial reports on the sales generated from the energy produced by the power plants. This means that even the local government which represents the community does not know the basis of the percentage share; and that they just accept what the power companies give them as their share.

4. No Separate Accounting of Funds Received from the Power Companies by the LGU

In looking at the reports of the local government of Bakun,[31] we cannot really come up with definite findings on the actual benefits shared by the power companies since the payments are lumped together in the general fund of the LGU. There is no separate report made for the taxes and financial assistance paid by the power companies to the local government. The people also feel that the local government should be more transparent as regards actual spending of money coming from the companies.

Revenues. Looking at the budget of the local government of Bakun, the tax payments reflect the total tax collection and there are no separate reports on the payments made by NMHC/

HEDCOR and LHC. Since these reports are made up of voluminous documents, we will just look at the local budget for the years 1999-2003.

Based on the records at the Municipal Budget Office, the annual budget of Bakun prior to the operation of the hydroelectric power plants was P989,000 in 1988. This increased to P1.3 million in 1989. Then, the annual budget more than doubled in 1990 to P3 million when NMHC/HEDCOR started to pay taxes. The increase in revenue was further noted when the hydroelectric companies started their operation in Bakun in 1991. Moreover, this was also the time when the LGC was implemented and provided for the IRA of the municipality.

Figure 10. Revenues of Bakun from 1999-2003.

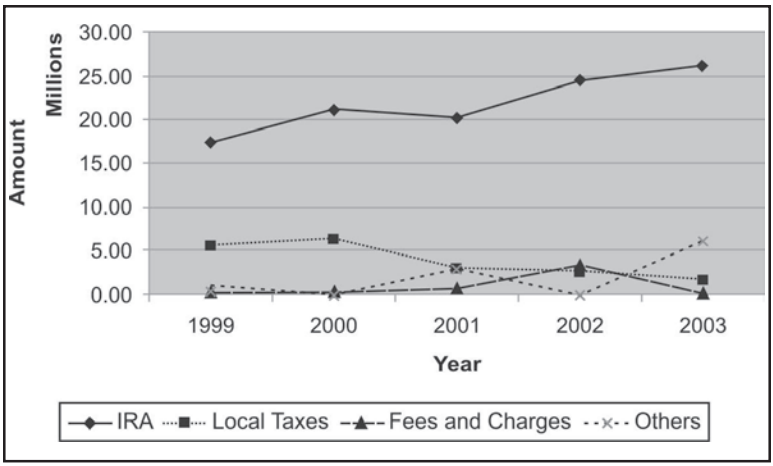
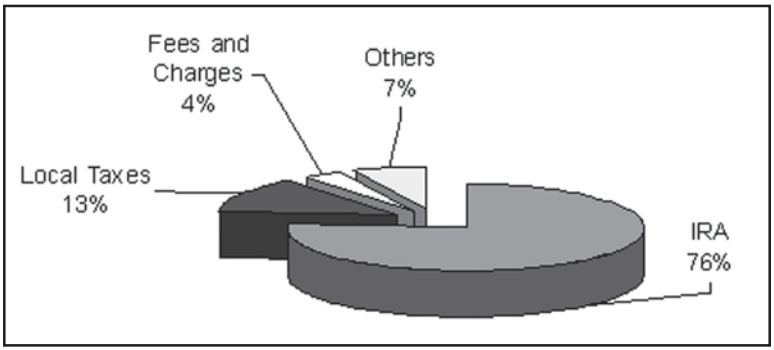


Figure 10 shows the revenue collection from various sources of income generated by the local government of Bakun over a five-year period (1999 to 2003). The chart shows an increasing amount of the IRA throughout the five-year period with the lowest in 1999 at P17 million and the highest in 2003 at P26 million.

It must be noted that the local government's share in the NWT that is paid to the national government is reported as part of the IRA in the income and expenditure reports of the local government. According to representatives of the LGU, they do not report the NWT separately but is consolidated as part of the IRA.

Aside from the IRA, other revenues come from local taxes, fees and charges, and other sources such as grants or aid. From the data gathered, the local government made one of its highest collections of local taxes in 2000 in the amount of P6.4 million. Of this amount, NMHC/HEDCOR and LHC's payment for real property and business taxes was P4.5 million which made up 71 percent of the local tax collection that year. But this amount makes up only 16 percent of the total revenue of the municipality that year (P28.2 million). It is also only21 percent of the IRA for the same year.

Figure 11. Five-Year Average Revenues of Bakun (1999-2003)



From LHC's records, it was reported that the NPC and NPC paid their NWT to the national government. From this, the local government's share for 2004 amounted to P3.2 million or about 12.6 percent of the IRA for one year. Each of the seven barangays got a share of more than P366,377 from the NWT.

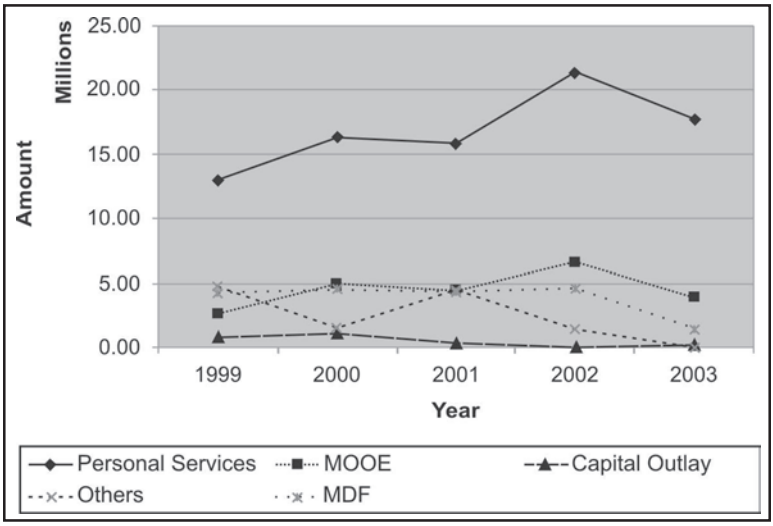
Figure 11 shows the average revenues of Bakun from 1999-2003. It shows that more than three-fourths of its revenues come from IRA.

The revenues of the municipality are used to fund all activities as well the salaries of the employees of the local government. The next discussion is about where the revenues go as reflected in the local government's expenditures.

Expenditures. The offices in the local government covered by the expenditure items include the Mayor's Office, the Sangguniang Bayan (or the Municipal Council), Municipal Planning and Development Office, Municipal Civil Registrar, Municipal Budget, Municipal Accountant, Municipal Treasurer, Municipal Assessor, Municipal Health Office, Municipal Agriculture, and Municipal Engineer. However, the benefits that go to the barangays from these expenditure items are difficult to measure, although it should be understood that the services rendered by these offices are for the development of the municipality and the barangays.

Figure 12 gives us a picture of how the Annual Budget of Bakun was spent over a period of five years (1999 to 2003). It shows that Personnel Services (PS) which includes the salaries of employees comprise the bulk of the expenditures every year, with the biggest percentage (76%) in 2003. If we combine it with the Maintenance and Other Operating Expenses (MOOE) and the Capital Outlay, the three items have a total amount of P21.8 million or almost 94 percent (93.7%) of the total expenditures of Bakun for 2003. This means that only a little over six percent (6.3%) went to other expenses. The combined expenditures for these three items range from 64 and a half percent (64.5%) to almost 94 percent (93.7%) of the total budget in 1999 and 2003, respectively.

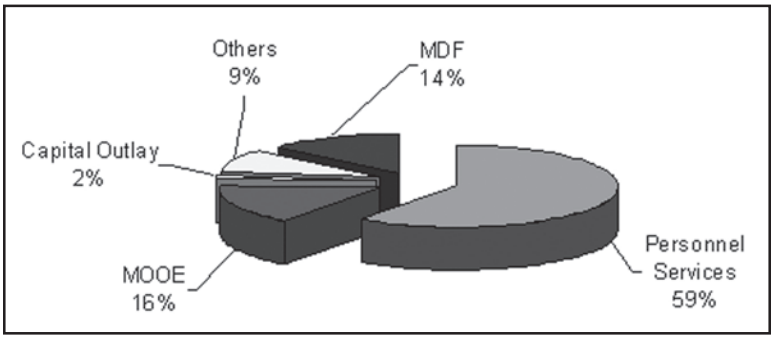
Figure 12. Expenditures of Bakun from 1999-2003



The data presented reveals a lopsided bureaucracy where bulk of the local government's funds goes to PS and MOOE. Only a small amount goes to the implementation of development projects. Based on the concept of budgeting for a local government unit, experts say that administrative expenses must be within the range of 45-55 percent of the budget so that sufficient funds remain for development projects that would help improve the lives of the people in the barangays. But in the case of Bakun, administrative expenses went up to as high as 93 percent of the budget for the past five years, leaving the LGU with very little funds to implement other projects.

The Municipal Development Fund (MDF) which LGC mandates as 20 percent of the IRA is where the funds for infrastructure projects and for social and economic development of the barangays come from. In the five-year data shown above, the MDF ranges from a high of only 16.8 percent in 1999 to a low of 6.3 percent in 2003. This amount is very small compared to the amount spent on other items. The detailed expenses for the year 2003 showed that only a small amount of the revenues collected in Bakun is actually used for development projects in the communities. Figure 13 below shows the average expenditures of the local government over the period 1999-2003.

Figure 13. Five-Year Average Expenditures of Bakun (1999-2003)



5. Non-Inclusion of Some Provisions of the LGC, ER 1-94, and other Laws Enacted After the Implementation of the Projects

As mentioned earlier, there appears to be a selective inclusion of provisions of certain laws in the MOAs, both original and amended. Not all provisions were included. In the amended MOA between NMHC/HEDCOR and Bakun, the only provision of the LGC included is the payment of real property tax, but not the provisions on the national wealth tax, and the provision on the reduction of the cost of electricity. In the case of the ER 1-94, the provisions on the reduction in the cost of electricity and on prioritization of load dispatch were not included in the MOA.

With the granting of the CADT to Bakun, the people are expecting that the hydroelectric power companies must also be guided by the IPRA. However, representatives of the power companies argue that they shall not be affected by new laws that are enacted after the MOAs were signed. Moreover, the people of Bakun could not propose amendments to the MOAs since they are represented by the local government of Bakun and the provincial government of Benguet which are designated as parties to the MOA.

6. Increased Rate of Conversion of Forest Areas to Vegetable Farms due to Improvement of Roads

The people in Bakun acknowledge that the power companies helped in the improvement of existing roads and opening new ones which, according to the majority, is the priority need of the people to improve their livelihood. This, however, has posed a problem since the improvement of roads has resulted in increased rate of conversion of forest areas to vegetable farms which in turn is destroying their environment. There are more and more areas being converted to vegetable gardens by the land owners because vegetable gardening is their only source of income. While the barangay councils try to regulate these activities, the owner has the ultimate decision in terms of land use since vegetable gardens and most land in the area are privately-owned.

Nevertheless, the people in the community have exerted their own conscious efforts to protect the watershed areas, and to main-

tain the water quality more for their own purposes. In effect, they also protect the water utilized by the power plants.

7. Small Amount of Percentage Sharing Between the Power Companies and the Host Communities

As already mentioned, NMHC/HEDCOR and LHC pay certain amounts to the local government in terms of taxes and as voluntary donation based on their net sale. For example, NMHC/HEDCOR alone had total revenues of P1.198 billion in 2004.[32] From this amount, the total tax share of the LGU, including the share of the region and the province, would only be between P11 million to P20 million annually. These are very small amounts compared to the annual income of the companies. The requirement of the law on the tax share of local government is very small and heavily favors the power companies.

As expressed by people in the host community, their role as guardians of the watershed is very crucial to the operation of the hydropower plants. Therefore, they must be compensated more for the protection of the watershed in their communities.

8. Failure to Access ER 1-94 Funds

As provided for in RA 7638 (DOE Act of 1992) and ER No. 1-94, there are three kinds of funds, namely the Electrification Fund; Development and Livelihood Fund; and Reforestation, Watershed Management, Health and/or Environment Enhancement Fund. For these funds, the LHC paid a total of P6.6 million for the period 1998 to 2004. Specifically, there was P3.3 million for the Electrification Fund,[33] P1.6 million for the Development and Livelihood Fund,[34] and P1.6 million for the Environment Enhancement Fund.[35]

Electrification Fund. The law provides for the payment and use of the electrification fund by the host communities where:

> *the power producer shall be responsible for directly remitting the electrification fund to the PSC or in its absence, the relevant franchise holder. The DOE shall ensure that the electrification fund shall be used as provided in Section (a) (1) (c). Towards this end, the DOE shall formulate the appropriate guidelines and mechanisms for fund disbursement and utilization.*[36]

As reflected in the reports of the DOE, the Electrification Fund has not been availed of to date. It is thus reflected as "available financial benefits."

Development and Livelihood Fund. The Development and Livelihood Fund being paid by the power company shall also be paid and managed based on the *DOE Act of 1992* where it stipulates that:

> *the power producer and the energy resource developer, to the extent of their respective contributions, shall administer the development and livelihood fund. They shall each submit to the DOE for the latter's approval, development and livelihood programs after consultation with the appropriate affected parties. The power producer and the energy resource developer shall each hold its contribution to the development and livelihood fund in trust for the beneficiaries as enumerated under Section 6 (e) (2). Such funds shall not be mingled with its general fund and must be deposited in interest bearing accounts. Interest earned on the development and livelihood fund shall accrue to the benefits enumerated under Section 6 (e) (2).*[37]

This fund has not been accessed yet since the project proposals submitted were not approved by the DOE. The DOE requirements for the project proposals are stringent and quite long according to NMHC/HEDCOR who tried to access the fund in coordination with the local government of Bakun. The fund paid is reflected as Accrued Financial Benefits in the DOE report.

Environment Enhancement Fund. The Environment Enhancement Fund will also be used and managed based on the provisions of the DOE Act of 1992 where the power producer and the energy resource developer shall each submit work programs for reforestation, watershed management, health, and environment enhancement. These work programs need approval from the DOE in consultation with the DENR, the DOH, the relevant water districts, local government units, regional development councils, non-government organizations, and other affected parties.

The power producer and the energy resource developer may provide for the contracting out of the proposed activities, provided that the power producer and/or the energy resource devel-

oper shall remain primarily responsible for the implementation of such program. For a unified watershed management effort, however, the power producer and the energy resource developer shall turn over the amount allocated for reforestation and watershed management to the watershed reservation manager designated by law for the area.

The power producer and the energy resource developer may request the DOE to redirect funds to other projects deemed to be more beneficial to the host local government such as environmental projects with long-term benefits.[38] All these require consultation with the local government officials, non-governmental organizations, and other affected parties.

As of 2006, this fund has not been accessed and also remains as "available financial benefits" to the local government. The reforestation projects that have been implemented by ARDEMS and the Saguday Foundation with technical assistance from the DENR-CAR were partly funded by Cordillera Highland Agricultural Program (CHARMP) and LHC.

The three funds have already accumulated. Based on ER 1-94, these funds are not directly managed by the host communities or the local government but by the power companies and the DOE. Nevertheless, LHC opted to give an annual financial assistance to Bakun up to 2004 as part of the ER 1-94 funds. For this, the company has already released P6.6 million.

F. Participation

In this study, we also tried to look into the level of participation of members of the community. We did this by analyzing the utilization of both the "traditional" and the "formal" decision-making processes in the formulation of the MOA as well as its subsequent implementation.

1. Traditional Decision-Making Processes

The *papangoan* and *tongtong*. As mentioned in the community profile discussed earlier, the elders of Bakun, called the papangoan, are regarded with high authority in making major

decisions. They are selected men and women who have demonstrated wisdom and experience. The council of elders presides over regular assemblies to discuss prevailing issues in the community that need the approval of the residents. The council also has the power to hear, review, judge, and settle disagreements, controversies and conflicts within their villages. It then imposes corresponding penalties and fines to offenders during the hearing sessions, called tongtong, when cases are heard and decided.[39]

The local justice system—tongtong, where the papangoans play a crucial role—is based on consensus and is believed to have been used by the first settlers in the municipality. It covers all aspects of behavior and its ruling process is participatory where no particular person or persons had been assigned beforehand to make a decision.[40]

Diminished authority of traditional institutions. The traditional decision-making process of indigenous peoples in Bakun has been compromised at different levels. Owing to various factors, the role of the papangoan has significantly deteriorated as gleaned from interviews and group discussions with them. Apparently, their clout over major decisions concerning infrastructure projects has been weakened as illustrated in the case of construction and operation of the mini-hydroelectric power plants. Their role has been taken over by the elected officials of the local government.

Another factor that contributed to the diminished authority of the elders is the change in the land status. Land-ownership has slowly shifted from being communal, which allowed for collective decision-making headed by the elders, to the more household or individualized forms of ownership and decision-making. The privatization of many communally-owned properties deprived the majority of the population from collectively negotiating with the company regarding the approval and the implementation of the project as well as in drafting of the MOA. The company mainly negotiated with the owners of affected lands in terms of benefits they could acquire from the implementation of the project.

This prevailing land tenure system altered the traditional forms of decision-making and it allowed for the disenfranchisement of the majority of the population.

2. Local Government Mechanisms

Barangay Assembly. The 1991 LGC contains sufficient provisions for mechanisms and processes that would allow for greater voice of citizens. The local government plays an important role in ensuring this. At the barangay level, "there shall be a barangay assembly composed of all persons who are actual residents of the barangay for at least six months, fifteen years of age or over, citizens of the Philippines, and duly registered in the list of barangay assembly members."[41] The Barangay Assembly usually meets at least twice a year to hear and discuss problems and issues affecting the barangay. It is at this venue where all kinds of problems affecting the barangay are discussed by all the residents together with the elected members of the Barangay Council or Sangguniang Barangay.

Limited Participation. In practice, however, it appears that public meetings were conducted only to inform constituents about the proposed hydroelectric power projects. Majority of the residents signified that their level of participation was very poor since most of the meetings were for purposes only of information dissemination and not necessarily to get their views on the projects, or discuss problems and issues regarding the project. This conclusion is based on the interviews and group discussions conducted and later validated by municipal officials.

The process of coming up with the first MOA with NMHC/HEDCOR was initiated in 1989 when construction of the first plant already started. The process included public meetings and consultations to inform the residents of the implementation of the project and the signing of the MOAs, prior to drawing up the agreements. According to the people interviewed in Barangay Poblacion, the final MOA between Bakun and NMHC/HEDCOR did not reflect the request made by the residents such as their proposed scheme of production sharing. The people asked for five percent of the company's net sale as the municipal government's share, and three percent for the barangay. However, the final MOA stipulated only two percent of its net sale as share of the municipal government and one percent for the barangays.[42]

For the LHC's hydroelectric power projects, public meetings were also conducted to inform the concerned constituents about the nature of the project and the formulation of a MOA. The

people's concerns regarding the project which were raised during the public consultations were properly addressed by the LHC. Thus, there was a general assessment that the proposed project passed the social acceptability test. However, only representatives from LHC, and the local governments of Bakun and Benguet were present when the MOA was signed in Baguio City.[43] Some of the residents expressed the view that there should have been some representatives from existing organizations such as BITO, the indigenous peoples' organization.

The non-participation of the people in the formulation of the MOA and in planning the projects has created conflicts between the people and the local government, and between the people and the power companies. Most of the issues raised by the people are the unfulfilled commitments of the power companies contained in the MOAs. These could have been resolved if the people and the all stakeholders had effective participation in all the project stages.

Nevertheless, there were also those who said that the community was already represented by the local government of Bakun. The people we interviewed in the communities gave the impression that the local people look up to their elected officials and that they do not question their performance as elected officials.

3. Planning and Implementation

The participation of the local people in determining the projects to be implemented starts at the stage of barangay planning. Of the three barangays included in the interview, it was only in Barangay Poblacion where the residents said that their public assemblies discussed about funds. The proposed projects are then presented in a public assembly by the Barangay Council for scrutiny by the residents before implementation. However, this is true only in Barangay Poblacion.

The Barangay Development Plans are then submitted to the Municipal Development Committee (MDC) where they formulate the Municipal Development Plan which is then submitted to the Sangguniang Bayan for its approval. In practice, however, this process is not always followed. Despite the creation of the Municipal Development Council (MDC) which has representatives from the

various sectors in the community, the Sangguniang Bayan often makes the planning and budget appropriations; and then ask members of the MDC to sign. This process contradicts the ones outlined in the LGC.

In terms of the management of funds, respondents say that there is lack of transparency on the side of the local government regarding utilization of contributions from the hydroelectric power companies. The local government asserts, however, that this goes to the general fund which is used for the planned out activities of the LGU.

4. Representation

Most of the people interviewed in the host barangays place a high degree of respect for the officials of the local government and the barangay. They believe that local government officials have the people's best interest in their mind such that they relied heavily upon their local officials in matters pertaining to the hydroelectric power projects. Hence, there have not been many questions raised regarding the sharing of benefits from the power plants during the initial stages of the project.

More recently, however, some questions are being raised regarding the transparency of the local government's operations especially with regard to the utilization of funds coming from the power companies.

As representatives of the people of Bakun, the local government officials must incorporate the views of the people regarding issues and problems affecting them. Presently, the people could not even assert the problems that they have encountered regarding the MOAs since they are not a direct party to these agreements. Despite the view that the local government represents them, this is not true in practice because the local government must ultimately protect its interest against the issues raised by its constituents. These issues are currently being discussed and the people are optimistic that they will be resolved in the future.

IV. Conclusion

It is a fact that most of the natural resources that can be developed to provide energy are located in areas where indigenous peoples live. It is mainly because indigenous knowledge and systems of resource management that indigenous peoples practice have sustained and protected the natural resources within their territories and their environment as a whole. In many cases in the past, these natural resources have been exploited and utilized to provide benefit, not to the indigenous peoples living therein, but to the greater majority in the lowlands leaving the environment of indigenous peoples destroyed forever.

The energy program and other development programs of the Philippine government have been anchored on an agenda of attaining a balanced economic growth coupled with social equity in order to empower the countryside. These programs, in the main, are implemented to supposedly alleviate poverty and to develop the countryside. But these programs are also part of the government policy of privatizing basic services such as the provision of electricity. Therefore, the government enacts laws that support such policy.

It is seen in this case study that the government has legislated many laws to support its program of developing hydroelectric power projects in the country, as well as privatizing power distribution. Most of the provisions of the laws on energy benefit the power companies by providing them tax incentives while only a few provisions give benefits to the host communities.

In this case study, we have also looked at how development projects such as hydroelectric power plants could be implemented within the domain of indigenous peoples with little destruction to the environment. Moreover, the projects illustrate how benefits could be shared with the host community, a principle that is enshrined in several laws and policies such as 1991 LGC, the DOE Act of 1992, ER 1-94, as well as taxation laws in the Philippines.

Putting in practice government's policy of sharing benefits to host communities over the use of common resources has resulted in a certain degree of development in Bakun. However, balanced economic growth for the developers and the protectors of these

resources has not been achieved yet. Moreover, the implementation of laws and policies has been selective; i.e., some provisions of relevant laws that are beneficial to the power developers were used but not the provisions that will give more benefits to the host communities.

The negative perceptions of the people regarding the benefits shared by the power companies far outweigh the positive perception of the benefits. The processes and systems of benefit sharing need to be examined closely if a balanced economic growth with social equity is to be achieved.

The participation of the local community in Bakun regarding the implementation of the hydroelectric power projects started as early as the feasibility study. But this was in the form of delegating matters to local government officials. They believed that local government officials will protect the interests of the host community and the people of Bakun in general. The people could participate during barangay assemblies where priority projects are discussed, although this was true only in one host community. Peoples' participation can take place only in a situation where the people are well-informed about the situation and this has been wanting in Bakun and leaves much to be desired.

V. Recommendations

The issues and concerns expressed by the people in Bakun were discussed with the purpose of coming up with corresponding recommendations in order to improve the manner of implementing future projects. This study forwards the following recommendations:

1. The indigenous peoples' organization in Bakun, the BITO, must be further consolidated and strengthened to have the capacity and capability to assert what they, as a community and as indigenous peoples, want to do and want to achieve towards their economic, social and cultural development. In the end, it is the vigilance of the indigenous peoples themselves that will enable them to protect their interests and promote their own development.

2. The share of the municipality and the barangays in the payment of taxes by the power companies were acknowledged by the people to have helped them especially in the improvement of their road system and in improving their livelihood opportunities. However, the people in the community should get a bigger share of the taxes and other financial assistance since they are the ones who protect the watershed and are the guardians of the water bodies in the community. The bigger share in taxes and financial assistance would enable them to implement more projects on reforestation that are more appropriate and more sustainable to the local condition.
3. In order to increase the funds shared with the host municipality and barangays, it is important that the MOA stipulates all relevant provisions of laws like the 1991 LGC and ER 1-94. Future projects must take into consideration new laws like the IPRA and must respect the inherent rights, customary practices, and indigenous knowledge of the indigenous peoples in the project area.
4. As expressed by the communities, the people in the affected areas of a project must be represented in various processes pertaining to a project. These include formulating the MOA, planning and implementation of agreements, fund management and utilization, and in monitoring and evaluation of the companies' compliance with the stipulations of the MOA. The stakeholders need to set up an effective mechanism whereby the members of the community can have effective participation in the planning and implementation of projects that are appropriate to their needs. In addition, the MOA must contain mechanisms for redress of grievances in the process of the projects' operation so that conflicts could be avoided. Community members in Bakun envision a harmonious and effective partnership among the various stakeholders like the LGU, existing organizations, private companies and other sectors that are united in the improvement of Bakun as a community.
5. The participation of the people in planning, monitoring, and evaluating the performance of the parties to the MOA will ensure that the stipulations contained therein are effectively and efficiently implemented. The local government officials

must serve their role as representatives of the people in a responsible and trustworthy manner by being transparent and participatory. This could improve the relations between stakeholders and also avoid conflicts and tensions between them.

6. The primary role of the people in Bakun is to protect the watershed and water bodies which are the main resources shared with the power plants. Therefore, protection of the watershed and reforestation projects must be given more funds and must be addressed with appropriate and sustainable reforestation and watershed management systems that should be managed and implemented by the people in the affected areas.
7. The people must also balance the protection of watersheds and forest areas with the use of lands for vegetable farming to create a healthier environment for Bakun. Alternative livelihood systems must be studied so they can have increased income without destroying the environment. In the same manner, they ensure that implementing development projects will not result in environmental destruction.
8. Further studies on mechanisms of access to and benefit-sharing over the utilization and protection of common resources are encouraged in order to improve current systems of sharing benefits. This can also ensure that indigenous peoples who protect and sustain these resources get ample benefits in return and that the implementation of development projects does not jeopardize their environment. The ongoing study on "The Bakun Watershed: Testing the Rewards and Reward Mechanism to Benefit its Upland Dwellers for the Watershed Services (RUPES) they Provide" is one that aims to look at this concern. The study started in 2005 and will end in 2007 and is being implemented by the Department of Agriculture and BITO with funding support from IFAD.

Endnotes

[1] Village.

[2] IFAD is also supporting a project called Rewarding Upland Poor for Environmental Services (RUPES) which could complementary this case study. The project aims to support and build the capacity of local communities, institutions and government agencies in the watershed of Bakun to implement environmental services to promote sustainable natural resource management and poverty alleviation among upland communities. Department of Agriculture-CAR (Brochure on the RUPES Project. Baguio City. 2003).

[3] The local government claimed that they started to systematize their data only recently, and it would be cumbersome to look into their archived data since these have not been systematized.

[4] Name in parenthesis is the province where the municipality is located.

[5] Literally, "pharmacy in the village."

[6] Municipality of Bakun (2003). Profile of Bakun.

[7] Maurice Malanes (2002). *Power from the Mountains, Indigenous Knowledge Systems and Practices in Ancestral Domain Management: The Experience of the Kankanaey-Bago People in Bakun, Benguet Province, Philippines* (Baguio City: ILO).

[8] "Bakun folks oppose domain title rejection." Sunstar Baguio, February 22, 2006.

[9] In 2005, the NMHC was merged with two other hydro-power subsidiaries of Aboitiz Equity Ventures (AEV), namely: Benguet Hydro Corporation and Hydro Electric Development Corporation, to form the Hedcor, Inc. or HEDCOR. Henceforth, the entities shall be referred to as NMHC/HEDCOR.

[10] All photos courtesy of Clint Bangaan.

[11] HEDCOR. History of HEDCOR. www.hedcor.com. 15 June 2006.

[12] Noel R. Estoperez (2002), "Country Report (Philippines) on Small Hydro Power." www.hrcshp.org/en/world/philippines.pdf 12 July 2006.

[13] Ibid.

[14] Ibid.

[15] Office of Energy Affairs (1992), "Rules and Regulations Governing the Filing/Processing of Applications for Authority to Construct and Operate Mini-Hydroelectric Power Plants and Providing for the Terms and Conditions of the Operating Contracts Concluded Pursuant to the Authority Vested by RA 7156." March 10.

[16] Republic of the Philippines (2001). *The Electric Power Industry Reform Act (RA 9136)*, Chapter 1, Section 3.

[17] Republic of the Philippines. *RA 7638, the Department of Energy Act*. Chapter 1, Section 5 (i), 1992.

[18] Republic of the Philippines, Department of Energy (1994), "Rules and Regulations Implementing Section 5(i) of Republic Act No.7638, otherwise known as the *Department of Energy Act of 1992 (Energy Regulations No. 1-94)*." Section 6 *Nature of Benefits*.

[19] Republic of the Philippines (1991) *RA 7160, the Local Government Code*, Book II, Title One, Chapter 1, Section 291.

[20] Ibid, Section 294.

[21] The 40 percent share of the LGU is distributed to the different levels of local government units, namely, the provinces (23%), cities (23%), municipalities (34%), and barangays (20%). The share of provinces, cities and municipalities is determined based on population (50%), land area (25%) and equal sharing (25%). As to the barangays, there is another formula used to compute their share which is P80,000 per barangay with 100 or more population, plus the computed equivalence of population (60%) and equal sharing (40%). From the share of the LGUs, 20 percent must be used for development projects (what they term as 20% development fund) which shall not include seminars and trainings (1991 LGC, Section 284).

[22] Ibid.

[23] This is a partnership between Aboitiz Equity Ventures (AEV) and Pacific Hydro Limited of Australia.

[24] Republic of the Philippines, Department of Energy. *Energy Regulations No. 1-94*, Section 6, 1(b,c).

[25] Ibid. Section 6, e (2).

[26] Interview with Mr. Amos Beta-a, Former Chairperson of BITO.

[27] Interview with Mr. Lambert Tabao-ec, Barangay Captain of Poblacion, 9 July 2006.

[28] Interview with Mr. Lambert Tabao-ec, Barangay Captain, Poblacion. July 2006.

[29] Discussion during meetings of the Technical Working Group, RUPES Project of the Department of Agriculture, December 2005 and March 2006.

[30] Provision of electricity.

[31] The following documents from the local government were used as references: Municipal Budget Office (2003). *Accomplishment Report*; Municipality of Bakun (2003). *Accomplishment Report of the Municipal*

Accounting Office; Municipality of Bakun (2003). *Accomplishment Report of the Municipal Engineering Office*; Municipality of Bakun (2003). *Accomplishment Report of the Municipal Planning and Development Office*; Municipality of Bakun (2003). *Accomplishment Report of the Municipal Treasurer's Office*; Municipality of Bakun (2003). *Budget Performance and Financial Statement, Annual Accomplishment Report CY 2003*.

[32] Aboitiz News. "AEV consolidates hydro businesses." www.aboitiz.com. May 2006.

[33] As Available Financial Benefits as of December 31, 2004.

[34] As Accrued Financial Benefits as of June 25, 2004.

[35] As of June 25, 2004.

[36] Republic of the Philippines, Department of Energy (1994), "Rules and Regulations Implementing Section 5(i) of Republic Act No.7638, otherwise known as the *Department of Energy Act of 1992 (Energy Regulations No. 1-94)*." Section 6, (a) (1)(d).

[37] Ibid, section 6, (e) (3) (4).

[38] Ibid, Section 6 (f).

[39] Malanes, Maurice. Power from the Mountains, Indigenous Knowledge Systems and Practices in Ancestral Domain Management: The Experience of the Kankanaey-Bago People in Bakun, Benguet Province, Philippines. Baguio City: ILO. 2002.

[40] Ibid.

[41] Republic of the Philippines, The *Local Government Code of 1991*, Book III, Title 1, Chapter VI, Section 397 (a). 1991.

[42] Interview with Mr. Lambert Tabao-ec, Barangay Captain of Poblacion, 9 July 2006, and Mr. Amos Betaa, BITO Chairperson, 8 October 2006.

[43] Interview with Mr. June Acbayaan, Secretary of the Sangguniang Bayan (SB or Municipal Council), 12 July 2006.

Bibliography

Aboitiz News, "AEV consolidates hydro businesses." www.aboitiz.com. Accessed May 2006.

Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) of Bakun.

"Bakun folks oppose domain title rejection," *Sunstar Baguio*, February 22, 2006.

Department of Agriculture-CAR (2003). *Brochure on the RUPES Project*. Baguio City.

Department of Energy (1994), "Rules and Regulations Implementing Section 5(i) of Republic Act No.7638, otherwise known as the Department of Energy Act of 1992 (Energy Regulations No. 1-94)."

Estoperez, Noel R. (2002), "Country Report (Philippines) on Small Hydro Power," www.hrcshp.org/en/world/philippines.pdf accessed 12 July 2006.

HEDCOR, "History of HEDCOR." www.hedcor.com. Accessed 15 June 2006.

Malanes, Maurice (2002). *Power from the Mountains, Indigenous Knowledge Systems and Practices in Ancestral Domain Management: The Experience of the Kankanaey-Bago People in Bakun, Benguet Province, Philippines* (Baguio City: ILO).

Municipality of Bakun (2003). *Accomplishment Report*, Municipal Budget Office.

_____ (2003). *Annual Accomplishment Report, CY 2003*," Municipal Health Office.

_____ (2003). *Accomplishment Report of the Municipal Accounting Office*.

_____ (2003). *Accomplishment Report of the Municipal Engineering Office*.

_____ (2003). *Accomplishment Report of the Municipal Planning and Development Office*.

_____ (2003). *Accomplishment Report of the Municipal Treasurer's Office*.

_____ (2003). *Budget Performance and Financial Statement, Annual Accomplishment Report CY 2003*.

_____ (2003). *Municipal Accomplishment Report for 2003*."

_____ (2003). *Profile of Bakun*.

Office of Energy Affairs (1992), "Rules and Regulations Governing the Filing/

Processing of Applications for Authority to Construct and Operate Mini-Hydroelectric Power Plants and Providing for the Terms and Conditions of the Operating Contracts Concluded Pursuant to the Authority Vested by RA 7156."

Republic Act 9136 (2001), *The Electric Power Industry Reform Act*, Republic of the Philippines.

Republic Act 7638 (1992), *Department of Energy Act*, Republic of the Philippines.

Republic Act 7160 (1991), *Local Government Code*, Republic of the Philippines.

Annexes

Annex 1. List of Secondary Sources of Data

"Bakun dads told: Consult IPs on CADT rebuff," *Sunstar Baguio*, January 11, 2006.

Cordillera Peoples' Alliance and PACOS Trust. "Indigenous Peoples and Local Government: Experiences from Malaysia and the Philippines. Copenhagen: IWGIA. 2005.

Department of Energy. Report on the Implementation of ER 1-94, www.doe.gov.ph. 12 April 2006.

"HEDCOR donates computers to Bakun National High School," *Sunstar Baguio*, February 4, 2003.

HEDCOR. Reports on Tax Payments, 1994-2004, www.hedcor.com.

HEDCOR, Inc. Fact sheet 2005. www.hedcor.com. 15 June 2006.

Memorandum of Agreement between NMHC/HEDCOR and the Municipality of Bakun, January 15, 1991 and Amended MOA between same parties, December 20, 1993.

Memorandum of Agreement of LHC, NPC, Province of Benguet and Municipality of Bakun, December 3, 1997 and Supplemental Agreement, same parties, March 22, 2005.

Annex 2. List of Respondents

Mr. Lambert Tabao-ec, 84, Barangay Captain of Poblacion, Municipality of Bakun. 9 July 2006.

Mr. June Acbayaan, 42, Secretary of the Sangguniang Bayan (SB or Municipal Council), Bakun. 12 July 2006.

Mr. Edward Buscol, 39, Barangay Captain of Sinacbat. 8 July 2006.

Mr. Amos Beta-a, 53, Past Chairperson, Bakun Indigenous Tribes Organization (BITO). 14 August 2006, 9 October 2006.

3

Budget Analysis: The 1995-2004 Budget of the Provincial Government of Nueva Vizcaya, Philippines (Processes, Appropriations and Outcomes on Indigenous Peoples)

Bernabe Almirol*

1. Background

The "Programme of Activities for the International Decade of the World's Indigenous People" was approved by United Nations General Assembly during its 97th plenary meeting on 21 December 1995, and is contained in Resolution 50/157. One of the tasks identified therein is to conduct an assessment of the Decade. As per Objective 7: "The objectives of the Decade should be assessed by quantifiable outcomes that will improve the lives of indigenous peoples and that can be evaluated halfway through the Decade and at its end."

The International Fund for Agricultural Development (IFAD) took the initiative to answer Objective 7 and commissioned the International Center for Integrated Mountain Development

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(ICIMOD) and Tebtebba Foundation to undertake the assessment of the First International Decade of World's Indigenous People in 10 Asian countries.

As part of the assessment of the Philippines's achievements, a "budget analysis" was required. Budget Analysis is emerging as a new and incisive tool in the advocacy to promote economic, social and cultural rights, especially of a country's special interest groups. Hence, this study focuses on how the government budget addressed the rights, well-being and the development concerns of indigenous peoples during the decade. *Dignity Counts*[1] and *Promises to Keep,*[2] two papers on the rights-based approach to budget analysis, provided the insights helpful in the developing the framework for this work.

The beginning of the Decade coincided with the start of the decentralization process in the Philippines. A new local government code, Republic Act 7160, devolved powers from the national level downstream to the local government units, namely the province, the municipality or city, and the *barangay*/village. The Code also mandated the widening of grassroots participation in governance and opened more avenues that allowed the indigenous peoples to claim their rightful share of the services due from the government.

For this work the budgetary process in the province of Nueva Vizcaya was selected for study because the indigenous peoples of the province participate in the planning and budgeting exercise since 1994. Another reason for selecting Nueva Vizcaya was the presence of budget data, and the transparency in making them available for scrutiny. Furthermore, the province was one of the few local government units cited for re-engineering its bureaucracy toward greater people's participation. The book, *Celebrating Participatory Governance in Nueva Vizcaya,*[3] traces comprehensively how special bodies were organized in the province so that grassroots representation in development planning and budgeting could be generated.[4]

2. Research Objectives

As pointed out earlier the assessment of the First Decade required that quantifiable outcomes of the decade's activities be reported. Thus, the primary, general objective of this study is to look at how the budget of the last 10 years of the province of Nueva Vizcaya addressed the rights and well-being of its indigenous peoples. The outcomes of the budget line items for the basic social services, then, serve as this study's quantifiable indicators.

Specifically, this study seeks to analyze the following areas of the local government budgeting system:

1. The consultative bodies involved, the processes undertaken in preparing the budget, and the extent of indigenous peoples' participation therein;
2. The issues and concerns of indigenous peoples relative to local government income sources (e.g., local taxes) and budget policies;
3. The budget line items mandated by law governing the operations of the local government (Republic Act 7160);
4. The trends in income and expenditure in the last 10 years;
5. The sectoral divisions considered in allocating resources, and the level of appropriations among these sectors;
6. The needs addressed, as well as the services rendered, by the programs and projects that were implemented and for which budget allocations were provided; and
7. The outcomes of the budget, and the indicators used to measure them.

3. Research Methodology

This work uses the evaluation research method to determine the impact of a social intervention over time. In this study, the annual government budget from 1994 to 2004 serves as the social

intervention when broken down into its program-, project- and activity components.

Budget analysis, as an evaluation tool, determines how the government budget responds to promote and fulfill economic, social and cultural rights—rights which states must invest in before they can be enjoyed. From three references,[5] a framework for a Rights-Based Approach to Budget Analysis was adapted, similar to one that is used by rights activists to check the enforcement, protection and fulfillment of human rights through the budget.

Using this approach the annual budget of Nueva Vizcaya from 1994 to 2005 was examined to judge whether or not appropriations in the budget allowed the exercise of the rights of the indigenous peoples, as follow:

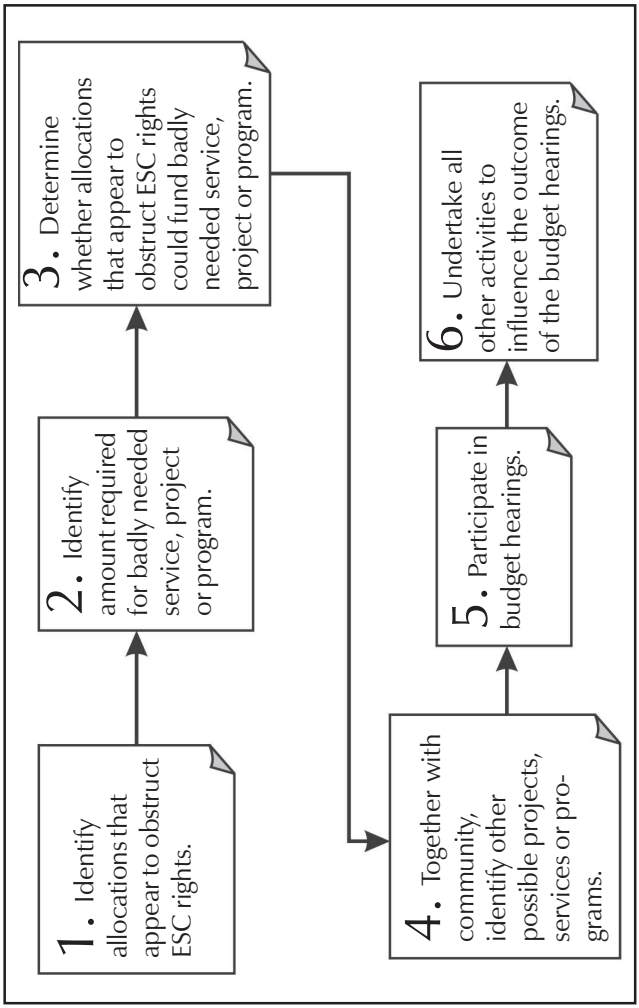
1. Economic rights which include mainly, but are not limited to, the right to livelihood and all the necessary support services (e.g., roads, buildings, irrigation, etc.);
2. Social rights which include the right to education, health services, shelter and adequate nutrition;
3. Cultural rights which include the protection of indigenous traditions, beliefs and practices, access to culturally significant ancestral territories (i.e., hunting grounds, burial grounds, etc.), and the recognition of indigenous peoples' right to self-determination over their ancestral domains; and
4. Political rights which include respecting the indigenous peoples' right to participate in the affairs of governance, as well as securing the state guaranty that all rights accorded to them by law are respected and fulfilled.

Rights-Based Approach to Budget Analysis

Although the "rights-based approach to budget analysis" was formulated only toward the end of the First Decade it, nevertheless, served well the purpose of interpreting the budget outcomes that could be read from the historical budget data from 1995-2004.

Diokno's Rights-Based Budget Analysis (which is shown on Figure 1, next page) found that government budgets, in most cases, are used to trample upon human rights instead of being used

Figure 1. Rights-Based Approach to Budget Analysis



Source: Ma. Socorro Diokno, A Rights-Based Approach towards Budget Analysis (Washington, D.C.: International Human Rights Internship Program, 1999).

toward the exercise of those rights. Thus, she proposes that a first step in budget analysis is to look at allocations that appear to obstruct economic, social and cultural rights.

Diokno claims that her paper "...is intended to encourage, stimulate and provoke human rights group to explore budget analysis from a rights perspective," and acknowledges that it is "... either definitive nor exhaustive."

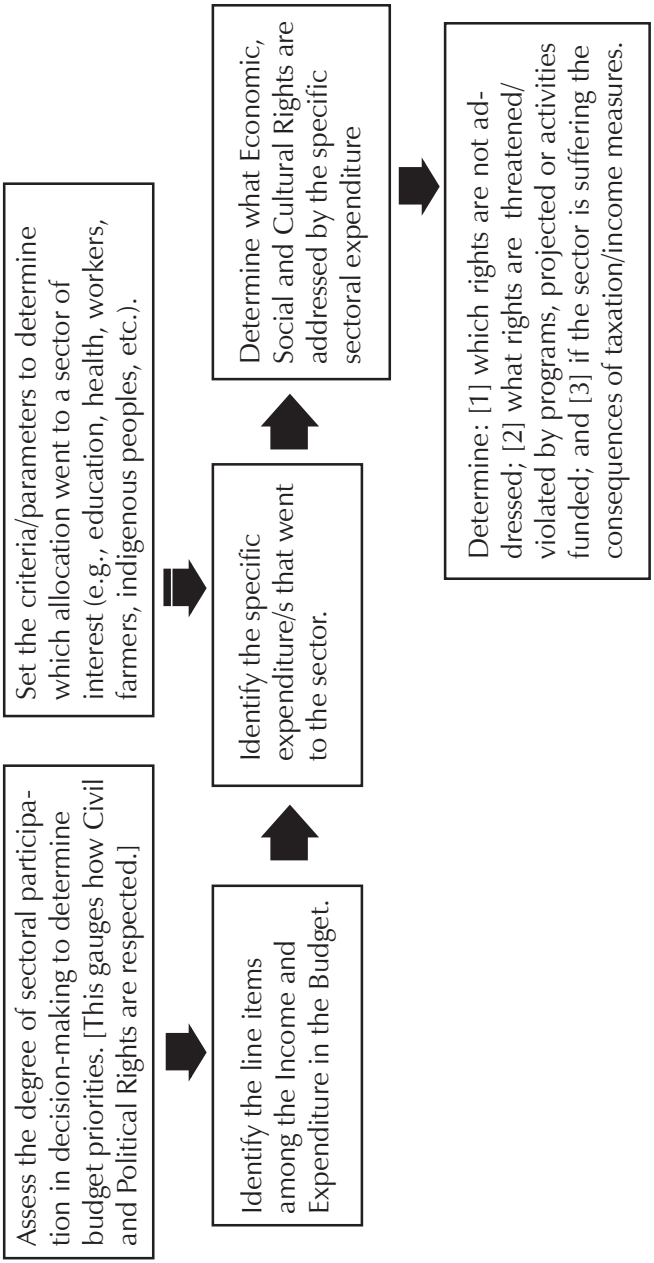
Searching to expand the framework above the papers, *Dignity Counts* and *Promises to Keep*, were searched for their contribution in widening and broadening the approach to budget analysis. In *Dignity Counts*, for example, commitments to specific policy areas are measured and contrasted with commitment to other policy areas. In *Promises to Keep* are very good suggestions on how to approach budget analytic work as applied by civil society. Budget analysis also involves looking at the impact of budgetary decisions (or choices) on people, and comparing the trends in investments (or program areas) or the cost of policy proposals against the human rights commitments signed by the government. Budget analysis is, finally, "...looking at the budget from the point of view of a specific population," a very appropriate approach for in assessing the Decade of Indigenous Peoples.

The modified framework (shown next page on Figure 2) considers the civil and political rights (i.e., right to participate in decision-making, thus, in governance) and the economic, social and cultural rights as parameters in measuring the effectiveness of the budget in meeting the objectives set for the indigenous peoples of Nueva Vizcaya.

In this study, participation of the various sectors serves as the indicator of the exercise of the sectors' respective civil and political rights. It is the take-off point to analyze the budget allocation at its preparation stage.

A criterion or parameter is formulated to determine which specific sectoral expenditure/s responds to particular need/s. The expenditure criterion is taken as a measure of how the economic, social and cultural rights are addressed by the budget.

Figure 2. The Modified Rights-Based Framework



Was an appropriation intended for indigenous peoples, or not?

To find out how/if the budget responded to economic rights (i.e., Point 1), social rights (i.e., Point 2) and cultural rights (i.e., Point 3) specific programs, projects and activities implemented in the areas predominantly inhabited by indigenous peoples were identified.

A program, project or activity that was implemented in an area where the indigenous peoples were the majority was assumed to be an appropriation that was 100 percent specifically intended for the indigenous population, i.e., given a weight of 1. A funded program, project or activity that was not area-specific was assigned a weight of 0.4 (i.e., 40 percent of the appropriation was assumed to have been enjoyed by the indigenous populations as beneficiaries)—based on the ratio of barangays where the indigenous population was a majority to the total of 275 barangays in the province.

Measuring Participation

The budget cycle was reviewed to determine when and how the indigenous peoples were involved in the planning and decision-making processes until the budget was approved. Their participation—through representation by indigenous peoples' organizations and NGO support groups in the planning and budgeting exercise of the provincial government—served as the proxy for the exercise of civil and political rights (i.e., Point 4), since it was the most obvert sign of the involvement of civil society in decision making.

Source of Data

The information (i.e., the budget data) used in this study came from the records of the period, 1994 to 2005, of the Budget Office of the Nueva Vizcaya Provincial Government. They were obtained by closely collaborating with the officer-in-charge and the records officer of said agency.

4. Scope and Limitations of the Study

In defining the scope of this study, even at the conceptual stage it was immediately apparent that the study would be confined to a local government unit. A more micro-view seemed to be the more promising route to demonstrate how data could be disaggregated to show the share of the indigenous populations in particular budget items than would a study of the national budget.

The provincial government of Nueva Vizcaya was chosen due to the following considerations:

1. The population was composed of diverse groups of indigenous peoples;
2. The provincial government adopted a policy of transparency and that included consultation with its indigenous peoples; and
3. There was an openness in sharing the budget data for the purpose of this study.

This study is, thus, limited only to the analysis of the budget of the Provincial Government of Nueva Vizcaya over a 10-year period, and covers neither the budget of the national government nor those of the lower level local government units (i.e., the municipal and barangay governments that compose the province).

However, the respective roles of national agencies and lower government units are also mentioned in the course of the discussion. That was inevitable because budget counterpart schemes have become common, especially when foreign special projects came in.

Finally, this study focused mainly on "new" or "developmental" programs, projects and activities that allowed for data disaggregation. The programs, projects and activities funded by the "general fund" were excluded, since its components were expressed only in terms of personal services; maintenance and other operating expenses; and capital outlay—items which could not be disaggregated to allocations between indigenous and non-indigenous peoples.

The Research Site

Nueva Vizcaya lies in the heart of Northern Luzon, Philippines. It is one of the four provinces in the Cagayan Valley, geographically is located at the southernmost part of the region. It is often referred to as the gateway to the valley.

The province has a total land area of 437,880 hectares (4,378.8 sq. km.), which is approximately 16.30 percent of the region's land area. Nueva Vizcaya is composed of 15 municipalities, with Bayombong as the provincial capital. The province consists of only one congressional district[6] and two sectoral subdivisions under the administrative jurisdiction of the Sangguniang Panlalawigan (Provincial Board).

The North Sector comprises seven (7) municipalities and 112 barangays, namely:

1. Ambaguio, with its 8 barangays;
2. Bagabag, 17 barangays;
3. Bayombong, 25 barangays;
4. Diadi, 19 barangays;
5. Quezon, 12 barangays;
6. Solano, 22 barangays; and
7. Villaverde, 9 barangays.

The South Sector is made up of eight municipalities and 163 barangays, namely:

1. Alfonso Castañeda, with its 6 barangays;
2. Aritao, 22 barangays;
3. Bambang, 24 barangays;
4. Dupax Del Norte, 16 barangays;
5. Dupax Del Sur, 19 barangays;
6. Kasibu, 30 barangays;
7. Kayapa, 30 barangays; and
8. Santa Fe, 16 barangays.

5. The Indigenous Peoples of Nueva Vizcaya

Before Nueva Vizcaya was formally created in 1839 as a separate colonial province under Spain, the area was part of what was the Upper Cagayan Region. The middle area of the region was called Paniqui which, when widely applied, extended to what are now the southern towns of Isabela Province. North of Paniqui was Tuy (or Ituy). To its south was Sinay and, thus, correspondingly the ethnic group that inhabited it was called *Isinai* — a term that was also occasionally applied to natives of the upper area of the Magat River.[7] In de Vegas's *Expeditions to the Province of Tuy*[8] the natives were described as "numerous and warlike, and were hostile and would kill."

Spanish records further note at least five other ethno-linguistic groups inhabited the valleys of Tuy and Paniqui: the *Ilongot* (also called *Ibilaos* and *Italons*), the aforementioned Isinai, the *Gaddang*, the *Yogad*, and the *Igorot* — an ascription that collectively applied to all the peoples of the Cordillera.

The almost 300 years of Spanish conquest gravely marginalized the indigenous peoples in this part of the country. The policy of assimilation and "national integration" applied by the succeeding American colonial regime on the Philippine indigenous populations further aggravated their marginalization.

The Indigenous Peoples of Nueva Vizcaya today

The Igorots to which Spanish records refer are the same people in Nueva Vizcaya who today are the *Ibaloi*, the *Kalanguya*, the *I'wak*, the *Kankana-ey*, the *i-Bontoc*, and the *Ifugao*. The other groups that are ascribed as *Igorot* are today's *Kalingas*, *Karao*, *Barleg* and the *Bago* from the western and the northern side of the Cordillera. Some *Itnegs* from the province of Abra also have settled in the town of Quezon, Nueva Vizcaya.

The Ilongots (who are now self-ascribed as *Bugkalots* to avoid the stereotype as headhunters) remain in settlements at the foot of the Sierra Madre Mountains to the southeast. The Isinai and the Gaddang co-exist with the non-indigenous migrants in the central

plains of Nueva Vizcaya while maintaining their close-knit communities, sharing a common dialect—the only part of their culture that remains intact. Barangay San Nicolas in Bayombong, and at least four villages in the town center of Dupax Del Sur typify such communities.

The Kalanguya (also called the Ikalahan) are the largest group among the indigenous peoples of Nueva Vizcaya, and the most widely dispersed in the province. The 2000 Census data from the National Statistics Office also used the ascription *Ilanuan* to refer to them. A small population of the *Agta*, *Ayta* and *Dumagat* could be found in Alfonso Castañeda town.

Table 1. Indigenous Peoples of Nueva Vizcaya and Their Respective Locations

Indigenous Ethnic Group	Location and Concentration
Kalanguya/Ikalahan	Ambaguio, Santa Fe, Kayapa, Aritao, Dupax del Sur, Quezon
I'wak	Kayapa, Santa Fe
Ilongot/Bugkalot	Kasibu, Dupax del Norte, Dupax del Sur, Alfonso Castañeda
Isinai	Dupax del Sur, Bambang, Aritao
Gaddang	Bayombong, Solano, Bagabag
Ifugao (Ayangans and Tuwali)	Kasibu, Villaverde, Solano, Bayombong, Diadi, Quezon
Ibaloi	Kayapa, Kasibu, Dupax del Norte, Dupax del Sur
Agta/Ayta	Alfonso Castañeda
Other Igorots (Kankanaey, Kalinga, Barleg, Karao, Bago, etc.)	Widely dispersed all over the province
Other Indigenous Peoples	-do-

Source: Nueva Vizcaya Data Disaggregation Project, October 2006.

Census Data

The National Statistics Office's 2000 census reveals that a majority (62.3%) of the population of Nueva Vizcaya classified themselves as Ilocanos. Meanwhile, the indigenous peoples listed include the Ikalahan/Ilanuan (11.6%), Ifugao (6.3%), and Ibaloi/Inibaloi (4.4%). Others included are the Ayangan (0.8%) and Bugkalot (0.3%).

Table 2. Household Population by Ethnicity and Sex Nueva Vizcaya, 2000

Ethnicity	Both Sexes	Male	Female
Nueva Vizcaya	**366,004**	**187,441**	**178,563**
Ilocano	228,027	116,567	111,460
Ikalahan/Ilanuan	42,300	21,886	20,414
Ifugao	23,211	11,809	11,402
Tagalog	21,615	10,912	10,703
Ibaloi/Inibaloi	16,017	8,313	7,704
Ayangan	2,966	1,600	1,366
Bugkalot	1,180	610	570
Others	29,555	15,150	14,405
Foreign Ethnicity	329	182	147
Not Reported	804	412	392

Source: 2000 Census of Population and Housing (Manila: National Statistics Office).

6. The Structure of the Philippine Government

The Philippine government is unitary in structure[9] and bicameral in form.[10] The executive branch is headed by a President, together with an appointive cabinet. It is separate from the legislative branch (made up of a Senate and the House of Representatives) and the judiciary. The legislative branch enjoys the power of review and approval of the General Appropriations Act or the annual budget.

In 1991 RA 7160 otherwise the New Local Government Code (for this study, the Code) granted a relative degree of autonomy to local governments. The Code devolved certain powers to provinces, municipalities (towns) and barangays (villages), or the "local government units" (LGU's). The national government agencies whose functions that were not devolved still maintained regional field offices or units in the continued exercise of their mandates.

Decentralization essentially means distributing political power throughout the territory. In the Philippines, decentralization happened with the barangay, municipal and provincial local government units now enjoying a higher measure of political power. Devolution is a necessary consequence of decentralization. It is a phenomenon where the central government gives up certain of its powers and responsibilities (e.g., taxation, regulation, public health, forest management, etc.) to the lower levels of government.

Funding System under a Decentralized, Devolved Setup

Provincial governments and lower-level local government units differ from line ministries in that the former should, at least in theory, have the authority to manage a given set of functions devolved to them from the latter, with a corresponding system of political accountability and leadership. They are funded through some mix of locally raised revenues (e.g., property or market taxes), and contributions from the central government which may be either be discretionary and/or based on entitlements, as specified in the Constitution or some other legal instrument.

The funding system often involves norms or formulae to determine the amount of grant from central to local authorities. The formulae typically involve some measure of scale (e.g., population size), and/or need (e.g., low level of income, high incidence of poverty, lack of social or other infrastructure, limited opportunities to raise revenue). There is now a debate as to whether "performance" should be added or not—in effect, rewarding units that do well according to a set of criteria.[11]

Sharing of Resources under a Decentralized, Devolved Setup

In the case of the Philippines, the national government shares 40 percent of its internal revenue with the local government units (LGU's).[12] The internal revenue allotment (IRA) for an LGU, in turn, uses a formula which takes into account the local government unit's land area and population, after which the IRA is released by the Department of Budget and Management (DBM).

Provincial LGU's, furthermore, are given the jurisdiction to collect real property taxes and other impositions, but these are to be shared with the municipal and barangay LGU's, as prescribed by the law.

Nueva Vizcaya is one among the 79 provincial governments of the Republic of the Philippines. Downstream the political structure are its 15 municipalities (or townships) and 275 barangays (villages)—the LGU's according to existing laws.

A local government unit is an independent body, with a corporate and juridical personality. A provincial level government unit exercises minimum supervisory powers over its counterparts that are downstream from it—the municipalities and the barangays. The municipal and barangay LGU's, likewise, possess a certain degree of "fiscal autonomy" and independence from the government bodies upstream to it.

A provincial legislature, the Sangguniang Panlalawigan (Provincial Board), is mandated to review and approve the as budget proposed by the local chief executive—the Governor. Both the legislative body and the governor are elected to serve a term of three years. The incumbents were elected during the 2004 elections.

7. Components of the Local Government Budget

Taxes and Non-Tax Revenues

The revenue of a local government unit comes from tax- and non-tax sources. The tax revenues are from its share in the rev-

enue allotment from the national government and locally generated from tax sources. Local tax revenues largely come from the assessment of real property, while the tax revenue that is shared with the national government is sourced from income taxes, other percentages taxes, and taxes from special laws, such as custom duties and tariffs. Non-tax revenues come from the proceeds of government business operations, fees, grants, donations, and other extra-ordinary and miscellaneous incomes.

Shown on Table 3 hereunder are the sources of revenue of provincial governments and other local government units.[13]

Table 3. Tax and Non-Tax Revenue Sources of Local Government Units

Tax Revenues	Non-Tax Revenues
1. Real Property Tax and Penalties	1. Accreditation, Registration, Inspection, Clearance and Certification Fees
2. Transfer Tax	2. Permit Fees
3. Peddlers Tax	3. Hospital, Medical, Dental & Laboratory Fees
4. Printing & Publication Tax	4. Sales Revenue
5. Occupation Tax	5. Income form Government Business Operation
6. Professional Tax	6. Interest Income
7. Franchise Tax	7. Rent Income
8. Immigration Tax	8. Receipts from Lease of Properties
9. Internal Revenue Allotment	9. Miscellaneous, Operating & Service Incomes and other Specific Income of LGUs
10. Local Share on National Wealth	10. Fines & Penalties
11. Share from **PAGCOR/ PCSO/ LOTTO**	11. Sale of Waste Material
12. Amusement Tax	12. Sale of Assets
13. Business Tax & Licenses	13. Grants & Aids and other Financial Assistance
14. Sand & Gravel Tax and Permit Fee	
15. Weight & Measures Tax	
16. Mining Claims	
17. Other Local and Miscellaneous taxes	

Source: COA Circular on the New Government Accounting System.

Expenditure Classification

The expenditures of a local government unit are classified into three main items, viz:

1. Personal Services;
2. Maintenance and Other Operating Expenses (MOOE); and
3. Capital Outlay.

As a rule, allocations for MOOE and Capital Outlay cannot be realigned to Personal Services; likewise, Capital Outlay cannot be realigned to MOOE, unless upon the closing of the books the unspent amount is declared as savings. The utilization of savings, however, needs an authorization through a supplemental budget ordinance.[14]

Established Funds[15]

The General Fund is appropriated to address the regular and recurring expenditures of the provincial government. These include personal services of regular and casual employees, the MOOE of provincial government departments, including the Offices of the Governor, the Vice-Governor and the Sangguniang Panlalawigan, and the provision for capital outlay.

A Development Fund is mandated which is equivalent to 20 per cent of the LGU's share from national internal revenue allotment (IRA). The appropriation is intended to fund development projects in the medium- and the long-term in support of national programs or thrusts. The Development Fund is the source of funding of the Annual Investment Plan.

The Calamity Reserve Fund is another mandatory appropriation equivalent to five percent of total projected income. It is intended to mitigate the impact of calamities, and to fund disaster preparedness measures. Provincial Commitments are appropriations to fund contractual obligations, such as debt payments and the provincial counterpart to multi-party development initiatives or investments.

8. Analysis of the Policy Environment

Several state policies are in place that allow the indigenous peoples to assert their own priorities through the provincial budget. Throughout the Decade, there was continuous advocacy for direct citizen participation in the affairs of government at the local level. While the post-1986 period was especially highlighted by the return to power of the traditional ruling elite on the one hand, it is also characterized by the demand to widen and deepen the democratic space at the grassroots level on the other.

Decentralization: opening avenues for grassroots participation

The aspiration of indigenous peoples for autonomy is ultimately expressed by their attempts to claim the right to self-determination. Under a unitary government, however, granting full political autonomy to groups of indigenous peoples is not acceptable. Thus, the national government could only afford to share a minimum set of its powers with other claimants, keeping a large part for itself.

None the less, the passage of the Local Government Code in 1991 opened avenues for greater citizen participation in governance. Under the decentralized set-up indigenous peoples have a chance to participate in local development planning. Basic services, such as health, agricultural extension, and social welfare have also been devolved to local government units.

The downside, however, is that the respective national agencies still control a large chunk of the allocation for health, agriculture and social welfare, and these line agencies continue maintaining regional field offices in the performance their mandate.

Furthermore, government investments that are driven by the agencies of the central government occasionally result in the grave disregard for the free, prior and informed consent of the indigenous peoples.

Local Development Councils and Indigenous Peoples

Because the formal structures of government do not exactly provide for strong representation and participation of the local indigenous communities in governance, it might be instructive to look at an alternative modality where the impact of devolution and decentralization may be studied. It is useful for the purpose of this paper to see the dynamics of the exchange among the formal and informal structures in the province in their attempt toward more effective governance via the development councils.[16]

In Nueva Vizcaya, "people participation" is evidenced by the membership of people's organizations in the provincial development council (PDC). The PDC is the planning body that formulates the medium-term development plan at the level of the provincial government. It has the power to recommend the investment priorities that are then embodied in the Annual Investment Plan (AIP). The Provincial Planning and Development Office (PPDO), a department under the Provincial Government, serves as its Secretariat.

Since 1992 NGO's and other cause-oriented groups advancing indigenous people's rights and welfare sit at the Provincial Development Council. For instance, the Philippine Alliance for Inter-cultural Development (PAFID), the Tribal Cooperative for Rural Development (Tricord) and the Nueva Vizcaya Federation of Tribal Councils are influential members. The strong presence of the Alliance of Community Development Advocates (ACDA) — the largest network non-government organizations and advocates of "participatory governance"—is credited for pushing to forefront indigenous peoples issues and concerns.[17]

Direct participation of indigenous peoples, however, does not happen at the PDC level. Participation is more direct at the level of the barangay where a development council is also organized, as mandated by the same R.A. 7160. In Nueva Vizcaya, 165 of its 275 barangays already had organized their barangay development councils, and had underwent planning and budgeting workshops by the end of 2003. The output of the workshops was the respective medium-term barangay development plans and their corresponding proposed budgets.

It is interesting to point out that a task force assigned to the USAID-funded Governance and Local Democracy Project found that people participation in development planning and budgeting workshops was better in indigenous communities than in non-indigenous communities.[18] It appears that the tradition of participation and consensus building still influences the community life of the former. And since the core methodology of the workshops was participation and consensus building it, thus, proved easier to generate greater grassroots participation in barangays that were populated predominantly by indigenous peoples.

Fiscal Management Rules for LGU's

On 8 June 1993, the Department of Budget and Management (DBM) and the Commission on Audit (COA) passed Joint Circular No. 93-2 that provides the rules that LGU's had to follow as they began to exercise a greater degree of fiscal autonomy, although it was only in 1998 that the DBM released the accompanying manual. Still, they were refreshing developments in an environment where patronage politics was the prevalent culture. The absence of mandatory guidelines that could stand scrutiny for consistency and rigor had been exploited in the years immediately after devolution to suit elected officials. Accounting and auditing rules may have been rigid, yet did not effectively prevent graft and corruption.

Plan and Budget Linkage

The Code also provides a clear link between an approved local development plan and the budget in that the budget is defined as "...[A] plan expressed in financial terms that describes the sources and uses of funds." It is, thus, the blueprint of the financial and policy decisions that the local government will implement during a coming fiscal year. It is, therefore, a document that establishes control over the direction of change and the future.[19]

The four basic principles of planning and budgeting provided by the Code are:

1. "Local budget plans and goals shall, as far as practicable, be harmonized with national development plans, goals

and strategies in order to optimize the utilization of resources and to avoid duplication in the use of fiscal and physical resources" (Sec. 304h of the Local Government Code);

2. "Local budgets shall operationalize approved local development plans" (Sec. 305i);
3. "Local governments shall formulate sound financial plans. The local budgets shall be based on functions, projects and activities in terms of expected results" (Sec. 305g); and
4. "Budget of LGU's for the ensuing year shall include the following: (a) a brief description of the functions, projects and activities; (b) expected results for each function, project and activity; and (c) the nature of work to be performed, including the objects of expenditure for each function, project and activity" (Sec. 317b 3).

Executive-Legislative Budget Impasse – The Nueva Vizcaya Experience

Between 2001 and 2004 the weakness of the executive-legislative setup became apparent in Nueva Vizcaya. The legislative branch (Sangguniang Panlalawigan) disagreed with the priorities of the executive branch (the Office of the Governor in particular), resulting in a deadlock during the authorization phase of the budget preparation.

A look into the configuration of political parties at the time showed that the governor—who headed the executive branch—had the support of only a minority in the legislative branch. The legislative branch, thus, could and did challenge the priority projects reflected in the proposed budget, and exercised its authority to amend it. In response, the executive branch then wielded its veto powers on selected items in the budgets that were passed.

Consequently, during the last three years of the Decade, the provincial government of Nueva Vizcaya operated under re-enacted budgets—which meant that the budget that was last operative also became the basis of fund obligation and disbursement the following fiscal year. Which impasse mirrored the national ex-

perience. This is seen in the 2001-2005 statement of fund operation,[20] where the 20 percent Development Fund was reflected as a continuing appropriation in the absence of an approved budget. Thus, development projects previously identified such as new roads and other infrastructure, livelihood and other economic support projects, development of social services, and new projects in support of natural resource management were not implemented.

A number of factors account for the impasse. To begin with, there seems to be some confusion as to the scope and limits of the power respectively enjoyed by the executive and legislative branches of government. In the case of the 2002 Budget, for instance, the Sangguniang Panlalawigan pruned the proposed allocation for certain projects and instead reallocated the trimmed-off portions to projects of its choice—in the light of a provision in the 1998 DBM Local Budgeting Manual that states, thus: "The local Sanggunian may not increase the proposed amount in the executive budget nor include new items except to provide for statutory and contractual obligations..."

Secondly, there is a great deal of disagreement remaining unresolved regarding the planning and budgeting process, mainly because the executive and the legislative branches each has a different interpretation of the process. The Updated Budgeting Manual[21] addresses this source of irritation by recommending a multi-stakeholder Executive-Legislative Agenda building.

Thirdly, there is confusion as to the proper procedure for formulating the Annual Investment Plan (AIP), which is a part of the executive budget. The AIP is a tool for managing and supporting financially its medium-term sectoral plan, and the local development investment plan. There is a guidebook[22] prepared in 1994 by Department of the Interior and Local Government (DILG), National Economic Development Authority (NEDA), the Leagues of Provinces, Cities and Municipalities, and the Liga ng mga Barangay but compliance to it has not been monitored.

A fourth source is the absence of a mandatory timetable and deadline for the legislative body to act on the executive budget which is submitted to it on or before every 16th of October. The reason is that while the local chief executive is administratively and criminally liable if s/he fails to submit the budget on the deadline set the legislative branch is not, even if it fails to pass the budget

beyond, say December 31 of the year preceding the budget year. This, by the way, is a reason given by those pushing for the amendment of the Philippine Constitution toward a shift to the parliamentary system.

The Updated LGU Budget Process

The budget process is a very serious political concern. The Department of Budget Management has been advocating for an Executive-Legislative Agenda (ELA) formulation to be integrated in the budget cycle process. It can be noted that during the budget process being advocated, the multi-stakeholder consultation is being introduced.

Table 4. The Updated Budget Cycle

Phase in the Budget Cycle	Steps in the Updated Budget Process
Budget Preparation (July 1 to October 16 of the current fiscal year)	Issuance of the budget call (June 15-30 of the current fiscal year)
	Preparation of the Executive
	Multi-stakeholder consultation*
Budget Authorization (Begins October 16 of the current fiscal year.)	Presentation of the Executive Budget for authorization
	Deliberation on the Executive
	Enactment of the Appropriations
	Veto and override of the Budget
Budget Review (Ideally, budget authorization and review must be completed before the beginning of the budget year. However, experience shows that even the national government does not have a fully operative budget until the second quarter of the budget year.)	Preparation of the Budget Review Matrix
	Checking the provision for budgetary requirements
	Checking consistency with Annual/Supplemental Budget with Annual Investment Plan (AIP) and the ELA
	Issuance of the review action

Budget Execution (Begins as soon as the budget is declared operative, ideally the first working day of the budget year.)	Preparation of the Local Budget Matrix (LBM), Cash Program and Performance Targets
	Obligation and disbursement of funds
	Procurement of goods and services under the new Government Procurement System
Budget Accountability (Begins as soon as the first expenditure obligated is paid.)	Submit budget accountability reports
	Evaluation of physical, financial and income Performance
	Evaluation of the LGU performance

Source: DBM Planning Manual.

By conducting a multi-stakeholder consultation, the executive and legislative branches can discuss priorities to be incorporated prior to the authorization stage (see Step 3 in Table 4 above). Adhering to the Updated Budgeting Manual can, hopefully, reduce the existing practice where setting priorities typically follows partisan ends, and when some elected officials argue that in a representative democracy there is no more need to directly consult their constituents upon their election to office.

That had been the cause of the major setbacks during the ten-year development planning and budgeting exercises conducted in Nueva Vizcaya. A majority of the officials elected to the Sangguniang Panlalawigan contended that its power as "holder of the purse" was absolute. Hence, no matter how much consultation the executive branch employed to ascertain the budget priorities the majority of the members of the Sangguniang Panlalawigan nonetheless believed that the final decision on allocations still came from it.

Local Governments and Customary Laws

The Indigenous Peoples Rights Act (IPRA)[23] prescribes the formulation of an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) as a means to an ancestral domain certificate and title, thus, a making a big step toward determining the development direction of an ancestral domain. Within the domain, customary laws are recognized as a part of Philippine laws but the mechanisms to interface the domain with the established local government remain largely exploratory even today. For instance, the IPRA recommends the transformation of barangays established under the New Local Government Code in areas where the indigenous peoples are a majority into "tribal barangays." But how to go about this process remains unclear.

Nonetheless, in villages where indigenous peoples are a majority the recognized customary or traditional leaders are already the local government officials. But there also are classic cases when non-indigenous persons with economic interests in the localities inhabited by indigenous peoples use the local government as a means to political power.

In non-homogenous communities a complicated issue is emerging in connection with the sourcing the development of the ancestral domain/s, given that the control of the budget is lodged in the local government/s.

9. Analysis of Income Trends

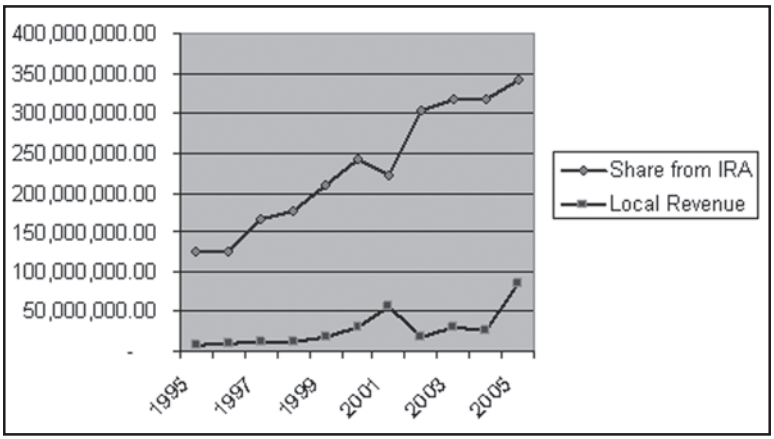
The income of the province from 1992 to 1998 depended largely on its share from the internal revenue allotment (IRA). According to R.A. 7160 the local government units are entitled to a total of 40 percent of the total internal revenue collection of the national government coming from income taxes, estate and donor's taxes, value-added tax, other percentage taxes, and taxes imposed by special laws such as customs duties, travel tax and others.

The internal revenue allotment for local government units is then distributed as follows: provinces are entitled to 23 percent,

cities to 23 percent, municipalities to 34 percent and the barangays to 20 percent.

From a base of 25 percent equal share, the respective internal revenue allotments for provinces, cities and municipalities will then differ amongst the local government units based on the population criterion with a 50 percent weight, and the land area criterion given a 25 percent weight. Thus, local government units with bigger land areas and with larger populations enjoy larger internal revenue allotments. Barangay allocations start from a base of P80,000 per barangay for those with a population of 100,000 or more, plus the computed equivalent of the population criterion with a weight of 60 percent and an equal sharing criterion with a weight of 40 percent.

Figure 3. Trend in Revenue Province of Nueva Vizcaya 1995-2005



Source: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

From Figure 3 above, it can be seen that the share from IRA of the provincial revenue increased by an average of 8.78 percent from 1995 to 2005. Except in 1996 and 2001 when a decrease was noted, the IRA consistently increased annually. When a sudden drop in the IRA was experienced in 2001, revenue from local sources compensated for the loss.

Figure 3 also shows that revenues from local sources started to increase in 1999 after the provincial government introduced reforms in the real property tax system and actively initiated tax campaigns. Still, a study conducted by the Governance and Local Democracy Project[24] shows the inefficiency in the tax effort because for every peso of realty tax collected the government spent some P1.49 (a ratio of revenue to cost of 1:1.49). This is true not only in Nueva Vizcaya, but in practically all LGU's since the assessed value of real property is unrealistically low.

Box 1. Casecnan: A Case of Asserting Indigenous People's Share of the Local Taxes

Revenue from local sources started to go beyond the then existing tax base in Year 2000 because of the aggressive tax campaigns that were mounted. Uncollected taxes and penalties do remain because implementing the legal remedies to enforce payment was difficult and not attractive to the political leaders.

The Bugkalots of Casecnan initially expressed their opposition to the plan of building a hydroelectric and irrigation facility in their ancestral domain in 1994. However, they eventually agreed to let the project proceed when the national government promised to bring development projects to mitigate the project's unfavorable impact. From the beginning, the Bugkalots hoped to benefit from the taxes that California Energy would have to pay.

The provincial government initiated measures to collect real property taxes from the Casecnan project, and when it was resisted, a court battle ensued that was eventually decided in favor of the LGU. The court ruled that California Energy must pay the province the amount of P250M (US$5M) in taxes, litigation costs and penalties. While California Energy did appeal the lower court's decision it, nonetheless, had to pay, albeit "under protest." (Existing jurisprudence prescribes that a taxpayer could only lodge a protest after the tax is paid.) The Bugkalots were among final beneficiaries because their barangays were entitled to 25 percent of the P250-million of local taxes that were collected. The share was, thus, entered as income in the 2006 Budget. Currently, the real property assessment for taxation purposes of telecommunications and power companies have also been done, the notices of the levy delivered and are now under negotiation.

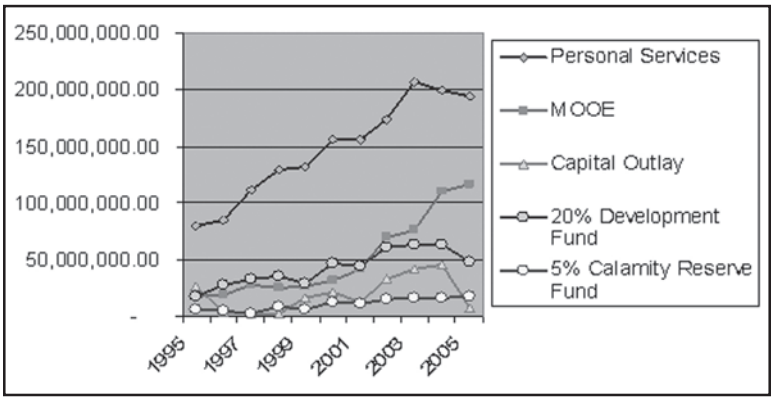
Sources: Various Newspaper Articles, 1994 and 2005.

10. Analysis of Expenditure Trends

The sad reality in government allocation, both for the national line agencies and LGU's alike, is the fact that the bureaucracy is so huge that more than half of the funds is eaten up by personal services (PS). Legally, LGU's can spend 45 to 55 percent of their total income for personal services, depending on its income level classification (Sec. 325a of the Code).

The Commission on Audit reported that the expenditures on personal services in 2005 of the Provincial Government of Nueva Vizcaya exceeded P38.2 million, the excess being mainly due to non-mandatory personal expenditures, such as employee benefits, increase in representation and traveling allowances, and honoraria of special working bodies like the Local Finance Committee and the pre-bid and awards committees.

Figure 4. Trend in Expenditures Province of Nueva Vizcaya 1995-2005



Source: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Utilization of the General Fund

It proved to be quite difficult disaggregating the uses of the general fund in such a way that expenditure amounts going to a particular beneficiary, such as the indigenous peoples, could be determined. While we see above that 55 percent of LGU income goes to personal services, there is no easy method to monitor how government employees allocate their working time to a particular clientele or sector.

Neither are there established systems that are capable of disaggregating data to monitor how services delivered by the LGU are distributed among its different constituent beneficiaries. In fact, even the provincial demographic data are not officially disaggregated yet by ethnicity[25] — the most effective way to identify who among the population are indigenous peoples.

Therefore, the likely beneficiaries of the general fund are best seen through the programs, projects and activities that are implemented by the different departments of the provincial government. The Code identifies three main sectors of public services: (a) Social Services; (b) Economic Services; and (c) General Public Services that the LGUs are mandated to provide.

Social Services: Health

The Provincial Health Office (PHO) is the agency mandated to manage preventive health care, in partnership with the Department of Health (DOH), 15 municipal health offices, and the barangay health workers. The PHO is also linked with the United Nations Fund for Population Activities (UNFPA) in actively advocating reproductive health—the new strategy addressing maternal health care and population concerns that tones down the often aggressive birth control campaigns that antagonizes the predominantly Catholic constituency.

In the northern district there is no provincial government-operated hospital. The area is served by the Veterans Regional Hospital (VRH), which is operated by the DOH. It effectively serves the Gaddang communities of Bayombong, Solano and Bagabag. Oth-

erwise, public health care is the job of the single tertiary provincial hospital in Bambang, and three satellite hospitals: Kasibu Municipal Hospital, Dupax District Hospital and Lt. Tidang Memorial Hospital in Kayapa.

The Nueva Vizcaya Provincial Hospital is an accredited tertiary hospital; in 2003 it expanded its bed capacity with a new six-room private ward that is now operational.

It is easily accessible to the Isinai communities of Bambang and Aritao, and the Kalanguya and I'wak communities of Santa Fe and Aritao

The three satellite hospitals are located in areas where indigenous peoples are predominant. Kasibu Municipal Hospital is in the area where the Ifugao and Bugkalot are the majority. Dupax District Hospital is located at the center of the Isinai, Bugkalot and Igorot communities. Lt. Tidang Memorial Hospital is in the Kalanguya and Ibaloi ancestral domains.

There are some interesting observations from the statistics on health service facilities in the table next page. While there seems to be a close match between the distribution of hospital beds to population served (i.e., a total of 19% of total accommodations for some 23% of the total population), on average there was only about 41 percent occupancy for the three hospitals in 2002. This compares with the 98 percent bed occupancy in the Provincial Hospital and 85.7 percent bed occupancy at the Veterans Regional Hospital during the same year.[26]

The Provincial Nutrition Office is a special office under the Governor and is tasked to coordinate the nutrition programs of the province. Together with the Provincial Social Welfare and Development Office and the Provincial Health Office, it runs such programs as Operation "Timbang" and supplemental feeding.

Table 5. Hospital Capacity, Occupancy Rate and Catchment Area 2000-2002

Hospital	No. of Beds	Bed Occupancy Rate			Catchment Area	Aggregate Pop'n Served
		2000	2001	2002		
Veterans Regional Hospital	200 (65%)	89.86	89.34	85.70	North Nueva Vizcaya, Ifugao, Quirino & South Isabela	202,679 (53%)
NVPH	50 (16%)	72	87	98	Santa Fe, Aritao & Bambang	89,797 (24%)
DDH	25 (8%)	55.28	56.69	55.30	Dupax del Norte & Dupax del Sur	40,824 (11%)
KMH	10 (3%)	50.7	43.6	58.7	Kasibu	29,139 (7%)
LTMH	25 (8%)	15.6	12.16	10.8	Kayapa and nearby barangays of Benguet	19,269 (5%)
Total	310 (100%)					381,708 (100%)

Source of basic data: Nueva Vizcaya Socio-Economic Profile, 2003.

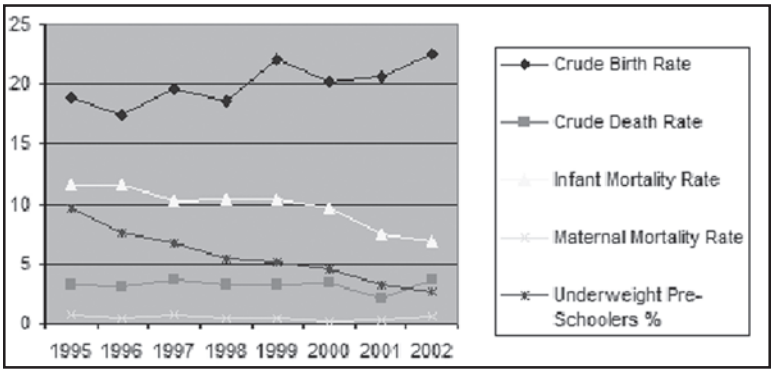
Basic Health and Nutrition Indicators[27]

As of Year 2002 the crude birth rate (i.e., number of live births per thousand population) was 22.51, slightly lower than the national crude birth rate of 25.70 (see Figure 5 below). It is to be noted that population control measures have shifted from the traditional birth control approaches (e.g., use of contraceptives) toward the promotion of good reproductive health practices (e.g., maternal health care, prevention of teenage pregnancy, etc.) which are coordinated by the UNFPA. The latter type of programs tends to find favor with the Roman Catholic Church.

The crude death rate in the province was relatively stable at three to four persons per 1,000 population from 1995 to 2002. In 1999, the number of total deaths registered at 1,180, with a crude death rate of 3.24 per 1,000 population—the highest incidence of mortality being observed at the age range that was above 65 years.

There is a slight improvement observed in infant care during the last five years. While the 1995, Infant Mortality Rate (IMR) was 11.52 out of 1,000 live births, the record improved such that by 1999 it was 10.42 out of 1,000 live births. But the biggest improvement was observed during the period from 1999 to 2002 when IMR dropped from 10.42 to 6.87. In 1999, 7.03 percent of all deaths was among infants, the number one cause being pneumonia, followed by complications from premature births.

Figure 5. Health Indicators Province of Nueva Vizcaya, 1995-2002



Source: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Maternal Mortality Rate (MMR) was kept to a minimum of less than one death per thousand population for the past eight years. Even the 1999 value of 0.37 was still below the regional 0.60. The low rate could be attributed to the increasing awareness of protecting and promoting the health of mothers and children. In 1998, the proportion of skilled health personnel attending to total births was 91.20 percent; 76 percent of pregnant women had at least three pre-natal examinations.

Likewise, the incidence of malnutrition in the province among preschool children has dropped from 9.6 percent in 1995 to 5.41 in 1998, in the moderately- and severely-underweight category. It was also the age group that registered the highest incidence of malnutrition, and compared with the level of 4.91 percent for the region, Nueva Vizcaya's situation was worst among the provinces in Region II. A significant improvement was noted since 2000, however, when the incidence of malnutrition dropped to 4.48 percent, which dropped further to 3.25 percent in 2001, and eventually to 2.68 percent in 2002.

Social Service: Basic Education[28]

Participation Rate. According to the Department of Education (DepEd), the participation rate at the elementary school level was at 67.04 percent in 2002[29]—lower than the regional figure of 94.57 percent. The trend, however, fluctuates. In school year 1996-1997, for example, the total participation rate (both public and private) was 103.60 percent, surpassing the total participation rate in the region. During the school year 2002-2003, the rate was 93 percent for those attending public schools, and a low seven percent among those in private schools.

Of the 15 municipalities, Bambang, Dupax del Norte, Solano, Villaverde and Alfonso Castañeda registered the highest participation rates—more than 100 percent that could be attributed to: (a) the entry of students less than seven years of age; (b) re-entry of dropouts and those older than 12 years; and (c) possibly, the cross-enrollment of students from another municipality.

On the other extreme, the low participation rates are registered in Ambaguio (47.24%), Kasibu (82.67%) and Kayapa

(87.64%) which could be traced to the scarcity of teachers and classrooms. The situation is further aggravated by the inaccessibility of the schools due to rugged terrain, poor road conditions, and distance from home, as well as to financial difficulties. Note that these municipalities are predominantly populated by IP's.

At the secondary or high school level, enrollment in school year 2002-2003 reached 28,600—76 percent of enrollees were in public schools while 24 per cent went to the private schools.

There were eight tertiary institutions with an enrolment of 32,942 students in SY 2002-2003. Students included those from neighboring provinces who preferred to enroll at Saint Mary's University and Nueva Vizcaya State University—the two institutions in Nueva Vizcaya with the higher level of accreditation.

Teacher: Student Ratio. The teacher to student ratio in the public elementary schools for SY 2002-2003 was 1:30. However, 49 schools had a teacher-pupil ratio below the 1:40 standard. In public secondary schools, the average teacher-pupil ratio is 1:40 but teacher distribution remained uneven so that in 12 public high schools, a typical teacher handled more than 40 students.

Classroom: Student Ratio. The average classroom-pupil ratio in public elementary school is 1:27, within the 1:45 standard set by the Department of Education. But there are 11 elementary schools that need additional classrooms. The Daclig Primary School in Ambaguio, in fact, has no classroom at all.

It is at the public high schools, however, where the need for additional classroom is a greatly felt need because the existing ratio is 1:53, which is below the standard. More than 50 percent of the public high schools have classroom-student ratio not within the 1:45 standard. The worse situation is in Bambang National High School where one classroom has to accommodate 126 students.

The Special Education Fund. The provincial school board is the local special body that is tasked to oversee the province's concerns on education. One of its main functions is the management and administration of the Special Education Fund (SEF) from a local revenue source that is equivalent to 50 percent of taxes levied on real property. Because of the improving performance of real property tax administration in the province, more teachers are

now being paid and additional school buildings constructed out of the fund.

Economic Services

Agricultural and Fisheries Extension Services.[30] The provincial agriculture office compliments the Department of Agriculture's food security thrust which concentrates on rice, corn and fish production. The indigenous peoples of the province are its potential major beneficiaries because they are dependent on imports of rice from the lowlands — the production areas in the indigenous communities being extremely limited to produce sufficient quantities for consumption.

The agricultural support services in the province are focused on strengthening the technical capability of the municipal agriculture offices in delivering extension services, research and commodity specific development projects.

Based on 1997 fisheries data, only 76 hectares of land were devoted to fish culture — 77.63 percent of which were backyard fishponds, and only 22.37 percent were commercial ventures. This explains why fish sufficiency level in the province remains at less than one per cent.

Veterinary Services.[31] The services of the Provincial Veterinary Office are devoted mainly to animal disease control and upgrading the quality of breeder stocks. It is also tasked to ensure meat sufficiency because data show that since 1994 there already was a growing net deficiency in meat supply registered in the province. The deficit in beef is attributed mainly to a national policy reverting all lands used for cattle ranching back to their original state as forests and watersheds, while the deficit in pork and poultry is explained by the periodic the outbreak of animal diseases from 1994-98.

Table 6. Meat Sufficiency Level Nueva Vizcaya 1994-1998

Beef	1994	1995	1996	1997-1998
Production available for supply (MT)	615	625	720	782
Consumption (MT based on the projected population)	1,463	1,495	1,525	655
Surplus/deficit	(848)	(870)	(805)	127

Pork	1994	1995	1996	1997-1998
Production available for supply (MT)	3,065	2,974	2,593	3,136
Consumption (MT based on the projected population)	3,312	3,384	3,456	3,498
Surplus/deficit	(247)	(870)	(805)	(362)

Poultry	1994	1995	1996	1997	1998
Production available for supply (MT)	560	482	770	716	732
Consumption (MT based on the projected population)	1,748	1,785	1,823	2,552	2,609
Surplus/deficit	(1,188)	(1,303)	(1,053)	(2,481)	(1,877)

Sources: NEDA TRP 1994-1996 and Food Security Workshop, 1997-1998.

Cooperatives.[32] The province had a total of 351 cooperatives registered with the Cooperative Development Authority (CDA) as of 1999. Of that number, 56 percent were deemed active and functioning, while a large 44 percent were inactive or not functioning. As a consequence, most inactive cooperatives have had their registrations canceled by CDA.

The province registered a growth of 66 cooperatives on average per year. There already are 23 cooperatives that have reached the million-peso asset mark, and one cooperative a year on average surpasses the million peso asset standard. Between 1996 and 1999, the number of millionaire cooperatives increased by five, and their total collective assets increased by P54.4-million. Cumulatively, all 23 cooperatives have posted a total of P371,539,160 in assets.

Most of the cooperatives in the province are in agriculture-based enterprises but their major programs are concentrated on credit and financing. A Nueva Vizcaya Federation of Cooperatives is established, with the Alay Kapwa MPCI and the Solano Rang-ay Credit Cooperative as lead incorporators. The federation aims to provide the necessary support to enable cooperatives to venture into larger investments that could sustain their operations and finances.

Where cooperativism has taken root, it has grown to maturity as evidenced by two national Most Outstanding Cooperative awards received by the Alay Kapwa MPCI among multi-purpose agricultural cooperatives, and by the St. Vincent Parish Credit Cooperative among credit cooperatives. But with 15 municipalities in the province there is room for improvement with only six municipalities actively incorporated with the federation at the moment: Solano, Bayombong, Bagabag, Quezon, Ambaguio and Diadi.

Natural Resource Management[33]

Forest denudation, intrusion of roads and encroachment of settlements in protected areas have contributed their share to the rapid erosion of land in parts of the province. Considered severe are the 56,046.00 hectares (or 22.27%) of the protected forests,

while moderately eroded are 172,107.00 hectares (or 68.41%) of protected forests. The nearly 98 percent of the entire protected forest that is eroded has indications that human activity is the cause. This problem of erosion pervades almost all parts of the province, especially along the road systems, posing danger not only to life, but also to property.

This places the indigenous peoples in severe jeopardy since they inhabit areas that are classified as protected — not all the time because they chose to, but as a consequence of their marginalization in the lowlands. Since 1992, thankfully, the Provincial Government exerted efforts to protect its forest resources. The LGU co-managing the forests with the Department of Environment and Natural Resources (DENR), together with the Tree-for-Legacy Concept, contributes to restoring the forest cover of the province that has been encouraging.

Co-management was a breakthrough in watershed management, particularly at the 439-hectare Barobbob Watershed and the 24,500-hectare Lower Magat Forest Reserve. On these sites the LGU, the DENR, and watershed occupants themselves join forces in forest protection, at the same time that economic opportunities are provided therein.

The Tree-for-Legacy Program is, so far, providing the better alternative to traditional reforestation. Its component activities include a "tree for legacy" which is reforestation within protected areas whereby a tree planted under the program is not to be cut, but will be left as a planter's legacy. The "tree for education" component is for elementary, high school and college students where trees a student plants can be later sold (whether it remains standing or is cut) in order to pay for his/her education. The third is the "tree for enterprise" where an entrepreneurs can avail of land for the purpose tree production on commercial scale and purpose.

The indigenous peoples are, however, more inclined toward securing tenure using as their avenue the Indigenous Peoples Rights Act (IPRA). Applications for the Certificates of Ancestral Land Titles are processed by the National Commission on Indigenous Peoples (NCIP).

General Support Services: Roads and Other Public Utilities[34]

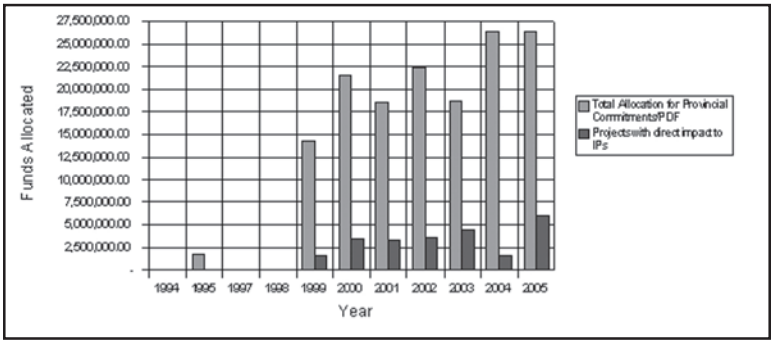
In 2003 and 2004, a P4 million provincial commitment fund was allocated for irrigation; in 2005, the Provincial Engineering Office (PEO) was tasked to implement the P8.2 million provincial commitment fund for road and irrigation improvement out of the general fund. Priority was given to the opening and improvement of roads serving the areas inhabited by indigenous peoples.

In Kasibu, for instance, P1.5 million was committed to open and improve access roads. Appropriation for transport fuel (e.g., P1.7 million in 2003) also is being regularly committed by the provincial government so that a fast response to emergencies is possible, e.g., to clear of landslides blocking provincial roads, and to repair irrigation canals. There is a provincial waterworks system serving Bayombong and Solano. The system has been improved to become self-sustaining after the water metering- and bill collection systems were established.

But the province while allocating heavily on roads is hampered by a shortage in the work force and equipment to allow it to implement all funded projects during the year. Furthermore public utilities, such as electricity and telecommunications, have not been devolved to the local government unit.

The increase in revenue beginning 1999 allowed the provincial government to set aside funds beyond the mandatory allocations provided by the Code and DBM rules. Such funds, called provincial commitments (see Figure 6 next page), were used to fund high impact General Support Services projects that the provincial leadership identified. Projects funded by provincial commitment would no longer compete for a share in the 20 percent of the internal revenue set aside for development projects.

Figure 6. Indigenous Peoples' Share in "Provincial Commitments"



Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

At the most, projects with a direct impact on indigenous communities got a share of close to one-third of the total provincial commitments.

Utilization of the 20% Development Fund

The development fund of the province—20 percent of the IRA—is devoted to the following five development investment areas:

1. Development administration;
2. Economic development;
3. Social development;
4. Environment and natural resources; and
5. Infrastructure.

Five committees have been organized—one for each development area, and every area is given a tentative ceiling with which to work. A committee is tasked to review the project proposals from agencies, NGOs and peoples organizations that request want to access to the 20 percent development fund. A set of criteria, agreed upon by a committee, is used to determine the respective priority projects to be funded.

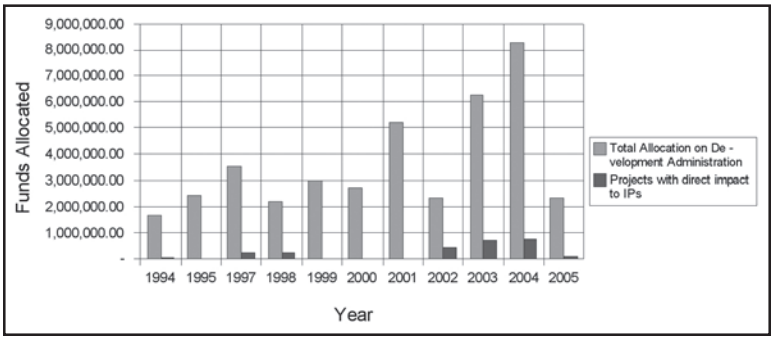
Development Administration. This investment area addresses management concerns, such as the improvement of the real property tax administration, community affairs and information, project monitoring and evaluation, etc. Programs, projects and activities that are funded in this sector are for the general constituency, and hence, do not directly address indigenous peoples' concerns in most cases.

Local development policy is one critical area for indigenous peoples. Inasmuch as their lands are subjected to pressure due to state-planned development projects, stronger mechanisms allowing peoples participation in decision-making were pursued. In 1996, the USAID-funded Governance and Local Development Project assisted in operationalizing such participatory mechanisms. However, the experiment stage was disorderly in as far as the budget was concerned. The Provincial Development Council was accused by the Provincial Board of usurping its powers in allocating the resources and passing the budget. (This explains the absence of a budget data for 1996. The provincial budget office could not show an official copy of the approved budget for 1996 after the Sangguniang Panlalawigan questioned the budget prepared.)

Hence, from 1997 the provincial government allocated a bigger share for the operation of the Development Administration sector and the systematization of the operation of the Provincial Development Council begun (see Figure 7 next page). It can be observed that only a very small percentage of the budget was devoted to indigenous peoples concerns for the period 1997 to1998, but had increased dramatically in 2002, 2003 and 2004.

The operation of the PDC has likewise improved, including the tax collection measures which the provincial government pursued and that benefited the indigenous communities.

Figure 7. Indigenous Peoples Share in Development Administration Allocation to Total



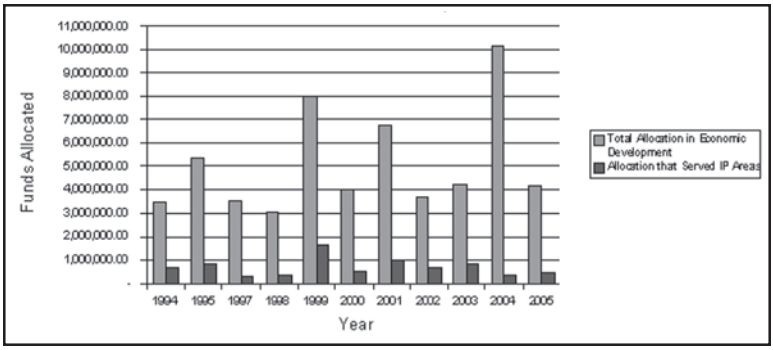
Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Economic Development. Thus far, the fund allotment for economic development was directed largely to the needs of the lowlands. For instance, the Provincial Agriculture Office has been limited to assisting commercial agricultural production in the attempt to reach its optimum level. Thus, few among the indigenous peoples were able to avail of the services of the office. Planting materials that were distributed (e.g., fruit tree seedlings, tissue-cultured banana plantlets, coconut seedlings, rice, corn and vegetable seeds) hardly reached the indigenous peoples' communities in the uplands.

The biggest single project funded from this account was the P4-million annual allocation that was given to the development of the lowland irrigation systems since 1999. The average share of indigenous peoples, about P500,000 annually, usually funds small economic projects, such as the acquisition of planting material and agricultural inputs, that are channeled mostly through farmers' groups and cooperatives.

The largest share that went to the indigenous peoples was recorded in 1999 (see Figure 8 next page). This share went to the establishment of a training center in Malabing Valley for orchard agriculture development.

Figure 8. Indigenous Peoples Share in Economic Development Investment

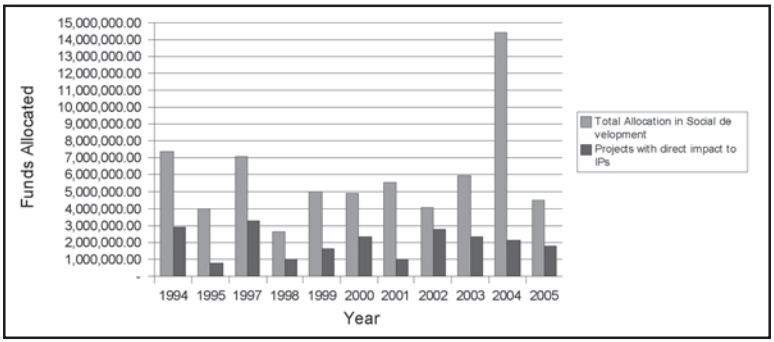


Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Social Development. The allocation for social development had the large allocation for indigenous peoples. Health delivery was the service that had the longest reach to the areas where indigenous peoples were predominant. The needs of the four provincial hospitals, strategically located in areas mostly occupied by the indigenous population, were top funding priority from the 20 percent development fund.

The share of the indigenous peoples was the highest recorded in 1994 and in 1996 as seen on Figure 9 next page when the provincial government established three satellite hospitals in indigenous areas, namely: the Lt. Tidang Memorial Hospital in Kayapa, the Kasibu District Hospital, and the Dupax District Hospital. Annually, the average share share of IP's from the allocation to this investment area was P2.007M or 33.67 percent of total funds. The highest recorded total allocation for the investment area was in 2004, and mainly it was to finance the upgrading of the Nueva Vizcaya Provincial Hospital to a tertiary-level medical facility.

Figure 9. Indigenous Peoples' Share in Social Development

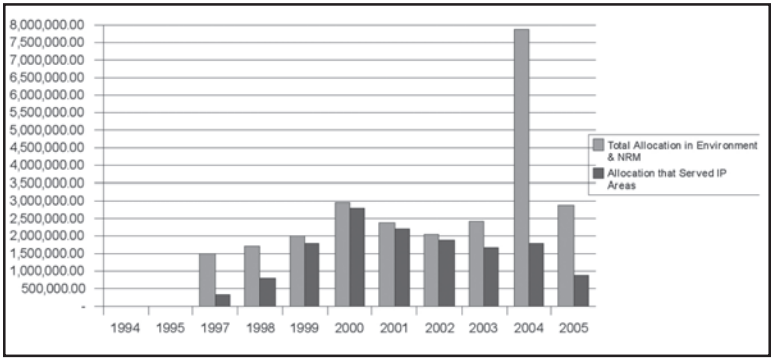


Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Environment and Natural Resources. Programs, projects and activities having a direct impact on indigenous peoples were regularly a priority in the investment area on environment and natural resources. Although created only in 1997, its forest management policies became so popular as to challenge convention and, thus, became sanctioned by the Department of Environment and Natural Resources (DENR), especially the "Tree-for-Legacy" Program. The program finally recognizes the indigenous peoples as occupants of the forest—not its "squatters," as they were formerly treated—and, therefore are its "co-managers." Thus, the Lower Magat Forest Management Reserve became acknowledged as one of the country's first DENR-LGU co-managed forest.

The highest share enjoyed by the indigenous communities was in 2000 (see Figure 10 next page) when nearly all the allocation considered for this investment area benefited the indigenous peoples. The Provincial Environment Office undertook projects operationalizing the TREE-for-Legacy project. The Lower Magat Forest Co-Management concept was launched then, using the funds from the allocation for the investment area. On average, annual share of indigenous peoples is 54.6 percent, or a little over P1.5M.

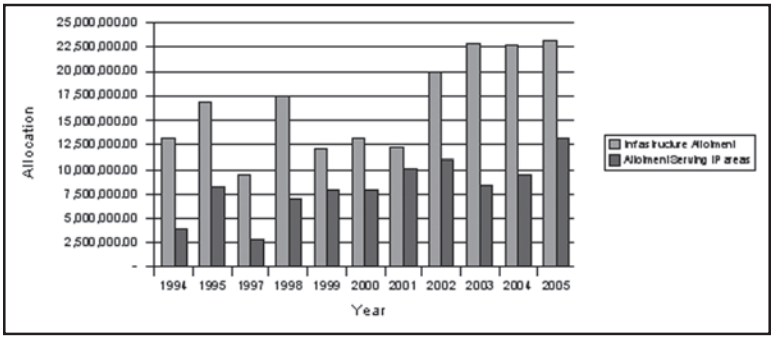
Figure 10. Indigenous Peoples' Share in Environment and NRM



Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

Infrastructure Sector. This is the investment area that regularly obtained the lion's share of the annual development fund — and in the past 10 years, allocation to areas inhabited by indigenous peoples enjoyed high priority. As seen in the Figure 11, infrastructure projects serving areas inhabited by indigenous peoples, mostly located in the uplands, were funded by almost half the total appropriations for "infrastructure." Projects that benefited indigenous peoples' communities was 48.75 percent of total average annual allocation.

Figure 11. Appropriations for Infrastructure Development Province of Nueva Vizcaya



Source of basic data: Provincial Budget Office, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

11. Other Fund Sources for Public Services

Aside from the internal revenue allotment, municipal and barangay incomes also come from their respective shares in the local taxes and other levies. Solano had the highest annual income, while Ambaguio the lowest. On average, a barangay had an annual income of P600,000. To implement their respective mandates the line agencies of the national government (e.g., the Department of Environment and Natural Resources, Department of Agrarian Reform, Department of Health, Department of Education, Department of Public Works and Highways, among others) are funded from their agency's regular and special allotments.

The Priority Development Assistance Fund (PDAF) of a member of Congress is another source of funding for the delivery of public services. Informally, the "congressional pork barrel" involves the "insertions" that are made by legislators in the budget that is proposed by the executive branch. The "pork" then finances the pet projects of legislators in their respective districts and constituencies. A congressional representative, for instance, had a P40-million PDAF at his/her own disposal — reduced from P60-million in the face of mounting criticism against the "pork barrel" system.

Special projects typically foreign assisted, such as the EU-funded Caraballo and Southern Cordillera Agricultural Development Programme (CASCADE) also contribute to the alleviation of poverty in Nueva Vizcaya. CASCADE was an offshoot of the Earthquake Rehabilitation Programme in 1990, and was funded by a €9.78M grant that officially started August 1997 and ended in December 2004.

12. The First Decade's Objectives and Nueva Vizcaya's Provincial Budget

Whether the allocation in the provincial government budget was in line or not with the objectives of the First Decade of World's Indigenous People may be evaluated by looking at the following:

1. How the budget process allowed the indigenous peoples to participate in planning and decision making;

2. The levels of appropriation actually spent for programs, projects and activities that directly affected the areas inhabited by indigenous peoples, and the non-area specific programs, projects and activities that likewise addressed their concerns; and
3. The expected outcomes of these programs, projects and activities on the rights and well-being of indigenous peoples.

Re. Point 1. It is necessary that indigenous peoples are represented as stakeholders in governance. The avenues that were opened by the New Local Government Code for participation, e.g., in special government bodies, should be used by indigenous peoples to advance their interests.

The process adopted by the provincial government in preparing its annual budget opened avenues for the participation of indigenous peoples, especially at the Provincial Development Council and other local special bodies. Further, participation was welcome not only at the provincial level but at the municipal and barangay levels, as well.

Although elected officials were sometimes hesitant to share power with their constituents, a familiar experience in Nueva Vizcaya, by asserting their rights indigenous peoples and their non-government organization partners persisted om their efforts to influence the process of development planning and budgeting thereby yielding them more favorable results.

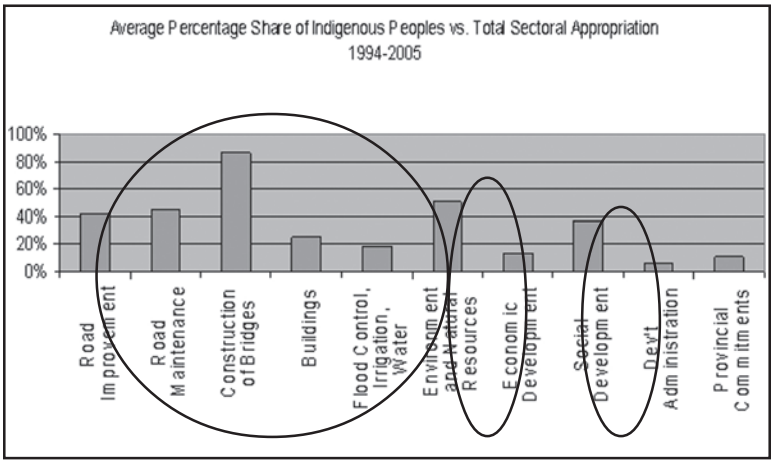
There is, however, the urgent need to determine the mechanism that will achieve the interface between custom law and state law through a consultative process, as provided in the Indigenous Peoples Rights Act. The experiment establishing the so-called "tribal barangay" might finally signal the recognition of the effectiveness of traditional governance in indigenous societies. In as much as direct citizen participation is the norm under custom law, the consultative processes operating in indigenous societies may then effectively substitute for the tasks assigned to local special bodies, as provided for under the New Local Government Code.

Re. Point 2:

1. Among the investment areas that enjoyed appropriation in the provincial budget, it was for "infrastructure" that obtained the biggest. It was also the sector where the bigger part of the appropriation for programs, projects and activities were delivered to indigenous peoples' communities.

   Thus, where the indigenous peoples were a majority, they also were the beneficiaries of a larger share of the bridges, roads, buildings, irrigation, flood control and water projects that were the most typical infrastructure investments.

Figure 12. Average Percentage Share of Sectoral Appropriations Directly Benefiting Indigenous Peoples Province of Nueva Vizcaya



Sources: Working Tables, Consolidated Statement of Income and Expenditures, Province of Nueva Vizcaya, 1995-2004.

2. Programs, projects and activities covered by the investment area on environment and natural resources were ranked second to infrastructure that were allocated the highest budget appropriation. They, likewise, provided the second largest benefits to indigenous peoples. Expenditures included programs, projects and activities that were

related to resolving the tenurial problems in the uplands, and measures to protect existing forests.

Still, those measures need to be interfaced with IPRA. In implementing them the local government asserts that alternative modes regarding usufruct rights be explored as the bases for granting tenure to forestland occupants. The Department of Environment and Natural Resources (DENR), while receptive to the idea of considering forest occupants as "social fences" in order to protect the remaining forests, nonetheless still finds the LGU position to be incompatible with its existing policies.

3. Programs, projects and activities for social development was third in rank among the expenditure categories that benefited indigenous peoples. The expenditures went largely to the four government hospitals operated by the province. As earlier pointed out, these hospitals are located near the areas inhabited by indigenous peoples.

4. Other Programs, Projects and Activities

   The Provincial Government of Nueva Vizcaya invested least in non-infrastructure types of economic support services—investing only about 15 percent of its total expenditure to this category. Expenses, such as the provision of agricultural inputs and extension support, were directed to the lowlands where intensive agricultural production was located.

   Indigenous peoples also got a meager share in the appropriations for "development administration and provincial commitments." Expenditures in this category went to management-related activities, and amortizing the debt incurred by the provincial government. The only expenditure that benefited indigenous peoples were for those activities related to strengthening the local special bodies to accommodate better citizen participation in local governance.

Re. Point 3:

1. In terms of outcomes, the opening of roads and building of bridges was beneficial to indigenous peoples in ways

that are pointed out hereunder. Less time is needed to transport goods to and from the nearest marketplace—a boon especially to the Igorots in the vegetable industry, because of the perishable nature of their produce. They allowed the Ifugao communities of Kasibu to develop their multi-million orchard industry starting with citrus, and now other high value fruit trees because the roads are now passable year round.

They likewise provided easier access to social services, especially to hospitals where professional help could be immediately availed. The remote municipality of Ambaguio is now no longer isolated from the rest of the province.

The downside, however, is that improved accessibility to the once isolated communities also now exposes them to an increasing incidence of intrusion of their ancestral domains, resulting to the potential uncontrolled exploitation of the natural resources.

2. The outcomes of the programs in the environment and natural resource sector — especially the programs that institutionalized "social fences" recognizing forest occupants as partners in forest management — serve as an antidote to the potential negative impact on the ancestral domains of better accessibility provided by the improved road system.

3. Expenditure on social services contributed to the improvement in the health and nutrition indices. Infant and maternal mortality rates were effectively contained within acceptable standards. Malnutrition was also dramatically reduced within the decade.

Box 2. Validation of Selected Budget Outcomes from a Recent Survey

To determine some specific outcomes, this study used the result of a survey conducted from October 2005-July 2006 among 540 respondents randomly selected from the list of indigenous households. The survey was aimed toward assessing the level of satisfaction of the households from the basic services provided by government. The results show the following:

On Health Services:

Of the 218 respondents who availed of health services recently, 22 (10%) rated the service of the health facility visited as very satisfactory, 169 (77.5%) said it was satisfactory, 26 (12%) were not satisfied and only one (0.5%) rated it poor. When the 218 respondents who visited a health facility in the previous six months were asked, 134 (61.5%) said they were attended to by a medical doctor, 26 (12%) by a nurse, 49 (22.5%) by a midwife, and nine (4%) by a *barangay* health worker.

On Accessibility:

Three hundred of the 540 respondents (55.5%) said the road from their farm to the nearest market was passable by land vehicles any time of the year; 152 (28%) claimed the roads were sometimes not passable; 87 (16%) responded that the question was not applicable to them as they were not farmers; and one (0.5%) had no answer.

On Access to Land:

Three hundred sixty five of 540 respondents (67.5%) thought that the government respects their "ownership" of the land they till despite the inherent limitations in securing formal tenure instruments. The opinion was attributed to the provincial government's aggressive campaign to adopt alternative tenurial options in the uplands.

13. Conclusions and Recommendations

The commitment made by governments to faithfully observe the various United Nations instruments to respect human rights, including civil and political rights, are mere words contained in documents, unless translated to appropriations in the budget. At the very least, funding guarantees the observance of some of those rights at some minimum level (e.g., to maintain a police force that protects a person's right to live or one's right to one's property). Not to mention the appropriations needed to fulfill their commitment to economic, social and cultural rights, i.e., those that guarantee access to livelihood opportunities, education and health services, and other public goods,

Hence, the following recommended actions are proposed:

1. Because a country, rich or poor, never have the necessary resources available to meet all existing needs, deciding where its scarce resources go is a central decision for its government. Thus, the paper, *Dignity Counts*, proposes that the technique of budget analysis be used as a tool to advance human rights.[35] In a wide range of countries around the world, pro-poor groups have discovered that developing the capacity to analyze, understand, and influence the budget can be a powerful advocacy tool to advance rights issues. The national budget, the budgets of states or provinces, and even budgets of local communities are subjects for scrutiny and study. The ability to engage in the budget process can help human rights organizations in several ways, including:

    1.a. Measuring the commitment of governments to specific policy areas, and contrasting that commitment with other areas;

    1.b. Determining the trends in spending on program areas in order to ensure that programs aimed at meeting human rights commitments receive their rightful share in the budget across time;

    1.c. Estimating the cost of policy proposals and their alternatives;

    1.d. Analyzing the impact of budgetary choices on people;

1.e. Assessing the adequacy of budgets relative to international or local conventions and commitments; and

1.f. Identifying possible new sources of funding for the policies proposed.

Since the United Nations General Assembly voted to adopt the Declaration on the Rights of Indigenous Peoples, advocates must develop the mechanics that assure that all the rights accorded by this landmark international instrument are respected. It will be difficult to lobby for the just share of the indigenous peoples in the budget if the advocates cannot translate the 46 articles on indigenous peoples' rights into concrete programs, projects and activities with the corresponding cost estimates that are ready to be incorporated in government budgets.

2. Indigenous peoples have to claim the spaces opened to them in the local special bodies, specially the local development councils in order to strengthen their participation in governance. The Local Government Code (R.A. 7160) is very explicit in requiring the multi-sectoral participation in preparing development plans at every level of the local government, provincial, municipal and barangay.

   Nueva Vizcaya had already adopted the Participatory Monitoring and Evaluation System (PMES) that uses the "logical framework" and the "project cycle management" methods in the preparation, implementation and evaluation of programs, projects and activities. The province also had already developed a manual of operation to implement said system.

   The local level is especially hospitable for the exercise of indigenous peoples' initiative in using budget analysis to advance indigenous peoples' rights. For instance, an important arena waiting to be explored at present is the P1 million annual allocation to a barangay, from which resources to finance indigenous people's programs, projects and activities could be drawn.

3. Should the notion of a tribal barangay translate to reality, one such barangay could draw its resources of from the regular source and use them to implement the ancestral domain sus-

tainable development and protection plan. Within ancestral domains, the Indigenous Peoples Rights Act should prevail over other national laws, such as the New Local Government Code.

4. The consultative mechanisms in planning, budgeting, monitoring and evaluation should be institutionalized, particularly in the effort to interface the local government development plans and the ancestral domain sustainable development and protection plans.

   DBM's Updated Budgeting Manual of June 2005 already recognizes the significance of consultative mechanisms to ensure the smooth flow of activities over the budget cycle. The new manual lifts from the experiences and insights of the participatory planning-budgeting workshops it had conducted, spearheaded by the USAID-funded Governance and Local Democracy Project from 1996 to 1999. It is time for all local government units in the Philippines adopt the participative planning-budgeting methodologies prescribed therein. For indigenous peoples, awareness of available avenues to be heard from must be explored.

   The Updated Budgeting Manual and the Participatory Monitoring and Evaluation System can be effective tools to enhance citizen participation in governance. The indigenous peoples should maximize the opportunities and avenues they open to access the funding for their ADSDPP.

Endnotes

[1] Fundar – Centro de Analisis e Investigacion, *International Budget Project and International Human Rights Internship Program, Dignity Counts: A guide to using budget analysis to advance human rights* (N.p., 2004).

[2] Jim Shultz, "Promises to Keep, Using Public Budgets as a Tool to Advance Economic, Social and Cultural Rights," *Reflections and strategies from a dialogue among international human rights and budget activists held in Cuernavaca, Mexico January 2002* (Mexico City: Office of Ford Foundation and FUNDAR-Center for Analysis and Research, May 2002).

[3] Pilar Ramos-Jimenez, Saniata P. Masulit, and Ysadora F. Mendoza, *Celebrating Participatory Governance in Nueva Vizcaya* (Manila: De la Salle University Press, 2004).

[4] Doing an assessment of the Philippine national budget did not seem to fit this study because national programs are formulated to address a whole range of general and specific public needs. The national budget is not particular to a specific sector such as indigenous peoples — the study's special interest — except for the allocation to the National Commission on Indigenous Peoples (NCIP). However, the NCIP was operational only toward the middle of the Decade after the constitutionality of the law creating the NCIP was upheld by the Supreme Court because only then did the government released the funds for the commission's operations. Furthermore, even with devolution not all local government units effectively adjusted to the situation. Only a few of the elected local officials installed the mechanisms and structures that promoted peoples' participation as the law mandates. It was a challenge to find an appropriate local government unit for the purpose of this study until Nueva Vizcaya.

[5] [a] Ma. Socorro Diokno, *A Rights-Based Approach towards Budget Analysis* (Washington, D.C.: International Human Rights Internship Program, 1999), [b] Fundar, op.cit. and [c] Jim Shultz, op. cit.

[6] A Congressional District is entitled to one elected representative to the Lower House of the Philippine Congress.

[7] Felix M. Keesing, *The Ethnohistory of Northern Luzon* (Stanford: Stanford University Press, 1962).

[8] Juan Manuel de la Vega, "Expeditions to the Province of Tuy," in *Edited by E. H. Blair and J.A. Robertson, XIV, The Philippines Islands* (Cleveland: A.H. Clark, 1903-09).

[9] "Unitary" is used in contrast to a "federal" structure. However, existing local government units have especially devolved powers.

[10] "Bicameral" is used in contrast to "unicameral." It is also sometimes called "Presidential" in contrast to "Parliamentary."

[11] Andy Norton and Diane Elson, *What's behind the budget? Politics, rights and accountability in the budget process* (N.p: Overseas Development Institute: 2002).

[12] Republic Act 7160 or the Local Government Code of 1991.

[13] The account names of the different tax revenue sources are in Annex A, where the account items before and after the adoption of the "accrual-based" New Government Accounting System (NGAS) are also shown.

[14] Department of Budget and Management, *Part IB of the Updated Budget and Operations Manual for LGU's* (Manila: DBM, 2005).

[15] Ibid.

[16] Cordillera Peoples Alliance (CPA), PACOS Trust, Center for Orang Asli Concerns (COAC), and Anthrowatch (2005), "Indigenous Peoples and Local Government: Experiences from Malaysia and the Philippines," in

IWGPA Document no. 113 (2005).

[17] Of late, ACDA (formerly the Anti Casecnan Dam Alliance) has mobilized its network to oppose the Didipio Gold-Copper Mining Project of Climax Mining Ltd of Australia, together with people's organizations such as Didipio Earth Savers Multipurpose Association (DESAMA), the Lower Muta Valley Farmers Federation, the Kasibu Inter-tribal Response for Development (KIRED), the Kongkong Valley's KOVENANT, and the Nueva Vizcaya Environment and Rural Development (NVERD), Inc. The position of the alliance, though, places it in direct opposition to the newly reorganized Nueva Vizcaya Federation of Tribal Councils, whose newly appointed "tribal chieftains" support the large-scale mining venture.

[18] Engr. Jonem Gacad and Bernabe Almirol, "Assessment of the Barangay Planning and Budgeting Workshops in Nueva Vizcaya" (GOLD Project Task Force, 1997).

[19] Department of Budget and Management, *op.cit*.

[20] From the *Consolidated Statement of Fund Operation (1994-2005)* as collated by Manuel Tabora, OIC, Nueva Vizcaya Provincial Budget Office, 2006.

[21] Department of Budget and Management, *op.cit*.

[22] Planning Guidebook, DILG and NEDA, 1994.

[23] Republic Act 8371 or the Indigenous Peoples Rights Act of 1997.

[24] Governance and Local Democracy (GOLD) Project is a technical assistance project funded by the USAID to pilot strengthening local governance in the Philippines.

[25] There is a recently completed "Survey on Indigenous Peoples of Nueva Vizcaya," a component of UNDP's *Pilot Data Disaggregation Project* in the Philippines, the result of which shows the level of satisfaction of indigenous peoples with the basic services provided by the Philippine government.

[26] The reason/s for such a disparity would be interesting to pursue. The difference might be explained by ease or difficulty of access to the facility, cultural values and practices as the low bed occupancy rates were in the areas of indigenous peoples, access to resources to finance the hospital stay, or simply differences in the efficiency in hospitals' records keeping.

[27] Provincial Planning and Development Office, *2000 and 2003. Nueva Vizcaya Socio-Economic Profile*, Province of Nueva Vizcaya.

[28] Provincial Planning and Development Office, *2000 and 2003 Nueva Vizcaya Socio-Economic Profile*, Province of Nueva Vizcaya.

[29] Participation rate measures the population of children of school-going age who are actually in school.

[30] Provincial Planning and Development Office, *2000 and 2003 Nueva*

Vizcaya Socio-Economic Profile, Province of Nueva Vizcaya.

[31] *Ibid*.

[32] Provincial Planning and Development Office, *2000 and 2003. Nueva Vizcaya Socio-Economic Profile*, Province of Nueva Vizcaya.

[33] *Ibid*.

[34] *Ibid*.

[35] Fundar – Centro de Analisis e Investigacion, International Budget Project and International Human Rights Internship Program, *Dignity Counts: A guide to using budget analysis to advance human rights* (N.p., 2004).

Bibliography

Cordillera Peoples Alliance (CPA), PACOS Trust, Center for Orang Asli Concerns (COAC), and Anthrowatch (2005). "Indigenous Peoples and Local Government: Experiences from Malaysia and the Philippines." In *IWGPA Document no. 113* (2005).

De la Vega, Juan Manuel. "Expeditions to the Province of Tuy." Edited by E. H. Blair and J.A. Robertson. Vol. XIV, *The Philippines Islands*. Cleveland: A.H. Clark, 1903-09.

Department of Budget and Management. *Updated Budget and Operations Manual for LGU's*. 2005.

Diokno, Ma. Socorro. *A Rights-Based Approach towards Budget Analysis*. Washington, D.C.: International Human Rights Internship Program, 1999.

Fundar – Centro de Analisis e Investigacion, International Budget Project and International Human Rights Internship Program. *Dignity Counts: A guide to using budget analysis to advance human rights*. N.p. 2004.

Gacad, Jonem & Bernabe Almirol. "Assessment of the Barangay Planning and Budgeting Workshops in Nueva Vizcaya." GOLD Project Task Force, 1997.

Keesing, Felix M. *The Ethnohistory of Northern Luzon*. Stanford: Stanford University Press, 1962.

Norton, Andy and Diane Elson. *What's behind the budget? Politics, rights and accountability in the budget process*. N.p: Overseas Development Institute: 2002.

Provincial Planning and Development Office. *2000 and 2003. Nueva Vizcaya Socio-Economic Profile*. Province of Nueva Vizcaya, Philippines.

Ramos-Jimenez, Pilar, Saniata P. Masulit, and Ysadora F. Mendoza. *Celebrating Participatory Governance in Nueva Vizcaya*. Manila: De la Salle University Press, 2004.

Shultz, Jim. "Promises to Keep, Using Public Budgets as a Tool to Advance Economic, Social and Cultural Rights." *Reflections and strategies from a dialogue among international human rights and budget activists held in Cuernavaca, Mexico January 2002*. Mexico City: Office of Ford Foundation and FUNDAR-Center for Analysis and Research, May 2002.

4

Indonesia: Recognizing *Masyarakat Adat*

Albertus Hadi Pramono and Bernardinus Steni

Introduction

Indigenous peoples are among Indonesia's poor, vulnerable groups who do not have meaningful access to decision making that affects their lives, rights and identities. Fighting to assert their rights, indigenous struggles, once waged separately by different groups, have been coalescing to form a strong, vibrant movement of indigenous peoples in the archipelago.

The government of Indonesia, however, maintains that there are no indigenous peoples in the country as its original people are all indigenous. In a press conference the Ministry of Foreign Affairs Spokesperson declared that the concept of indigenous people is not in the Indonesian vocabulary because only Indonesian people exist.[1] This position prompted the government to rename the event Indigenous Peoples Year 1993 to Traditional People's Year. How-

ever, as this report shows, Indonesia has begun to address indigenous issues in state policies, laws and regulations.

The report consists of policy and program analyses. Using a theoretical framework, the former delves into national laws and policies, regional and international conventions, and new mechanisms that deal with indigenous concerns. The latter reviews identified programs and projects of the UN Decade of the World's Indigenous People by donors, UN agencies, partner governments and key civil society organizations, where available. This was done through content analysis and interviews with key resource persons to understand the programs' impacts on indigenous peoples and their relations with the Decade.

The report is divided into several sections. It starts with a theoretical framework on postcolonial theory that we consider helpful in understanding the situations of indigenous peoples worldwide, particularly in former colonies such as Indonesia. A sketch of the country's social and political contexts during the Decade follows, including the constraints and opportunities indigenous peoples faced in this period.

The third explores the different terms and their definitions used to refer to indigenous peoples in Indonesia. This is crucial as there is no widely accepted term and definition for them in Bahasa Indonesia. The following section lists and analyzes national policies relating to indigenous peoples. Innovative policies supportive of indigenous issues are emerging at the regional levels, but these could not be examined with the study's scope and time limitations.

The fifth part looks at two government programs specifically implemented for indigenous peoples and the effects on their lives and identities. Succeeding it is a brief description of indigenous and nongovernment organizations that have influenced indigenous policies particularly during the Decade, and how they have responded to socio-political changes and interventions. The report concludes with the study's recommendations for future directions in indigenous rights' recognition. It may not reflect the whole, complex indigenous situation in Indonesia, but it is hoped that it can contribute significantly towards improving the conditions of indigenous peoples in the country and to some extent in the world.

Othering of Indigenous Peoples

Throughout modern history indigenous peoples throughout the world have suffered from discrimination and dispossession. During colonial times they were considered by the Europeans, with the latter's notions of superiority, as inferior, "uncivilized," "barbaric," "primitive" and even non-human. Through this kind of discourse the colonial powers sought the reasons to conquer, dominate and foist their culture on indigenous peoples. This notion justified their appropriation and control of indigenous peoples' territories and even their lives as they embarked on massive salvation missions to bring the "uncivilized" into the "civilized" world.

The ideology and practice of seeing and treating other groups and/or peoples as different from the self-proclaimed superior or normal group, such as the colonial Europeans, is known as Othering. The inferior people is the Other which is perceived to possess the opposite nature of the normal group. The latter often sees the Other as suffering a "social disease" or from uncivilized cultures so that it is its duty to engage in a "salvation" or "healing" mission to save or cure it.

The notion of Othering continues to the present. If in the past the Europeans constructed the Otherness, it is currently the elite and dominant cultures of postcolonial states that practice it. Their Others are the minorities, particularly indigenous peoples, whose cultures are not assimilated into Western and mainstream cultures. Based on his observations in Bolivia, Albo (1996) describes the Otherness of indigenous peoples today: "Being indigenous necessarily means being part of a rural population, if not the jungle, as if ethnic identity was something *primitive*; because primitivism and ethnicity were invariably associated, it was assumed that an indigenous person couldn't be a peasant farmer, much less an urban professional."

Apart from being different, indigenous peoples have another label pinned on them. The national elite call them "poor people" because they do not meet the standards of well being developed by state authorities with the guidance of international financial agencies. Development programs have thus entered the picture as a means for the state to intervene to make them part of modern

societies. This agenda is not new since it was introduced by the colonial powers. Development is part of the continuum of modernization prescribed by the West.

As indigenous peoples around the world decry and many scholars note, development does not improve indigenous conditions but instead has spawned new problems. Because of development, indigenous peoples have lost their lands and thus unable to practice their cultures and economic activities or decide the kind of lives they want. It virtually dispossesses them spatially, culturally, economically and politically, worsening the sufferings they experienced in the colonial period. Due to its grave negative impacts, Cariño (2004) calls it "development aggression."

Development Discourse and Postcolonial Theory

The postcolonial world is the legacy of European colonialism and imperialism. These have transformed today to a discourse of development and globalization. The development discourse began when in 1949 President Harry S. Truman proclaimed a plan to assist "underdeveloped countries," believing they suffered from poverty due to their populations' "primitive and stagnant" economic lives (Escobar, 1995).

This view sees poverty as a negative condition – in fact a social disease – that should be eradicated. As in colonial times, it sets as the duty of "advanced" countries to help underdeveloped peoples escape from this misery and achieve the conditions the West enjoys through the use of capital, science and technology. The underdeveloped countries, which in the Cold War period received the label, Third World, were in fact the former European colonies outside of Europe and North America.

The development discourse has shifted the label of former colonized peoples from "primitive" and "barbaric" to underdeveloped, poor peoples. The change implies that poverty is equal to primitiveness (Cooper 1997), and bringing development programs or intervention to poor countries was, and still is, a civilizing mission (Shresta 1995) or an act of salvation (Escobar 1992) by the West for the rest of the world. This is where postcolonial theory can be use-

ful. It helps critique and dismantle Eurocentricism including concepts of modernity and progress that colonial powers and societies promoted in the past and development discourse at present.

McEwan (2001) gives four reasons to employ the postcolonial framework. One is the need to "destabilize" Western-dominated discourse including development and challenge its assumptions which do not take into account the values and meanings of other cultures. Another is to question the way by which the idea of "Third World" is constructed. The term implies Othering by separating the Western world from the rest through both spatial and temporal distance, which puts the latter "'out there' and 'back there.'"

Thirdly, postcolonial theory interrogates how "the experiences of speaking and writing by which dominant discourses come into being" has made the West practically dominate knowledge production about the world. This includes the "*idea* of development" which has "enabled the West to appropriate and control the past, present and future of the non-west…" Finally, postcolonialism tries to assist the dispossessed and marginalized to reclaim control over their history and knowledge by reconstructing these. This process is critical, since defining and satisfying needs is a key dimension in development.

In short postcolonial theory questions the politics of knowledge and practices in the construction of the "Third World," thus the "poor," and provide alternative (hi)stories of local communities, including indigenous peoples, and their places. Through such resistance and reconstruction, communities are expected to determine and develop their own futures. For indigenous peoples in particular, this process is essential to achieve and realize self-determination. As McEwan suggests, postcolonial critique can help us to "understand how location, economic role, social dimensions of identity and the global political economy differentiate between groups and their opportunities for development."

Concept of Poverty

A fundamental notion in development thought is poverty, which the state uses as a reason to introduce development programs.

Development proponents have constructed theories and indices of poverty whose basic assumptions need to be questioned, as these ignore other meanings, cultures and realities.

What does poverty actually mean? Poverty may have different meanings in each language, but as Rahnema (1992) notes a common denominator is the notion of "lack" or "deficiency." To understand its meaning it is useful to know its dimensions, and Rahnema argues that poverty has four dimensions.

The first is materialities, which refers to "things," either of a material or non-material nature that someone lacks. It can manifest as starvation, visible hardship, discrimination, inability to meet one's goal or feeling insecure. The second is the perception of the subject on his/her own condition in which one labels him/herself as poor because (s)he feels a lack of something. This process is quite personal as well as social and cultural; in some societies being poor is not considered a negative condition.

The third is how others view the poor. There are generally two reactions to the poor; one is to intervene (directly or directly) in their lives, and the other is not to do so. The final dimension is socio-cultural and bound by space and time. This means that perceptions of poverty can change over time and in different contexts. An example is the consumption of *sago* in Indonesia. In the past it was a sign of wealth among people in most of the country's eastern part but today it shows one is poor after the government introduced rice consumption as modern. The different understandings of the dimensions of poverty lead to different meanings, which goes to show that poverty is a social construct.

Poverty theories include indices to determine who is poor, and the current ones in use by governments and institutions employ three perspectives identified by the United Nations Development Program (1997). The income perspective is based on a defined poverty line, in particular a person's income that enables him/her to buy food. The basic perspective looks at the minimum requirements to fulfill human needs, including food. This has expanded to include essential services such as health care, education, employment and participation. The capability perspective considers physical and social capabilities that enable one to function in a society.

Other indicators are based on statistics, i.e., gross national product (GNP) and per capita income. The former measures the conditions of a state while the latter classifies whether a person or household is poor by setting a poverty line. Globally the poverty line is daily income of less than a dollar as indicated in the Millennium Declaration. In Indonesia, as set by the Central Statistical Agency, the poverty line is the amount of rupiah (Indonesian currency) needed to pay food equivalent to 2,100 kilo calories per day and minimal expenses for housing, education, health care, and transportation (Anon 2005: 10).

Such numbers and measures imply that market exchange is the only mechanism for people to trade goods and services. While it is true that today virtually all societies get most of their needs from the market, the assumption denies that some societies, especially indigenous groups, still obtain their food from subsistent lifestyles and barter. The same argument applies to transportation costs. This component shows a strong urban bias, while ignoring that rural people tend to use manual, self-owned modes of transportation or travel on foot most of the time. This view implies that so-called traditional practices are inferior and must not be accommodated in statistical indices.

The UNDP has introduced two other indices: the Human Poverty Index (HPI) and the Human Development Index (HDI), which both fall under the capability perspective. The HPI is based on three dimensions: longevity, knowledge and decent living standards, and the HDI essentially enlarges people's choice and access to these three. Inferred here is what a person needs to function well within a modern, capitalistic society. Such an assumption, which some studies show as flawed, can be a disadvantage to many, including indigenous, groups.

Scholars of literacy studies, for example, argue that literacy is a social construction that is site specific and culturally bound (see Heath 1980, Street 1993). They found that so-called illiterate people employ other strategies to follow written instructions, such that they can ably perform in a society. Thus literacy, as presently determined, does not represent a full picture of how people function in a group. It tends to be measured in the standards of dominant cultures, particularly the ability to read and write in Latin letters. But this

disregards the fact that some societies have developed their own writing systems. It also marginalizes oral traditions because they are considered inferior to the written form. The development discourse assumes a single, universal literacy, when in reality there are plural literacies in the world.

In the same vein, access to health services is seen as access to modern medicine. This connotes that indigenous health systems practiced by shamans have lost their validity. The irony is that modern pharmaceutical industries have extracted knowledge on medicinal plants maintained by these shamans to develop new medicines and drugs, a multi-million dollar industry. The practice of appropriating such plants and associated knowledge is known as biopiracy.

In comparison, the concept of poverty among indigenous peoples is much broader and more qualitative than that propagated by the development industry. Based on a workshop participated in by some indigenous groups in Guatemala, poverty results when indigenous rights to self-determination and political participation are violated, when greed occurs and resources are unjustly distributed, when identity and spiritual values are lost, and when the environment is degraded (Fiering et al., 2003: 13). An ADB study on indigenous peoples in Indonesia found similar notions. Poverty was associated with dispossession from land and natural resources, behavioral and cultural problems, and hardships relating to unavailability of basic social facilities or services (Safitri & Bosko 2002).

In the declaration of the Continental Summit of Indigenous Nations, Pueblos and Organizations in Mar de Plata in Argentina in 2005, indigenous groups advocated that the concept of poverty take into account the cosmovision and ways of life of indigenous peoples. In contrast to the dominant concept, the indigenous notions are based more on social, cultural and spiritual considerations rather than on quantitative and economic measures alone.

The development discourse on poverty has its critics and some of them come from within the development industry itself. The Nobel Laureate and economist Amartya Sen (1999) criticizes the quantitative leaning in poverty measurement as it cannot incorporate quality of life. He advocates instead the concept of develop-

ment as freedom (Sen, 1999). This means "[t]he freedom [of a person] to achieve valuable functionings" in which "development becomes the expansion of the capabilities of persons to lead the kinds of lives they value" (Sengupta 2000: 569).

Similarly a UN official asserts that current development indicators lack: (1) justice administration; (2) personal security; (3) political participation/democracy; and (4) cultural aspects of development (Mokhiber 2001: 159). Both argue that development indicators should include human rights.

Right to Development

The concept of human rights has entered the development discourse, and with it the new notion of rights-based approach (RBA). The shift became apparent when the UN Declaration of the Right to Development, although vaguely recognized, was adopted in 1986. But the matter of people's rights as a distinctive concept came out only in 1995 during the World Summit on Social Development in Copenhagen (Nyamu-Musembi & Cornwall 2004).

Two important international instruments have become important reference points in the rights-based approach: the International Covenant on Economic, Social and Cultural Rights in 1966 and the Declaration of the Right to Development. Most rich industrial states, however, opposed the latter and still do because it gives more obligations to them than "Third World" states. The Declaration states that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." (Article 1)

Based on this wording the UN High Commission on Human Rights considers the right to development includes: full sovereignty over natural resources, self-determination, popular participation in development, equality of opportunity, and the creation of favorable conditions for the enjoyment of other civil, political, economic, social and cultural rights. The right to development is inherently political and people have to take political action to determine their own future. This is in pursuit of social justice.

With these changes, development agencies are starting to redefine poverty and adopting rights issues into their policies. This can be seen in the way two UN agencies currently look at poverty. To UNDP (1997) "poverty means that opportunities and choices most basic to human development are denied—to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-respect, and the respect of others." On the other hand the International Fund for Agricultural Development (2001: 4) states in its Strategic Framework: "poverty is not only a condition of low income and lack of assets [but] [i]t is [also] a condition of vulnerability, exclusion and powerlessness. It is the erosion of their capability to be free from fear and hunger and have their voices heard."

Indonesia itself launched in 2005 a National Strategy for Poverty Reduction that clearly adopts a rights-based approach. The strategy perceives poverty as "an act of denial or violation of rights and unfulfillment of rights. Poverty is also seen as a process of taking away the power of poor people…. Therefore, this concept gives affirmation on the duty of the state to respect, protect and fulfill the basic rights of poor people."

With market expansion into public services under neoliberal globalization, the rights-based approach is intended to set minimum standards on the state's duties to its citizens, which cannot be transferred to the market.

However, when it concerns how to implement the rights-based approach, many thinkers, generally economists, preach the old paradigms of development. It then becomes "business as usual" (Nyamu-Musembi and Cornwall 2004) for development and, in particular, aid agencies, notwithstanding their adoption of this approach in their formal policies. Discourse on the right to development becomes another guise for conventional development talk.

Sengupta (2002), for instance, writes that "[t]he realization of all rights, separately or jointly, must be based on comprehensive development programs using all the resources of output, technology and finance, through national and international policies" (p. 874). To him, GDP growth is still crucial in measuring the economy, and the minimum indicators of the right to development are the rights to food, primary health care and primary education

(Sengupta 2000). But as discussed earlier, these measures are problematic.

To benefit from development is the people's right and the duty of the state. While this paradigm shift sounds benign or even noble, the problem is it does not go beyond the framework of development discourse, particularly in its insistence on efficiency and market mechanism (Sengupta 2002). Adopting a rights-based approach is, in this sense, merely "taming the beast."

Another problem can arise when technicalities eclipse the political goal to achieve social justice (Leftwich 1993, 1994). The discourse on the right to development faces potential reductionism as shown in Mokhiber (2001):

> *[The right to development is essentially] a rights-based approach integrates the norms, standards, and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations, and in the authoritative interpretations of the bodies established to monitor treaty implementation. The principles include those of participation, accountability, non-discrimination, empowerment and direct (and express) linkage to the international human rights instruments and standards themselves.*

Accountability or the technicality of implementing rights is primary in this discourse. With this the rights-based approach may fall into a trap of merely fulfilling formal, standardized rules and regulations. This perceives people's rights not as a necessity but within a procedural mesh and formal legalities.[2] In this case states, corporations, and other development agents can claim using a rights-based approach only because they have gone through the whole set of mandated procedures and requirements.[3]

Adopting a rights-based approach into the development discourse, therefore, may not lead to a radical change in its core belief. The approach should be applied with caution so as not to weaken the rights of indigenous peoples and other marginalized groups. With this potential risk, indigenous peoples should concentrate to defend and explore the full weight of the right of self-determination.

Framing Right of Self-determination

The previous sections show that indicators of poverty have changed from time to time following the paradigms of the day. However, none of these can release indigenous peoples from being trapped as the Other since these ignore their distinct needs and characteristics. To address the issue of rights, the development industry adopts the rights-based approach, which however has evolved within the framework of development discourse and favors the neoliberal agenda. The rights-based approach, therefore, does not fully represent the discourse of indigenous rights.

Indigenous peoples are now faced with the pressures of maintaining their identities while being part of a changing world brought on by globalization. With its determination to open up markets around the world, neoliberal globalization is a new episode in the West's attempt to foist social, economic and political standards on the rest of the world.

The key for indigenous peoples to address these pressures is the right of self-determination, and this is at the heart of indigenous movements and struggles around the world. Self-determination has various meanings, and many states fear that applying it to indigenous peoples will lead to the formation of independent states. This position has been a major obstacle in the discussions on the Declaration on the Rights of Indigenous Peoples in the United Nations.

In his widely-cited book, Anaya (1996) discusses the history and meanings of self-determination and how it has influenced the struggles of indigenous peoples. The concept of self-determination, whose core belief is freedom and equality, emerged amidst the breakdown of imperial powers. Colonized states immediately adopted this concept, which led to the decolonization of their territories, and set up independent sovereign nation-states. That is why states are wary of the demand for self-determination by indigenous peoples. The emphasis on territorial sovereignty under the concept of nation-state has driven governments to maintain the integrity of their territories with all the powers they have.

Anaya argues that decolonization does not necessarily mean creating a new statehood but it mandates an understanding that

all forms of colonialism are illegitimate. He notes two strains of self-determination: constitutive and on-going. In the former the people(s) operate within the framework of a nation-state in which decisions about them are taken on certain occasions, such as a general election or referendum. In the latter category decisions pertaining to them can be taken on an everyday basis, once the issues come before them. This type works in a scale smaller than a nation-state, including among indigenous groups. Regardless of the differences, Anaya emphasizes governance is essential. Therefore, the keys in self-determination are *freedom*, *equality* and *governance*.

Decolonization however does not mean the end of colonialism. One problem is that the decolonization process assumes everyone within the former colony agrees to be part of the new state and its territorial boundaries are the same ones the colonial powers imposed. Often such boundaries cut across indigenous territories, causing fractures that placed members of the same indigenous group in different states.

Secondly, the groups that were recruited by the colonial power to help them rule have become the new authority in the new state. Many marginalized people today question their legitimacy and demand equal treatment and opportunity to manage the state. The dominant groups also often apply the same stereotypes produced by the colonial rulers to those less powerful, and on the basis of state sovereignty violate their rights, especially over natural resources on their lands or waters.

The indigenous peoples thus continue to suffer today. It is the state's responsibility to acknowledge and protect their right of self-determination but it should not equate this right with the creation of an independent state. Forging a new nation opens up opportunities to the world's dominant powers to step in as the East Timor experience shows. The fight of the East Timorese was framed as a struggle for self-determination against colonizing Indonesia (e.g., Anderson 2003). However, after they gained independence, UN and aid agency consultants poured in to "teach" them how to set up a new nation-state, virtually giving them no chance to develop their own models to govern and manage their lives and territories. Further, the ruling political elite comes from the same group privileged by the Portuguese who colonized the country before the Indonesians came.

For indigenous peoples the choice of establishing an independent state therefore can have severe consequences. Forming indigenous territories within a nation-state may be the best option as long as the state recognizes and protects the exercise of their rights. The creation of the Nunavut territory in Canada and the autonomy of the Inuit people show the way. In promoting this type of self-determination, Anaya (1996) asserts: "indigenous peoples and their members are entitled to be full and equal participants in the creation of the institutions of government under which they live and, further, to live within a governing institutional order in which they are perpetually in control of their own destinies."

Former UN Working Group on Indigenous Populations chairperson Erica-Irene Daes (1993) proposes "belated state-building." This allows indigenous peoples to participate meaningfully in (re)negotiating mutually agreed-upon and just terms as citizens of the nation-state while maintaining their distinct identities. The Maori peoples in Aotearoa/New Zealand, in currently reinterpreting and renegotiating the meanings of the Treaty of Waitangi,[4] may be undergoing this process (Durie 1998).

The struggles of indigenous peoples for self-determination are about cultural politics. It is the state's duty to provide them political space to freely express their choice of a development path to take. It cannot force them to be assimilated into dominant cultures or modern lifestyles. As a minimum recognition of the right of self-determination, it should allow them to decide how they want to adapt to the changing cultural, social, economic and political environments.

Socio-political Context: 1995-2004

When the UN Decade of the World's Indigenous People began, former President Suharto's New Order, the term used for his regime, was at its height. Under his rule Indonesia experienced the highest economic growth and was predicted to be a new Asian tiger. But expansion was at the expense of democratic principles and political and economic lives. Using government and military apparatus, the state maintained a tight grip on the citizenry, employing close surveillance and intruding into private lives.

The New Order imposed a concept of unity, which tended to homogenize social organizations and cultures and used as a means of control. Using the notion of *Wawasan Nusantara* (Archipelagic Outlook) as an ideological foundation, it justified the appropriation and exploitation of indigenous lands and waters to implement an export-led economic development. This growth strategy continued into the 1990s with the adoption of the World Bank deregulation package in 1988.

To support its export-oriented policies, the government issued laws that enabled it to dominate people and resources, which led to the disruption of indigenous lives and cultures. The most destructive was Law No. 5/1979 that imposed a model of village government called *desa* all over the country. For 20 years the indigenous peoples watched their governance systems and thus their cultures crumble.[5]

Through the desa the central government tried to lay down a system of territorial and administrative control over people and resources. The New Order however failed to install it fully, as most villages were able to combine their indigenous systems with the imposed state model and some upland tribes and communities were too remote to reach. In Minangkabau in West Sumatera, *nagari* could still operate. Benua in Kalimantan could administer its federation of *kampung* (indigenous villages) which for some time was recognized as desa before village reorganization took place. In Maluku the elders retained important roles in conflict resolution at the local level.

Despite a strong state approach, the New Order destroyed itself from within. Political and economic power and its attendant benefits concentrated in Suharto and his cronies, which was a major cause for the country's multidimensional crisis that continues to date. The 1997 Asian financial crisis further plunged the economy and New Order into deeper straits, and in May 1998 Suharto was forced to step down.

Despite the grave problems it wrought, however, the New Order though reluctantly catered to the ideas of political openness, decentralization and participatory development as the neoliberal agenda entered its discourse.[6] These ideas were an important factor in the flowering of social movements in Indonesia. Although

hounded and oppressed,[7] these organizations especially in the environment and human rights arenas were at the forefront of the democratization movement. They joined forces with student groups to put pressure on Suharto that eventually eased him out.

The fall of Suharto was a crucial moment in Indonesian history as it led the people to acquire more political freedom. It was also a moment to redefine the relationship between the people and the state, especially the central and regional governments. After Suharto resigned, new political parties and organizations emerged and social movements flourished, including indigenous and peasant movements.

Another major step in the redefining process was the amendment of Indonesia's 1945 Constitution. The document that was considered sacred but dead for 32 years during Suharto's rule turned into a living one. Amended four times the Constitution significantly reduced presidential power while giving more political space to the people and regional governments.

The current process of redefining Indonesia has two important and related outcomes: decentralization and the emergence of identity movements throughout Indonesia. Decentralization was a reaction to the power and state wealth concentrated in Jakarta during the New Order, which disenchanted some regions and became a major source of political tensions. Such regions as Aceh, Papua, East Kalimantan and Riau have fought or declared their intention to be independent from Indonesia. On the local level the formation of uniform villages throughout the country disrupted long existing indigenous governance systems.

The passage of Law No. 22/1999 ushered in the era of decentralization, initiating a process to restructure relations between central and regional governments. The government also recognized the existence of indigenous villages, accommodating local demands to rectify earlier impositions on indigenous governance.

The law mandated central authorities to transfer to regional governments the task of managing their respective areas. Decentralization extended to lower levels, giving the people more opportunity to participate in planning and influence decision making. In some districts officials have passed laws or decrees that acknowledge indigenous lands or practices.

However just five years after this law, the government backtracked and passed Law No. 32/2004, which returns some authority over the regions to the central government. Like the New Order policies, its provisions on village government reemphasized state role in village administration and public service delivery.

The decentralization policies nevertheless provide the people, including social movements, new political space to take part in development planning previously closed to them. Villages are also more autonomous in decision making, including planning and regulation. Although the central government requires some standard practices and institutional arrangements, they exercise more freedom in governing their jurisdictions. Indigenous groups use this opportunity to (re)construct their identities by revitalizing their own governance systems, especially in natural resource management. The decision on village autonomy can be considered as the watershed of indigenous movements at the local level.

Terms and Definitions of Indigenous Peoples

Various terms are used for indigenous peoples in Indonesia and their roots lie in the different philosophies and ideologies of those who introduced them. In addition to *masyarakat adat,* which is widely used by civil society, the indigenous peoples had been, and still are, labeled as *masyarakat terasing* (isolated community), *suku terpencil* (isolated tribe), *masyarakat hukum adat* (community of customary law), *orang asli* (original people), *peladang berpindah* (shifting cultivators), *peladang liar* (illegal cultivators), and sometimes *penghambat pembangunan* (obstructers of development). The indigenous peoples, however, refer to themselves according to the names of their tribes as known to themselves and to the surrounding communities. The Baduy people of West Java, for example, prefer to call themselves the Kanekes people.

The Indonesian Constitution only uses the term masyarakat hukum adat but no official explanation has been given as to why it is used. It is a translation of *rechtsgemeenschap*, a term introduced by van Vollenhoven (a colonial Dutch legal scholar) that refers to a community that lives based on customary law. Ter Haar (2001), another Dutch legal scholar, developed this concept further to

indicate an association of self-governing community who believe they were created out of natural or magical powers, who possess wealth of their own, and among whom no one would think of dissolving the association. Yet, the members may leave the community, although the practice differs from one region to another.

In a later decree the State Minister for Agrarian Affairs defines the term as "a group of people bound by the customary law system as members of a legal association due to their commonality of area or genealogy."[8] This concept implies that indigenous peoples have been able to interact within and outside their communities using their customary laws. The term, however, has an obvious weakness. It merely refers to a community that possesses law, while undermining their relations to natural resources, their religious aspect, and the whole identity attached to them. A problem also arises from the conditions applied to the use of the term.

Article 18B of the Constitution says that the state can recognize masyarakat hukum adat only if they meet four criteria: (1) they can prove their existence; (2) proper to the current standards of progress; (3) in accordance with the principles of the Unitary State of the Republic of Indonesia; and (4) must be regulated in state laws. Such a conditionality has become a rule of thumb and worsens the status of indigenous rights in the country. Rahardjo (2005) argues that this shows the arrogance of the state as though indigenous peoples could not exist if they did not meet these conditions. Furthermore, the conditionality draws not only scientific criticisms but rejection by indigenous peoples.

Another sign of state arrogance is in giving a derogative label to those who do not adopt modernity. The government considers them "backward, primitive peoples who are not yet members of modern society" and therefore are not "proper Indonesian citizens." They are among *penyandang masalah sosial* or bearers of social problems. In other words, indigenous communities categorized as *komunitas adat terpencil* (customary remote community) have to be transformed to become an eligible and legitimate part of modern society. Just like the Dutch with their colonial project, the state has to engage in a civilizing mission. Due to this perception, it is the Ministry of Social Affairs whose main responsibility is to deal with social problems that administers development programs for indigenous groups.

Komunitas adat terpencil (KAT) is the latest definition used by the government. A decree (Presidential Decree No. 111/1999) defines KAT as "a locally disperse socio-cultural group that have limited, or the lack of, participation in national social, economic, and political networks or services." The definition, drawn up by a group of anthropologists, was in response to the demands of the first *Konggres Masyarakat Adat Nusantara* (Congress of the Indigenous Peoples of the Archipelago) in 1999, which criticized the derogatory, discriminatory notions of terms used for indigenous peoples.

The decree lists the characteristics of KAT as follows:

- small, closed, and homogeneous communities;
- having social institution based on kinship;
- generally isolated geographically and relatively hard to reach;
- living in a subsistent economy;
- employing simple tools and technologies;
- relatively quite dependent on environment and local natural resources;
- have limited access to social, economic, and political services.

The Ministry later added several other criteria (Direktorat Pemberdayaan Komunitas Adat Terpencil, 2004), among these, practice of ancestors' traditions, oral transfer of knowledge and through practice and example, emphasis on social more than private ownership for common use regulated by adat laws, and exercise of political influence through adat authority.

Based on these characteristics, the Directorate of KAT Empowerment of the Ministry of Social Affairs produced an operational definition: "social cultural group that is intrinsically local, relatively small, closed, backward, homogenous, dispersed and nomadic or sedentary, whose life still upholds custom, [depends on] remote geographical condition, depends on local natural resources employing simple technology and subsistent economy, and has limited access to basic social services" (2004).

However, the word *komunitas* as a translation of community can be problematic. The term tends to refer to inhabitants of a defined territory who interact more with each other than with those who live outside their boundaries (Soekanto, 1997). The term KAT would thus favor sedentary communities while undermining the existence of nomadic tribes who are not fixed to a single place and whose territories often overlap with others.

Moreover, the definition stated in the Presidential Decree tends to show characteristics of a society from a modern perspective, as the term "traditional remote community" clearly shows. That is why the emphasis on social, economic, and political development becomes an explanatory clause for the term *terpencil* (remote). To proponents of modernity the term refers to an undesirable, inferior condition of human civilization and to bring a community in such a state into modern life and the life of the nation-state.

That also explains why the Ministry of Social Affairs' main program for KAT is empowerment. It connotes helpless and passive groups who become the objects of other people's intervention (Direktorat Pemberdayaan KAT, 2004). It implies a binary opposition of primitive-modern that justifies the Ministry's interventions in the lives of indigenous communities.

Masyarakat adat, on the other hand, is popularly used by civil society, particularly the environmental and human rights movements that have been at the forefront in defending indigenous rights. The indigenous movements later adopted it as a common identity for their struggle. The term has a wider meaning as it represents not only legal aspects but the totality of the their society based on custom.

The word *masyarakat* (society) is also debatable to some scholars. Selo Soemardjan argues that masyarakat means people who live together and produce culture across geographical boundaries (Soekanto, 1997). However, the word *adat* that follows implies an attachment to a certain identity and thus to a place or boundaries. Therefore, the meanings of the words that build the term contradict each other.

The term masyarakat adat also attracts royal families of the old kingdoms and sultanates. These groups who ruled over the indigenous peoples on behalf of the colonial administration claim them-

selves to be masyarakat adat. The word adat also means traditions. Since many royal families still hold and practice their traditions, they consider their claim of masyarakat adat as legitimate.

Policy Analysis

International Law

Five international conventions are mostly referred to when talking about indigenous rights. These are: (1) International Covenant on Civil and Political Rights; (2) International Covenant on Economic, Social and Cultural Rights; (3) Convention on Biological Diversity; (4) ILO Convention No. 169 on Indigenous and Tribal People in Independent Countries; and (5) Universal Declaration of Human Rights.

In determining which articles in each agreement are relevant to explain the rights of indigenous peoples in Indonesia, we assess them against a set of rights: (1) rights to self-determination (governance, how to determine development programs and public service); (2) rights to natural resources (to own, to manage); (3) rights to cultural identity (language, belief systems, values); (4) rights on collective knowledge; (5) rights to public service (access to health, education, water, electricity, among others).

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). These two covenants do not explicitly employ the term peoples, but several important clauses can be used as the foundation of indigenous rights protection. Among these are the clauses relating to self-determination and state obligation.

In the first Article of both ICCPR and ICESCR, self-determination has two aspects. The first is the collective rights of all peoples to determine their own political status and to pursue their economic, social and cultural development. The second is the right of all nations to freely manage their natural wealth and resources for their own purposes, while ensuring that "a people [will not] be deprived of its own means of subsistence."

Article 1 of ICCPR further declares that ratifying states "shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

Based on both points, the right of self-determination gives room for peoples to veto what the state decides for them. This means that when a decision is taken without considering them, a people has the right to consider it invalid and it cannot be implemented as it is against their will and interests.

However it is difficult to implement this right because to most states the term peoples tends to mean nation-state. Indonesia has had a bitter experience with the right of self-determination. In 1999 the East Timorese won their struggle for self-determination, and separatist movements are still active in Aceh and West Papua.[9] The debates on this particular right however should not delay the fulfillment of other rights inherent to the existence of a people.

In addition, some individual rights, such as to education, occupation and health, are state responsibility. These are attached to each citizen as well as to the community. Yet, their implementation must consider the right of self-determination. The state cannot impose its will in ensuring individual rights because it has to respect and recognize the desire of a people to shape their own lives. It is not a coincidence that both conventions declare the right of self-determination at the very start. It was a conscious act of the drafters to emphasize its importance, setting the tone for the whole text.

Convention on Biological Diversity (CBD). Indonesia being a country with a vast biological diversity, the government ratified the CBD in 1994 two years after it was signed in Rio de Janeiro and the Cartagena Protocol on Biosafety in 2004. The implementation of these agreements however is weak, due in part to the feeble position of the State Ministry of Environment, as the implementing agency, in relation to sectoral agencies.

The government has not set clear policies on the CBD provisions regarding protection of indigenous knowledge and access to genetic resources and benefit sharing (Articles 8(j) and 15). Its Third National Report as a Party to the Convention considers both issues of medium importance. Although the copyright law (No. 19/

2002) has a clause on traditional knowledge, Article 10 rules that "the State holds the copyright of folklore and the products of people's culture that have become common property, such as stories, folktales, *hikayat*, legends, *babad*, songs, handicrafts, choreography, dances, calligraphy, and other artistic forms." This policy negates the existence of indigenous peoples who can regulate themselves.

Some agencies have also initiated the drafting of laws on both issues. The Agency for the Assessment and Implementation of Technology is formulating a law on the management of traditional knowledge,[10] while the State Ministry of Environment has drafted another on the utilization and conservation of genetic resources. Both proposals are included in the National Legislation Program 2005-2009 agreed upon by the President and Parliament.

ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. The Convention was adopted at the 76th session of the General Conference of the International Labor Organization in 1989. As its title declares, the Convention not only uses the term "indigenous peoples" but also "tribal peoples."

Article 1 provides the definitions of both terms. Tribal peoples refer to peoples "whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations." On the other hand, indigenous peoples are those "who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

Djuweng and Moniaga (n.d) translate both terms as masyarakat adat and *bangsa pribumi,* respectively. They argue that most Indonesians are bangsa pribumi, but not all of the latter are masyarakat adat.

We argue, however, that the term "indigenous peoples" as defined in the Convention applies more appropriately to settler colonies in which the (European) settlers rule over the original

populations. Therefore, in the Indonesian context the term "tribal peoples" applies. The problem is that it tends to imply peoples as Others, just like the term komunitas adat terpencil does.

The application of the term "indigenous peoples" is problematic as well. Most peoples are descendents of original settlers. Further the definition, which includes retention of some or all of their social, economic, cultural, and political institutions, implies a fixation of a people to a certain time. With the domination of positive law, it is essential to provide a definition that is accurate, clear and operational. The overwhelming use of the term "indigenous" in Asia without any clear definition reduces its status as a legal definition, such that it may be very difficult to maintain the term in legal discourse.[11]

The Convention has some other weaknesses but indigenous rights advocates in Indonesia believe that its ratification can fill the absence of legal instruments to protect these rights (Djuweng & Moniaga, n.d.).

Universal Declaration on Human Rights. The Declaration is a soft law, which although less binding legally than conventions or treaties, has moral and ethical strength in international law. It is the cornerstone of a number of international conventions, particularly of the United Nations, on human rights. Although some philosophical questions arise as to what extent it can represent indigenous philosophies and cultures, it can still provide an important ground for the protection of indigenous rights. It has been widely used in formulating numerous policies on human rights in many countries, including Indonesia.

Status of Ratification. To rectify the absence of human rights laws and serious rights violations during the Suharto regime, various administrations since 1998 have approved a number of international human rights conventions. By December 2004 Indonesia had ratified nine conventions,[12] all of them involving indigenous concerns:

- Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Law No. 7/1984);
- Ratification of the Convention concerning the Rights of the Child (Presidential Decree No. 36/1990);

- Ratification of the United Nations Convention on Biological Diversity (Law No. 5/1994);
- Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No. 5/1998);
- Ratification of ILO Convention No. 105 concerning the Abolition of Forced Labor (Law No. 19/1999);
- Ratification of ILO Convention No. 138 concerning Minimum Age for Admission to Employment (Law No. 20/1999);
- Ratification of ILO Convention No. 21 concerning Discrimination in the Respect of Employment and Occupation (Law No. 21/1999);
- Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (Law No. 29/1999);
- Ratification of the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Law No. 1/2000).

In most cases, however, these do not go beyond the act of ratification. These are usually not incorporated in the consideration of new laws on human rights, a practice common in Indonesian legislation. Even Law No. 39/1999 on Human Rights, which is considered the pinnacle of human rights policies in the country, does not refer to any previously adopted ratification. Moreover, government agencies generally tend not to adopt ratification laws into their policies and thus remain inoperative. Conventions on the rights of children and women are an exception, since they have operational policies.

National Policy

During the Decade of the World's Indigenous People, Indonesia experienced a crucial period in lawmaking, particularly after the demise of the New Order regime in 1998. The sacredness of the 1945 Constitution broke when the Majelis Permusyarawaratan Rakyat (MPR, People's Consultative Assembly)[13] amended it four times. The DPR (Parliament) agreed to pass a number of laws, either revising old ones or making entirely new legislation.

This development marks a paradigm shift within the state and the redefining process. This was, and still is, a critical period for indigenous peoples as they have to ensure that their aspirations and needs are incorporated into law. In many cases the laws passed without the Indonesian peoples being consulted, not to mention, participating in a meaningful way.

1945 Constitution. The position of indigenous peoples changed significantly when MPR amended the Constitution. Article 18 of the 1945 Constitution, although only in an explanatory note, recognized the existence of around 250 self-governing communities in self-governing districts (*zelfbestuurende landschappen*) and village communities (*volksgemeenschappen*) when Indonesia became a nation-state. The nagari in West Sumatera, *marga* in Southern Sumatera, and *negeri* in Maluku are examples of these governance systems, many of which are forms of indigenous governments. Although some scholars argue that these are not authentic because of Dutch influence, the Article shows that the state recognized the existence and autonomy of indigenous peoples who governed their communities based on customary law and culture.

The earlier Constitution also provided for special treatment for the areas where these systems operated: "[The state] honors the status of these special regions and all state laws related to these regions will take into account their original rights." However, such special status never materialized.

The various constitutional revisions greatly reduced and undermined this special status.

The new Constitution sends mixed messages to indigenous peoples in Indonesia. On one hand, it adopts many of the prin-

ciples of the Universal Declaration of Human Rights, requiring the state to protect and ensure the exercise of basic rights of its citizens, including indigenous peoples. On the other hand, although it accommodates the aspirations of indigenous peoples, it applies conditional recognition of their existence and requires a strong notion of progress.

Such a contradiction is particularly obvious in two articles. Article 18B(2) declares: "The State recognizes 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 be regulated in state laws." Article 28I (3) states: "Cultural identity and rights of traditional communities are respected in accordance to the advancement of time and civilization." These conditions prejudice indigenous peoples because they have to deal with complex bureaucratic measures, are treated as Other, and face the suspicion of being separatist groups or rebels.

Organic Policy. Organic policy is a set of policies formulated by the state that derive from the Constitution. Since the government generally uses a sectoral approach in developing organic policy, this report focuses on those that affect indigenous peoples. These are the sectoral policies on health, environment, natural resources, culture, economic and social development, human rights, and education.

- **Health**

Regulated by Law No. 23/1992, the policies on health and its derivatives are generally unfavorable to indigenous medical practices. While the government acknowledges the existence of traditional medicine,[14] Decree of Minister of Health No. 0584/MENKES/SK/VI/1995 on Centers of Development and Application of Traditional Medicine defines the term it tends only to recognize formally taught or trained medical providers and the application of scientifically scrutinized methods and drugs. Two regulations manifest this. Government Regulation No. 32/1996 obligates medical providers to possess approved knowledge and skills as indicated in certificates issued by educational institutions. Law No. 29/2004 on Medical Practices privileges medical doctors and dentists in health care through a rigorous licensing policy.

Other decrees issued by the Minister of Health further regulate traditional drugs through scientific testing and clinically proven packaging. Under the Decree on the Implementation of Traditional Medicine, practitioners have to organize as legal bodies and register their organization to apply for a license. Such rigorous regulations virtually exclude shamans or indigenous healers from the list of state-recognized medical practitioners. As cited earlier, scientists have been tapping their knowledge on medicinal plants for possible large-scale drug production, often without their consent, not to mention, sharing of benefits.

Further, the environmental health standards adopted in these policies are based on Western medicine's perspective and definitions. Therefore, these do not represent the philosophies and knowledge of indigenous peoples. The application of such standards can be disastrous to them because the criteria for healthy lifestyles, healthy houses, and overall healthy environment run counter to their own.

According to health agencies a healthy house, for example, means one that has ceilings, walls, floors, bedroom and living room windows, ventilation, smoke exhaust, and lighting. These qualifications prevent houses of many indigenous architectural types to be considered unhealthy. As a consequence indigenous houses are often demolished or have to be abandoned, and its residents relocated to new "healthy" houses. A concrete example is the fate of longhouses *(Betang)* in Kalimantan. Apart from trying to control population and to plan development, the government persuaded, if not forced, longhouse residents to resettle in individual houses. This practice destroys an important component of Dayak social system and identity.

Moreover, limited as their access is, indigenous peoples do not enjoy any special treatment to free health services. A decree on Guidelines of Desa Dispensary[15] regulates the sale of modern drugs to villages.

A recent law, however, protects the rights of health consumers by requiring doctors to get their informed consent prior to any medical procedure. Although it favors Western medicine, Law No. 29 Year 2004 provides that a patient has to possess complete information and consent can be oral or in written form. This ben-

efits indigenous peoples who often do not understand medical procedures or are illiterate. However, like previous rules and regulations, this policy gives no special treatment to poor vulnerable groups, including indigenous peoples.

- **Environment**

Environmental management policy is in the hands of the State Ministry of Environment, which has established close relations with civil society. This relationship enabled the birth in 1980 of WALHI (Indonesian Forum for the Environment), the largest environmental NGO network in the country, and the passage of the law on Basic Provisions on Environmental Management (Law No. 4/1982).

Largely favorable to people's rights and social movements, the law emphasizes the right of the individual to have a good and healthy environment (Article 5) and requires an environmental impact assessment for development projects with significant environmental impacts (Article 16). Article 19 also recognizes the role of NGOs in supporting environmental management that opened political space for the mushrooming of environmental NGOs in the 1980s.

This environmental law, however, has some provisions that can raise problems for indigenous peoples. Article 10 cites *hak menguasai negara* on natural resources. Although the term means the role of the state as regulator and enforcer, it has other meanings in other sectors, particularly in land administration, forestry and mining (see following sections).

A recent legislation is Law No 23/1997 on Environmental Management. While it does not have any specific reference to indigenous people, some articles cite sustainable development as one of its considerations. Sustainable development connotes a sustainable society that assumes the involvement of local and indigenous communities in development programs due to their knowledge in conserving the environment (Hardjasoemantri 2000: 17). Using this framework, the law has at least three important ideas that concern indigenous peoples.

First, its application in development planning in Indonesia is to prevent natural resources from getting overexploited with its undesirable effects of environmental pollution and degradation. As a healthy environment is a human right, the state is obligated

to make this condition possible. This right entails the right to information, particularly those concerning industrial and extraction activities and their environmental impacts.

Second, local communities have the right to sue when an activity results in environmental destruction. But no clear mechanism provides for their meaningful participation in deciding whether or not a potentially destructive activity should take place in their areas. Article 19 requires public officials to consider public opinion in issuing permits on activities with large environmental impacts. However, it is not clear what constitutes public opinion and how members of the public channel their opinion.

Article 5 states that everyone has the right to participate in environmental management in accordance with existing laws and regulations. This clause further weakens the position of local communities as the state tends to limit the right. Nonetheless, communities, either as an individual group or through *class action*, have the *legal standing* to sue once environmental destruction takes place.

Third, this law intends to promote environmental management policies under one roof. Yet, the State Ministry of Environment, which is responsible for its implementation, is in a weak position to deal with sectoral issues. While it cuts across sectors, its programs do not generate state revenues like those of the forestry, mining, fishery and agriculture ministries. These agencies often issue their own environmental policies that the private sector complies with.[16] Consequently, in some cases of environmental pollution and destruction, the law is a paper tiger. Moreover, financiers and owners of companies concerned usually have the support and backing of government and military officials.

As its operational policy, Government Regulation on Environmental Impact Assessment (No. 27/1999) does not state any specific protection for indigenous and other marginal groups as potential victims of environmental pollution or destruction. It deals more with technical prevention. The issues of hazard waste disposal, conflict resolution, and environmental audit thus remain only on paper rather than real acts of specific protection for vulnerable groups.

Finally the right of self-determination of indigenous peoples is not recognized as an important part of sustainable environmental

management and conservation. Other operational policies focus only on people's duties in ensuring this. Regulations or normative limitations restrict participation, so that these exclude indigenous peoples' initiatives and traditions in managing the environment in a sustainable way. This situation shows that environmental policies in Indonesia still take one direction — from government to people.

- **Natural Resources**

Indonesia has separate policies on natural resources since its management is the responsibility of sectoral ministries.

Land

Land is one of the most contested natural resources. The basis of Indonesia's land policies is laid out in the Basic Agrarian Law (No. 5/1960), also known as UUPA. It has been in existence for 45 years since the country's first president, Sukarno, was in power. The law has a socialist leaning, having been enacted at a time when the Indonesian Communist Party was the third largest communist party in the world and when the colonial legal structure was being overhauled.

The law is based on five principles:

- Only Indonesian nationals can own lands;
- The state does not own lands but has the highest authority to govern them for the prosperity of all peoples (*hak menguasai dari negara*);
- Land has a social function so that its use is not for mere private interests and may not harm other people;
- Land reform is necessary to redistribute lands to achieve just land ownership structure;
- The state has to produce land use plans to reach "Indonesian socialism."

The term hak menguasai negara has sparked a long debate between the government and civil society. Its rationale (Article 2) is that the state is the manifestation of all people and therefore will act on their behalf and for their interests. This entails the authority "to regulate and administer allocation, utilization, supply, and con-

servation of land, water and airspace; to determine and regulate legal relations between people and land, water and airspace; to determine and regulate legal relations between people and legal actions concerning land, water and airspace" (Article 2[2]).

With this provision, the term should be interpreted within the framework of governance, which places the government as administrator, regulator and enforcer. However since Suharto took power 40 years ago, the government has tended to act as a legal personality that can claim rights to own lands. If UUPA intends to eliminate the concept of state domain in which all untitled lands are state property, the New Order reversed the process even while maintaining the law. This practice has severely affected the lives of indigenous peoples throughout the country, land being crucial to their identities and livelihoods.

Further, the law has an odd position with masyarakat adat and *hukum adat* (customary law) that greatly disadvantages indigenous peoples. It places hukum adat as the source of agrarian law but with a condition that it does not go against national and state interests and is in line with Indonesian socialism and other laws and regulations (Article 5). The same condition applies in implementing *hak ulayat* (customary right) with an additional stipulation that the right still exists. Budi Harsono, an influential Indonesian thinker on agrarian law, argues that once the Indonesian state was formed the rights dissolved into *hak menguasai negara*. Therefore, indigenous peoples can no longer claim customary rights.

The New Order regime used the dominance of the concept of state authority over customary law in relation to lands in pursuing pro-market policies. It adopted the term *tanah negara* (state lands) in state regulations, a term that indeed contrasts with what UUPA actually intends. A good example is Government Regulation No. 40/1996 on Hak Guna Usaha, Hak Guna Bangunan, and Hak Pakai atas Tanah. Article 4(1) states that "lands that can be granted with Hak Guna Usaha (HGU) are State lands." Hak Guna Usaha refers to rights relating to agricultural investments including plantation, fishery and animal husbandry, with lease rights lasting for 35 years and renewable for 25 years.

To indigenous peoples the plantation is the most popular and destructive type of agriculture. Millions of hectares of indigenous

lands are considered HGU, which are being appropriated for this purpose mostly through repressive means. These include forced eviction of indigenous peoples, making them sign blank letters of agreement, and land compensation below market price. The palm oil boom in Indonesia has caused the popularity of this land scheme to soar.

Another setback for indigenous land rights is land registration. With the goal to provide land security, the New Order regime issued Regulation No. 24/1997 on land registration, which clearly favors private over communal property. Article 9 lists the lands that have to be registered and the different types of rights, which all pertain to individuals, either natural or legal person, and the state. Indigenous peoples cannot acquire a land title as a group to maintain their communal tenure and ownership. Their lands most likely fall under the category of *tanah negara* or state lands.

The indigenous peoples have long demanded that their land rights be recognized, which was raised at a meeting with the State Minister of Agrarian Affairs at the first Congress of Masyarakat Adat in 1999. In response to this as well as to the growing disputes on HGU lands and customary right recognition under UUPA, the State Minister issued Regulation No. 5/1999. An operational policy of UUPA, the Guidelines on the Settlements of Customary Land Rights of Masyarakat Hukum Adat aims to promote agrarian conflict resolution. However, it similarly sets a condition for acknowledging customary right.

Article 2(1) states that customary right exists if:

- There is a group of people who claim to be bound by an adat law as members of a particular legal association who recognize and implement their rules in everyday life;
- There is a particular tanah ulayat, which is the environment of the members of the association concerned, and their place for subsistence;
- There is an adat legal system concerning governance, control, and utilization of tanah ulayat, which applies to and is enforceable on members.

Indigenous peoples may find these requirements favorable to them as they can obtain legal rights over their lands. However, the

regulation has a clause that can hinder recognition. Article 5(1) requires research to prove the existence of masyarakat hukum adat and their land rights. The local government of the area in which the concerned group lives is to conduct the study with the participation of experts of adat law, the community concerned, NGOs, and government agencies involved in natural resource management.

However, despite community participation, the affected people may not benefit from the study since government tends to look at experts as the highest scientific authority. Scientists have their own mental baggage that can cloud their views on the group under study. For instance, in Pasir District, East Kalimantan, researchers from the Faculty of Law of Hassanudin University concluded that the district no longer has community lands (Tim Peneliti Fakultas Hukum Universitas Hasanuddin, 2002). This conclusion denies the fact that indigenous Dayak groups do exist in the district and manage their own lands, with many of them having mapped their territories prior to the research.

Finally, the purpose of customary rights settlement is merely to identify indigenous lands on land use maps rather than to issue communal land titles. This is far from securing indigenous tenurial rights. The National Land Agency is vague on land titles as these apply to the individual land registration policy. The World Bank has provided loans to implement this policy with the Indonesia Land Administration Project (1995-2000) and the Land Management and Development Project (2004-2009). Intended to speed up land registration in the country, the first phase set up a land administration system in urban areas, and the ongoing phase targets indigenous lands outside Java.

Both projects can create a land market in every corner of the country, turning this resource into a commodity. This view is harmful to indigenous peoples as it destroys their holistic concept of land and forces them to cope with market forces that can use the power of money to take over their lands.

Forestry

When the Decade of the World's Indigenous People began, the forestry law in effect was Law No. 5/1967. Operating under

the assumption that all untitled lands are state lands, it aimed to raise revenues through export-oriented activities. The forest areas[17] designated for both exploitation and conservation purposes were often on indigenous lands. Through this practice the Ministry of Forestry controlled about 62 percent of Indonesian landmass (Contreras-Hermosilla and Fay, 2005), ignoring the fact that almost half of the Indonesian population live in and around these areas. In 1999 the President signed a new forestry law (Law No. 41/1999).

The new law takes a significant paradigm shift in forestry activities, and one of the modifications is the component on community empowerment. It recognizes the existence of communities living in and around forests including indigenous peoples under the terms masyarakat hukum adat and masyarakat adat that were absent in the earlier forestry law. The following clauses show such recognition (HuMa 2006):

- Designation of forest management regions at the unit level takes into account, among others, local community institutions, including masyarakat hukum adat, and boundaries of state administrative units;
- Using the principles of integration, any forestry activity (*penyelenggaraan kehutanan*) is conducted by considering national interest, other sectors, and the local community;
- The implementation of each forest management component shall involve the local community, taking into account their rights, cultural values, aspirations and perceptions;
- The forest system is a design effort of the forest management unit, which is implemented in accordance with the rights of the local community that have existed due to their history and forest condition.

This position is closely related to decentralization, which was the driving force in the drafting of the law. Unfortunately, it does not explain definitively the difference between masyarakat hukum adat and people who live in and around forest areas, as the terms entail different kinds of rights. It is the decree on the Implementation of Community-based Forestry (No. 31/Kpts-II/2001) that defines local community. According to the decree, a local commu-

nity is a "social unity that consists of citizens of the Republic of Indonesia who live in and or around forests, who form a community, based on common forest-related livelihoods, history, attachment to place, and regulation to order their lives" (Article 1[7]).

Despite the paradigm shift in looking at forest communities, the same problems remain, one of which is conditional recognition. For a masyarakat hukum adat, the conditions are "as long as [it] exists and gains recognition, as well as not in conflict with national interests" (Article 4 paragraph 3). This position is in accordance with the Basic Agrarian Law, which elaborates in the explanation to Article 67 on other requirements the masyarakat hukum adat should meet:

- the community remains as a kinship-based group (*paguyuban* or *rechtsgemeenschap*);
- an adat governing institution still exists;
- has a clearly defined adat territory;
- has enforceable legal structure and instruments, particularly adat judicial system; and
- forest product collection is practiced in their surrounding forests for subsistence.

In addition a Ministry of Forestry non-binding circular letter (No. S.75/Menhut-II/2004) requests heads of regional governments to carry out a study led by adat law experts, local community leaders, and other government agencies to look into the authenticity of the masyarakat hukum adat concerned, among other things.

The law also claims that unless titled, indigenous forest lands are state forests. Article 1(6) defines *hutan adat* (indigenous forest lands) as "state forests that lie within the territory of masyarakat hukum adat." Although the Forestry Law declares that the state does not have the right to own, in reality it acts as a legal personality that owns the forests. Trespassing on state property is liable for criminal prosecution, and all activities within its jurisdiction have to possess state permits.

Article 50 lists the restricted activities in forest areas, and this includes carrying cutting tools, collecting non-timber forest products (both plants and animals), and cattle grazing. A person with a machete for collecting fuel wood, for example, can be doubly

charged for carrying a cutting tool and collecting forest products without a permit.

These positions make it the most threatening law for communities living in and around forest areas, which are mostly composed of indigenous peoples. It tends to destroy the indigenous peoples' relationship with the forest as a place of spiritual, cultural, economic and social importance. It puts up administrative and penal barriers that make the implementation of community rights almost impossible. If the law were strictly enforced, millions of indigenous peoples would be imprisoned.

The law mandates the national government to issue a regulation on adat forests. The *Aliansi Masyarakat Adat Nusantara* (Alliance of Masyarakat Adat of the Archipelago, more popularly known by its abbreviation AMAN) was invited to participate in the discussions on a draft regulation but desisted when the Ministry of Forestry was unwilling to accept its demand on indigenous rights recognition. A regulation was never passed, and the Ministry instead issued the earlier cited circular letter No. S.75/Menhut-II/2004.

Concessions and Protected Areas. To further control forest resources, the government has passed laws categorizing forests into protected areas, protection forest and production forest (Laws No. 5/1967 and No. 41/1999).[18] A separate law (Law No. 5/1990) exists for managing protected areas, while lower legal instruments are employed for the two other types.

The production forest is divided into hundreds of logging concessions to feed the timber industry, which peaked in the 1970s and 1980s. The largest contributor to state revenues after oil and gas, the timber industry declined in the early 1990s but bounced back after Suharto stepped down. As a result, since most forest areas are indigenous lands, indigenous peoples are left with a degraded, and often harsh, environment that worsens their living conditions.

To rectify the situation that gave more attention to commercial logging, the Ministry issued a decree introducing a community-based forestry scheme. However, the scheme only gives local communities access to protection and production forests that are not under concessions. This is like giving the indigenous and local communities the "crumbs" of the forest industry.

Moreover, the state tightly controls the scheme's implementation. Local government employees, for example, are assigned to aid the community in developing and implementing their internal rules, working plans and activities. More importantly the decree only allows the right to manage and not to own the land. Virtually no forestry policy, therefore, recognizes customary rights over forest areas that can be considered as legitimate as private property rights.

In protected areas, the Ministry of Forestry further implements biodiversity conservation policies (Law No. 5/1990).

The biodiversity law was drafted when the forest conservation approach became popular. Based on a model first introduced in the Yellowstone Park in the United States, the approach places more importance on animal and plant species than on people, tending to treat local communities as "pests" in conservation efforts.

A later regulation on natural preservation and conservation (No. 68/1998) promotes six types of protected areas. These are nature reserve, wildlife reserve, national park, grand forest park and nature recreational park. This categorization is a Western-imposed conservation system. Most indigenous groups have long used their own indigenous systems to preserve and maintain the forests.

Access to protected areas is denied to indigenous peoples. Nature and wildlife reserves are off limits to human activities other than scientific research and limited tourism. National park, grand forest park, and nature recreational park allow some human activities and interventions, such as nature-based tourism. Of the three, the national park has a zoning system that divides it into core, wilderness and utilization zones. With a combined system of preservation and utilization, the national park is a favored type of protected area in Indonesia. Protected areas do not generate substantial state revenue, and the fund lack has led partly to their poor condition.

The state also tends to "fence" the parks, preventing local and indigenous communities from entering while those who live within the area are evicted or locked in enclaves. The parks are often on their lands, which they have maintained in good condition as their livelihoods and spiritual and cultural lives depend on these.

With the new discourse on collaborative management, the Minister of Forestry recently issued a regulation promoting this approach. The Collaborative Management of Natural Preservation Areas and Natural Conservation Areas ((No. P.19/Menhut-II/2004) allows local communities, NGOs, and the private sector to participate in managing protected areas. The roles of stakeholders however are merely to contribute funds, expertise and labor in park management and do not include the sharing of power as indigenous peoples demand.

Mining

Mining is a vital component of the Indonesian economy. Oil, gas, coal, gold, copper and nickel are mined, with the first two contributing most to state coffers in the last 30 years. The mining industry is thus a top policy priority, receiving special treatment to attract investments. To realize this, the government has passed a number of laws and regulations, particularly during Suharto's rule.

In 1967 the New Order regime passed a mining law (Law No. 11/1967), which paved the way for foreign mining companies to invest and operate in the country. Enforced until the late 1990s, it aimed to accelerate national economic development. The first foreign mining company to operate was Freeport, which obtained a concession in West Papua.[19]

The law largely regulated procedures for concessions including their location and rights. Excluded from concessions were graveyards, sacred sites, public facilities and houses (including their yards) among others. When a concession overlapped with lands belonging to other people, it required concessionaires to compensate landholders on material loss due to mining activities and loss of access.

While the policy sounds favorable to indigenous rights, the reality was different. Concessionaires often wiped out settlements and areas of cultural importance to indigenous peoples, and only recognized land rights of those who could show land titles. Further, mining concessionaires tended to disrespect indigenous rights. JATAM, an NGO advocacy network on mining issues, found that some large concessionaires used manipulative and sometimes violent methods to obtain consent and appropriate the lands of indigenous peoples (2005: 11-12).

JATAM reported that from 1994-2000, PT. Kelian Equatorial Mining (a subsidiary of UK's Rio Tinto), Australia's Newcrest-owned PT Nusa Halmahera Mineral and PT Freeport Indonesia employed police officers and army soldiers who tortured, intimidated, arrested unlawfully and even killed indigenous persons who defended their lands and fought for their rights. The people were not only dispossessed of their lands but suffered other grave violations of their human rights.

Dispossession actually starts from the application process (Government Regulation No. 32/1969). An application goes to the Minister of Mines who then asks for the opinion of the Governor of the province where the proposed concession lies. People who have rights to the land and others who face potential loss can submit their objections to the Governor who sends them to the Minister. It is the latter who gives the final decision to accept or act on the complaints. The affected people do not have any role in making the decision.

This regulation was amended twice to decentralize mining benefits and authority. The first amendment gave 80 percent of concession fees to local governments, and the second transferred authority over mining to regional governments. The bargaining positions of affected local communities are still weak, however, since the procedures for concession application did not change.

Newer mining laws have been enacted by subsequent administrations. Law No 22/2001 aims to restructure the management of the oil and gas industries, previously a monopoly of the corrupt state-run company, Pertamina. It also intends to boost state revenues and employment amid the economic crisis that still grips the country. However, it does not take into account the needs and aspirations of affected and vulnerable communities, including indigenous peoples, who suffer the negative impacts of mining, particularly the loss of land.

The law states that the contract between a concessionaire and the Board of Oil and Gas, on the state's behalf, should have a clause that provides for the development of the affected community and for recognition of indigenous rights. But it does not clarify how these should be enforced. It also implies that the state transfers its

constitutional duty to protect the rights of vulnerable groups to the private sector.

Providing development for affected communities however can harm indigenous peoples in the long run as shown in the case of some West Papuan tribes. In 1996 Freeport agreed to give one percent of its gross income to seven tribes — Amungme, Kamoro, Nduga, Ekari/Mee, Lani, Damal, and Moni — as part of a settlement of a lawsuit they filed with a US court for human rights violations and environmental destruction. Reaching nearly $200 million in 10 years, the social fund spawned discord, disunity and a dole-out mentality in these communities. The administration of the fund, initially handled by a foundation the tribes set up, has since returned to Freeport. Currently benefiting more from this fund are people belonging to the dominant group in West Papua rather than the indigenous peoples who were adversely affected by Freeport's mining activities.

Indigenous peoples face a greater threat today as one of the considerations of the mining law is to open the doors to privatization within the framework of neoliberal globalization. This is compounded by questionable actions that some government agencies take.

The Ministry of Energy and Mineral Resources, which is more powerful than other ministries dealing with natural resources, often permitted concessionaires to start operating even before an environmental impact assessment was approved.[20] During former President Megawati Sukarnowati's administration, the Parliament amended Article 38 of the forestry law (Law No. 41/1999), and the process was reportedly tainted by corruption.[21] The amendment enabled 13 mining companies to operate in protected forests. As most protected areas are also indigenous lands, the mining operations have meant more dispossession and degraded environments for indigenous peoples.

Agriculture

Most indigenous peoples in Indonesia still practice swidden agriculture. The government labels it shifting cultivation that it considers destructive to the environment. It also calls the people "forest encroachers" since the practice involves cutting trees after a

fallow period. Behind the labels, however, is the government's program to impose sedentary agriculture. In 1993 the Ministers of Forestry, Domestic Affairs, and Transmigration and the Settlements of Forest Encroachers issued a joint decree to resettle swidden cultivators out of forest areas.

When the forest industry declined with the decrease in production forest supply,[22] investors began to focus on large-scale agribusiness, particularly palm oil plantation. Aiming to become the world's largest palm oil producer, the state issued a policy package, an important part of which is the law on plantation (Law No. 18/2004). As most plantations are on indigenous lands, Article 9 deals with tanah ulayat (customary lands), which promotes the same principles used in previous land laws and regulations. It similarly imposes proof of existence as a condition for indigenous peoples' recognition. While it rules that a concessionaire should negotiate with the existing land right holder on compensation, this is clearly not sufficient to protect indigenous rights.

To make way for investments, the state denies and even suppresses the land rights of indigenous peoples. Most areas cleared for plantations have been appropriated through repressive means. Many indigenous peoples have suffered from the use of force, either by state security forces or by company-hired thugs. An example is the land conflict between the indigenous Kajang people in South Sulawesi and PT London Sumatra.

PT London Sumatra began to appropriate land in the 1960s that was granted with Hak Guna Usaha or lease rights in 1997. It tried to expand its plantation into the lands of the Kajang people, using unlawful arrest, torture, house demolition and arson with the backing of military and police forces. After a couple of failed attempts at negotiation, the people began an open protest, and in July 2003 reoccupied their lands. The company in response called the police who opened fire on the protesters, killing four and injuring 20; 10 others were imprisoned.[23]

Marine and Fishery

Marine and fishery policies relating to indigenous peoples changed significantly in the period 2000-2004. Just after AMAN was founded, the Ministry of Marine Affairs and Fishery invited its representatives and other NGOs to take part in drafting the Law

on Coastal Zone Management. Their voice echoed strongly in the draft, which used the definition of masyarakat adat as adopted by AMAN and recognized indigenous rights. The articles also favored the roles, interests and practices of masyarakat adat in managing coastal zones, including adat sanctions for violations.

The final form of the law however changed substantially. Although it has articles on masyarakat adat, the weight has shifted back to the government, and the roles of local/indigenous communities in decision making have been greatly reduced.

In the same vein, the law on fishery (No. 31/2004) favors the large-scale commercial fishing industry while undermining the millions of vulnerable small-scale fisherfolk, many of them indigenous peoples. This is most pronounced in the provision that requires a permit for any person to catch, transport, culture, process and market fish within Indonesian jurisdiction; it excludes small-scale fishers.

Spatial Planning

In 1992 the Parliament passed the Spatial Planning Law (No 24 Year 1992) at a time when the concept of sustainable development was the issue of the day. This legislation impacts on the lives of indigenous peoples in Indonesia in several ways. First, its conceptual basis is state territory, which treats space as homogenous and empty to enable control and exploitation of people and resources, as shown in its categories of spatial function. This ignores the uniqueness of each place where people live and put a meaning. Indigenous peoples have such a uniqueness and have their own indigenous territorial concepts. The state, however, does not give special treatment to adat lands but treats them as the same, as implied in the land use regulation (No. 16/2004).

Second, it is only the government that develops and enforces spatial plans without much community participation. Although the law opens up opportunities for people to take part (Government Regulation No. 69/1996), there are no mechanisms to ensure inclusion of their inputs in spatial plans. Local communities, for example, can express their objection to spatial plans, but the final decision is in the hands of the central government at the national level and the regional government and local Parliament at the re-

gional level. National spatial planning in Indonesia tends to be from top to down, and spatial plans are inclined to accommodate market needs and investment schemes.

Third, both problems above lead to increasing conflicts but clear mechanisms for resolution are not provided. With their complaints falling on deaf ears, local and indigenous communities have no avenue for finding acceptable solutions to disputes. It is only within government agencies that some effort is made to settle land use conflicts. The Ministry of Forestry for instance has requested harmonizing spatial plans with forestland use plans to resolve overlapping land uses among sectoral agencies and secure its claimed forest areas..

Interestingly, spatial planning policies open up an opportunity for community mapping. The earlier cited Government Regulation No. 69/1996 provides political space for local people to contribute to the spatial planning process. Many indigenous communities use it to map their areas, which feeds into the spatial planning process. The more crucial outcome is the production of maps of indigenous areas that they can use to defend and protect their lands.

- **Culture**

As a means to promote nationalism, the Indonesian government has encouraged and promoted the development of a national culture. The definitions of national culture proffered by the New Order government and the *Garis Besar Haluan Negara* (GBHN, Outline of State Guidelines) in 1999 differ in concept especially on the issues of morality and rule of law. But both consider that adopting modern worldviews is fundamental to national culture/identity and capable of filtering *bad* cultural influence. Although the emphasized word would refer mostly to foreign, often pop, cultures deemed contrary to Eastern values, the adjective can be disastrous to indigenous cultures. The question then is: what constitutes bad cultural values? To answer this, let us discuss what the government considers as good culture.

In the last Five-year Development Plan or Repelita VI under Suharto, the government promoted the understanding and implementation of "high, civilized values of regional cultures" and a

break from traditional ones that did "not always support the readiness and maturity in thinking, behaving and acting openly and within the standards of progress, appreciating time, and willing to engage in healthy competition." The cultural values it wanted to develop were "productivity, efficiency, productive work ethos, and the development of science and technology." Law No. 25 Year 2000 on National Development Program (Propenas) 2000-2004 added another component, namely, a national culture rooted in "the cultural heritage of the ancestors of the nation … that contains universal values including the belief in One God."

With these notions indigenous cultures can fall into the category of bad culture. The first filter is whether or not a culture is high and civilized. The questions are: what are the criteria and who sets these? The indigenous cultures are often considered as traditional, and so can hinder the nation's progress. Many indigenous cultures also have more than one god, and thus do not meet the standards of the prescribed universal values. Indigenous groups who have their own religions are often forced to convert to one of the major religions, as a policy of the Minister of Religious Affairs on *Aliran Kepercayaan* (No. 4/1978) virtually excludes minor religions from the state-sanctioned list.

Another problem is the commodification of indigenous cultures, which are promoted as a tourist attraction. The GBHN 1999 gave the government a mandate to use Indonesian arts and traditional cultures as a means to develop national tourism. Policies and programs on culture have had a variety of names under different administrations but what are commonly advanced are the performing arts and cultural artifacts that can be showcased as tourism products. Culture becomes a commodity for much needed foreign exchange.

Finally, Bahasa Indonesia is seen as crucial by the government in building a sense of national identity. In schools throughout the country including in indigenous villages, Bahasa Indonesia is used as the language of instruction. The teaching of local languages does exist in some provinces but they tend to be those of the dominant cultures. This can have grave consequences for indigenous cultures as in many parts of the country speakers of indigenous languages are diminishing. Language is a medium for transferring the

knowledge of a people. Its loss can mean the loss of their collective knowledge, and thus puts in peril the future of indigenous cultures.

- **Economic and Social Development**

The Indonesian economy is generally resource-based, and the majority of the population, including indigenous peoples, is engaged in small-scale agricultural activities. Despite this fact, development planners have promoted urban-oriented industrialization based on Western experience as prescribed by economists. They believe in the evolution of society from traditional to modern through changes in economic enterprise. The New Order even adopted Rostow's stages of economic development into its policies.

Development planning in Indonesia uses three timeframes, long-term (25 years), medium term (5 years) and short term (1 year). The cycle began in 1958 with two abrupt changes with the fall of the first two presidents. When the Decade of the World's Indigenous People started, Indonesia was in its second Long-term Development Plan and sixth Five-year Development Plan (Repelita VI). The following discusses two periods: the New Order and Reformasi.

The New Order's development plan was based on a three-pronged strategy that later became an ideology. Called Development Trilogy, its elements were high economic growth, fair distribution of development programs and benefits, and strong national stability. Of these three the state focused on economic growth and national stability. The development plan, as contained in Repelita VI, thus largely concentrated on large-scale investments and schemes, and gave little attention to small-scale economic activities. The priority was to build a link between industrial and agricultural development and to improve human resources. The main economic engine was processing industries and food self-sufficiency.

Suharto's fall in 1998 came in the midst of economic crisis in the country. This was partly blamed on the top-down process of development planning that was insensitive to the needs of the Indonesian citizens and the regions. The succeeding government thus decided to end the New Order's Repelita scheme and intro-

duced the Program Pembangunan Nasional (PROPENAS, National Development Program),[24] which it claimed to be more participatory.

To respond to the multidimensional crises that Indonesia was facing, PROPENAS set five priorities:

- to have a democratic political system and to maintain Indonesian unity;
- to maintain supremacy of law and good governance;
- to accelerate economic recovery and strengthen the foundations of sustainable and just development based on a people's economic system;
- to develop social welfare and improve the quality of religious life and cultural strength;
- to improve regional development.

PROPENAS envisions a "more just and well distributed" economy that reflects the regions' increased roles and peoples' empowerment. While its economic goal and objectives sound promising, Indonesia has not recovered from the crisis. Although the country has had four presidents since 1998, their main strategy has been the same, i.e., bringing in foreign investments to boost the economy. Instead of breaking away from the New Order's path, the different administrations leaned more toward neoliberal policies that champion the private sector in providing employment and services to the people. Such policies however are harmful to local and in particular indigenous communities.

Protesting against pro-market neoliberal policies, many indigenous groups and NGO activists have demanded that the state focus on small-scale economies that the people have practiced and proven to be more resilient to crisis. They also urge the state to enforce agrarian reform to provide the millions of marginalized people access to land for their economic activities.

Irwan (2005) argues that within government circles, the neoliberal school of thought has won over the idea of community sovereignty, because the former has shaped development policies since the early 1990s. This condition puts indigenous peoples at a disadvantage since they need policies that consider their needs

and aspirations. The idea of community sovereignty has not been successfully institutionalized in the country's universities and research institutes, which produce technocrats for the government. Subsequently, the second level of institutionalization—in which it is adopted into laws and regulations—cannot take place.

Social development policies are no less harmful to indigenous peoples, as the state has launched programs to assimilate or integrate them into modern lifestyles and norms. The most popular is the Program on Empowerment of Komunitas Adat Terpencil. Launched by the New Order regime, it intends to "assist masyarakat terasing in 'providing pathways' towards more advanced ways of life….By showing it, they will know sedentary agriculture and farming and no longer practice shifting agriculture as they did before [joining the program]." Showing a patronizing attitude, it is a statement that denigrates indigenous peoples.

Responding to criticisms and protests by indigenous groups, the new government revised the policy, at least on paper. The new program on the Development of Social Welfare of KAT sets as a goal: "to empower komunitas adat terpencil in all aspects of their lives and livelihoods so that they can live a normal life physically, spiritually and socially in order to take part in [national] development." Its implementation is supposed to take local customs into account.

The KAT program covers development of settlements, civil administration, religious affairs, health, education, and others as needed. A coordinating forum, comprised by government officials; experts, mostly anthropologists who are most influential in shaping the program; eminent persons; and organizations working on social issues, formulates policies, plans and projects. Regional governments exercise some authority over the program.

- **Human Rights**

Human rights was a critical issue under Suharto. Although he approved the formation of the National Commission on Human Rights in 1993, his use of extensive intelligence and military networks to stop resistance, which is deemed state terrorism, continued.

After his fall the Parliament in 1998 passed the Indonesian version of a Human Rights Charter that spells out the rights and duties of every Indonesian citizen. It is strongly influenced by the Universal Declaration on Human Rights and other international instruments signed by Indonesia. The charter became the basis in formulating the law on human rights (Law No. 39/1999).

Unfortunately, despite its driving force the legislation has serious flaws and gives mixed signals to indigenous peoples. Article 5(3) requires the State to provide special treatment and protection to vulnerable groups. Article 6(1) more specifically provides for attention and protection for the different needs of masyarakat hukum adat. However, the same Article states that their cultural identities and rights on tanah ulayat "are protected in line with the advancement of time." With the same wording as Article 41 of the Human Rights Charter, Article 6 implies that while indigenous peoples can be different from dominant groups, they nevertheless have to take the mainstream path.

The law further fails to make a political breakthrough in eliminating all policies that potentially violate or are explicitly against human rights. Article 105 rules that "all policies concerning human rights regulated in other laws and regulations still apply as long as they are mentioned in this Law." Indigenous peoples are further disenfranchised as the laws on Human Rights Courts (No. 26/2000) and Truth and Reconciliation Commission (No. 27/2004) do not have a mandate to deal with rights violations committed against them.

The law is bogged down in technicalities that weaken the strong intention to promote human rights. It does not have the power to have the rights it recognizes and protects to be adopted into sectoral policies. This is attributable to the sectoral approach in Indonesian lawmaking, in which laws are drafted by the state agency concerned to justify its existence and programs. Such an approach affects the implementation of this law, making it the sole responsibility of the National Commission on Human Rights. While the institutionalization of human rights is weak by design, on the whole indigenous peoples can use this legislation, as they are often the victims of gross human rights violations.

- **Education**

Education is vital in transferring knowledge between generations, and thus in shaping identity. Earlier policies on education tended to promote a standardized system, but these have been replaced by Law No. 20/2003, which recognizes the different needs of vulnerable groups. Article 5 states that "citizens in remote or backward regions as well as masyarakat adat in remote areas are entitled to a special service of education programs."

The term "special" here can be problematic, however, as it is subject to multiple interpretations. In development discourse, it can refer to special treatments and efforts since, within the framework of social evolution, masyarakat adat are still considered far behind. In addition, the special program and how it will be enforced are not clear up to now. Its goal, as cited in a draft regulation on the management of education programs, is basically the same as for other groups in Indonesian society. No special program is specifically crafted for the needs of indigenous children. Lawmakers may have been merely following a trend in including masyarakat adat without any clear ideas about its consequence.

Nonetheless, although not its intent, the law opens a window of opportunity for indigenous peoples. With decentralization, the law allows schools to develop local content (*muatan lokal*) in their curricula to help students to understand the potentials of their surroundings. Some indigenous groups take this opportunity to introduce their languages and cultures into the educational program.

In West Kalimantan, for instance, the Institut Dayakologi of Pancur Kasih produces books containing Dayak stories to be used in elementary schools. The masyarakat adat of Landak District on the other hand have urged the government to incorporate their traditions, language, local wisdom, and adat laws in school curricula from kindergarten to secondary level with their participation in developing and teaching it.

Institutional Support

In general the above-cited sectoral policies are not adequately backed by institutional support to make them fully operative and ensure the protection of indigenous peoples' rights. As shown in the following table, some sectors have not taken concrete actions to put in place the initiatives or mechanisms agreed upon to carry out these policies.

Policies	Institutional Support
Health	No institutional setup to protect rights of traditional medical care and traditional knowledge of medicinal plants
Environment	• No particular institution for indigenous rights
Natural Resources	• Mechanism to resolve indigenous land conflicts has been decided, but not in place yet • Community-based forestry grants local communities the right to manage but not tenurial rights • Policy on participation in natural resource management exists in most sectors, but it is an opportunity given by the State not a right that people own
Culture	• Directorate General of Culture exists, but not special protection of indigenous cultures; instead these become a commodity for tourism industry
Economic & Social Development	• No institutional mechanism to protect indigenous peoples' economic rights • Ministry of Social Affairs has a directorate on indigenous peoples, but it treats them under the category of KAT as bearers of social problems
Human Rights	• National Commission on Human Rights has long been established and has Commissioners on Masyarakat Hukum Adat and on Minority Groups.
Education	• There is an initiative but no concrete actions to form a special education program for indigenous peoples.

Program Analysis

Two government programs, chosen on the basis of their impact on indigenous peoples, are discussed: KAT Empowerment of the Ministry of Social Affairs and the Rural Community Empowerment Program of the Ministry of Internal Affairs.

Empowerment of Komunitas Adat Terpencil

The program's core is empowerment. It defines empowerment as "the delegation of power and trust to a local community to determine their own life and various forms of development programs as well as their needs by means of protection, strengthening, enhancement, consultation, and advocacy in order to improve the level of their social welfare" (Ministerial Decree No. 06/PEGHUK/2002).

KAT empowerment aims to improve the fulfillment of basic human needs, provide basic social services, improve social interactions with more advanced communities, develop an institutionalized social security system, and improve active roles and responsibilities of KAT in development programs. It has six components: social mapping, project plan development, human resources, empowerment of social environment, cooperation in social development, and monitoring and evaluation.

Under the program people are categorized according to where they live and their livelihoods. By location four categories are used: those in uplands or mountainous areas, in lowlands and/or swamps, in hinterlands or border areas, and living in boats or coastal areas. Based on livelihood, the people are grouped as nomadic, semi sedentary and sedentary.

The program undertakes the development of KAT settlements, and the Ministry of Social Affairs uses two spatial approaches for this. First, settlements are developed where the community lives or in a new location, referred to as *in situ* and *ex situ* development respectively. The former entails improving existing houses or building new ones and constructing public facilities such as schools and roads. Certain criteria are set, such as geographic location, which

excludes disaster- or disease-prone areas, soil fertility, undisputed land. The latter approach involves resettling a community in a new location designated by the government, when the original location is not feasible for the purpose. The new area should meet the same requirements with a better prospect for development.

Second, the Ministry employs a zoning approach. The zones are: core or settlement zone, life or main zone, buffer zone, and border zone. The core zone includes housing, socializing area, sacred sites, and burial grounds of ancestors. The life zone is the area where the community obtains their staple food, either from agricultural activities (dryland and wetland farming, animal husbandry) or plant gathering from the forests, and where they perform related rituals. The buffer zone supports the activities in the life zone and allows activities such as hunting, fishing, timber collection for community needs, and gathering of non-timber forest products. The border zone is the area adjacent to neighboring communities.

Program Implementation. To illustrate the program's success, the Ministry of Social Affairs has published stories such as the following to show the transformation of a community after government intervention (Direktorat Pemberdayaan Komunitas Adat Terpencil, 2004c).

Bonai Kasang Padang Tribe, Bonai Village, Kabupaten of Rokan Hulu, Riau Province

Under the KAT program, the community, which inhabits a lowland area near a river mouth, shifted their livelihood from swidden cultivation and fishing to tangerine farming and marketing their crops. Started in 1997, the project assisted them to enter "modern life" with the introduction of a road system, electricity, elementary school, health center, and marketplace.

Community of Subeleng, Cimpungan Village, Kabupaten of Mentawai Islands, West Sumatera

Before the project commenced in 1997, the community lived in a remote area with very little interaction among themselves and with neighboring communities. They were swidden farmers and hunters. If they were not busy in these activities, they spent

their time "at home, in the gardens, or pig huts so that they tended to relax without thinking about their future."

After the program's guidance and counseling the community could accept and understand lives outside their village and have been able to interact with neighboring communities. They practice sedentary farming, diversify their crops, and use chemical fertilizers. With a number of agencies the program built public facilities such as a children's primary health unit and village road and provided a diesel generator set.

Community of Tanjung Aur Atas, South Bengkulu Kabupaten, Bengkulu Province

This community lived in a remote area that made it difficult for the government to provide services and carry out development projects so that they tended to be "slow and backward." After the project started in 2002, most were growing coconut trees and other useful plants. They also built houses facing each other on a six-meter road that was enhanced by neat fences.

Pelimping Community, Kabupaten of Sintang, West Kalimantan

This community's development was deemed "slow" if public facilities or social services were not made available by the government. They engaged in shifting cultivation, hunting and gathering of forest products using traditional tools and methods. They did not have sufficient food and lived in simple long houses that were disorganized and dirty. With the project the people now live in regular individual houses, which makes housing and settlement planning easier, especially for sanitation purposes.

Bajo people in Sulako Village, Kolaka Kabupaten, South-East Sulawesi

The Bajo people are seafarers whose culture and livelihood are all connected to the sea. In 1995, 60 households lived in 45 houses, while 20 households lived on boats or in houses built with palm fronds in tidal areas. Between 1996 and 2000 the project conducted a series of intensive extension work and training in sedentary farming. With the project, 85 households received land titles for their gardens and house plots.

The above examples portray the supposed positive changes brought by the KAT program in the lives of indigenous peoples. But as these "success stories" show, the program implies cultural and physical disruption. Several indigenous persons from Sulawesi who had first hand experience of the program gave an idea of the rupture and violence it caused. According to Karim, Lamatoti and Ardin (2005), government officials threatened imprisonment and arson to compel Tompu people in Central Sulawesi to move out of their village and into new areas. A police officer burned houses that forced the people to finally abandon the village. They were brought to a new location that was unsuitable to their farming ways, prompting them to clear other lands. The Ministry of Forestry later designated their original village as part of a conservation area.

Empowerment of Rural Communities

The program is administered by the Directorate General of Rural Community Empowerment of the Ministry of Internal Affairs. To illustrate how it works we use an ADB-funded project on Community Empowerment for Rural Development as an example. This project is designed to reduce poverty by increasing incomes in 11 districts in Central Kalimantan, East Kalimantan, South Kalimantan, Central Sulawesi, North Sulawesi, and Southeast Sulawesi provinces. Of the targeted 85,000 families, around 74,000 families or 370,000 people are expected to move out of poverty. The project started in 2001 and is scheduled to end in 2007.

Indigenous peoples most likely inhabit many of the targeted communities but the definition used by the project refers to masyarakat terasing which is now KAT. The US$115-million-project aims to (i) empower rural communities by strengthening their capacity to plan and manage their development activities and (ii) to support investments and promote agricultural productivity and off-farm business enterprises. The main approach is by establishing community-based savings and loan organizations to support micro and small enterprises.

The project however appears to be flawed in several aspects. In 2002 the ADB received a complaint from the Forum Masyarakat

Peduli CERDP, a coalition of NGOs and five villages in South Kalimantan, claiming the project violated its design, principles and approach. In a February 15, 2005 letter the Forum declared that affected communities were in "confusion, doubt and suspicion towards the project implementor at the village level" due to lack of public participation and project transparency. They noted that the public works component was carried out even before capacity building and institutional strengthening took place and that it destroyed existing infrastructure. On the whole they asserted that contrary to what it had committed, the ADB failed to promote good governance and respect for human rights. *(ADB's response is not discussed here as it came after the period of the Indigenous Peoples' Decade.)*

Nongovernment and Indigenous Organizations and Programs

The indigenous movement in Indonesia has a long history and it started to emerge in the national scene in the1990s. Initiated by activists from environmental and human rights movements, it rapidly grew and gained widespread support after the formation of AMAN in 1999**.** Since then more indigenous organizations have been set up, which, unlike the state, use international instruments to advocate and advance the rights of masyarakat adat.

Three organizations at the forefront of the indigenous movement are discussed here: JaPHAMA (Jaringan Pembela Ha-hak Masyarakat Adat/ Network for the Defense of Indigenous Peoples' Rights), AMAN and Pancur Kasih. They were selected based on their work and advocacy for indigenous rights and their historical significance to the indigenous movement in Indonesia. Of the three only JaPHAMA has ceased to exist.

JaPHAMA. In 1993 several indigenous leaders, academicians, and NGO activists met in Tana Toraja to discuss the conditions of indigenous peoples under Suharto's New Order. The meeting was spurred by common problems faced by indigenous groups and the growing indigenous movement around the world. It was there that the term masyarakat adat to mean indigenous peoples was adopted.

The meeting resulted in the formation of JaPHAMA as a network of activists and indigenous leaders to respond primarily to domestic policies that disadvantaged masyarakat adat. Held in suspicion by the government, the group was often forced to hold its meetings in secret. The work of JaPHAMA has contributed greatly towards building a strong indigenous movement in the country.

AMAN. The foundations laid by JaPHAMA led to the birth of the Aliansi Masyarakat Adat Nusantara. AMAN was the outcome of the first meeting ever held of indigenous peoples in the country, i.e., the *Konggres Masyarakat Adat Nusantara* or Congress of Masyarakat Adat of the Archipelago, convened in Jakarta in 1999 by 10 NGO networks and three indigenous organizations. The participants, finding a common bond in alienation, dispossession and discrimination in their own homeland, demanded law and policy reforms. They called on the government to recognize and protect their rights to land, natural resources, adat system and cultural identity, self-determination through the adat institution, and customary laws.[25]

Pessimistic about state response to their call, the congress raised the cry: *If the State does not recognize us, we will not recognize the State either*. The slogan caught the attention of government and political parties, and since then, discourse on indigenous rights has entered local and national policy making. Although masyarakat adat has not fully gained government's favor, recognition can be found in certain laws and regulations especially on natural resources. Many hurdles remain as state policies have a strong pro-market bias.

Although it has politically resonated with numerous communities who identify as masyarakat adat, AMAN has not been able to set criteria of what constitutes masyarakat adat and procedures for membership. This has enabled groups descended from past local nobility to become network members.

Pancur Kasih. Pancur Kasih was founded in 1981 by a group of Dayak intellectuals to improve the lives of the Dayak people amid what some of them called individualism and consumerism. The organization seeks to (re)construct Dayak identity in order to gain back control over their lives and lands. It owes much to past Dayak organizations, including Pakat Dayak (1930s) and Persatuan Dayak (1950s), which have helped to reconstruct the Dayak identity (Riwut, 1993).

Pancur Kasih's main principles are education, self-reliance and solidarity (Mecer and Florus, 1998). Its first activity was setting up schools, and from there it has grown to an organization of 13 semi-autonomous specialized units that address people's economy, natural resource management, education, and indigenous research.

In reconstructing the Dayak identity, Pancur Kasih produces knowledge about the Dayak through ethnographic accounts by Dayak writers and by producing counter-maps. The Institut Dayakologi (ID) spearheads the former by publishing their researches on Dayak culture. Pancur Kasih, through *Pemberdayaan Pengelolaan Sumber Daya Alam Kerakyatan* (PPSDAK, Empowerment of Community-based Natural Resource Management) takes the lead in the counter-mapping movement.

Pancur Kasih has also helped to establish regional indigenous alliances. In the late 1990s when the Dayak peoples began to organize to reclaim their lands and have their rights recognized, Pancur Kasih facilitated the formation of the Indigenous Peoples' Alliance of West Kalimantan (*Aliansi Masyarakat Adat* – AMA Kalbar). AMA Kalbar, one of the 13 organizations that convened the first indigenous peoples' congress, is the leading regional indigenous peoples' alliance in Indonesia.

Counter-Mapping and Reclaiming Identity

With the establishment of PPSDAK in 1995, Pancur Kasih embarked in developing a counter-mapping program as a means to reclaim Dayak lands in West Kalimantan. Since then the program has grown into a movement that is galvanizing indigenous communities to reconstruct their identities and delineate their lands.

The PPSDAK program intends to clarify boundaries of local/indigenous land claims, perform spatial management functions, and organize communities to reduce conflicts and destruction of natural resources. It also seeks to lay down the foundation for policy advocacy to legitimize indigenous land claims through recognition, respect and protection of indigenous peoples' land rights.

The counter-mapping movement has spread rapidly in West Kalimantan, aided by the decentralization policies that opened up political opportunities for local people. As the Dayaks became more aware of their rights and attempted to reframe their indigenous identities, more kampungs or villages requested mapping of their

lands by PPSDAK.[26] Even local governments up to the kabupaten (administrative unit in a province) level asked PPSDAK and other NGOs to assist them in delineating their jurisdiction and produce spatial plans.[27] Several NGOs have adopted counter-mapping into their programs on a smaller scale and limited to certain areas.

Counter-mapping in West Kalimantan has become the yardstick for the rest of the country. By December 2004 PPSDAK had assisted in mapping 263 kampungs in nine kabupatens, covering an area of some 1,135,416 hectares or 7.6 percent of West Kalimantan. This is a considerably large area for the movement, since most NGOs have only succeeded in mapping less than 10 villages in ten years.

However, although a promising tool for reclaiming indigenous lands, the counter-mapping program is limited in its scale of intervention and advocacy. After 10 years of existence it still has not been able to influence the political landscape even at the kabupaten level.

Some of the constraining factors are internal. The movement focuses more on the local level that gives it little influence beyond this. This is partly due to the need to organize communities at the grassroots and possibly a reluctance to deal with state agencies beyond the level of *kecamatan* (administrative unit of kabupaten). Another reason may be its inability to handle the complexity and large amount of spatial information. For instance, although it relies on the Spatial Planning Act as a legal basis for its interventions, its mapping exercises have so far been limited to villages. The smallest scale of the government's spatial planning process occurs at the kabupaten or sometimes at the kecamatan. There is a gap in intervention, so that the movement needs to scale up its activities to have leverage at the national level.

Other limiting factors are external. Current laws on natural resource management do not sufficiently protect or recognize local/indigenous tenurial practices nor do these provide conflict mechanisms and room for people to participate. There is no law that recognizes or regulates indigenous territorial claims such as the Indigenous Peoples Right Act in the Philippines. The security that counter-mapping provides is only temporary since no assurance exists that the communities can maintain or perfect their claims.

Even if signed by government officials, a counter-map cannot be presented as proof in court.

The movement has engendered both positive and negative outcomes. As a tool for organizing communities, counter-mapping has increased the sense of community within kampungs as cohesion grows among members. The exercise aids communities to (re)construct their identities, but at the same time it can create problems as identities relate to boundaries (Peluso 2005). Most importantly, it helps protect their lands from being appropriated or grabbed for resource extractive industries. Unfortunately, such pressure from outsiders shifted in some cases to internal pressures.

The program has also brought changes that can cause problems in indigenous communities. Counter-mapping is basically an effort to transform mental maps that exist in oral traditions into cartographic maps that evolve in a written culture, and this transformation has some implications. First, cartography is alien to most, if not all, indigenous spatial knowledge traditions. As each spatial knowledge tradition evolves within a certain context of social relations, cartographic maps cannot fully represent the social relations among members, for instance, of a given Dayak community. Scholars have shown that Dayak peoples have complex tenurial systems in which multiple tenurial rights may exist on a piece of land, a phenomenon that cartographic maps are unable to represent to date.

Simplification of tenurial rights on cartographic maps has resulted in changes of social relations within and between communities. One critical issue is increased tensions since individualism has strong effects on a community. Land boundaries tend to be fixed, denying or making access to customary claims difficult. Counter-mapping may not be the only factor in this regard, but it certainly contributes to the problem. This problem spawns other sets of changes.

Counter-mapping exercises usually delineate a kampung or desa. This practice in effect also reinforces existing state administrative units by providing clear boundaries that had previously never been surveyed. As a consequence, it unintentionally delegitimizes indigenous land claims and at the same time brings adat institutions under state control. Moreover, every counter-map is signed

by government officials and community members. In West Kalimantan communities are encouraged to have the map signed up to the *bupati* (kabupaten head) with the understanding that the officials endorse it or that it can become a legal document. Such a practice however weakens the meaning of resistance implied in counter-mapping.

Another difficulty comes from resource extraction by the communities themselves. Counter-mapping helps to prevent outsiders to exploit their kampung, but it has engendered new pressure that comes from within the community. Some consider the kampung map as a proof of land title, and thus exploit it according to their interests. While PPSDAK advises the kampung to draft an agreement among its members to manage their lands in a sustainable way, the agreement often does not work. The drafting process outside adat mechanisms may contribute to this.

The transformation into cartographic maps may also weaken indigenous peoples as the original owners of spatial knowledge. The spatial technology is alien to them and they cannot control the uses of the maps once these are in the hands of outsiders, even PPSDAK. The use of computer-based mapping technologies further separates the communities from map production. Many of them do not have access to electricity, not to mention computers. Even if these were present, computer literacy becomes another obstacle as mapping software requires certain skills that are generally not available in the communities.

Finally, the maps can backfire, becoming a means to control communities by outsiders who have interest in their lands. One advantage of a written culture is that everyone has access to information once it becomes part of the public domain. However, once the information circulates the original owner or author cannot control how it is used. For marginalized communities, this can be a big problem because it can be used against them, and they do not have access to power to counter actions harmful to them.

A recent workshop to evaluate the counter-mapping movement in West Kalimantan identified the following other issues: 1) A map becomes an end in itself, not a means to achieve political goals due to technical preoccupations within the movement; 2) There is a perception that mapmaking is only a project; 3) The

NGOs came to communities using economic language to promote the need to map their lands and did not explore the land's spiritual and social values strongly attached to Dayak cultures.

Conclusion

On Policies

The laws and regulations discussed in this report have no relation whatsoever to the International Decade of the World's Indigenous People. The inclusion of indigenous peoples into national policies was mostly due to the national political situation, particularly after Suharto stepped down. The year 1999 was a milestone for indigenous peoples in Indonesia. It was the year when the first congress of all indigenous peoples in the country took place. The congress was not only decisive in consolidating the indigenous movements that were scattered and limited, but also in gaining state attention.

Since then virtually all laws and regulations mention indigenous peoples, using different terms but mostly masyarakat hukum adat. However, the mention of the term does not necessarily mean that their conditions improve. Its inclusion seems merely to follow a trend, without concrete policy changes and institutional support.

The recognition of indigenous peoples in Indonesia is half-hearted. Their existence is recognized in state policies but with numerous conditions that are penalized if violated. The policies, therefore, have two characteristics. One is semi-accommodating under which policies employing conditional recognition fall. Conditional recognition is prone to interpretation that can lead to annihilation of indigenous rights. Policies on lands, human rights, and social development are in this category. The second is the repressive character of policies that employ a language that implies intimidation, prohibition, and sanctions. Forestry policies are of this nature.

On Programs

The KAT empowerment program responds to a certain extent to the state obligation to provide care and protection for the poor as mandated by the Constitution. However, serious flaws arise in interpreting the mandate and in implementing the program. First, the program is ambitious in defining empowerment but is weak in implementation. The definition used entails a bottom up process that should be reflected in the program's policy and planning processes. In reality most of these tasks are done solely by the Ministry without meaningful participation by indigenous groups. The Ministry is the planner, executor, and evaluator of the program. If it argues that people's participation is through the Coordinating Forum, the forum like in most government practices is based on appointed membership formalized in a decree. It is thus a flaw by design.

Second, the program employs terms that imply indigenous peoples are mere objects of classification and intervention. The categories of KAT based on habitat and livelihood show a strong notion of classifying human beings that was crucial in colonial projects that made the people as Others and thus justified the civilizing mission. The use of such spatial terms for settlement planning as in situ, ex situ, core zone, buffer zone and so on makes people objects of intervention. Widely used in biodiversity conservation, the terms connote people as an endangered species or even non-human objects. Furthermore, the zoning policy negates the indigenous philosophies and practices on spatial management. It favors sedentary farming, showing a strong land bias, and discourages swidden agriculture, hunting and gathering.

Third, the projects discussed earlier clearly show that the program has a strong modernist orientation. It promotes individualization of the community, modern science and technology, participation in the market economy, and assimilation of the indigenous community into modern society, albeit it claims to take local values and wisdom into account. Although it also claims to consult communities in individual projects, they seem to lack sufficient information to be able to participate meaningfully in decision making. In addition, the program orientation engenders an economic frame of mind that identifies social change in material terms as shown in

development indicators. The intangible spiritual, emotional and cultural values are absent from indicators which set what a project must achieve and how it must be implemented.

Fourth, the program does not encourage and stimulate the communities to be autonomous groups, employing instead a charity approach. This weakens indigenous institutions. Reciprocity that was a rule of the thumb in the past is now replaced by monetary-based labor exchange.

Finally, the program is within the framework of the state's population and territorial control. Through it the state extends its network of power into small pockets of indigenous populations throughout the country.

The lesson from the Community Empowerment for Rural Development project is that the physical development approach is partly responsible for the flaws in program implementation. Like the KAT empowerment program, development indicators are in material terms, which spurs management to show performance through infrastructure development.

Recommendations

Indonesia is undergoing a process of redefining the relationship between state and its citizens, a condition that Erica Irene-Daes calls belated state-building. The state and indigenous peoples should use this momentum to negotiate their relationship that reflects equality in a plural nation. The state should provide indigenous peoples political space to freely determine their lives for themselves.

The government needs to tackle indigenous rights' issues seriously to implement the international agreements it has ratified. For that reason it should establish a permanent institutional setup to monitor the enforcement of policy initiatives concerning indigenous peoples. Special efforts should be directed to develop indicators that can incorporate spiritual, emotional, social, and cultural components of human well being. The current emphasis on material indicators hampers this.

Considering the distinctive contexts and histories of indigenous peoples in Indonesia, it is vital to have a discussion on the term indigenous peoples as it applies to the country and even Asia. In a Second Decade of the World's Indigenous Peoples, the priority agenda for Indonesia are identity and access to natural resources.

Endnotes

[1] http://www.deplu.go.id/?hotnews_id=299, accessed on 11 August 2006.

[2] Critical legal studies criticize such positivist view in which legal formalism turns the law into a mere formal regulation regardless of the social, cultural and political circumstances where the law applies (Sinha 1993: 311-312).

[3] The most recent case is the protest against a gold mining company, Freeport, in West Papua as a reaction to environmental destruction and violation of indigenous rights. Both the state and the company do not talk much about the rights violation but focus instead on the contract they signed. The Papuans cannot regain their rights as the contract has a well-guarded definition of the rights.

[4] The chiefs of Maori people and the British on behalf of the Queen of England negotiated and signed the treaty in 1840. The treaty has Maori and English versions but the translations are not compatible. The Maori meant to give the governance of the land to the Queen, but the English understood it as the transfer of sovereignty. The Maori has tried to rectify the meaning as they understood it.

[5] Yando Zakaria, Abih Tandeh: Masyarakat Desa di Bawah Rejim Orde Baru, Elsam, Jakarta, 2000, pp. 1-26.

[6] The reason of this adoption partly might be to tap the funds that the donor community poured into development programs. Foreign debts and development grants were, and still are, crucial in setting development agenda within the Indonesian government.

[7] Many activists were jailed and even missing. The fates of some missing persons are still unknown to date; they were most likely killed.

[8] Regulation No. 5/1999 on Guidelines on the Settlements of Customary Land Rights of Masyarakat Hukum Adat.

[9] The fear of disintegration is evident in a recent press statement released by the Permanent Representative of the Republic of Indonesia in Geneva after the Human Rights Council adopted the Declaration of the

Rights of Indigenous Peoples in June 2006. See http://www.mission-indonesia.org/modules/news.php?lang=id&newsid=76&PHPSESSID=8c2d6c7e2c9ec438430c226e631ff3ba.

[10] http://www.sinarharapan.co.id/berita/0606/23/ipt03.html.

[11] Benedict Kingsbury, Indigenous Peoples in International Law, a Constructivist Approach to the Asian Controversy, The American Journal of International Law, vol. 2 No. 3, (July 1998), pp. 414-457.

[12] In 2005 the Parliament and the Government agreed to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as Laws No 11/2005 and No 12/2005 respectively.

[13] MPR is the highest lawmaking body in the country. In the past it consisted of the members of the parliament and representatives of various groups nominated by the President and had a duty to elect the President and the Vice President and to produce state guidelines for the President. After the amendment of the constitution, members of the elected officers of the Dewan Perwakilan Daerah (House of Regional Representatives, an equivalent of the Senate but with much weaker political power) replace the selected representatives. MPR no longer elects the President and the Vice President as they are elected directly by the people in general election.

[14] Decree of Minister of Health No. 0584/MENKES/SK/VI/1995 on Centers of Development and Application of Traditional Medicine defines the term as "health treatment or care, either originated within and or from outside Indonesia, performed with methods and drugs by health providers whose experiences and skills are passed from generation to generation, and is applied according to the existing societal norms." This definition refers to all non-Western allopathic medicine including massages, acupuncture, non-Western educated midwifery, etc.

[15] Such dispensary is a means to provide Primary Health Care to people who are remote from Pusat Kesehatan Masyarakat (Primary Health Center) that is usually located at the seat of camat (subdistrict head).

[16] In one of the studies, it is stated that the spirit of sectoralization, disengaging the use of natural resources, causes some policies adopting the power of environmental conservation not to be implemented (see Ahmad et al n.d.).

[17] Forest areas mean lands and water surface designated by the Minister of Forestry as forest regardless of the existence of forest stand. Therefore a significant portion of these forest areas are in fact grasslands, agricultural lands, marine and coastal areas, and settlements.

[18] However, in a forest land use plan issued in 1984 that is known as Tata Guna Hutan Kesepakatan (TGHK – Forest Land Use by Consensus) the Ministry of Forestry adds another category, forests convertible to other uses, particularly for plantations and transmigration settlements. In addition, a

significant extent of forest areas is considered as unclassified, which is often converted into other land uses as well.

[19] The company signed an agreement even before the Law was passed and the province was not officially a part of Indonesia yet due to the dispute with the Netherlands. This company holds the largest gold mining in the world and is now PT Freeport Indonesia, a subsidiary of New Orleans-based Freeport-McMoran Copper and Gold, Inc.

[20] The case of gas leaking of PT Lapindo Brantas reveals the fact that the company operated prior to AMDAL. The mine permit was issued by the Energy and Mineral Resources Department.

[21] A national newspaper, KOMPAS, on July 24, 2004 reported that some members of parliament had been offered money, ranging from 50 million up to 500 million rupiahs, to pass the amendment. It is not quite clear where the funds came from, but the suspicion is it was the mining companies.

[22] Timber production boosted again as the State weakened after the fall of Suharto. The logging activities since then are considered illegal, but have destroyed most of the remaining forests.

[23] http://dte.gn.apc.org/AMAN/kasus/Bulukumba/pers_blkm.html.

[24] This scheme existed in the period of 2000-2004. In 2004 the parliament passed Law No. 25/2004 on National Development Planning System that introduces new terms: Rencana Pembangunan Jangka Panjang (long-term), Rencana Pembangunan Jangka Menengah (mid-term), and Rencana Kerja Pemerintah (annual).

[25] AMAN, ICRAF dan FPP, Satu Yang Kami Tuntut: PENGAKUAN, 2003, pp. 1-3.

[26] To enable it to meet the large flow of requests, it recruited and trained local persons with basic mapping skills and dispatched them as community mappers.

[27] However, the requests from local governments can also mean a way of taming the counter-mapping movement by turning the NGOs as consultants.

Bibliography

Ahmad, Rival *et al*. (n.d.), *Di Bawah Satu Payung: hasil konsultasi publkc RUU Pengelolaan Sumber Daya Alam* (*Under One Umbrella: results of public consultation on draft Law on Natural Resources Management*). Tim Konsultasi Publik RUU Pengelolaan Sumber Daya Alam.

Albo, Xavier. 1996. Poverty, development and indigenous identity. In D. Iturralde and E. Krotz (eds.) *Indigenous Development: poverty, democracy and sustainability*. Washington, DC: Inter-American Development Bank. pp. 33-40.

AMAN, ICRAF dan FPP. 2003. *In Search of Recognition.* Jakarta.

Anon. 2005. *Strategi Nasional Pengentasan Kemiskinan* (*National Strategy on Poverty Alleviation*).

Aschroft, Bill, Gareth Griffiths & Helen Tiffin. 1995. General introduction. In Aschroft, Bill, Gareth Griffiths & Helen Tiffin (eds.) *The Post-Colonial Studies Reader*. Routledge, London & New York: 1-4.

Bhader, Johan Nasution dan Warjiyati, Sri. 2001. *Bahasa Indonesia Hukum (Indonesian Language of Law)*, Citra Aditya Bakti, Bandung.

Biccum, April R. 2002. Interrupting the discourse of development: on a collision course with postcolonial theory. *Culture, Theory & Critique* 43(1): 33-50.

Blaikie, Piers. 2000. Development, post-, anti-, and populist: a critical review. *Environment and Planning A* 32: 1033-1050.

Cariño, Joji. 2004. Indigenous peoples addressing land and resource conflicts. In Tauli-Corpuz, Victoria & Joji Cariño (eds.) *Reclaiming Balance: indigenous peoples, conflict resolution and sustainable development*. Tebtebba Foundation, Baguio City: 75-82.

Chambers, Iain. 1996. Waiting at the end of the world? In Morley, David & Chen, Kuan-Hsing (eds.) *Stuart Hall: critical dialogues in cultural studies.* Routledge , London & New York: 201-211.

Cooper, Frederick. 1997. Modernizing bureaucrats, backward African and the development concept. In Cooper, Frederick & Randall Packard. (eds.) International Development and the Social Sciences: essays on the history and politics of knowledge. University of California Press, Berkeley. pp. 64-92.

Departemen Sosial. 2006. *Peran dan Perjalanan Departemen Sosial dari Masa ke Masa* (*The Roles and Journey of the Ministry of Social Affairs from time to time*). Department Sosial, Jakarta.

Direktorat Pemberdayaan Komunitas Adat Terpencil, Departemen Sosial RI. 2004a. *Model pendekatan Sosial Budaya Dalam Penyiapan dan Pemantapan Pemberdayaan Komunitas Adat Terpencil* (*The Model of*

Socio-cultural Approach in Preparation and Consolidation of The Empowerment of Komunitas Adat Terpencil). Jakarta: Departemen Sosial.

Direktorat Pemberdayaan Komunitas Adat Terpencil, Direktorat Jendral Pemberdayaan Sosial, Departemen Sosial, 2004b. *Program Pemberdayaan Komunitas Adat Terpencil 2005-2009. (Program on the Empowerment of Komunitas Adat Terpencil 2005-2009).* Department Sosial, Jakarta.

Direktorat Pemberdayaan Komunitas Adat Terpencil Direktorat Jendral Pemberdayaan Sosial, Departemen Sosial. 2004c. *Profil Keberhasilan Pemberdayaan Komunitas Adat Terpencil pada 12 Provinsi*. (*Success Stories on the Empowerment of Komunitas Adat Terpencil in 12 Provinces*). Jakarta, Departemen Sosial.

Escobar, Arturo. 1992. Planning. *In* Sachs, W. (ed.) *Development Dictionary: a guide to knowledge as power*. Zed Books, London & New Jersey: 132-145.

Escobar, Arturo. 1995. *Encountering Development: the making and unmaking of the Third World*. Princeton: Princeton University Press.

Escobar, Arturo. 1996. Constructing nature: elements for poststructural ecology. In Peet, Richard & Michael Watts (eds.) *Liberation Ecologies: environment, development, social movements*. Routledge, London & New York: 46-68.

Fauzan, M Uzair. 2005. "Politik Representasi dan Wacana Multikulturalisme dalam praktek Program Komunitas Adat Terpencil, Kasus Komunitas Sedulur Sikep Bombong-Bacem," dalam Hikmat Budiman (ed), *Hak Minoritas: Dilema Multikulturalisme di Indonesia* ("The Politics of Representation and Multiculturalism Discourse in the Implementation of the Program on Adat Remote Community, The Case on Sedulur Sikep Bombong-Bacem," in Hikmat Budiman, *Minority Rights: The Multiculturalism Dilemma in Indonesia*), Yayasan Interseksi, Jakarta.

Feiring, Birgitte with Maurico Alfredo Ambrosio Coguox, Edgardo Benítez Maclin, Daisy George West, Marcelo Fernandez Osco. 2003. *Indigenous Peoples and Poverty: the cases of Bolivia, Guatemala, Honduras and Nicaragua*. Minority Rights Group International, London.

Hadisoeprapto, Hartono. 1999. *Pengantar Tata Hukum Indonesia (The Introduction to Indonesian Legal System)*, edisi 4, Liberty, Yogyakarta.

Hardiman, F. Budi. 2006. The Structural Position of Ethnic Groups and the Relationship Between Ethnic Groups in the Nation and State Life in Indonesia. in Ignas Tri (ed.) *Structural Relationship Between Indigenous Peoples, Ethnic Groups, Nations and the State*. Jakarta: National Commission on Human Rights.

Hardjasoemantri, Koesnadi. 2000. *Hukum Tata Lingkungan (The Law on*

Environment Management), 7th ed. Yogyakarta: Gadjah Mada University Press.

Heath, Shirley Brice. 1980. The functions and uses of literacy. *Journal of Communication* 30(1): 123-133.

<http://www.baritoutarakab.go.id>.

<http://www.smeru.or.id/newslet/2002/ed04/200204p3.pdf>.

<http://dte.gn.apc.org/Aif26.htm>.

<http://www.bappenas.go.id/index>.

<http://www.bumn-ri.com/events.html?id=902&yy=2005&mm=06>.

<http://portal.komnasham.go.id/portal/page?_pageid=35,294479&_dad=portal&_schema=PORTAL>.

HuMa. 2006. *Argumentasi Kritis Usulan Atas Perubahan Undang-Undang Kehutanan. (Critical Arguments on the Proposal to Revise Forestry Law).* Unpublished manuscript.

Irwan, Alexander. 2006. Institutions, Discourses, and Conflicts in Economic Thought in Vedi R. Hadiz dan Daniel Dhakidae (Eds.) *Social Science and Power in Indonesia*. Jakarta: Equinox.

Jaringan Anti Tambang (JATAM). 2005. *Indonesia Bangkrut*. (*Indonesia Bankrupt*). Jakarta: JATAM.

Johnson, Craig & Tim Forsyth. 2002. In the Eyes of the State: negotiating a "rights-based approach" to forest conservation in Thailand. *World Development* 30(9): 1591–1605.

Kingsbury, Benedict. July 1998. *Indigenous Peoples in International Law, a Constructivist Approach to the Asian Controversy*, The American Journal of International Law, vol. 2 No. 3.

Kleden, Emil. 2006. "Indigenous People, Democracy, and Autonomy," Ignas Tri (ed) *Structural Relationship Between Indigenous Peoples, Ethnic Groups, Nations and the State*, National Commission on Human Rights, Jakarta.

Leftwich, Adrian. 1994. Governance, the state and the politics of development. *Development and Change* 25: 363-386.

Lynch, Owen dan Talbott, Kirk. 1995. *Balancing Acts: Community-Based Forest Management and National Law in Asia and the Pasifik*, Washington: World Resource Institute.

Marzuki, Peter. 2005. *Penelitian Hukum (Legal Research)*, Kencana, Jakarta.

McEwan, Cheryl. 2001. Postcolonialism, feminism and development: intersections and dilemmas. *Progress in Development Studies* 1(2): 93–111.

McFarlane, Colin. 2006. Transnational development networks: bringing

development and postcolonial approaches into dialogue. *The Geographical Journal* 172 (1): 35-49.

Mokhiber, Craig G. 2001. Toward a measure of dignity: Indicators for rights-based development. *Statistical Journal of the United Nations ECE* 18: 155–162.

Moniaga, Sandra. 2006. *Pluralisme Hukum Negara dan Ketidak Pastian Hak Masyarakat Adat (State Legal Pluralism and The Uncertainity of Adat Communities Rights)* FORUM Keadilan, No. 14, Tahun XVI/Edisi 24-30 Juli and No. 14, Tahun XVI/Edisi 31 Juli-6 Agust 2006.

Murray Li, Tania. 2000. *Articulating Indigenous Identitiy in Indonesia: Resource Politik and The Tribal Slot*, Society for Comparative Study of Society and History.

———————————. 2002. *Proses Transformasi Daerah Pedalaman di Indonesia (The Transformation Process of Uplands in Indonesia)*, Yayasan Obor Indonesia, Jakarta.

Nonet, Philippe dan Selznick, Philip. 1978. *Hukum Responsif, Pilihan di Masa Transisi (Law and Society in Transition: Toward Responsive Law)*, HuMa, Jakarta, 2003.

Noor, Aslan. 2006. *Konsep Hak Milik atas Tanah bagi Bangsa Indonesia: ditinjau dari ajaran hak asasi manusia. (The Concept of Property Right over Land for Indonesian Nation: a view from human right teachings)*. Mandar Maju, Bandung.

Nyamu-Musembi, Celestine & Andrea Cornwall. 2004. *What is the "rights-based approach" all about ? Perspectives from international development agencies*. Working Paper 234. Institute of Development Studies, Brighton, UK.

Peet, Richard. 1999. *Theories of Development*. Guilford Press, New York & London.

Perkumpulan HuMa. 2006. *Argumentasi kritis usulan atas perubahan undang-undang kehutanan (Critical Thingking on the amandement of Forestry Law)* kajian yang belum dipublikasikan (unpublished study).

Radcliffe, Sarah A. 2005. Development and geography: towards a postcolonial development geography? *Progress in Human Geography* 29(3): 291–298.

Rahardo, Satjipto. 2005. *Hukum Adat Dalam Negara Kesatuan Modern Republik Indonesia (Adat Law in the modern Unitary State of the Republic of Indonesia)*. Paper presented at the National Workshop on the Identification and Protection of the Rights of Masyarakat Hukum Adat. Jakarta 14-15 Juni.

Rahnema, Majid. 1992. Poverty. *In* Sachs, W. (ed.) *Development Dictionary: a guide to knowledge as power*. Zed Books, London & New Jersey:

158-176.

Redclift, Michael. 2005. Sustainable Development (1987–2005): an oxymoron comes of age. *Sustainable Development* 13: 212–227.

Riyanto, Astim. 2003. *Filsafat Hukum (Philosophy of Law)*. Bandung: Yapemdo.

Rossida, Hilmy (ed). 2005. *Inventarisasi dan Perlindungan Hak Masyarakat Hukum Adat* (*Identification and Protection of the Masyarakat Hukum Adat*). Jakarta: Komisi Nasional Hak Asasi Manusia.

Safitri, Myrna A. & Rafael Edy Bosko. 2002. *Indigenous Peoples/Ethnic Minorities and Poverty Reduction Indonesia*. Asian Development Bank, Manila.

Sen, Amartya. 1999. *Development as Freedom*. Anchor Books, New York.

Sengupta, Arjun. 2000. Realizing the Right to Development. *Development and Change* 31: 553-578.

Sengupta, Arjun. 2002. On the theory and practice of the right to development. *Human Rights Quarterly* 24: 837–889.

Simarmata, Rikardo, *Pengakuan Hukum Terhadap Masyarakat Adat di Indonesia (Legal Recognition on Adat Communities in Indonesia)*. Unpublished manuscript.

Simon, David. 2006. Separated by common ground? Bringing (post)development and post)colonialism together. *The Geographical Journal* 172 (1): 10–21.

Sinha, Surya Prakash. 1993. *Jurisprudence Legal Philosophy.* West Publishing.

Soekanto, Soerjono. 1997. *Sosiologi Suatu Pengantar (An Introduction to Sociology)*, Jakarta: RajaGrafindo Persada.td.

Street, Brian V. (1993) The new literacy studies, guest editorial. *Journal of Research in Reading* 16(2): 81-97.

Sylvester, Christine. 1999. Development studies and postcolonial studies: disparate tales of the "Third World." *Development and Change* 20(4): 703-721.

Ter Haar, B. 2001. *Asas-Asas dan Susunan Hukum Adat*, (*The Principles and Structure of Adat Law*). trans. K. Ng. Soebakti Poesponoto, 13th ed. Jakarta: Pradnya Paramita.

Tim Peneliti Fakultas Hukum Universitas Hasanuddin. 2002. *Eksistensi Masyarakat Hukum Adat dan Hak Kolektif Masyarakat Hukum Adat atas Tanah (Hak Ulayat)*, *Penelitian Deskriptif Analitis, di Kabupaten Pasir, Kalimantan Timur*, (*The Existence of Masyarakat Hukum Adat Community and the Collective Rights of Masyarakat Hukum Adat on Land [Ulayat Rights], analytical descriptive study in Kabupaten of Pasir, East*

Kalimantan), A cooperation between Pemerintah Kabupaten Pasir and Fakultas Hukum Universitas Hasanuddin.

Tri, Ignas, (ed). 2006. *Structural Relationship Between Indigenous Peoples, Ethnic Groups, Nations and the State*. Jakarta: Komisi Nasional Hak Asasi Manusia.

UNDP. 1997. *Human Development Report 1997*.

UNHCHR. http://www.ohchr.org/english/issues/development/right/index.htm, April 4, 2006.

Wiratno, et all. 2004. *Berkaca di Cermin Retak; Refleksi Konservasi dan Implikasi Bagi Pengelolaan Taman Nasional*, (*Reflecting in a Cracked Mirror: a reflection on conservation and its implication to the national park management*) FOReST Press, The Gibbon Foundation Indonesia, Departemen Kehutanan, PILI – NGO Movement.

Zakaria, Yando. 2000. *Abih Tandeh: Masyarakat Desa di Bawah Rejim Orde Baru*, (*Wiped Out: Village Community under the New Order regime)*. Jakarta: Elsam.

5

Assessment of the International Decade of the World's Indigenous People (1995-2004) in the Kingdom of Cambodia

Nation Religion King

Moul Phath and Seng Narong

Introduction

The conclusion of the first UN Decade of the World's Indigenous People (1995-2004) offered a great opportunity both to assess the outcomes of the policies, programs and activities undertaken during the decade—acknowledging their successes and shortcomings—and to pinpoint the issues evolving from such outcomes and, thus, propose the strategies that can advance the cause of indigenous peoples.

There are an estimated 360 million indigenous people in 70 countries across the world. While the indigenous peoples want to participate in and benefit from development, they also desire to safeguard their respective cultures, their unique set of values and their own institutions. Because indigenous peoples are the stewards of their lands' biodiversity and traditional knowledge, their role as such must be safeguarded and nurtured, especially in what

are now the zones endangered ecologically due to the inroads of exogenous forces on the ancestral domains.

In Asia, a significant proportion of the poor that is socially marginalized consists of indigenous peoples. The deeply embedded power relations fostering social inequities deprive indigenous peoples control over their own lives and the socio-political system. They are susceptible to poverty because of, among other reasons, their lack of power over the decision making process even in their own lands. This lack, thus, limits their rights to exercise control over their resources, based on traditional knowledge and customary laws and practice.

In the last decade, thankfully, the world's indigenous peoples and their concerns received greater visibility and attention. A diversity of international initiatives was introduced to address the challenges and the missed opportunities of indigenous peoples — the most significant among the initiatives being the declaration of the decade from 1995 to 2004 as the United Nations Decade of the World's Indigenous People.

At the decade's conclusion, ICIMOD and the Tebtebba Foundation, with support from IFAD, undertook an assessment of the progress made in 10 countries in Asia. ICIMOD covered five countries from the Hindu Kush-Himalayan region, namely Bangladesh, Bhutan, China, India and Nepal. Tebtebba Foundation covered five countries from South East Asia, viz: Cambodia, Indonesia, Philippines, Thailand and Vietnam. This document reports on the status of the welfare of the Cambodian indigenous peoples during the period.

IFAD's strategic framework toward development emphasizes the need to build up the resilience of the poor. It further believes that a focus on indigenous peoples will hasten the achievement of the Millennium Development Goals. IFAD's focus on the welfare of indigenous peoples is highlighted by the fact that one-third of its total investments are in the regions where the indigenous peoples live in relatively large numbers. Furthermore, 20 percent of IFAD's investment in Asia over time has been toward the development of indigenous peoples. Its targets, in their behalf, have been:

1. Securing indigenous peoples' rights through policy dialogue, building awareness and setting a legal defense fund;

2. Revitalizing the traditional knowledge systems; and
3. Conflict prevention.

For IFAD, therefore, the exercise in assessing the impact of the policies, programs and projects undertaken during the recently concluded United Nations Decade of the World's Indigenous People, 1995-2004 was intended to generate the following:

1. Inputs toward the updating of its regional and country strategies;
2. Lessons from the experience of the last 10 years to guide future IFAD projects and programs;
3. Requisite inputs for policy dialogues amongst governments and the stakeholders in IFAD-supported undertakings;
4. Recommendations toward a regional and global advocacy of indigenous peoples' rights and concerns; and
5. Guidance toward the strengthening of regional and country networks.

For the agencies that facilitated the assessment process and the countries that participated in the assessment exercise, the objectives and activities in pursuit of each objective were expressed as follow:

1. To increase the awareness and understanding of the status of indigenous peoples by conducting discrete, but interlinked, assessments in five Southeast Asian countries in order to evaluate the successes and realize the missed opportunities experienced in the course of the decade by:

   1a. Examining the national laws and policies, the international and regional conventions and frameworks, and the new mechanisms in the five countries that address indigenous peoples' issues and concerns;

   1b. Analyzing a sample of national budgets to examine how resources were allocated by their respective governments—and for this purpose to use the Philippine and Indonesian budgets as subjects of study;

   1c. Reviewing specific programs and projects, and when-

ever they were available, with the representatives of donors, the United Nations, partner governments and key civil society organizations; and

1d. Conducting situational analyses of a number issues (e.g., access and rights to resources, decision making roles, legal environment, etc.) within a broad contextual environment (e g., the role of the media, the judiciary, research, public discourse, etc.) through case studies of Philippine and Indonesian situations;

2. To synthesize and disseminate the findings and outcomes of the assessment by using innovative exchange and communication technologies; and
3. To strengthen the partnership among indigenous peoples, and institutions and networks in Southeast Asia that support the well-being of indigenous peoples.

The Conduct of Assessment in Cambodia

The following methods were employed to carry out the assessment work in Cambodia. A Cambodian research team was organized consisting of a teamleader, and a research assistant who recruited a few additional volunteers to help the team, especially in arranging the project's local administration.

The principal approach selected for the research was qualitative, rather than quantitative, and the team collected both primary and secondary data. Secondary data collection was done in Phnom Penh, and primary data collection was conducted at Ratanakiri Province. (While the indigenous people are inhabitants of about 16 provinces, resource limitation did not allow the assessment to be done in all of them. The team, thus, decided that since the majority of the indigenous population is located in two provinces in Northeast Cambodia to select Ratanakiri, one of these provinces, for its research site.)

Primary data collection used a set of common guide questions that was consistent with the guidelines on the policy and program analysis of the International Decade of the World's Indigenous People in Cambodia (see Annex 10).[1] In order to integrate the

primary information from the field study with the secondary data set, the team selected key informants from the following four sources:

1. Government representatives from the core ministries that were the most involved in development work with the indigenous peoples in the northeastern provinces of Cambodia. Among them were the Ministry of Rural Development; Ministry of Education, Youth and Sport; Ministry of Land Management, Urban Planning and Construction; Ministry of Health; Ministry of Culture and Arts; Ministry of Planning; Ministry of Agriculture, Forestry and Fishery; and the former IMC Secretariat for Ethnic Minority Development in the Kingdom of Cambodia;
2. Representatives of selected international and national non-government organizations, such as CIDSE, CLEC, UNDP, ILO, NGO-Forum, CIPERAD, NTFP and Highlanders Association;
3. Twenty-three representatives of the indigenous communities of Kreung, Tumpuon, Jarai and Phnong in Ratanakiri and Mondulkiri Provinces; and
4. Local authorities of Ratanakiri Province, such as the representative of the Department of Rural Development and 2nd Deputy of PRDC/ExCom, the Deputy Governor of the O'Chum District, the chief of the commune council of the Yakloum Commune, the 2nd chief of the commune council of the Cha Ung Commune of the O'Chum District, the chief of Yak Loum Village, the elders of the village, and the Police Officer.

The work schedule followed from May to September 2006 appears as follows:

1. May 2006: Review of project handbook and check list, revision of the outlines of questions as proposed by Tebtebba; revision of the literature review;
2. June 2006: Working out the plans for primary and secondary data collection;
3. 14-17 July 2006: Conducting the field study at Ratanakiri Province;

4. August 2006: Preparing the assessment report to be sent to Tebtebba for comments and approval as a first draft report; scheduling the National Consultation Workshop on the results of the assessment;
5. September 2006: Conducting the workshop on 1 September at the Sunway Hotel with 25 participants; received comments and recommendations from Tebtebba for improving the report which was finalized by the end of September.

Indigenous Peoples of Cambodia

Most Cambodians are ethnic Khmer. Many ethnic Vietnamese also live in Cambodia—often working as fishers in floating or riverside villages, or as skilled artisans and small businesspeople in urban centers. Despite political tensions over the years ethnically, the peoples of the Mekong Delta are intermingled. The Chams[2] have a strong identity as Cambodia's small Muslim minority, wearing their distinctive headscarves, and producing fine weaves and other textiles. Severely persecuted during the Khmer Rouge era, they now number less than a quarter of a million people.

The ethnic Chinese have been assimilated into the Khmer culture, but still keep up their traditional celebrations. Today, Cambodia is experiencing a fresh wave of Chinese influence, including a thriving garment industry largely driven by Chinese money from neighboring countries, including Hong Kong and Taiwan.[3]

All together, Cambodia's indigenous peoples perhaps number to fewer than 150,000 (Table 1, for instance, shows an estimated 140,397 souls). The indigenous peoples are sometimes known as Khmer Loeu (i.e., "Upper" or "Highland Khmer"), and the most well-known groups are the Jarai and Tampuan in Ratanakiri Province, the Phnong of Mondulkiri, and the Stieng.[4]

A new Constitution was adopted in 1993, and among other provisions it grants Khmer citizens the rights to personal freedom and security; to vote; to participate in the political, economic, social and cultural life of the nation; and to freedom of expression,

press, publication and assembly without discrimination according to sex.

Article 31 of the Constitution, furthermore, recognizes and respects internationally accepted human rights standards when it declares that:

> *The Kingdom of Cambodia shall recognize 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.*

And as per Article 32 of the Constitution:

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

However, there is no provision in the Constitution that directly refers to its indigenous peoples. In fact, there is no official definition of "indigenous peoples." But this does not mean the absence of such a concept. There are laws and policies which use different terms, such as "indigenous communities," "indigenous ethnic minorities," "highland peoples," etc. where the intent clearly refers to indigenous peoples.

Hence, to give an account of the number of the indigenous populations is fraught with complications since no two population surveys give the same estimate. Sometimes, the difference is enormous.[5] Information from the Ministry of Planning, which is part of the 1998 census, is currently used to list ethnic groups at the provincial level. The criterion for ethnic grouping was by mother tongue—but it should be noted that because of the wariness of the indigenous people of the Cambodian authorities there might well had been an over-reporting of Khmer mother tongue-speakers.[6] This statistic should, therefore, be treated with caution. Even data collected in 1998 and 2004 will have been rendered out of date by the collapse of the Khmer Rouge, and the subsequent shifts in the domestic migration pattern.

Table 1. Indigenous Population of Cambodia As Currently Used by MRD

No.	Indigenous Groups	Ratanikiri (RAT)	Kratie (KRT)	Steung Treng (STG)	Mondulkiri (MKR)	Kampong Speu (KSP)	Preah Vihear (PVR)	Total
1	Tumpoung	27,239	0	4	382	0	0	27,625
2	Kreung	17,683	0	278	598	0	0	18,559
3	Jarai	20,312	0	12	93	0	0	20,417
4	Brao/Brou	8,560	0	444	0	0	8	9,012
5	Kavet	2,620	0	2,710	0	0	0	5,330
6	Kachak	3,383	0	1	0	0	0	3,384
7	Lun	267	0	251	0	0	0	518
8	Phnong	270	8,306	430	23,964	0	39	33,009
9	Kraol/Kroy	0	2,389	0	597	0	0	2,986
10	Stieng	0	3,311	0	1,335	0	1	4,647
11	Thmun/Thmoon	0	669	0	147	0	0	816
12	Kuoy	0	5,216	1,644	2	0	4,536	11,398
13	Knoung	0	544	0	0	0	0	544
14	Roong	0	0	0	0	0	0	0
15	Radaer	3	0	0	0	0	0	3
16	Suoy	0	0	0	0	1,833	0	1,833
17	Pear	0	0	0	0	0	316	316
	Total	**80,337**	**20,435**	**5,774**	**27,118**	**1,833**	**4,900**	**140,397**

Sources: Buoy Kim Streang. Draft of Concept of Department of Ethnic Minority Development of the Ministry of Rural Development (Ministry of Rural Development, September 2006);Department of Rural Development, Kampong Speu and PRDC of Ratanakiri, Mondulkiri, Kratie, Stung Treng and Prah Vihear; and Kent Helmers and Pia Wallgren, Cambodia: Rural Investment and Local Governance Project, Indigenous Upland Minorities Screening Study, (The World Bank - East Asia and Pacific Region, 15 October 2002).

The Ministry of Planning is also said not to have indicated the number of the indigenous population in the National Statistics Institute. During the national consultation on the Indigenous Peoples Development Policy, it was claimed that only the location of indigenous communities living in 10 provinces/municipality of Cambodia was provided.[7] In 1992, the Department of Ethnic Minorities of the Ministry of Religious Affairs claimed that there were over 309,000 people in Cambodia belonging to ethnic minority groups—around 3.5 percent of the total population of 8,900,000. But the number did not include a large proportion of the minority population, such as the Lao, Thai, Malay, Burmese, Chinese and Vietnamese because they were regarded as "foreign residents" rather than as ethnic minority groups of Cambodians.

Table 2. Ethnic Groups & Their Respective Population in Cambodia according to the Administration Department of the Ministry of the Interior - 1995

Ethnic Group	Population	Percentage of Total
Chams	203,881	46.05
Vietnamese	95,597	21.59
Chinese	47,180	10.66
Lao	19,819	4.48
Tampoun	15,861	3.58
Kuy	14,186	3.20
Jorai	11,549	2.61
Kreung	7,854	1.77
Phnong (Mnong)	5,323	1.20
Kraveth	3,585	0.81
Stieng	3,234	0.73
Prov	2,585	0.58
Thai	2,454	0.55
Kraol	1,962	0.44
Robel	1,640	0.37
Pear	1,440	0.33
Thmaum	453	0.10
Loemoun	280	0.06
Saoch	72	0.02
Kachac	6	0.00
Other	3,708	0.84
Total	**442,669**	**99.97**

** Total is less than 100% because of rounding.*

According to the statistics of Ministry of Interior of the Royal Government of Cambodia which were issued in 1995, there were some 442,669 members of the population who belonged to the different ethnic groups.[8]

While the Chinese and the Vietnamese were included in the statistics as members of Cambodia's ethnic communities, they were still officially considered as "foreign residents." The situation of the ethnic Chinese further illustrates the dilemma in using the official statistics. Chinese migration to Cambodia dates to as far back as the Angkor period and, thus, in terms of numbers the ethnic Chinese were a significant minority group before the Khmer Rouge era.

Table 3. Ethnic Groups & Their Respective Populations in Cambodia according to the Administration Department of the Ministry of the Interior July 1996

Ethnic Group	Population	Percentage of Total
Chams	203,881	40.58
Vietnamese	109,512	21.79
Chinese	47,180	9.39
Lao	21,649	4.21
Tampoun	21,189	3.78
Phnong (Mnong)	19,000	3.13
Kuy	15,771	2.78
Jorai	13,969	2.53
Kreung	12,711	1.07
Prov	5,379	1.05
Kraveth	5,318	1.04
Stieng	5,234	0.79
Thai	3,976	0.79
Kraol	2,677	0.53
Mil	2,178	0.43
Kachak	2,172	0.43
Robel	1,640	0.32
Pear	1,440	0.28
Souy	1,158	0.23
Thmon	532	0.10
Kayong	515	0.10

Lun	464	0.09
Loemoun	355	0.07
Poang	260	0.05
Kaning	150	0.02
Arach	100	0.01
Kachrouk	100	0.01
Saoch	72	0.01
Kola	31	0.00
Javanese	27	0.00
Arab	11	0.00
Khmer Khe	10	0.00
Other	3,708	0.73
Total	**502,369**	**96.34***

**Total is less than 100% because of rounding.*

Then, in 1996, the Ministry of Interior estimated that there were 502,369 persons legally registered as ethnic minorities of, foreign residents of, and/or immigrants to the Kingdom, as seen on Table 3 above. They, thus, comprised some 4.48 percent of total population.[9] Note that despite the registration of the Ministry that the ethnic Chinese, Vietnamese, Lao, Thai and "Others" as persons who belonged to a national, ethnic, religious or linguistic group that were different from the majority, they were still officially classified as "foreign residents" or "immigrants."

However, the juridical term "alien" or "foreigner" that is applied to an ethnic Chinese, Vietnamese, Lao, Thai and "Others," who in fact belongs to an ethnic minority group of Cambodians, does not seem to be appropriate. The only advantage in using the terms seems to be to identify who is, and who is not, a bearer of a passport of the Kingdom of Cambodia. The disadvantage, however, is that most of those who are classified as "aliens" or "foreigners" have lived in Cambodia for decades. They now are no longer aliens or foreigners, but are legally *Procheapolroadh Khmae*, i.e., citizens of the Kingdom, or who are undergoing the process of naturalization. But their current status hampers their faster integration into the Cambodian society.

Definitions of 'Indigenous Peoples' in the Cambodian Context

At this point, it is necessary to clarify the terms that have been used in referring to indigenous peoples in the Cambodian context. The development program that was in place between 1960 and 1970, for instance, referred to the indigenous peoples of Cambodia as the "Khmer Loeu" or the "Upland Khmer."[10] Then, the Inter-Ministerial Committee for Ethnic Minorities Development in Kingdom of Cambodia (IMC) stated in the draft Policy of Highland Peoples Development[11] in 1997, called them as "highlanders" or the "ethnic minorities."

Studies done by the agencies of the United Nations, and the programs and projects of the World Bank and of other donors in Cambodia used the term "indigenous peoples," which term was eventually recognized in 2004 by the Ministry of Rural Development (MRD) in its revised national policy.

In 2002, the World Bank did the Indigenous Upland Minorities Screening Study and in it used the term "indigenous peoples" to refer only to the so-called "hill tribes," but not to the Cham or Khmer-Islam who were also considered indigenous to Cambodia. It also did not refer to the Lao or the Vietnamese inhabitants of the region, though some of the Lao or Vietnamese communities had existed in the region for centuries. The World Bank's Operational Directive 4.20,[12] likewise, provides a definition of "indigenous peoples" as being those inhabitants that are characterized, in varying degrees, by the following:

1. A close attachment to the ancestral territories and to the natural resources therein;
2. Self-identification and identification by others as members of a distinct cultural group;
3. An indigenous language, often different from the national language;
4. The presence of customary social and political institutions; and
5. Orientation toward primary, subsistence production.

The Center for Advanced Studies, in the meantime, seemed to have opted for the term "ethnic groups," over "minorities" because the term "ethnic groups" appeared to be the most appropriate to use in referring to all inhabitants of the Kingdom of Cambodia who were not of Khmer descent. Therefore, the ethnic groups in Cambodia may be said to consist of the following:

1. Indigenous minority groups;
2. Chams or Khmer-Islam;
3. Chinese;
4. Vietnamese;
5. Laos;
6. Thais; and
7. "Others";
8. Foreigners who live in Cambodia (i.e., the foreign residents);
9. Migrants/immigrants; and
10. All foreigners and immigrants to Cambodia who have become citizens through naturalization.

At the moment, however, Cambodia has officially classified its ethnic groups into only the following categories:

1. The indigenous minorities, also called Khmer-Loeu;
2. The Chams or Khmer-Islam; and
3. The foreign residents.

Cambodians look at the Khmer-Loeu as "undeveloped" because the majority of them have no formal education, and could neither read nor write in even their own language. They may speak some Khmer, but only when forced to. Thus, a part of the majority's perception of the Khmer-Loeu as an ethnic minority is "all the people who are almost totally illiterate in Khmer."

The Chams or the Khmer-Islam are considered by the majority, and by themselves, as not only literate in Khmer but as fully integrated into the Khmer society. Their representatives claim that they actively participate in all kinds and at all levels of schooling, are involved in trade and other professions, and most are urban-

ized. Therefore, while they belong to an ethnic group, in Cambodia they have been assimilated into the Khmer society.

The Chinese, Vietnamese, Lao, Thai and "Others" are also classified as ethnic groups of the Kingdom, despite the fact that they are also commonly considered as national, ethnic, religious, or linguistic groups different from other groups inside a sovereign state. Nevertheless, in Cambodia it is also generally agreed that a large number of the so-called "foreign residents" are Procheapolroadh Khmae or Khmer citizens, as seen earlier.

The Indigenous Highlanders of Northeastern Cambodia

Indigenous communities are the "hill tribes" of highlanders that inhabit the high plateau of the northeastern provinces of Kratie, Mondulkiri, Ratanakiri and Steung Treng, as well as the mountainous area of Koh Kong Province, whose terrain consists of upland forests. The indigenous communities of the highlands of Cambodia are collectively known by the generic "Khmer Loeu" or "Upper Khmer," although they are, by no means, homogenous. An UNTAC survey of the indigenous minorities in Cambodia identifies six main groups of indigenous highlanders[13] to be the Jarai, Kreung, Brao, Kuoy, Mnong, Stieng, and the Tumpuon. They number over 10,000 while other groups number only less than 3,000.[14] The use of various terms by the different indigenous communities to express their respective identities indicates the multiplicity of cultures that becomes subsumed under one singular, generic term.

The main activity is the cultivation of hill rice using swidden agriculture, or slash-and-burn technique. The indigenous highlanders practice a form of religion that is permeated by, and is inextricably linked to a profound respect for the environment. The natural environment is believed to be inhabited by spirits that have the power to influence the fortune and well-being of humans.

Social cohesion and a sense of identity are insured through the exercise of authority by the village elders and the adherence to customary law. Customary laws govern the various forms of social behavior, including the rules on kinship and one's relationship with the environment. Despite one's strong link with one's own village,

a highlander nonetheless describes himself as a member of an ethnic group. This self-identification is proclaimed in Khmer as *Chuncheat Pheaktech*, which translates roughly to "small group nationality."[15]

There is a shared belief among highland communities and the majority of the Khmers that they all have a common ancestry. But while this common heritage is recalled with pride by the indigenous highlanders, it is received in a somewhat negative fashion by the many who consider the indigenous highlanders as not having reached the same level of civilization as theirs. This perception, however, is often based on an incomplete understanding of the highlanders' way of life and belief systems.

A Capsule History of the Indigenous Groups of Cambodia[16]

Linguistically, the majority of Cambodia's indigenous populations, including the Khmer, speaks the languages of the Mon-Khmer of the Austro-Asiatic family. The sole exceptions are those of the indigenous Jarai and Cham ethnic groups (and a small group of Radaer speakers in Mondulkiri), whose languages belong to the Austronesian family. It is speculated that while most long-term migrations of Cambodia's indigenous peoples have been from the north, the Jarai, Tampoun and Kachak migrations have been from the southeast.

Relations between the lowland Khmer and the highland minorities have traditionally been uneasy. From as far back as the 13th century, a Chinese emissary noted that many of the slaves at Angkor were tribal people from the uplands. Men were captured to perform manual labor, while the women were sought for sex and to do domestic work. The practice of keeping slaves persisted until the period of the French protectorate, though by that time there seemed to have been very few Khmer who actually lived in the northeast provinces.

Under the long rule of the French, most highlanders in the Ratanakiri Province were employed as workers in the rubber plantations and in construction projects. The French organized these enterprises through village chiefs so that there was minimal contact between the colonial authorities and the natives.

During the Sihanouk period, the attempt to unite Cambodians to foster national solidarity also led to a policy of assimilating the highlanders on the one hand, and another policy of resettling the lowland Khmer in the fertile uplands on the other—a process which the Lon Nol government continued.[17] The Sihanouk government, thus, saw discontent growing among the highlanders. Like most other Cambodians, the highlanders suffered under the Khmer Rouge regime. The treatment of indigenous peoples, however, seemed to have varied according to location and to ethnic group because in some instances, members of the groups were able to attain positions of power, at least at the provincial level.

With political stability being achieved somewhat during the 1990s, lowland Cambodians began again to move to the highlands in search of agricultural land. Thus, pressure on the upland communities has increased—with land grabbing and encroachment becoming issues of concern. Commercial logging, both legal and illegal, had caused damage to the forests of the indigenous communities. This led several of them to protect their natural resources through communal forestry initiatives that were supported by international organizations.

While farming to meet food needs is still done in the traditional system of swiddening, at least in Ratanakiri Province, many have already been drawn into, or have chosen to enter, the market economy. Paddy rice cultivation is being attempted by some, but with somewhat uneven results.

In the meantime, the destruction of traditional "spirit forests" by the logging companies, the in-migration of the Khmers, and exposure to Khmer cultural norms have weakened the traditional belief systems.

Policy Analysis

Laws, Strategies, Policies and Guidelines

In order to reduce overall poverty in Cambodia the royal government passed laws, regulations and a number of national strategies and policies. Some laws and policies do affect the welfare of indigenous peoples and communities directly; however, the concern of the anti-poverty legislations is for the poor, rural population as a whole—in the lowlands, coastal zones or highlands. The following are the laws, regulation, policies and strategies:

1. Law on Environmental Protection and Natural Resource Management, 1996;
2. Law on Commune/*Sangkat* Administration Management, 2001;
3. Law on Mineral Resource Management and Exploration, 2001;
4. Law on Forestry, 2002;
5. Law on Land, 2002;
6. Cambodian Millennium Development Goals, 2003;
7. Socio-Economic Development Plans I & II.

In addition, policies, guidelines and instructions that support rural, as well as indigenous peoples have been decentralized through the local authorities or commune councils. They include:

1. Draft Highland Peoples Development Policy, 1997;
2. Gender Mainstreaming Strategy, 1997-2005;
3. Manual on Commune Development Planning Process and Commune Investment Program, 2002;
4. Manual on Indigenous Peoples and Participation in Commune Development Planning Process, 2003;
5. National Policy for Indigenous Peoples Development, 2004.

The Land Law of 2001

There is a Land Law of 2001 that includes a provision allowing indigenous communities to register their respective territories in the form of collective titles. This, in effect, recognizes that many indigenous peoples of Cambodia do manage their respective lands communally, and continue their rotating swidden agricultural practice. It has, thus, become urgent for the indigenous people to understand their traditional rights and mobilize to protect their land, forest and other natural resources because these rights are protected by the Land Law of 2001 and the Forestry Law of 2002.

However, the sub-decree that is required to implement collective titling has yet to be passed. In 2004 a National Taskforce, the Consultative Group and Legal Drafting Team, was set up to work on the sub-decree, but other priorities and a lack of political will stood in the way of progress. The Ministry of Interior is beginning to prepare the legislation that regulates the process of how indigenous communities can become legal entities. It is, thus, essential that the process includes meaningful consultation with indigenous communities, and which also requires significant input from and coordination among NGOs and indigenous associations.

The National Assembly also implicitly recognizes that Cambodian development should not follow a uniform model for the entire population. Special considerations are needed to respond to the situation of its indigenous peoples, such as the chapter on indigenous communal titles that is incorporated in the Land Law of 2001. Provisions in Chapter 3 of the Land Law, for instance, conform to the traditional methods of land use and its distribution, especially with regard to the communal ownership of land.

The Land Law, therefore, recognizes the rights of indigenous communities to continue managing their lands in the traditional, communal manner. There also seems to be a consensus among legal experts that the sale and alienation of indigenous communal lands, particularly without informed and complete community consent, is not legal. Indeed, Article 23 of the law recognizes the prior right of indigenous communities to continue to manage their land in traditional ways. The provision was included in order to secure

the right of the communities during the interim, before the communal titles to the lands could be issued.

But the Land Law is not being respected, and as a result, indigenous communities lose their lands, livelihoods and traditional way of life. The customary management systems of indigenous communities are destroyed through the sale of communal land by individuals to powerful people, thus, illegally dispossessing entire communities. For instance, land is sold by individual members of a community, but in an environment of insufficient information, disinformation and at times, through threats and intimidation.

Indigenous peoples are also being misinformed by being told that since the land belonged to the State, it will be taken back from them in the future. Furthermore, local authorities arbitrarily sell land without informing the members of the indigenous community who live on it. In other cases, land is simply occupied or forcibly taken by non-indigenous persons, or even by indigenous persons themselves, who have the power and the connections, without any approval or acceptance of the indigenous community. These practices are clearly in contravention of the Land Law, and need to be tackled seriously by the authorities, especially while communal titling is in progress.

The non-enforcement of the Land Law of 2001 also comes from the lack of information about land rights, a situation that could exploited to speed up illegal land sales before the adoption of the sub-decree on communal titling. For example, there are reports of some officials and land speculators telling indigenous communities the following:[18]

1. Fallow agricultural lands belong to the State and, therefore, communities should sell as soon as possible before the officials decide to take it back from them;
2. Communities should sell their lands for "development" and for cash cropping because it is the national policy of the government on poverty reduction;
3. The villagers need to own the land privately, so that they have something to sell when they need money for, say, medical expenses. This argument is used to weaken com-

munal ownership, and to undermine the integral link between the land and the health of indigenous peoples;

4. Because a community is the traditional holder of the land that is presently occupied by another the former, therefore, can sell because the people are told the wrong thing—that the old, traditional boundaries are those that the law recognizes, not the boundaries currently existing. This lack of understanding of the law on selling rights is used to dispossess indigenous people. It also results in inter-village conflicts and it breaks up community cohesion;
5. "A communal title is the same as the one during Pol Pot's time." This is a clear misunderstanding or misinterpretation of a communal title—which no longer refers to the communal use as practiced during the Khmer Rouge period, when all harvests were pooled. On the contrary, a communal title is a single title that is issued to a community, which then allows that community to allocate to an individual or a family the usufruct right to a particular area of the land. (This kind of confusion most likely arises because of the translation of the provisions of the law, and their interpretation from Khmer).

National Policy for Indigenous Peoples' Development

A draft of a document called the Policy for Highland Peoples Development was drawn by the Inter-Ministerial Committee for Ethnic Minorities Development (IMC) in 1997. During the policy formulation process between 1995 and 1997, the committee focused on the improvement in seven sectors, namely: Agriculture, Environment, Culture, Health, Education, Infrastructure, and Land.

It also included a long-term action plan around six points: (1) human resources development; (2) poverty reduction and health improvement; (3) information system; (4) strengthening local communities to protect the elderly and the children; (5) establish community—and indigenous organizations; and (6) institutional strengthening and capacity building.

The main objective was to encourage the government to adopt a special policy for the highland peoples in the provinces of North-

eastern Cambodia, and to provide the people with the rights and access to the incentives under the seven development sectors. The policy draft, however, was not approved by the Council of Ministers.

The Department of Ethnic Minority Development at the Ministry for Rural Development (MRD) then worked on the revision of the policy draft in discussion with NGOs and the indigenous peoples in 2004 and 2005. The government was urged to consider all comments submitted and to adopt the Policy as soon as possible.

Box 1

Indigenous peoples' development is a cross-cutting and multi-sectoral issue. It means that development needs both internal and external support. In the Indigenous Peoples Development Policy and Guidelines, development covers forest, land, fishery, environment, agriculture, infrastructure, health, education, and culture.

In 2002, the Royal Government of Cambodia established the Department of Ethnic Minorities Development to be responsible for the overall indigenous peoples planning and development under the direct supervision of the Ministry of Rural Development. The department can lead the development process, and not only at the local level because a stronger collaboration and cooperation are needed with all the relevant provincial technical departments and line ministries at the national level.

These institutions should work in close collaboration with the department in taking up the action plans that respond to the indigenous peoples' development policy. It is critical that the department, as well as the Ministry of Rural Development, should have its plans for: (i) national policy coordination; (ii) a clear structure, with a bottom-up management and monitoring systems; (iii) accountability and transparency at all levels; (iv) building partnerships with other indigenous development partners; and (v) its annual participatory work plan and budget to support indigenous peoples' development.

Seng Narong, *Statement of IMC Activities in a National Consultative* Workshop on Indigenous Peoples *Development* (Ministry of Rural Development, 3 April 2006).

There was an urgent need to coordinate the advocacy efforts of NGOs and indigenous associations based an overarching national policy framework, particularly on the issues of land grabbing, land titling, and securing access to forest resources. There was also the need for a moratorium on land sales, and the cancellation of land concessions that had a detrimental affect on the livelihoods of indigenous communities. The communal land titling process especially needed to be sped up, and to be identified as an indicator of reform efforts of the government.

The former Highland People Development Policy for Northeastern Cambodia had been revised, and thence was declared as the National Policy on Indigenous Peoples' Development. The MRD organized five policy consultation-workshops and the outcomes, which were contained in the policy draft, were submitted to the ESCOU/Council of Ministers in September 2005. The new policy draft still focused on the same previous seven sectors, with an addition, namely the "Right to Justice."

ESCOU then met on the proposed policy draft at the Council of Ministers on 22 February 2006, but proposed that MRD revise it again in view of the following comments:

1. Include a background and the statement of objectives and goals;
2. Revise the proposed action plans to become strategic plans;
3. The Ministry of Agriculture, Forestry and Fishery (MAFF) should review a section on fishery;
4. The Ministry of Land Management, Urban Plan and Construction (MLMUPC) should review a section on land;
5. Insure that the policy will not encourage "separatism" on the part of indigenous communities; and
6. Insure that the former IMC members will be invited to participate in the policy revision.

But already, the Ministry of Education, Youth and Sports completely supported the section on education, particularly on the use of two languages, Khmer and an indigenous tongue.

Framework of the Land Policy for Indigenous Peoples[19]

A tradition of Cambodian indigenous peoples had been to depend for their livelihood on their natural environment using shifting cultivation, and gathering forest products. Indigenous peoples in the highlands practiced a system of agriculture that left fallow a piece of land after using it for some time. This allowed the land to regenerate before being cultivated again. Practiced well, it was a sustainable form of upland agriculture that avoided chemical inputs, and did not significantly interrupt the forest and the wildlife. It also supported and ensured a simple, but sustainable, livelihood for the highland people. Farming was supplemented by the gathering forest products, such as rattan, bamboo, fruits and nuts, mushrooms and vegetables, spices, herbs, roots and tubers, as well as wildlife. But this livelihood strategy required relatively large tracts of land, and the nurturing of the forest ecosystem.

It is now recognized that areas in various indigenous communities that were formerly devoted to traditional land use had been disturbed since the arrival of immigrants. Solving this problem is important to secure the livelihood of indigenous communities, especially those which have become economically and socially vulnerable.

Currently, the policy on land for indigenous peoples is the concern of the Ministry of Land Management, Urban Planning and Construction, and the Council of Land Policy. While some progress is being achieved to create a legal and administrative framework, a closer relationship between communities, government agencies and advocates is still needed. It is, therefore, recognized that to manage the lands of indigenous communities a strategy is necessary, and one was designed based on three pillars.

Table 4. Three Pillars for Managing the Land of Indigenous Communities

Strategies	Instructions
Pillar 1 Provide communal titles to indigenous areas	Indigenous communities may be granted communal ownership rights to their land. This communal ownership includes all the rights and the protection of ownership as are enjoyed by other private owners under the law, with the sole exception that the community does not have the right to dispose of any communally owned property that derives from the state to any person or group outside the community.
Pillar 2 Land Use Planning	Land use planning will be integrated with natural resource management, and be decentralized as much as possible. In practice, this means that villages and communes will be given the increased responsibility for planning land use, and that district and provincial authorities will support the local plans, subject to the overall guidelines. This approach to planning will help the human activity in, and around an indigenous community's traditional land. This is the forum for discussing access to forest land which also needs to be planned, with participation from the MAFF and MLMUPC.

Pillar 3 Strengthening the cooperation among the government, the indigenous communities and their civil society partners	With their civil society partners, the indigenous communities need to educate themselves about their land rights, and to monitor the encroachment on and the unauthorized uses of their land. The MLMUPC requires coordination with the Department of Ethnic Minorities Development within the MRD, the Ministry of Interior's Subcommittee on Boundaries and Urbanization, *Seila* Programs and the provincial departments, especially of the northeastern provinces, on the following tasks: (i) Outreach to indigenous communities, especially in providing them informational material; (ii) Providing a regular forum among stakeholders, particularly for discussing specific, problematic cases; (iii) Legal training to personnel from each group of stakeholders; and (iv) Allocating resources to allow visits to sites, to work on problem resolution, or to go to dispute resolution bodies or the courts, if necessary.

The pillars of land policy are also the bases for a more detailed policy development, and its better implementation. The Ministry of Land Management Urban Planning and Construction welcomes dialogue and suggestions from communities and NGO's on how to implement communal land titling, and on the requirements of land management to ensure economic livelihood and social harmony in the indigenous communities.

But to make the policy on land for the indigenous people work required research, and testing the policy provisions on a pilot basis. The output of research and testing was to be an input to the sub-decree of the land law to enable communal titling. The World Bank provided the resources to this endeavor through a sub-component of the Land Management and Administration Project to:

1. Develop a strategy and draft the guidelines and procedures for the titling of community's indigenous lands;
2. Prepare the implementing regulations that relate to indigenous communities; and
3. Contribute to the preparation of an indigenous people development strategy based on the land law and the 1997 draft policy of the Inter-Ministerial Committee on Highland People Development.

The Asian Development Bank provided the technical assistance to prepare the sub-decree to define the "indigenous community" in order to grant it the communal land title in accordance with this definition (TA N 2591). At the same time, it was to help the indigenous communities prepare themselves for the responsibility of formally owning and managing the communal land. To internalize their rights to the communal property was necessary so that the individual households are able to ward off the coercion from outsiders to let go of the land.

The sub-decree that will give the legal power to local authorities to prepare a land use plan that is now under way. The bonus provided by the preparation is that the mechanisms for cooperation between the government and civil society can be improved through regular meetings and the exchange of information required during its duration.

Even this early, a community may already identify its communal areas spatially by mapping them, and document the tradi-

tional uses of these lands. These steps are valuable both as evidences toward demarcating the boundaries of its communal land, and providing the Ministry of Land Management Urban Planning and Construction with an understanding of a community's traditional system of land management. The NGO's, for their part, can monitor the encroachment on the land, and other disturbances to the traditions of indigenous communities, and to improve the enforcement of the land policy. The Ministry of Land Management, likewise, established a mechanism to settle the land issues and conflicts that had occurred within the decade, including instructions on the implementation of the sub-decree, and the criteria and procedures for granting social land concessions for residential use and/or family farming in the Cambodia.[20]

Finally, in 2004 the MLMUPC decided to form a working group to study the land registration of indigenous communities.[21] The working group was to pilot test the land registration in Mondulkiri and Ratanakiri Provinces, and to organize consultative forums and/or meetings with PLUP-GTZ, CLEC, PLG, Highlanders Association, Natural Resource Management Network, WCS and CIDSE.

The Forestry Law of 2002

The Forestry Law, which applies not only to indigenous peoples and communities, was approved by the National Assembly on 30 July 2002 contains both very general and specific provisions on communal forest protection and management, notably in Articles 40, 44 and 45 of Chapter 9.

Article 40's provisions, for instance, could be summarized to include that:

(1) The State shall recognize and ensure the community's traditional user rights over timber, products and NTFP's on community land that has been legally registered with the State;

(2) For a community living within or near a permanent forest reserve but whose land has been registered under a communal title, the State shall recognize and ensure its traditional user rights for the purpose of customary, religious and subsistence use as defined in this law;

(3) The traditional user right of a local community over timber products and NTFPs shall not require a permit for their exploitation, and includes the following:

(3.a) Collection and use of dead wood, wild fruit, products from beehives or combs, resin, and other NTFPs;

(3.b) Harvest of timber to build houses, stables for animals, fences and to fashion agricultural implements;

(3.c) Cutting grass or grazing livestock within the forest;

(3.d) Gathering of other timber products and/or NTFPs for traditional family use; and

(3.e) The ability to barter or sell NTFPs to a third party, where the amount is consistent with traditional community practice;

(4) It is prohibited to transfer any of the traditional user rights from the community to a third party, despite mutual agreement or contract. Traditional user rights shall:

(4.a) Respect the natural balance and sustainability of forest resources, and the rights of other people; and

(4.b) Comply with the permissions and prohibitions stated in this law.

Article 44, furthermore, provides that:

(1) A communal forest shall be managed in an economic and sustainable manner by the local community, conforming to the Communal Forest Management Plan, rules on communal forests, and guidelines on communal forestry. A forest administration shall monitor the implementation of the management plan, and provide technical assistance, where appropriate, upon the request of the local community;

(2) The management plan of the communal forest shall be prepared by the community, subject to approval by the chief at the canton level of the forest administration. A copy of the plan shall be sent to the central level of the forest administration to be reviewed and revised if necessary, once every five years on the minimum, or earlier if needed;

(3) Communal forests—including tree plantations and natural forests established by the local community as communal forests—shall be subject to the communal forest management plan, and to the supervision and technical assistance of the forest administration;

(4) Rules for the establishment, management and use of a communal forest shall be determined by the sub-decree or *Anukret* on communal forest management; and

(5) The technical and specific guidelines covering communal forestry shall emanate from the declaration or *Prakas* issued by the MAFF.

The pertinent provisions of Article 45 include:

(1) A local community, operating under a Communal Forest Agreement, shall have traditional user rights to timber products and NTFPs within the demarcated area stated in the agreement and/or the communal forest management plan;

(2) The traditional user rights shall include the right to barter or sell NTFPs without a permit, provided such a sale does not threaten the sustainability of the community forest. But a transport permit is required for any third party who buys NTFPs from a local community, in accordance with the provisions of this law and after the payment of any applicable royalties and premiums; and

(3) No community shall use the communal forest in the form of a concession, or sell or transfer its rights in such forest to a third party.

For many indigenous people, access to forest resources is essential to their livelihood. But as with all communities that rely on forests to support their livelihoods, the indigenous peoples of Cambodia neither have secure access to, nor management rights over forest areas. While the forestry law, the sub-decree on communal forests, and provisions over the management of such provide some opportunities to secure indigenous people's use and management of forest areas, significant challenges remain, that include the following:

(1) In implementing the sub-decree on communal forest management, communities must be given access to high qual-

ity mature forest, and not only degraded forest areas;

(2) The development of communal forest agreements in indigenous communities should be linked to the land titling process, as this will minimize the effort and expense required in mapping and developing community management structures and by-laws;

(3) Areas of forest, especially spirit forests, burial forests and small areas of forest amongst agricultural land should be included in communal land titles because excluding these areas will have the effect of greatly slowing the mapping process for a communal title; and

(4) There are still chronic abuses of community rights due to illegal logging by the military, police, business people and government officials which need to be addressed as a matter of urgency.

Like all communities in Cambodia that use the forest for their livelihood support the indigenous minority people do not have secure management rights to the forest areas that they traditionally use and manage. When land is alienated, the indigenous minority people have to move to the forest areas for their agriculture. They are then blamed for forest clearing. Likewise, people granted forest concessions intimidate indigenous minority communities, and those concessions deprive the communities of the opportunity to develop their own secure and sustainable livelihood.

Furthermore, the indigenous minority people are not entitled to extract timber by sawing, even by hand, "because this is not customary use." Thus, the indigenous minority people who establish the community regulations to protect the forest feel discriminated against by the "customary use" provision of the forestry law and its interpretation.

The sub-decree may offer a wider scope for indigenous minority people's management and use. There is, therefore, the strong need to carefully monitor its passage to ensure that it actually serves the needs of the poor communities. It is also imperative that the sub-decree covers the community's traditional management rights in mature forest and forest concessions—not just in degraded forests. Many areas of forest—especially the spirit forests, burial grounds and small areas of forest amongst agricultural

land—need to be included in communal land titling if indigenous land management and culture is to be protected. To exclude them will have the effect of drastically slowing down the mapping processes required for communal land, thus, reducing the land security of most of the indigenous minority people.

Forest Management

Chan Sarun, on the occasion of Seventh Government-Donor Consultative Group Meeting in December 2004, in his speech stated that the Royal Government always regarded environmental protection and sustainable natural resource utilization as its primary duty. Hence, Cambodia constructed the comprehensive legal, policy and institutional framework to ensure environmental protection and sustainable utilization of natural resources. Throughout are 23 designated protected areas, accounting for 18 percent of the country's total area. The figure is increasing due to the allocation of more forested areas for protection and conservation purposes. Still, the country should recognize the necessity of a comprehensive reform in managing natural resources, such as forest, fisheries and land—the prominent national assets.

The MAFF and the MEF have established an inter-ministerial committee to develop the guidelines and the inter-ministerial *Prakas* on the forest revenue management system. The Prakas had been subjected to several public consultation workshops and meetings before it was signed by both the ministers of the MAFF and MEF on 28 August 2003.

The Sustainable Forest Management Plans (SFMPs), and the Environmental and Social Impact Assessments (ESIAs) also had been prepared and submitted to an independent review team with support from the WGNRM for comment. The SFMPs and ESIAs also underwent a considerably long consultation process with the WGNRM and with local communities to insure sufficient local participation in the planning process, and secure their benefits. The results of the consultations were subsequently reported to the stakeholders. The SFMPs and ESIAs have likewise been used as a precondition to cancel forest concession agreements. Until now, the government has yet to allow any forest concession to operate again.

A moratorium on timber transportation and forest concession operation is currently in force, but the MAFF is considering applying a domestic annual coupe to supply timber for domestic use. The measure is also deemed to help eliminate small-scale illegal forest harvesting and transportation which occur because of local consumption needs. The MAFF, besides its principal mandate, has likewise closely cooperated with the MoE in protecting and cracking down illegal activities in the protected areas. Both ministries have reviewed the draft Law on Protected Areas that they expect to be finalized.

To tackle illegal forest land clearing and land grabbing, the Royal Government established the National Committee to Prevent, Suppress and Eliminate Forest Land Clearing and Grabbing for Ownership Purpose on 2 June 2004. In conformity with the Forestry Law, a vertical management line of the Forest Administration has been put in place.

The above express the MAFF's recognition of the role of local communities and, thus, empowered them by establishing several hundred forestry and fisheries communities throughout the country. The sub-decree on communal forests was drafted with provisions to insure local participation and securing the benefits from the law. The draft sub-decree went through series of consultations to insure transparency so that, finally, on 2 December 2004, the Royal Government issued the sub-decree. It now is implemented to establish forestry communities.

International Day for the World's Indigenous People

It is the Cambodian Royal Government that declares national holidays and international days, including International Women's Day, International Labor Day, and International Human Rights Day, but not the International Day for the World's Indigenous People. The Ministry of Rural Development, however, organized an informal one in 2005. The occasion aimed to:

1. Celebrate and enjoy the first International Day for the World's Indigenous People in Cambodia;
2. Strengthen national and international cooperation to help

solve the problems faced by the indigenous peoples of Cambodia;

3. Encourage the recognition of the indigenous peoples rights by promoting ILO Convention No.169; and
4. Provide an additional opportunity and occasion for the indigenous peoples to show and demonstrate their cultural heritage.

Box 2

Between 1996 and 1997, the draft Highland Peoples' Development Policy was submitted by the IMC for Ethnic Minority Development three times to the IMC of the Council of Ministers for revision and approval. In 1997, the policy was pending, waiting for the approval of the land and forestry laws. Between 2002 and 2006, the Ministry of Rural Development started reviewing some of its parts, but it seems that the policy has not yet been indorsed by the Royal Government of Cambodia.

The Ministry of Rural Development exerted efforts to encourage the Council of Ministers to recognize and to approve the policy as soon as possible. In order to generate support for it at the Council of Ministers, the Ministry of Rural Development organized an International Day for the World's Indigenous People in 2005.

In 2006, the Ministry again will organize the International Day of the World's Indigenous People, where senior government leaders will be invited to attend and speak of their support to the indigenous communities. This kind of support should provide some influence on the Council of Ministers to speed up the process of approving the policy for indigenous people development. Cambodia wishes to take the opportunity during the joint holding of the International Day for the World's Indigenous People and the Public Indigenous Peoples Forum to address the need for the immediate approval of the Highland People's Development Policy by the Council of Ministers.

Representative of DEMD/MRD, 02 June 2006

The Ministry of Rural Development, finally, is preparing plans to consult with national and international non-government organizations in order to popularize the celebration of the International Day for Indigenous Peoples thenceforth.

Government Institutions

Commune Councils. For local administration, commune councils were established through direct, free and fair elections conducted in February 2002. Capacity building activities for the new members were then carried out in the highland areas, orienting them and providing them with the skills and the knowledge to effectively carry out their new role and responsibilities.

The Royal Government legislated laws that apply to the administration and management of the commune councils, including election to the council. The NCSC has also approved sub-decrees that govern the following: decentralization of power, and the role and duties of the commune council, the establishment of a commune/*Sangkat* fund, and the formation of the commune/Sangkat financial management system.

There are, furthermore, several Prakas already in place that delegate to the local institutions the following:[22] the role, duties and rights of the commune/Sangkat clerk; the role, duties and the structure of the Department of Local Administration; commune/Sangkat development planning; and to the provincial and municipal governors to support the commune/Sangkat councils.

While much still needs to be done, the support that has been given so far has helped the commune councils and the members of the Planning and Budgeting Committees[23] to develop the commune development plans and the commune investment programs in a participatory manner.

Each commune develops its own plan, which is then integrated with the other plans at the district level. At that point, provincial line departments and other development agencies, NGO's as well as IO's, pledge their support to the projects of choice among those contained in the district-level plan. At present, a majority of the projects are for infrastructure development, such as the construction of roads, canals, schools, health centers, and the like. But as

the decentralization program proceeds, it is expected that other projects, such as those on natural resource management, will be included.

Inter-Ministerial Committee. In 1995, the government established an Inter-Ministerial Committee for Ethnic Minority Development made up of 10 ministries in Kingdom of Cambodia (IMC), including the Phnom Penh University. The IMC has been supported in 1996-1997 by the ILO, the UNDP, and the NGO Task Force (IDRC, CIDSE, HU, NTFP), with the cooperation of UNESCO, UNICEF, and the UNCOHCR.

The IMC's main task is to oversee the work of highland development, particularly in the provinces of Ratanakiri, Kratie, Mondolkiri, Preah Vihear, Stung Treng, and Kampong Speu. The role of IMC is to develop a policy for the highland peoples' development. So far, the IMC had conducted workshops aimed at:

1. Equipping the participants with the analytical and diagnostic skills necessary to identify the highland peoples' development problems, and develop problem-solving skills;
2. Increasing the participants' knowledge and capacity to participate in the organizational and functional aspects of training management in order to improve the productivity and quality of highland people's development management; and
3. Providing a venue for the exchange the participants' experience in development work with the highland peoples, based on an environment of respect for cultural differences amongst the participants.

Ministry of Rural Development's Department of Ethnic Minority Development. In 2001, the Royal Government of Cambodia established the Department of Ethnic Minority Development, under the Ministry of Rural Development, to concentrate on the 16 provinces where there are indigenous people. It is this department that continues the work on the Highland Peoples' Development Policy toward the National Policy for Indigenous Peoples Development, after the consultations in 2004. The department has the following responsibilities:

1. Prepare short, medium and long-term plans toward the development of communities of the ethnic minorities;
2. Study the minority groups in the mountainous, highland and forested areas by determining the identities, customs, culture and traditional behavior of each community in Cambodia;
3. Prepare the design, and implement the development programs and projects for the minority groups in the mountainous, highland and forested areas, based on clearly defined priorities;
4. Coordinate the development activities of minority groups in the mountainous, highland and forested areas of Cambodia;
5. Observe, evaluate and develop the reports of the activities that implement the development projects and programs of minority groups;
6. Train staff at all levels, and conduct workshops involving partners that carry out development programs and projects with minority groups; and
7. Establish and manage the National Information Center.

Ministry of Education, Youth and Sports (MEYS). In 1996, the Ministry of Education, Youth and Sports signed an agreement with ICC to lead a research on indigenous languages in Ratanakiri Province, and to establish a literacy program. Between 1997 and 2000, ICC worked with indigenous groups of Kreung, Brao, Kavet and Tumpuon that spoke their own respective indigenous languages to assist each in establishing its alphabet writing system, in consultation with the provincial department of MEYS, and His Excellency, Bu Thang, a member of parliament from Ratanakiri Province. In 2002, a workshop on "Two Languages Education" was organized and held at Ratanikiri Province. Through an official communication numbered 2696 dated 25 March 2003, the Ministry instructed that education on Indigenous Languages would take effect in Kreung, Brao, Kavet, Tumpuon and Phnong in northeastern Cambodia, with the support of ICC.

Participatory Development Planning for Indigenous Peoples

Commune Development Planning Process. The Ministry of Planning, Ministry of Women Affairs, and the Ministry of Interior have agreed to develop the guidelines for the commune development planning process (CDP),[24] and the commune investment program (CIP)[25] which are to be undertaken in all the 24 provinces and municipalities, with all the IOs, NGOs, government departments and ministries concurring. The Ministry of Planning official instructs CDP/CIP stakeholders to carry out orientation workshops in June or July of each year.

In accordance with the national policy and guidelines, a government program called *Seila*[26] is undertaken by a Seila Task Force (STF)[27] and a National Committee for Supporting the Commune/Sangkat (NCSC). The program is supported by the Rural Investment and Local Governance Project. If agreement is reached by the indigenous peoples and other ethnic minorities after a participative consultation, a needs assessment document is adopted. It is also required that there be a public presentation of the plan by the commune council to representatives of the indigenous or ethnic minority communities in order to agree on priorities.

In 2003, additional special policy safeguards were included in the Highland Peoples Development Plan[28] to ensure that:

1. Indigenous groups were afforded meaningful opportunities to participate in planning that affected them;
2. Opportunities were provided to such groups, and culturally appropriate benefits were considered; and
3. Any project impact that adversely affected the indigenous peoples were avoided, or otherwise minimized and mitigated.

Pilot Testing the Indigenous Peoples' Development Planning Process. In 2003, a pilot government program that fitted within the broad campaign promoting decentralization and heightened local-level participation in the development planning process was undertaken in two provinces, Kratie and Kampong Speu. In 2004, it was applied to another province, Preah Vihear, and in 2005

was expanded to other 5 provinces, Mondulkiri, Ratanakiri, Steung Treng, Pursat, and Kampong Thom. The program promoted participatory methods to identify and prioritize the needs at the village level. The project had also two other fundamental objectives:

1. To support local infrastructure or service improvements through investment; and
2. To increase local participation in decision making at both the village and commune levels.

The policy safeguards earlier mentioned were promoted in all the 24 provinces and municipalities where there were indigenous communities so that multicultural respect was rendered toward indigenous peoples in the development situation. The commune council must, in its development plan, include the needs as articulated and prioritized by the ethnic minority villagers.

Capacity Building

Inter-Ministerial Committee for Ethnic Minority Development (IMC). The committee, chaired by the Minister of Rural Development, has the following goals:

1. Improve well being and living condition of indigenous peoples;
2. Protect their tradition, culture, religion and beliefs;
3. Strengthen their capacity by providing them training courses on the basic management of local areas, the management of highland development and natural resources; and
4. Coordinate and collaborate with national and international organizations to develop and implement the policy in the highland areas where the indigenous people live.

Over the decade, the achievements of the IMC have been:

1. Through the support of the UNDP/HPP, the members and staff of the committee had been studying the culture, tradition, religion and living condition of the indigenous peoples of the four northeastern provinces of Cambodia: Kratie, Stung Teng, Mondolkiri and Rattanakiri;

2. Assisted the indigenous people to delineate the forest community, and establish their legal rights to a land title;
3. Carried out research in the four provinces, formulated the draft of policy for a highland peoples' development, conducted workshops on indigenous people development, and provided training and study tours to neighboring countries in order gain more experience;
4. With the support of ILO Geneva, conducted three training courses on the management of highland development to the member ministries and the respective staffs, and one workshop on policy-sharing experience among indigenous/ethnic minorities;
5. With support from ADB, the IMC conducted a national workshop in Phnom Penh on Health and Education Needs for ethnic minorities, and on Indigenous/Ethnic Minorities Development and Poverty Reduction at Ratanakiri Province and in Phnom Penh;
6. In collaboration with CIDSE, conducted a national workshop on sustainable development in Northeastern Cambodia; and
7. In collaboration with UNDP/HPP, UNCHR, IDRC/CARERE and NTFP conducted a national workshop on Land Use Management in Forestry for indigenous peoples.

Likewise, between 1996 and 2001, the IMC provided capacity building to all its member ministries and the representatives of indigenous communities from the northeastern provinces of Cambodia. Training sessions on the "Highland People Development Policy" were held in Chiang Mai, Thailand and on "Culture and Development" in Hanoi, Vietnam.

Still on capacity building, the member ministries also had been invited to join workshops to share their experiences with representatives from other countries in the region. Those workshops included "Development of Highland Peoples Through Participatory Capacity Building" in Chiang Mai, Thailand and in Bac Thai, Vietnam; "Health and Education Needs for Ethnic Minorities" in the Greater Mekong in Thailand and in Laos; "Indigenous Peoples/ Ethnic Minorities and Poverty Reduction" in Manila, Philippines; "

Environmental and Social Safeguard" in Bangkok, Thailand; the regional workshop on "Indigenous Peoples' Practice of Sustainable Land and Resources Management" in Chiang Mai, Thailand; and "Regional Indigenous Peoples Program Workshop" also in Bangkok, Thailand.

ILO-IMC Cooperation. The perspective of ILO Convention No. 169 differs from that of Convention No. 107[29] in that there has been a shift from one that visualized the eventual integration of the indigenous peoples with the dominant society to one which respects specific identities, worldviews and lifestyles of indigenous and tribal peoples. The current perspective acknowledges the plurality and dynamic nature of culture, and accepts the differences among peoples' experiences.

The Convention covers a number of issues which are of utmost importance to indigenous and tribal peoples. Some of these are: (i) the right to participate in their own culture and traditions; (ii) the right to ownership and possession of traditionally occupied lands; (iii) the right to natural resources, and to participate in the use, management and conservation of these resources; (iv) the right to move residence to other places or to sell; and (v) the right to education, health service, and employment.

In 1996, through the ILO a project was implemented intended to deal exclusively with indigenous and tribal peoples. The project's objectives were:

1. To encourage dialogue and cooperation between governments and indigenous and tribal peoples in policy formulation;
2. To improve capacity building; and
3. To increase the participation of indigenous and tribal peoples at the regional, national and local levels.

This was achieved with the cooperation of the government, employers and workers organizations, indigenous and tribal peoples' organizations, and NGOs. Policy advisory services, training workshops and seminars, pilot projects and publications were all utilized to achieve the above stated goals.

The ILO's involvement with IMC started in 1997 at the latter's request. A pilot project of three workshops on development man-

agement was held in 1998, with the IMC as the implementing agency. The workshops formed part of an overall training program whose objective was to provide the IMC, the government officials at central, provincial and district levels, and indigenous and tribal peoples with policy advice and an understanding of the basic concepts and processes of a development program.

The project also sought to ensure the participation of all parties involved in the development process, at the same time promoting the incorporation of the basic principles of ILO Convention No. 169 on indigenous and tribal peoples in the development policies affecting the indigenous peoples of the highlands of Cambodia. The project assistance to the IMC had been implemented at two levels:

1. The development of policy initiatives at the decision-making level; and
2. At capacity building level.

Box 3. Statement of Indigenous Peoples

The representatives of the indigenous peoples from 14 provinces[30] at the National Forum on Indigenous Peoples and Land on 9-12 September 2004 at Kampong Speu Province united to declare in a single statement our suffering when we lose our livelihood based on our traditional land and natural resource management.

We, therefore, ask the intervention of the Royal Government of Cambodia to protect and allow us to exercise our rights as equals to every Cambodian, with respect to our cultures, to our use of the traditional languages, and to secure our livelihoods, land, and natural resources, and their management. In this connection we, therefore, present our proposed solutions and recommendations that:

1. Indigenous cultures and communities be recognized as parts of Cambodia;
2. Communal land titling of indigenous communities and individual land titles be recognized;
3. Our culture be protected against land- and mining concessions;
4. Our management rights and/or ownership of the natural resources be recognized;
5. Our traditional structures be respected, and
6. Education programs be provided to us.

Indigenous Minorities Affairs[31]

Land Rights. In 2001, the government passed the new Land Law containing provisions for the indigenous minority communities to gain title to their land—either in the form of an individual title or as a communal title. Under the law the land of an indigenous community can be defined as residential, agricultural, or land kept in reserve as part of the traditional rotating cultivation system.

Article 23 of Section 2 of the Land Law, which was approved by the National Assembly on 20 July 2001, states:

An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands and their possession according to customary rules of collective use. Prior to their legal status being determined under a law on community, the groups actually existing at present shall continue their community and immovable property according to their traditional customs and shall be subject to provision of this law.

Numerous studies show that indigenous minority people operate on the basis of a well-developed land allocation and management system that relies on communal decision making through traditional social structures. Individual land titling and land sales bypass this system and, therefore, threaten the collective nature of indigenous minority communities which may eventually create wide-spread poverty.

As earlier noted, the sub-decree that defines the requirements for legal recognition of communal land ownership has yet to be written. Therefore, drafting it should be encouraged. The process needs to be comprehensive in order to give full recognition to the indigenous minority communities in terms of the sustainability of the use and management of land and natural resources.

The Ministry of Land Management, Urban Planning and Construction (MLMUPC) already had implemented a pilot project to register indigenous communal land through a national task force which was created for the purpose. The task force is supported by a consultation forum where members can provide inputs and recommendations, as well as raise important issues in order to facilitate the legal process in communal land registration.

Article 265 in Part 2 of the Land Law also states:

An owner who cultivates on his own land or who intentionally provides or rents land to a third person to cultivate crops that are prohibited by law or regulations shall be fined from fifteen million (15,000,000) Riel to forty five million (45,000,000) Riel, and shall be imprisoned under the force of law.

Issues and Challenges Regarding Land Rights. Despite the initiatives mentioned earlier, however, land alienation remains an alarming and growing problem. Of particular concern is the proliferation of "land concessions" that are issued by the government in provinces like Mondulkiri and Ratanakiri, as well as other provinces such as Kompong Thom, Stung Treng and Kratie.

The land concessions establish agricultural-industrial plantations of rubber and cashew after forests of endemic species are cleared. This act, in its turn, reduces the indigenous minority people to a position of subservience and poverty because the natural resources are removed from their management and use. Also of concern is the growing incidence of land "sale" that involves misinformation, coercion, threats, bribes to officials, among other illegal mechanisms.

Information dissemination in indigenous languages about basic human rights, land rights and contract procedures is an urgent need. And in order that the proper exercise of those rights and procedures are observed, the indigenous minority people and indigenous minority organizations require strong representation in the Land Cadastral Commission and in the courts of law.[32]

Natural Resource Conservation. The Royal Government of Cambodia has paid its strongest attention to biodiversity conservation, including in-situ and ex-situ conservation, as well as conservation within forest concession areas. Surveys have been done in close collaboration with international organizations, experts and the development partners. Forests have been designated and managed; some function as protected forests in order to conserve forest genetic resources, seed supply, wildlife, bio-diversity, water sources and to act as watersheds.

Adding to the 23 protected areas already established in 1993, three more main areas have been designated, namely: the Central Cardamom Protected Forest (consisting of 401,313 has), the Mondulkiri Protected Forest (of some 429,438 has), and the Preah Vihear Protected Forest (some 190,027 has). In all, Cambodia now has 29 protected areas covering 4.5 million hectares, or 25 percent of the country. This makes Cambodia a leading nation in terms of conservation, with the highest percentage of lands under a protection and conservation system.[33]

Education. The documents that marked a milestone for the Ministry of Education, Youth and Sports are the Education Strategic Plan (ESP), and the Education Sector Support Program (ESSP). They form a five-year, sectoral plan which was formulated in collaboration with stakeholders. They, therefore, consist an integrated reform program that is claimed to be pro-poor, and policy-led. These documents provide a basis for addressing the constraints in achieving education for all, and they specifically address the marginalized groups made up of the poor, the females, the disabled and the ethnic minorities.[34]

The key education issues in the five-year ESP are: (1) The cluster school system; (2) Pre-school education, thereafter Early Childhood Care and Development; (3) Gender disparities; (4) Special education, thereafter Children with Special Education Needs, e.g., disabled, ethnic, street/working children, refugees, etc.; (5) HIV/AIDS; and (6) Quality education.

Education reforms in Cambodia, in general, progress slowly. In the area of education for indigenous minority people a number of positive, but also some disturbing trends may be observed. One is the support for a bi-lingual education. The approach promotes the development of literacy in indigenous languages; it also serves as a bridge to literacy in Khmer. NGO's work in close cooperation with the Ministry of Education, Youth and Sports to create a model for bilingual education in formal education. But many schools remain understaffed or non-functional. In many cases, non-indigenous faculty are assigned to teach in indigenous people's schools without adequate consideration for how practical this practice is. Isolation from their families and culture, the language problem and cross-cultural barriers explain the large incidence of absenteeism of these teachers.

It is the system of non-formal education, both bilingual and monolingual, that produces positive results. This form of education remains literacy-based, and has had much success most likely because in the indigenous minority communities, the school calendar has enough flexibility. Classes are scheduled at the times most suited to the seasons, and to the students' daily lives. Another feature of Cambodia's non-formal education is that the teachers are indigenous minority people themselves who able to use

the native languages to support literacy in the Khmer tongue. On the less positive side, post-literacy non-formal education classes and materials are seriously lacking, thus, there is a marked absence of support for people who want to advance in Khmer beyond the very basic.

In areas where no non-formal education is provided, little or no effective education is available to the indigenous minority people. Hence, in an environment of very rapid social and economic change, there is the danger that marginalization will further be entrenched.

Health. Indicators of the health status of the indigenous minority people in Cambodia are among the worst in the country. The problem is complicated by reports from the indigenous minority people of incidents of corruption and abuse at the hands of non-indigenous health staff when seeking assistance. Thus, the indigenous minority people have developed a distrust for the health system such that they are less likely to avail of its services or follow its directions. The numerous attempts to rectify this situation have been frustrated by the inefficiencies in the public health system. Recent moves to outsource health services may offer a short-term solution, but reform of the national health system is required in the longer-term in order to develop a health assistance system that is responsive to the needs of the indigenous minority people.

Tourism. The governments of Cambodia, Laos and Vietnam signed a Triangle Development Plan that includes the opening of the north-eastern provinces of Cambodia to rapid- and large-road access toward extensive tourism development. Loans from the Asian Development Bank fund the construction of an international airport in Ratanakiri, the reasoning behind tourism as an engine of rapid economic growth being the reduction of the incidence of poverty.

However, tourism development needs to be controlled and managed because there are barriers to making it sustainable and equitable. The current policy of the rapid expansion of tourism is misplaced and potentially highly destructive.

Decentralization. Much is being made of the decentralization process currently underway in Cambodia, as it promises some real opportunities to promote self-management for indigenous

peoples. However, in many areas money is being directed toward "development" without adequate guaranty for true community and human development. Per diems and similar financial incentives are used to generate participation in the activities of development agencies. In many areas, likewise, government and NGO projects that are developed at the national and regional centres are delivered by predominantly non-indigenous people in non-indigenous languages.

Their impact is now seen in the form of dependency, loss of community self-management and empowerment. If the indigenous minority people are not actively involved in their own development, and without local alternatives in the industrial development models now being promulgated many severe social and economic problems are expected to arise—as they have in other indigenous communities in similar conditions throughout the world. A major review of the impacts on indigenous minority people from different development approaches is, therefore, required.

Box 4

Two Five-Year Socio-Economic Development Plans (SEDP-I, 1996-2000 and SEDP- II, 2001-2005)[35] formulated strategies that respond to the national goal of poverty reduction, in conjunction with the strategies on land, forest, agriculture, education, health, decentralization, and governance. Those components of the development plans were intended for the multiple of rural people of many religions, wherever they live—in the uplands/highlands, the lowlands or on the coast. For the Ministry of Planning, no discrimination should be demonstrated in the national development plans. All who live in Cambodia and all who were born in Cambodia must enjoy equality—in rights and in development, all being a Khmer citizen and Cambodian national.

So far, the Royal Government of Cambodia has no specific agency responsible for the development of the indigenous peoples of Cambodia. But a new department has been established by the Royal Government to be supervised by the Ministry of Rural Development.

The ethnic minority or indigenous peoples (the Khmer Loeu) have never had any conflict with the Royal Government of Cam-

bodia, especially in the 1990's. Thus, the development strategy or strategy should not contain any clause that could lead to any move toward separatism on the part of the indigenous peoples. Rather, the national strategic development plans pay special attention to them and the indigenous communities. There are now also two laws which attends to the indigenous peoples that have been indorsed by the National Assembly—the Land Law, especially in Articles 25 and 265, and the Forestry Law, with particular details in its Chapter 9.

But the Royal Government needs to establish, where there are none, or strengthen where they exist the government agencies responsible for indigenous peoples' development in Cambodia. Currently, the few government institutions that should be strengthened are: (i) Ministry of Rural Development, (ii) Ministry of Agriculture, Forestry and Fishery, (iii) Ministry of Land Management, Urban Planning and Construction, and (iv) Ministry of Culture and Fine Arts.

Representative of Ministry of Planning, 14 July 2006

Cultural and Gender Balance. The Ministry of Women's Affairs formulated the general strategy implemented at all levels by government institutions in order to recognize the contribution of women to society. For example, the Ministry of Women's Affairs formulated a Gender Mainstreaming Strategy 1997-2005[36] and while the strategy was not specifically only for the benefit of indigenous women, it meant that indigenous women could benefit as well from this general strategy as all other Khmers.

The strategy was premised on the fact that it was the government that had the capacity to sustain the effort to put in the mainstream gender equality in poverty alleviation efforts and in governance, thereby promoting equitability in participation and the empowerment of women in development. Three components were present to achieve the goals of the strategy:

1. Building commitment and capacity;
2. Increasing the participation of women in local development planning and governance; and
3. Enhancing the capacity for gender monitoring and database management.

Gender Issues Among Indigenous Peoples. Although the traditional upland communities seem to be more egalitarian than the mainstream Khmer society, still there are some pronounced differences between the sexes.[37]

In the day-to-day village life, men and women perform different roles. Women usually have the responsibility of managing the household, while the men dominate the political life of the village. Among some groups, such as the Kreung, women traditionally had the role of spiritual healer but in general, while the women share decision-making in matters of household finance and livelihood such as agricultural decisions, beyond the household women typically have very little influence. For instance, it is uncommon for elderly females to be part of the traditional elders' council.

The workload of indigenous women is about equal to that of men in productive activities. The women's share in the work on the swiddens complements the role of the men, both in the tasks and in decision making. In contrast, the paddy rice system of cultivation and in intensive farming which commonly occur after the privatization of land holdings, the men dominate the work and decision-making, disempowering the women.

However, indigenous women do nearly all the household's reproductive activities. These keep them busy throughout the day, and most nights, even during the agricultural fallow periods. Middle-aged and younger women also do much of the work during community activities, such as celebrations, marriages, funerals, etc. While both men and women do have some time to relax during these community activities, the women appear to have less.

Table 5. Productive and Reproductive Activities of Indigenous Men and Women

Women	Men
Productive Activities	
	Cutting trees
Burning field	Burning field
Planting rice and vegetables	Planting rice and vegetables
Harvesting rice and vegetables	Harvesting rice and vegetables
Weeding	Weeding
Gathering vegetables, fruits	
Looking after pigs and chicken	Looking after cows and buffaloes
Fishing	Hunting, fishing
Sell vegetables at markets	
Reproductive Activities	
Looking after chicken	Looking after chicken
Fetching water	
Collecting firewood	
Cooking	
Cleaning the house	
Small house repairs	Building and repairing house
Weaving cloth, baskets	Weaving mats and baskets
	Making and repairing tools
	Gathering construction materials

Source: Kenneth M. Irwin, Promoting Gender Equity in Land Registration and/or Titling and Participatory Land Use Planning (IDRC - Ratanakiri, June 2004), 4.

Gender Relations in the Communal System of Indigenous Groups. The communal nature of indigenous groups in Cambodia displays for the greater part gender equality in a number of ways. In addition the inheritance system, and even the rules on resource control in cases of divorce favor the woman. All families in the community—including those where a woman is head of family—have access to land, *chamkars*, for rice and vegetable farming. This mirrors the Cambodian government's system of granting social concessions in the form of land so people can survive.

Indigenous women also customarily enjoy a high level of livelihood security in the respective communal systems that indig-

enous groups follow. The same communal systems have helped the indigenous peoples survive for many generations in Ratanakiri. The break up of these systems, thus, represents a very serious threat to the peoples' cultures and livelihoods, and leaves vulnerable the rights of women in these indigenous groups.

Partnership for Gender Equality. The Ministry of Women's Affairs, in collaboration of UNDP, developed the ministry's plan, Partnership for Building Together, which was a follow up to the Beijing Platform for Action for Gender Equality 2000-2004.[38] While four main achievements in developing gender equality were cited in 2002, they were enjoyed by all Cambodian women, and not solely by the indigenous women. However, the report did identify instances, such as pathways to justice, that were intended especially for the poor, the women, and for indigenous peoples[39].

Indigenous Peoples' Organizations and Networks. In Cambodia, it was only recently that the concerns of indigenous peoples entered the national agenda. There are over 17 ethnic minority groups[40] throughout the country, some living in isolated communities, but most are in the northeastern provinces of Ratanakiri and Mondulkiri. Indigenous peoples speak as many languages as there are ethnicities, and their cultures and traditions are diverse.

In 2004, efforts to form a network began in order to bring together groups of indigenous peoples from around the country. The network is called the Indigenous People's Forum (IP Forum). The efforts were timed to coincide with the drafting of the sub-decree on indigenous land rights—a defining legal document within the 2001 Land Law. The organizers hope that the network will extend its mandate beyond getting the sub-decree passed, and continue the nation-wide effort to link and strengthen indigenous communities.[41]

In Ratanakiri Province, two networks work at the grassroots level—the Ratanakiri Natural Resource Management Network (RNRMN) and the Highlanders' Association (HA). The former was formed in 2000 to provide inputs to the natural resource management laws and policies that were then being drafted. The latter network, still in its infancy, started with a cultural and community development focus, and is moving also toward national resource management.

Both are involved in capacity building of indigenous facilitators who are to work directly with local communities to educate them of their rights to the natural resources, and to strengthen pride in the indigenous tradition and culture. They have been effective in stemming the tide of land alienation but the ongoing pressure on the scarce land resource, coupled with a weak administrative and judicial system requires a sustained effort at resistance on the part of the indigenous communities and civil society.

The Highlanders' Association, in particular, takes a non-violent grassroots approach in solving land conflict, despite threats of violence and intimidation, by seeking the support of the major actors, including international donors such as the United Nations. The networks are assisted by several NGO's, including the CFAC-sponsored Ratanakiri Network Support Project (RNSP), Action Aid, Non-Timber Forest Products Project (NTFP)[42] and the NGO Forum.

Education Programs. Recent studies on the impact of education reforms show that in terms of gender there has been some improvement in female enrolment in the primary and secondary school levels. In 2002-03 the number of female students in primary school increased by 25,000 pupils, representing over 60 percent overall growth. The net increase is attributed to the larger enrolment rate in the remote and rural areas (a growth of around 27,000) over the overall growth — given the slight decline in urban female enrolment. Since 1999, the number of females in primary school has increased from 1.01 million to 1.28 million. The growth rate in the enrolment of female students is estimated at 27 percent, compared with the 22 percent growth rate among male students. One possible reason for the rate of increase in female enrolment is the elimination of the start-of-year contribution. In addition, remedial classes gradually improved the female progression rates, especially from Grades 3 to 5.

Female enrolment trends at the secondary level are, likewise, encouraging. The growth rate for females enrolling in the lower secondary levels has been around nine per cent higher than the growth rate among boys for the past three years. Between 1999-2000 and 2002-03, the number of female students in the lower secondary levels has almost doubled to around 167,000.

The enrolment patterns are, however, less rosy at the upper secondary and post-secondary education levels. In 2002-03 only

19,000 female students entered Grade 10, or 37 percent of the total enrolees. At Grades 10 to 12 female enrolment appears to have stabilized at around 33 percent in the last three years. The low ratio of female students to males in the upper secondary education levels contributes to the low female participation in higher education and in technical, vocational education and training (TVET), where the number of female students is only about 20 to 25 percent of total.

Despite the marked improvements, the Ministry recognizes that additional strategies are needed to increase the participation of females at all levels of education. For instance, the gender action plan acknowledges the urgency of improving the transition rate of female students at Grades 6 and 7. Although the dropout rate among Grade 6 female student is down to 19 percent from 26 percent in the last three years, the dropouts explain why females are under-represented in the secondary education levels and beyond. The new program granting scholarships for the poor from Grades 7 to 9 which allocates 60 percent of the incentives to female students at the end of Grade 6 is likewise expected to address the problem.

A more equitable access to high quality education means providing more services to indigenous minority areas, a key component of the ESP/ESSP strategy. In those terms, there has also been some positive impact, at least on the primary and lower secondary levels. In the ethnic minority areas, the growth rate in enrolment ranged from a low six per cent (in Steung Treng) to a high 16 percent (in Ratanakiri) in 2002-03. At the lower secondary levels enrolment grew likewise, from a low 27 percent (also in Steung Treng) to a high 41 percent (in Mondulkiri). It has to be acknowledged, however, that these growth rates start from the very low enrolment base lines of the previous years. In all areas, growth in the enrolment of female students in the lower secondary levels exceeded that of the males.

Ethnic minority areas also remain under-served at the secondary levels. Net enrolment rates at the lower secondary levels in the four provinces are at fewer than seven percent, compared with the overall national average of 20 percent. The same situation applies at the upper secondary levels where the same prov-

inces have a very low net enrolment, compared with the national average.

On the whole, therefore, the enrolment and admission rates remain disappointing in the provinces with large indigenous populations, compared to the national average. For example, the primary net enrolment rates in Ratanakiri and Mondulkiri are only 53.6 percent and 64.1 percent, respectively—among the lowest in the country. Net admission rates are also comparatively low in 2002-03 because of the combination of late entry and the uncertain demand for formal schooling. Thus, these rates call for developing a different set of strategies (e.g., bilingual curricular programs, scholarships and other incentives, training of ethnic minority teachers, improved secondary school facilities, etc.) in order to address the access constraints that are unique to ethnic minority areas.

Information Dissemination. Regulations, guidelines and instructions related to the implementation and management of decentralization are formulated by the Ministry of Interior. The support provided to management meetings, workshops, pilot initiatives, provincial reviews and provincial-based commune council congresses enables continuous feedback between national, provincial and commune levels as to design, work plan, guidelines, and in 2004 to the establishment of the Local Administration Unit within the Sala Khet/Krong Office.[43]

A commune council has a committee that is responsible for coordinating the different indigenous communities (e.g., land-use community, forestry community, fishery community, etc.) and other indigenous organizations within the commune territories. The commune councils also have their respective information networks decentralized to the level of the village that use the previous village administration structure, including the traditional prominent role of the elders.

The Royal Government of Cambodia practiced a top-down approach to disseminate information but failed to elicit participation from indigenous communities. Hence, it established a pilot decentralization and de-concentration program on good governance in all 24 provinces/municipalities that now has a parallel mechanism in government departments called the Executive Com-

mittee of the Provincial Rural Development. The management structure includes the provincial and district authorities, especially for the local development planning process and public administration.

In the districts are information centers shared by all indigenous communities at the commune level. The commune councils and the Planning and Budgeting Committees serve as information feedback agents among the indigenous peoples and the provincial/sectoral departments or district/provincial authorities.

Changing Landscapes of Indigenous Peoples. After the first national elections, Cambodia is, once more, a market economy linked to the international community via trade. The wealth and resources of the highlands, especially of Ratanakiri, coupled with the population pressure in the lowlands increase the interest of local and foreign investors in extracting the timber of the forests, as well as developing the land for plantations of coffee, rubber, palm oil and soy bean. The consequence is the major shift in the use of the ancestral domains of the indigenous peoples.

The highland village community had its own religious practices, rules on kinship, social obligations, patterns of authority, custom law, and the mechanisms for decision making and conflict resolution. A tradition existed that governed the way indigenous peoples used, maintained and controlled the natural resources to support the subsistence of the village community.

Indigenous highland peoples had rules on what land could be used for habitation, as well as for cultivation. The boundaries were usually a natural feature, such as a mountain, a stream, a river, and others. The people of one village could not use the land or cut a tree that belonged to another village, or otherwise the spirits would cause diseases and other misfortunes on the interloper. Should a potential conflict arise, inter-village negotiations between respective sets of elders would resolve the question. Farming was prohibited in the spirit forests.

Now, there are more and more claimants to the natural resources, and many changes are underway. Villages are disturbed by external forces, such as a government relocation program, by wars, or epidemics. Cases could happen that a group would desire to break away because of a conflict or due to population increase

– the breakaway group having to look for a new site upon which to live and farm.

Issues of Land Security. Population pressure in the lowlands and the new economic order have pushed many Khmers to migrate to the highlands, especially to the provincial towns of the Banlung and Bokeo districts along the national road toward Vietnam, as well as to the Sen Monorom town in Mondulkiri.

Between the UNTAC population census of 1992 and the national census of Cambodia in 1998, the population of Ratanakiri Province grew by about 41 percent. The national average was a 29 percent population growth. In Banlung, the population increase was 82 percent for the same period. The population movement was mainly from Kampog Cham, Takeo, Kandal, Phnom Penh and Kratie.[44]

In Ratanakiri, the main impact of the migration to the province has been the demonstration effect on the indigenous peoples of the consumer goods that need to be purchased that then leads them to sell land or more forest products. It also has an impact on the traditional cultural practices, on clothing style, food, housing, the weakening of taboos and beliefs, and the loss of respect for elders. And although at the moment the migrants still do not own much land, the indigenous peoples are concerned about their increasing numbers coming to the province, fearing that it will lead to conflict and loss of the ancestral lands.

Box 5. Land Use and Access in Tuy Village

Between 1979 and 1996, there were vast land and forest, and plenty of wildlife. Villagers had easy access to land. The forest contained different species of precious wood. The richness of natural resources in the village of Tuy attracted new settlers, including the logging companies. Illegal logging was also unrestrained during the period. Then, the new settlers developed the land in the deforested areas for agriculture.

Today, the major problems faced by villagers in Tuy are directly related to land: the increasing difficulty finding good land for the swidden fields, declining rice yields and the increased presence of weeds and pests. Land in Tuy is being encroached by

outsiders and new settlers. Native villagers now to take protective measures, such as planting cashew and other fruit trees along the main road to prevent outsiders from taking possession of fallow land.

Most villagers have only a few means to earn a cash income which is needed in a money economy. Some families sold land that is perceived as belonging to the entire community, while others only sold the part of the land that they cultivated and remained in the village. They believed that it was better to sell the land immediately and receive some money, rather than to lose it later to investors without getting anything. As a volunteer teacher in Tuy village expressed it:

> "At present, villagers are not yet facing a serious problem about the amount of land to use, but the next generation of indigenous peoples will not have enough land to plant the field rice, as well as land for paddy agriculture."

But there are also positive trends visible. Non-governmental and international organizations work with the indigenous peoples of Tuy, raising consciousness among both the government authorities and the local people about sustainable development. There had been such activities as the land rights action research project, and the local planning process, etc. Consultations are conducted among provincial authorities, NGO's and IO's and representatives of local communities to discuss and respond to indigenous peoples' needs and rights. These types of exchanges have contributed to a better understanding, and appreciation of the unique culture and natural resource use and practices of Tuy.

Ms. Tiean Mony[45]

The declaration of Virakchey (in the Veunsai District) as a national park and of the Lumphat District (of Ratanakiri) as a wildlife sanctuary is viewed as providing forest and wildlife protection and developing them as tourist sites over the interests of the indigenous peoples whose lives are affected because many indigenous villages are located in the tampon zone of the national park and other conservation areas. It is also feared that when a development project is started or an agricultural concession is approved, the villagers whose territories are intruded may go in the protected areas, as the experience in the palm oil concession in O' Yadao proves.

There are, furthermore, several hydroelectric power projects being proposed along the Sesan and Sre Pok Rivers and their tributaries. There is, therefore, the other likelihood that the projects will force the villagers to relocate to another place that is far from their ancestral land.

Box 6. Land Sale in Kamang Village[46]

According to village leaders, a former district governor permitted the cultivation of land along the national road by government employees in the Bokeo District within the boundary of Kamang. No permission was sought or was given by the villagers. When the government workers left, they sold the parcels that they received to Khmer buyers, who then planted cash crops. The government workers who sold the first parcels were policemen. The sellers claim that the district had the authority to allocate the land to them, but the Kamang villagers counter that the parcels were old plots where they practiced crop rotation. After the sale, there was little that could be done by the villagers to get the lands back.

Since the initial land sales four or five year ago, the number of Khmers in the center of the district had increased steadily, along with the expansion of the Bokeo market. With the large number of the Khmer migrants seeking to acquire land to cultivate, the pressure on Kamang villagers to relinquish their land rights had been severe. The land parcels most desired by the Khmer buyers were those that were located along the roadsides since they were reached easily by motorcycles, and were directly accessible by transport either from the Banlung market or the Vietnam border. As one Kamang woman remarked, "Khmer people like to buy land along the road. They do not know how to walk like the *Tampuon*."

The VDC Chief estimates the amount received from the sale of lots along the roadside to be about 200,000 Riels per hectare. But in some instances, lots had been sold for as little as 50,000 Riels per hectare. Some of the Khmer buyers who bought parcels thenceforth occupied areas that were beyond what they did buy. Others simply occupied land without paying for them. Most of the sales took place in the last three years, such that there are now only a few parcels left along the roadside that have not already been sold. Some Kamang villagers negotiated directly with the buyers, not bothering to consult the village chief or an elder. As a

result, it is no longer clear how many villagers had been involved in land sale, or how much they received. The village chief identified some 35 of 67 households as having sold land to Khmer buyers. The VDC chief, for his part, pointed to 22 of the same 67 households.

The village chief himself sold one hectare of land in the interior of the village. He argues that Kamang villagers with plots alongside the national road feared that these lands could be taken freely from them, if they did not sell. This sort of argument expresses the sense of powerlessness and resignation that now characterize the villagers of Kamang in dealing with the Khmer, especially when it comes to real estate. And while such an assertion may be overstated, it is not without a measure of truth. In 1997, the district authorities enlarged the area of the district center, and included land alongside the road that previously was a part of Kamang. With the village boundary redrawn, Kamang no longer has a claim over the land that now falls under a new jurisdiction.

John P. McAndrew

Official and legal complexities aside, there are practices that do imply some informal recognition of highlanders' rights to at least their farmland. Potential investors especially in commercial agricultural plantations—in most cases, Khmers—do offer to buy the usufruct rights to the fields from some of the native villagers. However, the fact that the indigenous peoples are neither aware of their legal rights nor the market value of the land they farm leaves them vulnerable to exploitation. In several cases villagers had been misled by individuals introducing themselves as government representatives, thus, putting added pressure to owners who were initially reluctant to sell but felt obliged to do so, and at very low prices.

In a case that is often cited a private individual, allegedly with government connection, chose a forest area to develop a coffee plantation. But the area was, in fact, a former Phnong village site in Dak Dam and had been planted to sacred trees. As one villager commented: "If it had been a villager who had cut the trees here, the elders would have fined him by so much. But with the government, they dared not say anything."

In other cases, such as the loggers in the Stung Treng Province or the commercial farmers in Mondolkiri, while an offering to the spirits might have been negotiated in a few instances between them and the village elders prior to cutting down sacred, primary forests, this often is not the case. Nonetheless, tradition has it that the violation has serious implications for the native villagers. Though the outsiders may remain unscathed, the villagers would be punished by the forest spirits for these acts of desecration.

Thus are custom law and authority, and tradition disregarded or undermined. Should small offerings be made to the spirits, still the role of traditional beliefs is lost, i.e., the power of such beliefs to prevent the imbalance in the relation between people and the forest. Because native villagers are aware of such customs and tradition, and conform to them the primary forests remain untouched.

The decision to sell on the part of an indigenous person also seems to rely on the mistaken belief that the mechanism that worked in the past in times of severe pressure on land is still in operation. Traditionally, when the population of a village reached a certain threshold, there would a relocation of the village and its farming sites. Similarly, villagers who came into conflict with lowlanders due, say to the encroachment of livestock on the lowlanders' commercial farms also opted to move the village farther away. Today, while the same tactic may no longer be a viable option, some villagers are still not aware of the fact.

Food Security Issues. The livelihood of indigenous peoples depends mostly on swiddening agriculture. They grow varieties of upland rice, and the same fields are interspersed with different vegetable crops. The diet from this form of agriculture is supplemented by the catch from fishing and hunting, and by forest vegetables and fruits gathered. Given the low yield from the *chamkar* (i.e., the upland plot that is farmed), it is most likely that there will be a shortage of rice before the next harvest. Poor weather conditions, coupled with the infestation of the crop from pests further affect the chamkar.

Villagers of Kanat Toch claimed during the research team's interviews with them that paddy rice cultivation has become the important source of income. The rice yield is higher, and rice sufficiency for a full year is insured. But the village elders, for their part, belonged to the generation that practiced only swidden agricul-

ture. It was a system that did not allow the time for other forms of work in order to earn more income for the family, especially during the four or five months of every year when the rice shortage is experienced.[47]

Today, the livelihood of many villagers relies more heavily on paddy rice cultivation than on swidden agriculture. And in other villages where case studies were conducted there is an indication that the indigenous peoples want to do the same, except for the problem of soil fertility, the lack of seeds, draft animals and the equipment to do so. Now, indigenous highland communities have come to understand that swidden agriculture cannot provide sufficient rice yields for their daily subsistence. This is the case in Kanat Toch and Kakol in Ratanakiri Province, Kantro in Kratie, and Rumpoat in Stung Treng, to cite some instances. Still, the shift from swiddening to paddy agriculture cannot be immediate. Swiddening has been a tradition for a long time, and the customary mix of crops cultivated in the swiddens provides the staples in the diet.

Another important fact is that today there is hardly enough land for more paddy agriculture in some areas. Or otherwise, the fields would be very far from the village. The case in point is Lao Ka in Mondulkiri Province. With the area available for paddy agriculture being about fifteen kilometers from the village, upland cultivation in the swidden farms is still the preferred mode.

In the villages of Rumpoat and Kantro, people complain that they have become poorer in the last ten years. The combined forces of increasing population and declining agricultural production have taken its toll on the share per capita from the returns of their livelihood activities. Furthermore, since 1990 as a result of logging the timber and unregulated hunting the wildlife have become progressively less. Fishing is becoming hazardous with the use of explosives and other illegal methods.

One also has to assess the externalities that accompany the government's policy on increasing farm productivity that is based on paddy agriculture. Take the case of communities in Phnong, in Dak Dam in Mondulkiri Province, for instance. To encourage the farmers to adopt the lowland rice varieties, assist in building a small irrigation dam and maintain a water pump that was installed, a food-for-work program was put in place. As in many other places

where not enough social preparation accompanies the technical innovations, the project did not prove sustainable. Currently, people have stopped doing the project components, explaining that the dam had been damaged.

When development unfolds using a different social order, such as the free market economy, the indigenous peoples start to discover and understand, albeit oftentimes painfully, its benefits and costs. For instance, planting fruit trees on a plot of land has two possible benefits: as permanent improvements the trees provide the planter some proof to legally claim the land, and eventually the trees generate cash income from the sale of the products. Previously, forest products were only a supplement in the diet, or to be used for constructing the simple village structures and to be bartered occasionally for goods from the lowlands. The villagers of Tuy now turn to the forests as a source of cash income. Timber, fruits, wildlife, and fish are valuable and in high demand. The villagers also found only recently how outsiders use the gun to hunt wildlife to sell, so that today villagers have a difficulty collecting the forest products in the traditional way.

A man from Tampuan in the village of Tuy expresses it, thus: "Before, we did not know about the value of wildlife. But since the outsiders began transporting in vehicles the wildlife they capture in order to sell many people now, including provincial officials and their staff, companies and even some villagers equate wildlife with money." But as the villagers themselves explain: "As the yields of the swidden fields drop, the forest becomes an increasingly important source of supplementary food. Tubers, forest fruits and vegetable are essential in periods of a rice shortage."

Infrastructure and Their Impact. Indigenous peoples lived in harmony with nature, secure in their time-tested knowledge of their natural environment. With water, they survived in consonance with the changes that accompany the seasons and the tides, in its volume and quality, and with the plant and animal species that grow in and beside water bodies. But "development" has arrived, reshaping the natural environment, and not all of development is in the peoples' favor.

While few have ever seen the Yali Falls Dam that impounds the Sesan River waterway, its impact is felt by all the communities along the river, such as the four districts of Andong Meas, Taveng, Veunsai

in Ratanakiri Province, and Sesan in Stung Treng, together with the 59 villages where the research team conducted its consultations with the residents.

The deputy chief at Andong Meas, for instance, observes the now "unnatural" ebb and flow of the river's water level that suddenly and unexpectedly changes. Such a change has seriously affected the livelihood of the local people. Fish stocks in the river have declined a great deal, and are still in decline. He claims, most likely with some poetic license, that before the dam was built a person could fish for a day or two, and have enough "to eat for a month," but not anymore. He also explains that the old methods of fishing with gillnets and with hooks and lines are now risky and ineffective. For example, gillnets that are set at night when checked in the morning are now often found hanging above the water line. The same is observed with hooks and lines. These tales of woe have become common in Andong Meas.

The deputy chief also recalls losing his rice crop because of the "unnatural" floods experienced during the rainy season in the recent years. He remembers that his farmland by the stream did get flooded annually—but only for about three days. It was actually beneficial, since the flood water deposited silt on the fields. In recent years, however, the floods tended to occur much more suddenly, and last much longer, to the point where, like last year, he lost most of his rice crop.[48]

Villagers report of occasions when the water level rose so fast as to upend people's canoes that a death already resulted from drowning. Water quality, too, had altered to the point that people report of sore throat and stomach trouble from drinking it; and incidences of death of farm animals, livestock and poultry had been observed.

In the village of Kanat Toch, fishing gear of Kanat Toch have been lost in the flood waters, and presently there are no more vegetables that could grow along the flooded banks. There also had been occasions when the floods destroyed the paddy fields.

Leaders of the community, including the respected elder, express the need for a network among communities to face the issues related to the Se San River—to get a chance to have their voices heard, to advocate that the river be restored to its original state.

The consensus is that a network should address important issues, such as this one. They, however, seek the support of advocates in their behalf. They wish, for example, to go to Phnom Penh to personally tell "high officials" and "politicians" of their problems caused by the Yali Falls Dam. But they do not even know how to get there, or whom to see and talk with. Right now, the villagers need outside help to provide them with information and develop negotiating skills.

Forestry Concerns. Cambodia's forest cover is approximately 10.5 million hectares, about 60 percent of the nation's total land area.[49] However, already around 4.7 million hectares of it have been granted as concessions to some of 21 local and international logging companies, of which around 2.4 million hectares are in the four northeast provinces where the indigenous highland populations reside.

In 1998, the government of Cambodia granted a 25-year timber concession to a Taiwanese company, HERO, of about 60.000 hectares of forest that straddle three districts in Ratanakiri. Almost 10,000 people, including Kameng villagers, lived on it, mostly of the Kreng ethnic group. Despite an agreement between the company and the DFFW to exclude the areas that were protected by the communities, it was an agreement that was not fully respected.

The villagers further claim that they had "zero" to only a "little" participation in the grant of the concession to HERO, also during the planning and negotiating which areas would be allowed to be logged. By 1999, HERO started to construct a road directly into the forest in village of Svay. It also built a road that crosses the chamkar of the Kamed villagers and goes straight to O Lang. The villagers also allege that the company encroaches on the forest of the village of Kamed. If the impact of HERO activities has not affected villagers severely yet, it is because villagers appear to have stopped them in time. As a Kreung woman, Yiay Lao, says: "There are many forest products that we use—bamboo, vines, rattan, *kanma* leaves. We Kreung do not have money, so we rely on the natural resources of the forest. Cutting the trees from the forest has violates our rights."[50]

There also have been encroachments on village's community forest by its neighbors, not only to collect the forest fruit, *samrong*,

but also to cut down trees. Already, many studies show that logging has a negative impact, not only on the physical environment, but also on the spiritual landscape, as well. The villagers of Kreng want development, but not at the expense of their belief system and culture. Logging, both legal and illegal, has become a major threat to the land and traditional livelihood of the indigenous peoples. But indigenous peoples are strongly linked to the forests for generations to sustain both their livelihood and spiritual life.

Conclusions and Recommendations

Between 1995 to 2004, the Royal Government of Cambodia formulated a number of policies and strategies toward poverty alleviation, but no specific law or regulation regarding the welfare only of indigenous peoples or ethnic minorities. The Cambodian constitution only mentions in Article 31 that:

> *The Kingdom of Cambodia shall recognize 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.*

Article 32 further states that:

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

Included among the policies and strategies aimed at general poverty reduction of all rural peoples in Cambodia are: (1) Cambodian Millennium Development Goals; (2) the first two Five-Year of Socio-Economic Development Plan (SEDP I) 1996-2000 and 2001-2005; (3) Government's Rectangular Strategy for Growth, Employment, Equity and Efficiency, 2004; (4) Gender Mainstreaming Strategy 1997-2005; and (5) National Strategic Development Plan 2006-2010. On the whole, Cambodia is only just starting up again after a long and difficult hiatus. At the moment, the sectors enjoying priority status in development terms

are: Economic, Social, Gender Mainstreaming, Natural Resources and Environment Management, Security and Administration.

To meet the need of the highland peoples in the northeastern provinces of Cambodia the Royal Government of Cambodia, therefore, established a transitional committee of 10 government ministries as members in 1996. For its main task the committee was assigned to formulate a policy for development of the northeastern provinces of Cambodia. The draft policy was completed in September 1997.

No action was taken on the policy for some time because the laws governing land and forests were also being prepared. But there were many advocates for the rights and welfare of indigenous peoples, and strong support from non-government organizations to persuade the proper government ministries (e.g., the Agriculture-Fishery and Forestry, and the Land Management-Urban Planning and Construction) and the Inter-Ministerial Committee for Ethnic Minority Development to intervene with the Council of Ministers to hasten the approval of the policy, and also to integrate as special cases the rights of indigenous people in the land and forestry laws.

The Royal Government assigned to the Ministry of Rural Development for implementation by Department of Ethnic Minority Development the upgrade the 1997 policy proposal to become the National Policy for Indigenous Peoples' Development. Since 2004, the policy revision has been finalized and submitted to the Council of Ministers. It is still waiting approval by the Royal Government. In the meantime, the Ministry of Land Management, Urban Planning and Construction established an inter-ministry working group to do a pilot study of registration of indigenous community lands in Ratanakiri and Mondulkiri Provinces. In a related development, the Land Law and the Forest Law were endorsed by the National Assembly in 2004, later than the law on the Commune/Sangkat Administration and Management.

Earlier in 2003, the Ministry of Education, Youth and Sport strengthened the non-formal education system, and adopted bilingualism using both Khmer and the indigenous tongue. The Ministries of Interior and Planning, for their part, formulated the guidelines for the participation of indigenous peoples in the commune/*sangkat* development planning process.

The Royal Government of Cambodia seemed to have spent only some scant attention to the indigenous peoples' development. Policy and coordination mechanisms toward development have not yet been clearly established. For instance, the Department of Ethnic Minorities Development does not seem to have a clear mandate, its human resources and capacity to deliver its mission still weak.

The Royal Government has established an inter-ministerial committee for ethnic minority development to formulate policy and coordinate ministries at the national level. But the committee is not tasked to mobilize fund sources for support of indigenous people's development. Then in 2002, the Department of Ethnic Minority Development was established with direct supervision from the Ministry of Rural Development. However, its mission and mandate toward the indigenous communities in Cambodia have not been made clear. Hence, even as its branch offices at the provincial level are being organized, they do not seem to be functioning.

A *Seila* Task Force of 11 ministries is also in place.[51] The member ministries have their mandate to decentralize and devolve their respective programs vertically, from the national to the district levels. The Ministry of Interior is tasked to coordinate the process from national to provincial, district, communal and village levels. In addition, the Provincial Rural Development Committee's Executive Committee facilitates and coordinates the commune council and the Planning and Budgeting Committee on the commune development plan.

The original objective of the Seila Program is to the design horizontal provincial and commune management structures and systems that are to be owned and operated by the government and that should be at par with international standards. Stringent standards are set so that the donor assistance can be transferred directly to the provinces and the communes to finance the activities that are designed by local the authorities, following the national guidelines. But while indigenous communities in the 16 program target provinces did benefit from the Seila Program (through the Seila Task Force), the program itself is mobilized for an overall national purpose, rather than raise funds specifically to finance indigenous peoples' programs.

There were 26 Cambodian government ministries, 17 United Nations agencies and programs, 450 non-government organizations, and 50 internal non-government organizations operating in Cambodia toward the end of the decade of indigenous peoples. But moving toward genuine development for the indigenous peoples, what appear to be called for are interventions specific to indigenous communities, not only in terms of the law but especially in terms of the strong support and commitment at all levels of government.

Endnotes

[1] In addition, the following questions were added: (1) General questions on the participation of the indigenous peoples of Cambodia in the processes, on the mechanisms and procedures of various United Nation agencies; and (2) General questions to help generate information on the success or failure of the first Indigenous People's Decade (such as the observance of the United Nations' special days for indigenous people), the respective roles of the United Nations and its agencies, the regional organizations, the government/member states and the inter-governmental organizations in the country, the non-government organizations (NGOs) and other parties, e.g., the academe, media, religious, and the business sector, the indigenous peoples' organizations, and the international indigenous networks.

[2] Cham is the original term for an ethnic minority group that practices Islam; the official term in use is Khmer-Islam.

[3] UNDP, "Cambodia Annual Report 2002," <www.un.org/undp> (April 2003).

[4] For this report the government, particularly the Department of Ethnic Minorities Development, the NGOs and representatives of the indigenous peoples agreed to the use of the term "indigenous peoples." Some documents, however, still use "ethnic minorities," which is left as is when a document is quoted. But the term is avoided as it is often confuses, especially when used in the context of Ratanakiri and Mondulkiri, where the indigenous populations represent the majority in these provinces (67% and 71%, respectively).

[5] IMC Secretariat, Interim Report of 1997.

[6] Kent Helmers and Pia Wallgren, Cambodia: Rural Investment and Local Governance Project, Indigenous Upland Minorities Screening Study (The World Bank - East Asia and Pacific Region, 15 October 2002), 8.

[7] Seng Narong, Speech delivered at the National Consultation on the Indigenous Peoples' Development Policy, 15-17 December 2004. The locations and the indigenous communities, as per official sources, were: (1) Mondulkiri – Phnong, Kreung, Jarai, Kaol, Steang, Thmoon, Kuoy, Tumuon; (2) Ratanakri – Phnong, Kreung, Jarai, Tumuon, Brao, Kavet, Kachak, Lun, Radaer; (3) Kratie – Phnong, Kraol, Steang, Thmoon, Kuoy, Mil, Khnong; (4) Steung Treng – Phnong, Kreung, Jarai, Kuoy, Tumpuon; (5) Preah Vihear – Kuoy; (6) Kampong Thom – Kuoy; (7) Koh Kong – Por; (8) Pursat – Por; (9) Kampong Speu – Suoy; and (10) Sihanuk Ville – Saoch.

[8] Pen Dareth, Sharing Experience on Policy for Indigenous/Ethnic Minority Development in the Kingdom of Cambodia (Council of Ministers, 4-5 April 2002). Additional details, data and other information are in Annex 11, 6-7.

[9] Ibid., 6.

[10] National Workshop on Highland Peoples' Development Policy, Ratanakiri, September 1995.

[11] Additional information may be found in Annex 7 in the section "General Policy for Highland Peoples Development," Highland Peoples' Development Policy (25 September 1997), 4-5.

[12] Both "Operational Policy (OP)" and "Bank Procedure (BP) 4.10" have been replaced by "Operational Directive 4.20" of the Indigenous Peoples' Development Policy which is applied to all projects requiring a Project Concept Review after 1 July 2005.

[13] Seng Narong & Moul Phath, Three Training Workshops on Highland Development Management in Cambodia (IMC/MRD Secretariat, 31 May 2000), 4.

[14] The figures are estimates of the IMC Secretariat for 1996-1997.

[15] This is the Khmer word which is used to refer only the indigenous people belonging to the original groups who have lived in Cambodia for centuries. Other ethnic minorities such as the Lao, Vietnamese, Chinese, and Khmer-Muslim are not counted among the groups of indigenous peoples.

[16] Kent Helmers and Pia Wallgren, op. cit.

[17] Ibid., Annex 10, 7.

[18] "Land Alienation from Indigenous Peoples in Cambodia: Statement of NGO's Working Closely with Indigenous Peoples in 2004," <http//: www.ngoforum.org.kh> (11 August 2006).

[19] Pen Dareth, op. cit.

[20] Council for Land Policy, Policy Paper on Social Land Concession in Kingdom of Cambodia. (Ministry of Land Management Urban Planning and Construction, 19 March 2002).

[21] Council for Land Policy,Declaration on Establishment of the Inter-Ministerial Working Group for Study of the Indigenous Communities' Land Registration (Ministry of Land Management Urban Planning and Construction, 2004).

[23] The commune council selects and appoints two representatives from the indigenous communities or villages to participate and to express the needs or problems of their communities in order to integrate them in the commune development plans and the commune investment programs.

[24] A commune development program process is undertaken every five years according to the mandate of the commune council election.

[25] A Commune Investment Program is called a three-year rolling program. The commune council and the Planning and Budgeting Committee, in collaboration with the villagers, work on the development plan to be submitted and presented during the Annual District Integration Workshop.

[26] This is a Khmer word that means "the stone that is used for the foundation."

[27] Ministries of Interior; Planning; Rural Development; Women's Affairs; Education, Youth and Sport; Social Affairs; Economy and Finance; Agriculture, Forestry and Fishery; Water Resource Management and Meteorology; Environment; Land Management, Urbanization and Construction; and the Council for Administration Reforms.

[28] Indigenous Peoples in Participatory Commune Development Planning Process (STFS and NCSC, 2003).

[30] Ratankiri, Mondulkiri, Steung Treng, Preah Vihear, Banteay Meanchey, Odor Meanchey, Koh Kong, Kampong Thom, Kampong Cham, Kampong Speu, Kratie, Sihaknuk Ville, Battambang, and Pursat.

[31] The NGO's raised key issues related to the laws, regulations, policies and programs affecting the development of indigenous peoples during the Consultative Group Meeting (CGM) of March 2006 held in Cambodia.

[32] Remarks of indigenous peoples', NGO and government ministry representatives during the National Consultative Workshop for the assessment of the International Decade of the World's Indigenous Peoples in Southeast Asia at the Sunway Hotel in Phnom Penh, 1 September 2006.

[33] Speech of H.E Chan Sarun of 28 January 2003, Intervention in Agriculture, Forestry and Fisheries to the Seventh Government-Donors Consultative Group Meeting (MAFF, 6-7 December 2004).

[34]*NGO Statement to the* 2002 Consultative Group Meeting on Cambodia (CCC – NGO Forum) and NGO Statement to the 2006.

Consultative Group Meeting on Cambodia (NGO Forum on Cambodia, 2-3 September 2004).

[35] First Five-Year Socioeconomic Development Plan 1996-2000 and

Second Five-Year Socioeconomic Development Plan 2001-2005 (National Economic Growth and Poverty Reduction Strategy) (Ministry of Planning, 1997 and 2002).

[36] Seila Task Force, Seila Program Document 2001-2005 (Seila Task Force Secretariat, December 2000), 42.

[37] Kent Helmers and Pia Wallgren, op. cit.

[38] UNDP, "Cambodia Annual Report 2002," <http://www.un.org.kh/undp> (April 2003, 29).

[39] Cambodia Annual Report 2005: Finding Solutions (UNDP, 2006), 15-16.

[40] The data focusing on the indigenous communities were collected by CFI in only 10 target provinces and municipalities: Kratie, Mondulkiri, Ratakiri, Stung Treng, Prah Vihear, Kampong Thom, Koh Kong, Pursat, Kampong Speu, and Sihanuk Ville.

[41] Amanda Bradley, Natural Resource Management Networking in Cambodia: Status, Lessons Learned, and Future Possibilities (Phnom Penh: CFI, 2005) 13-15.

[42] Non-Government Organizations located in Ratanakiri province working on land law promotion and for establishing indigenous communities for natural resource conservation.

[43] The Khmer equivalent of Provincial and Municipal Governor's Office.

[44] IMC & EMD, *National Workshop on the Distribution Policy Regarding Indigenous Communities*. (Ministry of Rural Development, 4-5 April 2002).

[45] Pen Dareth, op. cit.

[46] John McAndrew, "Indigenous Adaptation to a Rapidly Changing Economy: The Experience of Two Tumpuon Villages in Northeast Cambodia," Paper Presented at the National Conference on Landless and Development (22-24 August 2000).

[47] Seng Narong, op. cit.

[48] Kent Helmers and Pia Wallgren, op. cit.

[49] Inception Report of T.A. 3152-Cambodia (1999).

[50] Don Muller,Logging Destroys Forest and Hill Tribe Culture in Northeast Cambodia (NTFP Ratanakiri).

[51] Ministry of Economy and Finance, Ministry of Rural Development, Ministry of Social Affairs and Vocational Training, Ministry of Agriculture, Forestry and Fishery, Ministry of Women's Affairs, Ministry of Land Management, Urban Planning and Construction, Ministry of Water Resources and Meteorology; Ministry of Environment, Ministry of Interior, Council for Administration Reforms/Council of Ministers, and the Ministry of Planning.

Bibliography

Reports and Proceedings

Hean Sokhom. *Indigenous Peoples, Ethnic Minorities and Poverty Reduction*. Asian Development Bank - Cambodia, June 2002.

Helmers, Kent and Pia Wallgren. *Cambodia: Rural Investment and Local Governance Project, Indigenous Upland Minorities Screening Study*. The World Bank - East Asia and Pacific Region, 15 October 2002.

Irwin, Kenneth M. *Aspects of Indigenous Peoples' Communities and Their Land Use and Management Systems in Ratanakiri*. International Development Research Centre - Ratanakiri, April 2004.

——————— *Promoting Gender Equity in Land Registration and/or Titling and Participatory Land Use Planning*. International Development Research Centre - Ratanakiri, June 2004.

———————*Improving Local Governance to Protect Natural Resources Customarily Used by Indigenous Peoples*. International Development Research Centre-Ratanakiri, November 2005.

Kothari, Miloon & Rodolfo Stevenhagen. "Rethinking Poverty Reduction to Protect and Promote the Rights of Indigenous Minorities in Cambodia." *NGO Forum on Cambodia*, April 2005.

McAndrew, John. "Indigenous Adaptation to a Rapidly Changing Economy: The Experience of Two Tumpuon Villages in Northeast Cambodia." *Paper Presented at the National Conference on the Landless and Development*, 22-24 August 2000.

"NGO Statement to the 2002 Consultative Group Meeting on Cambodia." *CCC - NGO Forum*.

"NGO Statement to the 2006 Consultative Group Meeting on Cambodia." *NGO Forum on Cambodia*, 2-3 March 2006.

"Statement of Indigenous Peoples of Kampong Speu Province. *NGO-Forum on Cambodia*, 9-12 September 2004.

UNDP. *Cambodian Annual Report 2005: Finding Solutions*, 2006.

State and Local Government Documents

Bradley, Amanda. *Natural Resource Management Networking in Cambodia: Status, Lessons Learned, and Future Possibilities*. Phnom Penh: CFI, 2005.

Brereton, Helen. *Gender Mainstreaming and Decentralization: An Assess-*

ment of the Process with Recommendations. Ministry of Women's Affairs, 2006.

CAS&IMC. *Capacity Building for Indigenous Peoples/Ethnic Minority Issues and Poverty Reduction*. IMC Secretariat/MRD, September 2002.

Chaily, Yim. *The First of the Twelfth International Day for the World's Indigenous Peoples in Cambodia*. Ministry of Rural Development, 9 August 2005.

Chhon, Keat. *Annual Workplan and Budget for 2004 of Seila Program*. Seila Task Force Secretariat-CDC, 12 January 2004.

Council for Land Policy. *Declaration on the Establishment of the Inter-Ministerial Working Group for Study of Indigenous Communities' Land Registration*. MLMUPC, 2004.

——————————————— *Policy Paper on Social Land Concession in the Kingdom of Cambodia*. MLMUPC, 19 March 2002.

DANIDA. *Component Description of the Natural Resource and Environment Program: Commune and Community-Based Natural Resource and Environment Management Component 2003-2007*. Seila Task Force Secretariat, April 2003.

First Five Year Socioeconomic Development Plan 1996-2000. Ministry of Planning, 1997.

Second Five Year Socioeconomic Development Plan 2001-2005 (National Economic Growth and Poverty Reduction Strategy). Ministry of Planning, 2002.

Hang Chuon Naron. *The Medium-Term Expenditure Framework for Cambodia: 2005-2007*. Phnom Penh: Ministry of Economy and Finance, January 2004.

IMC&EMD. *National Workshop on the Distribution Policy Regarding Indigenous Communities*. Ministry of Rural Development, 4-5 April 2002.

Keanhor, Lim. "Guidelines for Implementation of the Sub-Decree on Social Land Concessions." *Decision with No. 200 Dor Nor Sor/Pror Kor*. MLMUPC, 2003.

King Norodom Sihanouk. *Forestry Law*, *Royal Decree 0802/016*. Ministry of Agriculture, Forestry and Fishery, 31 August 2002.

King Norodom Sihanouk. *Land Law, Royal Decree 0801/14*. Ministry of Land Management, Urban Planning and Construction, 30 August 2001.

Ministry of Education, Youth and Sports. *Using Khmer Orthography to Write Ethnic Minority Languages in Cambodia: Kreung, Brao, Kavet, Tampuon and Phnong*. September 2003.

Narong, Seng and Moul Phath. *Three Training Workshops on Highland Development Management in Cambodia*. IMC/MRD Secretariat, 31 May 2000.

NCSC. *Manual for Indigenous Peoples and Participatory Three-Year Rolling Commune Investment Program*. DoLA/MoI, September 2005.

Seila Task Force. *Financial and Technical Support Provided to the National Committee to Support the Commune/Sangkats 2001-2005*. Seila Task Force Secretariat, 2004.

——————— *Manual on Indigenous Peoples in Participatory Three-Year Rolling Commune Investment Program*. Seila Task Force Secretariat, May 2004.

——————— *Safeguard Policy for Rural Investment and Local Governance*. Seila Task Force Secretariat, June 2003.

——————— *Seila Program Document 2001-2005*. Seila Task Force Secretariat, December 2000.

Sen, Samdech Hun. "Establishment and Appointment of National Committee for Social Land Concession." *Sub-Decree with No. 323 ANK/BK*. Council of Ministers, 2005.

Sen, Samdech Hun. "The Social Land Concessions in the Kingdom of Cambodia." *Sub-Decree with No. 19 ANK/BK*. Council for Ministers, 19 March 2003.

Sen, Hun. "Amendment to Sub-Decree No. 78/ANK/BK of December 01, 1997 on the Organization and Functioning of the Ministry of Rural Development." *Decree No. 51 ANK/BK*. Council of Ministers, 21 June 2001.

Sreang, Buoy Kim. *Draft of Concept of Department of Ethnic Minority Development of the Ministry of Rural Development*. MRD, September 2006.

STFS&PLG. *Management System, Partnership Framework and Achievements 2001-2005*. Seila Task Force Secretariat-CDC, May 2005.

Thouch, Ly. "Roles and Responsibilities, Structure, Mission and Mandate of the Department of Ethnic Minorities Development." *Decision No. 136*. MRD, 11 September 2002.

UNDP & SIDA. *2003 Cambodia Millennium Development Goals Report*. Ministry of Planning, November 2003.

Working Group. "*Manual for Facilitators of the Commune Investment Program*." Ministry of Planning, March 2003.

Yanara, Chhieng. *Socio-Economic Development Priorities and the Official Development Assistance Needs: Prepared for 2002 Consultative Group Meeting for Cambodia*. Council for Development of Cambodia, June 2002.

Speeches

Dareth,Pen. *Sharing Experience on Policy for Indigenous/Ethnic Minority Development in the Kingdom of Cambodia*. Council of Ministers, 4-5 April 2002.

Narong, Seng. *Statement of IMC Activities in a National Consultative Workshop on Indigenous Peoples Development*. Ministry of Rural Development, 3 April 2006.

Dr. Sarun, Chan. *Intervention in Agriculture, Forestry and Fisheries to the Seventh Government-Donors Consultative Group Meeting*. MAFF, 6-7 December 2004.

Sen, Samdech Hun. *Speech on Rectangular Strategy for Growth, Employment, Equity and Efficiency*. Office of the Council of Ministers, April 2004.

Websites

"CCC NGO Database and NGO Directories." <http://www.ccc-camodia.org> (29 September 2006).

"Indigenous Peoples and Poverty Reduction." <http://www.un.org.kh> (14 August 2006).

"Land Alienation from Indigenous Peoples in Cambodia: Statement of NGOs Working Closely with Indigenous Peoples in 2004." <http://www.ngoforum.org.kh> (11 August 2006).

UNDP. "Cambodia Annual Report 2002." <http://www.un.org.kh/undp> (April 2003).

World Bank. "The World Bank Operational Manual: Operational Policy, OP 4.10, July 2005." <http://www.worldbank.org> (August 2006).

6

Thailand: Right to Citizenship for Indigenous and Tribal Peoples

Sakda Saenmi[1]

Introduction

As in most of Southeast Asia, the International Decade for the World's Indigenous People (1995-2004) was not officially commemorated in Thailand. But the country was nevertheless included in the assessment of the Decade as significant events and changes occurred in the conditions of the indigenous and tribal peoples (ITPs) during the period.

The assessment conducted in Thailand aimed to identify key policies and programs relevant to indigenous communities that the government, key institutions and civil society organizations implemented between 1995 and 2004. These were analyzed as to whether they promoted or hindered the improvement of indigenous and tribal conditions. Policies were mainly those that the government enforced directly for indigenous communities, and programs included those that targeted and benefited them directly or indirectly. Many of the latter were undertaken by civil society organizations and UN agencies.

The study primarily relied on primary and secondary documents and reports of relevant agencies, institutions, government and nongovernment organizations as well as researches published in print and online. The researcher conducted interviews to verify primary sources. The results of the assessment were presented and validated in a national consultation held on August 28, 2006 and attended by representatives of key agencies, indigenous and tribal peoples' organizations and NGOs in Thailand.

Terms and Definitions

"Indigenous peoples" and "indigenous and tribal peoples" are terms used and accepted by the United Nations. In Thailand various names are used to refer to indigenous peoples, and these largely depend on the particular setting and particular period. The Thai government uses "hill tribes" more often than other terms. Today the phrases that come closest to the UN definition of Indigenous Peoples are "tribal group (*klum chon phao*) and ethnic highlanders" (*chart phan bon pheun thi soong*) or "Thai highlanders" (*chao thai phu khao)*. These terms refer to ethnic groups that originally or have always lived and farmed in the highlands in the Kingdom of Thailand, and have cultures, traditions, beliefs, languages and ways of life that make up their specific identity.

In this report "indigenous and tribal peoples" is used over others and refers to 10 main ethnic groups, namely, the Karen, Hmong, Mien, Akha, Lahu, Lisu, Lua, H'tin, Khamu, and Mlabri. There are other indigenous groups such as the Sea indigenous peoples in Southern Thailand. These are the Moken, Moklaen, Urak-Lawuai and Munni (Sakai), which have small populations (estimated at 10,000 living in Phuket, Krabi, Phang Nga, Phattalung, Satoon, Yala and Nalathiwat) and not included in government definitions.

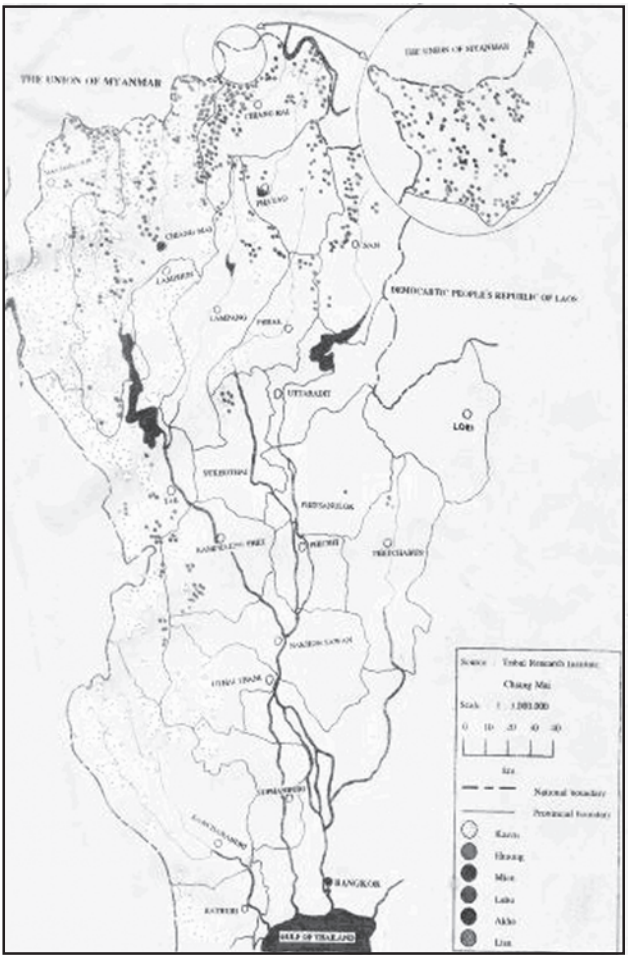
The Hilltribe Welfare Division of the Public Welfare Department, Ministry of Labor and Social Welfare (2002) officially recognizes the following populations as Thai highlanders or indigenous and tribal peoples in northern and western Thailand.

Table 1. Population of Indigenous and Tribal Peoples in Thailand

Ethnic group	Village	House-hold	Family	Population				
				Men	Women	Boys	Girls	Total
1. Karen	1,912	87,628	95,088	151,186	147,168	70,193	69,584	438,131
2. Hmong	253	19,287	24,551	45,382	45,703	31,578	31,292	153,955
3. Mien	178	6,758	8,022	15,260	15,442	7,609	7,260	45,571
4. Akha	271	11,178	12,909	20,948	21,876	12,756	13,073	68,653
5. Lahu	385	18,057	20,347	32,059	32,094	19,430	19,293	102,876
6. Lisu	155	6,553	7,338	12,345	12,505	6,737	6,712	38,299
7. Lua	69	4,361	5,098	7,454	7,553	3,536	3,717	22,260
8. Htin	159	8,496	10,474	15,512	14,941	6,084	6,120	42,657
9. Khamu	38	2,256	2,523	3,991	3,873	1,366	1,343	10,573
10. Mlabri	2	63	63	76	68	71	67	282
Total	-	164,637	186,413	304,213	301,223	159,360	158,461	923,257

In some cases, H'tin and Lua are combined to form a single ethnic grouping, and in other cases, the Mlabri are not counted due to their small population. Communities and settlements of these indigenous and tribal peoples are found predominantly in the northern and western areas of Thailand. Government records show they are in 20 provinces, namely, Kanjanaburi, Prajuabkireekan, Petchburi, Ratchburi, Suphanburi, Kamphaengphet, Chiang Rai, Chiang Mai, Tak, Nan, Pisanulok, Petchaboon, Phrae, Maehongson, Lampang, Lamphun, Sukhothai, Uthaithanee, Phayao and Loie.

Map 1. Distribution of Indigenous and Tribal Peoples' Communities



Government recognition of these peoples however does not mean recognition of their rights and as a distinct part of the Thai population. Like her neighbors, Thailand lacks a clear legal policy for the advancement of indigenous and tribal peoples as a distinct sector in the country. Specific government agencies, which oversee their situation, carry out a policy to assimilate them into mainstream Thai society.

Chupinit Kesmanee, a progressive academic activist, contends that even with numerous government services the indigenous and tribal peoples confront fundamental and chronic problems such as lack of citizenship and land titles and displacement due to declared national parks and forest reserves over their settlements.[2] Although the government has implemented Master Plans for Community and Environment Development and Narcotic Plant Control in Highland Areas, these have not included cultural promotion at all.

The present Constitution (1997) of the Kingdom of Thailand is so far the main reference point used by many civil society groups as the legal basis for recognizing the rights of indigenous and tribal peoples. It indicates this intention in Article 47, which states:

> *Individuals who live together in traditional communities have their rights to preserve or to revive their customs, indigenous knowledge, arts and culture, which are good for locality and the nation; and to participate in the management, maintenance, and utilization of natural resources and environment leading to well-balance and sustainability...*

However the Constitution does not mention collective rights or recognize the distinct characteristics of these peoples. Nor does it cite that it is a government responsibility to ensure and protect their indigenous customs, knowledge, arts and culture in order that they can continue to practice and develop these.

Situation of Indigenous and Tribal Peoples

As in other parts of the world, the indigenous and tribal peoples in Thailand face enormous and complex challenges in today's globalized and rapidly altering world. They are socially, economically and politically vulnerable, and as a result are often exploited and marginalized. Comprising only around 1.3 percent of the national population, their small number puts them in a weak position. Many do not have citizenship, which deprives them of fundamental rights and access to basic social services. They are fast losing their cultural heritage, especially customs, values and indigenous knowledge that contributed to sound and sustainable development practices in the past. Their children are growing up in an environment of weakening cultural roots, continued lack of guaranteed human rights and eroding sustainable development traditions.

The problems of the indigenous and tribal peoples can be divided into two main areas: 1) the conceptual base and practical failures of government development policy in highland areas; and 2) and the absence of legal status. These have interrelated impacts on their everyday lives. Government highland policies have resulted in insecure land tenure, failed agricultural replacement projects that eroded traditional self-sufficiency and caused rising debts, social stress and migration to urban areas. Policies were often inconsistent and contradictory such that indigenous communities that followed government development programs could be recipients of health care centers on one hand while losing their rights to their lands and livelihood on the other.

The insecurity and uncertainty of highland life caused by these policies have hit the women and young children most. Many are consequently migrating to lowland urban centers. While the reasons underlying migration are complex, one of the most important is the almost complete lack of a secure alternative that would allow continued living in the highlands.

A second crucial issue relates to their status. Due to bureaucratic, practical and historic reasons, over 300,000 indigenous and tribal peoples in Thailand do not have any official legal status under Thai law. The official figure, placed at 377,450 by the Department of Local Administration, Ministry of Interior, is considered

conservative by many. The absence of legal status has grave impacts as it touches all areas of life.

Two separate surveys have been conducted in highland areas over the past 15 years. This was an attempt by the government to resolve the status of remote communities that have lived for generations in lands that are now part of the Thai nation. These surveys issued official cards to community members. The earlier survey of 1990-1991 gave out what is referred to as a "Blue Card;" and the later survey in 1999, the "Green Card with Red Border."

However, merely receipts of government surveys, these cards guarantee no rights at all and are simply a record of a person's presence in the country. The holder of either card or those without any identification at all have no right to avail of any government services such as education or medical care, no right to own property, and no right to work. Further they cannot travel outside of their district of residence without prior permission from the District Head. The curtailing of such rights is a serious breach of international law and of the fundamental human rights of an individual.

An attendant problem arising from the lack of legal status is human trafficking and exploitation of indigenous women and children. A study conducted by the Physicians for Human Rights (PHR) reveals an alarming situation among these sectors in Thailand. The absence of legal status directly elevates the risks of HIV/AIDS as the report demonstrates the prevalence of discrimination, human trafficking, labor exploitation, sexual exploitation and denial of health care among indigenous women and children.[3] Forced to migrate to cities due to official corruption and neglect that imperil their livelihoods and cultural traditions,[4] the women risk being preyed upon by traffickers and abusive authorities. Increased migration to urban centers has only made them more vulnerable to drug addiction, prostitution and HIV/AIDS.[5]

Land and Tourism

Another serious problem affecting the indigenous and tribal peoples is encroachment and, in many cases, loss of their lands. It was during the Indigenous People's Decade that many business

interests and state agencies intruded into common lands including farming areas and forests of indigenous and tribal groups. In Lamphun province businessmen have obtained land titles that overlap farmlands as well as more than 3,000 rai or 480 hectares of community forest, a situation which has prevented access by local communities to their farms and forests.[6] Indigenous leaders submitted petitions to the Juridical Council to revoke the illegal land titles, and their petitions were granted but the provincial governor refused to sign the revocation order.[7]

Northern Thailand's indigenous and tribal peoples have long used and protected forests through traditional and customary regulations. Forests form part of their traditional territories and are thus seen as integral to their well being. Over the years the government developed regulations that prohibit indigenous communities from using the forest, giving rise to conflicts. In many instances indigenous persons have been arrested for merely cutting wood for household use. The Network of Community Forests, an indigenous alliance, has been purposely established to respond to such resource conflicts and to help indigenous and tribal peoples to assert their right to use, manage and conserve forest areas.[8]

When the government promoted "protected areas" and "national parks," the dichotomy between indigenous peoples and forests emerged. The concept of forest conservation gained prominence over indigenous and tribal peoples' traditional forest management. Laws were passed establishing national parks and conservation areas in indigenous lands, resulting in their eviction and resettlement in often unsuitable areas.

Also an area of concern in highland communities is tourism, which is a leading industry in Thailand. The national and local governments actively promote tourism using indigenous communities, and this has made northern Thailand one of the country's most popular tourist destinations. The different ethnic groups are labeled and promoted by tour agencies as well as the local Tourism Authority with exoticism, e.g., "the long neck tribe" (referring to the Akha ethnic group). Organized tours to various indigenous villages can be found all over Chiang Mai, Chiang Rai, Mae Hong Son and other northern provinces, which are highly sought by foreigners.

In a paper,[9] Prasit Leepreecha of Chiang Mai University's Social Research Institute argues that the state plays contradicting roles in ethnic tourism and related ethnic minority issues. He says four decades of ethnic tourism in the northern highlands has developed an industry that promotes a declining authenticity of ethnic culture or "staged authenticity." The recent development of alternative tourism, such as community-based and ecotourism, has created more dignity and equality for various stakeholders.

Many indigenous and tribal peoples have been drawn into the ethnic tourism industry as this provides an important source of income. However, some have encountered unpleasant experiences with tourists and refused to host or perform their cultural dances and ceremonies. Local government officials however prevail upon such groups for their continued cooperation. Government support for tourism is extensive, especially in providing basic information, protecting tourists and investing in infrastructure for tourism businesses. In many instances, indigenous villagers have thus been reluctant to decline from performing for tourists.

Government policies however are inconsistent. While the state is aggressive in pushing for ethnic tourism, its policies towards indigenous and tribal peoples are directed towards assimilation. These are implemented through the educational system, religious conversion and registration system. Speaking indigenous languages is discouraged in state-administered schools and indigenous knowledge is not recognized since only the Thai curriculum is used. Religious conversion, such as that found in the Dhammajarik Buddhism Project, is a fundamental thrust of the government. Indigenous and tribal peoples are actively encouraged to convert to Buddhism and give up their traditional spiritual belief systems. Another assimilation move is the government registration system, which aims to change ethnic identities into Thai—e.g., changing indigenous names into Thai first names.

But while indigenous and tribal peoples are used to advance the tourism industry, many remain with illegal status. Local government officials have used this insecurity to intimidate them to stay in their provinces for the main purpose of attracting tourists. In many ways they are objects of tourism from which various agencies benefit economically.

Addressing Problems

The process of addressing these problems requires extensive coordination and cooperation between indigenous and tribal peoples and government agencies. Also fundamental is a common understanding of the basic rights of indigenous individuals and communities and enhancing their existing capacities, skills and knowledge for sustaining and developing their livelihoods.

Various mechanisms at the local and national levels have been set into operation by various sectors, separately or jointly, in the attempt to come up with feasible solutions. These have come from government, NGOs and indigenous and tribal organizations themselves. Among indigenous groups in Thailand and in other countries, cultural revivals are increasingly becoming popular to serve this purpose. Not only do these events strengthen distinct identities and cultures, highlight indigenous knowledge and develop learning networks among communities but these are also proving to be a vital mechanism to lobby for relevant policies at the local and international levels.

Some of the mechanisms, which have been developed at various levels to respond to problems of indigenous and tribal peoples, are the following:

Joint mechanisms between government and indigenous communities such as:

- Subcommittee to Address the Problem of Indigenous and Tribal Peoples in the Highlands;
- Subcommittee to Address the Problem of Forests and Forest Land;
- Committee to Monitor the Addressing of Problems of Northern Peasants' Federation and Northern Peoples' Organizations Network.

Government mechanisms:

- Ministries;
- Bureaus;
- Departments;

- Government agencies at central and regional levels;
- Various independent agencies.

NGO mechanisms such as:

- Coordinating Centre of Non-governmental and Tribal Development Organizations (CONTO);
- Highland Peoples Taskforces (HPT);
- Various projects, foundations and associations that work with indigenous and tribal peoples at the national and regional levels.

Indigenous and tribal networks such as:

- Assembly of Indigenous and Tribal Peoples in Thailand (AITT).

Other mechanisms operate at the local level such as:

1) Mechanisms and frameworks used by government agencies, local administrative organizations, and NGOs to support activities at the community or field level;
2) Mechanisms and frameworks used by community organizations and inter-community networks such as watershed networks and indigenous and tribal organizations.

Policy and Program Analysis

Policy Analysis

Various laws and policies are in force in Thailand that affect indigenous and tribal peoples. Some directly or indirectly support indigenous rights while others undermine these. There are also those that appear to protect their welfare and improve their situation but when implemented further erode these. This section presents some of the more important examples of these kinds of policies as well as proposals and legislative bills that have originated from the ranks of indigenous and tribal networks working to advance indigenous rights.

Favorable Laws and Policies

- ***1997 Constitution***

The 1997 Constitution of the Kingdom of Thailand is the nation's supreme legal framework that governs the lives of the Thai people including indigenous peoples. It sets out the state's obligations and the basic rights and duties of the individual in such areas as education and residence as well as community rights such as those pertaining to traditional cultures and resource use and management. Article 36 of the Constitution guarantees freedom of movement and residence; and Article 43, the right to free basic education of not less than 12 years. Article 46 gives people, who have settled as a community, the right to conserve and revitalize their own traditions, knowledge, art and culture. This includes taking part in managing, maintaining and making use of their natural resources and environment in a sustainable way.

The government has subsequently passed laws and other mechanisms to flesh out the Constitution's provisions but some old laws still exist which conflict with their spirit and intent. Politicians and interest groups have also influenced newly passed laws and policies while those required by many articles of the Constitution have not been legislated. The expectations of the indigenous peoples for the Constitution to protect their rights have thus not been met. Some sectors of the polity have started a movement calling for the amendment of the Constitution, and it is expected that the Parliament will take this up after the 2007 general election.

- ***1999 Law on National Human Rights Commission***

This law was issued in accordance with Articles 199 and 200 of the Constitution, which provides for the setting up of a National Human Rights Commission (NHRC). The NHRC has 11 members with a term of six years, with the first Commission serving from 2001-2007.

The Commission's mandate is to promote respect and compliance with human rights principles; monitor and report violations of human rights to the Parliament; propose policies and needed legal amendments on human rights to the Parliament and Cabinet; foster cooperation and coordination among government agencies, NGOs and other organizations concerning human rights; and fulfill other tasks as required by law. The Secretary of the Commission

is responsible for the operations of the Office of the National Human Rights Commission (ONHRC).

Both the NHRC and the ONHRC are the mechanisms for responding to problems of human rights violations against indigenous peoples. They set up the Sub-commission to Study the Problems Confronting the Indigenous Peoples, which is tasked to collect data to facilitate resolution of such problems. In addition the NHRC created a forum for NGOs involved in human rights work and has expanded this to include peoples' organizations. The forum is regarded as an independent organization under the Constitution and has not been influenced by any political party. It is thus the mandate of the Thai people, including the indigenous peoples, to take active part in this forum and monitor its direction in order that it serves its purpose as intended by the Constitution.

- ***1999 National Education Act***

This law provides for education to promote the physical, mental, intellectual and moral development of the Thai people and to ensure they can co-exist peacefully. It gives a framework for instilling civic and social values for the individual to function fully as a member of a democratic society with the King as Head of State. It fosters awareness of his/her responsibility to protect and promote human rights, freedom, respect for the law, equality and human integrity. It also promotes religious and cultural values, local wisdom and national and international knowledge.

An essence of the law is the obligation of the state to provide a free 12-year basic education for all. It also affords participation by individuals, community and local administrative organizations, NGOs and other institutions to set up schools and educational services. The law thus opens up space for alternative education for indigenous peoples such as the study of the mother tongue and traditional culture and local curriculum development. In practice, however, the state has not fully implemented the free basic education for all. Under the law the school is a corporate and autonomous institution that can charge various kinds of indirect expenses, which could restrict access by indigenous children and youth to educational services. In addition those who lack citizenship can only get basic education but cannot continue to higher studies.

Such problems have prompted many concerned organizations and networks to lobby for an alternative education system. They

have pushed forward an "Alternative Education Bill" to fill a gap they see in the current law. The bill proposes alternatives to enable the Thai people from all walks of life, including indigenous and tribal peoples, to have more opportunities and access to education.

Indigenous Education

The Thai educational system is based on assimilation rather than on pluralism. While indigenous children are not prevented from learning about their culture in their homes, formal education does not include a study of their own histories and identity. Their culture is given no "space" in the promotion of official Thai identity.

A case study conducted by the Food and Agriculture Organization in 2002 shows a differential assistance for lowland and highland areas.[10] The indigenous and tribal peoples do not get as much educational support as the lowland Thai population. During the Indigenous People's Decade, however, inter-agency collaboration to meet the education needs of the indigenous peoples noticeably increased including NGO involvement. This has brought some favorable changes in their overall living conditions in infrastructure, sanitation, access to health and education, and participation of community members in decision making.[11] Generally, however, several old and new problems remain, particularly diminishing traditional knowledge, no security to resources and absence of legal status.[12]

The case study pointed out several ways to improve education services for the indigenous and tribal peoples. Among these are reinforcing inter-agency collaboration through holistic approaches and developing curriculum and pedagogy appropriate to them and their changing conditions. These however need to be founded on a strong favorable policy.

- **National Economic and Social Development Plan**

The government has so far issued nine national economic and social development plans prepared by the Office of the National Economic and Social Development Board (NESDB). The country is under the 9th Phase covering the period 2002-2006. The first seven phases were mostly prepared by the government sector, and a

lesson gained from these periods is that "economically Thailand is better but social problems increased. The development is far from being sustainable."

The 8th Phase subsequently brought some changes as more people took part in the planning. The plan was redirected to focus on "the people," making them the center of development. The 9th Phase maintains this, stressing social development, but seeks as well to foster a "self-sufficient economy" and make it the philosophical foundation for the administration of the country. The plan's core is building the economic base and linking it to the world market as it did under the previous plans.

These development plans however have generally not responded to the needs of the majority of Thai people. All emphasize economic development and although the 8th and 9th Phases have focused more on people and society, the government has not developed these into a clear policy. It has referred to these plans when it pushed for a policy to eradicate poverty, but again, in practice, has not included the indigenous peoples as one of the target groups.

To deal with this problem, government agencies and peoples' organizations have set up a forum to discuss and make recommendations for the 10th phase of the plan. The effort aims to stress the importance of the long-term goal of development, which is to have a balanced and happy society. However, concluding that the present Thai-Rak-Thai Party led-government will never have indigenous peoples as a policy focus, the forum has advocated that the people's sector, including indigenous peoples, should put the essence of the national plan into particular projects they themselves can undertake.

- ***Act on National Economic and Social Advisory Council***

This law was drafted in accordance with Article 89 of the 1997 Constitution, which provides for the establishment of an advisory council to make recommendations to the Cabinet on economic and social problems. Part of the Council's task is to study and review the National Economic and Social Development Plan before it is implemented. The Council, which has had two terms, consists of 99 representatives selected from various occupations. The first

Council had two indigenous representatives while the current Council has one.

Most members of the Council come from the middle class or business sector, the same proportion found among politicians. This might explain why it has served more as a vehicle for its members to be socially recognized. It has not functioned as the mouthpiece through which the people can voice out their problems for the government to solve. Nonetheless, the presence of indigenous members in the Council has made it possible for them to present the issues and concerns confronting indigenous as well as Thai peoples.

However, the Cabinet has not adequately addressed issues raised to them. The Council itself has been hampered by too much bureaucracy and too many regulations and operational procedures. Such obstacles have impeded the body from doing its expected roles, appearing more as a tool to legitimate government policies.

- ***2002 National Health Security Act***

The Act was passed to comply with Article 52 of the Constitution, which states that the Thai people should have equal access to health services. Article 82 further requires the state to improve public health care to acceptable standards and to be inclusive and effective. The law guarantees the right of poor people to free basic health services and encourages local administrative organizations to take part in the health care system.

The Act requires the setting up of the National Health Security Policy (NHSP) Committee and the Committee to Control Quality and Standard of Health Services (QSHS). These two committees with 4-year terms develop health and related policies, which are executed by the National Health Security Office (NHSO). The committees have as members two representatives from NGOs who work with indigenous peoples, and one of these is the Inter-Mountain Peoples Education and Culture in Thailand Association (IMPECT).

Part of the health care services is a public health insurance system administered by the Office of National Health Insurance. During the initial period of its operation, some conflicts arose among participating agencies, and it took some time to build up cooperation among them. At present the Office has branches in most operational zones. Indigenous representatives have set up the Cen-

ter to Coordinate Health Insurance of Highland Peoples to monitor its operations in indigenous communities and to respond to problems of discrimination against indigenous peoples. It was found that indigenous persons who do not have a citizenship card could not avail of health insurance and other health services. The Center has filed complaints and lobbied with public health agencies to allow indigenous peoples to have access to and benefit from public health insurance.

Laws and Policies that Undermine Indigenous Rights

• *Master Plan for Community and Environment Development and Drug Control in Highland Areas (1992-2006)*

Thailand has implemented a Master Plan for Community and Environment Development and Drug Control in the Highland Areas since 1992. The plan primarily aims to improve the social and economic situation of indigenous and tribal peoples, to encourage permanent settlement and community registration, and to conserve the environment.

The first Master Plan, undertaken in 1992-1996, was drafted by the United Nations Fund for Drug Abuse Control (UNFDAC), the Social Research Institute of Chiang Mai University (CMU) and the United Nations Development Programme (UNDP). Two agencies, the Centre for the Coordination of Hill Tribe Affairs and Eradication of Narcotic Crops (COHAN) and the 3rd Division of the Military, enforced the plan while coordination was made by the Office of the Narcotic Control Board (ONCB).

The Master Plan classified the indigenous communities into four groups:[13]

(1) Formally registered villages under the Local Administration Act of 1914 where permanent villages were those with more than 50 households with permanent settlement and no migration for the last 20 years, suitable for permanent agriculture, outside watershed class 1 or wildlife areas, with government agencies present and car transport possible;

(2) Villages established without yet receiving formal registration but likely to qualify for registration or potential per-

manent settlements, which were those villages that posed no threat to national security, had 20-50 households, with no migration for 10 years, with permanent houses and suitable for permanent agriculture;

(3) Villages established without formal registration and lacking the capacity to be registered formally (to be relocated) or non-permanent settlements, which were communities that did not fulfill the conditions for group 2; and

(4) "Special category" communities with special dispensation from the Cabinet to remain for the time being.

The 2nd Master Plan (1997-2001) had a few changes and highlighted some implementation problems such as a lack of coordination among agencies, restrictive forest policies, a slow citizenship process, and a lack of planning meetings between provincial and local organizations. This plan also recommended three strategies towards the development of the indigenous and tribal peoples: the creation of security for highland communities; management of natural resources with a focus on people and forest living together; economic diversification and land use boundaries; and administrative cooperation between the government and the private sector.[14]

The 3rd Master Plan (2002-2006) emphasized the relocation, control and 'management' of highland communities instead of a concept of cooperative development.[15] It stressed the use of Cabinet Resolution of 30 June 1998, which details a process of rights verification that is inappropriate for the reality of indigenous and tribal peoples. It also divided all highland communities into four groups, as identified in the 1st phase, according to which the future of the community is determined.[16]

The Master Plan overall has major weaknesses, the first being an ethnocentric view of the indigenous peoples. Mainly developed and implemented by the government, the plan looks at indigenous peoples in the highland areas as the cause of various problems ranging from drug proliferation to natural resource destruction to national security. It segregates and categorizes them as the "Other," going against the principle of encouraging different peoples to live harmoniously in the same society. It has thus proved to be a factor in slowing down the process of obtaining citizenship by indigenous

and tribal peoples and has worked more as a tool to control them rather than to promote diversity.

Further the plan has conflicting principles and its implementation reflects double standards. For instance, on one hand it tries to advocate a self-sufficient economy but on the other promotes opium cultivation. More importantly the plan has impacted adversely on the indigenous communities. The most evident is the relocation program, which has moved indigenous peoples out of their highland villages to lowland areas, destroying their way of life.

The relocation sites are neither suitable for settling or cultivating, and some of these are not provided with the basic infrastructure and services needed to survive. Many indigenous communities were grouped together in clusters in order that they could more easily be managed and controlled by the government. But at the same time some communities were not relocated because the government wanted them to serve as a tourist attraction and as a pool of cheap labor for its resource management programs.

The current Master Plan continues to reinforce a centralized approach without local involvement and the propagation of negative stereotypes of indigenous and tribal peoples, e.g., that they cause forest and soil destruction. Like other government plans developed for indigenous and tribal groups, the Master Plan is highly technical and far removed from their needs and perspectives on development. It was developed without the meaningful participation of the indigenous peoples even if they are its target and "beneficiaries."

As the Master Plan has not succeeded in improving the situation of highland communities, the indigenous and tribal peoples' network has drawn up an alternative development plan to be implemented by the highland peoples themselves. The network hopes it would eventually be accepted and supported by the government.

- ***Cabinet Resolutions***

Cabinet Resolution of 30 June 1998. The Cabinet Resolution of 30 June 1998 is perhaps the most important single document that currently affects the rights of indigenous peoples in Thailand and natural resource management.[17] This resolution shelved three earlier resolutions in April 1997 popularly known as the

Wang Nam Khieo resolutions, which allowed villagers who had been living in forest reserves prior to 1993 to remain there on the condition that they take part in forest conservation. Instead it recommended the old strategies of classification and zoning, including eviction of villagers living in "sensitive areas." This turnaround was apparently due to a logging scandal in the Salween forest of Mae Hong Son involving provincial and district forest officials, which was exposed in April 1998. This Cabinet resolution resulted in the expulsion of indigenous and tribal communities in forest areas particularly in protected areas.

Cabinet Resolution of 10 August 2004. This Cabinet resolution initiates a "New Plan of Forest Villages Project." The Project aims to lessen the incidence of trespassing in forests and to create collaborative management practices with communities living within Project sites, including forested areas where indigenous peoples live, to protect, conserve and use resources in a sustainable way.[18] The resolution appears to be a positive move by the government towards recognition of the indigenous and tribal peoples living in forest reservations. Unfortunately, the method of implementation is based on the June 30, 1998 Cabinet resolution, superceding its original purpose.

- ***1963 National Forest Reserve Law***

In 1963 the government passed a law which converted undeclared or untitled lands into national forest reserves. Such lands all over the country effectively came under state ownership. Many of these however were areas inhabited and cultivated by indigenous peoples. The law also affected lowland people who made their living on lands considered deteriorated and needed to be included in the national forest reserve. Victims who refused to move out were arrested and punished under this law.

However the law has not been applied equally to everyone. Many settled villages and sites of government centers are also found on lands declared as national forest reserve but these have not been evicted. This law provides for stringent rules but it appears to be more strictly enforced on poor and marginalized peoples.

- ***1992 Wild Life Reserve and Protection Law***

This law has created forest conservation areas where no one is allowed to reside, hunt or engage in any activities, and where anyone who enters or leaves is strictly monitored. It has led to the

relocation of many people in villages inside these areas. The government however allows other groups to enter these forests for such purposes as to conduct research. Some have used loopholes in the law to do other kinds of activities and make use of the lands. Despite this law and its intent, it has been found that the number of protected wild life species has decreased.

- ***1961 National Park Law***

The government has targeted virgin forests to establish national park zones but most of these are inhabited by indigenous peoples. As a consequence, disputes have arisen between indigenous peoples and government officials who use the National Park Law to control and manage people in these areas. Indigenous communities have long practiced sustainable resource management, but a look at court cases involving forestlands reveals that most of the accused who end up convicted are indigenous persons. The National Park Law contains stricter rules and regulations than other forest-related laws, and as the trend is for more lands to be declared as national parks, it will mean more problems including eviction for indigenous and tribal peoples.

Government officials have opened the national parks for tourism and for this purpose have allowed some indigenous communities to stay in order to serve as a tourism showcase and to provide cheap labor. In this case economic benefits rather than sustainable natural resource management have driven the law's enforcement.

Indigenous and tribal groups, along with NGOs and peoples' networks, have forwarded a community forest bill that assures the status of forest people to continue living in forests in a sustainable way. They have called on the government to abolish all such laws that conflict with the Constitution and in which the people had no participation in making.

Populist Policies

The Thaksin government started making populist policies in 2001, many of which initially received public support. The major ones are discussed below.

1) *Social policies* such as those to eradicate drug use and smuggling and related illegal activities. This kind of policy

was formulated at a time when amphetamine use was widespread. The campaign however used extrajudicial means to get rid of drug dealers and smugglers. The official number of those killed was placed at 2,000, which was used as an indicator of government success in the war against drugs. Unfortunately this included innocent community leaders and individuals who had disputes with government officials or had openly opposed government policies.

2) *Economic policies* (such as the One Million Baht Village Fund and the Conversion of Asset into Capital) and *health care policies* (such as 30 Baht for curing any disease). These policies have excluded indigenous and tribal peoples without Thai citizenship. But even for those who carry citizen's cards but live in remote villages, it is not always the case that they can have access to such services.

These populist policies however have had negative effects on indigenous and tribal peoples. The assistance extended under these policies eroded traditional ways of life, self-reliance and caring for others in indigenous communities. Village leaders spent more time healing fractures and splits within the community rather than upgrading the people's capacity to solve their problems. Another consequence is that indigenous peoples have become materialistic and consumerist, causing many to become indebted. The policy to convert assets into capital has further undermined the concept of community rights, as it promotes individual and private rights and capitalism, which is unsuitable to the indigenous way of life.

The populist policies may seem to have succeeded in the eyes of political parties and politicians as these strengthened their political base and support, but these have evidently failed to solve common problems experienced by the people. It is important for indigenous and tribal peoples to be aware of this and consequently to take active part in political reforms.

Legislative Bills initiated by Indigenous and Tribal Peoples

- ***Draft Community Forest Bill***

Since 1989 indigenous peoples' and NGO networks involved in natural resource management, such as the Northern Farmers' Network (NFN), Assembly of the Poor, and Community Forest Network, have proposed a bill that encourages the community to manage its resources—soil, water and forests. One of the early attempts was in 1996 when 11,000 farmers staged a 28-day demonstration in Bangkok to call for a community forest bill. This forced the newly formed Banharn government to produce a draft called the "Suanbua Draft Version."[19] After a lengthy process involving the Cabinet, the Council of State and the Parliament, the bill was approved in principle on June 2, 1996.[20] The Banharn government's electoral defeat, however, postponed the passage of the bill, which prompted another 99-day demonstration by the Assembly of the Poor in 1997.

In that same year the Community Forest Network, Northern Farmers' Network and Assembly of the Poor submitted a draft community forest bill with 50,000 signatures, which is needed for proposing a law, and submitted it to Parliament. This went through a more protracted process in the legislative mill. The draft passed the House of Representatives in 2001 and went on to the Senate. Some contentious issues had to be threshed out by a bicameral committee, such as the bill's component on a committee to govern community forests. In 2005 changes were made to the draft, chief of which was the use of the phrase "special forest conservation" in place of "community forest." Unfortunately Thailand came to a political crisis and the government chose to dissolve Parliament and with it the draft bill.

What are currently in place are the old processes of forest classification and zoning that includes the eviction of villagers living in "sensitive areas" of forest reserves. These were restored after the Cabinet in 1998 revoked the so-called Wang Nam Khieo resolution upon the recommendation of the National Forestry Committee.[21] This earlier cited resolution recognized that people and forests could co-exist, thus giving the right to settlers of national forest reserves to stay until the process of zoning conservation areas had been completed.

The prolonged corrective process involving many agencies of the Thai government did not prosper in favor of the indigenous and tribal peoples during the decade. Many activists in Thailand feared that the community forestry bill would take a new form of state-controlled forest management. The fierce and often violent arguments by the government against alleged deforestation by indigenous peoples is part of the unresolved forest issue in Thailand. Government agencies strongly enforce rules around declared national parks and wildlife sanctuaries in many areas where indigenous communities live. Tensions between government local officials and indigenous peoples thus continue especially as Thailand implements proactive programs and policy support for national parks and forest reserves at the expense of indigenous peoples

Although the Constitution has opened the opportunity for the people to propose any law, in practice it is very difficult to push a people-initiated bill in Parliament. A reason may be that as most politicians come from the middle class and business sector, they are more inclined to pass laws that protect their and their associates' interests more than those that can satisfy the people's needs.

However, the participatory process the people went through in pushing for the community forest bill provided a great learning opportunity. It gave birth to many leaders and networks involved in resource management, particularly at the community level. Their knowledge and action are powerful tools in negotiating with government officials who have tried to take the management of forests into their own hands.

- ***Draft Master Plan for Sustainable Community and Environment Development in the Highlands***

A movement initiated by the Assembly of Indigenous and Tribal peoples in Thailand and other NGO and peoples' alliances have called for the abolition of the present Master Plan for Community and Environment Development and the Narcotic Plant Suppression, Phase 2 (1997-2002). In 2003 the AITT and NFN proposed a master plan for community and environment development based on the principles of sustainability, integration and participation. They submitted the proposed bill to the Sub-committee to Solve the Problems Confronting the Northern Farmers Network and the Northern People Network chaired by a Deputy Prime Minister.

Approved by the Sub-committee, details of the draft were worked out and integrated with the government Master Plan.

The current Cabinet however abolished this government-NGO mechanism, putting a stop to the work on the draft. Since then some of the participating NGOs have moved on to undertake other activities. CONTO, a center to coordinate NGOs involved in mountain peoples' community development, later tried to coordinate member organizations and networks to draft another master plan for highland development. However CONTO itself faced certain internal adjustments and was unable to carry on the task.

Although it did not take off, the attempt to draft or integrate a master plan for highland development has inspired participating communities to think about their development seriously. It has made them realize the significance of developing a plan and cooperating at various levels for programs to succeed.

Program Analysis

Although Thailand's national policies do not make clear to what extent the government is obliged to attend to indigenous peoples' needs and concerns, various programs have been implemented for highland communities with financial support from government or foreign donors. Most of these however were not done in connection with the International Decade of the World's Indigenous People. In addition to those undertaken by the state, projects have come from UN and other international agencies, educational institutions and NGOs; and indigenous and tribal organizations themselves.

UN-sponsored Projects

Many of the UN projects specifically targeted for highland communities were built on cooperation between governments but some agencies worked directly with village organizations or gave fund support for them to implement their own projects. However project grants such as those facilitated by UN agencies had very strict and complex regulations and communication was carried out in English, making it difficult for indigenous and tribal peoples to avail

of these. Among the UN agencies that have done work for indigenous and tribal peoples in Thailand are the UNESCO, UNICEF and UNDP.

The UNESCO took active part in the government's registration program for citizenship among highland people. The government's decisions on 29 August 2000 and 28 August 2001 to register highland people in 20 provinces for citizenship or permanent residency opened opportunities for other institutions to be involved in addressing the status of indigenous and tribal peoples. With support from UNIAP (UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region), UNESCO embarked on a research, publication and training project.

First, it conducted and published an extensive research and analysis of Thai citizenship legislation, regulations and practices. It then launched the project "UNESCO's Highland Citizenship Registration Project" to support and train nongovernment and government agencies interested in helping to register highland people. It also worked with Thai government offices and local NGOs on this project.

Training workshops on citizenship registration were conducted in northern Thailand. The first was held on 30 June 2001 in Chiang Mai for six local ethnic minority NGOs: the New Life Center Foundation, Upland Holistic Development Project, Inter-Mountain Peoples Education and Culture in Thailand Association, Baan Ruam Jai Project, Lahu Youth, and Lahu Health Project.

Immediately following the Chiang Mai workshop, a trained staff from the New Life Center Foundation made four trips in August and October to Fang District, where they assisted district officials to register highland people.[22] The NGO staff registered 871 men and women of various ethnic minority groups for either Thai citizenship or permanent residency during an 18-day mission.

The second training workshop took place in Chiang Rai on 27-28 November 2001. With support from Japan Foundation the workshop focused on training highland villagers to be community volunteers, who can assist their own and neighboring communities to register for citizenship. Around 270 village representatives from about 70 villages of 20 districts in six provinces attended the workshop.

The work of UNESCO helped resolve the problem of stateless status among indigenous and tribal peoples in Thailand. The actual process of registering people for citizenship or permanent residency is a lengthy and complicated procedure, as it involves a dozen legislation and revolutionary decrees. Since a family household instead of each individual is encouraged to register, the process requires categorization of the status of each family member, completion of various application forms for each category and preparation of all supporting documents. In the absence of a required document, a witness' testimony is needed; and in the case of children without proof of birth certificate or witness, a DNA test.[23]

Tracing the Citizenship Problem

1956: The first national census fails to include the indigenous and tribal peoples when Thai authorities begin issuing household-registration certificates to Thai families. The highland population comprising different ethnic groups such as Akha, Hmong, Karen, Lahu, Lisu and Mien become "stateless minorities" in their own country.

1969-1970: The first census of the highland population is conducted covering nearly 120,000 people in 16 provinces.

December 1974: The Ministry of Interior decides to register their citizenship.

2 January 1975 and 20 March 1992: A total of 182,065 highland people in 20 provinces are registered as Thai nationals.

1985-1988: The second census of highland population is conducted in 18 provinces and nearly 580,000 people are covered. Following the survey, the government decides to register their personal record certificates and issues a highland identity card, commonly known as a "blue card."

1990-1991: Nearly 250,000 are registered and given a blue card. Under the Ministry of Interior's 1992/1996 regulation handbook on Thai citizenship registration for highland people, 46,555 are registered Thai citizens.

1997-2001: The 2nd Master Plan for Highland Development reports there are 773,316 indigenous and tribal peoples residing in 20 provinces of whom 210,989 have Thai citizenship.

Source: UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region and IMPECT's annual report of May 1998 to April 1999.

Chronology of Indigenous and Tribal People's Clamor for Thai Citizenship during the First Indigenous People's Decade

April-May 1999: Thousands of indigenous villagers stage a protest in front of Chiang Mai City Hall, demanding the government to recognize their right to Thai citizenship and access to their farmlands and community forests.

May 1999: The Government of Prime Minister Chuan Leekpai decides to set up a committee to study problems in categorizing indigenous and tribal peoples and other ethnic minorities and the process of granting legal status to these different groups.

1 June 2000: The Ministry of Interior produces a new regulation handbook on how to categorize and register status of highland population in 20 provinces. The document outlines and simplifies the registration process and allows non-governmental organizations to assist villagers in their applications for Thai citizenship or permanent residence.

29 August 2000: The Thai Government decides to grant Thai citizenship or "alien status," which constitutes permanent residency, to hundreds of thousands of indigenous and tribal peoples and other minority groups in Thailand. It decides to confer Thai citizenship on indigenous children who were born between 14 December 1972 and 25 February 1992. The Government also agrees to allow about 190,000 indigenous and tribal peoples and minority people who entered Thailand after 3 October 1985 until 15 September 1999 to stay in the country for one year pending studies on how to deal with them.

28 August 2001: The Government of Prime Minister Thaksin Shinawatra decides to grant Thai citizenship to indigenous children whose parents are registered as "alien" with permanent residency, regardless of when they were born. It also allows those 190,000 indigenous and tribal peoples and highland minorities to stay in Thailand for another year.

June 2000: The Ministry of Interior's regulation handbook reports that there are about one million indigenous and tribal peoples and other minority people in Thailand, of which nearly half have already obtained Thai nationality. Of the remaining, about 100,000 are qualified for Thai citizenship; about 90,000 for permanent residency; and about 120,000 are indigenous children who are entitled to Thai citizenship. The remaining 190,000 tribal and minority peoples are permitted to stay temporarily in the country pending final government's decision on how to deal with them.

Source: UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region.

The UNICEF's involvement was in AIDS prevention in particular indigenous communities. In 1995 the UNICEF funded a project on the Promotion of Village Participation in AIDs Prevention and Rehabilitation among Akha people which was implemented by the Department of Public Welfare.[24] The 5-year project aimed to revive family relations, restore traditional culture and enhance the roles of elderly people to combat drug addiction and keep AIDs from spreading. One of the attempts to revive traditional culture was the performance of an Akha traditional ceremony in a site in Chiang Rai. Directed to counter AIDs, the ceremony was performed to clean and rid houses of all malevolent spirits.

The United Nations Development Program undertook the Highland People Programme (HPP) to study the history and development of indigenous and tribal peoples in Thailand. The agency also facilitated small grants for highland projects.

State Programs

King-Inspired Projects

These projects refer to those initiated by the King himself or other royal family members who wish to set up a prototype for various groups to learn, particularly the disadvantaged such as the indigenous and tribal peoples. Some of these projects are the Royal Project, the Small House in the Big Forest Project, and the Model Farming Project. These are based on sound principles and aimed at improving and developing the quality of life of the target groups.

The implementers however are people from concerned agencies who are unable to put these principles into practice and care more about producing quantitative results. These are true for such projects as cold-climate plant promotion, husbandry and handicrafts. They also fail to make the target group understand the project's conceptual foundation or participate and receive the expected benefits. Most indigenous peoples are loyal to the King and can not refuse the entry of his projects into their communities. Many of the projects used a community's already scarce land resources to demonstrate a model or prototype and ended up taking over the land. Worse the villagers had no part in managing the project.

New Concept Forest Village

Launched to celebrate the Queen's 72nd anniversary, this project advocates the principle of people's participation in forest resource management. It is publicly viewed as a response to the Queen's remarks that suggest that people and forests can co-exist. But government officials have used the same royal pronouncements to implement the June 30, 1998 Cabinet resolution on forest management. Under the resolution people must prove they have lived on or cultivated a piece of land before its declaration as part of a national park or conservation area. Other conditions are that the land should not exceed 35 degrees in slope and must not be in a strategic zone defined by government. The affected people barely comprehend such government conditions and have no part in its verifying process, which includes satellite photos.

Many of the lands occupied by indigenous peoples have at least 35 degrees slope, but they have long managed to utilize the land effectively and in a sustainable way. In the past the indigenous peoples practiced rotational farming which required a 5-10 year fallow period for the land to recover. From satellite images, these fallow areas look like forests, which has prompted government officials to prohibit people from reusing the land. This rule has prevented indigenous and tribal peoples from maintaining their life and livelihoods in the traditional way.

Moreover, the project has been used as a strategy to convince the people to donate and offer their land to the state as a gesture to the Queen. The result is that the villagers can stay on as caretakers but can no longer utilize the forest. When they are forbidden

to cultivate the land, they have no choice but to migrate to towns for paid labor they can barely survive on and where they are vulnerable to labor exploitation, trafficking, HIV infection and other risks.

University Scholarships

This project is carried out under the National Master Plan for Communities, Environment Development and Drug Control in Highland Areas. Launched in 1990, the project established a fund of 20,000 baht/year for students to complete a 4-year college degree at Chiang Mai University and Mae Jo University. The primary objective is to open up opportunities for indigenous and tribal youth to take up higher studies that can be used to develop highland communities, such as political science, law and education. The project has provided university scholarships to some 176 indigenous youth, 88 of whom have graduated.

The project however is weak in its ability to draw back graduates to work in highland communities. The scholarships carry no stipulations or conditions to ensure they return and work for the benefit of their communities after graduation. As a result, many of them end up working in urban areas with business companies or government offices, and a few with indigenous organizations or NGOs working with highland communities. To strengthen this project component, the Inter Tribal Youth's Education and Culture Project, along with some NGOs, has initiated a program that gives current scholars an opportunity to live in indigenous communities during vacations breaks and learn from the elders and community leaders.

Projects by Educational Institutions and NGOs

Andaman Pilot Project

This appears to be the only project clearly specifying that it was promoted and implemented in accordance with the spirit of the Indigenous People's Decade in Thailand. The project was started in 1997 by the Social Research Institute of Chulalongkorn University with the Surin Islands National Park as the primary implementing agency and with support from the Cultural Advisory Office of UNESCO Asia-Pacific.

The target group were the Moken people, also known as sea people or sea Gypsies. The project, which ended in 2003, coordinated and organized many activities and fulfilled many of its goals, especially in generating ideas, creating working alliances, sharing and learning, research, increasing skills, potentials and alternatives for communities, supporting cultural transmission and conservation, and disseminating and building awareness.

Many sectors participated in the activities, aligning their goals on sustainable development. They gave priority to indigenous knowledge and conducted participatory community organization, which strengthened communities by instilling pride in their tribal identity. Information generated by the project was disseminated to make the larger public know about and understand the Moken people and to promote the value of cultural diversity. The project also created for indigenous and tribal peoples the opportunity to learn about the outside world and to test development alternatives that would not destroy their society, culture and environment.

The project aimed to meet the immediate and basic needs of the Moken as well as to preserve their cultural and environmental inheritance. The latter requires a long-term perspective to ensure social and cultural sustainability for the indigenous and tribal peoples and environmental sustainability for the seacoast.

Community Rights of Indigenous and Tribal Peoples in Northern Thailand

This was a research project on the history and community rights of indigenous and tribal communities in natural resource management in northern Thailand. The study showed that the indigenous and tribal communities living in forest areas have local knowledge and a way of life that can be sustained along with the forest, as long as no external factors negatively impact their current systems of thought, belief and practice.

The project recommended, among others, for the government: (1) to recognize the rights of indigenous and tribal communities to manage their natural resources; (2) to strengthen indigenous and tribal cultures and disseminate knowledge about them to generate public acceptance; and (3) to establish an agency with the particular responsibility to respond to resource problems. The project's conclusions and recommendations can be used to de-

velop policies or programs that support indigenous and tribal communities.

Ethnic Studies

The Tribal Research Institute, Chiang Mai University, Mahidol University and Chiang Rai Rajabhat Institute carried out a joint study to review the researches that have been made in the area of ethnic studies in Thailand. Their study found that researches, mainly done by social, linguistic and cultural research institutions, delved largely on indigenous and tribal issues and the development of curricula in ethnic studies.

It further showed that the government has given low priority to development work in the highlands. In 2002 for instance the government streamlined the Tribal Research Institute, which is the government agency especially established to carry out research and manage data on indigenous and tribal peoples in the highlands. The groups that mainly benefited from academic research projects were government agencies doing highland development work and students interested in indigenous issues. In the past indigenous and tribal peoples received little direct benefit from this kind of work.

By the end of the Indigenous People's Decade, collaborative development work had increased between indigenous and tribal organizations and networks and educational institutions in the area of ethnic studies.

Projects by Indigenous and Tribal Peoples

Workshop on ILO Convention 169

A workshop on International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries was organized on June 5-7, 2002 by the Inter-Mountain Peoples Education and Culture in Thailand Association. With support from the ILO, it brought indigenous leaders and NGO representatives together to study the Convention to enable them to campaign, disseminate and use the knowledge in their daily lives.

However, because Thailand is not a signatory to the Convention, little support was generated for a broader awareness raising on the instrument among indigenous peoples. A workshop recommendation urged the government and organizations doing rel-

evant indigenous work to support the production of information and education materials on the Convention to be disseminated to indigenous communities. Another proposal was to hold a forum among government and the wider public to build greater understanding on the Convention that can lead to a wider campaign for its ratification by the government.

ILO Convention 169 is in line with the current Thai Constitution, but most government agencies operate on the principle that Thailand does not have tribal or indigenous peoples. A major task therefore of indigenous peoples' organizations and networks is to join support agencies to push for the Convention's ratification and recognition of indigenous peoples during the Second International Decade of the World's Indigenous People.

Local Curriculum Development Project

Carried out by IMPECT from 1998-2000 with ILO support, the project aimed to study and compile indigenous knowledge and use it to develop learning curricula that would serve as a process for transmitting this knowledge. The project also intended to develop cooperation among communities, schools and various agencies to support the development of a form of education that meets the needs of indigenous and tribal communities.

Based on project reports, among the most important lessons learned was that developing and using local curricula is a way for indigenous and tribal peoples to lobby for education alternatives at the policy level. The curricula must cover every area and be truly in line with the community's way of life. The lessons learned were used to develop the Footholds in the Hills Project, a pre-school program still being implemented today.

Highland Mapping Development and Biological Management Project

The project, undertaken from 2004 to date, is a collaborative effort between IMPECT and the Forest Peoples Programme (FPP) with the participation of Karen and Hmong community networks in Chomthong District, Chiang Mai province. It is a pilot project that requires indigenous and tribal peoples to practice their concepts of living with the forest and to develop community maps using the GIS system. The map is then used as a tool to negotiate with the government for recognition of their rights and to learn and manage biological resources themselves.

The project has succeeded in building confidence in communities as they can prove that they are able to live well in the forest. Their customary resource use and management are expressed in maps, which are made according to international standards. A handbook on mapping and a project report on the research results further emphasize the concept of living with the forest and sustainable resource management by the community. The project is being expanded to other indigenous and tribal groups in other areas.

The Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) is a pioneering indigenous organization founded in 1992.

During the decade, its work focused on cultural revival and promotion, strengthening of community organizations and inter-ethnic networks, and livelihood support. It has achieved significant gains in the following:

- Empowerment of grassroots organizations;
- Research on Natural Resource Management and its dissemination to government organizations;
- Establishment of community cultural centers;
- Assistance for delivery of basic education to indigenous areas and support for bi-cultural education;
- Development of traditional curriculum and learning materials for indigenous and tribal peoples (designed to revive their traditional knowledge);
- Assistance to village livelihood development work such as support for seed banks;
- Promotion of community-based health care including assistance for construction of herbal gardens;
- Revival and promotion of "traditional sustainable agriculture and integrated farming";
- Capacity building/leadership training in indigenous communities;
- Holding of fora and related activities that address the documentation and transmission of culture of each ethnic group;
- Promotion of gender and development and establishment of an indigenous women's network;

- Assistance to indigenous and tribal peoples in their application for Thai citizenship;
- Human Rights and HIV/AIDS awareness raising programs.

Wisdom Festival and Culture Fair

Implemented by indigenous and tribal groups, this is a project organized at the ethnic and inter-ethnic levels. The groups hold festivals, which celebrate their indigenous cultures, reinforcing their pride in their local wisdom and ethnic identity. The events are also a way of generating understanding and acceptance among the general public of the indigenous ways of life.

Ongoing since 1994, the project has helped in training leaders on cooperative work and in teaching children and youth about their cultures. Ethnic elders support the process of transmitting their knowledge and values to the new generation. The festivals create a sense of destiny that inspires leaders and sages in each community to go back and organize a cultural learning process in their own communities.

Forum for Highland Ethnic Peoples Procession

First organized in 1999 as a result of social and political changes in Thailand, the forum was a way by which indigenous and tribal peoples could learn about these changes and how to respond to them. This resulted in the formation of the Indigenous and Tribal Peoples' Procession, which developed four main strategic plans: (1) to develop indigenous and tribal organizations and networks; (2) to develop an information system; (3) to develop cooperation and create alliances; and (4) to develop a warning mechanism for human rights violations.

The forum served as a way to establish alliances and cooperation among ethnic groups in organizing, campaign and lobbying. Some of their activities involved lobbying for policy change, setting up the Indigenous and Tribal Peoples Day in Thailand and establishing an institute to develop the potential of the next generation of tribal leaders.

13 Thai Ethnic Groups Forum

In 1992 a number of tribal leaders set up the 13 Thai Ethnic Groups Forum, which resulted in a learning network among leaders of the Karen, Khamu, Sakai, Palaung, H'tin, Shan, Hmong,

Mien, Mlabri, Lahu, Lisu, Lua, and Akha. They came out with a Declaration of the Spirit of the 13 Thai Ethnic Groups and submitted proposals to the government, other organizations and their own communities.

The joint forum of the 13 Thai Ethnic Groups continues to be held to date at the tribal and inter-tribal levels. The fora serve as a venue for indigenous peoples to discuss their problems and create greater awareness and understanding of their situation among the Thai people. These have opened up opportunities for more cooperative work with NGOs working in highland communities.

Indigenous Women's Network

Tribal women have few opportunities to become either official or unofficial leaders, which prompted development workers to develop and raise their status and potential. They subsequently organized periodic learning forums for tribal women until 2001 when the Indigenous Women's Network in Thailand was formed.

The Network is made up of women leaders from six tribes, namely, Karen, Hmong, Mien, Lahu, Lisu and Akha. It carries out activities to raise the potential of tribal women in the areas of leadership and supplemental livelihoods at the community level. Many indigenous and tribal women leaders have gained acceptance and enhanced status at national and international fora, especially in the arena of human rights and environment. In addition, two indigenous women were included in the group of one thousand women nominated for a Nobel Peace Prize.

The activities of the Indigenous Women's Network in Thailand have brought about changes in the quality of life at the family level. Women tribal leaders are better able to stand shoulder to shoulder with their male counterparts. The Network leaders have also conducted researches on herbal and indigenous medicine, which has led to greater acceptance of tribal herbal doctors among academics and advocates of alternative medicine. However, mechanisms are needed to further advance the work of the Indigenous Women's Network, especially in raising women leaders' potential.

Indigenous Knowledgeable Peoples (IKP) Network

In 2002, sages from six tribes formed the Indigenous Knowledgeable Peoples Network with support from the Social Investment Fund to produce information materials on local wisdom.

The Network also developed mechanisms to expand its work jointly with educational institutions that needed to develop curricula for ethnic studies, such as the Chiang Rai Rajabhat Institute. This eventually resulted in the organization of cultural and indigenous wisdom festivals held at the local, national and Mekong region levels.

The IKP Network is an important mechanism for bringing local wisdom to bear on development and for managing the process of transmitting indigenous and tribal knowledge to the next generation. This has engendered pride among indigenous knowledge holders and created a current of awareness in learning at the community level. Further it has widened the space for indigenous and tribal peoples to learn about their own history and culture with young people in educational institutions. It has shown that sages and elders have an important role in developing networks for learning about indigenous knowledge at the regional and international levels.

Assembly of Indigenous and Tribal Peoples in Thailand

Started by a group of individuals belonging to eight ethnic groups in northern Thailand, the Assembly of Indigenous and Tribal Peoples in Thailand has as a primary goal to create a peoples' movement that would look for solutions to common issues faced by ethnic communities. Its establishment has empowered indigenous and tribal groups to negotiate with the government and its officials who lack understanding and concern for their problems.

The AITT was able to set up a mechanism for cooperation between the government and highlanders and to push to a certain extent for policy change on forestlands and legal status. The resulting agreements were put to good use in protecting human rights and defending victims, and prodding government personnel to be more sensitive in carrying out work that impacted on indigenous communities. A large number of indigenous and tribal peoples were also finally conferred with legal status.

Regional and International Indigenous and Tribal Peoples' Networks

The Asian Indigenous Peoples Pact (AIPP), Indigenous Knowledge and Peoples Network (IKAP) and International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF) work at the regional level. These networks open opportunities for

indigenous and tribal peoples in Thailand to attend meetings and trainings that enable learning and sharing of experiences on issues relevant to them. They also assist indigenous representatives in joining international indigenous processes, such as the Permanent Forum on Indigenous Issues and the International Indigenous Forum on Biological Diversity, to lobby for indigenous rights at the international level.

Indigenous Peoples' Movement

It was largely in response to the discriminatory policies and programs carried out by the government that the indigenous movement in Thailand emerged. The major problems of resource use conflicts and stateless status brought indigenous and tribal peoples together to forge a broader unity for recognition of their rights. The indigenous movement was particularly strong and confrontational during the 1990s.

In April-May 1999 thousands of people from at least seven ethnic minority groups in Thailand staged a protest in front of Chiang Mai City Hall, demanding the government to recognize their right to Thai citizenship as well as access to their farmlands and community forests. The rally did not only put pressure on the government but also succeeded in drawing regional and international attention to the long-neglected problems of the marginalized indigenous and tribal peoples in Thailand and state policies towards them.[25]

One of the specific demands of the 1999 protest was for the government to review the process of issuing citizenship cards, citing the slow process entailed and cases of corruption by local officials. The application process requires indigenous persons to go through two levels of officials—subdistrict and district—to prove they can be granted citizenship. Such a process reportedly allowed officials at both levels to extort money from village people, e.g., to get the blue card, one had to shell out 3,000 baht (US$81) and for a Thai citizenship card, 40,000 baht ($1,080).[26] The protesters urged that rather than vesting authority with local officials to grant citizenship, a joint committee should be established comprising village people's representatives and academics to address concerns on citizenship.[27]

A report by Northern Farmers Network Secretary General Somchai Sirichai[28] in 1999 showed that 870,000 ethnic people had then registered with the Ministry of Interior, of whom about 500,000 either had the "blue highlander I.D. [identification] card" or the Tor Ror 13 or temporary house registry deeds.[29] Many of these indigenous peoples sought Thai citizenship identity cards to be able to own their land, travel freely outside their provinces without having to get permission from the provincial governor, and to have access to social welfare services and employment opportunities.

> "But we have learnt many valuable lessons from the demonstration. Village people feel stronger although we realise that the struggle in the future is going to be more difficult. So we are making preparations for a long and hard struggle for our rights. We feel that it is better to place hope on strengthening the people's movement rather than trust the State. We are trying to seek ways for Thai society to better understand the situation of ethnic communities while also working to revise the framework of the laws and policies that are biased against us."
>
> Somchai Sirichai (leader of the NFN)

Among the peoples' organizations that have emerged in northern Thailand to address this and other problems of indigenous peoples are the Northern Farmers' Network, Assembly of Indigenous and Tribal Peoples in Thailand[30] and Inter Mountain Peoples Education and Culture in Thailand Association.[31] Working together they developed and implemented projects and programs that raised the capacity of the indigenous and tribal peoples to use their traditional knowledge in claiming their land rights and in negotiating with government authorities and other institutions (such as tourism agencies) that enter their territories. They have gained the support of some academic scholars who have written about their problems and even joined them in their protests against government policies.

Although these have yet to fully take root, these organizations have also succeeded in helping put into place self-governing rules on education, health, culture and natural resource management

in a number of indigenous villages. Many community organizations, however, need to be further strengthened and a program set up to address the transmission of indigenous knowledge.

Conclusion

During the International Decade for the World's Indigenous People, policies affecting indigenous and tribal peoples did not improve, as the government remained elusive in recognizing indigenous rights. Most of the existing laws and policies do not sufficiently protect them, and some in fact are obstacles to the exercise of their basic human rights.

The government has continued its policy to assimilate indigenous and tribal peoples into mainstream Thai society. Thus its programs are directed towards transforming them into Thai nationals without regard for their traditional heritage and without giving them the right to use and have access to their resources.

As far as could be found, only a few projects for indigenous communities were specifically undertaken by local agencies in accordance with the Decade's program of action. Many of the development programs implemented by the government and UN agencies were dispersed, fragmented and short-term. While seen by the government as increasingly important, programs to improve indigenous conditions are generally far removed from mainstream development efforts. Those carried out by the government and civil society groups are hampered by weak national policies. A strong policy recognizing and supporting indigenous rights, such as those to citizenship and to lands, territories and resources, is basic and forms the foundation for solving indigenous problems.

While noteworthy programs have been implemented for the indigenous peoples, many appear to be quick-fix solutions, addressing their poverty situation but falling short in sustaining improved conditions. Many failed to work towards revitalizing traditions and important local institutions, which are essential in improving indigenous conditions over the long term. The programs have responded more to the missions of funding and implementing agencies rather than in meeting the aspirations of indigenous and tribal peoples.

Another lesson that needs attention is the consideration of the heterogeneity of indigenous and tribal groups, each having its unique cultural traditions. The work of IMPECT has been found successful as it operates in particular settings especially in developing curriculum for each ethnic group.

While programs are under way, policy support needs to be in place. Otherwise these will remain limited in enforcement and coverage.

Recommendations

An analysis of the problems encountered by indigenous and tribal peoples during the Decade only indicates the urgency for policy reforms particularly on their citizenship status. This is fundamental to any program or activity designed to uplift their situation. The government should improve its process for indigenous and tribal peoples to obtain Thai nationality or legal status. Legal status will facilitate their access to basic social services and exercise of basic rights.

Policies and a program of action should also be developed to support the recognition and exercise of indigenous rights in line with the new Constitution and international agreements to which Thailand is a signatory. These should be suited to their needs and should thus be made with their participation, particularly those pertaining to human rights protection. The government must create awareness among the Thai population for the acceptance of ethnic and cultural diversity as part of Thai and global society.

On their part indigenous and tribal peoples in Thailand can also use international tools and laws to work for the recognition of their rights and the development of the highlands by their own communities. Many indigenous organizations have developed various kinds of mechanisms to support their development, including at the local, watershed, tribal and intertribal levels, and alliances with related organizations.

But at the same they must develop alternative tools to face new problems and needs. Some of the new areas to look into are:

(1) the development of a highland ethnic health network to address general health problems of indigenous and tribal peoples; (2) organization of a National Highlanders Assembly or Indigenous and Tribal Peoples Assembly as a mechanism to develop policies and cooperation at par with government policy mechanisms; and (3) setting up of an institution to manage the knowledge of indigenous and tribal peoples for practical use by each and among ethnic groups at the community, watershed and national levels and to develop a new generation of indigenous and tribal leaders.

Endnotes

[1] The author would like to acknowledge Leah Enkiwe-Abayao for her valuable and significant inputs on this research.

[2] Chupinit Kesmanee. The promotion of ethnic cultures in Thailand: A Case Study of Ethnic Highlanders. Paper presented at the "Asia-Europe Seminar on Ethnic Cultures Promotion." September 18-20, 2001 in Chiang Mai, Thailand.

[3] Physicians for Human Rights. No Status: Migration, Trafficking and Exploitation of Women in Thailand. June 2004. <www.phr.org> (Accessed January 31, 2007).

[4] Human Trafficking.org. The Situation of Hill tribe Minorities in Thailand. May 29, 2006. <www.humantrafficking.org/updates/351> (Accessed February 2, 2007).

[5] Inter-Mountain Peoples Education and Culture in Thailand Association (IMPECT). Narrative Report May 1996 to April 1997.

[6] Somchai Sirichai. Ethnic Minorities struggle for rights. Watershed Vol. 5 No.1 July -October 1999.

[7] Ibid. Article 61 of the Land Act of 1930 states that authority to revoke the land titles rests with the provincial governor.

[8] Ibid.

[9] Prasit Leepreecha. Politics of Ethnic Tourism in Northern Thailand. The Workshop on "Mekong Tourism: Learning Across Borders." Social Research Institute, Chiang Mai University. February 25, 2005.

[10] Rika Fujioka. (2002).

Case Study on Education Opportunities for Hill Tribes in northern Thailand. Food and Agriculture Organization (FAO) of the United Nations.

Regional Office for Asia and the Pacific. Bangkok, Thailand.

[11] Ibid.

[12] See a more extensive report in the Inter-Mountain Peoples Education and Culture in Thailand Association Narrative Report for the years May 2001 to April 2002.

[13] Puginier, Oliver. (2002) Hill tribes struggling for a land deal: Participatory land use planning in northern Thailand amid controversial policies. Dissertation, Humboldt University of Berlin. <http://edoc.hu-berlin.de/dissertationen/puginier-oliver-2002-05-16/PDF/Puginier.pdf>.

[14] Royal Thai Government. 1997. 2nd Master Plan for Development of Highland Populations, Environment and Control of Narcotic Crops. p. 5. Cited in PUGINIER (2002).

[15] Chingya Luithui. (2006) UNDP- RIPP Natural Resource Management Country Studies: Thailand Report. (Unpublished final report).

[16] Ibid.

[17] Chingya Luithui. (2006) UNDP- RIPP Natural Resource Management Country Studies: Thailand Report. (Unpublished final report).

[18] Ibid.

[19] Yanuar Sumarlan. How Participatory is Thailand's Forest Policy? <http://www.iges.or.jp/en/fc/pdf/report11/05Thailand.pdf> (Accessed January 20, 2007).

[20] Ibid.

[21] Verena Brenner, et. al. Thailand's Community Forest Bill: U-Turn or Roundabout in Forest Policy? SEFUT Working Papers Series 3. Freiburg, Germany. January 1999.

[22] Yindee Lertcharoenchok. Searching for Identity. Step-by-Step, (Newsletter from the UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region). Fourth Quarter 2001, Issue 5.

[23] Ibid.

[24] Chupinit Kesmanee. The promotion of ethnic cultures in Thailand: A Case Study of Ethnic Highlanders. Paper presented at the "Asia-Europe Seminar on Ethnic Cultures Promotion." September 18-20, 2001 in Chiang Mai, Thailand.

[25] Yindee Lertcharoenchok. Searching for Identity. Step-by-Step Newsletter on the Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region, Fourth Quarter 2001 Issue 5.

[26] Somchai Sirichai. Ethnic Minorities struggle for rights. Watershed Vol. 5 No.1 July-October 1999.

[27] Ibid.

[28] The Northern Farmers' Network (NFN) was established in January 1995 in Chiang Mai with member communities throughout the four large river basins of Northern Thailand. The NFN links forest-dwelling communities – especially those with community forest practices – towards strengthening local community control over the use and management of natural resources.

[29] Somchai Sirichai. Ethnic Minorities struggle for rights. Watershed Vol. 5 No.1 July-October 1999.

[30] The Assembly of Indigenous and Tribal Peoples in Thailand (AITT) was founded on July 1998. IMPECT's narrative report of May 1998-April 1999 disclosed that this was established in response to policy problems on traditional lands among the ITPs.

[31] The Inter-Mountain Peoples Education and Culture in Thailand Association is an indigenous organization founded and staffed entirely by representatives of indigenous communities in Thailand. It focuses its work on various aspects such as environment, education, culture and health with seven indigenous groups found in the northern provinces of Thailand: Akha, Hmong, Lahu, Lisu, Lua, Karen and Mien. It has also helped form networks at various levels on indigenous health and women.

Bibliography

Andaman Pilot Project. <www.cusri.chula.ac.th/andaman/th/about/about02.htm> (Accessed 20/04/2006).

Asia Center for Human Rights (2005). *"Thailand: Not so smiling to its indigenous hill tribes."* ACHR Review. <http://www.achrweb.org/review2005.htm> (Accessed 2/11/07).

Brenner, Verena, et al. *Thailand's Community Forest Bill: U-Turn or Roundabout in Forest Policy?* SEFUT Working Papers Series 3. Freiburg, Germany. January 1999.

Buergin, Reiner (2000). *"'Hill Tribes' and Forests: Minority Policies and Resource Conflicts in Thailand."* SEFUT Working Paper no. 7. <http://www.sefut.uni-freiburg.de/pdf/WP_7e.pdf> (Accessed 12/15/06).

Chingya Luithui. *"Research Documents on Indigenous and Tribal People and Natural Resource Management."* Compiled February 2006.

Department of Provincial Administration, Ministry of Interior (2000). *"Regulations of the Central Registration Bureau for Consideration of Registering Personal Legal Status in the Census Roll for Highland Residents."*

Fujioka, Rika. (2002). *Case Study on Education Opportunities for Hill Tribes in Northern Thailand*. Food and Agriculture Organization (FAO) of the United Nations. Regional Office for Asia and the Pacific. Bangkok, Thailand.

Hill Tribe Welfare Department. (2002) *Highland Population Survey.* (2002). Chiang Mai: Hill Tribe Welfare Department, Thailand.

Human Trafficking.org. *The Situation of Hill Tribe Minorities in Thailand*. May 29, 2006. <www.humantrafficking.org/updates/351> (Accessed February 2, 2007).

IMPECT Association (2002). *"Proceedings of the Meeting to Build Understanding on the Content of ILO Convention 169 Concerning Indigenous and Tribal People in Independent Countries."* 5-7 June 2002.

IMPECT, (2002).*"Workshop Report on Indigenous Practices of Sustainable Land and Natural Resource Management in Asian Highlands Chiang Mai," Thailand,* 2-5 December 2002.

Inter-Mountain People Education and Culture in Thailand Association (IMPECT). *Annual Reports* for the years 1995-2004.

Inter-Mountain People Education and Culture in Thailand Association (IMPECT) & the Forest People Programe (FPP). *Customary Use of Indigenous Knowledge in Sustainable Biological Research Management by Indigenous Communities: Case Studies of Hmong and Karen*.

Jamlong Inthawong (2005). *"Situation of Human Rights Violations of Indigenous and Tribal People in Thailand's Highlands."* Published by IMPECT Association and IAITPTF. December 2005.

Kesmanee, Chupinit. *The Promotion of Ethnic Cultures in Thailand: A Case Study of Ethnic Highlanders*. Paper presented at the "Asia-Europe Seminar on Ethnic Cultures Promotion." September 18-20, 2001 in Chiang Mai, Thailand.

Krittiya Atchawanit (2004). *"Who Are the Aliens in Thailand? How Many Are There? What Kind of Database Can Provide an Answer."*

Leepreecha, Prasit. *"The Politics of Ethnic Tourism in Northern Thailand*." Paper presented at the Workshop on "Mekong Tourism: Learning Across Borders. Social Research Institute, Chiang Mai University. 25 February 2005.

Lertcharoenchok, Yindee. *Searching for Identity*. Step-by-Step Newsletter on the Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region, Fourth Quarter 2001 Issue 5.

Lohmann, Larry. (1993). *"Translation Politics: Villagers, NGOs and the Thai Forestry Sector Master Plan."* <http://www.thecornerhouse.org.uk/item.shtml?x=52224>.

Luithui, Chingya (2006). *UNDP-RIPP Natural Resource Management Country*

Studies: Thailand Report. Unpublished Final Report.

Ministry of Education(1999). *"National Education Act 1999."*

National Economic and Social Development Plan Advisory Council (2006). *"Proceedings of the Public Seminar on Monitoring and Readiness Preparation of the Public for Implementing the 10th National Development Plan in the Northern Region."* 16 August 2006.

National Human Rights Commission of Thailand (2004). *"1997Constitution of the Kingdom of Thailand."*

National Health Security Office (2002). *National Health Security Act."*

National Security Council (2006). *"National Master Plan on Development of Highland Communities, Environment and Drug Control."* 3rd period from 2002-2006.

Physicians for Human Rights. *No Status: Migration, Trafficking and Exploitation of Women in Thailand*. June 2004. <www.phr.org> (Accessed January 31, 2007).

Puginier, Oliver. (2002) *Hill Tribes Struggling for a Land Deal: Participatory Land Use Planning in Northern Thailand amid Controversial Policies*. Dissertation, Humboldt University of Berlin. <http://edoc.hu-berlin.de/dissertationen/puginier-oliver-2002-05-16/PDF/Puginier.pdf>.

Rattanaphorn Setthakul et al. *"Final Research Report on the Rights of Tribal Communities in the Northern Region of Thailand: Past and Present."* Thailand Research Fund, August 2001.

Registry of Highland Communities in 20 Provinces of Northern Thailand, Ministry of Social Development and Human Security, 2003.

Ritchie, Mark. *Evicted & Excluded: The Struggle for Citizenship and Land Rights by Tribal People in Northern Thailand*. Cultural Survival Quarterly. October 31, 2000. Issue 24.3.

Royal Thai Government (1998). *"Cabinet Resolution of 30 June 1998 on Land Occupation in Forest Areas."*

Royal Thai Government (2003). *"Cabinet Resolution of 26 August 2003 on Consideration of a Temporary Amnesty for Highland Groups and Communities that Live in the Highlands."*

Royal Thai Government (2005) *"Cabinet Resolution on the Implementation of the Strategy to Manage the Problem of Personal Legal Status and Rights,"*18 January 2005.

Sakda Saenmi (2003). *"Indigenous and Tribal People and Self-Development. Forum to Summarize Lessons Learned in Community Self-Development and the Community Organisation."* 7 December 2003.

Sakda Saenmi (2005). *"Concepts and Background of the Development of the Indigenous Knowledge Management Institute (IKMI) of the IMPECT*

Association." 1 March 2005.

Sakda Saenmi and team (2001). *"Experiences and Lessons Learned from the Development of Local Curricula for Thai Mountain People."* October, 2001.

Sarawut Prathumrat (2002). *"Articles of ILO Convention 169 and Related Thai Laws."*

Sarawut Prathumrat (2005). *"International Laws and Agreements Related to the Rights of Tribal People in Thailand."* Published by IMPECT, HPT and IAITPTF. December 2005.

Somchai Sirichai. *Ethnic Minorities Struggle for Rights*. Watershed Vol. 5 No.1 July-October 1999.

Sumarlan, Yanuar. *How Participatory is Thailand's Forest Policy?* <http://www.iges.or.jp/en/fc/pdf/report11/05Thailand.pdf> (Accessed January 20, 2007).

7

Vietnam: Bringing Ethnic Minorities into Mainstream Development

Luong Thu Oanh*

Introduction

Like many of its neighbors in Southeast Asia, the Socialist Republic of Vietnam (SRV) did not officially declare the International Decade for the World's Indigenous People from 1995-2004 at the country level. This, however, does not preclude us from conducting an assessment of the Decade in Vietnam, a country with a significant population of indigenous peoples or, as they are called there, ethnic minorities. For this paper, ethnic minorities is used over indigenous peoples since this is what is accepted at least among government, civil society and scholars in Vietnam concerned with indigenous issues.

This study aimed to gain a better understanding of what transpired in Vietnam particularly on the situation of the ethnic minorities during the United Nations-proclaimed Decade. Specifically it

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looked into key policies or related mechanisms that address or affect ethnic minority concerns. It also reviewed major programs and projects conceived and implemented during the period by government agencies and other key institutions. Since there was no official pronouncement by the SRV, the study did not follow the structure of the UN Declaration and program of action for the Decade. It instead looked into major areas the researcher identified as critical issues and concerns of the ethnic minorities.

Time and budgetary constraints form part of the limitations of the study. Conducted in six months, the study primarily used documents, agency and institution reports and a few secondary sources. A periodic fieldwork to Ha Giang and La Song provinces was done in March-April 2006 to get a general picture of the conditions of ethnic minorities including what they think of government programs especially implemented for them. While the study intended to consult all UN agencies and other international institutions operating in the provinces where fieldwork was conducted, it was not possible because of bureaucratic problems.

The draft report was written in Vietnamese and translated into English. The first draft was presented in Hanoi on July 19, 2006 at a National Consultation/Workshop participated in by key respondents and representatives of the agencies and organizations involved in the research. The consultation, conducted in Vietnamese, served as a venue to present and validate the research findings. It was instrumental in seeking comments and recommendations from participants for inclusion in the final report.

Ethnic Minorities

Vietnam is strategically located on the Indo-Chinese peninsula that connects the Asian mainland to Southeast Asia, making it a center of cultural exchange. A multiethnic country, Vietnam has 54 recognized ethnic groups, with the Kinh comprising the majority at 86.2 percent of the population. The rest are ethnic minorities who make up around 14 million or 13.8 percent of the total 83 million people.

Each ethnic group has its own distinct culture and traditions, creating a nation culturally rich and diverse. This is manifested in part in the presence of eight different language groups to which the 54 ethnic groups belong (see Table 1).

Table 1. Ethnic and Language Group

Language Group	Ethnic Group
1. Viet-Muong	Chứt, Kinh, Mường, Thổ (4 groups)
2. Tay-Thai	Bố Y, Giáy, Lào, Lự, Nùng, Sán Chay, Tày, Thái. (8)
3. Mon-Khmer	Ba na, Brâu, Bru-Vân kiều, Chơ-ro, Co, Cơ-ho, Cơ-tu, Gié-triêng, Hrê, Kháng, Khmer, Khơ mú, Mạ, Mảng, M'Nông, Ơ-đu, Rơ-mặm, Tà-ôi, Xinh-mun, Xơ-đặng, Xtiêng (21)
4. Kadai	Cờ lao, La chí, La ha, Pu péo (4)
5. Mong-Dao	Dao, Mông, Pà thẻn (3)
6. Malayo-Polynesian	Chặm, Chu-ru, Ê đê, Gia-rai, Ra-glai. (5)
7. Han	Hoa, Ngái, Sán dìu. (3)
8. Tibeto-Burman	Cống, Hà Nhì, La hủ, Lô lô, Phù lá, and Si la[1] (6)

The ethnic minorities are dispersed throughout the country, inhabiting wide portions of the midland, coastal and mountain regions. They are concentrated mostly in the mountain areas, particularly the Northern Mountains and Central Highlands. Different ethnic groups intermingle closely and no one group possesses its own private territory. Two or three groups can be found in the same village, and through everyday relations, learn each other's language, customs and traditions.

Differences however mark the living conditions of the ethnic groups—both between the majority and the minorities, and among the latter. While the situation of the ethnic minorities has generally improved with Vietnam's rapid economic growth in the last decade, their current level of development is still considered low. A wide gap persists between their social and economic life and that of the Kinh. The ethnic minorities account for nearly 29 percent of the poor people in Vietnam. In some of the regions where they live, the poverty rate in 2005 was reported to be 4-5 times higher than the national average.

There are historical, social and natural factors that explain why many of the ethnic minorities remain poor. They are mostly subsistent farmers who suffer low farm productivity, low development rate, poor infrastructure and limited access to education. Their farm cultivation is not stable, leading to an uncertain life. A number of nomadic hilltribes practice shifting cultivation, which can lead to poverty and attendant illness. Some ethnic minority communities are also geographically isolated, hampering their access to basic social services. In general the people in the lowlands have a higher level of economic and social growth compared to those living in the remote highlands. These are among the fundamental roots for the inequality among the ethnic groups.

Government Policies on Ethnic Minorities

This situation is recognized in the 1992 Vietnam Constitution, which provides for a policy of comprehensive development to improve the living conditions of the national minorities. The Socialist Republic of Vietnam follows a policy of equal rights of all ethnic groups and considers it a decisive factor for the sustainable development of the country.

Amended four times since 1946, the Vietnam Constitution has retained through its various refinements the principles of equality, solidarity and mutual assistance. It declares:

> *The State carries out 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 fine customs, habits, traditions and culture.*
>
> *The State carries out a policy of comprehensive development and gradually raises the material and spiritual living conditions of the national minorities.* (Article 5)

Other Articles provide specifically for ethnic minority development:

> *Priority is given to the programs of health care for highlanders and ethnic minorities.* (Article 39)
>
> *The Nationalities Council studies and makes proposals to the National Assembly on issues concerning the nationalities; supervises and controls the implementation of policies on nationalities, the execution of program and plans for socio-economic development of the highlands and regions inhabited by ethnic minorities. (Article 94)*

The Socialist Republic of Vietnam implements these policies in all political, economic, cultural and social areas of the nation's life and incorporates them into national law.

State Institutions

The Socialist Republic of Vietnam has specific national and local institutions mandated to oversee ethnic affairs. A National Council, elected by the Vietnamese National Assembly in accordance with the Constitution (Article 94), is in charge of studying and making recommendations on ethnic issues to the National Assembly. It further monitors the implementation of policies and socio-economic development programs in mountain and ethnic minority areas. The government consults the Council before making any decision on ethnic concerns.

At the ministerial level is the Committee for Ethnic Minority (CEM) that is directly responsible for the development of ethnic minorities and mountain areas. Its earliest predecessor, the Department for Ethnic Minority Affairs, was established as early as 1946 under the Ministry of Interior, and in 1955 it became a sub-department under the Internal Affairs Department of the Office for the Prime Minister. It turned four years later into a ministerial-level agency called the Committee for Ethnic Minority Affairs, which today is the CEM.

The Committee for Ethnic Minority performs the following ministerial duties and mandate:

- To carry out general studies and develop policies on ethnic minorities and mountain areas;
- To coordinate with ministries, relevant bodies and mass organizations on the development of specific policies on ethnic minorities and mountain areas;
- To direct, monitor, and oversee implementation of policies on ethnic minorities and mountain areas by concerned ministries and bodies;
- To develop specific projects and programs on ethnic issues and socio- economic development in mountain areas delegated by the government.

The CEM operates at the central and local levels. At the national level it has three units: those performing state management functions (such as the Department of General Management, De-

partment of Policies on Ethnic Minority Affairs, Department of Policies on Mountainous Area Affairs), professional units (Research Institute for Policies on Ethnic Minority and Mountainous Area Affairs, Ethnic Minority and Mountainous Area Affairs, among others), and entrepreneurs.

At the local level the CEM, which reaches down to the commune system, works through the following offices:

- Department of Ethnic Minority Affairs of the province or city (if ethnic minority population is above 100,000);
- Department of Ethnic Minority and Mountainous Area Affairs of the province or city (if ethnic minority population is from 50,000 to 100,000);
- Office of Ethnic Minority Affairs or Office of Ethnic Minority and Mountainous Area Affairs under the People's Committee or Council of the province/city (if ethnic minority population is under 50,000);
- If ethnic minorities comprise the majority population of the commune or district, a full-time cadre is assigned to take charge of the Ethnic Minority and Mountainous Area Affairs under the People's Committee or Council at the local level.

Vietnamese citizens belonging to ethnic minorities can stand for elections to the National Assembly and People's Councils. At present, many representatives of ethnic minorities hold important positions, even in the highest one, the National Assembly, and in agencies of the government.

Eighty-six of the 498 deputies in the 11th National Assembly (2002-2007 term) are from ethnic minorities. This accounts for 17.3 percent, which is higher than the 13.8 percent proportion of ethnic minorities to the whole population. Their number is also relatively high in People's Councils. They comprise around 14 percent of deputies at provincial, 17 percent at district and 19 percent at commune levels. The figures are much higher in mountain and ethnic regions. Ethnic minority members make up 31 percent of the commune staff in the Central Highlands provinces.

Table 2: Ratio of Ethnic Minority Members in National Assembly and People's Councils

National Assembly 2002-2007		Total	Ethnic Minority Members	Ratio
		498	86	17.27%
People's Councils	Province	3.462	489	14%
	District	18.748	3.192	17%
1999-2004	Commune	219.438	42.500	19%

Government Programs for Ethnic Minorities

In the effort to narrow the development gap with the mainstream population, the government has tried to create favorable conditions for the development of the ethnic minority people. In 2004 total investments in their areas reached around VND38,000 billion, accounting for 33.5 percent of the country's development investments. The government's pro-active policy has also taken the form of socio-economic programs specifically designed for ethnic minorities and mountain areas. Among these are the following:

- Plan of Action 122 to implement the 7th Party Plenum (9th Congress) Resolution on ethnic affairs;
- Program 135 on socio-economic development in specially difficult communes of ethnic minority, mountain and remote areas;
- Decision 132 on priorities for infrastructure development and allocation of cultivated and residential land;
- Decision 134 in 2004 on providing cultivated land, housing and other needs for poor ethnic minorities;
- Decree 20 in 1998 and Decree 02 in 2002 on tax incentives for agricultural products, financial assistance for en-

terprises, price subsidies for essential commodities such as salt, medicine, fertilizer, writing paper for ethnic minority people;

- Program 327 on forest development and habitat protection in mountain areas;
- Programs to prioritize training and employment of ethnic minority staff; achieving universal education, development of boarding schools, admission of ethnic minority students into universities and vocational training schools; improvement of free medical clinics for ethnic minorities and assistance in cultural and information services;
- Settlement and production for ethnic minorities with shifting cultivation;
- Promoting cultural preservation and development in minority areas.

The government has also implemented geographically targeted programs for the Central Highlands (2001-2005 Plan) and the poorer provinces in the Northern mountain region (Decision 186/2001/QD-TTg, 2001) and the Mekong Delta (Instruction 173/2001/QD-TTg, 2001).

This report looks into some of these policies and programs to see how far these have gone to raise the living standards of the ethnic minority people. Given focus are those aimed to improve their access to social services, in particular health and education, land and forest development, poverty reduction in their most disadvantaged communities, and efforts at cultural preservation and development. The program and policy analysis includes the study's findings on how the people themselves view these programs and the impacts on their lives and communities.

Social Services

Health Care

Health is a priority for development in Vietnam. The government has established a wide network of health care throughout the country and has succeeded in enforcing health policies in all hamlets. About 93.5 percent of communes in the ethnic minority and mountain areas have health care stations, higher than the national rate at 90 percent. Most of these health stations now have doctors. Some 95 percent of minority children have also been vaccinated against six diseases through extended vaccination programs.

Part of the government's health care program is a health insurance system, which provides free medical examination and treatment for the poor, and among the priority are the ethnic minorities. This service has increased the number of ethnic minority people with access to the local health system by three to four times, and in some places even higher.

A June 2003 report on a World Health Organization study conducted in Vietnam cited the free services provided under the public health care system in remote communes, which are mainly populated by ethnic minority groups. In the northern province of Cao Bang, WHO noted that some district hospitals successfully made use of the health insurance for the poor to meet the medical needs and improve health care of the ethnic minority people. Although limited, the essential medicines and health services were given free for all the lower income groups at the commune level.

Other positive actions the WHO report commended were the following:

- There is one clinic in each commune;
- The number of provincial and district hospitals and of hospital beds in provinces with ethnic minority groups is higher than the national average;
- There is at least one health care worker in a rural commune/ hamlet;

Despite the great strides made however, the current health care system meets only with modest demand. As Health Minister

Tran Thi Trung Chien has stated, Vietnam's health program faces challenges as demand increases with economic growth, and the gap between rich and poor widens. Although the national budget for health services rises annually, it is insufficient to keep up with local needs. Further the financial policies and mechanisms to realize this are not always suitable and sustainable. The Ministry of Health has been able to fully equip only 65 percent of the provincial health care system and to satisfy a mere 20 percent of local medicine requirements.

The quality of medical services is also low and weak, and a lack of management and professional capacity and staff exists at both local and national levels. There are few qualified ethnic minority health practitioners. One reason is the lack of incentives available to them to upgrade their capacities or to serve in their hometowns where they have to cope with low salaries, a difficult environment and limited opportunities for further training.

Similar weaknesses were observed by the WHO study:

> *In the Central Highland, the public health care systems are free for all ethnic groups. However, the sum of all inputs from this service is just enough for the basic medical expenditures. Lack of local medical staff is the critical question. There is a tendency that only poorly trained doctors are taking care of poor patients with the low health care service quality in the districts where the minority ethnic groups live while most of the professional staff is moving to those hospitals with good potentialities which serve the rich patients.*
>
> *WHO adds that every factor that seems to work against the minorities' social development and welfare, such as low educational level, severe weather conditions and geographical distance, contributes to limit their access to health services and to their poor health status.*

This is clearly evident in the areas of maternal and children's health care and infectious diseases. Compared to the lowland and national conditions, the health of pregnant ethnic minority women and mothers appears to be more precarious as shown in the following table. They undergo more pregnancy and birth difficulties and have greater death rates. Because of a lack in health care

staff, birth cases assisted by local midwives still stand at 11 percent. It is the main cause of death for mothers because of the harm and danger from contamination and bacterial diseases.

Table 3: Maternal Health Care (2004)[2]

Rate	Nationwide	Plains	Mountainous Areas
Pregnancy management	84.8%	97.1%	**59.2%**
Pregnancy, more than 3 times	89.7%	97.8%	**64.6%**
Born with medical assistance	94.7%	99.9%	**79%**
Health assistance to mother after having baby	86.0%	96.0%	**70%**
Obstetrical difficulties	0.25%	2.1%	**4.1%**
Maternal death rate (per 10000 birth cases)	165/100,000	46/100,000	**411/100,000**

Many health problems also confront young children. Malnutrition among those under five years, low birth weight and infant death rate are all higher in mountain areas than in the plains. Local health care operated by midwives accounts for 33. 3 percent, which may explain the poor health care for children. To this is also attributed the low rate of mountain children using the health care system as compared to urban children.

Table 4: Health Care for Children (2004)[3]

Rate	Nationwide	Plains	Mountain Areas
Birth weight under 2500 grams	3.2%	2.9%	**4.3%**
Malnourished children under 5 years	26.6%	20%	**34%**
Infant Death Rate	22.2‰	17.1‰	**37.4%**

In addition, highly infectious diseases, particularly malaria and tuberculosis, are more common in ethnic minority regions. There are five times more people suffering from malaria and tuberculosis in mountain than in urban areas. Malaria is especially high in Lai Chau province at 1,724.30 per 100,000 population. Those newly infected with tuberculosis number approximately 84.69 cases per 100,000 population.

Ethnic minority peoples also face the spread of AIDS today. The rate of HIV/AIDS in mountain areas is from 127.79 to 150.76 per 100,000 population. The results of a 1995 survey showed that nationwide 93 percent of districts and 43 percent of communes had people living with HIV/AIDS. In some provinces the rate was 100 percent.

Many of the above problems are traceable to a low awareness among the ethnic minorities and local authorities on the importance of reproductive health and personal health care. This is compounded by the generally poor control system operations of primary health services, inadequate health data, and lack of collaboration between health care systems and other concerned agencies.

Sanitation and Water Supply

A related health concern is hygiene and sanitation in ethnic minority and mountain areas. To upgrade health and environmental conditions, the government has adopted policies and programs to address the need and access of rural and local communities to freshwater supply. One of these is Direction 200/TTg, which has widely benefited rural and mountain villages. The program builds ponds, water and electric pumps, tanks and other water storage that enables local people to have access to freshwater for household and other domestic needs.

Through the program the number of poor people supplied with freshwater in mountain areas, especially in ethnic minority communities, had increased to 2.3 million people in 2004. This brings to 4.9 million the total of rural people in the country who enjoy freshwater supply or nearly 51.5 percent of the entire population. Sixty-one of 64 provinces have formulated water supply plans, which has improved hygiene and environmental sanitation in villages.

Noting the program's benefits, Vice Chief of the Secretariat of the National Program on Freshwater, Hygiene and Environment in Rural Areas, Nguyen Xuan Hoe, declared:

> *The biggest achievement of the program is that the people's awareness of environment protection and hygiene lifestyle remarkably raised in all places, especially in remote mountainous areas.*
>
> *The water supply structures such as pond, well-drill, tank and water storage, hand water pump, electric pump, etc are to create access for the local peoples in 20 mountainous provinces to freshwater, cut down the burden of water collection for women and children. There are more than 400 self-flown water systems (using the water from mountain creek) in running which meet the people's demand of using freshwater…*[4]

The program however has encountered a number of difficulties. Although freshwater supply systems have been built, their sustainability is not ensured as fees are not collected, and, if any, these are so minimal as to be able to contribute significantly to maintaining the systems over the long term. Also hobbling program administration are bureaucratic problems and management overlaps between functional and governing bodies. The implementation process, for instance, is not clear on the local level. In Ha Giang, Tuyen Quang, it is the provincial department of Agriculture and Rural Development that administers the program, while in some provinces it is the Department of Planning and Investment, and elsewhere, the district authorities.

One of the most pressing concerns is how to keep the structure in the long term. The commune management is weak and loose, and the local people have a low awareness of maintaining and preserving public property. If a water container leaks, it has no system for repair and becomes not only useless but also pollutes the environment.

In addition the program requires vast financial resources in order to attain all its objectives. The national budget allocation and capital mobilization have met only six percent of the proposed requirements. The program is not able to mobilize local resources

as government investment policies and mechanisms are not suited to the social and economic conditions of the target area.

To promote the program and ensure freshwater supply and good sanitation for local and ethnic minority people, all concerned agencies at different levels have to define the program's objectives clearly especially in relation to quality and technical aspects. At the same time they should adjust, supplement and promulgate mechanisms, incentive investment policies, and capital mobilization from various resources to ensure its sustainability.

Finally more attention has also to be given to the protection of water sources. Vietnam has abundant natural water resources but current usage and practices badly point to the need for more effective utilization and management. The exploitation of surface water has exceeded the maximum level, and underground water has been degraded significantly both in quality and quantity. An emerging problem is pollution as almost all wastewater runs directly to the surface water system, seriously polluting water in many places.

Environmental Pollution

Environmental pollution, which includes air, water and soil, is another health problem that mountain regions face. The people in these areas use waste matter and night soil to fertilize cultivated areas, which has caused lands to be polluted and helped in the spread of stomach-related diseases. According to data from mountain hamlet clinics, the most common ailments among ethnic minority people, such as parasitic worms, diarrhea, dysentery, gynecological problems and eye ailments, are brought about by serious pollution of the environment and unhygienic living conditions.

The habit of keeping cattle, cows, horses near and/or under the stilt house, letting cattle loose to wander, discarding waste anywhere, using polluted water from streams and pools is largely the source for unhygienic conditions. Although freshwater supply has been extended to mountain areas, there are still those unable to avail of this resource. Personal habits also contribute to pollution problems. Almost half of households have toilets next to their houses, but by habit many urinate in streams and surrounding fields, bathe themselves and wash animals in the same rivers and streams, which severely pollutes surface water.

The apparent lack of awareness on good hygiene may be due to the practice by mountain authorities and other agencies of giving importance only to the big issues such as poverty alleviation, birth control or infrastructure building. Everyday concerns such as sanitation and public health care (preventing rather than curing diseases) are given cursory attention. Local people have not been motivated to help build and develop latrines, biogas tanks, bathrooms, breeding facilities far from houses, village road sanitation, or sewage adjustment.

The abuse of chemical fertilizers and pesticides is another factor polluting land and waters in mountain areas. This has increased chemical residues remaining in agricultural foods and products and has decreased biological diversity. New species of pesticide-resistant worms have appeared. The entry of imported repellants is poorly controlled, allowing great quantities to be smuggled in.

Many constraints beset the government's efforts in land and water protection. Although the country has a law on environment protection, its management system is inadequate, which includes a small management staff and low capacities. At the central level, the system does not correspond to actual needs and requirements, is too weak at the local level, and even absent in some important places.

Moreover, few investment policies and assistance activities have been developed for environmental protection in mountain areas. There is no policy, for instance, on waste and pollution management and rehabilitation as well as the finance systems to set these up.

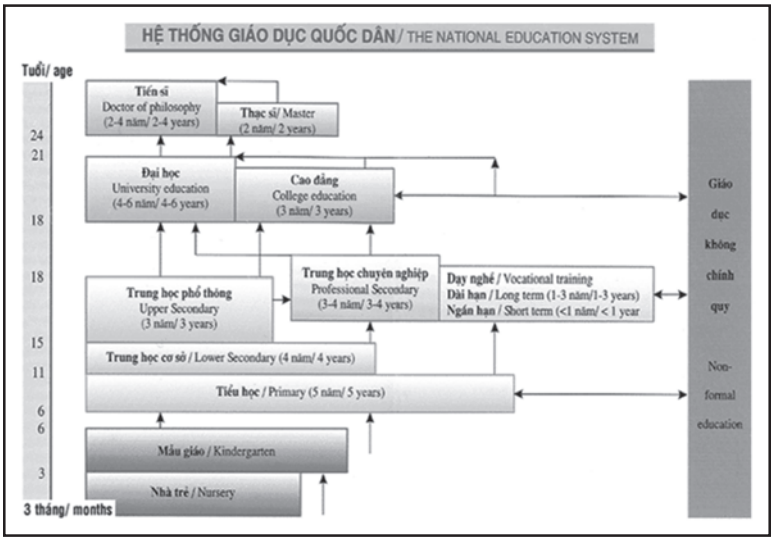
Education

Extending the benefits of education is another development priority of the Socialist Republic of Vietnam. For the ethnic minorities, this has translated into more schools, use of bilingual teaching in the primary and secondary levels, and a gradual increase in the number of ethnic minority students entering university.

In the last decade the target for school construction was reached in ethnic minority and mountain areas. The number of boarding

schools built was four times higher than in 1995. At present, 243 such schools serve the district and central levels and 519 day-boarder schools at the commune level. In all, these serve some 600,000 pupils.

Figure 1. National Education System in Vietnam



The government has established primary classes in all villages with no exclusion. As a result, ethnic minority children attending school have gone up to 85-90 percent. Many provinces further adopt the priority policy to admit such children to junior and senior secondary schools, with a 100 percent admission in public schools. These developments have helped to raise the number of 6- to 14-year-olds in school especially in the northern provinces of Ha Giang and Lao Cai.

The improvement is manifested not only in the growing number of students but also in the quality of education in the last five years. It is the policy of the government to provide free education, including textbooks and notebooks to ethnic minority children. Nearly 20 million textbooks have been given by the government to boarding schools. Six sets of textbooks and curriculum in eight ethnic languages, namely Thai, Hmong, Ede, Bana, Jarai, Hoa, Cham and Khmer, have been developed. Bilingual teaching in these eth-

nic languages and script addresses local learning needs and in the process promotes and further strengthens cultural identity. More than 95,000 pupils in 25 provinces enjoy bilingual education.

Aside from primary and secondary schooling, the government is creating more opportunities and priorities for their admission to institutions of higher learning. Some 1,000 ethnic minority students are nominated annually to technical/vocational schools and universities, and in some of these the state has opened special classes for them. Three pre-university schools[5] operate in the North, South and Central Vietnam where selected minority students can enroll for a year to prepare for university entrance examinations. Many provinces also adopt their own local policies, providing financial assistance of 1,000,000 to 3,000,000 VND annually to assist nominated students. Four university centers are currently operating in the North West, North East, Central Highlands and Mekong Delta.

But even among the ethnic groups there is uneven development in education. Ten ethnic minority groups do not have a single member who has pursued college or vocational training, and not one in 40 ethnic minority groups holds a postgraduate degree.

Limitations

An assessment on compulsory and quality education in the last decade shows that a wide chasm still separates remote areas and the plains in educational achievement. In terms of pupil and teacher number alone, the ethnic minority regions lag behind as depicted in the following tables. This shows that inequality in education still exists, and this is largely attributed to the lower level of development that ethnic minorities have to start from. All the fundamental factors to ensure sound education are weak or deficient in their regions. They suffer a lack of required school infrastructure and equipment, low teacher qualification, poor student learning capacity, lack of background knowledge at the primary level and high dropout rate due to economic difficulties.

Table 5. Number of Pupils in Vietnam from 1994 to 2004[6]

PUPIL	**17,806,158**	**17,869,398**	**17,925,422**	**17,796,998**	**17,578,497**	**17,246,299**
Primary pupil	**10,063,025**	**9,751,431**	**9,336,913**	**8,841,004**	**8,350,191**	**7,773,484**
Minority	1,650,847	1,647,710	1,630,332	1,584,087	1,476,401	1,438,385
Lower secondary pupil	**5,767,298**	**5,918,153**	**6,254,254**	**6,497,548**	**6,612,099**	**6,670,714**
Minority	571,860	667,240	748,551	799,656	858,303	913,090
Upper secondary pupil	**1,975,835**	**2,199,814**	**2,334,255**	**2,458,446**	**2,616,207**	**2,802,101**
Minority	98,399	121,386	148,312	183,227	224,510	264,624

Table 6. Number of Teachers in Vietnam from 1994 to 2004[7]

TEACHER	**614,862**	**646,862**	**679,516**	**710,506**	**742,284**	**762,266**
Minority	50,825	50,671	55,677	58,049	59,408	60,440
Primary	**340,871**	**347,833**	**354,624**	**358,606**	**362,627**	**360,624**
Minority	37,178	35,802	39,289	39,565	39,530	38,929
Lower secondary	**208,802**	**224,840**	**243,208**	**262,543**	**280,943**	**295,056**
Minority	11,380	12,444	13,462	15,063	16,328	17,405
Upper secondary	**65,189**	**74,189**	**81,684**	**89,357**	**98,714**	**106,586**
Minority	2,267	2,425	2,926	3,421	3,550	4,106

According to some studies, a major problem in remote mountain areas is the low priority accorded to formal learning by ethnic minority people. This attitude is exacerbated by poor living standards, with many of them living below the poverty line. This can be gleaned from such responses as the following that were drawn by these studies on a query on education needs. "There was no need for learning." "Learning might cost a lot of money." "Going to school might use up the time for farming." "There was no chance to be a member of a cadre." For many, working in the fields is a preferred choice to attending school.

Another challenge is the low percentage of ethnic girl children in school,[8] due to many difficulties, mainly poverty that causes a lack of food, clothes and books. Children from poor families have to help their families earn a living by gathering vegetables, fish or crabs, leaving them little time for school and resulting in malnutrition. Along with poor teaching standards, these were found to be the reasons for poor studies and a high dropout rate in the Central Highland in the period 2004-2005.

Despite free education, certain conditions in ethnic minority areas discourage formal learning, and primary among these are the school's physical state and distance from residential areas. Schools are usually located far from homes and many primary schools in hamlets are in poor condition and ill equipped. To remedy this, the government has built boarding schools for ethnic minority pupils in every province and district. The condition of school infrastructure is currently being addressed as part of the government's commitment to the Millennium Development Goal (MDG) on universal education. The most prominent MDG action plan on this concern is removing dilapidated schools in mountain areas. This is gaining some headway, and upgrading all schools is being carried out in other provinces.

While state policies on education have explicit priorities for ethnic minority students, it may be necessary to modify some of them to further improve the quality of education. For instance, policies stipulating less time and learning programs for ethnic minority students widen educational standards between ethnic minorities and the mainstream population. On the criteria for illiteracy and compulsory education, equal rules must apply to all and reflect quality rather than mere quantity.

Further, local needs have to be taken into account. Aside from providing general education, the government should modify or supplement learning programs to suit the conditions of each ethnic minority group. Teacher incentives should also be conferred to attract professional teachers. Although policies grant preferential salaries for teachers in ethnic minority and mountain areas, they lack support programs, such as opportunities for additional jobs or shorter periods for Kinh cadres to work in remote areas. This has resulted in fewer and less qualified teaching staff in mountain regions compared to urban areas.

Training of Ethnic Minority Cadres

The state of the education program for ethnic minorities is mirrored in the training and education of ethnic minority cadres. Poor training curriculum, low staff capacity, and inadequacy to address local needs and conditions similarly characterize the ethnic cadre program.

Cadres constitute an important unit in the local political and governance system. The membership of ethnic minorities in local bodies, in particular people's committees, has rapidly grown at all levels. In 16 northern mountain provinces, they account for 39 percent, 36.7 percent and 46.3 percent of people's committees in provinces, districts and communes respectively. In provincial committees in Cao Bang, Bac Kan, Lang Son, Hoa Binh, Son La and Ha Giang, they comprise more than half of these bodies. A similar situation obtains in the district and commune levels in other northern provinces.

However considering they constitute the majority population in some northern provinces, their representation in local bodies is greatly inadequate. In Bac Kan, ethnic minority cadres account for only 15 percent of the commune people's committee although minorities are 90 percent of the total provincial population. In Thai Nguyen province, they comprise three percent of the committee but make up one-fourth of its total population. Similarly in the Communist Party committee boards and other local authority positions, ethnic minority members are a minuscule number when taken against their total population in the area.

One factor that has contributed to this situation is the limited professional capability of ethnic minority cadres. While their professional skills are generally much improved today, there are small segments of ethnic minorities such as the Mông, Dao, Khõ Mú, Si La who do not possess the required skills. The rate of cadres with university and college degrees in the northern mountain provinces is lower than in the delta region. In the most remote communes, capacities are critically low. Some of those in important positions did not complete a primary education, and weak management skills and poor motivation generally characterize their work.

College opportunities for cadres are constrained by the small percentage of ethnic minority students chosen to undergo university education. In 2004 some 732 ethnic minority students in 16 northern mountain provinces were selected to go to university but this was a mere fraction of their total population in these provinces.

The policies on training for ethnic minority cadres have shown certain shortcomings, as manifested in the strategies employed to implement these. In addition to weak curriculum and staff, the training program does not conform to the social conditions of minorities and is not coordinated with other agencies to make it more practical and effective. It provides few subsidies for further training and development. Because of the lack of education and special training, ethnic minority cadres are often unsuited to the work assigned to them and future opportunities for them are bleak.

Policy Changes

The government has started to develop new policies and approaches to strengthen the training and recruitment of ethnic minority cadres into governing bodies at the various levels of the political system. A positive and practical step is the recent opening of pre-training classes in colleges or universities for ethnic minority students but the policy to raise admission test scores should be restudied as it may work against their interest. Other measures that can help to overcome their disadvantaged situation are:

- Widen, upgrade and increase the number of boarding schools at all levels (province, district and commune), increase their facilities and scale, and develop other policies

for day-boarder schools. Raise monthly school subsidies for ethnic minority pupils as well as education grants for those belonging to groups with a population of less than 100,000 persons (Bố Y, Cờ Lao, Lô Lô, Mảng, La Hủ, Lư).

- Amend policies on candidate selection for higher education by increasing the number from northern provinces, especially from the ethnic minority groups;
- Formulate a policy to develop training plans for cadres for every ethnic group and in all mountain areas. Efforts should be made to increase the number and improve the capacities of ethnic minority cadres in all political levels, especially in areas where they are poorly represented. In the short term, it is essential to train them in professional and management skills and assign them in strategically important areas such as governance, security and national defense;
- Train ethnic minority youth to become potential staff after completing military service;
- Revise and amend existing mechanisms and policies for ethnic minority cadres including those in the most disadvantaged communes. It is necessary to have a special policy for officers working in remote, border and marginalized areas. Working mechanisms to enforce ethnic policy in border areas should satisfy social and economic requirements and guarantee national security.

Land and Forest Development

One of the most important factors that promote the country's social and economic development, and in particular of mountain areas, is the system of policies on land use and management. Giving great importance to this concern, the government has passed numerous laws, decrees and policies in addition to the major land laws promulgated in 1993 and 1998. All these laws affirm that the land belongs to the whole nation.

Under these laws the state regulates the use and development of this primary resource. It allocates and leases land to households,

organizations and individuals for long-term use. The user of the land has rights on inheritance, exchange, transference, mortgage and, upon withdrawal by the state, compensation. In mountain areas, each household is apportioned one to two hectares of farmland for a period of 20 years, and five to 10 hectares of forestland for 50 years.

Most of the forests have not been allocated and are under government ownership. For natural forestland given to farmers, no tax is imposed on its use if the owner lives within the forest. Priority on allocation of community forests is given to local communities in accordance with the ethnic group's traditions. Under the latest norms, the area of protective and productive forests allowed each individual or family is not to exceed 30 hectares of each type of forest. Additional acreage must not be over 25 hectares for those already given farmland for cultivation, aquaculture and/or salt production. The excess over the norm is taxed.

Limits are also imposed on the length of use. The period of owning or use is not over 50 years for productive, natural and planted forests. This can be extended to not more than 70 years for forests with perennial trees with a long productive cycle or with investment projects in difficult and remote areas.

Land Issues

The country's land policies provide the legal framework for ensuring the rights of people to their land and for promoting agricultural and forestry production. In general, however, the many laws on forest and land allocation and development are difficult to implement in remote and mountain areas. On one hand, defining forest boundaries is difficult and huge financial resources are needed for forest mapping. On the other, land and forest laws and policies have largely been made without consideration for ethnic customs and characteristics. Almost all ethnic minority groups, for example, own land collectively rather than privately.

The lack of interface between customary and state laws on land and forest use and management is evident in prevailing customs and practices in ethnic minority areas. A survey on allocation of residential ("Redbook") and cultivated land ("Greenbook")[9] found that land as individual property is not the practice in many

mountain areas. What each household owns is considered as the land of their ancestors or has been reclaimed. They also exercise customary rights to use and produce from the land as well as responsibilities in preserving the forests. Elders and villagers agree on watersheds to serve as water sources for their communities.

Some land policies however are giving rise to problems and conflicts in ethnic minority and mountain regions. In particular policies that emphasize land value rather than quality of use have caused some ethnic minority families to lose their farmlands. The Land Law provides for the right of land transaction, which has enabled wealthy and powerful families to purchase big tracts for plantations. In mountain areas poor families who are unable to have farm workers because of their economic state sell their land and become hired labor on bigger farms and plantations. In some northern provinces about 10-15 percent of poor households is without any farmland (Nguyễn Thị Hằng, 1998).

Another emerging complex issue is the dispute over land between ethnic minorities and Kinh who have reclaimed areas in mountainous regions. The conflict has resulted in the outmigration of members of minority groups to the Central Highlands and the south. In addition to land tensions, poor environmental conditions are forcing ethnic minorities to leave villages and farms they have long inhabited. Some groups such as the Tay, Nung and Thai have moved to Lam Dong province in the Central Highlands because they lack land and water for farm and domestic use.

Also directly affecting ethnic minority people is the government's fixed farming and resettlement program that is aimed to discourage and reduce the practice of shifting cultivation. While it has achieved considerable results on this objective, the program has spawned new difficulties for ethnic minorities. Resettled areas often lack the needed infrastructure and do not allow for customary farming methods used by ethnic groups. The program's orientation has also focused more on construction rather than on the conditions and long-term strategies for developing the land. In general it has not provided for participation, consensus and decision making by the affected people.

In the same vein some forest development policies have not been entirely beneficial to the ethnic minority population in moun-

tain regions. Although these emphasize ecological protection and development, these do not sufficiently ensure people's livelihoods or encourage their investment of time and resources in forestation. The government programs to enforce these policies have put greater emphasis on the economic and technical aspects of sylviculture rather than on developing human capacity, such as improving knowledge and skills in tree cultivation and management. This deficiency has led some local people to cut trees for short-term profit and benefits. Forest destruction is widespread, especially in high slope terrain in critically essential areas such as Lai Chau, Ha Giang and Cao Bang, among others. Forest cover is under 10 percent, leading to erosion that has caused floods, landslides and other natural disasters.

Poverty Alleviation

Although it has made great economic and social progress, Vietnam continues to encounter new challenges in its goal to reduce poverty. In 2001 about 2.8 million households were deemed below the national poverty line, accounting for 17 percent of total households in the country. From 1996-2000 the poverty line was under 15 kg of rice equivalent to 55,000 VND (US$34) per individual per month. In 2001-2005 the poverty line was placed at under 80,000 VND ($50) per individual per month.

The benefits from economic growth and social development have not reached all sectors of the population. Most of the poor have difficulty in getting access to basic social services, and the upgrading of infrastructure in poor communes has been slow. Poverty variously occurs in different places and regions in Vietnam, but a higher poverty rate prevails in mountainous, remote and island areas, where most ethnic minorities are.

In an effort to alleviate the living conditions of the poorest among the ethnic minorities, the government has undertaken a specially designed poverty reduction program targeted for the most remote and difficult areas and communes. For its stated purpose, Program No. 135 is an appropriate renovation and development policy for poor households and communities in such locations.

Implemented in 1998 by the Committee for Ethnic Minority, Program No. 135 sets up basic infrastructure in identified poor communities. Through the program some 25,000 social and economic infrastructure and 498 commune centers have been built. More than 70 percent of hard-up communes have completed five fundamental structures. Almost all (97.4%) have a road to the commune center, medical stations (100%), schools (73%), electricity (84% of communes and 64% of households) and radio stations (61%). Some 408 of 545 commune centers are in operation.

Based on government statistics the program has generally achieved its goal to bring down poverty levels in target areas. The number of poor households went down from 60 percent before 1999 to below 20 percent in 2005. The people's production skills and capacities improved, they changed their shifting cultivation methods and were ensured of higher food security. Program success was also measured in terms of better access to social services, particularly health care and education. The target communes are now able to provide general education at the primary level and medical station systems are upgrading health care, contributing to the prevention of most diseases and to the general well being of the local people.

The benefits are further apparent in the political field. Program 135 has consolidated the political system at the local level. It has strengthened the governance role of cadres and the community, made ethnic minority groups more socially cohesive, and mobilized the participation of social organizations and agencies.

Shortcomings

While Program 135 has generally succeeded in reducing poverty levels, some weaknesses have been observed in the implementation of some components that have affected its overall effectiveness. Firstly, some of the chosen communes and areas did not truly qualify as disadvantaged. Further, leadership mechanisms overlapped, incentives and motivation were deficient, and regulations on how to manage the infrastructure was delayed.

Despite limited financial resources, more funds were allocated to physical infrastructure. Some of the construction was not strictly supervised, resulting in the poor quality of some water channels

and irrigation and water supply systems. It also failed to create planned jobs for the local people and to consider local custom and usage; as a consequence some market halls and school buildings remain unused.

The component on settled agriculture achieved some positive results, but the infrastructure built did not meet local demands because of the fund lack and present food aid. The plans for developing settlements in essential areas, agricultural and forestry development, and cadre training have also been found wanting.

Program 135 has shown that government intervention can help improve economic and social conditions in the poorest regions, but the abovecited shortcomings point to a need to reconsider and adjust some of its criteria and components. Local provincial authorities have to clarify the qualifications for disadvantaged communes to be able to target the right program beneficiaries. This will prevent the infusion of investments in communes that are not impoverished. Communes that do not meet with program standards ought to be withdrawn in order to concentrate resources where they are needed most. It is also essential to assist the local people with new production methods, which are appropriate to their customs and ways (production in association with the market).

A clear decentralization and devolution of the program at the provincial level would contribute to its better implementation. Each province needs to develop a comprehensive program to mobilize resources for local development, and undertake the tasks of planning and defining local potentials and advantages, including human resources and production. Developing human resources, promoting basic education and intellectual capacities, and providing access to social services are key to future mountain and ethnic minority development.

Challenges in Poverty Reduction

Many challenges lie ahead in the government's program to uplift the living conditions of poor and marginalized groups in Vietnam. Gains have been made in poverty alleviation but these may be unstable, as the risk of poverty re-emerging is high. The poor are still vulnerable to disease, disaster, crop failure, market chaos, and unemployment. A social security system has not developed in

mountainous and remote areas. Around 80 percent of the poor are peasants. A relatively large number of households have unstable incomes, which can make them easily fall into the status of the poor.

Poverty is closely linked to environmental degradation. Privation may push peasants to exploit limited natural resources excessively, leading to a cycle of impoverishment. Vietnam is also affected by tropical storms and floods. Poor island, mountain and border areas have always been at risk of natural disasters that endanger lives and infrastructure

Although capital resources for poverty alleviation have increased yearly, these have not been sufficient to satisfy local needs. The poor regions have low incomes, and it may be necessary to develop a mechanism to mobilize domestic and foreign investment into rural, and in particular, mountainous areas. Human resources are abundant but the number of well-trained and skilled workers is small, and job creation is limited. While efforts are made to promote labor productivity, the labor force is steadily growing, leading to rising unemployment.

The scope of poverty alleviation must be widened. This is to ensure not only food security but other basic needs such as clothing, housing, medicine and education. To meet these objectives, goods production should be developed, and poor communes assisted for infrastructure investment. It is vital to create favorable conditions for the poor to have access to basic social services, enhance their capacities and have legal assistance. Their interests should be protected to reduce their vulnerability.

Cultural Development

Vietnam strives to raise not only the economic conditions but also the spiritual and cultural development of the ethnic minorities. Towards this end the government follows a policy of equal recognition, value and development of the Kinh and minority cultures. Vietnamese culture is unique in its diversity. The 54 ethnic groups possess distinct cultural traits and have their own ethnic languages, epics, songs, literature and other cultural manifestations

that are essential contributions to the nation's heritage. Each ethnic group has found its own way to deal with nature and the environment, handing down its customs, traditions and beliefs from generation to generation.

The state respects, maintains and promotes these varied cultures and their tangible and intangible manifestations. As provided for by the Constitution, each ethnic group is entitled and encouraged to use its own dialect and language, script and writing, and to preserve and promote its fine traditions, customs and cultural characteristics.

Cultural Preservation

Rapid social changes and outside influences however are altering some ethnic minority customs and practices, and in some cases, slowly causing their disappearance. The most apparent may be in the manner of dress. Many of the ethnic minority youth today dress like the Kinh, who live near their villages or are often their teachers in schools. They don their traditional dress only during festivals, holidays or meetings with visitors. In some areas, many adults and youth alike use ready-made traditional costumes or Chinese-made clothes.

The ethnic minority peoples face losing other cultural gems. Traditional folk festivals are vanishing with the mix and adoption of modern characteristics. Each ethnic group celebrates its own folk festivals, which are an expression of their cultural identity. In the past the people relied on nature, destiny, their respect for ancestors and religious beliefs. The folk festivals manifest these belief systems, their spiritual life and their desire for well being, good health and abundant harvests.

Recognizing the great value of folk festivals in the community life and cultural identity of the ethnic groups, the government has issued policies on cultural promotion and preservation. The Ministry of Culture and Information has started to research and document folk festivals in some provinces and to promote the importance of these events. Another initiative is the "cultural village community." An endeavor to strengthen cultural identity, the government program entails setting up archival centers and ethnic museums to showcase the different cultures of the 54 ethnic groups.

But bigger efforts and finances may be required. An active program has to be launched to gather and retrieve traditional festivals that are in imminent danger of being lost. The ethnic craftsmen with original knowledge of the old festivals, for instance, are not only small in number but getting on in age. Only old men over 60 years know the festivals in their authentic and diluted form while younger ones hardly remember or have paid any attention to them.

Unfortunately no program has been developed for these craftsman to transmit their knowledge to the younger generations. The fear is that the folk festivals may be lost or distorted when they pass away. As the ethnic groups have lived together for a long time, cross-cultural exchanges have occurred, which makes it difficult to distinguish the real traditional cultural forms from assimilated ones. Moreover, while some festivals are still celebrated, their elaborate procedures have been minimized and/or lack the solemnity that identifies folk festivals.

The ethnic minority groups want to restore their traditional festivals but are uncertain as to how to do this in accordance with state policies and values. Special policies, including funding support and mechanisms, may be needed to revive those that are fast disappearing.

Art and Literature

Another area that needs support and development is ethnic minority art and literature. The number of ethnic minority writers and artists is small compared to their cultural potential. The development of the different art forms among ethnic groups is also uneven and at variance especially among the younger generation. Tay and Thai artists, for instance, greatly outnumber their Hmong colleagues, and more than 20 ethnic minority groups have no known writers or artists.

Modern ethnic minority literature and art emerged after the August revolution. The first writings were poems in the ethnic script by well known writers such as Hoàng Vặn Thụ, Nông Quốc Chấn, Nông Minh Châu (Tay ethnic group); Bàn Tài Đoàn (Dao ethnic group); Cầm Biêu, Hoàng Nó, Lưởng Quy Nhân (Thai ethnic group).

In the 1990s, a young group of ethnic artists appeared on the national scene with various works distinct in their individual style. However, new writers have not been as confident.

Writing on contemporary concerns is rather low in the mountain and ethnic minority areas. The popular trend is writing in the mainstream language rather than in the writer's own ethnic voice. Knowledge of the dominant language is essential for access to modern information, but the ethnic minority writers should not neglect their own mother tongue because this is the best way for remembering.

There are fewer artists in drama, music or the visual arts. The more prominent are those in the Central Highlands, with their gong cultural spaces and folk festivals and who work in various fields such as music and dance. Among them are Y Brơm, Rơ-chặm-pheng, Y Moan, Linh Nga Niêiđam, Y Phôn Ksor, and Siu Black.

With the spate of artists, it is crucial to identify the potentially gifted individuals and to create a good environment for the arts to flourish. One way is to develop a special training program in ethnic minority cultures, and the promotion and development of the languages and scripts of ethnic groups. Some provinces such as Daklak, Lang Son have started their own initiatives and through these have discovered new outstanding writers such as Vũ Thị Thu Đam, Quỳnh Nga, Niê Thanh Mai.

Research and documentation on the ethnic minority groups, their languages, epic literature and other cultural forms can help build and enrich these fields. Studies have started on the Thai and of the epics in local communities of five ethnic groups: Raglai (Khánh Sơn, Khánh Hòa), MNông (Đak Song, Đak Nông), Êđê (Đak Lắk), Bana (Kon Tum) và Xơđặng (Kon Tum). A research done by Hà Minh Du of Quan Trì village in Thanh hóa province has resulted in the book, *Semantic Vocabulary of Viêt-Mường*. The Institute of Folklore in cooperation with the Daklak Department of Culture has also collected and published the customary laws of the Ede and Mnong ethnic groups.

Another way to propagate and widen the appreciation for ethnic minority art and literature is through the formal education system. The Ministry of Education and Training can integrate these in high school, university, and technical and vocational curricula.

Aside from pedagogy or medicine, ethnic cultural studies should be opened as a major academic program or field of concentration for students selected to take up higher education. The younger generation, including cadres, should be given all the opportunity to study, research and document the tangible values and manifestations of their rich cultural heritage.

Summary and Conclusion

The Vietnam government, as mandated by the Constitution, has pursued policies and programs to improve the lives of ethnic minority peoples, and thus close the development gap with the majority Kinh. In general these have resulted in positive changes in their social and economic situation, in strengthening their integration, and in putting them on the course of national development.

However, in many aspects the ethnic minority groups still lag far behind. Due to the high economic development in delta areas, the social and economic divide between upland and lowland people has widened. The poverty rate in the Northeast, Northwest, Central Highlands and North Central Coast, where most ethnic minorities are found, remains high compared to the national average. Households in some ethnic minority communities depend on state subsidies in order to sustain their basic needs.

Compared to urban people in Hanoi and Ho Chi Minh City or other lowland regions, the ethnic minorities including Kinh who live in mountain and remote areas are economically disadvantaged. They are left out of much of the development that is rapidly taking place in the country. Despite the special attention given by government to remote and mountain areas, their rural economy has not prospered and advanced at the same pace and in equal degree.

The government has implemented policies and mechanisms for poverty alleviation and assistance for the poor but in many places their enforcement has been weak and unsystematic. Some cases of corruption have also occurred in projects and investments in some localities. As a consequence these have not produced the expected and desired outcomes in poor communities.

Differences in living standards, education and health care are stark among ethnic groups. Educational achievement, which is a fundamental element in determining whether economic development programs will succeed in the long term, is much lower in mountain areas. Various other factors, such as school location and poverty, have made it difficult to bring the level of quality of urban education to children in ethnic minority and mountain regions.

Policies on gender equality have also been developed but unfortunately have not been enforced strongly enough. Poor females and girl children in remote, mountainous areas do not benefit much from those policies and are still adversely affected by negative cultural practices that denigrate and discriminate against them. They are victims of trafficking and family violence, and the lack of education and medical services has increased their burden and stress.

Each ethnic group's awareness of its cultural identity is marked by its isolation from national life and development. Some members feel their group to be inferior, more superstitious, more backward and traditional.

Government policies impact on the social, economic and cultural development of ethnic minority communities. Their differences with the mainstream population in development level and pace may be explained by their specific historical experiences, local institutions (party, local authority and other civil organizations), and standards and unity in undertaking development activities.

From the limited data of this study, it is too early to makes conclusions on the development of Vietnam's ethnic minority population during the First International Decade of the World's Indigenous People from 1995-2004. Although the government has tried to lay down sound policies and guidelines for ethnic minorities, their implementation by local institutions has not always met with success. In addition, new extraneous social and cultural issues have cropped up that affect ethnic issues and concerns. More study is thus needed to look deeper into whether the government is pursuing the right policy direction and thrust in relation to ethnic minority development in Vietnam.

Endnotes

[1] Vietnam: Image of the community of 54 ethnic groups, 1988, p.14-15.

[2] Report on reproductive health in 2004, Department of Reproductive Health, Ministry of Health.

[3] Report on reproductive health in 2004, Department of Reproductive Health, Ministry of Health.

[4] <http://www.cema.gov.vn (news on 19 May, 2005)>.

[5] Ethnic minority high school graduates who do not meet university admission test requirements may be chosen to go to a pre-university school where they undergo one year of study to prepare for university entrance examinations.

[6] <http://www.edu.net.vn>.

[7] <http://www.edu.net.vn>.

[8] Vietnamese women are trained from childhood to do housework especially in rural areas. Girl children, particularly under the age of 15, are expected to stay home to look after a baby brother/sister, sweep the floor, cook rice, wash clothes and other related house chores.

[9] Legal certification issued by local authorities for the right to own land: "Greenbook" for cultivated land, "Redbook" for residential land.

Bibliography

Anthropology Review. No1(139). 32SD year, 2006. p. 126.

Circular letter No 525 TTg, 2 January 1993. On solutions and guidelines on continuing social and economic programs in mountainous areas.

Circular letter No 16/BYT/CT, 16 November 1993. On the appointment of medical staff to communes.

Circular letter No 01/GD-ĐT, 3 February 1997. Issued by the Ministry of Education and Training on the teaching instruction of minority ethnic language and script.

Colin McQuistan, 1999. *The Distribution of Land in Rural China,* The Journal of Peasant Studies. Vol.21. Tropical Forest Update. 71-84.

Constitution of the Socialist Republic of Vietnam, 1946, 1954, 1981, 1992.

Đào Thế Tuấn, 1999, *Development of the Mountainous Agricultural System in the Northern*, National Conference on the Research of Mountainous

Sustainable Development in Vietnam Mountainous Areas. Hanoi, 3 to 5 August 1999. Agricultural Publishing House. pp.103-110.

Decree No 38/CP, 1968. On agricultural and living settlements.

Decree No 13-CP, 2 March 1993. On defining agricultural expansion.

Decree No 19/TTg, 19 January 1994. Issued by the Prime Minister on investment for schools for army training of ethnic minorities.

Decree No 37/CP, 20 June 1996. On strategic direction on protecting and caring for people's health in the period 1996-2000 and national policies on health care and medicine in Vietnam.

Decree No 2590/GD-ĐT, 14 August 1997. Issued by the Minister of Education and Training on the organization and operation of ethnic high schools.

Decree No 20/1998/NĐ-CP. On economic commodities in mountainous and minority ethnic areas

Decree No 124/2003/QĐ-TTg, 17 June 2003. Issued by the Prime Minister on approving Vietnam's ethnic minorities' cultural protection and development.

Decree No 170/2003/QĐ-TTg, 14 August 2003. Issued by the Prime Minister on priority policies on cultural inheritance.

Decree No 146/2005/QĐ-TTg, 15 June 2005. Issued by the Prime Minister on policies on revocation and delivery of plantation, forestation lands to poor ethnic households.

Direction No 39/1998/CT-TTg, 3 December 1998. Issued by the Prime Minister on cultural and information promotion in mountainous and minority ethnic areas.

Document No 42/CTPH/UBDT-VHTT, 19 January 2006. Between the Nationality Committee and Ministry of Information and Culture on the cooperative program for the promotion of ethnic minorities' cultural protection and development in the period 2006–2010.

Hoàng Xuân TỶ, Lê Trọng Cúc, 1998. Indigenous Knowledge of the Upland People on Agriculture and Natural Resource Management. Hanoi: Agricultural Publishing House.

<http://viet.vietnamembassy.us>.

<http://www.vietnam.tourism.com>.

<http://www.cema.gov.vn>.

<http://www.moh.gov.vn>. Interim Report of No 135 Program for the period of 1999–2000. Halong Bay. 14 May 2001.

International Paper (special weekly issues), 1993, on poverty alleviation in the globalization period.

Law on Land, 1998 and 1993.

Law on Protection and Development of Forests, 12 August, 1991.

Ministry of Health. Final Report on Reproductive Health Care. 2004.

Nationality issues and mountainous development of the Socialist Republic of Vietnam in 1999.

McKinley, Terry and Griffin, Keith, 1993, *The Distribution of Land in Rural China*. The Journal of Peasant Studies. Vol. 21, No. 1, pp. 71-84.

Ngô Đức Thịnh. Customary Laws and Natural Resource Management. National Conference on the Research of Mountainous Sustainable Development in Vietnam Mountainous Areas. Hanoi, 3 to 5 August 1999. Agricultural Publishing House, pp. 40-49.

Nguyễn Thị Hằng, 1998. National Program on Poverty Alleviation. Special weekly issues of International Paper on poverty alleviation in the globalization period, pp. 20-23.

Program No135 on social and economic development of the special disadvantaged communes following Resolution No 135/1998/QĐ-TTg issued 31 July 1998 by the Prime Minister.

Professional Report of World Health Organization on Health and Vietnam's minority ethnic groups, June 2003.

Resolution No 48/BYT/QĐ on establishment of subcommittee on health care activities in mountainous areas..

Resolution No 10-NQ/TW, 5 April 1988 on the renovation of agricultural management.

Resolution No 72/HĐBT, 13 March 1990 on the particular guidelines and policies on economic and social development in mountainous areas.

Resolution No 712/1997 by the Prime Minister approving the program on social and economic development in the Northern West.

Resolution No 133/1998/QĐ-TTg on the National Program of Poverty Alleviation in the period of 1998-2000.

Resolution No 134/2004/CP issued on 20 July 2004 by the Prime Minister on issues on land assistance policies for agriculture, settlement and clean water for poor and disadvantaged minority ethnic groups.

Resolution No173-HĐBT issued on 2 October 1990 on the establishment of a National Committee for programs on illiteracy in the period 1990-2000.

Society of Environment Protection. Background knowledge on environment. 2002.

Vietnam Institute of Forest. The Indigenous Knowledge of Upland People

on Agriculture and Natural Resource Management.

Vietnam Ministry of Foreign Affairs. Achievements on protection and development of human rights. 2005.

8

Indigenous Peoples and the Dynamics of Development Programs: The Case of the East Kalimantan Local Communities Empowerment Program (EKLCEP)

Rukka Sombolinggi and Leah Enkiwe-Abayao

Background

The UN encourages the development of new partnerships among indigenous peoples, and states and other groups, and between indigenous peoples and the UN. These partnerships—based on the principles of equity, mutual respect and understanding—can present ways for indigenous peoples to develop their own solutions to the problems they face. A number of UN agencies are partnering with indigenous peoples to further the Decade's goals, among these include the United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), Food and Agricultural Organization (FAO), United Nations Development Program (UNDP), International Labor Organisation (ILO), and International Fund for Agricultural Development (IFAD), among others.

For the indigenous peoples and civil society in general, this positive step signals new opportunities to address indigenous peoples' visions of development, including alleviating poverty in their communities. Since UN agencies and governments were the key actors in the implementation of the International Decade of the World's Indigenous People's Program of Action, it is of interest to study a development program that has been developed to improve the living conditions of indigenous communities in a region of Indonesia. Considered a breakthrough in the country's conventional development practice, the program attempted to treat communities as active actors in the conceptualization, process and implementation rather than isolate them as objects of development.

Good development intentions are not easily translated into noble acts or righteous programs especially when the implementation phase is not well executed and when lead implementers are poorly equipped to carry out their functions. This kind of deficiencies can lead to government policy problems and challenges. How then can funding agencies help to ensure good program dynamics to bring about real development?

As in many well-conceptualized development programs, implementation always presents a bottleneck. What happens when good intentions are crippled by a development program's dynamics? How do indigenous peoples figure out in its good intentions? The East Kalimantan Local Communities Empowerment Program (EKCLEP) in Indonesia can provide some answers and insights into this common stumbling block in development initiatives.

This report examines the East Kalimantan Local Communities Empowerment Program and the dynamics involved from its initial negotiation until its cancellation. Specifically it undertook the following:

- review the processes in which the EKCLEP program was conceptualized, established and finally cancelled;
- examine the program contents and draw out positive aspects of good development programs and development perspectives favorable to indigenous peoples;
- derive lessons that can be useful to advocate policy/pro-

gram reforms that influence development programs implemented in indigenous communities.

The study started in February 2006 with discussions with colleagues in the indigenous peoples' movement in Indonesia to get a broader picture of development programs undertaken in indigenous communities. A short period of field research took place in July of the same year, involving interviews with men and women elders in Kutai Barat. These include Mr. Amisan, Mr. Paulus Kadok, Mr. Pius Eric Nyompe as well as with district and provincial officials. Project documents were also studied and reviewed.

The study however fell short in getting all the necessary data from the national government. Several attempts were made to get interviews with and secure primary data from officials of the Ministry of Agriculture, but unfortunately the agency did not reveal information needed for the research. Thus, much of the data used were limited to field information gathered at the provincial and district levels and from earlier documents and related literature.

Political Context

The East Kalimantan Local Communities Empowerment Program, which aimed to improve poor communities' social and economic well-being, was conceived in the late 1990s when Indonesia had just entered a new era of decentralization. In late 1998 Soeharto's New Order regime that had been in power since 1966 collapsed, ushering in a so-called "reformation" period. The government passed Law No. 2/2000, which shifted administration and policy making from the central government in Jakarta to the provinces and districts. The law redefined and distributed roles and responsibilities in every level in the government structure. Decentralization was considered an extraordinary breakthrough from the centralist rule that characterized the Soeharto regime.

In the last six years the government issued several laws and regulations, the most important being Law Number 22/1999 on Regional Governance and Law Number 25/1999 on Financial Distribution between the central and regional governments. These two

laws give the legal basis for regional autonomy, the framework of decentralization and the regulation of authorities down to the district level.

Several laws on natural resource management were also issued including Law Number 41/1999 on Forestry, Law Number 18/2004 on Plantation, and Law Number 7/2004 on Water Resources Management. Regional autonomy has forced local governments to share more of their resources such as gold, oil, gas, timber and other natural resources, with the central government getting the biggest share from resource exploitation.

Problems and Possibilities

The two laws on decentralization were passed amidst much controversy and debate. On one side were those who regarded regional autonomy as a historic change in the Republic of Indonesia. Optimistic about autonomy, they considered these laws timely to speed up decentralization, using "the reformation spirit" of the Indonesian people and the then newly elected Parliament. They also regarded them as a means for fundamental change to involve all sectors of society in establishing new systems of governance.

On the other side were people who saw autonomy as a rush response to the economic, political and social conflict arising from the 1997 Asian financial crisis.[1] They looked at the new Habibie[2] government as lacking in political legitimacy. To many, regional autonomy was a "decentralization of corruption,"[3] as a high number of corruption cases were exposed in districts all over Indonesia. The transfer of authority in decision making to the district level had worsened resource exploitation to a dangerous level.

Regional autonomy also sparked conflicts between the central and regional governments particularly in relation to who has authority to grant resource permits. According to the Forestry Law, for example, the authority to issue large logging concessions rests with the Forestry Department. But on the basis of district income, the district government exercises this authority through its right to issue special permits for collecting and utilizing timber (hereinafter referred to as IPPK), although this pertains more to small logging

concessions. In several areas the revenues earned from issuing IPPK contributes significantly to a district's income.[4] However, IPPK is also considered as a contributing factor to forest destruction. In East Kalimantan, IPPK has often been granted to palm oil companies in former and mostly abandoned concessions.[5]

The conflict over authority later forced the central government to replace Law Number 22 /1999 with Law Number 32/2004. The newer law basically restores authority to the central government by transferring authority from the district to provincial level. Other policy adjustments have also been made by the central government that have engendered political disputes within the government system as well as with the nongovernment sector.

Under the decentralization process, which allowed district governments to reform and make new policies including revenue generation, the EKLCEP was perceived as an opportunity for funding and development.

Indigenous Peoples in Decentralization Process

The discussions on the decentralization laws, which advocate a participatory process, did not involve the indigenous peoples. Their participation could have provided an opportunity for the state and indigenous peoples to renegotiate a new relationship. Nevertheless, the laws particularly on regional governance granted them a chance to revive their traditional governance systems at the local level. With this law they lobbied the local parliament to acknowledge and restore their indigenous political institutions.

In Toraja, for example, the District Parliament in 2002 issued a district regulation on Lembang[6] Governance System but this merely brought about a cosmetic change. It allowed the use of Lembang and some other indigenous terms without really restoring the indigenous governance system.

In West Kutai, a project site of the EKCLEP, 12 district regulations related to village governance were issued in 2001.[7] While these in principle restored the use of some Dayak terms in governance including *kampung* (village) and *petinggi* (village leader), these did not clearly define the indigenous system they referred to. These

also brought an additional level to the village structure, as the indigenous institution was placed as an advisory body within it. The revived institutions, however, do not reflect the diversity of indigenous governance systems practiced in West Kutai.

Despite such changes, most indigenous leaders feel these regulations do not touch the fundamental issues indigenous peoples have been struggling for, particularly self governance and their rights over land and natural resources. But at the same time, they are quite optimistic with their role within the new political structure. They are willing to take the opportunity to strengthen their institutions to enable them to push forward recognition of indigenous rights.[8]

East Kalimantan Local Communities Empowerment Program

Empowerment programs in East Kalimantan are not new, as a number have previously been undertaken[9] in its local communities such as the KAT empowerment program (also discussed in this book, see Albertus Hadi Pramono and Bernardinus Steni). Such programs, however, have yet to be proven successful as the EKLCEP experience also shows.

The East Kalimantan Local Communities Empowerment Program was initiated by the International Fund for Agricultural Development (IFAD document EB 2002/77/R.22/Rev)[10] and executed by Indonesia's Ministry of Agriculture/Agency for Agricultural Human Resources Development. It started off from an informal exchange between an IFAD officer and the former director of Puti Jaji, an indigenous NGO working in East Kalimantan[11] at a workshop in Japan in 2000. Following up on the latter's recommendation and the basic information he provided on East Kalimantan, the IFAD the following year sent a team to assess the possibility of undertaking a development program there.

The assessment resulted in a formulation report for a program, Indigenous Communities Empowerment Project in East Kalimantan with inputs from the district government and the Min-

istry of Agriculture. The provincial government however later replaced the term indigenous communities with local communities, saying the government serves not only the indigenous but all people of East Kalimantan.

The change in name to East Kalimantan Local Communities Empowerment Program sparked a debate between NGOs and the provincial government. To the NGOs the government argument showed an attitude of denial toward the existence of indigenous peoples and their rights over territory, land and natural resources, which are internationally guaranteed rights that the Indonesian government should abide by as a member of the international community. Such rights unfortunately do not necessarily apply to local communities.

Envisioned as a 12-year program, the East Kalimantan Local Communities Empowerment Program intended to develop strong self-reliant village institutions[12] in target communities. The institutions would provide the foundation for the various economic, social and infrastructure development activities under the program. They were to undergo organizational, financial and technical training to build their capacities to manage natural resources. The program built on the government's political and administrative reforms that aim to create a more open society based on improved recognition of the rights of individuals and local communities while supporting a process of decentralization and regional autonomy.

Specifically the EKLCEP's objectives were: (i) to empower local communities by developing strong, self-sustaining village institutions with improved access and control over productive resources; (ii) to facilitate the provision of technical and financial resources required for community-based economic development; (iii) to increase access to and quality of village education and health services and improve village infrastructure; (iv) to develop the institutional systems necessary for registration by the government of village claims over traditional lands; and (v) to establish effective program management services.

The project had a cost of USD26.47 million, of which SDR15.10 million (approximately $9.96 million) was loaned by the government of Indonesia payable to IFAD in 40 years at an interest rate of 0.75 percent per annum. As planned, the government would

assume a $5.62 million fund counterpart and the beneficiaries would contribute $886,287. The project was channeled through the United Nations Office for Project Services.

Program Site

East Kalimantan is the largest province in Indonesia, occupying 21,144,000 hectares or approximately 11 percent of the country's total land area. It shares an international border with Sabah and Sarawak in Malaysia. The province is divided into four municipalities and nine districts,122 subdistricts, 1,347 villages..

Although it registered a growth rate of 2.77 percent between 2000 and 2005, East Kalimantan's population is still classified as low. Its population in 2004 was 2.75 million, which increased to 2.8 million in 2005. The province is partly populated by the Dayaks who make up 25 percent of the island population. Dayak is a broad term referring to the different ethnic groups living on the island such as the Iban of Sarawak, the Murut and Dusun of Sabah.

Over 60 percent of the province's population is urbanized. It is estimated that 25-30 percent of the total population in urban areas is composed of major ethnic groups including the Lundayeh, Kenyah, Punan, Bahau, Penehing, Benuaq, Bentian, Dayak Pasir, Tunjung and Kutainese. Many of these groups have a discrete language and culture.

The Dayaks continue to practice swidden agriculture, traditionally involving very long and complex rotations of crops and trees on various patches of land. Indonesia's transmigration policy[13] has affected East Kalimantan, leading to the eviction of Dayaks from their traditional territories or their being outnumbered by migrants. An estimated six million people have already been moved to Kalimantan, Irian Jaya and Sumatra. The 2000 population census identified East Java, South Sulawesi, South Kalimantan and Central Java as the four main points of origin of migration.

East Kalimantan is rich in natural resources such as gold, coal, oil, natural gas, and timber and nontimber forest products. Massive forest resource exploitation by logging concessions, however, is becoming a big problem. Around 17.3 million hectares of the

province are covered by natural forest but this has been highly degraded by commercial logging. In 2003 concession areas of both operating (57) and inactive (45) logging companies covered some 11,610,345 hectares.[14] Oil palm plantations currently cover a total area of 6,433,597 hectares, apart from a million hectares being targeted by the government for new plantations[15] and abandoned ones of approximately 1,020,636 hectares.[16]

Despite official policies and regulations, concession areas are seldom managed on a sustainable basis. Over-extraction of timber is common and contractual requirements for reforestation after logging completion are often ignored. Logging concessions have intruded on land and forest resources traditionally claimed by local communities under Adat law (customary laws),

Program Components

Designed to be participatory and demand-driven at the onset of implementation, the EKLCEP allowed target communities to define the scope of program activities in the village. This way, the beneficiaries would gain full ownership of the development process. The target beneficiaries were some 39,000 households or about 160,000 people in 240 of the poorest villages in five East Kalimantan districts.

The EKLCEP had no pre-defined program activities at the start. It emphasized participatory development processes in which target village beneficiaries would identify development priorities and allocate funds for program activities. All activities and budgets were drawn from workshop-consultations among the government, NGOs involved and target beneficiaries. The EKCLEP is pioneering in its approach since many programs in many marginalized communities in Indonesia are executed in a top-down process.

It also provided for civil society participation as it purposely tapped NGOs to take the lead in all community empowerment activities.[17] With a view to upgrading low capacities in the newly formed districts, the program proposed establishing an independent program management structure that would not rely on or place excessive demands on existing government structures but instead

contract local NGOs to build capabilities of village institutions in target communities. However, many local NGOs regard the government with suspicion.

The EKLCEP had five components: (i) community empowerment;[18] (ii) economic empowerment;[19] (iii) social services and village infrastructure;[20] (iv) security of tenure over land and natural resources[21] and (v) program management services.[22]

In its logical framework, each of these components had identified key target outputs as follows:

Programme Component	Objectives	Target outputs
1. Community Empowerment	To empower local communities through the development of strong and self sustaining village institutions with improved access to and control over productive resources	• Functional self-help affinity groups. • Identified needs of poor households by the poor. • Programme management is responsive to the expressed needs of beneficiaries and works with them to fulfill these needs.
2. Economic Empowerment	To facilitate provision of the technical and financial resources required for community-based economic development.	• Functional farmers' groups established. • Government agricultural extension services upgraded to support project activities. • Functional FFSs established. • Newcastle Disease control programme established. • Implementation of common action projects funded from the DD-CIF.

3. Social Services and Rural Infrastructure	To improve access to and quality of village education and health services; and To improve village infrastructure	***Primary Health Care*** • Village health posts upgraded. • Trained health service staff. • Improved health extension materials. • Village health workers identified and trained ***Education*** • Scholarships for primary and junior high school students. • Teacher training for nutritional, health and environmental education • Improved educational equipment. • Improved classroom facilities. • Scholarships for vocational training. ***Small-Scale Village Infrastructure*** • Village infrastructure microprojects implemented.

4. Security of Tenure over Land and Natural Resources	To develop the systems necessary for recognition by government of village claims over land.	• Registration procedures for village boundaries finalized. • Draft village boundary maps recognized by government agencies and neighboring villages. • Final maps prepared. • Village land use maps prepared. • Conflict resolution mechanisms developed
5. Professional Institutional Services	To establish sufficient capacity for effective management of the programme.	• National programme coordination office, provincial programme facilitation unit and district programme management unit and governance structure established. • PCU, PPFU and DPMUs fully staffed. • Staff trained. • Management systems established. • Coordination systems established. • Monitoring systems established.

Organization and Management

The EKLCEP had a decentralized management structure, and as designed it was as follows. The Agriculture Ministry's Agency for Agricultural Human Resources Development through its Centre for Agribusiness Entrepreneurship Development executes the program. Also at the national level is a National Steering Committee, chaired by the Director General of the lead agency and vice-chaired by the Deputy Minister of National Development Planning/*Bappenas* for Natural Resources and Environment. Its members are representatives from the Bappenas, Ministry of Finance, Ministry of Forestry, District Land Authority, *Bupatis* (district heads) of West Kutai and Malinau, and the head of the *Bappeda* of East Kalimantan province.

A National Program Coordination Office, located on the premises of the executing agency, takes charge of overall program coordination. At the provincial level, a Provincial Program Facilitation Unit (PPFU) is responsible for the monitoring of the program under the provincial *Bappeda* (Regional Development Planning Agency).

Program implementation is decentralized at the district level in accordance with the Autonomy Law that became effective in January 2001. In each district, the Bupati establishes a program district board (PDB) comprised of a District Program Management Unit (DPMU) director (Secretary) and representatives from the following: district parliament, indigenous association, NGO, district agriculture, forestry, health and education units, District Program Management Board (DPMB), district women's organization (PKK) and Self-help Groups (SHG, one man and one woman).

Each PDB reviews the activities of the DPMU. A legally independent entity, the DPMU serves as the secretariat of the district boards and operates under their direct control. Separate from any government or private institution, these units have full responsibility for program implementation.

Each DPMU has a program manager, accountant/procurement officer, assistant accountant, agricultural development coordinator, livestock development and animal health coordinator, community forestry/reforestation coordinator, gender specialist (also

responsible for health and education) and training coordinator. In addition are two secretaries/computer operators, one driver and two general support staff. Staff are recruited on the basis of merit through open competition.

Program implementation directly involves a number of district government agencies including the Bappeda, Departments of Agriculture, Forestry, Health and Education, and DPMB (within the office of the Bupati). To facilitate coordination between the DPMU and these agencies, activity managers are appointed inside each department. They are accountable for achieving the targets defined in the Annual Work Plan and Budget (AWP/B) relevant to their department/agency. They report to the director of their technical department on technical matters and to the DPMU on issues relating to the overall planning and implementation of their agreed development activities.

At the village level, responsibility for coordinating and monitoring program activities are contracted out to NGOs working in close cooperation with village institutions, field extension workers (PPLs) and concerned government agencies. An NGO community facilitator and a PPL have to live in each village. Through participatory planning, self-help groups and farmer field schools identify development priorities within the village.

Contracted NGOs have a designated coordinator responsible for ensuring the performance of the NGO as well as for maintaining effective communication with the DPMU. All NGO staff are recruited on a three-year contract, subject to an initial probationary period and renewable on the basis of performance.

Innovative Features

The program, as envisioned by IFAD, had innovative features. These are:

- adoption of a highly decentralized management structure entrusting district governments with responsibility for implementation;
- promotion of community empowerment through development of strong, effective village institutions;
- full involvement of local NGOs in project implementation in recognition of their commitment to work with indigenous communities in remote areas;
- independent management structure to facilitate the involvement of nongovernment stakeholders and a system of program governance involving government, NGO, civil society and community representatives;
- adoption of a *design that is strongly process-driven* rather than prescriptive in terms of the kind of activities that would be financed;
- establishment of highly flexible financing arrangements to ensure that program management had the capacity to respond to demands expressed by target communities; and
- strong focus on *community-based forest management as a means of preventing further environmental degradation.*

Indigenous Peoples' and NGO Participation

The EKLCEP drew a high participation from NGOs and indigenous peoples in contrast to previous development programs undertaken by the government particularly during the Soeharto regime when indigenous peoples were never involved. They participated in the project at various stages. Most of the kampung leaders approved of the EKLCEP, as this was the first time they were involved from the start of the project. They were consulted on their needs, priorities and how they wanted the program implemented.[23] The program also created a space for NGOs to contribute their skills and expertise[24] in its conceptualization and development.

The working document or concept paper prepared by experts hired by IFAD was done in consultation with NGOs and indigenous leaders. The NGOs mainly involved during the consultation process were Puti Jaji, SHK East Kalimantan and Plasma. The consultations brought out divergent views among the NGOs on the funding source of the EKLCEP. There were those who argued that the program fund would constitute a foreign debt, which they believe would later be paid from revenues generated from natural resource exploitation. Other groups, on the other hand, considered the program an opportunity to empower and recognize indigenous peoples.

After a long debate, some NGOs decided not to be involved directly in the program while some members were willing to participate as individuals. This was a decision that the NGOs involved were comfortable with and agreed upon as it meant allowing space for some activists to contribute to the program.

IFAD involved some NGO activists for the needs assessment of EKLCEP. Done in the villages in Kutai Barat, the project's first target, the assessment involved interviews and meetings with communities to determine basic requirements for the program.

In the implementation stage, the indigenous peoples, in particular the leaders, took on an important role, being placed in positions that directly defined implementation policies. Among these roles were:

1. District Board (Dewan Pengarah Kabupaten). representative of the indigenous communities, represented by the Kutai Barat Indigenous Council, was assigned as a member of District Board I. The board's main role was to provide operational directives to the DPMU but it was not able to prove its worth because EKLCEP was cancelled before implementation could take place;
2. Approval of work proposal. According to the plan for program implementation, the needs and requirements of the community would be determined through their traditional ways of decision making. This was to be in the hands of the indigenous institution in each community, including giving approval to the work plans proposed by the technical supporting team. This did not also happen for the same reason.

Inclusion of policy dialogue that would lead to government policy reform on land tenure security was one of the promising values of EKLCEP. This could have been a breakthrough as EKLCEP aimed to empower indigenous institutions and to address land issues. Land security for indigenous peoples would certainly have raised a big debate, if the less contentious issue of the provincial government's replacing the term "indigenous communities" is any indication.

Project Implementation: West Kutai District

The program intended to cover five rural districts in East Kalimantan, four of which were created in October 1999. The districts are divided into 73 subdistricts that include 1,074 rural villages and 72 urban villages.

The EKLCEP had five phases. The first phase was conducted in the district of West Kutai with parallel capacity-building activities in Malinau district. The program was to be gradually expanded to the other districts in the remaining phases, depending on the achievement of set indicators.

The West Kutai District was formed along with the Nunukan District, Malinau District, Kutai East District and Bontang Municipality by virtue of Act No. 47/1999 on the regency and administrative division in the East Kalimantan region. Kutai West with an area of 3,162,870 hectares is divided into 21 subdistricts and 223 kampung.[25]

Poverty is prevalent in the West Kutai District. Road infrastructure, transportation and other public facilities are poor. In Sangsang village of Siluq Ngurai Subdistrict, for example, electricity provided by Perusahaan Listrik Negara (Government Electric Company) is only available from 6:00 pm to 11.00 pm. In Barong Tongkok, the district capital, electricity shuts down almost everyday.[26]

The level of education is also low mainly because of the absence of good educational facilities. A survey carried out by Cahyat et al.[27] found that children in 27 percent of families in the district have dropped out from elementary school because they were unable to pay for educational expenses.

This economic situation is ironic as the district hosts PT Kelian Equatorial Mining (PT KEM), one of the biggest gold companies in Indonesia. The PT KEM operates on land measuring 6.67 hectares. West Kutai is, in a sense, a field of gold as in 10 years of operation the company was able to produce approximately 152 tons of gold. In 2002 it paid as high as 200 billion rupiah in royalty to the government, of which the West Kutai government received only five percent or 10 billion rupiah

West Kutai District Head Rama Alexander Asia acknowledged that the quality of human resources in the district was low and that special measures were needed to improve the economy, education and empowerment of communities.[28] It is this situation and the need to develop the district that prompted the local government to accept the EKLCEP, even if it were to be funded by a loan that would have to be paid from exploiting natural resources.

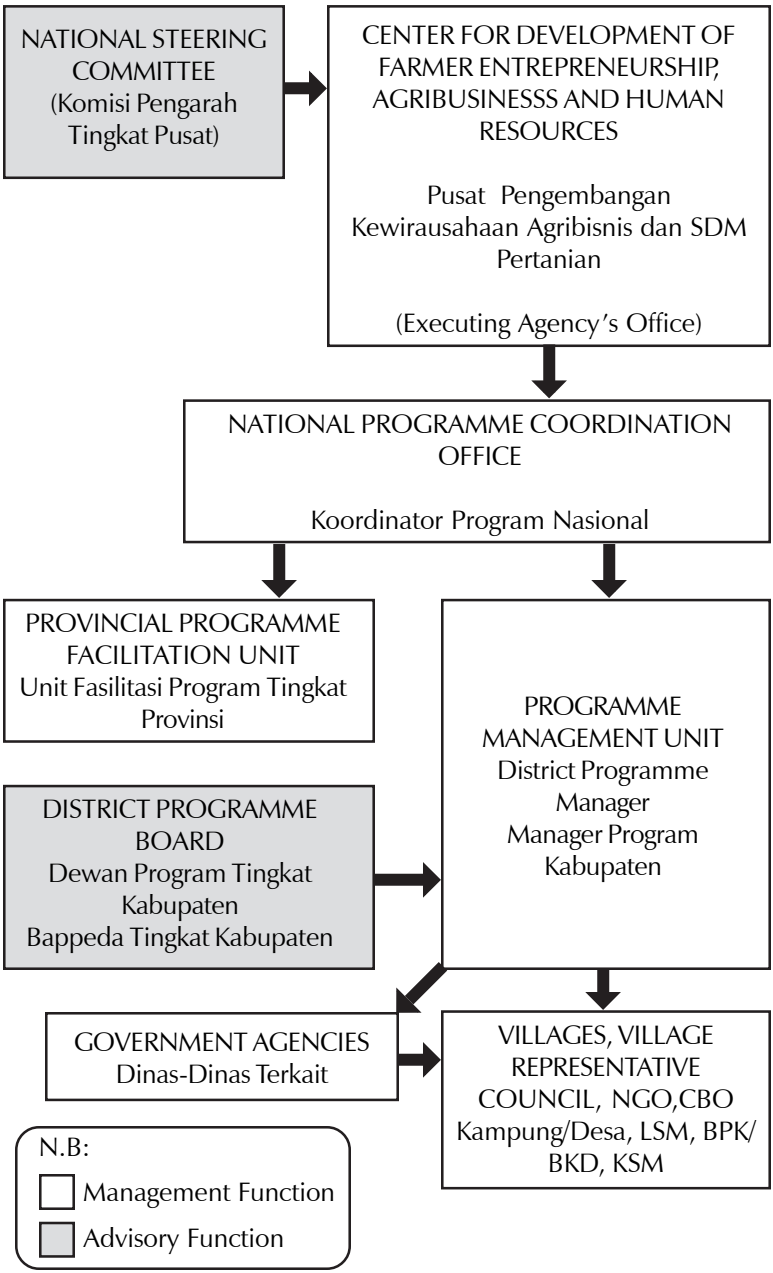
Loan Dynamics

The preparation and implementation of EKLCEP as a development program were established in accordance with the procedures and mechanisms of the Indonesian government and of IFAD. While the preparatory stages offered few hitches, the loan negotiations that involved the district and central governments spawned confusion and complications that finally brought the program down. The problem revolved mainly around the status of the loan and which level of government structure would carry the burden of repayment.

The West Kutai local government was supportive of the EKLCEP and wanted it implemented. In a letter (No 978.5/2812/XI/2002) in November 2002, the district head wrote the Ministers of Finance and Agriculture, declaring the district government's commitment of 1.2 billion rupiah from its 2003 annual budget for prefinancing EKLCEP before the fund installment from IFAD.

On March 23, 2003, IFAD and the Finance Minister on behalf of the Indonesian government signed the Program Loan Agreement. The agreement provided that the implementation of the EKLCEP would be decentralized, placing management responsibilities at the village and district levels, monitoring at the provincial level and coordination at the national level. The EKLCEP management structure is shown in the following graph:

PROGRAMME MANAGEMENT STRUCTURE



Most of the villages had already set up their governance institutions in 2001 after the issuance of several district laws regarding governance system at the village level. Thus the formation of Self-help Groups, Farmers Groups, Farmers Field Schools, Customary Village Institutions and Formal Village Institution as contained in the EKLCEP was made only in villages where some or none of the needed village institutions existed.

At the district level, the establishment of the District Program Management Board and the District Program Management Unit was prepared during the EKLCEP negotiation and officially set up right after the signing of the loan agreement. The DPMB consisted of representatives of government and indigenous leaders in West Kutai. The DPMU, as the implementing body, had experts and technical support staff. The district head assigned an NGO activist, Paulus Kadok, as the manager to lead the DPMU, based on his expertise. Some of the EKLCEP program divisions also recruited NGO experts.

The DPMU was all set to start implementing the program when problems began to arise between the district government and central government, in particular the Ministry of Finance. The dispute started with the status of the project account. Article II-2.3 of the Program Loan Agreement provided that the borrower should open and maintain a special US dollar account in a bank in Indonesia or one proposed by the borrower and acceptable to IFAD for the purpose of financing the EKLCEP. However, Ministerial Regulation Number 35/KMK.07/2003 on the Preparation, Implementation and Monitoring of Foreign Debt Delivery to the District Government does not consider any special account.

On 6 June 2003, the West Kutai district head wrote to the Finance Minister and the BAPPENAS head[29] asking for special treatment for EKLCEP on the following bases:

a) the negotiation on EKLCEP was final;

b) the Program Loan Agreement had been signed before the Ministerial Regulation was issued;

c) the EKLCEP was strongly supported by the East Kalimantan provincial government and Department of Agriculture as executing agency;

d) the West Kutai government had established the DPMB and DPMU, provided the contribution fund and was drafting a Program Implementation Guideline, designing the monitoring and evaluation system and capacity building for EKLCEP staff;

e) the target groups were the poor people who account for 48 percent of the West Kutai population; and

f) during the planning, preparation and implementation processes, the West Kutai government had and would involve the target communities.

Therefore, he added, the communities were waiting for the implementation of the EKLCEP.

The Minister of Finance subsequently issued a new policy,[30] giving dispensation to 14 projects including the EKLCEP. The dispensation involved special account and project appraisal procedures.

The DPMU, using the contribution fund provided by the district government, thus proceeded with setting up the office, staff recruitment, capacity building for personnel, implementing plans, preparing manuals and coordination work.

On 5 January 2004, the district head once again sent a letter[31] to the Ministers of Finance and Agriculture and BAPPENAS head, stating the district was to start field implementation of the program by allocating its contribution from the 2004 district annual budget. Expressing concern that the district had not received any funds from the central government, he also requested the Finance Minister to address this problem and for the other two officials to facilitate the process.

In August 2004, a Memorandum of Understanding on the implementation of EKLCEP was finally signed by the West Kutai District Government, East Kalimantan Provincial Government and Agency for Agricultural Human Resource Development. They agreed on their respective responsibilities within the Program Management Structure.

Loan Status

A second dispute concerned the status of the loan. The West Kutai government initially expected the loan to be turned into a grant by the central government while the latter could not meet the expectation to repay it. The West Kutai Parliament recommended on 3 March 2005 that in the event the district failed to pay the loan in time, the central government should draw payment from the Annual General Allocation Fund (Dana Alokasi Umum/ DAU) and Benefit Sharing Fund (Dana Bagi Hasil).[32] The district head included this statement in his earlier cited letter[33] to the Finance Minister and BAPPENAS head.

The BAPEKKI of the Minister of Finance, as lead institution for the EKLCEP Project Appraisal Team, interpreted the District Parliament's statement as an approval of the loan. The BAPEKKI then sent a recommendation letter[34] to the Agency for Agricultural Human Resource Development to coordinate the process of fulfilling requirements to get the Finance Minister's approval for *special treatment*. However, the West Kutai government clarified in a 28 July 2005 letter[35] that the District Parliament's position was "in support of the EKLCEP" not "an approval of the loan."

The West Kutai district head consulted the Directorate General of Treasure c.q. Directorate of PHLN[36] resulting in an agreement that the fund for the EKLCEP was a grant and a Grant Agreement Document was in fact agreed on between the Department of Finance and the District Government.[37] In contrast, the BAPEKKI considered the Grant Agreement negotiation legally infirm, saying it went against official procedure[38] and reiterated the EKLCEP status as a loan.

Termination of EKLCEP

In support of the West Kutai government, the Agency for Agricultural Human Resource Development wrote[39] to the BAPEKKI on 15 August 2005, requesting it to consider the status of the fund as a grant.

But even with the Department of Agriculture's support, the dispute over the fund status could not be resolved. On 28 December 2005, the West Kutai district head wrote BAPEKKI reiterating the district government's objection to the loan. Three months later on 30 March 2006 the Indonesian government finally received a letter from the IFAD President proposing that the loan be cancelled. The government formally declared a cancellation the following day.[40]

The negotiations that ended in the loan cancellation involved only the central and district governments and IFAD, and had no participation at all by NGOs and the indigenous peoples.

Unfortunately, there was no official announcement to let the target groups, including the indigenous communities, know about the loan cancellation. In fact they are still waiting up to now for the EKLCEP implementation. The program had raised the hopes of indigenous peoples in Kutai Barat District, but in the end they were not even informed that it had been terminated. Neither the government nor the IFAD set up emergency strategies to prevent such unexpected events as a suspension or cancellation of the program.

Mr. Amisan, The Former Petinggi of Kampung Sangsang

"...From my long experience and during my period as Petinggi of this Kampung, this was the very first time where the Project initiated by consulting the villagers and most of all is that we can decide. It's not as usual that they consider us stupid, do not know anything. I am very happy and am waiting for the realization of the project..."

Kampung Sangsang, 19 July 2006

Insights from Program

It is clear from IFAD documents that the EKLCEP was a program financed by a loan of the government of Indonesia from IFAD. Unfortunately this was not clear to some local officials in East Kalimantan.[41] It is government policy to channel to the national government any loan negotiations in the regions. In chapter 11 of Law 25/1999, it is stated that the "regional government can receive foreign loans through the central government."

The law requires the regional government to submit to the central government plans of future loan agreements entered into with any third party. The latter evaluates the proposed agreement, and upon approval, loans can be sent directly to the province. The law further states that the regional government can receive long-term loans for financing the development of infrastructures within the region, as long as the development can produce sufficient income to repay the loans and to fulfill the needs of the region.

Chapter 12 provides indications on the loan making process. It clarifies that loans a region requests for should be agreed upon by the regional legislative assembly. In addition to this, Section 3 of this Chapter notes that "to ensure that people are informed, every loan agreement signed by the regional government must be announced in the official regional gazette."

Chapter 13, Section 1 further states that the "regional government is forbidden from receiving loans which they have no capacities to pay back. There is a fixed quota established by the central government determining the maximum amount that the regional government (province) should receive."

Law 25/1999 allows the regional government to receive loans through the central government. The loan dynamics and the confusion that emerged among the provincial and district officials regarding the IFAD loan apparently show that the central government was not convinced about the loan proposal. But the provincial and district governments expressed interest and willingness to carry out the program.

Despite decentralization the central government is keen in controlling loans by the regional government and adopts central-

ized decision making where mining and logging policies are concerned. The latter has led to the massive impoverishment of many indigenous communities in East Kalimantan. A Decree of Minister of Forestry and Estate Crops No. 614/Kpts-II 1999 assigns the right of companies to extend palm oil and industrial tree plantations in unutilized production forests, which include land under fallow.

Weak policy foundation. Even if good programs are developed and designed for the indigenous peoples in East Kalimantan, neither development nor empowerment will be achieved if they are not recognized as indigenous peoples and more importantly if political engagement at any level is used or abused. The poverty problem will similarly not be addressed despite good programs if a corrupt bureaucracy is ignored.

Empowerment can only be appreciated and applied when the indigenous peoples of East Kalimantan gain civil and political rights as peoples distinct from the major population. Empowerment is premised on enhanced political engagement or participation and more importantly on well-grounded policy recognizing indigenous rights. The absence of a strong legal foundation favorable to indigenous peoples is a hindrance to any empowerment project. One cannot empower local people by introducing village-driven development programs, without giving them legal recognition of their rights to their resources, particularly their lands and territories.

Target groups for empowerment. Empowering local communities cannot be realized by empowering local officials. One needs to create leaders from the marginalized groups so they themselves can conceive of, run and have ownership of programs that truly benefit them.

Weak implementation plan. IFAD has recognized the need for a level of intensive supervision in the project implementation phase.[42] The EKLCEP shows there was no serious study in its implementation phase, particularly in addressing the already recognized low capacity of local motivation of local parliament members. Further, it did not include other options.

The project was envisioned under the decentralized governance system at the local level. But it appears that the project site was not prepared to carry out the project. Personnel did not have the ca-

pacity to implement a community-driven development program nor did they have the motivation to work for indigenous peoples.

The problem with devolved governance is that it has not been fully and effectively operationalized. Local government officials lack a development plan or perspective, and thus may find difficulty with programs that are conceived to be participatory. There are serious flaws arising from the notion of decentralization as well as its implementation process. On one hand the intention may be good to empower the district level, but on the other hand, it may be too ambitious such that one questions the sincerity of the central government as no strategic processes were involved, e.g., personnel development.

It may have been more strategic if the implementation phase directly addressed not only the human resource capacity of district officials, but also raised their motivation and social responsibility to extend their focus and concern beyond basic functions. There is much to be desired in the growth and maximization of economic assets and opportunities as well as improving environmental and health conditions. While several capacity building programs have been implemented for local officials,[43] their attitudes and mindset have not changed correspondingly.

Restoring capacity. The investment and operation by multinational companies in East Kalimantan weakens indigenous political institutions. The vitality of cultural institutions useful to indigenous peoples' development should thus be restored.

Lessons and Recommendations

Other significant lessons have been learned from the EKLCEP undertaking. First, the poor and remote conditions of the people, mostly indigenous peoples, in the newly established West Kutai District forced the local government to look for funds from any possible source including a foreign loan. Although the status of the program fund was not a special focus of this study, it is important to emphasize that the fund would be a foreign debt that in the end would directly impact on the indigenous peoples.

Even if the central government would draw payment for the loan from the Annual General Allocation Fund and Benefit Sharing Fund, the loan would still be paid by the people and from revenues collected from natural resource exploitation. Such funds represent the share from taxes and natural resource use, and using these to repay the loan would reduce allocations for district public services. Thus, even without a loan from IFAD or any other agency, the Kutai Barat Government could finance a program like EKLCEP by allocating part of the district annual budget to an integrated program.

Secondly, the participation in the EKLCEP by NGOs and indigenous peoples was encouraged by the openness of the district government and IFAD's ability to stimulate their interest and willingness. The role of the NGOs and indigenous leaders during the EKLCEP conceptualization and development was notably higher compared to previous government programs. While it was promising, the implementation plan unfortunately could not be tested as the program was terminated before it could even start. However, NGOs and indigenous peoples can not be said to have fully participated, as they were not involved in the final negotiations that led to the loan cancellation. Moreover, issues raised by NGO's and IPO's during the Conceptualization phase was not resolved nor addressed. It would have been good if IFAD did some efforts help resolve the issues.

Thirdly, IFAD's long experience in dealing with civil society groups especially indigenous peoples[44] has contributed to a new program approach based on communities' needs and local ownership.[45] Reforms, however, are needed in central government policies and procedures to accommodate flexibility in implementing funding designs. Part of these should be a synchronized system and procedure within government departments to avoid miscommunication and misperceptions. Funding agencies should continue to influence reform processes at the national level, a crucial role they can play.

Fourthly, the involvement by various stakeholders including IFAD, indigenous peoples and NGOs showed a big improvement in government sincerity to bring in civil society in its programs. The EKLCEP provides lessons for all including NGOs, indigenous peoples, IFAD and other development agencies, and especially the govern-

ment. EKLCEP's failure can not be said to be government's alone. However, in future projects indigenous peoples and NGOs should be allowed to participate more fully including in negotiations with any party, whether intergovernmental or with other agencies.

Finally, development programs need to consider the dynamics of change in target communities and consider strategic adjustments that is acceptable to the population.

Endnotes

[1] <http://dte.gn.apc.org/46iRA.html>.

[2] President Soeharto assigned then Vice President Habibie to take over his position as President.

[3] <http://www.tempointeraktif.com/hg/narasi/2004/11/04/nrs,20041104-01,id.html>.

[4] Samsudkk, 2005. Kontribusi Ijin Pemungutan dan Pemanfaatan Kayu (IPPK) 100 ha terhadap Pendapatan Daerah: Study Kasus Kabupaten Bulungan. Decentralisation Brief No 6 April 2005.

[5] <http://www.fwi.or.id/publikasi/Berburu.pdf>.

[6] Village or community.

[7] Bagian Hukum dan Organisasi Pemerintah Kabupaten Kutai Barat, 2001. Himpunan Peraturan Daerah.

[8] Interview with indigenous activists and leaders, among them Mr. Amisan, former Petinggi of Kampung Sangsang, an indigenous community in West Kutai District.

[9] See Agus Andrianto. The Role of District Government in Poverty Alleviation. CIFOR, 2006.

[10] *Report and recommendation of the President to the Executive Board on a proposed loan to the Republic of Indonesia for the East Kalimantan Local Communities Empowerment Programme (EKLCEP)*. Agenda Item 9(c)(ii). IFAD Executive Board – Seventy-Seventh Session. Rome, 10-11 December 2002.

[11] Interview with Mr. Paulus Kadok, former manager of EKLCEP.

[12] The policy of moving big numbers of people from heavily populated islands to relatively underpopulated ones has remained for decades one of the government's top priorities, with disastrous consequences on indigenous forest-based economies.

[13] <http://www.fwi.or.id/cgi-bin/perusahaan.cgi>.

[14] <www.sawitwatch.or.id>.

[15] <http://www.fwi.or.id/cgi-bin/perusahaan.cgi>.

[16] NGOs were acknowledged by IFAD to have a comparative advantage in fostering effective participation, inclusive of poor households.

[17] As illustrated in the IFAD document, the program component of **Community Empowerment** is intended to strengthen existing formal and traditional village institutions and support the formation of new grassroots institutions (e.g., village representative councils, traditional village councils, self-help groups [SHGs] based on shared concerns and farmers' groups) responsible for the planning, budgeting and implementation of economic, social and infrastructural development activities in the village. The goal is to increase the social capital of the village and enable communities to assume full ownership of their development process. This program is to be implemented by one NGO.

[18] **Economic Empowerment** was designed to stimulate food production and household income through improved upland agricultural, forest and livestock production activities and the establishment of off-farm enterprises. These activities will be carried out by SHGs and farmers' groups who will benefit from the provision of intensive training, financial support and service facilities. The program includes such activities as: (i) training of field extension workers (PPL) in agribusiness; (ii) establishment of farmer field schools (FFSs) in each village; (iii) performance-based matching grants to SHGs to enable them to invest in activities such as wet rice cultivation, small estate crops, production of poultry, pigs and small ruminants, veterinary care, development of small fish production units, village nurseries for timber, fruit, fodder and tree seedlings, food and NTFP processing, and trading; (iv) financing to establish demonstration plots; and (v) financial support for a district training centre. Accordingly, the key feature of this component will be the establishment of a Demand-Driven Community Investment Fund (DDCIF), which will be used to finance matching grants and reforestation, soil and water conservation activities in response to community-identified needs and priorities.

[19] The **Social Services and Rural Infrastructure** component was formulated to address health care, education and infrastructure needs of the target communities. Under the primary health care sub-component, the program will: (i) support the improvement of village and subdistrict health services through provision of basic equipment and information; (ii) support village health programs for infectious disease prevention, infant and child nutrition, mother and child care, safe pregnancy, and health and hygiene; and (iii) identify and train village-based health workers and traditional birth attendants. The education subcomponent will: (i) improve the quality of programs in primary and junior high schools, with emphasis on health, nutrition and environmental education, through provision of teaching

materials and teacher training; and (ii) provide scholarships to improve access of children from poorer households to junior high schools and relevant vocational training. Finally, the program will support a small-scale village infrastructure program funded through a Demand-Driven Village Infrastructure Fund, in which local communities will be responsible for the identification, planning, implementation and maintenance of their proposed facilities. Areas eligible for program funding include drinking/domestic water supply, sanitation facilities, upgrading of health clinics and classrooms, irrigation/drainage headwork, village tracks and bridges, and market infrastructure.

[20] **Security of Tenure over Land and Natural Resources** is perhaps the most tricky part wherein NGOs will support local communities in mapping village territorial boundaries and land use patterns as a basis for recognition of their claims. This component is envisioned to assist in the creation of an enabling legal environment to help communities settle disputes over land and natural resources, with subsequent registration by the government of claims over forestry and agricultural lands, including swidden and fallow lands. Degraded areas over which the village communities have managed to re-establish effective control will be reforested through community-based initiatives. During the first phase, a review of past and ongoing community-based forest management (CBFM) initiatives in East Kalimantan will be undertaken by a research institution under joint supervision by the Center for International Forestry Research and the International Centre for Research in Agroforestry.

[21] The **Programme Management Services** will support the development of the institutional systems necessary for effective implementation. This component is composed of the following activities: (i) selection of personnel and establishment of program management services at the national, provincial and district levels; (ii) training of core staff in management techniques and project planning, budgeting and financing; (iii) training of administrative staff in administration and accounting; (iv) establishment of administrative procedures and purchasing rules according to the IFAD Procurement Guidelines; (v) establishment of a monitoring and evaluation (M&E) system; (vi) enhancing coordination among the three levels of the program management structure; (vii) fostering cooperation between the program management structure and concerned government agencies particularly at the district level; and (viii) implementation of activities according to annual work plan and budget (AWP/B).

[22] Interview with Mr. Paulus Kadok, former manager of EKLCEP.

[23] Kalimantan Timur dalam Angka, BPS 2004.

[24] The local term for the Village, was officially changed through The Kutai barat District Regulation Number 13/2001.

[25] Field visit was made to East Kalimantan on 13-23 July 2006.

[26] Profil Kampung-Kampung di kabupaten kutai Barat: Kondisi Sosial Ekonomi Kampung-kampung.

[27] <http://www.kompas.com/kompas-cetak/0312/03/otonomi/711695.html>.

[28] Badan Perencanaan Pembangunan Nasional or National Plan and Development Agency.

[29] 357/KMK.07/3002.

[30] Letter of the head of West Kutai District Number 050/122/Bapp-TU.Pim/I/04.

[31] West Kutai Parliament Statement No 170/327/DPRD-KB/III/2005.

[32] Letter of the head of West Kutai District Number 119/119/IFAD-TU.P/III/2005.

[33] Letter of the Head of West Kutai District to the Minister of Finance Number 866/119/IFAD.TU.P/VII/2005.

[34] Penerusan Hibah Luar Negri (Foreign Grant Delivery) of Department of Finance.

[35] Letter of the Head of West Kutai District to the Minister of Finance Number 866/119/IFAD.TU.P/VII/2005.

[36] BAPEKKI letter to the head of West Kutai District number s-24/TP.5KB/2005.

[37] Fax No: 0062 21 3457490.

[38] See page 11, paragraph 43 of the document "Report and recommendation of the President to the Executive Board on a proposed loan to the Republic of Indonesia for the East Kalimantan Local Communities Empowerment Programme." December 2002

[39] See Agus Andrianto.

[40] See IFAD, 2001. Indigenous Peoples.

[41] According to its Country Strategic Opportunities Paper (1998), IFAD should concentrate its financial support in marginal and environmentally degraded areas, with priority given to eastern islands and Kalimantan. Food-deficit marginal farmers, together with indigenous communities and women-headed households, constitute IFAD's priority target group. IFAD support will focus on rained agricultural development, microfinance, community infrastructure and off-farm, income-generating activities and assistance to local grassroots institutions.

The first Decade is one factor which led to the establishment of more indigenous peoples' formations within the countries. The existence of the UN Permanent Forum, the UN Working Group on the Declaration and the UN Working Group on Indigenous Populations provided the venues for indigenous activists and leaders from all the parts of the world to come together. One cannot underestimate the role these spaces played in cementing unities among indigenous peoples who are very diverse.

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