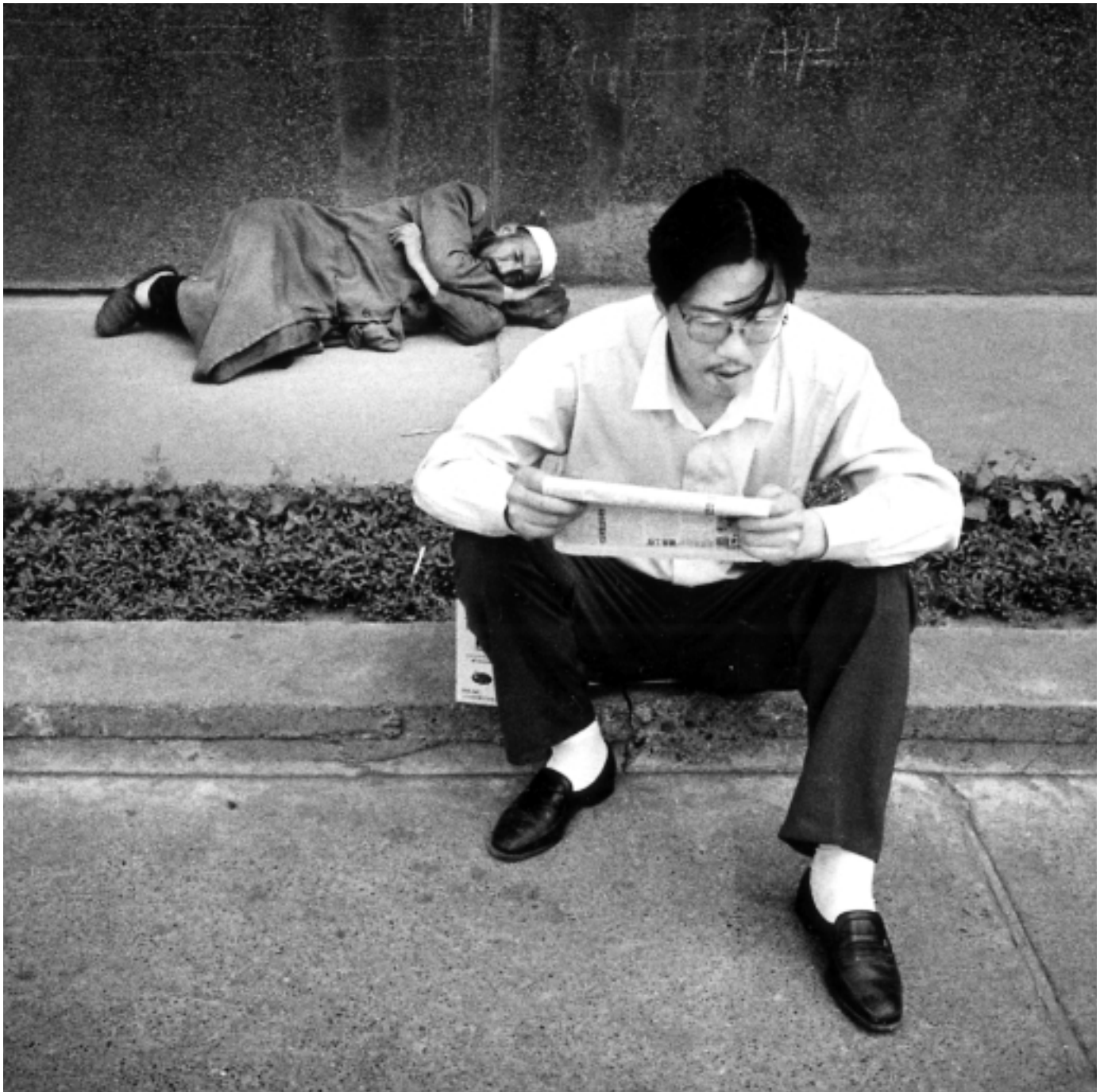


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Good Governance and Indigenous Peoples in Asia

By Lejo Sibbel



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Minority Rights Group International

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

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Executive summary

Indigenous peoples are nearly always among a country's poorest. For their size, they are also typically disproportionately poor compared to the rest of the population. Where development efforts lift some of society's poor to a higher standard of living, these same efforts often leave indigenous peoples worse off. One of the principal reasons for this disparity is that indigenous peoples are associated with the concept of self-determination, which governments find threatening. They link it with loss of control over land and natural resources, and calls for shared decision-making. Nowhere is this more evident than in Asia, where the great majority of governments systematically deny the existence of indigenous peoples on their territories.

Governance is at the heart of most development and poverty reduction efforts today, including those aimed at realizing the Millennium Development Goals, but it has failed to lift indigenous peoples out of poverty. This report examines the ways in which the governance policies of international development organizations affect the indigenous peoples of Asia. It argues that there are a number of structural problems, which continue to prevent indigenous peoples benefiting from efforts to improve governance to the degree that could be expected.

Definitions of governance vary, but all refer to a process through which government authority is exercised. The best governance is simply seen as the most efficient means to achieve a goal. There are generally considered to be four basic elements of good governance: accountability, predictability, transparency and participation. Here, different organizations emphasize different elements according to their mandate. The International Monetary Fund (IMF), World Bank and Asian Development Bank (ADB) place greater emphasis on elements of accountability and transparency, while the United Nations Development Programme (UNDP) emphasizes the element of participation. As a result, the supposedly holistic concept of governance is, in reality, fragmented. The question is whether it is possible to successfully segment governance in this way.

International development agencies and failures of governance

Governance policies, programmes and projects consider it important for all relevant parties to participate in the

decision-making processes. This would seem to be positive for indigenous peoples, but this is not the case. An analysis of some of the tools used by development organizations (Poverty Reduction Strategy Papers, conditionality, decentralization, and poverty and governance indicators) show the failure of governance. There are frequently scope limitations, political constraints and debates over the use of the term self-determination in connection with indigenous peoples. Most governments in Asia deny the existence of indigenous peoples in their countries, which makes it difficult for organizations to set up programmes specifically for them. Consequently, the invisibility of indigenous peoples in Asia continues.

The Poverty Reduction Strategy Paper (PRSP) approach, introduced by the IMF and the World Bank in 1999, was specifically designed to improve national ownership of development policies. But analyses of a number of PRSPs show that governments either ignore their existence, target them for assimilation, mix them in with other 'vulnerable groups', or fall short of seriously listening to indigenous peoples' concerns. The result is that these concerns are largely ignored in PRSPs.

Conditionality is also seen as largely ineffectual. Negotiations between recipient countries and international financial institutions invariably come with restrictive conditions. For indigenous peoples, World Trade Organisation (WTO) membership requires certain policy choices, which is contrary to the idea of good/democratic governance. The international agenda of trade liberalization is also seen by indigenous peoples to be behind the use of conditionality and is felt to be responsible for the loss of their land and heritage by laying the groundwork for a destructive link-up between multinationals and national governments, who seek access to natural resources and foreign investments.

It is generally considered that decentralization enhances the responsiveness of policy-making and the effectiveness of poverty reduction measures because it allows for more direct participation by those affected by the measures. But indigenous peoples in Asia are mostly left out of national decision-making processes, and decentralization decisions are no exception. What is often not taken into account is that decentralization may lead to an erosion of traditional authority and decision-making structures and lead to significant and life-altering changes in the socio-economic position of indigenous peoples. It can result in increased impoverishment of indigenous peoples, both in monetary

and spiritual terms, because they are set to lose most with the introduction of authority and decision-making structures parallel to their own traditional structures.

Measuring governance

Measuring governance is not an easy task because it is largely about processes and institutions. The sources of information and indicators typically used to measure governance do not capture the particular situation of indigenous peoples. In fact, some of the indicators used can actually work to the detriment of indigenous peoples. For instance, where business can express its concerns (an indicator used by the World Bank) but indigenous peoples cannot, governments may well decide to allow logging on indigenous lands against the wishes of the indigenous peoples concerned.

Nor do indicators used to measure poverty capture the situation of indigenous peoples. First, governments rarely collect and analyse data by ethnic origin at the national level. Furthermore, there is an increasing understanding that traditional indicators of poverty, such as monetary income, fail to grasp indigenous perceptions of poverty and wealth. Another complicating issue is that indigenous peoples are often assumed to be static and not subject to change. However, like any other community, they do change and never more so as today, as they are increasingly rapidly exposed to development efforts. These changes often affect their perception of poverty and wealth. Land, for example, has become increasingly treasured because it is becoming ever scarcer. It is important for all poverty reduction efforts to accurately incorporate and reflect these notions of wealth and poverty notions among indigenous peoples. Otherwise, they will not help, and may even hinder their situation.

Towards improved governance

Governance is about creating sufficient space for all parties to be heard and act on their own behalf. Participation should be within a framework of adequately upheld minimum standards, which protect all people from the undue

influence of others. Currently, most government structures in Asia do not provide this framework. The report describes some of the differences here between Asian countries. It notes that where space for the participation of indigenous people exist within national frameworks, international organizations can work together with governments and indigenous peoples to ensure that this is used optimally when developing national policies and programmes. Where there is insufficient space for such participation, international organizations can work together with governments and indigenous peoples to increase the space.

Improving governance is, first and foremost, the duty of national governments. It is their responsibility to ensure that every man, woman and child has a voice in decisions that affect them. The group of people that lack this voice the most in Asia today are the indigenous peoples of the region. Political considerations concerning the right to self-determination prompt governments to systematically deny their indigenousness, and systematically exclude them from national decision-making processes. International development agencies all realize that ensuring the participation of indigenous peoples in decision-making processes is crucial to their continued existence. Increasingly, they also realize that a human rights-based approach to governance (i.e. democratic governance) is the only suitable basis for reducing poverty in general, particularly among indigenous peoples.

International development agencies could be less reverent to prevailing opinions among Asian governments and be more forceful in convincing to listen openly to claims by indigenous peoples for self-determination. Development agencies should engage governments in a frank, open and non-dogmatic policy dialogue concerning the identification, legal status and poverty situation of indigenous peoples living in their territories. This policy dialogue should have as its ultimate aim the development of a comprehensive and rights-based national policy/law. This should promulgate the concept of free, prior and informed consent of indigenous peoples whenever legislative or administrative measures are considered that may affect them.

Introduction

In September 2000, all 189 Member States of the United Nations (UN) adopted the Millennium Declaration. The Declaration contains a broad reaffirmation of their commitment to the purposes of the UN and identifies a number of key objectives for all to realize. A set of eight specific goals for development cooperation were defined, accompanied by specific targets to be attained within a certain time, most by 2015. The so-called Millennium Development Goals (MDGs) are:

- Goal 1: Eradicate extreme poverty and hunger
- Goal 2: Achieve universal primary education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/Aids, malaria and other diseases
- Goal 7: Ensure environmental sustainability
- Goal 8: Develop a global partnership for development.

Given that indigenous peoples rank among the world's poorest, the attainment of these MDGs should benefit them greatly. Nowhere would this hold truer than in Asia, where indigenous and tribal peoples are estimated to make up 70 per cent of the world's indigenous and tribal peoples.¹ But as the initial effects of the international community's MDG efforts start to become visible, it seems that indigenous peoples in Asia remain largely unaffected. Why is this?

The Millennium Declaration states that '[s]uccess in meeting these objectives depends ... on good governance within each country'.² In other words, good governance plays a key role in reducing world poverty. The concept of good governance is relatively new. It only surfaced around 15 years ago but has since swiftly become the new mantra for international development organizations. So is governance to blame for the failure? If so, why and what should be done to change these governance policies or the way in which they are implemented?

This report hopes to provide some answers to these questions. It aims to provide an analysis of the way in which the governance policies of international development organizations affect the indigenous peoples of Asia. In doing so, it aims to provide an overview of the concept of governance and the manner in which the governance policies of international development organizations relate to their policies on indigenous peoples. It also seeks to

provide some insights into their record of improving the situation of indigenous peoples in Asia.

Indigenous peoples in Asia

There is no universally accepted definition of the term 'indigenous peoples'. The sheer complexity and diversity of the estimated 300 million indigenous people worldwide, and their associated political considerations, has rendered any attempts futile. Indigenous peoples themselves will tell anyone who asks them that they know who they are and that there is no need for or problem of 'definition'. They will make it clear that '[t]he right to define oneself and to be recognised as indigenous is a right that indigenous peoples may claim, along with the right to self-determination' and that '[i]ndeed, this right of identity is in itself an important aspect of the right to self-determination'.³ But it is exactly this link with the concept of self-determination that brings about gloomy visions of loss of sovereignty over land and natural resources, and sweaty palms over calls for shared decision-making, or even secession among governments across Asia.

Many of these governments are caught in singular notions of nationhood within which diversity among peoples is deemed unacceptable. If indigenous peoples have the right to self-determination, then defining indigenous peoples is no longer an exercise relevant only for anthropologists but also for those who govern the countries where indigenous peoples live. In the case of developing countries, this extends to the international organizations which assist in effecting development. As a result, defining indigenous peoples – or choosing not to – becomes a loaded issue: a political choice.

In Asia, many indigenous peoples struggle to be recognized every day. Almost without fail, they are not only among the poorest, but also disproportionately poor for their size compared to the rest of the population. For instance, in Vietnam, 37 per cent of the total population lived below the poverty line in 1997–98, whereas 67 per cent of the ethnic minorities in Vietnam live below the poverty line even though they constitute only 14 per cent of the total population.⁴ Where development efforts lift some of the poor to a higher standard of living, often these same efforts leave indigenous peoples worse off. For example:

In Bangladesh, there are some 2.5 million indigenous peoples or 'adivasis', belonging to 45 different ethnic

groups. In the Chittagong Hill Tracts in the south-east, 11 indigenous peoples continue to live in one of the most highly militarized regions in the world. In spite of the provisions of a December 1997 Peace Accord between the government of Bangladesh and the indigenous resistance movement, which foresees the withdrawal of the armed forces and the dissolution of all non-permanent army camps, it is estimated that approximately one-third of the Bangladesh military is deployed there. The army is reportedly still involved in human rights abuses.⁵

In India, an estimated 70 million indigenous people are facing difficulties in their struggle for recognition and survival. In the state of Orissa, several projects for mining bauxite and alumina are threatening the existence of indigenous peoples. Protests against the projects are violently dispersed and activists have been jailed without access to bail. While the projects will generate billions of rupees for the state-government coffers, indigenous peoples fear they will also lead to their displacement and the destruction of the lands and water sources on which they depend.⁶

On the island of Flores in Indonesia, five people were killed and 26 injured when police opened fire on hundreds of indigenous farmers who had stormed the police station. They were demanding the release of seven local residents who had been detained by the police for planting coffee in their kitchen gardens. The locals have worked the kitchen gardens for generations, but the local government, without informing or consulting local residents, claimed the land as protected forest.⁷

There are reported to be 8 million indigenous peoples in the Philippines. In 1997, the Philippine government promulgated the Indigenous Peoples Rights Act (IPRA) in

an attempt to accord indigenous peoples with a measure of protection and a framework for their development. Subsequently, a land titling drive was undertaken under the auspices of the National Commission on Indigenous Peoples, the government agency mandated to deal with indigenous issues. There are an estimated 300–500 ancestral domains nationwide. By the end of 2004, 29 titles had been approved. At this rate (three to four per year), it would take 75 years to issue all the requisite land titles. Unless this is speeded up, the indigenous peoples fear the majority of them will lose their identity, if not their lives before they are granted official titles.⁸

In the northern highlands of Thailand, the indigenous tribal peoples are caught up in environmental protection efforts. It is estimated that almost 10 million people in Thailand live in areas classified as ‘reserved’ or ‘conservation’ forest, where there are restrictions on cultivation and residence rights. Where these forests coincide with traditional indigenous lands, indigenous tribals face arrest. In an early morning raid by 200 armed government officials, 48 members of the Pang Daeng community were arrested for cultivating land in a ‘reserved forest’.⁹

The aforementioned examples help to explain how indigenous peoples represent about 5 per cent of the world’s population, and yet represent over 15 per cent of the world’s poor.¹⁰ But given these figures, why are development efforts aimed at reducing poverty apparently not reaching indigenous peoples? And if indigenous peoples rank among the poorest of the poor, shouldn’t the concepts that underpin development policies specifically take into account the situation of indigenous peoples? Let’s see if they do.

The concept of governance

The origins of the concept of governance

The concept of good governance is relatively new. It only surfaced around 15 years ago but has since swiftly become the new mantra for international development organizations. Its appearance constituted a major departure from what was previously thought to be the cure-all for developing countries – simple economic growth.

Following the success of the Marshall Plan in rebuilding Europe after World War II, it was believed that the same technical process of transferring aid, technology and political and economic processes could provide a global blue print for development. The state was considered to be the vehicle for delivering development and its role and size increased commensurably. It was believed that government-orchestrated investment in large-scale infrastructure projects, capital intensive industries and large-scale manufacturing projects would kick-start economies and in its slip-stream provide for sustained economic growth and development of other sectors. The theory that development was basically an economic problem was the basis of all thinking at that time.¹¹

The focus shifted in the 1970s. The state was no longer considered part of the solution but part of the problem. Government bureaucracies were deemed incapable of taking on the sizable role they had been apportioned. The political processes that steered them were inefficient because they were geared towards solidifying and expanding the position of the already rich and powerful. Instead, markets were considered to be the most efficient and effective vehicle in bringing about economic growth and proper distribution of wealth. Government interventions were seen as distorting the free movement of the market. As a result, government ownership and subsidies had to be stopped. What was needed was a 'structurally adjusted', lean government whose job it was to de-regulate markets, open borders to international trade and finance and provide macro-economic stability. This would enable the private sector to function properly in a global and liberalized free market and bring about economic growth and development worldwide.¹²

Over the years, however, it became apparent that the free-market reforms and structural adjustment strategies introduced in the late 1980s and early 1990s were just as ineffectual at lifting developing countries out of poverty

as the industrial economic growth models of the 1960s and 1970s. Gross Domestic Product (GDP) growth could not be brought about simply through economic models and prescriptions of development. More importantly, it became apparent that economic growth does not necessarily lead to sustainable human development and, moreover, that disparities between segments of societies exist in both poor and rich countries alike.

As a result, frustrations continued over the continued level of poverty in the world, the (partial) ineffectiveness of aid, the lack of commitment to reform of governments in developing countries and the widespread corruption in these countries. A re-think was needed. The aim was to find the alternative to technical development approaches based solely on the panacea of economic growth, which had proven to be largely ineffective. The answer was thought to lie somewhere between government-engineered economic development and free markets. This was where good governance came in.

Definitions of governance

There are several definitions of governance (see box 1), each of which points to a process through which authority is exercised. Governance is a process, a means: it is not an end in itself. In principle, it carries no moral value, for whether governance is considered good or bad depends solely on its efficiency. Good governance is simply the most efficient means to achieve a goal. There are generally considered to be four basic elements of good governance: accountability, predictability, transparency and participation.

Box 1: Definitions of (good) governance

UNDP: Governance is defined as the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations. Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and most vulnerable are heard in decision-making over the allocation of development resources. (Governance for sustainable human development, 1997, UNDP)

World Bank: Governance is identified as the manner in which power is exercised in the management of a country's economic and social resources. (Governance and Development, 1992, The World Bank)

ADB: The definition of 'governance' from ADB's point of view is 'the manner in which power is exercised in the management of a country's economic and social resources for development.' ADB regards good governance as synonymous with sound development management. It involves both the public and private sectors. It includes the effectiveness with which development assistance is used, and has a direct effect on the impact of development programs and projects (including those financed by ADB). Sound development management, among other things, takes into account the absorptive capacity of borrowers. Irrespective of the economic policies adopted by a government, good governance is essential to ensure that these policies have their desired effect. (Governance, 2003, ADB Operations Manual)

IMF: Good governance is defined in terms of the effective and transparent management of public resources and a stable economic, regulatory and legal environment conducive to the sound management and efficient use of private and public resources. (Review of the Fund's Experience in Governance Issues, 2001, IMF)

Accountability

Accountability is the obligation public officials have to explain – and answer for – their actions when exercising government authority. In other words, when public officials make mistakes or fail to perform their duties, they have to explain their actions and face the consequences. This presupposes that there are ways (measurable criteria, oversight mechanisms, rules and procedures) and means (rectification of mistake, dismissal of official, compensation, etc.) to hold people accountable, and that people are aware and have faith in these mechanisms. A lack of accountability leads to an erosion in trust in government ability and authority to interact with society, and allows public officials to make decisions on grounds other than a reasoned assessment of all applicable rules and regulations. Accountability differs from transparency (see below) in that it only enables negative feedback after a decision or action, while transparency enables positive and negative feedback before, during and after a decision or action.

Predictability

Predictability refers to the rule of law: i.e. the existence of laws, rules, regulations, policies and procedures to regulate society, as well as their prompt, equitable and consistent

application. In other words, it means that people can expect that if A occurs, then B will follow; if you steal something, you will go to jail – even if you are the son of the president. It presupposes a clear set of rights and duties as well as independent mechanisms to enforce them. A lack of predictability creates uncertainty and prevents people from making sound decisions based on a reasoned assessment of all expected risks and benefits. For instance, businessmen will think twice before they decide to invest in a country where decisions to nationalize property can be made by the regional governor. They are more likely to do so in a country where legal safeguards limit nationalization to exceptional and clear situations and provides for fair compensation.

Transparency

Transparency means that the rules and procedures by which a government functions and makes decisions are clear, and that information on these rules, procedures and decisions is freely available to the general public. For instance, there is a high level of transparency in those countries where government meetings and court proceedings are open to the press and the public, where budgets and financial statements have to be published and can be reviewed by anyone, and where private individuals and enterprises can request the disclosure of information on the basis of freedom of information legislation. It presupposes an open flow of information through public information (official publication of laws, calls for tender, announcements on building plans, etc.) and the existence of a free and independent media. This should be embedded in a legal framework through which information can be legally obtained when withheld, while some is legally protected (privacy, national security, intellectual property). A lack of transparency creates distrust between government and society and prevents people from making sound decisions based on a reasoned assessment of all relevant information.

Participation

Participation refers to the different ways and means through which the general public is involved in decision-making processes on matters that affect them. For instance, there is a high level of participation where there are regular general elections in which every citizen can participate, where referenda can be held without undue constraints, where city councils are elected, where building permits can be questioned, and where development plans are open to comment by people affected. It presupposes that people, or the non-governmental organizations that represent them, know there are opportunities for them to get involved in decision-making processes, are informed in a timely manner of decisions to be made, have full access to all relevant information and can under-

stand this information, and that decision-makers are responsive to arguments and concerns raised. Participation is a process and has no set outcome, i.e. it does not mean that all views put forward will be reflected in the ultimate decision. It does mean, however, require the publication and explanation of any reasons why certain views are not reflected in a decision. A lack of participation creates distrust between government and society. This prevents both government and private entities from making sound decisions based on a reasoned assessment of all information available, where all views within society are taken into consideration.

From good governance to democratic governance

Although there is broad consensus on the elements which form the basis of good governance, organizations use and apply the concept of governance in different ways. These differences stem from the framework within which organizations have to work. They start with the mandate they have been given, and extend to the boldness they display in formulating policies and instruments to fulfil their mandate. Where some organizations have considered their role in promoting good governance boldly, others have been less forthcoming. Problems here occur mostly in aligning the concept of governance (by definition, a whole-country, holistic process), with the mandates of international organizations, which are often limited to only certain aspects of governing a country.

The IMF's approach to good governance

The IMF is basically the world's economic watchdog. It is responsible for ensuring the stability of the international monetary and financial system – the system of international payments and exchange rates among national currencies that enables trade to take place between countries. The Fund seeks to promote economic stability and prevent crises, to help resolve crises when they do occur, and to promote growth and alleviate poverty.¹³ The IMF aims to assist countries in developing and implementing sound monetary and financial policies and practices through its key functions of surveillance (oversight of economic policies), technical assistance, and lending.

The IMF considers that the concept of governance encompasses all aspects of the way a country is governed. Since this includes the economic policy interactions that fall within the mandate and expertise of the IMF, the IMF has a clear mandate here. It does, however, set itself clear boundaries for dealing with governance issues. While the IMF is conscious that it may be difficult to separate

economic from political aspects of governance, it sets out clearly defined lines for intervention to ensure it does not overstep the boundaries of its mandate. As a result, the IMF only gets involved in governance issues when they have a significant current or potential impact on macro-economic performance. This mandate prohibits it from taking into account political considerations and from interfering in the domestic or foreign politics of any of its members.

Consequently, the IMF basically limits its governance role to two areas: i) improving the management of public resources through reforms of public sector institutions (e.g. the treasury, central bank, public enterprises, civil service, and the official statistics function), which includes administrative procedures (e.g. expenditure control, budget management, and revenue collection); and ii) supporting the development and maintenance of a transparent and stable economic and regulatory environment conducive to efficient private sector activities (e.g. price systems, exchange and trade regimes, and banking systems and their related regulations).

The IMF has considered that '[d]omestic ownership at all levels is important of the credibility of initiatives to promote good governance and the even-handed application to, and adoption by, all individuals and groups of practices of good governance'.¹⁴ It is of the view that '[i]n low income countries, the introduction of PRSPs and the associated participatory preparation process, together with the involvement of civil groups in monitoring progress should encourage such ownership'.¹⁵ In practice, the combined considerations have resulted in the IMF's work promoting good governance being geared towards enhancing transparency and accountability of a country's economic policies and thus preventing any possibility of corruption.

The World Bank's approach to promoting good governance

The World Bank's mission is to assist developing countries integrate into the world economy and promote long-term economic growth to eradicate poverty and improve the living standards of people in the developing world. It provides loans, policy advice, technical assistance and knowledge sharing services to low and middle income countries to reduce poverty.

The World Bank has placed governance at the heart of its policies and programmes. The policy of governance reform has been translated into two main areas of activity: institutional development and capacity building. The ultimate aim is to reform public institutions so that they help, not hinder the reduction of poverty. Here, it should be noted that within the framework of governance, the

concept of ‘institutions’ does not refer to organizations but to ‘the rules of the game’, as cited by the World Bank. These are the set of rules that ‘emerge from formal laws, informal norms and practices, and organizational structures in a given setting’.¹⁶

To a large degree these rules also determine the behaviour both of public officials and also the clients (private individuals, businesses, etc.) with which they interact and which they serve. Institutional development is therefore not a sectoral activity focusing on content (for example, advising a government to lay off a number of civil servants) but rather a cross-cutting activity focusing on process (for example, assisting governments in creating an efficient and effective employment-management system for civil servants). Placed within this framework, the World Bank sees its core business as assisting developing countries in (a) helping define its role in line with economic rationale and with its own capacity, and (b) helping it enhance performance within that role.¹⁷

Central to the Bank’s view of governance is the belief that ownership and participation, or ‘voice’ as the Bank often calls it, are crucial elements in ensuring good governance. By this it means that reform will only be successful when a government is fully committed to it, and that the participation of all the parties involved is necessary to ensure that governments are committed to the right reforms. This cross-party involvement is considered necessary because ‘[i]n nearly all societies the needs and preferences of the wealthy and powerful are well reflected in official policy goals and priorities, [b]ut this is rarely true of the poor and the marginalized, who struggle to get their voices heard in the corridors of power’, and, ‘[a]s a result, these and other less vocal groups tend to be ill served by public policies and services, even those that should benefit them most’.¹⁸

Another important aspect in the Bank’s view of governance is its desire to move away from applying ‘best practices’ worldwide to what it calls ‘good fit’. In an effort to emphasize the unique character of conditions in each country the Bank has taken a step back and said: ‘[W]e need to start with a thorough understanding of what exists on the ground and emphasize “good fit” rather than any one-size-fits-all notion of “best practice”’.¹⁹

Though originally established to assist in a smooth transition from a wartime to a peacetime economy, the World Bank has become a broad poverty alleviation organization. Its historic development still has an effect on its work today in that its mandate requires it to focus on economic matters and in providing loans. But it must also do so ‘with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations’.²⁰ In practice, the Bank engages in a wide array of activities in practically

every conceivable field of development. When it comes to governance the Bank’s focus is on general public institution reform in an effort to increase transparency, accountability, predictability and participation. Like the IMF, however, it too pays a lot of attention to the prevention of corruption, and it treads lightly where political issues come to the fore.

The Asian Development Bank’s approach to promoting good governance

Where the Asian Development Bank (ADB) previously also focused on the singular promotion of economic growth among developing member countries (DMCs) in the Asian region, over the past years it too has broadened the scope of its activities and today focuses more generally on poverty reduction. The three pillars of its poverty reduction strategy are pro-poor, sustainable economic growth, inclusive social development and good governance. The ADB provides loans, policy advice, technical assistance and knowledge-sharing services to low and middle income countries in the region to reduce poverty.

Promoting good governance has become an important policy item in the ADB. In its approach to promoting good governance, the ADB is guided by two general considerations. The first is that the ADB considers that governance requires flexible (non-doctrinaire) and country-specific approaches. It has considered that ‘there are many institutional alternatives for managing the development process soundly’ and because ‘the specific features of public administration in each DMC reflect, and respond to, its own political and bureaucratic evolution, cultural norms, and social values, [t]his underscores the need for home-grown approaches for enhancing governance quality in DMCs’.²¹

The second element that guides the ADB in promoting good governance is the provisions of its Charter. According to Article 1, the ADB’s purpose is to foster economic growth and cooperation in the region, and promote economic development of its DMCs. In addition, the provisions of Article 36 of the Charter prevents the Bank from interfering in the political affairs of a member country or be influenced in its decisions by the political character of a country.

When considering these articles combined, the General Counsel of the ADB concluded that while ‘[g]overnance has at least two dimensions: political (e.g. democracy, human rights) and economic (e.g. efficient management of public resources), [i]n dealing with governance ... the Bank needs to stay close to its mandate for accelerating the process of economic development in DMCs’.²² But these economic and political considerations

are not set in stone because they do not 'prohibit the Bank from taking into account demonstrable and direct economic effects of non-economic factors as part of the "economic considerations" on which the Bank must base its decisions'.²³ In this round-about way the Bank creates space to undertake activities in 'social areas' such as the environment, education or gender.

However, when it comes to governance the ADB's focus remains clearly set within the economic sphere. Here it is geared more towards improving transparency and accountability, for instance, through support for programmes to prevent corruption, and to a lesser degree to improve predictability and participation. It steers clear of political issues to a greater extent than the World Bank.

The United Nations Development Programme's approach to promoting democratic governance

The United Nations Development Programme is basically the development arm of the United Nations. Its overall goal is poverty eradication in developing countries. UNDP develops and implements technical assistance programmes and projects but also has a coordinating role within countries for the UN system as a whole.

UNDP's approach to governance has changed dramatically in recent history. Initially, much like the IMF, the World Bank and the ADB, it considered promoting good governance a matter of efficiency – a means to an end. Subsequently, however, it considered that good governance has a value in itself. It felt that being able to participate in a country's political decision-making processes or knowing that reliable and predictable laws and regulations protect people, for instance, is a development end in itself. The justification for this lies in the fact that such factors are valued by people for what they are, and therefore form part of the concept of human development in the widest sense. It considered that '... politics is as important to successful development as economics'²⁴ and consequently broadened the concept of governance to include this consideration. Thus, UNDP consciously stepped out of the socio-economic sphere within which the concept of good governance was usually placed; it deliberately stepped into the political sphere and developed the concept of 'democratic governance' (see box 2).

Where good governance refers to the efficiency and effectiveness of governance, democratic governance refers to its legitimacy. UNDP argues that democracy is the best vehicle to assure good governance, and that it has a value in itself because it requires that a society's rules are devel-

oped through a process in which all people have a voice, and that they are not just efficient but also fair. It places 'rights' at the centre of governance, and therefore requires a rights-based approach to governance and poverty reduction. It asserts that governance is neither simply an aspiration, nor just a need, but rather an entitlement which every man and woman on the planet can claim.

Box 2: UNDP's description of democratic governance

From the human development perspective, good governance is democratic governance. Democratic governance means that:

- People's human rights and fundamental freedoms are respected, allowing them to live with dignity.
- People have a say in decisions that affect their lives.
- People can hold decision-makers accountable.
- Inclusive and fair rules, institutions and practices govern social interactions.
- Women are equal partners with men in private and public spheres of life and decision-making.
- People are free from discrimination based on race, ethnicity, class, gender or any other attribute.
- The needs for future generations are reflected in current politics.
- Economic and social policies are responsive to peoples' needs and aspirations.
- Economic and social policies aim at eradicating poverty and expanding the choices that all people have in their lives.

Source: UNDP Human Development Report 2002, p. 51.

UNDP not only considers democracy the best form of good governance because of its intrinsic value but also because it argues that 'countries can promote human development for all only when they have governance systems that are fully accountable to all people – and when all people can participate in the debates and decisions that shape their lives'.²⁵ Participation at the heart of governance. Because participation is best served by the fullest possible measure of political freedom, democracy becomes paramount. This form of governance is considered to be the best vehicle to promote and protect political rights, such as the right to freedom of expression or the right to peaceful assembly and association. But this does not mean that UNDP promotes a single model of democracy, such as the Western European model. It considers that each country must follow its own path to democracy for the resulting democracy to be effective and that 'countries will necessarily be differently democratic'.²⁶ In fact, it sees many democratic deficits in established democracies around the world, for instance in the area of corruption,

special interest influence, elite capture and political indifference among the general public.²⁷

Concerning governance, UNDP's focus is therefore not limited to the socio-economic sphere. Instead, it places political considerations at the heart of its concept of democratic governance. Where predictability, transparency and accountability all have an important role to play, UNDP considers that participation is the key to ensuring democratic governance.

Governance policies in overview

The governance policies of international organizations have certain key elements in common: accountability, predictability, transparency and participation. Although these elements are considered to be interlinked and all have a role to play in ensuring good governance, different organizations emphasize different elements. The IMF, World Bank and ADB place greater emphasis on the elements of accountability and transparency, while UNDP clearly emphasizes the element of participation. This difference appears to be linked to the mandate of the different organizations and the way in which these mandates are interpreted. The IMF, World Bank and ADB all have, more or less, a mandate to secure and promote economic stability and growth – and their founding instruments all specifically prohibit them from taking into account politi-

cal considerations. Even though the mandates of the World Bank and the ADB have been expanded to include much broader elements of poverty reduction, the policies and instruments they develop are still largely interpreted within the confines of their original mandates.

As a result, the typically holistic concept of governance, which covers all aspects of how a country is governed, is applied only within the limited scope of matters that fall within the mandate of these organizations that cover only part of government activity. The question is whether it is possible to have such a segmented application of the holistic concept of governance. On the other hand, UNDP's mandate allows it to embrace all aspects of governance, and it does so in practice. It has even gone as far as to develop and promote the concept of democratic governance, thereby according it a value and giving it a political dimension.

The realization of good/democratic governance should also be advantageous to indigenous peoples. It seems only natural that indigenous peoples would benefit from its key characteristics: increased accountability, predictability, transparency and participation, better rule of law, reduced corruption and a bigger voice for all people in decision-making processes. But this is not the case. Could international organizations' programmes on indigenous peoples be clashing with their good/democratic governance policies?

Policies on indigenous peoples

ILO Convention 169 on indigenous and tribal peoples

The only international legal instrument concerning indigenous peoples in existence today is Convention 169 of the International Labour Organization (ILO). The Convention is only binding for states which have ratified it.²⁸ The basic policy of C. 169 is enshrined in Articles 6 and 7.

These articles provide for consultation and participation of indigenous peoples, as a matter of right or state obligation, at all levels of decision-making, when legislative or administrative measures that affect them directly are being considered. They also demand consultation and participation with indigenous peoples in the formulation, implementation and evaluation of plans and programmes for national and regional development that affect them directly. The objective is to ensure that indigenous peoples 'have the right to decide their own priorities for the process of development' and 'to exercise control ... over their own economic, social and cultural development', as provided for in Article 7.²⁹ These rights provide indigenous peoples with the space to be heard by – and negotiate with – governments, but it does not amount to a right to veto.

C. 169 does not define who are indigenous and tribal peoples but contains 'a scope of application': a description of the peoples it aims to protect (see box 3). This combines a number of objective criteria (traditional lifestyles, culture, customs, historical continuity, etc.) with a subjective factor: self-identification. This is considered a fundamental criterion. The scope of application uses 'peoples', a term heatedly debated during the development of the Convention. The problem is that under international law 'peoples' have the right to self-determination under which 'they freely determine their political status and freely pursue their economic, social and cultural development'.³⁰

According to this right 'peoples' are therefore able to determine their own sovereign status; i.e. secede from the state in which they live, demand autonomy within the state in which they live, etc. Many Asian governments find this troubling. For instance, the government of India indicated it had 'strong reservations about the use of the term 'peoples' since it ... may imply the right to self-determination as understood in international law' and concluded that '[t]he government of India is not in favour of applying the term 'peoples' to any particular religious,

tribal, linguistic, ethnic or other groups'.³¹ Others shared these misgivings over the use of the term 'peoples'. Eventually, the term was used but came with a qualifier which disconnected the term from any of the rights that may be attached to it under international law (see box 3).

Box 3: Article 1 of ILO Convention 169

1. This Convention applies to:
 - (a) tribal peoples in independent countries 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;
 - (b) peoples in independent countries 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 colonisation 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.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

United Nations' studies and working groups in indigenous peoples

The United Nations has also yet to adopt an official definition of indigenous peoples. It has, however, been the subject of many debates in UN offices, coffee lounges, meeting rooms and official conference halls. Perhaps the most widely accepted definition within the UN system was developed by José R. Martínez Cobo, a UN Special Rapporteur appointed to study the problem of discrimination against indigenous populations. He defined indigenous peoples using a number of objective and sub-

jective elements (see box 4) but emphasized that '[t]he right of indigenous peoples themselves to define what and who is indigenous must be recognized' and therefore defined an indigenous person as 'one who belongs to ... indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group)'.³²

In 1982, on the basis of the recommendations made by Cobo, the UN established the Working Group on Indigenous Populations with a mandate to review development relating to the human rights of indigenous populations, and give special attention to the evolution of standards concerning indigenous populations. Its expert Members used the Cobo definition as a guide with a focus on self-definition and 'in the interests of flexibility and the openness of its proceedings no formal definition has been prepared by the Working Group'.³³

As a result of this open approach, the meetings of the Working Group have grown into one of the largest meetings held at the UN Offices in Geneva, Switzerland. In 2004 it attracted 651 participants, of which the vast majority were representatives of indigenous peoples from all over the world, including Bangladesh, India, Indonesia, Japan, Laos, Nepal, Pakistan and the Philippines.³⁴ When the Working Group set out to develop a draft declaration on the rights of indigenous peoples it formalized its views and incorporated an article which recognizes the right of indigenous peoples to identify themselves (see box 4).³⁵ The draft declaration also recognized the right of indigenous peoples to self-determination.

The issue of a definition of indigenous peoples came up again in the first session of the intergovernmental Working Group, which was established to consider the draft prepared by the expert Working Group on Indigenous Populations. A special meeting was set aside for discussions on what was called 'the scope of application' of the draft declaration. During this meeting the joint statement by Asian governments 'maintained that the "indigenous people" question relates to the unique situation of the original inhabitants of certain regions who were, at a point in history, overrun by settlers from overseas, dispossessed and reduced to marginal groups in their own land; and that the situation had been generally different in other regions. The group felt that since there was no established definition of "indigenous people", and that mere self-identification cannot be an objective criterion for the envisaged declaration, it was crucial to have a clear understanding of the scope of the declaration ...'.³⁶ This view was summarized most succinctly by the government representative of China, who stated that 'a precise definition was "necessary and imperative" and "the question of indigenous peoples ... the product of European countries'

pursuit of colonial policies in other parts of the world" but that "[p]roperly defined, "indigenous peoples did not exist in Asia generally or China in particular".³⁷ The thrust of this statement was repeated by government representatives from Bangladesh, India and Malaysia.³⁸

In 2000, the Permanent Forum on Indigenous Issues (UNPFII) was established. This acted to further institutionalize the issues concerning indigenous peoples and improve their participation in the UN system. The Permanent Forum is an advisory body to the UN Economic and Social Council (UNESCO) with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The secretariat of the Permanent Forum has considered that '... in the case of the concept of "indigenous peoples", the prevailing view today is that no formal universal definition of the term is necessary', and that '[f]or practical purposes the understanding of the term commonly accepted is the one provided in the Martinez Cobo study ...'.³⁹

Box 4: Considerations on the identification of indigenous peoples within the UN.

Report of Special Rapporteur Cobo:

Paragraph 369. The right of indigenous peoples themselves to define what and who is indigenous must be recognized.

Paragraph 379. Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Paragraph 380. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

- (a) occupation of ancestral lands, or at least part of them;
- (b) common ancestry with the original occupants of these lands;
- (c) culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.;
- (d) language (whether uses as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- (e) residence in certain parts of the country, or in certain regions of the world;
- (f) other relevant factors.

United Nations Draft Declaration on the Rights of Indigenous Peoples:

Article 8. Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

The central approaches laid down in the Cobo study and the draft Declaration are both in agreement. Cobo expresses the view that indigenous peoples' wish to be considered different should be accommodated '... within the context of socio-cultural and political pluralism ...' and sees a particular importance in this respect for incorporating indigenous peoples organizations '... into policy-making and policy-implementing bodies and process and programmes ...'.⁴⁰ He concludes that '[t]he need for the participation of [indigenous] communities and organizations in advisory and consultative procedures should be recognized explicitly ...'.⁴¹

The draft Declaration in Article 3 recognizes the right of indigenous peoples to self-determination, and that '[b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. The practical reflection of this right is found at different places in the draft Declaration where reference is made to the concept of 'free and informed consent'.⁴² From a procedural angle, Article 19 and Article 20 of the draft Declaration recognize that indigenous peoples have the right to participate fully at all levels of decision-making in matters which may affect their rights, and particularly in devising legislative or administrative measures that may affect them.

In addition, one of the main topics of discussion and deliberation within the Permanent Forum has been the concept of 'free, prior and informed consent'. A specific workshop on its relevance and meaning was convened following recommendation by the UNPFII. The workshop recommendations and conclusions noted that '[c]onsultation and participation are crucial components of a consent process' and that '...most participants considered that the favourable outcomes of a free, prior and informed consent process far outweighed the difficulties of such a process'.⁴³

It is fair to say that there is general consensus within the UN on the elements to be taken into account when identifying indigenous peoples. It is clear, however, that almost all Asian governments – even though they may agree on the elements to be taken into account when identifying indigenous peoples – consider that these peoples do not exist in their countries. Instead, they view their existence within the context of colonization and therefore linked to the right to self-determination that 'peoples' have under international law.

According to this view, the entire population of countries in Asia are 'indigenous' because they have long resided on their territory, unlike majority populations in the Americas and Australia and New Zealand, who originated from overseas. However, leaving aside political considerations, it is generally considered that '[t]he concept of being indigenous is a relational term, which refers to historical processes of colonization and *nation-building* (emphasis added), through which their development as peoples has been subordinated to state control'.⁴⁴ In other words, it doesn't matter whether the marginalized status of a culturally distinct and territorially based ethnic group is the result of overseas colonization or nation-building efforts of the majority population of a state.

The group that finds itself marginalized through nation-building efforts can claim indigeneness, as can those who have been marginalized through colonization. Accordingly, '... the indigenous peoples of Asia include all or most of the officially designated "aboriginal tribes" (Taiwan), "aborigines" (Malaysia), "hill tribes" (Thailand), "indigenous cultural communities" (the Philippines), "isolated and alien peoples" (Indonesia), "national minorities" (China), and "scheduled tribes" (India)'.⁴⁵ While perceptions are changing, as illustrated by the adoption by the Philippines of the Indigenous Peoples Rights Act in 1997, for example, the view of most Asian governments remains the same. This has a considerable effect on any efforts to improve governance and reduce poverty among the indigenous peoples of Asia.

The United Nations Development Programme's policy on indigenous peoples

The United Nations Development Programme (UNDP) has developed 'A Practice note on Engagement' with indigenous peoples. As the two overall objectives of UNDP engagement with indigenous peoples and their organizations, the note lists: 1) to foster an enabling environment that: promotes indigenous peoples' participation in all decision-making levels; ensures the coexistence of their economic, cultural, and socio-political systems with others; and develops the capacity of governments to build more inclusive policies and programmes; and: 2) to integrate indigenous peoples' perspectives and concepts of development into UNDP work. It notes in this respect that this right of participation '... is of particular significance to indigenous peoples because in their experience, development has tended to be imposed upon their communities from outside, often resulting in violations of "their right to

development”, by damaging ancestral lands, water and natural resources’.⁴⁶

When it comes to defining indigenous peoples the note states that ‘[d]espite common characteristics, there does not exist any single accepted definition of indigenous peoples that captures their diversity as peoples’.⁴⁷ Nor does the note attempt to provide its own definition or scope of application. Instead, it simply provides an overview of the practice in other organizations, referring specifically to a number of objective criteria (ancestral territories, distinct social, economic and political institutions) and the concept of self-identification.

In developing the practice note, UNDP consulted representatives of indigenous peoples organizations, who identified the issue of self-determination, among others, as an area for UNDP support. While the UNDP note uses the term indigenous peoples freely, it also states that ‘self-determination shall not be construed as authorizing or encouraging any action that would impair the territorial integrity or political unity of severing and independent states’.⁴⁸ The practical implications of this reference are highlighted in the statement: ‘[i]t is ... understood that engaging with indigenous peoples is a political act ultimately subject to approval by Governments’.⁴⁹

The World Bank’s policy on indigenous peoples

The World Bank has only very recently revised its policy on indigenous peoples. The revised policy 4.10, dated July 2005, states that ‘[t]his policy contributes to the Bank’s mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies and cultures of Indigenous Peoples’.⁵⁰ Central to the Bank’s policy is that it requires borrowers to engage in a process of free, prior and informed consultation for all proposed projects that affect indigenous peoples, and that the Bank will only provide project financing when this consultation process results in broad community support for the project by the affected indigenous peoples. In addition, it states that projects that affect indigenous peoples must include measures to avoid potentially adverse effects or, when avoidance is not feasible, minimize, mitigate, or compensate for such effects.

The Bank’s draft policy uses the term ‘indigenous peoples’ for distinct groups which possess a number of objective criteria (attachment to territories, separate and customary cultural, economic, social or political institutions, and language) with the subjective criteria of self-identification. The policy expressly notes that because there is no universally accepted definition, it does not do

so either. It states that it may decide to use a country’s system to address environmental and social safeguards in a Bank-financed project that affects indigenous peoples. The use of such ‘borrower systems’ is a pilot within the Bank, and was laid down in policy 4.00, dated March 2005. This is aimed at encouraging its borrowing member countries to adopt and implement systems that meet the objectives of the Bank’s environmental and social safeguard policies. Thus, it seeks to build capacity beyond individual project settings. The Bank determines whether a country’s systems are equivalent and acceptable by analysing whether they are ‘... designed to achieve the objectives and adhere to the applicable operational principles set out in Table A1’.⁵¹ Indigenous peoples are a category in this table. The Bank could therefore consider the use of a country’s system concerning indigenous peoples (identification criteria, laws, policies, structure and functioning of institutions, etc.) provided it is in line with the objectives of the Bank’s policy on indigenous peoples. This appears to be a fairly strong policy statement because it does not simply accept national systems for engaging with indigenous peoples. In particular, the policy also recognizes that ‘the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend’.⁵²

However, the policy also notes that ‘Indigenous Peoples may be referred to in different countries by such terms as “indigenous ethnic minorities”, “aboriginals”, “hill tribes”, “minority nationalities”, “scheduled tribes” or “tribal groups”’,⁵³ suggesting that the Bank would accept these terms where the peoples thus categorized may not agree with them or exclude certain indigenous groups. Also, it should be noted that the Bank’s founding charter prohibits it from taking into account political considerations when developing policy and aid instruments.

This was underlined by the World Bank Legal Department, who advised the Bank’s Board of Executive Directors concerning the concept of ‘free, prior and informed consent (FPIC)’ as follows: ‘[W]here a country is not one of the few that have incorporated FPIC into their domestic legal framework, requiring FPIC would be inconsistent with the Bank Group’s role as a global institution whose members are sovereign governments, possessed of their own rights to determine whether to follow the terms of any international convention.’ It continues: ‘[I]ndeed, this would create a conflict with the Articles of Agreement, as the Bank Group would, in effect, be giving the equivalent of a veto right to parties other than those specified in the country’s legal framework’.⁵⁴ This legal note raises questions about the extent to which the Bank might be willing to test its own policy against a country’s system concerning indigenous peoples.

The Asian Development Bank's policy on indigenous peoples

The indigenous peoples policy of the Asian Development Bank (ADB) recognizes that '[w]ith a substantial portion of the world's indigenous peoples living in Asia and the Pacific, virtually every country in the region has an indigenous population'.⁵⁵ The stated objective of the policy is 'to promote the participation of indigenous peoples in project preparation and implementation, to ensure that they benefit from development interventions that would affect them, and to provide effective safeguards against any adverse impacts'.⁵⁶ The policy requires that specific 'indigenous peoples plans' are prepared and implemented for any projects financed by the ADB which have an impact on indigenous peoples. The policy also states that '[i]nitiatives should be conceived, planned and implemented, to the maximum extent possible, with the informed consent of affected communities ...'.⁵⁷

The ADB's policy contains a working definition of indigenous peoples which is based on a number of objective criteria (descent from pre-state population groups, maintenance of cultural and social identity, and separate social, economic, cultural and political institutions). Here, the concept of self-identification is highlighted as

one of five '[a]dditional characteristics often ascribed to indigenous peoples...'.⁵⁸ Furthermore, the policy explains in a foot note that '[i]ndigenous peoples' as used in this paper encompasses a generic concept not easily reflected in a single term. Other terms relating to the concept of indigenous peoples ... include 'cultural minorities', 'ethnic minorities', 'indigenous cultural communities', 'tribals', 'scheduled tribes', 'natives, and 'aboriginals'. ... 'Indigenous peoples' is the term used in United Nations documents, and is used throughout this paper solely for convenience.'⁵⁹

As a result, it seems that the ADB, like the World Bank, accepts these terms where the peoples thus categorized may not agree with them. The ADB does recognize that '[a]t the national level, ... new laws, policies, and other measures may be necessary to reconcile competing demands and conflicting interests, especially if interests of indigenous peoples are to be protected'. But in the same breath, the policy also states that 'the Bank must respect the will of governments, including legislation and policy that exists and the power of eminent domain that governments possess'.⁶⁰ As with the World Bank, it should be noted that the ADB's founding charter prohibits it from taking into account political considerations when developing policy and aid instruments.

Governance policies vs. policies concerning indigenous peoples

A comparison of the basic precepts of governance policies of international organizations, and their policies concerning indigenous peoples, show that there are no intrinsic conflicts. On the contrary, where governance policies centre on the concepts of accountability, predictability, transparency and participation, the policies concerning indigenous peoples all take the concept of participation as their singular precept. It would therefore be only logical to assume that governance policies, programmes and projects would benefit indigenous peoples particularly. After all, participation in relevant decision-making is considered the most important way to ensure an organization's continued survival. But this does not necessarily appear to be the case. This lack of positive impact on the situation of indigenous peoples could be due to the political constraints attached to the mandates of the international organizations, and/or the political debates surrounding the use of the term 'self-determination' in connection with indigenous peoples.

Perhaps a look at the way governance policies affect indigenous peoples in practice will provide the answer. Since participation is considered by all organizations to be the central means by which to ensure indigenous peoples can influence/have control over their development, this basic precept of governance has been chosen to be the focus of this review. Different instruments, tools and notions used by international development agencies to promote governance and bring about development (PRSPs, conditionality, decentralization, poverty notions) will be reviewed. But first, we will have to discuss whose participation we are talking about.

Governance and indigenous women

While this report deals with the general effects of governance policies on indigenous peoples, it is important to underline that these policies may affect different indigenous groups in different ways depending on the particular circumstances of the group. Also, these policies may affect different indigenous persons within one indigenous group differently. This may be the case for the young and/or the aged but is most likely to be the case for indigenous women.

Indigenous women are doubly disadvantaged by virtue of their ethnicity and gender. However, these two identities do not necessarily map cleanly one onto the other because there can be 'intersectional discrimination' –

where gender discrimination is compounded by ethnic identity and vice versa. The multiple discriminations indigenous women face '... do not operate independently but intersect and reinforce each other with cumulative adverse consequences ...' creating '... layers of inequality that structure the relative positions of [indigenous] women and men ...'.⁶¹ Such '[i]ntersectional discrimination is illustrated by the following example: 'minority men earn less than majority men (racial discrimination); women earn less than men (sex discrimination); minority women earn less than either majority women or minority men (race and sex discrimination)'.⁶²

In this respect, an important question in any discussion about governance issues of indigenous peoples – and especially the participation of indigenous peoples in decision-making processes – is whose voice is being heard, and whose participation in decision-making processes is being talked about. Indigenous representation and governance structures are usually determined by gender and age. Indigenous women are often excluded from decision-making structures. Decision-making indigenous elders will typically be male. Development organizations or governments will find it hard to question the right of men to speak on behalf of the whole indigenous group.

Indigenous women may be caught in the cultural patterns of their group. These can make it extremely difficult for indigenous women to assert their rights. For instance, where an indigenous group '... suffers extreme economic and social disadvantage and deprivations it may be seen as trivializing to focus on those that occur solely or disproportionately to women'.⁶³ Also, women may be under pressure to preserve indigenous customs, including decision-making structures, which may in themselves be discriminatory. Demanding rights (to participate in decision-making processes) under national and international human rights law may be considered divisive and disloyal towards the group.⁶⁴

While specific reference will be made where gender concerns arise, the aforementioned issues should be considered when reading the following sections.

Poverty reduction strategy papers – participation in general

The IMF and the World Bank introduced the Poverty Reduction Strategy in 1999. It was designed to give pro-

poor economic growth considerations a more central role in the design of IMF/World Bank (WB) programmes in low-income countries. This represented a move away from the structural adjustment approach. The strategy was introduced with a new policy instrument, the Poverty Reduction Strategy Paper (PRSP). PRSPs are supposed to contain comprehensive strategy for poverty-reduction based on a long-term perspective. They form the basis, and pre-condition, for external debt relief and concessional lending. The PRSP approach was specifically designed to improve on earlier framework documents, which were considered to lack national ownership, have weaknesses in the analytical and empirical bases for social policy, and be too inflexible to adequately allow for different policy choices between different countries.⁶⁵

Initially, explicit IMF/WB endorsement of the PRSP was a precondition for lending. But since 2005, this is no longer required. The influence of PRSPs, however, goes beyond the IMF/WB because most development agencies, including UNDP and the European Union (EU) (but also donor countries like the United Kingdom and the Netherlands), base their programmes – at least to some extent – on PRSPs and are often actively involved in their formulation. As such, PRSPs form a common framework for development assistance in a country as well as a means to improve aid coordination.

PRSPs are supposed to be developed in line with five underlying principles; they should be: 1) country driven involving broad-based participation; 2) results-oriented and focused on outcomes that benefit the poor; 3) comprehensive in recognizing the multi-dimensional nature of poverty; 4) partnership-oriented involving coordinated participation of development partners; and 5) based on a long-term perspective for poverty reduction.⁶⁶ As of the end of February 2005, 44 countries had completed a full PRSP and an additional 14 countries had completed an interim-PRSP.

The functioning of the PRSPs has been reviewed regularly since their introduction. In one such review, the IMF and the World Bank held a series of five conferences, four regional (end 2001) and one international (early 2002), to discuss experiences of the PRSP approach. Present at these conferences were, to varying degrees, representatives from governments, donor agencies, international organizations and civil society organizations. Their overall conclusion was that progress had indeed been made in moving forward the PRSP approach and that the approach should be continued.⁶⁷ There was also criticism, however, which partly focused on the difficulties surrounding the issue of participation of civil society in the development of PRSPs. This was generally felt to require substantial further development.⁶⁸ The main findings of the review found that '[t]he open and participatory nature of the PRSP

approach is regarded by many as its defining characteristic and its most significant achievement' but that '[v]arious concerns have been expressed about the lack of involvement of specific groups in the participatory process'.⁶⁹

The Participation and Civic Engagement Group of the World Bank undertook a study of participation in PRSPs in 2001. In summarizing external assessments of participation the study found that '[d]onors and most governments see [participation] more as a means, an instrument, to facilitate implementation of projects or conduct poverty assessments, while non-governmental organisations (NGOs) opt for a rights-based approach, seeing it as an end in itself, and thus calling for long, deep and broad processes'.⁷⁰ The study also concluded that '[t]he breadth and depth of participation has been insufficient', and '... has ignored non-traditional NGOs, and Community Based Organisations (CBOs) located outside the metropolis or those engaged in niche issues'.⁷¹

In 2004, the Independent Evaluation Office of IMF undertook an evaluation of the PRSPs. It found that there were three underlying tensions in the PRSP approach, two of which relate to participation. First, even though PRSPs are supposed to be country-driven there is nonetheless an externally imposed requirement for broad-based participation. This assumes that existing participatory/political processes in countries are in some ways inadequate. This means that the participatory process has to be broader and more inclusive than existing national political processes allow for. Given that the IMF's mandate prohibits it from interfering in political issues, which would include the imposition of some sort of 'political test', there is no yardstick for measuring what such broad participation should entail. Second, while PRSPs place emphasis on country ownership, the IMF and the World Bank do review and approve PRSPs based on their soundness and also negotiate requirements (see below, under conditionality). This means that the scope for the true, independent weighing of all policy alternatives at the country level becomes limited.

The evaluation acknowledged that these underlying tensions create different expectations on what the PRSP approach means and can deliver. It recognized that this had led to criticism, especially from international NGOs, that the IMF 'is only paying lip service to some aspects of the initiative (e.g. ownership and participation)'.⁷² Broad conclusions from the evaluation were that participation in the formulation of PRSPs was generally more broadly based than in previous approaches, but that the process has had limited impact in generating meaningful discussions outside the narrow official circle of alternative policy options.⁷³

The IMF and the World Bank recognize there are still concerns about the nature, width and depth of participation in the development of PRSPs, as well as in the

evaluation of their implementation. One of the themes identified for the ongoing 2005 joint IMF/World Bank review of the PRSP approach was the '[b]roadening and deepening of meaningful participation'.⁷⁴ A meeting of civil society representatives held in early 2005 within the framework of the IMF/World Bank 2005 PRSP Review, underlined this ongoing concern.⁷⁵ One of the conclusions of the actual 2005 Review is that '[c]ontinued efforts are needed to identify stakeholder groups that are important in each country and for processes to be put in place for their engagement in the PRS process'.⁷⁶ It notes here that '... concerns have been raised that the early focus on civil society engagement in Poverty Reduction Strategy (PRS) formulation may have bypassed certain stakeholder groups, notably parliaments and poor people and other marginalized groups.'⁷⁷

Poverty Reduction Strategy Papers – participation of indigenous peoples

It is clear that there are ongoing concerns and structural problems in ensuring that PRSPs are country-owned and developed in a participatory manner. If well-established civil society organizations find it difficult to participate in the process, this would appear ominous for (organizations of) indigenous peoples.

To find out in how far indigenous and tribal peoples had been able to participate in the development of PRSPs, and to which degree their rights and aspirations were reflected in the resulting strategies, the ILO has undertaken an 'ethnic audit' of PRSPs in 14 countries. Seven of these countries are Asian: Bangladesh, Cambodia, Lao PDR, Nepal, Pakistan, Sri Lanka and Vietnam. For these countries, the audits revealed that PRSPs '... range from total neglect of the issue (Sri Lanka) to passing references to it (Pakistan) to a clear concern about enhancing the living conditions and status of tribal peoples or ethnic minorities (Vietnam and Cambodia)'.⁷⁸

The report found that the PRSP of Bangladesh acknowledges that chronic and extreme poverty are widespread among indigenous peoples. The suggested policies and programmes are to be implemented in the country's poorest areas, and will focus on the most disadvantaged groups. They will pay special attention to the development problems of indigenous and tribal peoples in different parts of the country. There is, however, no indication that targeted interventions aimed at different disadvantaged groups, who face different sources of disadvantage, are dissimilar in approaches and means.⁷⁹

For Cambodia, the ethnic audit found that the PRSP reveals a clear concern about ensuring ethnic minorities

have equal access to public institutions and services, but fails to address the discriminatory and exclusionary nature of this unequal access. This undermines the effectiveness of the outlined strategies.⁸⁰

The programme activities in the interim-PRSP of Lao PDR were found to be directed at ethnic minorities, who represent more than two-thirds of the total population and have the lowest standards of living. There was no indication, however, of how the government intended to achieve all the goals set out in this interim-PRSP.⁸¹

The PRSP of Nepal stresses that the incidence of poverty is not only high, but has clear regional, gender, ethnic and caste dimensions. Out of the four interlinked PRSP pillars (broad-based economic growth; service delivery; social inclusion and governance), the third pillar, social inclusion, is the weakest. The report also notes that although consultation of indigenous organizations did occur and marked a vast improvement on earlier development plans, many of the inputs given were not included in the final document.⁸²

The report notes that the PRSP of Pakistan recognizes that people in tribal areas live in dehumanizing poverty. However, it ascribes the causes of the relative higher poverty of the areas inhabited by tribal peoples to their physical remoteness, lack of infrastructure, high population growth and scarcity of farmland. The status of tribal peoples is never identified as an explanatory factor. It concludes that the PRSP is based on the view that a strong ethnic identity is incompatible with and detrimental to national cohesion and loyalty. For the PRSP, this is therefore a problem to be addressed, rather than something to be supported and promoted.⁸³

In the case of Sri Lanka, the ILO audit found that the PRSP reflects a clear concern for re-establishing ethnic reconciliation and helping develop a climate of ethnic harmony and ethnic pluralism. It mentions the Sinhalese, Sri Lankan Tamils, Indian Tamils and the Muslims and Moors but not the *Wanniyala-Aetto*, the indigenous peoples of Sri Lanka.⁸⁴

The PRSP of Vietnam acknowledges that ethnic minorities suffer from higher poverty than the rest of society and incorporates specific components for targeted action, including: enhanced access to primary; bilingual education; the stabilization and settlement of ethnic minority communities into commune clusters and townships; transformation of subsistence indigenous economies into market-oriented economies based on the production of cash-crops; and the issuance of individual and collective land use rights certificates. The report notes that where some components seek to protect and promote indigenous identity other components clearly seek to alter traditional lifestyles and production systems. It concludes that the different components in the PRSP reflect a ten-

sion between the government's willingness to accept cultural difference and the construction of a national culture glorifying the majority *Khin* culture and history.⁸⁵

When looking specifically at the level of participation of indigenous peoples in the formulation of PRSPs, the findings were equally varied. When PRSPs or reports on their implementation are formulated, IMF and World Bank staff develop a Joint Staff Advisory Note (JSAN) or a Joint Staff Assessment (JSA). This is designed to evaluate the soundness of the process and content of PRSP formulation and assist the Boards of the World Bank and the IMF in judging whether financial assistance and debt relief can be provided on its basis. One of the issues these assessments cover is participation/country ownership.

As a result, they provide some indication of the issues that specifically affect the participation of indigenous peoples and the sensitivity of World Bank and IMF staff to these issues. For Bangladesh, Cambodia, Sri Lanka and Vietnam, the assessments said nothing specific about the issues that could affect their participation. The staff assessment for Lao PDR notes that greater participation will be critical and will require the increase use of local languages to enable the broader population to participate more effectively.⁸⁶ The assessment for Nepal notes that the authorities consulted widely, including remote communities and ethnic minorities, but that this consultation was hampered due to an intensification of security problems. It also suggested improvements, such as making PRSPs documents more widely available in Nepali and languages of the major ethnic groups for whom Nepali is a second language.⁸⁷ For Pakistan, the assessment notes that a partnership with an NGO had been forged and that this NGO had held community-level consultations in 49 districts of the country, encompassing 120 communities. It added that 54 participatory poverty assessments had been conducted across all provinces, the Federally Administered Tribal Areas and the Northern Areas.⁸⁸

When it comes to addressing the particular situation of indigenous women as distinct from indigenous men, the ILO study concludes that because '[s]everal PRSPs reflect a concern for the gender dimensions of poverty dynamics and patterns ... [t]his has helped highlight the specific (more disadvantaged) circumstances of indigenous and tribal women relative to their male peers and devise strategies to address indigenous women's vulnerabilities and risks to fall or remain into poverty.'⁸⁹ This suggests an almost accidental effect within the relevant PRSP processes. In other words, a general gender perspective uncovered disparities in poverty situations between men and women in areas where indigenous and tribal people live. But no conscious, specific effort was made to look into the multi-layered dimensions of exclusion and poverty situations of indigenous women based on race and gender. For

instance, the study notes that the PRSP of Pakistan reveals significant gender disparities within tribal areas administered by the federal government and stresses the need for improved women's living conditions and status.⁹⁰ Similarly, the study notes that the PRSP of Nepal stresses that poverty and inequalities in the country have clear regional, gender, ethnic and caste dimensions.⁹¹ Accidental or not, the study concludes that '[t]he gender perspective has permitted to expose ethnic-based discriminatory and exclusionary practices and institutions'.⁹²

The common challenges identified in the ILO ethnic audit for all countries concerning the participation of indigenous peoples were: '[t]he development, in partnership with indigenous organizations, of consultation methods aimed at ensuring a well-informed and meaningful exchange of views on the content of PRSPs as far as indigenous peoples are concerned'; and '[c]apacity building for indigenous organizations and government authorities on how to engage in local development planning, implementation and monitoring that is responsive to the aspirations, needs and rights of indigenous peoples'.⁹³

Since international development agencies acknowledge structural problems in ensuring meaningful participation of civil society in the development, monitoring and evaluation of PRSPs, it is safe to assume that indigenous peoples struggle even more to be heard in these processes – in spite of the fact that the development agencies' own policies on indigenous peoples all focus on ensuring their participation. This appears to be the case in reality. Governments either ignore their existence, target them for assimilation, mix them in with other 'vulnerable groups', or, at best, acknowledge them as a particular group with particular needs but fall short of seriously listening to their concerns and devising programmes with their participation. The result is that indigenous peoples' concerns are largely not reflected in PRSPs. Consequently, they are either left out of the development process or, worse, adversely affected by it. The increased participation of civil society, which is generally acknowledged as being a result of the PRS approach, has passed indigenous peoples virtually unnoticed.

Conditionality and trade liberalization

When a country borrows from the ADB, the IMF, or the World Bank, loans are provided only when governments commit to adopting and implementing certain specific economic, financial and social policies. Such a requirement is called conditionality. The rationale behind conditionality is that it provides a way to ensure that loans are being used effectively, i.e. in line with its intended purposes and agreed timelines and objectives. This

ensures that countries are able to repay loans. Conditionality can take different forms. For instance, ‘prior actions’ are measures that a country has to take before a loan is approved, while ‘performance criteria’ are specific conditions that have to be met before credit is disbursed. Conditionality is, in principle, agreed upon through negotiation between the financial institution and the recipient country.

Conditionality has been around for a while and has changed in nature with the mandates of organizations. As the financial institutions broadened their scope beyond the focus of their original macro-economic focus, conditionalities also became applicable to programmes aimed at institutional reform. With the appearance of the concept of governance as a policy instrument, programmes to improve governance also became subject to conditionality. As governance grew in importance as a policy instrument, so did the number of governance-related conditionalities (see table 1).

There is widespread belief that conditionality is not a particularly effective tool. Even IMF and World Bank studies have concluded that the effect of their conditionality-based, structural adjustment operations have been modest.⁹⁴ One of the criticisms lodged against the use of conditionality is that it has an inherent tension concerning the ownership of countries’ development and reform policies and programmes. The argument is that in their negotiations with recipient countries, the international financial institutions impose conditions on, or, at best,

limit countries’ choice of the prescribed policies of the financial institutions. This goes against the notion of governance, which seeks to ensure that all segments of society can play a role in decisions that affect them directly. If countries’ hands are tied by conditionality, then this clearly leaves no choice for society either. The financial institutions recognize this inherent tension between country ownership and, what they call ‘fiduciary accountability’.

In a 2005 review of conditionality, the World Bank concluded that ‘[i]n its operational work, the Bank has fully recognized the importance of ownership for development – effectiveness – but, like other development partners, the Bank is grappling with some of the practical challenges in assessing ownership ...’.⁹⁵ The IMF too has undertaken reviews of the use of conditionality, and like the World Bank, is looking for ways to improve its use by using conditionality more sparingly and create more clarity and policy choice. In a 2005 review of conditionality guidelines it concluded that ‘[i]t will remain difficult to gauge ownership, but substituting conditionality for ownership is not the answer’.⁹⁶

Indigenous peoples have long protested against the use of conditionality, especially in connection with policies aimed at trade liberalization. Again and again, indigenous peoples decry the effects of trade liberalization on their existence, citing loss of land and environmental degradation due to encroaching agriculture, logging, mining and the construction of dams, often blamed on multinationals

Table 1: IFI Conditionality Loosely defined: East Asia, Central Asia, East Europe, and Latin America

Country	Total	Of which Governance-related		
		Total	Institutional	Financial
East Asia				21
Cambodia	83	65	44	22
Indonesia	81	48	26	19
Rep. of Korea	114	44	25	19
Thailand	56	37	18	
Central Asia				36
Kazakhstan	114	69	33	35
Kyrgyz	130	97	61	
East Europe				22
Albania	72	47	25	12
Latvia	65	28	16	16
Romania	82	34	18	
Latin America				14
Bolivia	89	45	31	19
Brazil	95	44	23	10
Nicaragua	50	34	24	

SOURCE: KAPUR, DEVESH, AND WEBB, RICHARD, GOVERNANCE-RELATED CONDITIONALITIES OF THE INTERNATIONAL FINANCIAL INSTITUTIONS, P. 6.

which gain access to countries following trade-liberalization measures. Indigenous peoples have consistently blamed the trade liberalization policies and policy of conditionality of the IMF and the World Bank for their plight. Their voices were heard at: the Third Ministerial Meeting of the World Trade Organization in Seattle in November-December 1999; four years later in September 2003 at the Fifth Ministerial Conference of the WTO in Cancun; through the Charter of the Indigenous and Peoples of the Tropical Forests established in 1992 in Penang, Malaysia; at the Third World Water Forum held in Kyoto in March 2003; and at the Fourth World Conference on Women held in Beijing in 1995.⁹⁷

Some would say that indigenous peoples are barking up the wrong tree. They argue that in relation with the establishment of the WTO, the use of conditionality related to trade has declined significantly over the past two decades, and that where it is still used it relates more to institutional reform rather than tariff rates and trade liberalization.⁹⁸ However, indigenous peoples would argue that the name of the game/organization may have changed but that the paradigm, trade liberalization, remains the same. They maintain that negotiating WTO membership is akin to negotiating conditionality with the ADB, the IMF and the World Bank. The process is similar in that it limits countries to certain policy choices, contrary to the precepts of good/democratic governance precepts.

With respect to the policies of the WTO, indigenous peoples take particular affront to the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). The idea behind the agreement is that the protection and enforcement of intellectual property rights varies widely across the world. As ideas and knowledge have become an increasingly important part of trade and trade itself intensified, these differences have become a source of tension within the international trade system. The TRIPS Agreement lays down minimum standards to which any (prospective) WTO-member must adhere when it comes to: protecting the trademarks of, for instance, brand-named clothing and accessories; the copyright of, for instance, films and music; the geographical indications of, for instance, Champagne; and the patents of, for instance, pharmaceutical products.

The problem is that all these intellectual property rights protecting individuals/individual companies are usually in effect only for a specified period of time, and require the identification of a novelty, i.e. something that did not exist before. Indigenous peoples' heritage, their cultural and intellectual property, including their agricultural, medicinal, technical and ecological knowledge and practices, cannot be protected by these rights because they are held by the community and not the individual. Also,

their heritage has been developed over long periods of time and it is not always possible to identify the novelty within their knowledge.

The result is that indigenous knowledge is vulnerable to scientific and commercial exploitation due to bio-trade, bio-prospecting and bio-piracy. What makes indigenous peoples especially vulnerable is that often they live in (remote) areas rich in biodiversity. And where most pharmaceutical companies are based in North America and Western Europe, most biodiversity is found in Africa, Asia and South America. For instance, a small volcano near the International Rice Research Institute in the Philippines is known to have more tree species than Canada, and a 15 hectare plot in Borneo has more woody species than all of North America.⁹⁹ Bio-prospecting has become a lucrative business and indigenous peoples are specifically targeted. By consulting indigenous peoples, bio-prospectors can increase their success ratio from one of out 10,000 samples to one out of two and therefore Shaman Pharmaceuticals has the policy to collect and carefully study any plant if three different communities are found to use the same kind of plant for medicinal purposes.¹⁰⁰ In Bhutan, Oxford Natural Products from the UK uses the knowledge of the *Dunggrshos*, Bhutanese traditional medicine doctors, and the *Menpas*, their assistants, to identify Bhutanese herbal plants and how they are prepared.¹⁰¹ Hoechst Co., a German chemical and pharmaceutical company, holds several US patents on preparations derived from a medical plant of the mint family which grows in India, Nepal and Thailand. The plant has long been used and protected by indigenous peoples in these three countries.¹⁰² For more than 2,000 years, Indian indigenous communities have used the sap of a particular tree to treat different illnesses, but now the patent on the use of the sap is owned by the New Jersey-based Sabinsa Corporation.¹⁰³

Within indigenous communities, women are often the keepers of indigenous knowledge of pharmaceuticals or food products as well as the genetic resources themselves. Traditionally, they are responsible for the conservation and maintenance of natural resources and for preserving and transmitting indigenous knowledge. It could also be that women and men are keepers of different types of knowledge and resources. For instance, among the Tharu of Nepal the knowledge concerning herbs used for healing and cooking is passed from older to younger women.¹⁰⁴ Regardless of whether they are the principal or shared keepers of indigenous knowledge, women will be affected differently by the loss of this knowledge due to scientific and commercial exploitation of that knowledge. When, for instance, a plant, which has gone through decades of selection and cultivation by indigenous women because of its medicinal purposes, is patented, not only would the

indigenous group be prohibited from using the plant, but the women who carry the knowledge would lose their function and status within the group. When the patent concerns an important food item, food security for the group may be threatened and women traditionally responsible for farming would lose their occupation within the group and may be forced to search for a job outside of the group to be able to feed their family.¹⁰⁵

Using conditionality to bring about governance reforms seems to be a contradiction in terms. Where governance seeks to increase ownership through participation, conditionality reduces participation by limiting policy choices. Where implementation of these policy options has adverse effects on the situation of indigenous peoples, the one thing they do not have, i.e. meaningful participation in decisions that affect them, is the one thing they need most.

Decentralization

The concept of decentralization often comes to the fore in relation to governance issues. Decentralization is ‘... the transfer of authority and responsibility for public functions from the central government to intermediate and local governments or quasi-independent government organizations and/or the private sector’.¹⁰⁶ It is generally considered that decentralization enhances the responsiveness of policy-making and the effectiveness of poverty reduction measures because it allows for more direct participation of those who are affected by the measures. This is sometimes called ‘allocative efficiency’, but this efficiency depends very much on finding the right level and form of subsidiarity, i.e. finding the lowest level of government that can perform functions efficiently and effectively.¹⁰⁷ Because of this, decentralization is considered an important possible way to improve governance.

There are different forms of decentralization: political, fiscal and administrative. Political decentralization foresees the transfer of political power and authority to sub-national levels; fiscal decentralization entails the reallocation of resources to allow regional/local governments to function properly; and administrative decentralization is the transfer of decision-making authority, resources and responsibilities for public services delivery to local governments, or line ministry field offices.¹⁰⁸

Whatever form of decentralization is contemplated, it is generally considered that decentralization is not a cure-all for bringing government to the people or improving public service delivery. It is concerned with striking the right balance between centralized and decentralized decision-making. As a result, it is never considered to be a problem of ‘either-or’, but rather of ‘how’. The challenge is to find the right symbiosis between participation and decentralization, because, [o]n the one hand successful decentralization

requires some degree of local participation’, whereas, ‘on the other hand, the process of decentralization can itself enhance the opportunities for participation by placing more power and resources at a closer, more familiar, more easily influenced level of government’.¹⁰⁹ Improving participation is therefore not just a goal of decentralization. The existing level of participation is also considered an important element in determining whether decentralization structures will be successful or not.

Indigenous peoples are often left out of national decision-making processes. Decisions concerning decentralization are no exception, in spite of the realization among development organizations that participation of those targeted and affected is essential. However, because, ‘... there are sufficient examples of decentralization laws and policies that ignore traditional authorities, when in fact, they may have a much greater say on the ground than elected local governments’, involving ‘traditional authorities, especially those of indigenous and tribal peoples’ in the planning, implementation and monitoring of decentralization schemes is considered increasingly important.¹¹⁰ Evidence that the transfer of authority to local governments often clashes with indigenous structures of authority and therefore, ‘may face strong resistance and even create serious social and political conflict’ sees the participation of indigenous peoples as a function of successful decentralization.¹¹¹ What it does not reflect is that decentralization may lead to an erosion of traditional authority and decision-making structures and lead to significant and life-altering changes in the socio-economic position of indigenous peoples. Decentralization can lead to (increased) impoverishment of indigenous peoples, both in monetary and spiritual terms.

This is not to say that traditional authority and decision-making structures should be sacrosanct. As mentioned previously, traditional indigenous representation and governance structures are usually determined by gender and age, and the voice of indigenous women is often not heard, nor sought, when decisions are made. As a result, these structures often also fail the test of good/democratic governance. It is not right to accept the argument that they are cultural expressions, and therefore override the rights of individual members of indigenous groups, such as women. These structures need be assessed for their impact on governance and human rights requirements too.

The case of Cambodia illustrates the aforementioned issues concerning decentralization. Cambodia’s local government structures go from provinces and municipalities, to districts and *Khan*, down to communes and *sangkat*, and end with village chiefs who are appointed by the provincial authority. With signature into law in March 2001, of the Law of Administration of Communes, the nature of the commune structure has changed substantially. Where state-appointed commune chiefs once

(administratively) controlled, regulated and recorded the affairs of the commune, they have been replaced by popularly elected commune councils (commune elections were held in 2002), of up to 11 members, which also have a mandate for the development of communes.¹¹²

Since 1996, a government initiative called the Seila (a Khmer word meaning stone foundation) Program has been in operation. Though initially a modest programme aimed at building local government capacity, it has been expanded to an aid mobilization and coordination framework for support to Cambodia's decentralization reforms. It currently covers all 1,621 communes in Cambodia and receives funding, through different frameworks and projects, from DFID, SIDA, UNDP, IFAD, the World Bank, GTZ, DANIDA, AusAid, UNICEF and the World Food Program. It is presented as a poverty-alleviation-through-good-governance initiative.¹¹³ In an effort to decentralize poverty reduction efforts, the Seila Program foresees the establishment of commune development committees (CDCs) and village development committees (VDCs), and activities aimed at building capacity of local government structures to plan, finance, manage, and implement decentralized development activities. As the country develops and remote areas become more accessible, these structures have had a sizable impact on traditional indigenous village authority and decision-making processes.

The indigenous peoples of Cambodia, or *Khmer Leu*, as they are called in Khmer, constitute about one per cent of the total population. The 1998 National Population Census identified 17 indigenous groups based on language spoken. They often have sister communities across the border in Lao PDR, Thailand and Vietnam. Most of them live in north-eastern provinces of Monduliri (19,229) and Ratanakiri (64,037) where they represent 71 per cent and 68 per cent respectively, of the total population. Traditionally, the village elders and the traditional leader (an inherited or elected position) are responsible for managing village affairs (overseeing ceremonies, mediation and dispute-settlement, provision of advice, transmission of traditions and beliefs, etc.). But recent research based on interviews with indigenous people, undertaken by the Center for Advanced Study, a local Cambodian NGO, shows how structures have changed due to decentralized governance structures and increasingly rapid development.¹¹⁴

The research reveals that indigenous villagers feel that commune and village chiefs have become increasingly involved in decision-making processes, especially with regard to outsiders, such as enterprises operating in the vicinity. One traditional leader said in this respect that '[t]he elders care for dispute resolution and spiritual life but development is the affair of the village chief'.¹¹⁵ At the same time, where VDCs exist, they comprise primarily younger people who have been selected because of their

level of education and are Khmer literate. This has sidelined traditional elders and leaders from decisions about the development of their village. Traditional elders indicated that in some cases these committee members were not accepted by the entire community on account of their young age and lack of necessary leadership skills. Villagers also felt constrained by the rules and regulations that restrict and prohibit them from following their traditional lifestyle. This is particularly the case environmental protection restrictions on land use. They wonder why nothing is done about irregular land sales (often involving corrupt (local) government officials) and why logging and plantation concessions were granted by the government, but they were no longer able to use the forest, hunt wild animals, construct new houses, or clear forest for new fields as they have done for generations.

The changing situation led one traditional leader to lament that '[t]oday not the elders but people of the forest protection community ... decide on access to forest and prohibit cutting trees'.¹¹⁶ On the other hand, commune and village chiefs reported that they never received information about plans for commercial investments from higher up the ladder. Village chiefs said higher levels are not responsive to the concerns of the village and that they often feel sandwiched between the requirements of their administrative function and those of the traditional way of life of the village. The report concludes that '... interventions by administrative and development structures seem almost invariably to occur without the effective participation of indigenous communities adapted to their needs and customs, either at local level nor above ...'.¹¹⁷

According to the research, decentralized governance structures and increasingly rapid development have also had an impact on gender relations within indigenous groups. Where previously there existed a more or less equal and complementary distribution of traditional skills along gender lines, '[a]lterations in agricultural systems, and restriction of access to forests, has led to changes in the traditional division of tasks and responsibilities'.¹¹⁸ For instance, where women used to have an important role in seed selection for traditional cash-crops, men now perform this function. Dispute resolution has traditionally been the exclusive domain of men. With a marked upward trend of disputes within and between families over land issues, market activities and income generation, the report suggest the position of women is weakened '... as men have increasingly assumed control of many of the decisions relating to high value resources'.¹¹⁹

The situation of indigenous peoples in Cambodia, prompted the NGO Forum, an organization made up of local and international NGOs operating in Cambodia, such as Care International and Oxfam Great Britain, to state the following on decentralization efforts in Cambo-

dia: 'Decentralization: dependency or self-management. Much is made of the decentralization processes now underway within the Cambodian government which intends to offer real opportunities for promoting indigenous peoples' self-management. However, in many indigenous minority people's areas much money is being directed into "development" without adequate support for true community development and human development support. In many areas predominantly non-indigenous minority people in government and NGO projects deliver sometimes nationally or regionally designed projects in non-indigenous languages. In this scenario, per diems and similar financial support are being used to acquire participation in the activities of development agencies. The effects of this are starting to be seen in the form of dependency, loss of community self-management and community disempowerment. Without indigenous minority people being actively involved in their own development and without local alternatives to the industrial development models now being promulgated many severe social and economic problems can be expected to arise, as they have in other indigenous communities in the world with similar conditions.'¹²⁰

The negative effects of decentralization do not necessarily have to be permanent. They can also be reversed, but this very much depends how much change has occurred. In Indonesia, under Act No. 5 of 1979, all village institutions, including the *adat* communities, which are generally considered to be indigenous communities, were made uniform. They were merged or split into *desa*, formal villages which were designated as the lowest level of government in a formally decentralized framework of government. This was geared towards building uniformity and ensuring strong central government influence across Indonesia. Traditional structures of authority and decision-making were replaced by prescribed structures, which included a village head and a village council. This transformation led to leadership dualism, marginalization of traditional *adat* leaders, and low participation of the communities in governance and development processes. However, Act No. 22 of 1999 made it possible to reverse this change if local communities choose to do so, allowing for the revitalization of *adat* values and traditions.¹²¹ The results are mixed however. In one village, the community changed the name back to their native term *ngata* and restored *adat* authority and decision-making structures. But in another village, the effects of two decades of imposed uniformity and the close proximity to a city appeared to have weakened *adat* values and structures to a level where only few in the community are interested in restoring traditional structures.¹²²

Therefore, while it is generally considered that decentralization can be an important instrument to improve

governance, there is also widespread recognition that it is not a panacea for bringing government closer to the people.

Measuring governance

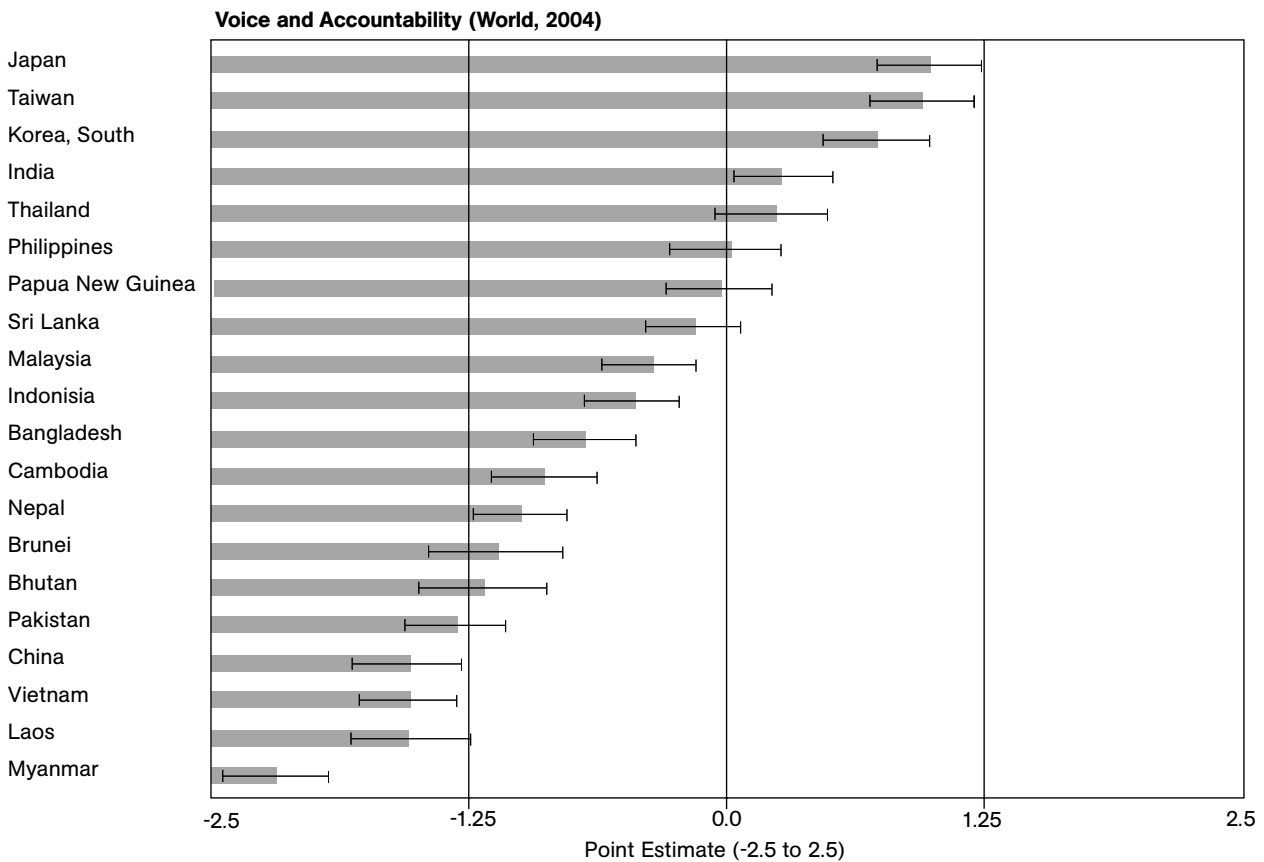
Governance is largely about processes and institutions, which makes it difficult to measure. The mere existence of laws, rules and procedures to guide these processes does not mean that these processes are considered effective or legitimate by its users. Good governance requires a certain measure of participation but democratic governance requires extensive participation. How do you measure perceptions of participation and democracy in societies where different groups compete and forge alliances, but more frequently have to compromise on their position? How do you measure perceived openness and whether people feel that they are listened to and their concerns taken into account?

Objective indicators, like the date of the most recent election, voter turnout, seats in parliament held by women, trade union membership and number of NGOs in a country are generally found not to capture the essence of governance. They may be an indication, but they are not considered to provide sufficient confirmation for the existence of good/democratic governance. They show that certain laws, rules and procedures exist. But they do not reveal if these are working effectively or considered legitimate by their users. Some countries hold regular elections, but the same party or even person can remain in power for decades. Trade unions may have large membership but be under the control of the ruling party. Women in parliament may only be given portfolios considered 'soft' by their male colleagues, handling finance or defence.

Subjective indicators are considered better at capturing good/democratic governance since they can capture sentiment. Being subjective, however, they are inexact, and open to disagreement and interpretation. The World Bank uses a set of subjective indicators to measure governance. Using a variety of sources, including expert opinion and surveys undertaken by other entities, it has developed different groupings to allow for different aggregate indices. One of the groupings is called 'voice and accountability' and is based on the following indicators: free and fair elections; freedom of the press; civil liberties; political rights; military in politics; change in government; transparency; business being kept informed of developments in laws and politics; and business expressing its concerns over changes in laws and politics. In a sample of 20 Asian countries, the indices are found in chart 1.

While it is possible to capture participation using certain indicators, the key question is whether these indicators are relevant for indigenous peoples, and whether the surveys used and experts questioned have

Chart 1: Measuring participation¹²³



SOURCE: D. KAUFMANN, A. KRAAY AND M. MASTRUZZI, 2005: GOVERNANCE MATTERS, IV: GOVERNANCE INDICATORS FOR 1996-2004, WWW.WORLDBANK.ORG/WBI/GOVERNANCE/PUBS/GOVMATTERS4.HTML

taken indigenous peoples into account. In fact, some of the indicators used can actually work to the detriment of indigenous peoples. For instance, where business can express its concerns but indigenous peoples cannot, it may well be that a government decides to allow logging or mining on indigenous lands against the wishes of the indigenous peoples concerned. The sources of information used for each country vary, but often refer only to Amnesty International and US State Department reports as the only possible sources for information on indigenous peoples (although these tend to focus more on civil and political rights). It goes beyond the scope of this report to verify every source of information used, but it is safe to assume that the indicators used do not capture the particular situation of indigenous peoples.

Numerous examples from across Asia illustrate that indigenous peoples can rarely participate in decision-making processes on matters that affect them. This applies even to countries that perform well under the World Bank voice and accountability grouping. In Japan, the Ainu consider that the 1997 Ainu Culture Promotion Act was formulated without any consultation, and unilaterally established procedures to address communal property

claims with a limit of one year for the entire restoration process. The Ainu were also not consulted prior to Japan's efforts to gain recognition of Shiretoko Peninsula, which is part of Ainu territory and gets its name from the Ainu language, as a UNESCO World Heritage Site. Following a formal request from UNESCO forwarding two Ainu requests that they would be placed in charge of managing the territory and be allowed to revitalize traditional ceremonies as part of an eco-tourism model, the Japanese government responded that it could accept the eco-tourism model but refused the right of the Ainu to manage the Peninsula.¹²⁴

In Taiwan, indigenous peoples stand to lose all use of their ancestral lands under the Draft Land Restoration and Conservation Act. In an effort to stop the environmental degradation brought about by excessive and, often illegal, development activities carried out by non-indigenous people, the Act foresees the classification of sensitive areas, such as all land above 500 metres and the entire coastline, as reserves where all use of land is prohibited. The indigenous peoples of Taiwan, who live mostly in the mountains, demand explanation, informed consultation and effective participation.¹²⁵

Full Thai citizenship has been denied to indigenous hill tribe people in Thailand for years. Reportedly hundreds of thousands of the estimated one million indigenous peoples of Thailand do not have Thai citizenship, which means they cannot vote and have no access to health and education systems in Thailand. The effective statelessness and their resulting lack of access to education leaves many tribal women vulnerable to becoming sex workers since other employment is not available to them due to their lack of schooling. The situation of effective statelessness prompted one tribal to say that ‘[t]he Thai Constitution does not apply to me, because I am an ethnic minority’.¹²⁶

What changes are required to ensure participation reflects the situation of indigenous peoples? Research is currently being carried out, and there is talk of developing specific poverty indicators regarding indigenous peoples. Perhaps parallels can be drawn from these discussions.

Measuring poverty

The Millennium Declaration places governance at the heart of the solution for eradicating poverty. Indicators used to measure poverty, however, do not reflect the situation of indigenous peoples. The availability of updated and reliable data is crucial to form and measure the effectiveness of development policies and programmes. This means that national and international practitioners have a very difficult task when it comes to formulating policies and programmes for – and ideally, with – indigenous peoples.

The problem starts at the national level where governments rarely collect and analyse data by ethnic origin. When they do, it is usually to a limited extent. For example, in Vietnam 85 per cent of the population is *Kinh*, ethnic Vietnamese, and around 10 per cent belongs to one of Vietnam’s 54 ethnic groups, not including ethnic Chinese. However, living standards are measured through household surveys which lump these 54 groups together into only eight categories.¹²⁷ This lack of visibility of indigenous peoples in data is perhaps particularly true for Asian countries which usually view themselves as unitary entities and aim for national cohesion rather than multi-ethnicity. They are reluctant to use the term ‘indigenous peoples’ because of its link with the concept of self-determination.

The Human Development Index used by UNDP in its yearly human development reports is another case in point. The index is based on a combination of three indicators: life expectancy, GDP per capita, and educational attainment. However, the index is based on national aggregates and does not reflect internal social and regional differences. It is also mainly based on social indicators and does not capture political dimensions of poverty, such as exclusion. As a result, the index does not reflect the par-

ticular situation of indigenous peoples. Unfortunately, no information is available for the possible effects including or excluding the indigenous population of an Asian country would have on its position on the index, but there is one example from Central America. Mexico ranked 48th of all countries in the index in 1996. However, it has been estimated that if its indigenous population of approximately 10 per cent had not been included it would have ranked 29th. If its index had been based only on its indigenous population it would have ranked between 87th and 101st out of 120 countries.¹²⁸

But disaggregating data according to ethnic origin is not the only problem. There is an increasing understanding that traditional indicators of poverty, such as monetary income and access to official health care services, do not capture indigenous perceptions of poverty. Furthermore, certain indigenous practices can be seen as an indicator of poverty when indigenous peoples themselves consider them an indicator of wealth and social prestige. For instance, sharing accumulated wealth with other members of society carries great social prestige and recognition in many indigenous cultures. The resulting lack of monetary/material possessions is measured as poverty under mainstream poverty indicators, but this is an entirely false assumption (see box 5).

Box 5: Traditional Notions of Poverty and Wealth of the Kankanaey of the Philippines

To understand the Kankanaey notions of poverty, one must understand their notions of wealth or who are considered rich.

Traditionally, those considered rich are those who host thanksgiving feasts called *sida* or *pedit*. These religious feasts are offered to gods and the spirits of the ancestors. These feasts are ranked according to the number of pigs the host family can offer to the gods and spirits. Ranking starts from 3 pigs, then 5, 7, 9, 13, 15, 17 and so on. The sequencing is always based on odd numbers because of the belief that the pig without a pair will again attract more pigs when the host family raises pigs again after the feast.

The bigger the feast a family hosts, the wider the circle of relatives and clans can be invited. The host family gains more prestige as it invites a wider circle from within and outside the community. With the prestige comes the status of *kadangan* or *baknang*, which connotes wealth and the ability to share such wealth. One was thus considered rich if he/she was able to hold feasts, during which the wealth was shared with many people in the community. One may have dozens of cattle and livestock but cannot gain the community’s respect without sharing the wealth through a feast.

Being rich is not synonymous with accumulating wealth. Being rich is being able to share one’s wealth through a *sida* or *pedit*. It follows, therefore, that poverty, at

least according to old tradition, is the opposite of the Kankanaey notion of wealth: being poor means being unable to invite a wide circle of relatives and clan members to a feast.

Source: Plant, Roger, *Indigenous Peoples/Ethnic Minorities and Poverty Reduction*, p. 39.

Measuring poverty in consumption patterns is inherently difficult. There are widespread food redistribution mechanisms in indigenous communities, which means, for example, consumption patterns of individual households are often useless. In these instances, it would make more sense to measure the local group or the extended family. There are problems measuring the use of indigenous health care systems too. The frequency with which indigenous women use professional and mainstream health care services is a flawed indicator because it will most likely show that indigenous women use these services less frequently than non-indigenous women.¹²⁹ Many researchers consider that '[i]ndigenous peoples' notions of poverty go far beyond a simplistic understanding of poverty as a lack of income; their rights and identities as distinct peoples are at the centre of their concepts of well-being and quality of life' and that '[g]overnments and donors, ..., have judged indigenous peoples to be poor without asking indigenous peoples themselves how they see their situation'.¹³⁰ Where mainstream indicators see poverty, indigenous peoples may see strong, rich, traditional patterns and expressions of culture which have developed over centuries. This is being increasingly real-

ized by international organizations. For instance, UNDP's policy on engagement with indigenous peoples states that '[i]t is important to note that indigenous peoples are often categorized as poor; however, they do not regard the term as appropriate since they consider themselves rich in knowledge and culture'.¹³¹ Putting this realization into practice, however, is a different matter.

Another complicating issue is the assumption that indigenous peoples are static and not subject to change. However, like any other community, they do change and never more so than today, as they are increasingly rapidly exposed to development efforts. As they change, so do their notions of wealth and poverty. Often these changes in perception of poverty and wealth relate to land. Research shows that in Vietnam, lack of (access to) land has changed indigenous peoples' view about land, prompting the following statement: 'Land grabbing and incidents and land disputes happen so often in our village. We were not aware of the value of land before. Now we have to compete with outsiders who are a lot faster than us.'¹³² Similarly, in neighbouring Cambodia, indigenous peoples indicated that where previously things such as the number of elephants, cows, buffalos, bronze gongs, and copper kettles were an indication of wealth, nowadays land availability and quality, food supply, modern means of transport, and access to health care were indications of health. Previously cited causes for poverty included laziness, bad harvests and misfortune. Nowadays, they also include lack of access to – and dwindling – forests and lack of land.¹³³

Table 2: Indicators on the right to land of indigenous peoples

<p>Indicators on the availability of land and exclusion from its ownership.</p>	<p>Quantity: Average per capita land holdings by the indigenous population compared to the non-indigenous population in the same region and to rural and national averages.</p> <p>Quality: Market value of an average land holding by an indigenous household/community compared to that held by a non-indigenous household/community. Is land quality adequate to sustain the traditional mode of production of indigenous peoples?</p> <p>Distribution: Percentage of indigenous households who held no land or more than x amount of land in a given year and over time.</p>
<p>Indicators on the violation/denial of the right.</p>	<p>Landless population: Percentage of the indigenous population with no access to land compared to the rural and national average and changes in landlessness over time.</p> <p>Security of tenure: Proportion of indigenous households/communities who hold legally enforceable land titles compared with non-indigenous households.</p> <p>Forced evictions: Number of indigenous people removed from the land that they traditionally occupied. Relocation of people without their free and informed consent.</p>
<p>Indicators on the fulfilment of the right.</p>	<p>Process: Ratification and implementation of international and national legislation on the right to land without discrimination and with the participation of indigenous peoples.</p> <p>Existence and effectiveness of government institutions that address violations of indigenous peoples' right to land such as ombudsman, HR commissions, local courts, etc.</p> <p>Outcomes: Percentage of the indigenous population that control either individually or collectively land they have traditionally occupied.</p>

SOURCE: TO BE ADDED

New indicators to capture poverty patterns of indigenous peoples have been suggested. These seek to reflect the rights that are considered crucial to their continued survival and to ensure development on their own terms. They are based on what indigenous peoples consider important for maintaining their identity. They adopt a rights-based approach, which acknowledges that poverty among indigenous peoples is due to historical (colonization) but also continuing (current moulds of state-building) patterns of political and economic exclusion. These can only be corrected by recognizing the collective and individual rights of indigenous peoples. These are not only variations of mainstream rights, such as the right to bilingual education, but are also wholly specific to indigenous peoples, such as the right to land (see box 6).¹³⁴ In more general terms, participants at a UN workshop on data collection for indigenous peoples stressed ‘... the need for developing a conceptual framework for rights-based indicators to ensure that the data to be collected would be relevant to indigenous peoples, while allowing for the measurement of issues crucial for indigenous peoples’ development and rights, such as control over land and resources, equal participation in decision-making and control over their own development processes’.¹³⁵

The participation of indigenous peoples in these processes plays a central role in the development of indicators and collection and analysis of data. For instance, the indicator on land in box 6 refers to ‘their free and informed consent’ and ‘with the participation of indigenous peoples’ as elements in determining whether the right has been violated/denied or fulfilled. The participants of the UN workshop on data collection underlined the importance of the participation of indigenous peoples in its recommendations (see box 7).

Box 7: Extracts from the recommendations from the UN Workshop on Data Collection and Disaggregation for Indigenous Peoples

- (2) Data collection concerning indigenous peoples should follow the principle of free, prior and informed consent at all levels.
- (4) Indigenous peoples should fully participate as equal partners, in all stages of data collection, including planning, implementation, analysis and dissemination, access and return, with appropriate resourcing and capacity building to do so. Data

collection must respond to the priorities and aims of the indigenous communities themselves.

Participation of indigenous communities in the conceptualization, implementation, reporting, analysis and dissemination of data collected is crucial, at both the country and international levels. Indigenous peoples should be trained and employed by data-collection institutions at the national and international levels. The process of data collection is critical for the empowerment of the communities and for identifying their needs.

- (10) The rights-based approach to development requires the development of a conceptual framework for rights-based indicators that are relevant to indigenous and tribal peoples. It should take into account not only a process of full, active and meaningful participation of indigenous and tribal communities at all stages of data collection, but also indicators that are of particular significance to indigenous peoples, such as access to territories (land and waters) and to resources, participation in decision-making, as well as issues of discrimination or exclusion in the areas of economic, social and cultural rights. Rights-based indicators to be used for data collection and disaggregation on indigenous peoples should be capable of reflecting the current status of the realization of their human rights, be useful in policy articulation and prescription and should measure both the process and the outcome of development activities. They should be able to measure dimensions of the process of the realization of human rights, such as participation, non-discrimination, empowerment and accountability.

All poverty reduction efforts initially stand or fall on the soundness of the poverty analyses on which they are based. If these analyses do not accurately incorporate and reflect the poverty notions and particular situation of indigenous peoples, they are likely not to have the desired impact, or worse, have an adverse impact. Ensuring that indigenous peoples participate in the design, collection and analysis of data on indigenous peoples, i.e. improve the governance of measuring poverty, is the first step towards ensuring that poverty reduction efforts will have the desired impact and alleviate poverty among indigenous peoples.

Good/democratic governance – creating space for indigenous peoples

The present focus of international organizations on good/democratic governance is aimed at ensuring that national structures of government are efficient in undertaking their functions. They are also designed to ensure all individuals and groups can participate in society to a degree where government is considered to be legitimate. When it comes to this participation, governance is about creating sufficient space for all to be heard and act on their own behalf within a framework of adequately upheld minimum standards, which protects each and all from undue influence of others. Currently, most government structures in Asia do not provide such a space for indigenous peoples nor are indigenous peoples protected from undue influence by others.

There are, however, very clear differences between – and within – government structures in Asia. These warrant some discussion here as an illustration of the different governance frameworks in existence in Asia. They may also suggest a role or entry points for international organizations to assist governments in creating a space for indigenous peoples' participation in national decision-making processes.

India has a federal state structure consisting of 29 states and six union territories. Unlike states, which have their own governments, union territories are ruled directly by the national government. In Asia, the Indian Constitution is the only one to mandate legislative representation to indigenous peoples in Parliament and state legislatures. Forty members of the 545 members of the Lok Sabha, or lower house, are reserved for 'Scheduled Tribes'. Some 8.08 per cent of the population have been designated as Scheduled Tribes – and are commonly referred to as Adivasis. Also, under the Fifth and Sixth Schedules of the Constitution, a certain level of autonomy is foreseen for the scheduled tribes through the creation of 'partially excluded areas' and 'excluded areas'.

In these areas, the Adivasis have a certain level of administrative control over their own affairs. For instance, the Sixth Schedule district and regional councils are partially autonomous from the state government and have jurisdiction over various matters, including the power to make laws on the allocation of certain lands. Thus, the Indian state structure provides different safeguards and layers of space for Adivasi participation. For instance, the overwhelming majority of the population in the State of Mizoram, in the North East of India, is of indigenous Mizo descent and the Indian Constitution specifically con-

tains safeguards for these peoples' customary laws, including those regarding ownership and transfer of land. In addition, Mizoram state has the power to control non-indigenous migration into the state. Yet, where Mizoram state has extensive powers to safeguard its majority indigenous population, at the same time several Sixth Schedule district and regional councils exist within its territory for indigenous groups, who are non-Mizo, like the Chakma.¹³⁶

Obviously, the mere presence of safeguards and availability of space for the participation of indigenous peoples are not necessarily enough in themselves. For instance, Adivasi members of parliament are mostly members of national, mainstream political parties and often considered to be constrained by party ideologies. The fact that Mizoram state came into being only after a two-decade long armed struggle also speaks volumes. Nevertheless, a certain measure of space for indigenous peoples' participation is available within Indian state structures – even if Adivasis often face an uphill battle to be able to use this space.

The Chinese government denies that indigenous peoples exist in China. But it does recognize the existence of 'national minorities' within its borders in addition to the dominant Han group. Fifty-five such ethnic groups are officially recognized, constituting about seven per cent of the total population. While not all of these national minorities can be considered indigenous peoples, the Tibetans being an example, some of them can, for example, the Dong, the Yao and Miao. China considers itself a multi-ethnic, unitary state within which ethnic minorities enjoy equal rights to participate and can independently manage the affairs of their own regions/communities. To this end, a number of administratively autonomous entities have been established under the Chinese Constitution and the Law on Regional Autonomy. Under the Constitution, the head of government of each autonomous entity must be of the ethnic group it covers. It also guarantees a range of autonomous powers, including independence of finance and economic planning and use of local language.

As of June 2005, there were five autonomous regions, 30 autonomous prefectures and 117 autonomous counties. Often these autonomous entities carry the name of the minority that lives within its borders. For instance, the Guangxi Zhuang Autonomous Region is named after the Zhuang people. This does not mean, however, that they constitute the majority population within the region since they are outnumbered by the Han. Nor does it

mean that they are the only national minority in the region; other minorities in the region include the Dong, Yao and Miao peoples. This system of naming autonomous entities can lead to their denomination as being multi-ethnic, as with the Longshen Multiple Nationalities Autonomous County. Alternatively, the denomination can list several of the minorities within the autonomous entity, such as the Shuangjiang Lahu, Wa, Bulang and Dai Autonomous County, whereby Shuangjiang is a geographical indication and the Lahu, Wa, Bulang and Dai all indigenous peoples. Although perhaps not designed in a very clear-cut manner, the autonomy framework of Chinese state structures does provide some safeguards and space for the participation of indigenous peoples.

It is widely considered, however, that local power within the different autonomous entities lies in the hands of the local Han-dominated Communist Party, which hand-picks candidates to be appointed or elected.¹³⁷ Furthermore, it seems the Chinese government's development policies are not based on the development needs of the regions where activities are planned. What is sometimes-called the 'Go West Programme' consists of a number of projects aimed at the exploitation of natural resources in the western regions of China for the benefit of the industries in the eastern, coastal region where most industry and large cities are located. The result for indigenous peoples is often the displacement from – and loss of – their lands.¹³⁸ The situation in China illustrates that installing safeguards and creating space for the participation of indigenous peoples becomes meaningless and merely cosmetic without the necessary political will to try and make it work for the benefit of the peoples for which it is intended.

In 1995, the Philippine government enacted the Mining Act to revive the ailing mining industry. Its application faces strong resistance from within Filipino society, including vehement opposition from indigenous peoples. They feel that the Mining Act contradicts the Indigenous Peoples' Rights Act (IPRA) of 1997. This recognized their right to participate in decision-making processes on matters that may affect them, as well as the right to determine and decide their priorities for development. The IPRA also recognizes rights to ancestral lands/domains and contains a process for their recognition. Heralded by the then president of the Philippines as a triumph of political will, the application of the IPRA remains a difficult proposition. As one of the 'threats' to

the implementation of IPRA, it was identified that '[t]he national government still views the remaining four million ancestral domains as a resource base ... and continues to adhere to development activities such as ... commercial mining ... that indigenous peoples see as destructive and unsustainable.'¹³⁹

In May 2002, a coalition of organizations active in the anti-mining campaign, including several indigenous organizations, held the Philippine National Conference on Mining in Baguio City. The 130 participants attending the conference, representing about 70 local community people's organizations, and regional, national and international support groups, adopted a declaration calling to scrap the 1995 Mining Act and effect a moratorium on the opening of new large mines.¹⁴⁰ On 3 January 2003, the president of the Philippines announced that the government will shift policies on mining operations from 'tolerance to promotion'.¹⁴¹ The situation in the Philippines illustrates that where safeguards are put in place to protect indigenous peoples and a space is created for their participation in decision-making processes, these can be restricted or rendered meaningless when other measures contradict or invalidate the safeguards or limit the space available for participation. It highlights that creating a space for indigenous peoples within national structures is not a one-off exercise but needs to be build into – and permeate – the entire structure.

The above cases are simplified depictions of very complex situations. The situation of indigenous peoples within different countries can vary starkly. The cases are also not meant to be representative for all countries in Asia. They do mean to illustrate, however, some of the differences in existing governance frameworks and policies in Asian countries. This highlights some country-level governance issues relating to the creation of a space for the participation of indigenous peoples. They provide entry points for cooperation between international organizations, governments and indigenous peoples. Where space for the participation of indigenous people exist within national frameworks, international organizations can work together with governments and indigenous peoples to ensure that this space is used optimally and consistently when developing national policies and programmes. Where there is insufficient space for this participation, international organizations can work together with governments and indigenous peoples to increase it.

Conclusion

At first glance, indigenous peoples would stand to gain much from efforts to improve governance. Improved accountability, predictability, transparency and, most of all, participation in public affairs and particularly decision-making processes would be of great benefit to indigenous peoples across Asia. Too often they are fighting for survival when their lands are taken from them with impunity. When they need them most, government officials are frequently turning a blind eye in return for 'a small administrative fee', all the while citing laws and regulations in a language that indigenous peoples do not understand and have not been consulted on when they were first developed.

There are a number of structural problems which prevent indigenous peoples benefiting from improved governance to the degree that could be expected at first glance. The problems start with the segmented approach many organizations adopt in promoting good governance. The ADB, IMF and World Bank are caught in their mandates which, in spite of the fact that both the ADB and the World Bank claim to be organizations with broad poverty reduction mandates, (still) largely focus on economic growth and stability. As a result, their efforts to improve governance also focus on these areas. It seems doubtful that the holistic concept of governance, which by its very nature covers all aspects of the way in which a country is governed, is best served by a segmented approach. On the contrary, UNDP's concept of democratic governance, which embraces the political dimension of poverty and entails a rights-based approach, seems much better suited to result in real improvements in governance.

Where governance policies centre on the concepts of accountability, predictability, transparency and participation, the policies concerning indigenous peoples all take the concept of participation as their singular precept. It would, therefore, be only logical to assume that governance policies, programmes and projects would benefit indigenous peoples in particular. After all, all organizations consider participation in decision-making on matters that affect them the most important way of ensuring their continued survival. However, the mandates of international development organizations prevent them from interfering in domestic politics and infringing on the sovereign rights of states. Because most governments in Asia deny the existence of indigenous peoples in their countries, it becomes difficult for these organizations to

set up programmes with indigenous peoples. Consequently, the invisibility of indigenous peoples in Asia continues.

Efforts to improve ownership and participation of civil society in the development of PRSPs by indigenous peoples virtually unnoticed. This is because national structures of participation exclude indigenous peoples. The use of conditionality to bring about governance reforms seems to be a contradiction in terms given that it limits policy choice and national ownership. The international agenda of trade liberalization is seen by indigenous peoples to be behind the use of conditionality and is felt to be responsible for the loss of their land and heritage by laying the groundwork for a destructive link-up between multinationals and national governments seeking access to foreign investments. Decentralization efforts, generally considered to be an important instrument to improve governance, often result in challenges to the traditional authority and decision-making structures of indigenous peoples. Poverty analyses do not incorporate or reflect the poverty notions of indigenous peoples. Any poverty reduction measures that are based on it are therefore unlikely to have the desired impact. Similarly, the voice of indigenous peoples is not reflected in governance indicators.

Improving governance is primarily the duty of national governments. It is their responsibility to ensure that the people who live in their countries can live freely and with dignity, i.e. free from want and free to participate in political processes. They are responsible for ensuring that each and every man, woman and child has a voice in the decisions that affect them. The group of people most clearly lacking this voice in Asia today are the indigenous peoples. Improving governance would bring the greatest benefits to the indigenous peoples of Asia. Different levels of space are available for the participation of indigenous peoples in national or local decision-making processes in Asian countries. However, political considerations concerning the right to self-determination and nation-building prompt almost all governments in Asia to systematically deny their indigenesness, and systematically exclude them, as indigenous peoples, from national structures of decision-making. As long as this situation continues, indigenous people will remain the poorest of the poor, regardless of how much money is pumped into efforts to improve governance.

International development agencies all realize that the participation of indigenous peoples in decision-making

processes is crucial to their survival. Increasingly, they also realize that a rights-based approach to governance, i.e. democratic governance, is the only suitable basis for finding solutions to reduce poverty in general, and particularly among indigenous peoples. As a result, they could perhaps be less reverent to current Asian govern-

ments' opinions on indigenous peoples. They could also be forceful in convincing these governments that claims for self-determination by indigenous peoples are, in essence, simply that: a claim for the creation of a space for indigenous peoples in decision-making processes, and for improved governance.

Recommendations

- The World Bank and IMF should include the issues of good governance and poverty as they relate to indigenous peoples in the agenda of their next review of PRSPs/the Poverty Reduction Strategy process.
 - International development agencies should ensure that their policies concerning indigenous peoples are consistently considered and brought to the fore when engaging Asian governments in broad policy and programme discussions, like the development of a PRSP.
 - International development agencies should ensure that the basic objectives and precepts of their policies concerning indigenous peoples are consistently considered when developing other policies that are of relevance to indigenous peoples, such as governance policies, poverty reduction strategies or environmental policies, for example.
 - International development agencies should intensify their efforts to work together in improving their understanding of the link between racial and gender discrimination as the cause of poverty amongst indigenous peoples. This cooperation could, for instance, include more regular common policy discussions, training of staff from one agency by staff from another agency with more or different experience, and the common development of indicators of poverty among indigenous peoples.
 - Sub-regional forums should be established in Asia through which international and national policy-makers/development practitioners and indigenous representatives can address issues such as the development of culturally sensitive poverty reduction strategies and the development of meaningful participation procedures and mechanisms. The sub-regions could be identified on the basis of similarities in socio-economic contexts and political regime.
 - Development agencies should engage governments in Asia and the indigenous peoples that live in their territories in a frank, open and non-dogmatic policy dialogue concerning the identification, legal status and poverty situation of indigenous peoples living in their territories. This engagement should be undertaken with a view to facilitating the (creation of a) dialogue between governments and indigenous peoples. This should be aimed at the development of a comprehensive and rights-based national policy/law which should have at its core the creation of a space for the participation of indigenous peoples in national structures of decision-making, based on the concept of free, prior and informed consent of indigenous peoples whenever legislative or administrative measures are considered that may affect them. In building – and as part of – such a policy dialogue, the following (simplified) steps could be taken:
 1. Raise awareness among decision-makers and civil servants of the situation of indigenous peoples and the particular obstacles that prevent/hamper their lack of participation in national decision-making processes through compulsory attendance of briefings, workshops, visits to indigenous communities, etc.
 2. Develop poverty indicators that reflect indigenous notions of poverty and well-being.
 3. Undertake a complete poverty analysis of all indigenous peoples in the country, regardless of their particular status under national rules and regulations.
 4. Undertake a review of all laws and regulations that concern indigenous peoples and the way in which they affect indigenous peoples.
 5. Hold a national conference of indigenous peoples' representatives and national policy-makers, with a view to discussing basic policy options to address the situation of indigenous peoples and establishing a statutory body with an equal number of indigenous and non-indigenous members mandated to draft a national policy/law on indigenous peoples.
 6. Hold a national conference of indigenous peoples' representatives and national policy-makers, with a view to endorsing the draft national policy/law on indigenous peoples.
 7. Adoption of the national policy/law, including a framework and budget for implementation, by the relevant national (legislative) body.
- In Asian countries where a comprehensive national policy/law already exists, development agencies should engage governments and indigenous peoples to undertake a review of the successes and failures in implementing the policy/law with a view to amending

the policy/law where necessary and adjusting implementing structures as required.

In Asian countries that generally do not receive assistance or borrow from development agencies, governments should initiate a frank, open and non-dogmatic, national policy dialogue with indigenous peoples living in their territories. This should focus on the identification, legal status and poverty situation of indigenous peoples living in their territories. This engagement should be undertaken with a view to facilitating the (creation of a) dialogue between governments and indigenous peoples aimed at the development of a comprehensive and rights-based national policy/law which should have at its core the creation of a space for

the participation of indigenous peoples in national structures of decision-making, based on the concept of free, prior and informed consent of indigenous peoples whenever legislative or administrative measures are considered that may affect them.

- Indigenous peoples should engage internally and externally in a frank and open and non-dogmatic dialogue concerning their governance structures. This should include the participation of women and the issue of gender discrimination.

The recommendations and steps listed are to be further developed and implemented in consultation with all indigenous peoples concerned.

Relevant international instruments

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by General Assembly Resolution 47/135 of 18 December 1992)

The General Assembly,

- Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion.
- Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.
 - Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations.
 - Inspired by the provisions of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities.
 - Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.
 - Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States.
 - Considering that the United Nations has an important role to play regarding the protection of minorities.
 - Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities.
 - Taking into account the important work, which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities.
 - Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities.
 - Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

International Covenant on Civil and Political Rights (1966). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.
- (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

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