

# Indigenous peoples at the global level

Theme >  
Global discourse

Representatives of indigenous peoples today articulate claims of their constituents with sophistication and effect. Although parties still disagree about how to define 'traditional knowledge' or 'prior informed consent', and the reluctance of vested interests to resolve the issues remain, this has not prevented the discussion from moving forward. This article overviews the international discourse on the position of indigenous peoples.

By Barbara Slee

Today indigenous representatives are active and respected participants in the international debate, in contrast to some years ago when attention noticeably drifted off as another indigenous representative pointed an accusing finger at the developed world to point out the injustices they have suffered. Indigenous peoples have much to offer in terms of norms and values respecting nature and its use.

The new role is substantial. Indigenous representatives have learned the rules of diplomacy and are better organised. They phrase their statements in terms more acceptable to national delegations. This does not mean that serious disagreement has vanished; the definition of indigenous peoples is one such issue. Disagreement on specific definitions, however, is viewed by some parties as an advantage: it allows for flexibility when implementing treaties according to local and national conditions. Other parties, however, continue to insist on clear-cut definitions to decide who can and cannot be called indigenous.

## International Labour Organisation

The International Labour Organization (ILO) was the first international policy body to focus on indigenous rights. Convention No.107 'Concerning the Protection of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries' was adopted in 1957 to protect target populations from abuse. Unfortunately, Convention No.107 has a protective and integrative nature, regarding indigenous peoples as backward and conservative. Further, the convention was ratified by only 19 countries. Despite criticism, it was for many years the only instrument of international protection for indigenous peoples.

In 1989, the revised convention, No.169 'Concerning Indigenous and Tribal Peoples' was drafted. Convention No.169 has a more open notion of development than its predecessor; it states that indigenous peoples have the right to choose their own development priorities as it affects their lives, beliefs, institutions and lands. Convention No.169 also recognises the important concept of *free and prior informed consent*; indigenous peoples' right to participate in the formulation, implementation and evaluation of development programmes that may directly affect them. So far, the convention has been ratified by seventeen countries. Strikingly, not a single Asian country has ratified either convention (although many South American countries have committed themselves). This convention is the only legally binding instrument of international law with respect to protection of indigenous peoples and reflects common opinion on indigenous peoples' rights, but its effectiveness depends on implementation by member states.

## World Bank

The World Bank was, in 1982, the first international development agency to issue a policy on indigenous peoples. Many of the viewpoints embedded in its *Operational Manual Statement* (OMS 2.34) were based on the integrative and protective approach of the first ILO convention. The statement focused on small and isolated tribal societies. A review recommended that the Bank broaden its scope to larger and more heterogeneous tribal populations, while at the same time incorporating tribal and indigenous peoples' concerns into the Bank's environment programme.

The Bank issued a revised *Operational Directive on Indigenous Peoples* (OD 4.20) in 1991. The overall objective is to ensure that the development process fosters full respect for indigenous peoples' dignity, human rights and uniqueness. It seeks to ensure that indigenous people benefit from development projects,

and to avoid or mitigate potentially adverse effects caused by Bank-assisted activities. In 1997, the Bank began revising OD 4.20. During public consultations, indigenous organisations lobbied for a stronger emphasis on indigenous land rights and the right to self-determination. The resulting draft indigenous peoples' policy (*Operational Policy 4.10*) will replace OD 4.20. Ironically, indigenous organisations consider the latest draft weaker than the existing policy as it lacks requirements for securing indigenous land and resource use, and disregards fundamental human rights.

## United Nations

Since the 1980s, indigenous peoples have made advances in the human rights arena. The UN Draft Declaration on the Rights of Indigenous Peoples is probably the most progressive document on indigenous rights formulated so far. It was passed by the UN Working

Group on Indigenous Populations and the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities during the UN Year for Indigenous Peoples (1993).

The document was produced with the participation of hundreds of representatives of indigenous peoples, and their ideas and suggestions have clearly influenced its tone. The draft declaration touches on crucial issues such as self-determination, recognition of collective rights, prior informed consent, respect for indigenous culture and intellectual property, and recognition of indigenous peoples' institutions. It states that indigenous peoples have the right to restitution of lands, territories and resources taken from them without consent. If this is not possible, indigenous peoples should be appropriately compensated. In its present form, the draft declaration leaves little space for governments to decide on the specific

implementation of its provisions. The draft declaration is currently working its (troublesome) way through the UN system to the General Assembly. The outcome is expected at the end of the Decade for Indigenous Peoples.

The Convention on Biological Diversity (CBD), negotiated under the auspices of the United Nations Environment Programme, entered into force on 29 December 1993. Since then, 187 countries have ratified it. The CBD promotes: (1) the conservation of biological diversity; (2) the sustainable use of its components; and (3) fair and equitable sharing of benefits arising from the utilization of genetic resources. The convention works primarily through implementation of its principles and directives in national law, policy, research, and management. Annual meetings of the Conference of Parties (COP) result in decisions that provide instructions and guidance for parties on implementing the convention in their national activities. As a result of a powerful lobby, indigenous representatives have been directly involved in the CBD process since COP-4 (1998) through inter-sessional working groups which take place prior to each COP. The three working groups held so far have strengthened indigenous communities' positions in the CBD process and enhanced their dialogue with governments.

## World Conservation Union and World Wildlife Fund

In 1996, the World Conservation Union (IUCN) and the World Wildlife Fund (WWF) presented their joint *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas* (IUCN and WWF: 2000). The joint policy statement provides a basis upon which to

develop partnerships between indigenous peoples and protected-area planners and managers. This is to facilitate the establishment and management of protected areas which overlap with ancestral domains, and/or include indigenous and local communities who use these areas' resources. IUCN/WWF stress that the joint policy statement should be adapted to the particular situation, legislation and policies of each country. With regard to resettlement procedures, prior informed consent, collective rights and benefit sharing, the joint policy statement largely follows policy guidelines of the World Bank and the Asian Development Bank. It provides that even where collective rights have not yet been recognised by a government, the concerned communities should be guaranteed access to the resources in their natural environments.

In 1998 the European Commission and the European Council each produced documents to support indigenous peoples. The overall objective of EU policy is first, to enhance indigenous peoples' right and capacity to control their own social, economic and cultural development; and second, to enhance indigenous peoples' territorial rights and their capacity for sustainable management of biological resources.

## Asian Development Bank

In 1998, much later than the World Bank, the Asian Development Bank (ADB) approved its *Policy on Indigenous Peoples*, which was developed in close consultation with representatives of indigenous communities. Recognising the vulnerability of indigenous peoples in development processes, the policy requires that, with respect to development interventions the ADB supports or assists, affected indigenous peoples are at least as well off as they would have been in the absence of the intervention, or that adequate and appropriate compensation be provided. The ADB works to ensure equal opportunities for indigenous peoples, and to see that interventions affecting indigenous peoples are: (1) consistent with the needs and aspirations of affected peoples; (2) compatible with affected peoples' cultural, social and economic institutions; and (3) conceived, planned and implemented with the informed participation of affected communities. Like the ILO and World Bank, the ADB adopted the position that indigenous peoples should determine their own pace and path of development.

## Envoi

Despite these changes, several Asian countries still hesitate to support developments that specify an important role for indigenous and local communities. For example, Malaysia made a serious attempt to hinder the process, in Montreal, regarding the AKWE: *KON Guidelines* on 'the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities'. Malaysia suggested that it

should be the task of the government to decide what is or is not a 'sacred site'. The guidelines would then be dependent on the (not so evident) good will of the national government. At the Conference of Parties in Kuala Lumpur, both Malaysia and China attempted to emphasise the decisive role of national legislation (in contrast to international legislation) for the implementation of article 8(j) of the CBD, thereby diminishing the influence of international law and practice.

Nevertheless, Malaysia and China, together with the Philippines and India are seen as exceptions when considering the actual participation of Asian countries. At the international level, Asian delegations are much less active than, for example, African and Latin American or Caribbean groups. It seems that indigenous and local communities can make a difference by putting pressure on their governments.

Asian indigenous representatives can emulate the struggle and resulting influence of their South American counterparts. Communities need to be educated, informed, and organised at the regional and national levels with formal representatives. With assistance from professionals and researchers, representatives can participate effectively and have substantial input at the international level. With the establishment of a voluntary fund consistent with UN criteria for equal geographical representation, Asian efforts will be sufficiently supported and in time rewarded with unforeseen influence. <

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