Education Manual on Indigenous Elders and Engagement with Government

Indigenous Learning Institute for Community Empowerment (ILI)

Cordillera Peoples Alliance (CPA)

Asia Indigenous Peoples Pact (AIPP)

December 2012

Table of Contents

INTRODUCTION

INTRODUCTION AND ACKNOWLEDGEMENT

This Education Manual on Indigenous Elders and Engagement with Government is one in a series of leadership training manuals produced by the Indigenous Learning Institute for Community Empowerment or ILI. The term "ili" is indigenous term to the Igorot peoples of the Cordillera, Philippines meaning people, identity and community. Among the Ho people of India, "ili" means the sacred rice wine that is offered to the gods or spirits of the ancestors in prayer and thanksgiving.

ILI is a collaborative training program among several indigenous peoples' organizations in Asia that aims to build the capabilities of indigenous peoples' leaders and organizations in advocating and asserting indigenous peoples' rights. It was established in 2005 as a learning institute where indigenous peoples can come together to learn from each other and share their experiences towards empowering their own organizations and communities.

The indigenous organizations that collaborate through the ILI program include the Asia Indigenous Peoples Pact (AIPP), Cordillera Peoples Alliance (CPA), Partners of Community Organizations in Sabah (PACOS), Aliansi Masyarakat Adat Toraya – Toraya Indigenous Peoples Alliance (AMAN-TORAYA) in Indonesia, Sinui Pai Nanek Sengik (SPNS) in Peninsular Malaysia, Bindrai Institute for Research Study & Action (BIRSA) in India, Inter- Mountain Peoples' Education and Culture in Thailand Association (IMPECT) in Thailand, KALUMARAN in Mindanao, Philippines among others.

This training manual is meant for indigenous elders, leaders, organizers, and indigenous peoples' representatives in government, who desire to be of service to the interest of indigenous peoples. The manual aims to build and strengthen the capacity of indigenous elders in Asia to lead their communities during contemporary times, wherein indigenous peoples face serious threats to their survival in the form of development aggression, marginalization and violation of their rights to land, territories, resources and self-determination.

The manual highlights the important role of indigenous elders in traditional leadership and in sustaining our indigenous socio-political institutions, values and systems. At the same time it promotes the leading role of indigenous elders in asserting indigenous peoples' rights against oppression and marginalization, as our communities are undergoing momentous changes. It aims to equip indigenous elders and leaders with the knowledge and skills necessary to be able to advance indigenous peoples' rights during these changing times. It also

aims to arm indigenous peoples with the capacity to effectively engage in local and national government structures and processes, as well as in other political arenas of struggle of the indigenous peoples' movement.

The content of the manual was largely contributed by the participants to the ILI Writeshop on Traditional Elders and Local Government, which was organized by the AIPP and hosted by Cordillera Peoples Alliance in Baguio City, Philippines on October 14-20, 2011.

We acknowledge the participants of this workshop for sharing their knowledge and ideas that went into making this manual:

- Atina Gangmei – AIPP, Chiangmai, Thailand
- Neingulo Krome – Naga Peoples Movement for Human Rights (NPMHR), North East India
- Dr. Krishna Bhattachan – Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Nepal
- Nicholas Bawin Anak Angat – Sarawak, Malaysia
- Eliza Marthen Kissya – Aliansi Masyarakat Adat Nusantara (AMAN), Indonesia
- Patricia Miranda – Interpreter, AMAN, Indonesia
- Jomorito Guaynon – KALUMBAY, Mindanao, Philippines
- Windel Bolinget – CPA, Philippines
- Benedict Solang – CPA, Philippines
- Jovencio Balweg – Cordillera Elders Alliance (CEA) Advisory Council, Abra, Philippines
- Rev. Eduardo Solang, Sr. – MAITUD, Mountain Province, Philippines
- Nelson Yocogan – MAITUD, Mountain Province, Philippines
- Jaime Dugao – CEA, Mountain Province, Philippines
- Johnny Sawadan – CEA, Kalinga, Philippines
- Julifa Balonggay – Save Apayao Peoples Organization (SAPO), Conner, Apayao, Philippines
- Evelyn Miranda – CEA, Baguio City, Philippines
- Jill Cariño –Facilitator, CPA, Baguio City, Philippines
- Elvira Taguba – Facilitator, CPA, Baguio City, Philippines
- Sarah Dekdeken – Documentor, CPA, Baguio City, Philippines
- Ivan Torafing – Documentor, Asia Pacific Indigenous Youth Network (APIYN), Baguio City, Philippines

We acknowledge the writers of the different sections:

> Part 1 – Indigenous Elders and Governance: Windel Bolinget
> Part 2 – Indigenous Elders in a Changing Society: Benedict Solang
> Part 3 – Indigenous Peoples Engagement with Government: Jill Cariño

We also thank Joan Carling, Chris Erni and Shankar Limbu for their constructive comments on the final draft.

We give credit to the following for their work in completing the Education Manual:

> Editing: Jill Cariño
> Design and Lay-out: CPA
> Photos: AIPP, CPA, AMAN, Chris Erni

> **This Education Manual is dedicated to our indigenous elders who have gone before us, so that they may continue to guide us as we carry on the struggle for land, rights and self-determination.**

OVERVIEW OF THE TRAINING

Overall Training Objective: **To raise the participants' awareness and capabilities to strengthen indigenous elders and governance in their respective communities and to deal with the challenges faced in their engagement with government.**

Part I. Indigenous Elders and Governance

General Objective

For the participants to understand the general context and framework of indigenous elders and governance at the international, national and local levels.

Specific Objectives

After the session, the participants will be able to:

1. Be familiar with and updated on the fundamental rights and issues affecting indigenous peoples, in general, and indigenous elders and governance in particular;

2. Understand the basic principles and good practices of indigenous elders and governance;

3. Have a general understanding of state policies, laws and issues related to indigenous elders and governance;

4. Share and learn from different experiences relating to indigenous elders and governance.

Part II. Indigenous Elders in a Changing Society

**General
Objective**

To have a common understanding of the present situation of indigenous elders and their important role in a changing society.

**Specific
Objectives**

After the session, the participants will be able to:

1. Have a common understanding of the role of indigenous elders as traditional leaders and as new leaders.

2. Have a rich sharing and understanding of the diverse but common indigenous systems, practices and values, whereby indigenous elders flourished as traditional leaders and which is a fundamental source of strength up to the present.

3. Have a rich sharing and understanding of the diverse but common struggles of indigenous peoples, whereby indigenous elders have evolved as new leaders to be able to deal with new issues and threats.

4. Learn from advanced and good practices in further sustaining and strengthening traditional and new leadership of indigenous elders.

Part III. Indigenous Peoples' Engagement with Local and National Government

General Objective

For the participants to become aware of the different factors and dimensions to be considered in engaging with the State bureaucracy, towards achieving good governance and effective advocacy on indigenous peoples' rights.

Specific Objectives

After the session, the participants will be able to:

1. Understand the varying levels of State recognition of indigenous peoples in Asia.

2. Understand legal pluralism and the relationship between customary law and State law.

3. Understand the principles and attributes of good governance and the challenges faced by indigenous peoples in relation to this.

4. Explore strategies for engagement of indigenous peoples with State structures in different branches and levels of government and how these can be used to advance good governance and indigenous peoples rights.

5. Share and learn of good practices or effective ways of engaging government officials and indigenous representatives in government to advocate for the respect, recognition and fulfillment of indigenous peoples' rights.

CONTENT OUTLINE

Part I. Indigenous Elders and Governance

A. Fundamental Rights and Issues of Indigenous Peoples

B. International Standards On Human Rights

C. Basic Principles of Indigenous Governance

D. Good Practices of Indigenous Customary Governance

E. State Laws and Policies vis-à-vis Customary Governance

F. Key Challenges to Indigenous Peoples' Governance

Part II. Indigenous Elders in a Changing Society

A. Concept and Definition of Indigenous Elder

B. Traditional Role of Elders in Promoting Indigenous Socio-Political Systems and Values

C. Historical Role of Elders in a Changing Society and in the Indigenous Peoples' Movement

D. Role of Indigenous Women Elders and Leaders

E. Good Practices of Indigenous Elders in Advancing Indigenous Peoples' Struggles

F. Challenges and Perspectives for Indigenous Elders

Part III: Indigenous Peoples' Engagement with Local and National Government

A. Government Context

B. State Law vis-à-vis Customary Law

C. Strategies for Engagement of Indigenous Peoples with State Structures

D. Sharing of Good Practices, Experiences and Lessons Learned

E. Planning

Part I.
Indigenous Elders and
Governance

General Objective: For the participants to understand the general context and framework of indigenous elders and governance at the international, national and local levels.

Specific Objectives

After the session, the participants will be able to:

1. Be familiar with and updated on the fundamental rights and issues affecting indigenous peoples, in general, and indigenous elders and governance in particular;
2. Understand the basic principles and good practices of indigenous elders and governance;
3. Have a general understanding of state policies, laws and issues related to indigenous elders and governance;
4. Share and learn from different experiences relating to indigenous elders and governance.

Topic Contents

A. Fundamental Rights and Issues of Indigenous Peoples

1. Human rights and indigenous peoples' rights
2. Distinct collective identity
3. Right to self-determination
4. Autonomy and Self-rule
5. Ancestral lands, territories and resources
6. Displacement, development aggression and militarization
7. Customary laws, indigenous institutions and indigenous knowledge
8. Indigenous languages and cultures
9. Free, prior and informed consent
10. Full, effective and meaningful participation in decision making at all levels
11. Equal rights of Indigenous women, elderly, youth, children, disabled and lesbian, gay, bi-sexual, transgender (LGBT)
12. Adaptation, mitigation and solutions to climate change
13. Self-determined development

B. International Standards on Human Rights

1. Universal Declaration of Human Rights
2. Convention on the Elimination of All Forms of Racial Discrimination (CERD)
3. International Covenant on Civil and Political Rights (ICCPR)
4. International Covenant on Economic, Social and Cultural Rights (ICESCR)
5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
6. International Labour Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
7. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
8. Universal Declaration of the Rights of Peoples (Algiers Declaration)

C. Basic Principles of Indigenous Governance

1. Sovereignty and self-rule
2. Collective identity, collective rights and collective leadership
3. Self-determination
4. Harmony and interaction with nature
5. International solidarity among indigenous peoples and linkage with wider social and political movements
6. Sustainability
7. Spirituality
8. Dignity

D. Good Practices of Indigenous Customary Governance

1. Structure
2. Roles and Functions
3. Process

E. State Laws and Policies vis-à-vis Customary Governance

F. Key Challenges to Indigenous Peoples' Governance

Methodology

- ☐ Lecture or PowerPoint presentation followed by discussion
- ☐ Sharing of case studies
- ☐ Film/video/documentary showing
- ☐ Story telling
- ☐ Songs and dances related to elders and governance
- ☐ Direct interaction between elders and participants
- ☐ Role playing/drama
- ☐ Group work
- ☐ Debates for and against
- ☐ Field visit and observation
- ☐ Meeting with community elders
- ☐ Focus group discussion
- ☐ Community meeting

Duration

1 to 2 days depending on the methods used

Guiding Points

- ☐ Venue should be conducive to the habits of the participants.
- ☐ Maximum emphasis should be given to practical parts.
- ☐ Assert indigenous governance.

A. Fundamental Rights and Issues

Many indigenous peoples share common historical experiences, common ways of life and aspirations. They also face common problems and challenges, and are struggling to overcome these. Colonization and globalization have eroded indigenous peoples' ways of life, including indigenous governance. Global warming, the global economic crisis and global politics adversely affect indigenous peoples. There is a need to be familiar with and updated on basic international issues affecting indigenous peoples in order to strengthen indigenous elders and governance for the common good.

There are many international issues, many common and some contextual, affecting indigenous peoples in general, and indigenous elders and governance in particular.

1. Human rights and indigenous peoples' rights

Human rights are rights of all human beings - indigenous and non-indigenous, individual and collective. Indigenous peoples' rights are human rights of indigenous peoples, encompassing both collective and individual rights. Human rights and indigenous peoples' rights do not contradict each other but indeed complement each other.

Indigenous peoples' human rights are inherent, inalienable, indivisible, natural and fundamental rights. Indigenous peoples have enjoyed these rights since time immemorial, which we struggled to uphold whenever and wherever these were violated. Indigenous peoples' rights originate from ourselves and we continue to fight for our rights as peoples.

Before the passage of the International Labour Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, human rights focused on individual rights only. It was with the adoption of ILO Convention 169 that the international community recognized the collective rights of indigenous peoples relating to land, culture and self-determination.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007 consolidated existing rights of indigenous peoples recognized in other international human rights instruments. Those rights have been recognized in various systems of domestic law and in international law, via treaties and other instruments, and have been put together in the UNDRIP.

The UNDRIP contains the minimum standard of rights of indigenous peoples that States and the international community have to comply with. It demonstrates a consensus among States that indigenous persons and peoples are fully entitled holders of individual human rights, as collective actors with distinct rights and status under international law. [International Law Association. The Hague Conference 2010]

Until now indigenous peoples' human rights have been seriously and systematically violated. We continue to suffer from all kinds of human rights violations, including the violation of our basic right to life. Thus, effective implementation of human rights and indigenous peoples' rights is a basic international issue that we need to confront.

2. Distinct collective identity

One of the remarkable characteristics of indigenous peoples is our distinct collective identity. Our oneness with nature, other living things, ancestors and future generations, ancestral lands and territories, languages, religion, cultures including foods, costumes, songs, dances, stories, indigenous knowledge, customary laws, customary institutions, justice, indigenous elders and governance. All these highlight indigenous peoples' distinct collective identity, which is different from that of other societies and cultures.

Colonialism of various forms, capitalism and globalization have continuously threatened the existence and persistence of such distinct collective identity of indigenous peoples. Therefore, our struggle for the maintenance and persistence of indigenous peoples' collective identity is another basic international issue.

3. Right to self-determination

The right to self-determination is an inherent, inalienable, indivisible, natural and fundamental right of indigenous peoples. We enjoyed this right before colonization, external and/or internal, and struggled to uphold it whenever and wherever this right was violated. The right to self-determination includes consent and control, and has material or territorial, non-material or political, and external and internal dimensions. The right to self-determination is ideology, principle, practice, and ways of life and governance of indigenous peoples.

States, multinational corporations, financial institutions and dominant groups have been violating, exploiting and denying indigenous peoples' right to self-determination. The right to self-determination of indigenous peoples has been recognized as a human right by ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). But in practice, indigenous peoples are prevented from exercising this basic human right. As a result, indigenous elders are marginalized and traditional governance is

disintegrating. In many countries, violent/armed and non-violent/unarmed political and social conflicts and movements against states, corporate forces and dominant groups have occurred or are occurring in the pursuit of this basic human right. Therefore, enjoyment of the right to self-determination by indigenous peoples remains as a basic international issue for indigenous peoples.

4. Autonomy and self-rule

Various indigenous peoples interpret the meaning of autonomy and self-rule differently. Depending on their particular situation, aspiration and self-determination, indigenous peoples choose the form of autonomy or self-rule that is best for those concerned.

Some indigenous peoples relate self-rule with full independence and sovereignty. They would take self-rule to mean complete and full exercise of governance and sovereignty, or in some cases, as an exercise of secession. Autonomy, on the other hand, is related to self-rule within the wider nation state. Autonomy is related to prevailing political conditions and can take shape at varying levels of governance such as state, regional, district and/or local levels.

The UNDRIP recognizes both autonomy and self-rule as forms of self-determination and sovereignty of indigenous peoples, i.e., "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs." However, the UNDRIP also states that this should not "be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial

integrity or political unity of sovereign and independent States." Thus, the full exercise of autonomy and self-rule remains one of the basic international issues for indigenous peoples.

5. Ancestral lands, territories and resources

Ancestral lands, territories and resources are part and parcel of indigenous peoples' distinct identity and way of life, in all its spiritual, cultural, social and economic dimensions. Colonization, including internal colonization, imposition by states, corporate forces, dominant groups and capitalism, have forcefully plundered, grabbed, damaged or displaced indigenous peoples' ancestral lands, territories and resources. As a result, indigenous peoples have lost ownership and/or control over our ancestral lands, territories and resources. Some have been able to maintain control with some limitation, and some have been completely displaced from their ancestral lands, territories and resources.

Indigenous peoples in various parts of the world are struggling to govern our ancestral lands, territories and resources by ourselves. Thus, this is one of the basic international issues for indigenous peoples.

6. Displacement, development aggression and militarization

States and multinational corporations often come up with so-called development paradigms and projects, which are an aggression against indigenous peoples. States use the military, paramilitary and private "armies" of corporations to exert excessive force to implement destructive projects, leading to ethnocide and displacement of indigenous peoples from our ancestral lands, territories and resources. Both so-called development aggression and militarization cause displacement of indigenous peoples from our own land, territories and resources.

Self-determined development, meaning indigenous peoples setting our own development priorities and making our own decisions on development that is appropriate to our needs, identity and aspirations, is one of the basic international issues for indigenous peoples.

7. Customary laws, indigenous institutions and indigenous knowledge

Indigenous peoples have our own customary laws, indigenous institutions and indigenous knowledge. However, these systems are often disregarded, manipulated, co-opted and disintegrated by state impositions such as the constitution, laws, policies, plans, programs and structures. Hence, indigenous peoples are often prevented or

constrained from governing ourselves, and indigenous elders cannot exercise and impart, fully or even partially, their customary roles and responsibilities.

Among many indigenous peoples, elders are the center of authority in the community. They play significant roles in safeguarding and promoting customary laws, indigenous institutions and indigenous knowledge. But state, corporate forces, military and dominant groups disregard and undermine the authority of indigenous elders and governance. In such as situation, it is difficult to realize effective implementation of customary laws, functioning of indigenous institutions, and use of indigenous knowledge. This is one of the basic international issues for indigenous peoples.

8. Indigenous languages and cultures

Indigenous languages and cultures are also a part of the distinct identity and precious heritage of all human beings. We are proud of our indigenous languages and cultures as our distinct identity and gifts from our ancestors to nurture for future generations. We are also aware of some negative aspects of our culture that do not fit in with the present time; hence, we are open to positive changes and improvement for the common good.

Languages and cultures are not only means of communication but also the main means of storing and transferring indigenous knowledge and way of life. These indeed contribute in making human beings more diverse, colorful and enjoyable.

Sadly, Western and other dominant languages and cultures have overshadowed, discriminated and eroded our indigenous languages and cultures in the process of modernization, nation-building and development. Many indigenous languages and cultures are already extinct; some are on the verge of extinction and others are being threatened with extinction. These have caused loss of identity and security of indigenous peoples.

Loss of indigenous languages and cultures has serious implications in indigenous governance. There is an urgency to save our languages, cultures and indigenous knowledge to be transmitted to present, younger and future generations. So, it is one of the basic international issues for indigenous peoples.

9. Free, prior and informed consent

"Free" means without coercion, threat, manipulation, fear or greed. "Prior" means before or prior to thinking, prior to planning, prior to making decisions, prior to implementation of decisions made, and prior to monitoring and evaluation of implemented activities. "Informed" means providing all information in the languages understood or chosen by the concerned indigenous peoples and providing the needed time for discussion with community members through indigenous peoples' own customary processes. "Consent" means not only saying 'yes'/'approval' but it could also mean 'no'/'rejection' or 'withhold decision' or 'changing or reviewing previous decisions if new information requires us to do so', as decided by indigenous peoples.

Free, prior and informed consent (FPIC) is a vital part of self-determination. If States, multinational corporate forces and dominant groups should directly or indirectly affect legal or administrative aspects of indigenous peoples or implement development activities in indigenous peoples' lands and territories, they cannot, and should not do so without obtaining the free, prior and informed consent of concerned indigenous peoples. Sometimes, they go to the extent of consultation with indigenous peoples but consultation is not sufficient, nor is it equivalent

to consent. In practice this fundamental human right to FPIC has been violated almost everywhere. Therefore, free, prior and informed consent is one of the basic international issues for indigenous peoples.

10. Full, effective and meaningful participation in governance and decision-making at all levels

States, multinational corporations and dominant groups have denied full, effective and meaningful participation of indigenous peoples in governance and decision-making at varying levels. Indigenous peoples have been systematically excluded, discriminated and marginalized in governance and decision-making of the State. Therefore, full, effective and meaningful participation of indigenous peoples in governance and decision-making at all levels is absolutely necessary. Hence, it is one of the basic international issues for indigenous peoples.

11. Equal rights of indigenous women, elderly, youth, children, disabled/differently able and LGBT

Indigenous women, elderly, youth, children, disabled, as well as lesbian, gay, bi-sexual and transgender (LGBT) persons are members of our communities. Therefore, they deserve equal rights and respect. Patriarchy and associated misogyny, machismo, homophobia, discrimination, exclusion and marginalization towards them must be stopped and corrected. These people could play a crucial role in leadership and governance, indigenous knowledge, conflict resolution, natural resource management and so on. They could be effective human rights defenders. However, their full potential and capabilities are often ignored. Violence against women, child labor, denial of youth in effective decision-making, absence of support for disabled persons and the social stigma against LGBT are all problems that need to be addressed for the common good.

In addition, indigenous women face multiple forms of discrimination. In a society characterized or influenced by patriarchy, women are treated as commodities and second-class citizens and are often excluded, discriminated, oppressed, marginalized and denied from enjoying their fundamental human rights. Although women are respected and have equal status in some indigenous societies and cultures, in others, there are certain customary practices and

governance systems that limit women's enjoyment of equal rights. In many indigenous societies, women are restricted from enjoying full leadership and governance functions.

Also, indigenous women should have equal property rights as men, and have the right to their own bodies relating to marriage, sexual relations, child-bearing and giving birth. These rights are denied by the prevailing dominant patriarchal society as well as by many traditional indigenous societies. Hence, equal rights for indigenous women, elderly, youth, children, disabled and LGBT are among the basic international issues for indigenous peoples.

12. Adaptation, mitigation and solutions to climate change

The world capitalist system has given rise to global warming and subsequent climate change. Although indigenous peoples have contributed the least to global warming and climate change, we are among the most vulnerable communities and are often the worst affected by such phenomena.

Genuine solutions to climate change are needed. There is an urgent need for all, indigenous and non-indigenous peoples, to find

appropriate and effective adaptation and mitigation measures to save life and nature. Indigenous peoples are custodians of forest and other natural resources and have maintained our sustainable ways of life. Thus, indigenous peoples must be at the center of efforts to mitigate and adapt to climate change.

Mechanisms to address global warming are now being initiated by the United Nations Framework Convention on Climate Change (UNFCCC), States and multilateral institutions such as the World Bank, such as Reducing Emissions through Deforestation and Forest Degradation (REDD and REDD+). However, indigenous peoples have experienced numerous risks and threats in relation to forest conservation and protected areas in the past. We need to guard against the disregard or violation of indigenous peoples' rights in any adaptation and mitigation measures to be adopted in addressing climate change.

In our quest for genuine solutions to climate change, we urgently need to follow our sustainable ways of living, our oneness with nature and our indigenous knowledge. Therefore, indigenous peoples around the world are struggling against developed and industrialized countries and multinational forces to decrease carbon emissions and respect indigenous peoples' ways of life and rights to lands, territories and natural resources. Hence, adaptation, mitigation and genuine solutions to climate change are among the basic international issues for indigenous peoples.

13. Self-determined development

Indigenous peoples have the right to determine the kind of development we want and formulate strategies for the development of our lands, territories and resources. In particular, we have the right to decide on development that is appropriate to us, including health, housing, livelihood and social welfare programs and to administer such programs through our indigenous governance institutions.

Our right to self-determined development has often been sidelined or disregarded by imposed development models motivated by profit, massive and unsustainable resource extraction and exploitation, at the expense of indigenous peoples. Hence, self-determined development is one of the basic international issues for indigenous people.

B. International Standards of Human Rights

1. Universal Declaration of Human Rights (UDHR)

Because of the compelling need to set out an international standard for the respect of human rights by every nation, the United Nations formulated and adopted the Universal Declaration on Human Rights (UDHR) in 1948. The various provisions of the UDHR uphold the civil and political rights of every person, and define the role of every State in respecting and upholding these rights as its core obligation. It also now forms part of the international customary law regarding the rights of citizens in relation to States.

2. International Convention on the Elimination of Racial Discrimination (ICERD)

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations human rights instrument that commits its members to the elimination of racial discrimination and the promotion of understanding among all races. The convention was adopted and opened for signature by the United Nations General Assembly on December 21, 1965, and entered into force on January 4, 1969. As of October 2011, it has 86 signatories and 175 parties. The Convention is monitored by the Committee on the Elimination of Racial Discrimination (CERD).

3. **International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR) was adopted and opened for signature, ratification and accession by the United Nations General Assembly on 16 December 1966, and came into force on March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of March 2012, the Covenant had 74 signatories and 167 parties.

4. **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of October 2012, the Covenant had 160 parties. Article 1 of the ICESCR states: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

5. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international agreement that affirms principles of fundamental human rights and equality for women around the world. The CEDAW agreement was adopted in 1979 by the United Nations General Assembly and entered into force in 1981. Almost all countries have ratified CEDAW - 187 out of 193 countries. Often described as an international bill of rights for women, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

6. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries

International Labour Organization Convention No.169 is a legally binding international instrument, which deals specifically with the rights of indigenous and tribal peoples. It is based on the respect for the cultures and ways of life of indigenous and tribal peoples. It recognises their right to define their own priorities for development. Convention No. 169 is open to ratification. Today, it has been ratified by 20 countries. Once it ratifies the Convention, a country has one year to align legislation, policies and programmes to the Convention before it becomes legally binding. Countries that have ratified the Convention are subject to supervision with regards to its implementation.

7. United Nations Declaration on Indigenous People's Rights (UNDRIP)

The United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007. The UNDRIP affirms that indigenous peoples are equal to all other peoples and have the right to self-determination, along with other related rights, including rights to traditional lands and territories. The UNDRIP is an international *human rights* instrument that sets the minimum standards for guaranteeing the *collective rights* that indigenous peoples have long been exercising. It is *not* a *new* set of rights *granted* by states; rather, it is a *recognition* of *inherent* rights and defines the *obligations* of states to respect those rights. Much of the contents of the UNDRIP are reiterations of rights already provided for in the international conventions mentioned above, the provisions of which also apply to indigenous peoples.

The various international standards on human rights mentioned above were envisaged by the United Nations to help transform the lives and conditions of Indigenous Peoples to full human rights standards, if implemented in its letter and spirit. However, these international standards are often mere decorative commitments of States, without serving the purpose for which they were enacted. The signatory parties to the various international covenants and conventions often defy their international obligations within their

respective territories and jurisdictions in order to suppress and marginalize indigenous peoples.

8. Universal Declaration of the Collective Rights of Peoples (Algiers Declaration)

Activity: Knowing Key Provisions of International Instruments

The key provisions of the above-mentioned international instruments that have significance for indigenous peoples are listed in a table, written on kraft paper and then posted on the wall. The facilitator leads the participants in reading aloud and understanding the key provisions listed. After which, the facilitator throws the participants the question: Do you think these international standards are being implemented in our communities?

The Universal Declaration of the Collective Rights of Peoples (also known as the Algiers Declaration) was adopted by the General Assembly of the "Conference of European Stateless Nations" (CONSEU) in Algiers in 1976. The signatories of this Declaration committed themselves to "winning recognition for all peoples and their collective rights by the competent international organizations and for all peoples to attain their own representation in them." The organizations that signed the declaration also took on the mission of "insuring the respect of the collective rights of peoples and to intervene in order to solve any violations that could attack them."

The Algiers Declaration needs to be put in its rightful place as an international standard that should be complied with, along with UN standards and conventions.

C. Basic Principles of Indigenous Governance

> *Note to the Facilitator:*
>
> A more detailed discussion of the various types of traditional leadership is presented in the ILI Education Manual on Leadership Training for Indigenous Peoples, which may also be used to guide the discussion in this section of the module. The facilitator can make adjustments or changes in the discussion below, in order to be appropriate to the actual situation of the indigenous peoples that the participants belong to.

Traditional governance is widely diverse as practiced across different indigenous communities in Asia. These may range from so-called egalitarian or acephalous societies found mostly among hunter-gatherer societies and among some swidden farming societies; to democratic governance based on consensus, such as the chief-cum-council or elder council systems (although at times patriarchal since women are usually excluded); to autocratic or dictatorial governance, just like the chiefdoms in the Pacific, or the petty principalities in Indonesia ("rajahs").

The basic principles of indigenous governance discussed below point out some of the positive traits, principles and responsibilities of indigenous elders that generally characterize traditional democratic leadership and governance.

1. Sovereignty and self-rule

Indigenous elders or leaders govern their respective communities as sovereign societies, which practice their own methods of self-rule in their political, economic, social and cultural life. This is an inherent system of self-governance based on the wisdom of our ancestors and continued by our indigenous elders. However, when colonial forces began to intrude into the lives and administration of indigenous peoples, the sovereignty and self-rule of indigenous peoples and leaders were over-powered or infringed upon by colonialism, which went on for decades and centuries. Today the indigenous peoples are rightly trying to reclaim these basic principles of indigenous elders and their system of governance. The ruling classes and dominant societies collude to deny these rights of indigenous peoples,

which have become a serious international concern and issue of indigenous peoples.

2. Collective identity, collective rights and collective leadership

Indigenous peoples are known by their collective identities, such as the Igorot of the Cordillera, Philippines, the Naga of North-East India and Western Burma (Myanmar), the Thakali and Tharu of Nepal, and so on and so forth. However, the primary and most relevant identity for indigenous peoples is usually at the village or 'tribal' level. For instance among the Naga, people identify themselves as being Angami, Ao, Tangkhul, etc. The Naga national identity is a fairly recent development as a result of many factors, particularly linked to their common resistance movement.

Indigenous peoples exercise collective rights over their lands, territories and resources, and their social, cultural and political rights, which determine their collective identity as a people or nation. Indigenous peoples also exercise collective leadership, wherein leaders are traditionally selected through a process of consensus or inheritance, taking into consideration the merit and integrity of the individuals. This is unlike non-indigenous communities where self-interested groups or individuals often choose leaders through deceptive electoral processes or through the use of force and money.

3. Self-determination

Indigenous peoples are self-determining peoples who reject impositions by colonial rulers and outsiders. The principle of self-determination has become an urgent concern among indigenous leaders, and an international issue for the indigenous peoples.

4. Harmony and interaction with nature

Another unique identity of indigenous peoples is harmony and interaction with nature. Indigenous peoples belong to their lands and their lands belong to them. Indigenous peoples depend on nature for their livelihood and in the various cycles of life. In turn, nature is nurtured through the activities of indigenous peoples. Thus, the rampant destruction of forests, lands and other natural resources in the name of development will always be a serious international issue of indigenous peoples.

5. International solidarity among indigenous peoples and linkage with wider social and political movements

In contemporary times, the voices and aspirations of indigenous peoples are marginalized and suppressed in various ways under different dominant governments and nations around the world. Thus, international solidarity is necessary in order to build broader and stronger unity among indigenous peoples based on our common concerns and aspirations. Linkage with wider social and political movements is also necessary as an important component of building international solidarity among indigenous peoples and with other social sectors.

6. Sustainability

Sustainability of our ways of life continues to be a basic principle of indigenous leadership and governance. The need to ensure that there is enough land and natural resources left for the survival of future generations is a motivation for indigenous leaders to resist development aggression and the imposition of inappropriate social and economic packages, which erode the self-sufficiency and sustainability of indigenous communities.

7. Spirituality

Despite the inroads of Christianity and other religions, indigenous spirituality, belief systems and reverence for the ancestors remain as a source of strength for many indigenous peoples. Calling on the wisdom of the ancestors and invocation of blessings from the spirit world reinforce the principle of sustainability for the sake of future generations of indigenous peoples. This has been derived from the close interaction of indigenous peoples with nature.

8. Dignity

The ultimate objective of human rights is to ensure a dignified life. Dignity means having self-respect and being worthy of the honor and respect of others. Thus, indigenous governance ensures that the dignity of its leaders and the whole community is protected and maintained.

D. Good Practices of Indigenous Customary Governance

1. Structure

a. Functions: all-in-one executive, legislative, judiciary and semi-judicial body

Modern governance systems usually have separate executive, legislative, judiciary and media functions performed by different branches of government. In contrast, the basic practices of customary governance in indigenous villages and communities are often integrated under one governance system. For instance, the village council or elders' authority decides and executes all these different powers without fragmenting the administrative system. Indigenous elders and leaders collectively oversee all aspects of the above-mentioned functions within the scope of their authority.

b. Membership

The membership systems in indigenous communities are normally inclusive in nature. All bona-fide members of the village or community are natural members of the village or community. Exceptional membership is also considered through adoption or inter-marriage.

c. Representation

Representation in the structures that govern the indigenous village or community is generally fair and equal. Every sub-group, family or clan usually finds representation regardless of the size of the population. However, women are often not given equal opportunity to speak or to sit as leaders in the village in some indigenous communities. Although women are usually consulted and their

opinions considered in any decision-making before consensus is reached.

d. Leadership

Leaders are often chosen through consensus upon consideration of the qualities and personalities among indigenous elders. Some of leadership qualities considered include fairness, wisdom, experience and ability to articulate opinions. Selection of leaders is often agreed upon through voice votes or by rising of hands and not necessarily through ballots.

e. Decision-making

Decision-making is usually done after thorough consultations and seeking opinions and advices from among the members of the community. Decisions are then reviewed among the Indigenous elders who form the council of elders. The views of women are also taken into account through consultation with them through the family.

f. Organization

There are organizations within indigenous communities that represent the youth, women and other sections of the society, given the particular conditions of the indigenous peoples or communities, which may vary from place to place. All these different organizations would usually fall under and within the purview of the village or community council or authority as the case may be.

g. Legitimacy of customary laws

Indigenous peoples do not necessarily have written laws and regulations. But whether written or unwritten, customary laws hold legitimacy and prevail as rules or laws that are recognized and followed by the community under the basic practices of indigenous governance.

2. Roles and functions of indigenous elders

Among the important roles and functions that indigenous elders perform for the community are the following:

- Provide continuity or connection from past, to the present and the future through the collective memory of the community
- Practice, enforce and transmit customary laws
- Hold, protect and teach indigenous knowledge developed through generations
- Dispense justice to maintain harmony in the community
- Oversee the sustainable management of natural resources
- Resolve conflicts among the members of the community
- Lead in the defense of land, territory, resources and people from outside incursions
- Provide guidance in the spiritual and cultural lives of the people
- Build solidarity within and outside the community

3. Process of customary governance

The process of governance as practiced by indigenous elders is usually marked by the following characteristics and principles:

- Consensus – seeks unity through thorough deliberation of all sides before taking a decision
- Participatory – allows all concerned and affected to take part in the discussions and decision-making
- Representativeness – gives equal opportunity for all sections of the community to be represented and heard
- Accountability to community - responsible and willing to explain and justify decisions and actions to the whole community
- Transparency - open to public scrutiny and transparent in all actions to the whole community
- Collective leadership – decisions are made not be one person or leader alone but collectively as a group after thorough discussion
- Democratic – listens to the opinions of all and takes decisions for the common good
- Voluntarism - ready to serve and make sacrifices if necessary for the welfare of the majority of the people
- Fairness – weighs all sides equally without prejudice or giving favor to some
- Collective good – the good of the whole are considered over the interests of a minority

E. State Laws and Policies vis-à-vis Customary Governance

State laws and policies came into existence in the process of nation building that included external and internal colonization by dominant nation states of heretofore independent, "undiscovered" territories of indigenous peoples.

Indigenous peoples lived in these territories since pre-colonial times, defending and sustaining our land, territories and resources; developing our own distinct cultures, and collective identity; while being firmly grounded on the protection of our environment. Our viewpoints and practices through time were developed and shaped into what indigenous peoples practice as customary law.

In the course of history, many indigenous peoples were colonized by Western developed countries, and subjected to State laws and policies that were formulated and imposed upon us as instruments to facilitate our subjugation by the invaders. Many of these laws imposed by the colonizers continue to be in effect until the present. Through these laws, indigenous peoples continue to be discriminated against, dominated or assimilated into an alien system. They are often subjected to divide-and-rule tactics and are marginalized politically, economically, culturally, socially in the process of nation state formation and globalization.

Despite these impositions, indigenous peoples have not only survived, but have sustained our societies, cultures and customary laws, while asserting our rights as indigenous peoples in our own ways and contexts. At the international level, through sustained efforts by the indigenous peoples movement, indigenous peoples have attained recognition in international human rights law as evidenced by the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The UNDRIP recognizes the inherent collective and individual rights enjoyed by indigenous peoples and holds States to abide by its provisions as a minimum standard for the recognition of indigenous peoples rights.

F. Key Challenges to Indigenous Peoples' Governance

Indigenous elders face numerous challenges in their customary governance functions at present. Among these challenges are:

- ☐ Eroding or weakening customary laws

- ☐ Non-transmission of indigenous knowledge and values to the youth and other members of the community
- ☐ Opportunism or using one's position to access greater opportunities for one's self
- ☐ Narrow tribalism or being concerned only with preserving traditional culture and protecting the narrow interests of a small group or tribe, without considering the wider issues that negatively impact on the community

It is necessary for indigenous elders to guard against these trends that could harm the interests of the whole community.

At the same time, State laws and policies have given rise to various particular problems and challenges for indigenous peoples, which may vary from people to people, given their respective contexts. For instance, governments have labeled indigenous peoples as tribals, hill tribes, highland people, ethnic minorities, indigenous ethnic minorities, aboriginal people, indigenous cultural communities or indigenous peoples. As a consequence, indigenous peoples are subjected to policies of assimilation, integration, annihilation or even ethnocide by the nation state.

Among the particular issues arising from the imposition of State laws and policies on indigenous peoples are the following:
- ▪ Violation of indigenous peoples' human rights
- ▪ Non-recognition of indigenous elders, governance systems and customary laws
- ▪ Erosion of indigenous institutions and processes
- ▪ Cooptation, dismantling and corruption of indigenous elders and governance
- ▪ Divisive policies or sowing disunity in the community
- ▪ Mis-education and distortion of indigenous history
- ▪ Non-implementation of UNDRIP, ILO C. 169 and other international commitments

In the face of these numerous challenges and issues it is important for indigenous elders to take part in the indigenous peoples' movement, assert their vital and leading role and strengthen indigenous values in these changing times.

Activity: Share and learn from different experiences

The facilitator asks the participants to share their particular experiences on the following points:

1. What particular challenges do indigenous peoples face in the exercise of indigenous governance and customary laws?

2. How have indigenous peoples asserted indigenous governance in the face of State impositions?

From the experiences shared, the facilitator synthesizes the discussion by summarizing the main and common points raised in the sharing.

The facilitator then closes the discussion by going back to the objectives of the section on Indigenous Elders and Governance to review if these objectives have been attained.

Part II.
Indigenous Elders
in a Changing Society

General Objectives

1. To have a common understanding of the present situation of indigenous elders and their important role in a changing society.

Specific Objectives

After the session, the participants will be able:

1. To have a common understanding of the role of indigenous elders as traditional leaders and as new leaders.

2. To have a rich sharing and understanding of the diverse but common indigenous systems, practices and values, whereby indigenous elders flourished as traditional leaders, and which is a fundamental source of strength up to the present.

3. To have a rich sharing and understanding of the diverse but common struggles of indigenous peoples, whereby indigenous elders have evolved as new leaders to be able to deal with new issues and threats.

4. To learn from advanced and good practices in further sustaining and strengthening traditional and new leadership of indigenous elders.

Topic Contents

A. Concept and Definition of Indigenous Elder

1. Indigenous elder as a traditional leader
2. Indigenous elder as a new leader

B. Traditional Role of Elders in Promoting Indigenous Socio-Political Systems and Values

1. Natural resource management and livelihood
2. Self-governance and customary laws
3. Socio-cultural values, practices and spirituality

C. Historical Role of Elders in a Changing Society and in the Indigenous Peoples' Movement

1. Social changes in indigenous peoples communities
2. Disintegration and persistence of indigenous people's way of life
3. Indigenous peoples resistance and movement
4. Role of new type of indigenous elders in the indigenous peoples' movement
5. Features of new type of elder
6. Areas for the exercise of leadership by new type of indigenous elders

D. Role of Indigenous Women Elders and Leaders

E. Good Practices of Indigenous Elders in Advancing Indigenous Peoples Struggles

F. Challenges and Perspectives for Indigenous Elders

Time Frame

Two days: Day 1 - Topics A, B, C
Day 2 - Topics D, E, F

Methods

- ☐ Lecture-input on different topics
- ☐ Sharing of practice and experiences by resource persons and participants
- ☐ Open forum discussions and synthesis
- ☐ Plenary sessions for inputs, summary reports, sharing and synthesis
- ☐ Workshop groups for sharing of experiences, practice and discussions

Other Points to Consider

1. The venue of the training should be conducive for elders, i.e., on the ground floor structure, not high-rise, and preferably with open spaces.

2. Circle or semi-circle or interactive sitting arrangements are encouraged, with the option of sitting on the floor.

3. Venue and spaces should be provided for evening and off-session storytelling, further sharing and socializing.

4. Efforts should be taken to set the atmosphere that is conducive for sharing and learning by elders through visual aids, cultural presentations, and storytelling.

5. Preferably, elders should be tapped as resource persons for some topics or in workshops.

References

Asia Indigenous Peoples Pact (AIPP) and United Nations Development Programme (UNDP). 2007. Indigenous Women and Decision-Making: A Community Training Manual. Pages 21-23. Bangkok, Thailand.

Verzola Jr., Pio. 2009. A Theoretical Framework in Studying the Cordillera Land Question. Cordillera Peoples Alliance. *Ti Daga ket Biag Land is Life.* Baguio City, Philippines. Pp 135-160.

Solang, Benedict. 2010. Persistence and Disintegration of Indigenous Socio Political Systems and Values. Unpublished paper presented during the 1st National Indigenous Knowledge Conference, Benguet State University, La Trinidad, Benguet on December 2010.

Solang, Benedict. 2012. Dap-ay Indigenous Socio Political System and Social Values. Unpublished paper presented during 2nd National Indigenous Knowledge Conference, Southern Christian College, Midsayap, Cotabato on February 2012.

Bangit, Rafael Markus. 2006. *Tribal War and Peace Pacts.* Binodngan Peoples' Organization. Baguio City, Philippines

Cordillera Peoples Alliance and Asia Indigenous Peoples Pact. 2011. *Leadership Training for Indigenous Peoples.* Indigenous Learning Institute for Community Empowerment. Baguio City, Philippines

Note to the Facilitator

To start the session, the facilitator gives a general briefing and overview of Part II by discussing the Introduction, the General and Specific Objectives of the topic, and the Content Outline. The facilitator then asks the participants for their expectations and the points or questions that they wish to be taken up. These expectations and points should be noted and the facilitator indicates where these can be taken up in the course of the discussion.

Program Flow

The concept of an indigenous elder is a village, community or tribal leader, who personifies the self-identification of a specific indigenous people. In whatever historical epoch, indigenous elders embody and give life to their indigenous socio-political systems and values. They are the moral guardians and are the repository of knowledge in all aspects of village life.

Indigenous elders are recognized as leaders, personalities and authorities in the community, who manifest their strong grasp of indigenous socio-political systems and values. They exercise leadership roles in all aspects of social life, whether economic, health, welfare, political, ritual or religious, or in village defense.

A. Concept and Definition of Indigenous Elder

Indigenous elders are recognized both as traditional leaders and as new leaders in many indigenous communities. Elders perform their role in upholding the indigenous peoples' way of life, and defending their land and resources in traditional ways. At the same time, they exercise emerging ways of leadership in the face of new challenges in the community.

It is important to appreciate the role of indigenous elders, both as traditional leaders as well as their evolving role as new leaders in the present situation.

1. Role of indigenous elders as traditional leaders

As traditional leaders, the role of indigenous elders is to:

☐ Actively lead their village or tribe in practicing their indigenous peoples' way of life to ensure equity and the common good over individual interest;

☐ Help maintain harmonious relations among the members in the community, and

☐ Help maintain the balance and sustainability of nature and the environment, rather than looking at land and resources as merely targets for exploitation and gain.

This role played by indigenous elders accounts for the quality of life in indigenous communities, which gives premium to people's welfare and social relations, and the nurture and management of land and resources that results in sustainability and quality of the environment.

2. Role of indigenous elders as new leaders

With social change since colonization, indigenous elders have developed new ways to be accountable and responsive to indigenous peoples' interests. This is especially true where indigenous communities are adversely affected by development aggression and extractive industries such as mining, logging, dams and plantations, facilitated by unjust state policies, and accompanied by militarization and political repression.
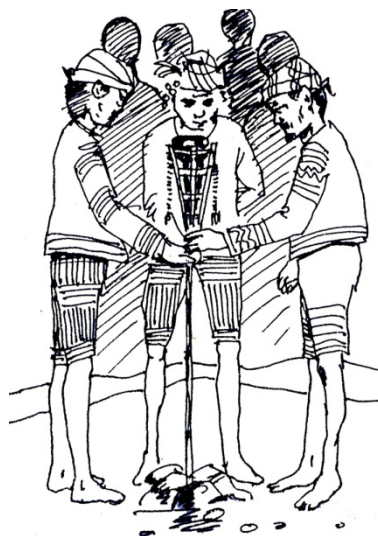
In the face of disruptive and life-altering changes in the community, the traditional role of elders has expanded from merely addressing local, village or tribal concerns, to include dealing with new developments and external pressures such as projects that displace communities and violate indigenous peoples' rights in the name of "development".

The fundamental role of indigenous elders as new leaders is crucial in:

☐ Upholding indigenous peoples' rights and ways of life;
☐ Ensuring the continued practice of indigenous knowledge, systems and values; and
☐ Ensuring the nurture of and equitable sharing of benefits from the land and natural resources in order to ensure social justice and sustainability in the community.

Especially with urgent life-and-death issues confronting indigenous peoples today, indigenous elders are indeed a potent force as new leaders in the indigenous peoples movement to advance the interests of indigenous peoples.

3. Traits of Indigenous Elders as Traditional and New Leaders

Traits of indigenous elders as traditional leaders:

☐ Selfless and committed service for the common good

    ☐ Authority and knowledge-holder in one or more aspects of indigenous life, i.e., economic, social, political, cultural, justice, defense, and inter-tribal relations

    ☐ Leadership by example and leadership is earned

    ☐ Skills in traditional forms of communication, e.g. cultural forms

    ☐ Usually (but not always) male, elderly, with economic means

    ☐ May have led in village defense or offensive attack against enemies.

Traits of indigenous elders as new leaders:

    ☐ Selfless and committed service for the common good

    ☐ Leadership by example and leadership is earned

    ☐ Social awareness and able to relate the local situation with the wider context for analysis and appropriate action

    ☐ Has skills in communication, organizing and building alliance

    ☐ Addresses immediate and long term social change

    ☐ Can be male or female, not necessarily elderly.

Whether in traditional societies or in the present modern era of globalization, indigenous elders have consistently played their role as defenders of land and indigenous peoples' way of life. Indigenous elders persist in their role as the moral foundation of their communities and peoples. Their role has creatively evolved to effectively cope with the needs of a changing society.

Effective indigenous elders today are steeped in the indigenous social systems and values developed by traditional societies. At the same time, they also have the capacity to maneuver within present development complexities for the determined defense of land, resources, and indigenous way of life. The indigenous elder of today, like the leaders and activists of other sectors of society, should be in the forefront of their community and people's struggles.

However, as social change is a process, there are some indigenous

elders who may still be limited to the traditional mold. For example, some elders may focus mainly on exercising ritual and spiritual roles. But as elders respond to present day realities of dealing with issues on land, resources, livelihood, and conflict in social values; they evolve into modern day indigenous leaders or activists who defend and assert sustainable management of land and resources for the common good, to benefit present and future generations.

Thus, indigenous elders could develop into new leaders with leadership qualities not necessarily present in traditional leaders. At present, there is a conscious effort to overcome gender and age bias in choosing indigenous leaders. Indigenous elders as new leaders could be women or young, not the usual gray haired elderly leader. Through education and sharing, they could develop a firm grasp of their local situation within a more comprehensive view of the wider social, economic and political context, coupled with the appropriate skills necessary to deal with the situation.

As new leaders, indigenous elders may be at odds with the existing national dominant system due to a clash of values and systems regarding land, resources and self-determined development for whom. They are critical of the system in power that allows development aggression and other threats to indigenous peoples.

But there could also be indigenous elders and new leaders who are able to operate within the existing national dominant system. This is of great advantage as long as they do not get co-opted and they still persevere in advancing indigenous peoples rights, systems, principles and values. Indigenous elders who are new leaders are activists who solidly stand for their peoples' rights in the midst of social change and its challenges.

On the negative side, it is also important to mention another new type of opportunistic indigenous leaders who are using indigenous issues for their own selfish interest or enrichment. These are the kind of "self styled leaders" that one should guard against and beware of.

Note to the Facilitator

These ideas can be further enriched through participant sharing. Allow the participants to freely discuss and share their ideas on these identified roles and traits of indigenous elders, both as traditional leaders and as new

Activity:

Group workshop for sharing and discussion on indigenous elders as traditional leaders and as new leaders

Determine and assign presenters or speakers from among the participants or invite resource persons who may not be participants to discuss their understanding and experience as traditional and new leaders. After the group workshop, a plenary session is held for reporting, questions and for further discussions and synthesis.

B. Traditional Role of Elders in Promoting Indigenous Socio-Political Systems and Values

The traditional role of elders operates from the context of traditional societies with a culture of indigenous socio-political systems and values. In such traditional subsistence societies, the economy is usually a combination of production for consumption and free access of resources available in the natural environment to meet basic needs. Livelihood activities include farming, fishing, hunting, and gathering of forest products. There is localized barter trade where necessary. Limited surplus is possible in food items, i.e. grain or animal stock, which mainly serve the community and the operations of indigenous socio-political systems and practices.

This is the context and tradition in which indigenous elders functioned as leaders in the life of traditional subsistence societies. They exercised leadership in all aspects of community life – economic, political, social and cultural. Indigenous elders flourished in this scenario as leaders advancing the interest of their communities, symbiotically relating with nature, land and resources. They promoted

an indigenous culture that serves collective concerns, addressing the common good and the welfare of present and succeeding generations. The foundation and practice, as well as reputation and legacy of indigenous elders as esteemed traditional leaders arose from such traditional subsistence societies.

> ## Activity: Sharing of case studies from different Indigenous communities on the role of Traditional Elders
>
> The following information from different indigenous communities may be shared to enrich the participants' understanding of what a traditional leader is and what his/her important role is in different aspects of life in

Various Related Definitions of Traditional Elder in Different Communities

1. Common definition among indigenous peoples

Being an indigenous elder is earned. What they do is for the common good. Part of their mature thinking is in being fair. They are committed to service. Age carries weight. Elder status is by community affirmation, and one cannot just claim to be an elder without affirmation by other community members.

2. Cordillera: *Manakam / Manakem / Maingel / Amam-a / Inin-a*

- ☐ Aged men who possess wisdom in conflict-resolution and could render fair judgment over crimes committed in the village. In most villages, they compose the village council of elders and are known for their wisdom and good reputation. They serve as advisers, mediators, peacemakers and village rulers. Their decisions are by consensus and deliberated lengthily.
- ☐ Able-bodied men who led war expeditions against enemies.
- ☐ An elder is mature in thinking, fully aware of the customs and traditions, leads by example, and one that could be depended on in times of crisis.

☐ In some 'tribes', one who has relative surplus production, i.e. *kadangyan*, can become an elder if he proves his leadership in practice.

3. **In Mindanao**, an elder has the responsibility to protect the tribe and the territory, and has credibility in resolving conflicts.

4. For some indigenous peoples' communities, the status of being a "chief" is inherited; but leadership in any aspect of indigenous peoples' life still has to be proven in practice.

Traditional Leadership Roles

The traditional leadership role of indigenous elders is manifested in three major aspects of indigenous peoples' life:

☐ **Natural resource management and livelihood**

☐ **Self- governance and customary laws, justice system and conflict resolution**

☐ **Socio-cultural values, practices and spirituality**

In all these aspects of life, an indigenous elder as a traditional leader serves as:

1. **Knowledge holder and teacher** – On any one or more aspects of indigenous life, the indigenous elder is an informed expert, on knowledge that was handed down be the ancestors and then continuously enriched through practice. This knowledge is generously shared with the community especially to younger generations. Passing on of knowledge is a key role of indigenous elders, and so elders teach with passion for the race, village or tribe to live on.

2. **Initiator and actor** – The practice of indigenous peoples is to act collectively, although elders still have the role to initiate and act on the matter at hand. Indigenous elders initiate and directly act together with the people on matters of livelihood and people's welfare, natural resource management, community socio-cultural affairs, and village defense. They exercise their leadership by initiating timely response and by direct action. But on matters of village or tribal governance, such as the justice system, inter-tribal relations like peace pacts, and conduct of rituals; indigenous elders do stand out both individually and together, as a council or as a collegial body elders.

3. **Unifier and mobilizer** – Indigenous elders can unify and mobilize the people to act as one on any aspect of indigenous peoples' life. This is because it is for the benefit of the community and not for the gain of individual leaders or as a group of elders. The ethos of unity and acting as one is ingrained among indigenous peoples from the necessity of collective labor in managing nature for livelihood, like construction of rice fields, or of village defense against tribal enemies. In this context, indigenous elders exercise leadership in building consensus for strong unity and mobilization to act as one.

4. **Symbol and model** – Indigenous elders act as a symbol and model to personify aspects of indigenous peoples' life where they have a reputation for effective leadership and action. As a symbol and model of their village or tribe, indigenous elders can be relied upon in health (as a healer or

medicine man or woman), in agriculture (e.g. as lead in seed selection), governance (as just and wise in dispute settlement), in spiritual life (as ritual leader), in external relations (as tribal peace pact negotiator), among others. Indigenous elders as a symbol and model of their village or tribe embody the good practices and values of their people.

The case studies shared below further illustrate the traditional leadership roles of indigenous elders on the following major aspects:

1. On natural resource management and livelihood

ndigenous elders are the active knowledge holders in all aspects of natural resource management and livelihood. Through traditional knowledge, they ensure the village and people's welfare, as well as mutually nurturing relations with nature and the environment, to benefit present and future generations. With social change since colonization and up to the present, there has been weakening of indigenous systems and practices on natural resource management and livelihood; but there has also been persistence. Traditional indigenous elders still significantly determine, at various levels, matters on natural resource management and livelihood.

The different aspects of natural resource management on water and irrigation, agriculture, traditional small-scale mining, health, and cooperative labor are elaborated in the cases shared below:

a) Water and irrigation

> **Indonesia** – Among the indigenous people in Moluccas, the main goal of the *sasi* system is to keep natural resources sustainable, regulate access, and ensure equitable distribution. *Sasi* regulates taking of natural resources within the village, from the forests, rivers and seas.

> **Higaonon in Mindanao** - *Getle system*

Datu Panalawahig – person in charge of water use/distribution

Datu Panalabugta – person in charge of land use (agricultural, sacred grounds, housing)

Datu Mantomogas – person in charge of trees, herbal medicines

Datu Mangangaso – person in charge of identifying areas for hunting

Datu Maninikop – person in charge of fishery

Only trees identified for cutting may be cut because there are trees that are used as herbal medicines and there are trees that produce sap used for making torch lights. Selling of wood lumber is prohibited. Selling of wild pigs and deer is prohibited. The practice of

gathering honey is to tie dried twigs and leaves and cover this with fresh leaves so smoke comes out to drive away the bees, but the fire is contained.

> **Sabah and Sarawak** - *Tagal system:* The aim is similar to the *sasi* system, focusing on river, fish protection, conservation and regulation.

> **Cordillera** - *Lampisa* system in western Bontoc and *Oblis* system in Central Bontoc on collective water and irrigation management for equitable distribution.

b) Agriculture and fishing

> **Cordillera** - The traditional agriculture cycle for rice farming is synchronized for the sowing of seeds, plowing, planting, and harvesting. However, this has been disrupted and weakened by the government's promotion of modern high yielding varieties of rice through Green Revolution agriculture that is dependent on chemical fertilizers and pesticides and does not require synchronization for the whole village. This has undermined the cooperative labor system that was necessary in the synchronized agricultural cycle. It also has had disastrous results in pest management because rats and rice birds have a field day attacking the few rice fields with grain at a time. The farmers ended up producing grain for the rats and birds! And so the villages resolved to return to synchronized village rice farming, as well as to go back to indigenous varieties and organic agriculture.

> **Higaonon** – They use organic pesticides and use of chemical pesticides is prohibited. In catching fish, they use herbs (*tubli*) to make the fish dizzy and float for easier catch. There is no use of chemicals or electricity for fishing.

> **Moluccas** - Even use of herbs in catching fishes is prohibited and fines are imposed for any violation because it affects fingerlings.

> **Borneo, Malaysia** - The *Lati' Ba'* system of highland Borneo releases buffalos into the rice fields after harvest in order to soften the soil and fertilize it with their droppings.

c) Traditional small-scale mining

> **Cordillera** – Elders have developed a system of mining by using crude tools to mine and process the ore to extract the gold. This does not use chemicals so it is clean but very laborious. Indigenous systems and values on traditional mining are a collective effort, admonishing miners to "get only what you need". There is fair sharing of gold and provision for widows, orphans and women. It is consistent with and not destructive to agriculture activities.

d) Health

> **Higaonon in Mindanao**
Datu Mantomogas – in charge of trees and herbal medicines.
There are herbal medicines for women's reproductive health and birth control. Herbal medicines are used to heal wounds and fractures.

e) Cooperative labor systems

These are usually applied to natural resource management, agriculture, other livelihood endeavours, and building of houses.

> **Cordillera** - *Obbo, Angkas, Gamal*
> **Higaonon** - *Pabulig*
> **Moluccas** - *Masohi, Gotong Royong*

> **Sarawak** – *Beduruk* (labor exchange system among groups of farmers)

f) Forest conservation

> **Sarawak, Malaysia** *- Pulau Galau* is an area of forest, whether wholly or partially surrounded by cultivated land, which is purposely reserved by the community through generations. This forest area is left unfarmed or uncultivated as a source of resources, such as timber, rattan, etc. for the domestic needs of the community.

g) Some "bad" practices in resource management

> **Cordillera**
- Burning of pasture lands during dry season to have fresh growth of grass during rainy season for cattle
- Wild honey collection using fire and smoke that is not controlled and that results in forest fires
- Use of electricity and chemicals to catch fish in the rivers, usually by younger generations. This happens when leadership of elders is weak.

2. Self-governance and customary laws, justice system and conflict resolution

Traditional indigenous elders shine in self-governance. They are the torch bearers of customary law for harmonious self governance with direct democracy. Village or tribal life is managed, directed, and nourished by the operation of indigenous socio-political systems with the leadership of indigenous elders and the moral sanction of values.

Indigenous elders are known to dispense just resolutions of civil internal village disputes, and will go into elaborate processes to achieve inter-village or inter-tribal peace. Historically, indigenous peoples through the leadership of

their elders, would not hesitate to go into "war" with adversaries if there is no justice. This is usually in times of inter-tribal conflicts or in cases regarding territory, resources, life, dignity or integrity.

With social change since colonization to the present, there has been disintegration of indigenous socio-political systems, and weakening of customary law. At the same time, there has also been persistence of traditional practices.

a) The strong force for persistence is because customary law and indigenous practices continue to serve the people's interest as in the observed advantages of customary law over state law.

- Customary laws resolve issues fast and direct to the point, compared to tedious and expensive justice system through court proceedings and requirements.
- Customary laws are directly accessible to the people and they are knowledgeable on its operation, while the state law and justice system require western style literacy of state laws and its operations.
- Participation is open and broad for community members, while it is limited to affected parties and legal practitioners in the state justice system.
- Truth and justice is ensured in customary law, while truth can be twisted or bought in the state justice system.

b) Among the observed contributing factors to the disintegration and weakening of customary laws, indigenous practices and values are:

- Non-recognition of customary laws in national laws
- Discrimination against customary laws and indigenous socio-political systems and values by the western oriented education system, mass media, and religion
- State laws that disregard, marginalize, or co-opt the role of indigenous elders in self-governance and justice system, i.e. Local Government Code of the Philippines.
- Limiting role of elders only to ritual performance and ceremonial functions.
- With the divisive and negative influence of profit-oriented development projects that promote individual gain and self interest, there are also

cases of elders who get co-opted and corrupted, and who are usually disowned, or in some cases banished by their people.

- ☐ But where custom law has disintegrated and is ineffective to render justice, indigenous peoples resort to filing cases in State courts instead of settling the problem within the indigenous council of leaders.

c) At various levels, traditional indigenous elders still exercise authority and continue to impact on self-governance to ensure unity and order, equity and justice, as well as sustainability of the indigenous peoples' way of life, even while assimilating in response to social change.

> Indonesia – *Latupati* and *Kewang*

- ☐ *Latupati* (council of chieftains) deals with conflict-resolution. The council looks for the best solution in order to avoid armed conflict. This is one of the elders' roles. A usual cause of conflict is territorial boundary dispute.
- ☐ *Kewang* is an indigenous socio-political institution that works as indigenous police, safeguarding the implementation of *Sasi* – indigenous system that regulates taking of natural resources and ensures fair distribution. *Kewang* also regulates social life in the community.

> Cordillera – *Bodong* and *Dap-ay*

- ☐ *Bodong / Vochong / Pechen / Peden -* This indigenous socio-political system is practiced by a significant section of the Cordillera. It governs, regulates, and manages tribal life in all aspects including inter-tribal relations. It is popular with its elaborate peace pact system of bilateral relations and justice system.
- ☐ *Dap-ay / Ator -* The *dap-ay* or *ator* in some parts the Cordillera is an indigenous socio-political system that governs, regulates, and manages all aspects of village life: with regards land and natural resources, synchronized agriculture, life cycle, socio-cultural practices and rituals, village and inter-village events and relations, dispute and conflict resolutions. The council of leaders decide by consensus after thorough deliberation.

> Mindanao - *Talugan* system of defense for the Higaonon, Talaandig and Banoaon.

- ☐ *Bungkato Labolawan* – customary laws for marriage, protection of territory, and choosing of elders. It has committees on justice system,

traditional system, agriculture, health, finance, blacksmith, peace and order, water and fishery, land use and hunting.

☐ For conflict resolution, the supreme *Datu* (*Datu Kinatangkawan*) calls a meeting of all chiefs. A negotiating panel headed by the supreme *datu* will talk to both sides to resolve the conflict.

☐ *Datu Bagani* – in charge of peace and order, heads the tribe's peace-keeping force or police. *Bagani,* meaning warrior, is also used to refer to policemen*.*

> Sarawak

☐ The Longhouse in Sarawak is both a physical setting or housing as well as an indigenous socio-political system for governing and regulating the economic, political and socio-cultural life of the Longhouse, which approximates a village.
☐ Native court system

3. Socio-cultural practices, values and spirituality, and knowledge transfer

Traditional indigenous elders personify the socio-cultural practices, values and spirituality of indigenous peoples. They are crucial in the process of transfer of such knowledge to the younger generations. These practices and values cover all aspects of indigenous peoples' life. The knowledge transfer processes are synchronized and integrated in their day-to-day life: while working in the fields or swidden farms, gathering forest products or hunting, maintaining community irrigation or village drainage, cooperatively building a house, at life cycle events of birth, marriage or death, at village and tribal socio-political and cultural events like peace pacts or rituals. As in other aspects of indigenous peoples' life, traditional indigenous elders have defined roles. They lead, but with everybody's participation as these are communal activities for the common good.

The following are common socio-cultural practices, values, spirituality and knowledge-transfer practices among indigenous elders:

a) Common values

☐ "Take only what you need from natural resources."
☐ Sharing of good practice, sharing of natural resources and food

b) Admonitions on good behavior and conduct

> **Cordillera** – *Inayan, Paniyew, Lawa*
> **Higaonon** - *Supaksupak*
> **Banwaon** – *Hadiglawangen*, meaning do not do unto others what you do not want to happen to you. Do not harm others, do not destroy the environment.

c) Admonitions on coping with misfortune, death or disaster

> **Cordillera** – *Kasiyana* or *Laton* meaning "it is alright or okay", used as a psychological coping mechanism, which ensures and gives confidence.

d) Cultural and spiritual practices

> **Cordillera** – *Liwliwa* or *ayyeng,* a social ritual chanting for prosperity, health and other aspirations

> **Higaonon** – *Panengdan,* performed by the elders to seek blessings and for prosperity.

e) Gender issues and discrimination

> **Mindanao** – Women are not allowed to become chiefs

> **Indonesia** – In most places in Indonesia, women are excluded from decision-making processes.

> **Cordillera** – Women are just observers but are not allowed to participate in decision-making.

> **Malaysia** – Women are beginning to be accepted in decision-making, but their number is still small.

f) Knowledge transfer - Transfer of indigenous music and arts, traditional medicines and healing, wearing of indigenous costumes, and rituals related to agricultural activities

> **Higaonon** – Elders are conscious of teaching lessons and giving training, i.e. the *baylan* (medicine person) teaches the younger generation about herbal medicine.

> **Moluccas, Indonesia -** Interested young people undergo training. Children are exposed to practices like making of traditional medicine, identifying medicinal plants in forests. Traditional plants and medicine are documented in books and the youth learn from these books. A library is built near the *Kewang*. Older *Kewang* train young *Kewang*. Young people observe what is done in the *Kewang* house during traditional ceremonies.

> **Alyansi Masyarakat Adat Nusantara (AMAN)** or the Indigenous Peoples Alliance of the Archipelago in Indonesia helps involve the youth in learning about indigenous practices.

> **Philippines**: Maintaining and transfer of knowledge is often done through indigenous peoples' organizations like the Cordillera Peoples Alliance (CPA) and KALUMARAN, civic organizations, family and clan activities, e.g. reunions.

> Documentation and writing of customary laws and practices for

knowledge transfer is an urgent need in many cultures. This is a challenge for indigenous elders as new leaders.

Note to the Facilitator

The Facilitator should take efforts to surface the ideas, knowledge and experiences of the participants from their own or other cultures or countries not included in the sharing above.

C. Historical Role of Elders in a Changing Society and in the Indigenous Peoples' Movement

1. Social changes in indigenous peoples' communities

The external and internal colonial experience brought social change with comprehensive impacts on the economic, political and socio-cultural life of indigenous peoples. What used to be localized subsistence societies were integrated within the wider centralized national structures. Completely colonized communities were transformed and adapted to the new economic and social systems. But indigenous peoples would manifest a different history by not being completely assimilated, and their indigenous way of life has continued to prevail, at varying levels, up to the present.

However, the comprehensive economic and social changes due to colonization and domination greatly influenced indigenous peoples' livelihood, socio-political systems and values. Colonization brought in cash crops and wage labor mainly for extractive industries like mining, logging, plantations and eco-tourism or employment in government and the emerging private sector. Social and culture changes were effected through public education and public health, western-oriented centralized national governance, religious influence and urbanization, along with the introduction of information technologies. Added to these are the massive effects of global warming and climate change on generally vulnerable indigenous peoples communities.

2. Disintegration and persistence of indigenous peoples' way of life

The indigenous peoples' way of life came to terms and dealt with such changes by assimilation and integration, adapting to the new system to benefit from it; but still living the core indigenous peoples' way of addressing the common good and nourishing positive relations with nature. A state of persistence and disintegration characterizes indigenous socio-political systems and values. What persist are indigenous systems and values that continue to be relevant as they serve the people's interest, i.e. livelihood and social wellbeing.

Thus, we see the dual process of **disintegration** of some aspects of indigenous peoples' life that may no longer be relevant (or may in fact be anti-people like expensive rituals and tribal war), yet **persistence** of progressive aspects, such as primacy of people's welfare and the common good, nurture and management of land and resources for the people and for the sustainability of nature itself. Since the colonial to post-colonial era, and up to the present, there has been persistence of positive aspects of indigenous economic, socio-political systems and values, because these are necessary for the life of indigenous peoples.

3. Indigenous peoples' resistance and movement

The adverse impacts of colonial power and impositions, as well as the systematic violation of the rights of indigenous peoples, were disruptive and were resisted by indigenous peoples. The continuing defense by indigenous peoples of their way of life, land and resources would last for decades for some cultures. This legacy of resistance and of upholding the ethically superior economic and social values of indigenous peoples has been rekindled in the present struggles against development aggression.

The present era is characterized by development aggression and plunder in indigenous peoples' territories, which result in displacement and threaten the existence of indigenous peoples. This scenario is complicated and challenging for any advocate of change, including indigenous elders who

stand for their communities and peoples. This is the context for indigenous elders to act as new leaders in the indigenous peoples' movement.

4. Role of indigenous elders as new leaders in the indigenous peoples' movement

The indigenous elder as a new leader:

☐ Leads the community, equipped with sufficient knowledge of the local situation, its wider national and global context, and armed with pro-people practice and values on people's welfare, land and resources, and over all social relations.

☐ Is an activist and advocate because he/she dares to be critical and to challenge the dominant system and practices that oppress indigenous peoples, and actively works for change.

☐ Combines the skills of a traditional indigenous elder with new capabilities that are needed to communicate, organize, and mobilize people on their issues to achieve gains and advance towards truly just and sustainable communities.

The indigenous elder as a new leader serves as:

a)**Organizer** - a researcher, organizer, teacher and facilitator, who combines traditional knowledge with new knowledge, in content and method

b)**Mobilizer** – motivates the people for advocacy and campaigns

c) **Unifier** – does alliance, networking and international solidarity to advance indigenous peoples rights.

5. Features of an indigenous elder as a new leader

Characteristics of the indigenous elder as a new leader, which are necessary in order to advance indigenous peoples' rights at present:

a) A community or village member who has integrity, sound judgment, impartiality, open-mindedness and progressive ideas;

b) Has knowledge of current issues, upholds and advocates the people's aspirations;

c) Committed for the common good, concerned with strengthening relevant customary laws, indigenous socio-political institutions, practices, beliefs and values, and lives by his people's customs and traditions;

d) Age does not matter, e.g., Eliza from Moluccas, Indonesia became an elder at the young age of 30.

e) Has given actual service to the community thereby building his/her credibility and reputation as leader. Because one leads in the context of customs and values, and in pursuance of indigenous peoples interests, one is regarded as an indigenous elder with both traditional and new capabilities.

f) One example of an indigenous elder emerging as a new leader in the Halmahera district in Indonesia, is a government district representative, who is at the same time a respected elder and a member of the AMAN council, and who is active in the indigenous peoples' movement.

6. Areas for the exercise of leadership by indigenous elders as new leaders

In the present situation of urgent issues and threats faced by indigenous peoples, given the local to national and global interlink of issues, the leadership role by indigenous elders as new leaders is exercised in the following areas:

a) Foremost role of the indigenous elder as a new leader is to inform, organize, advocate and mobilize

Indigenous elders as new leaders should have a grasp of issues of indigenous communities and the overall situation and inter-relation of issues. At present, these are generally on development aggression with displacement, conflicts on benefit and use of land and resources, and related militarization. It is necessary to understand the context or historical perspective of issues and threats affecting indigenous peoples.

An example of good practice is the sustained campaign of the Cordillera Peoples Alliance (CPA) for the defense of land, life and resources, which has been going on since 1994. This is an integrated campaign to defend ancestral land and resources, indigenous peoples rights and human rights from development agression, and to promote people's welfare and social justice, natural resource management and sustainability, climate change and disaster risk reduction.
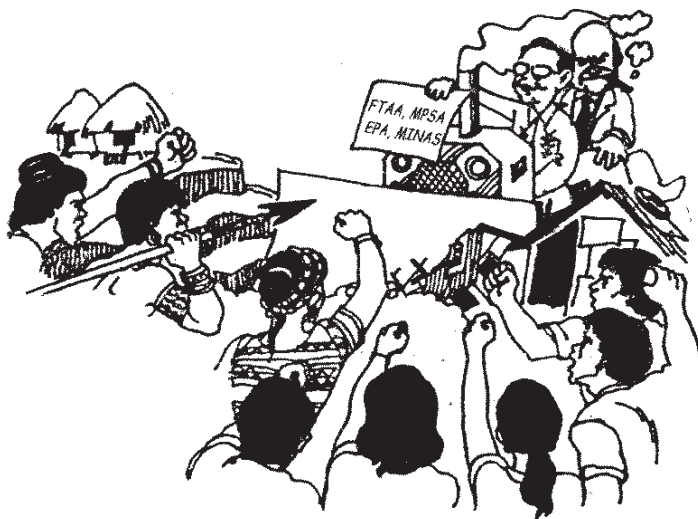
In present campaigns to pursue indigenous peoples' aspirations, it is important to keep alive the history of resistance and active defense of life, land and other aspects of the people's customs and traditions. This is important in affirming identity, which is important for young people and which gives them the confidence to pursue just and humanitarian struggles of their peoples. Sharing of accounts of struggles by other cultures would also be useful, such as the historic anti-Chico dam struggle in the Cordillera, the Jharkhand Save the Forest movement in India, among others.

b) Engage in various avenues for indigenous peoples' participation, representation, advocacy, alliance and networking

Indigenous peoples' struggles achieve results and gains by relating with other sectors or formations with similar issues and concerns, at the local to the national and even international levels. Indigenous elders should take all opportunities for projecting their concerns and for gaining support among fellow indigenous peoples, as well as with other sectors and formations.

Among the target groups for alliance and networking are the following:

> **Cordillera**: Selected local, regional, and national government officials, church, academe, non-government organizations (NGOs)

> **Mindanao**: Academe, church, barangay-level Lumad organizations that are not connected to government agencies, local government units

> **Indonesia**: Academe, media, NGOs, selected government officials like the North Halmahera district head who is also an indigenous elder and AMAN council member.

> **Malaysia:** *Jaringan Orang Asal Se-Malaysia* (JOAS) - Indigenous Peoples Network of Malaysia

c) Adapt new forms of indigenous elders' organizations

In the active struggles against development aggression and other issues, and in the modern age of social networking and internet, the traditional form of organization has its limitations in carrying out the struggle for indigenous peoples' interests. Thus, we now see the emergence of new forms of organization. A combination of both traditional forms with new forms of organization, as well as new methods of action, can be effective in advancing indigenous peoples' programs and campaigns.

Emerging elders' formations of the indigenous peoples' movement are combinations of traditional leaders and new leaders of elders organizations. Traditional organizations are usually at local levels where they effectively operate. As local indigenous peoples struggles reach out for wider participation to address common concerns, new forms of organization with wider scope become necessary.

A combination of local indigenous elders' organizations and new types of organizations within a wider scope, can be effective for

advancing indigenous peoples' struggles. The just issues and pro-people aspirations of the traditional indigenous socio-political institution is its fundamental strength. This is reinforced by the skills and methods of new types of organizations that systematically appraise issues on a wider and integrated plane. This is crucial in coming up with appropriate programs of action and methods. Some cases of good practice combining traditional and new forms of organization are

> **Indonesia**: AMAN Council is composed of indigenous elders representing different community members of AMAN.

> **Philippines:** KAMP (national federation of indigenous peoples organizations) is composed of regional federations, including KALUMARAN in Mindanao and CPA in the Cordillera. At the local level, indigenous socio-political institutions such as the *dap-ay* and *bodong*

are members of the region-wide multi-sectoral federation, Cordillera People's Alliance. With advances made in organizing indigenous elders at the provincial and inter-provincial level, there is now a Cordillera Elders Alliance that is also member of the CPA. For the Lumads in Mindanao, there is a *Datu* organization (composed of elders from different tribes); and BAI, an indigenous women elders and leaders network.

> **Sarawak, Malaysia**: At present, no indigenous elders organizations exist. They largely depend on NGOs to organize community movement. Today, some roles played by the headmen in the past are now taken over by a few active NGOs in Sarawak, namely BRIMAS and SADIA. These two NGOs have been very active helping to educate landowners pertaining to their rights. Mapping of boundaries and paralegal training are very important to land owners. This is where landowners are more prepared to protect their rights, even more so when land cases are bought to high courts.

It is important to note that the government has also put up new forms of indigenous elders' organizations. However, the observation is that these organizations usually function as channels for government programs, like elections, and are divisive among indigenous peoples. Examples of such organizations are:

> **Indonesia** - *Latupati* version organized by the State during elections that functions for individual or private political and economic interests of politicians, as opposed to indigenous *Latupati*. It is thus divisive among the people.

> **Philippines** – Functional indigenous peoples' justice systems in indigenous villages were marginalized with the imposition of the *Barangay Lupon* under the Local Government Code. In some areas, government agencies like the National Commission on Indigenous Peoples (NCIP) and the Department of Environment and Natural Resources (DENR) have organized "Council of Elders", who may not necessarily be those recognized by the people. The government also organized the Kalinga Bodong Council for the purpose of dispute settlement. However, it has earned a bad reputation for cashing in on dispute settlements.

> **Sarawak**: *Majlis Adat Istiadat;* **Sabah**: *Majlis Hal-Ehwal Anak Negri*

d) Utilize new methods of action

Historically, indigenous peoples have defended their land and resources and way of life, from colonization to the present. Throughout history, new methods of action were taken by indigenous peoples to assert their rights, defend their land and way of life. Peoples' actions have evolved and taken various forms – delegation, lobby, negotiation,

petition, picket, barricade, etc. Whether as traditional or new leaders, indigenous elders are often in the forefront of these actions.

The matter of taking up arms to resist colonization, and later development aggression, historically has been an option for indigenous peoples. After all, indigenous peoples are traditionally armed, as many are hunting societies, and they traditionally had to defend their villages from tribal enemies. With development aggression in the present era, some indigenous peoples have also resorted to arms.

Successful resistance to the World Bank-funded Chico dam project in the Cordillera during the 1970s was a combination of affected people taking up arms against the project and the dictatorial government; and a militant mass movement that generated wide local to national and international support against the dams. It was also shared that this is a current experience of the *bagani* defense force among the Higaonon of Mindanao, as well as the experience of Paperu in Moluccas, Indonesia.

e) Building the indigenous peoples' movement and solidarity at national to global levels

The national to international context of issues faced by indigenous peoples requires the same scope of action for advancing their struggles to ensure the defense and nurture of their interests. Issues and threats on indigenous peoples are easily recognized as they directly affect basic life and livelihood, land and resources, and indigenous peoples' way of life. They are localized only in the sense of affecting particular local indigenous communities and territories. But the same systems and plans, actors and beneficiaries, as well as methods are consistent almost anywhere.

Development aggression such as large-scale mining, mega dams, logging, and plantations are being pursued at national and global levels. Indigenous peoples, like other affected sectors and peoples of the world, are disadvantaged and suffer the same consequences.

The situation today requires local indigenous peoples together with their indigenous elders, both as traditional and new leaders, to be part of and to help build a militant indigenous peoples' movement at national to global levels.

D. Role of Indigenous Women Elders and Leaders[1]

Indigenous women have important roles to play in the family and in the community. Women's roles as indigenous elders and leaders need to be recognized and appreciated. They perform key roles both as traditional leaders and as new leaders of indigenous peoples' struggles.

Some Roles of Women within the Family

1. Meeting the needs of the family - gathering, preparing and cooking food; collecting firewood, looking after the physical health, spirit and soul of the family
2. Weaving and embroidery/making crafts
3. Acquiring the skills, knowledge and teachings and passing on the traditions to the next generation through practice and oral methods.
4. Maintaining peace and harmony
5. Preparing for ceremonies and rituals

Some Roles of Women in the Communities

1. Preparing for community ceremonies and festivals
2. Contribute during community events like weddings, funerals and birth ceremonies.
3. Supporting other women who are in need, e.g. victims of domestic violence, women who have to go through mourning rituals
4. In some communities, the women are also expected to contribute labor to the shamans and blacksmiths in their community as a form of respect for their services to the community.

Some Stories of Indigenous Women Leaders

There are simple, untold stories of indigenous women who have made either collective or individual decisions for the good of the whole community. The following "herstories" of these indigenous women can be shared to the participants:

The Khasis in Meghalaya, Northeast India were not always a matrilineal society. In the olden days, men used to organize hunting parties, leaving only women and children in the village. During one hunting party, intruders attacked the village, burning down houses and killing any villager they encountered. Without the men, the Khasi women had to stand up and fight the attackers. The women fought bravely and with all their might. When the men who were out hunting saw the smoke from their village, they rushed home fearing the worst. When they arrived, they found that the women had

---

[1] Asia Indigenous Peoples Pact (AIPP) and United Nations Development Programme (UNDP). 2007. Indigenous Women and Decision-Making: A Community Training Manual. Pages 21-23.

slain many of the attackers and had driven the others off. Because of this incident, the community decided to pay tribute to the women by changing and passing the clan names to the female side as well as passing down properties through the youngest female child in the family. (*Source: Mr. Julius, Khasi Leader*)

Meeju, is an Akha, one of the indigenous groups of Thailand. For the past 10 years, she has been mobilizing members of the Akha community to help fill up complicated citizenship application forms to be submitted to the government. She trained groups of young Akhas to fill up forms not just for Akha people but for other indigenous peoples of Thailand. In fact, they have given priority to other indigenous groups. The groups have unselfishly been working late at night when most people are already asleep. Between the months of March – August 2002, they completed and submitted about 30,000 forms. Meeju knows that without citizenship, indigenous peoples of Thailand will not have the opportunity to get an education, jobs and most importantly rights to their traditional lands and territories. Despite threats of arrests, she continues to be committed to the work and continues to ensure the rights to citizenship of indigenous peoples of Thailand. (*Source: Helen Leake, IMPECT Volunteer*)

When an oil palm company started to open a huge plantation in Ulu Niah, Sarawak in 1996, two longhouse communities had to face constant threats by thugs employed by the company. The Iban communities did everything to petition the government to intervene but to no avail. As the company started to bulldoze the Iban customary rights land, anger and frustration led to a violent encounter between members of the community and company thugs in 1999. Three people were killed, leading to an arrest of 19 Iban men. Elam, mother of 3 and daughter of the headman (one of those detained) worked

tirelessly for about three years to seek redress for those who were arrested

and to continue the campaign for the community's rights to land. Elam also performed ceremonies and rituals to keep the morale and spiritual well-being of the community. Her efforts, together with many other women, finally paid off when all those accused were acquitted by the Sarawak court and upheld their rights over their customary lands. Though Elam faced numerous hurdles both within the community and the wider male-dominated society, she gained the trust and respect for the leadership she has shown in their struggle. (*Source: Ideal, Sarawak-Malaysia*)

Meet CK Janu, an Adiya from Kerala, India. She comes from a family of five children, three of whom are girls. At about age 10, Janu began work in the fields at Rs 2 per day. When she was 16, she began to learn how to read and write and became a literacy instructor while working as a coolie. When Kurumarchira, her community's traditional land was encroached, the Adiyas launched an agitation, with Janu's help to organize them to struggle for their territories. Many people were arrested because the authorities were behind the encroachers. In 1993, she visited all the indigenous communities in Kerala to organize and demand for the implementation of the Kerala Scheduled Tribes (Restriction of Transfer and Restoration of Alienated Lands) Act 1975. To this day, Janu continues to be active leader, not only among indigenous peoples, but also among the Dalits. (*Source: C.R Bijoy, Activist*)

D. Good Practices of Indigenous Elders in Advancing Indigenous Peoples' Struggles

Note to the Facilitator

This part of the session is to share experiences and good practices of indigenous elders in advancing indigenous peoples' struggles in order to strengthen solidarity and contribute in building the indigenous peoples'

Activity: Panel Discussion

Assign Presenters/Speakers from among participants or invite Resource Persons to share more on the following topics:

> The diverse and common issues and threats affecting indigenous peoples

> The role of indigenous elders as activists or new type leaders

> Good practices of indigenous elders in upholding indigenous peoples' interests and advancing and building the indigenous peoples movement.

An open forum can be held after the panel discussion to entertain questions, sharing of other experiences and further discussions.

E. Challenges and Perspectives for Indigenous Elders

Challenges

The trend of disintegration of indigenous socio-political systems continues to erode **traditional leadership by indigenous elders** due to social change. Yet, at the same time, there is also persistence of indigenous systems and values, because these continue to be relevant and to serve the people's interest. These indigenous values affirm the symbiotic relationship of indigenous peoples and communities with the natural environment, and stress the primacy of people and the common good over individual gain and exploitative economic systems. Such positive people-centered practices and values embodied by traditional leadership carry on into the new situation and give moral ascendancy to indigenous elders, as they deal with issues and threats now affecting indigenous peoples.

This has led to the evolution of **new leadership by indigenous elders**, who are molded by the progressive aspects of traditional leadership; and who also exercise new leadership **capable of dealing with the complexities and challenges** of the present situation.

More than ever, indigenous elders are challenged to lead in the defense, management, and nurture of land and resources, as well as indigenous peoples' values and way of life. The challenge for indigenous elders, therefore, is to strive to embody a new leadership, whereby he/she stands as:

- ☐ A symbol of the enduring aspects of traditional leadership, as well as being capable of new activist leadership that is effective in the present situation.

- ☐ The committed activist who leads communities, tribes, or peoples to assert their rights and self-determined options for development.

- ☐ Upholds the indivisibility or oneness of the people with the natural environment,

- ☐ Stands for the common good, and committed selfless service for the people.

However, as shown by the experience across cultures in Asia, leadership in the present era of development aggression, militarization and other threats to indigenous peoples, is a complex and risky situation. Indigenous elders and leaders experience real threats to life and security as they go against the status quo while asserting indigenous peoples' rights.

Building Leadership Capability and Solidarity

There is a pressing need for building the capabilities of indigenous elders and for active solidarity with other indigenous peoples and movements. Through active sharing of experiences and lessons on the leadership, indigenous elders can be further developed to effectively lead and play their role as new leaders. Through continuous capacity building, they can be equipped with a sufficient grasp of the changing situation, upon which they can anchor their timeless defense of land and resources, self-determined

development, indigenous peoples' rights and human rights. In solidarity with each other, indigenous peoples can continue to advance indigenous peoples' interests, in the midst of issues and threats inherent in the present development situation.

This perspective should be widely shared with other peoples, so that together in solidarity, we can build the indigenous peoples' movement at all levels. This indigenous peoples' movement, with local to national and international spheres, promotes a holistic view of people, land, resources and culture. It is critical of the primacy of profit and individual gain, which perpetuates economic injustice and has led to the plunder of resources. It is ever mindful of the social common good when tapping land and natural resources, as it contributes towards building truly just and sustainable societies.

Note to the Facilitator

To wrap up the session on Part 2, the facilitator gives a recap that captures the major points discussed, while reflecting back on the Module's general and specific objectives. The following points below may be stressed in the recap.

Overall Synthesis of Part Two: Indigenous Elders in a Changing Society

1. The situation of indigenous peoples' communities is continuously changing within the wider local to national and international contexts.

2. The role of indigenous elders is evolving with solid and rich insight on their traditional and new leadership roles.

3. There is a positive combination of traditional and new leadership roles of indigenous elders for effective leadership at present.

4. Continuous capacity building to develop indigenous elders is important in order to enable them to lead at the present time.

5. Strengthening indigenous peoples' traditional institutions and new forms of organization, in conjunction with alliance work and international solidarity are necessary in order to build the indigenous peoples' movement, that ensures and asserts indigenous peoples' interests now and for future generations.

Part III.
Indigenous Peoples'
Engagement with Local
and National Government

General Objective

For the participants to become aware of the different factors and dimensions to be considered in engaging with the State bureaucracy, towards achieving good governance and effective advocacy on indigenous peoples' rights.

Specific Objectives

After the session, the participants will be able to:
1. Understand the varying levels of State recognition of indigenous peoples in Asia.
2. Understand legal pluralism and the relationship between customary law and State law.
3. Understand the principles and attributes of good governance and the challenges faced by indigenous peoples in relation to this.
4. Explore strategies for engagement of indigenous peoples with State structures in different branches and levels of government and how these can be used to advance good governance and indigenous peoples' rights.
5. Share and learn of good practices or effective ways of engaging government officials as well as indigenous representatives in government to advocate for the respect, recognition and fulfillment of indigenous peoples' rights.

Estimated Time

1 ½ to 2 days or sessions of 8-12 hours

Topic Outline

A. Government Context
1. State recognition or non-recognition of indigenous peoples in Asia
2. Legal framework for State recognition of indigenous peoples
3. National legal policy framework in relation to indigenous peoples

B. State Law vis-à-vis Customary Law
1. Legal pluralism
2. Good governance and challenges faced by indigenous peoples

C. Strategies for Engagement of Indigenous Peoples with State structures
1. Gaining indigenous peoples' representation in government positions
2. Policy reform and lobby work
3. Advocacy campaigns
4. Networking and alliance building
5. Legal tactics
6. Accessing government funds for community development
7. Drafting and filing of resolutions and ordinances
8. Capacity-building of local government officials and personnel
9. Documentation of indigenous knowledge systems
10. Community mapping

D. Sharing of Good Practices, Experiences and Lessons Learned

E. Planning

Activities: Lecture-discussion, role-playing, workshop, buzz session, case studies

References

AIPP and IWGIA. 2010. *Briefing Paper Who We Are Indigenous Peoples In Asia.* Chiang Mai, Thailand.

AIPP, IWGIA and Forum-Asia. 2010. *Briefing Paper Asean's Indigenous Peoples.* Chiang Mai, Thailand.

Christian Erni & Helen Tugendhat, (eds.) 2010. *What To Do With Redd? A Manual For Indigenous Trainers.* AIPP, FPP, IWGIA, Tebtebba. Chiang Mai, Thailand

Marcus Colchester & Sophie Chao (eds.) 2011. *Divers Paths to Justice: Legal pluralism and the rights of indigenous peoples in Southeast Asia.* AIPP, FPP, RECOFTC, and RRI. Chiang Mai, Thailand

Erni, Christian, ed. 2008. *The Concepts of Indigenous Peoples in Asia A Resource Book.* IWGIA. Copenhagen, Denmark.

Cordillera Peoples Alliance. 2004. *Indigenous Peoples and Local Government: Building Good Governance in the Philippines.* Baguio City, Philippines.

Erni, Christian and Cariño, Jill (eds.) 2005. *Indigenous Peoples and Local Government: Experiences from Malaysia and Philippines.* Cordillera Peoples Alliance and IWGIA,

Cariño, Joji. 2012. Legal Pluralism. Powerpoint presentation during the 2nd National Conference on Indigenous Knowledge, Midsayap, Cotabato, Philippines. February 22-23, 2012.

A. Government Context

1. State recognition or non-recognition of indigenous peoples in Asia

Not all governments in Asia recognize that there are indigenous peoples living within their territorial boundaries. Several Asian governments have expressed their reservation regarding the application of the concept of indigenous peoples to their countries and reject the application of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in their respective countries.

For instance, several Asian governments would choose to use other terms to refer to indigenous peoples. Their position is that the lack of a definition prevents a clear understanding of who the UNDRIP applies to. Based on existing definitions like that of the International Labour Organization (ILO), they conclude that their nation does not have any indigenous peoples. This interpretation ignores the evolution of the meaning of indigenous peoples within international law over the past two decades, and does recognize the right of indigenous peoples to self-identification.

Other governments, like Thailand, do not recognize the citizenship of almost half of the indigenous population because of the absence of adequate legal documents such as birth registers. This lack of citizenship of indigenous peoples in Thailand is one factor that makes them extremely vulnerable to human rights violations.

Some governments, like India, assert that all their citizens are equally indigenous. The non-recognition of indigenous peoples based on the claim that all their citizens are "equally indigenous" betrays an underlying assimilationist attitude of the State, which is itself an expression of the still prevailing discrimination of indigenous peoples within mainstream society.

This policy of discrimination is reflected in the official terms used to refer to indigenous peoples in most Asian nations. To illustrate, below, is an excerpt from the Briefing Paper Who We Are Indigenous Peoples in Asia published by AIPP and IWGIA in 2010:

China: The dominant Han Chinese have historically used various terms for non-Han "tribes", such as *"fan"* and *"man".* These carry the connotations of "barbarian", "primitive", "backward", or "uncivilized". Besides these general terms, more specific designations for the "the uncivilized tribes" living in the hinterlands have been used, like *nan man* for the diverse peoples of the hills and mountains in the southwest. Today, they are officially called "ethnic minorities".

India: The Indian government refers to indigenous peoples as Scheduled Tribes. In mainland India, *adivasi* has become the popular term. It means "original people". The indigenous peoples of India's North East do not call themselves *adivasi* in spite of the fact that the meaning of the term very much applies to them as well. They prefer to use the English terms "tribals" or indigenous peoples.

Nepal: Nepal is one of the countries in Asia where indigenous peoples are constitutionally and legally recognized. They are officially called "Indigenous Nationalities".

Philippines: *"Tribo"* (tribe) is still quite commonly used, but indigenous peoples and its translation into local languages are now well established in popular usage. The Philippines have officially recognized indigenous peoples. In the constitution, laws and other official documents they are called as "Indigenous Cultural Communities/Indigenous Peoples".

Vietnam: Indigenous peoples in Vietnam are subsumed under the category "ethnic minorities" *(dan toc thieu so, dan toc it nguoi).* This refers to all people who do not belong to the dominant ethnic group, the Kinh. It therefore also includes ethnic groups like Chinese or Khmer, who are minorities but generally not considered to be indigenous peoples.

Note to the Facilitator

Following is a table of the names used and population of indigenous peoples in different countries in Asia. This table may be posted on the wall as a visual reference material for the participants during this section of the training.

Country	Common External Designations	Number of Ethnic Groups	Estimated Total Population/ Percentage
Bangladesh	Pahari, Jumma, Adivasi, Tribal	45	1.7 - 3.7 million 1.2 - 2.5%
Burma/ Myanmar	Ethnic Minorities	135	14.4 - 19.2 million 30 - 40%
Cambodia	Indigenous Minorities	19-21	101,000 - 190,000 0.9 - 1.4%
China	Ethnic Minorities	Around 400 grouped into 55 officially recognized "ethnic minorities"	105 million 8.5%
India	Scheduled Tribes, Adivasi	622-635 of which 622 are recognized as "Scheduled Tribes"	84.32 million 8.3%
Indonesia	Masyarakat Adat	Over 700	50 - 70 million 20 - 29%
Japan	Indigenous Peoples (now officially applied to the Ainu)	2	Ainu: 50,000-100,000 0.04 - 0.08% Ryukans: 1.3 million 1%

Laos	Ethnic Minorities	Around 200 of which 49 are officially recognized as "ethnic minorities"	2.4 - 4.8 million 35-70%
Malaysia	Orang Asli, Natives, Orang Asal	97	3.4 million 12%
Nepal	Adivasi, Janajati, Indig- enous Nationalities	Over 80 of which 59 are recognized as "Indigenous Nationalities"	10.6 million 37.1%
Pakistan	Adi vaas, Tribal People	Over 20	35 - 42 million 21 - 25%
Philippines	Indigenous Cultural Com- munities/Indigenou s Peoples	110 officially recognized as Indigenous Peoples	6.9-12 million 10-15%
Thailand	Ethnic Minorities, Hill Tribes, Hill/Mountain People	Over 25 of which 10 are officially recognized as "hill tribes"	Over 900,000 1.5%
Vietnam	Ethnic Minorities	Over 90 of which 53 are officially recognized "ethnic minorities"	10 million 13.8%

Source: AIPP and IWGIA. 2010. Who We Are Indigenous Peoples In Asia.

Activity: Buzz Session

Participants seated together hold a short buzz group discussion on whether or not they have experienced discrimination as indigenous peoples. If yes, in what way have they experienced social, cultural, political or economic discrimination? Each small group then makes a short report to the whole group of their experiences of discrimination.

2. Legal instruments for the recognition of indigenous peoples[2]

Within the legal framework of the State, there are various legal instruments used to recognize indigenous peoples. These include:

- ☐ Constitutional recognition
- ☐ Recognition by special laws
- ☐ Recognition through court decisions, and
- ☐ Recognition through ratification or adoption of international instruments.

Constitutional recognition of indigenous peoples is found in:

- ☐ The Philippines 1987 Constitution
- ☐ The 1950 Constitution of India, which refers to indigenous peoples or adivasis as scheduled tribes,
- ☐ The 1957 Constitution of Malaysia, which includes special provisions for the natives of Sabah and Sarawak
- ☐ Nepal Interim Constitution of 2006
- ☐ The 1973 Constitution of Pakistan, which recognizes federally and provincially administered Tribal Areas and involves tribal authorities in decision-making.

Special domestic laws recognizing indigenous peoples are found in some countries:

- ☐ Indigenous Peoples Rights Act of 1997 in the Philippines
- ☐ Cambodian Land Law of 2001

---

[2] Rodolfo Stavenhagen. 2007. General Considerations on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Asia. *The Concept of Indigenous Peoples in Asia: A Resource Book*. Christian Erni, Ed. IWGIA, AIPP.

- In Nepal, the National Foundation for Development of Indigenous Nationalities Act (NFDIN Act) passed in 2002
- In Indonesia, those who identify themselves as indigenous peoples fall under customary law (adat), which is recognized by the state.
- Although the Ainu were previously not officially considered as indigenous peoples in the 1997 Ainu Cultural Promotion Law, this changed in June 2008, when the Japanese government — for the first time in its history— officially recognized the Ainu as an indigenous people, and promised to create a new law and improve policies to support them.

In other countries, such as China, Viet Nam and Laos, indigenous peoples are referred to as ethnic minorities with the same legal status as other minority groups. In other countries, indigenous peoples may have a distinct legal status, while not explicitly recognized as distinct collectivities.

Court decisions have also been instrumental in the recognition of indigenous peoples in some countries:

- In the case of the Ainu of Japan, a number of court decisions have affirmed their rights as indigenous peoples based on international indigenous rights standards.
- In Malaysia, the courts have affirmed the aboriginal title of the Orang Asli (meaning native or original people) over their traditional lands.

Recognition through ratification or adoption of international instruments:

Three Asian countries are parties to the 1957 ILO Convention 107 on Indigenous and Tribal Populations in Independent Countries. These are India, Bangladesh and Pakistan. Nepal also recently ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. This means that these countries are legally obliged to comply with the provisions of these international conventions.

Finally, the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 2007 by the UN General Assembly provided all indigenous peoples worldwide with an international instrument containing the minimum standards for the recognition of indigenous peoples rights. All States are thus expected to take measures so that they comply with the provisions and standards contained in the UNDRIP.

Activity: Knowing the Major Provisions of the UN Declaration on the Rights of Indigenous Peoples

1. The facilitator asks the participants to write down what they think are the rights of indigenous peoples as a way to gauge their level of knowledge and understanding of indigenous peoples' rights.

2. After this, the facilitator provides copies of the UNDRIP to the participants and identifies the major bundles of rights of Indigenous peoples as contained in the articles of the Declaration. Also include and mention the explicit obligations of States in relation to the respect of the rights of indigenous peoples.

3. Participants are asked to read out aloud the major rights of indigenous peoples and to say the main points they understand for each major bundle of rights.

4. An alternative activity is to present the AIPP posters on the rights of indigenous peoples by posting them on the wall. The participants gather around the posters and read the major provisions of rights.

3. National legal policy framework in relation to indigenous peoples

a. Legislation and policies

It is necessary to understand the particular legal framework in your respective country and to study the special laws pertaining to or with impacts on indigenous peoples to be able to strategize on how to engage with the national and local government. An understanding of the national legal framework, including how laws are made, is essential in order to effectively engage with the State in advocating for the recognition of indigenous peoples rights.

Activity: Lecture and Open Forum

A resource person, e.g., a lawyer, is invited to present the National Legal Policy Framework, special laws in relation to Indigenous Peoples in the country of the participants and the particular government agencies concerned with indigenous peoples. This will be followed by an open forum for questions from the participants to be answered by the resource person.

An alternative activity, found on the next page, is a workshop where the participants study the relevant laws and policies themselves.

Activity: Workshop - Knowing the National Legal Policy Framework in Relation to Indigenous Peoples

Before the start of the training, the facilitator selects relevant state laws and provides the participants with materials on the particular State laws relevant for indigenous peoples in their respective country. Ask the participants to do preparatory reading of the materials.

For the group work, each group is assigned to answer one of the following questions:

1. What are the relevant constitutional provisions pertaining to indigenous peoples?

2. What special laws exist pertaining to indigenous peoples?

3. What international instruments on indigenous peoples have been ratified or adopted by the State?

4. What government structures or agencies are in place to deal with indigenous peoples concerns in your country?

5. What other laws are an outright violation of indigenous peoples' rights or that are of significant concern to indigenous peoples?

6. What are the gaps and conflicts between the national legal framework and the UNDRIP?

For the reporting, make a list of the major provisions of these laws and post them on the wall to be used as a visual reference of the whole group during the

b. State structures of governance for indigenous peoples

States have set up their respective bureaucracies and structures of governance for the whole country from the national down to the local level. Some states have in place general structures governing the whole population. Others, in addition to the general structures of governance, have instituted

particular structures or government agencies dealing with indigenous peoples as citizens of the country with distinct and particular characteristics and rights.

Such particular types of structures of governance for indigenous peoples have been established through national legislation in the Philippines, Malaysia and other countries.

It is important to be familiar with these State structures and their functions, and to know who are the people occupying positions in these structures, to be able to effectively engage with them in our advocacy for the recognition of indigenous peoples' rights. It is also important to include those who are involved in policy formulation and review among the targets of lobby and advocacy work.

Note to the Facilitator

Particular cases of state structures of governance of indigenous peoples may be found in the book Indigenous Peoples and Local Government: Experiences from Malaysia and Philippines, published by International Work Group for Indigenous Affairs (IWGIA) in 2005.

Other experiences such as the Village Authority Council and the Autonomous District Council in Manipur, Northeast India may also be discussed.

Note to the Facilitator

It would be good to have a more detailed discussion on the particular State structures in the countries of origin of the participants, including national government structures, local government structures and the process of how laws are made.

As an example, the particular State government administrative structure related to indigenous peoples' participation at the local ministerial level in Sabah, Malaysia, and the functions of the different governance bodies and structures are included in Annex 1.

Annex 1

Current Government Administrative Set-Up and Indigenous Participation in Local Government in Sabah, Malaysia

B. State Law vis-à-vis Customary Law

1. Legal Pluralism

a. What is Legal Pluralism?

☐ Pluralism is a condition or system in which two or more states, groups, principles or sources of authority coexist. Legal pluralism therefore refers to the coexistence of multiple legal systems in a single geographic area.

☐ Plural legal systems are particularly prevalent in former colonies, where the laws of a former colonial authority may exist alongside more traditional legal systems.

☐ In the case of indigenous peoples, legal pluralism is seen in the continued persistence of customary laws at the local level, at the same time that national State laws and structures of governance are in effect in indigenous communities.

Understanding legal pluralism is important for indigenous peoples when dealing with State law, and in order to identify appropriate strategies for the assertion of indigenous peoples' rights when confronting conflicts between State and customary law.

Note to the Facilitator

Annex 2 contains some key concepts on legal pluralism that may be used as reference to help the participants appreciate its relevance in the struggle for the recognition of rights of indigenous peoples.

Annex 2: On Legal Pluralism

b. Historical Context of Legal Pluralism in Asia[3]

Asia is a continent of old peoples and young states. Different Asian countries have their own distinct histories of colonization, annexation, division and/or independence. However, the general picture is that pre-colonial societies were largely made up of autonomous peoples and polities within cultural-linguistic home regions.

Colonialism established nation states, imposing boundaries and a centralized government structure over these peoples. The new nation states encompassed not only the colonized majority people, but also the un-subjugated, un-Christianized, un-colonized or independent ethnic groups or "minorities" living within the defined national territory. A distinction developed between the majority population or the mainstream colonized society and the uncolonized "minority" peoples who continued to live the traditional cultures of their ancestors in relative independence from the centralized colonial government. Thus was created the distinct identity of indigenous peoples as distinguished from the dominant population in these nation states.

---

[3] Joji Cariño. Legal Pluralism. Powerpoint presentation during the 2nd National Conference on Indigenous Knowledge held at SCC-CEREA, Midsayap, Cotabato. February 22-23, 2012

Colonial governments then established the national government bureaucracy and legal system, some including specialized government units and laws to govern indigenous peoples. Colonial laws were imposed that facilitated the expropriation and enclosure of indigenous peoples ancestral lands, territories and resources or ancestral domains by the colonial state.

An example in the Philippines is the imposition by the Spanish colonial government of the feudal system of "encomiendas", "haciendas" and church districts or archdioceses. The Spaniards imposed and exercised the "regalian doctrine" over crown lands and required the registration of lands through Spanish title. This was followed by the passage of the American Land Registration Act (1902) and a series of public land laws, which expropriated the ancestral domains of indigenous peoples. This paved the way for the establishment of cities and provinces and the imposition of the colonial administration throughout the Philippine islands.

c. Contemporary Legal Pluralism

At present, legal pluralism exists in different Asian countries as seen in the simultaneous coexistence of State law and customary laws of indigenous peoples. This situation results in conflicts and has implications on the recognition and exercise of land and resource rights by indigenous peoples over their ancestral territories.

> ### *Note to the Facilitator*
>
> Case studies may be presented to show how customary laws and values prevail in indigenous communities at the same time that State laws are in effect over the whole country.

Case Study: Philippines[4]

---

[4] Joji Cariño. Legal Pluralism. Powerpoint presentation during the 2nd National Conference on Indigenous Knowledge held at SCC-CEREA, Midsayap, Cotabato. February 22-23, 2012

In the Philippines, there exist various laws that bear upon indigenous peoples. These include:

- Indigenous customary law
- 1987 Philippine Constitution
- 1997 Indigenous Peoples Rights Act (IPRA)
- 1995 Mining Act, Forestry Code, other laws on land and resources
- International law, including human rights treaty obligations by State parties signatory to these Conventions
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

There are risks embodied in legal pluralism of the Philippine Constitution and IPRA:

- Recognition of ancestral domain based on native title,
- But, simultaneously upholding vested property rights granted before IPRA,
- Also, strengthening State jurisdiction over lands and resources, and
- Affirming State ownership of all "public lands" and natural resources declared under colonial and existing land laws

Thus, there are parallel and conflicting practice of customary laws, statutory laws and international law:

- State exerts power and control over lands and resources
- Indigenous communities have the right of ownership of ancestral domain based on customary law, which theoretically includes the right to control the land and resources
- Indigenous peoples cannot exercise that right, because the State, which has the power to enforce such a right, is itself a property holder, and will not relinquish these rights to indigenous communities.
- Owing to the layered structure of Philippine land laws and resource use regulations, the state has the ultimate power to control the land and its resources.

This situation has resulted in land conflicts generated by the co-existence of multiple constructions of rights on indigenous territories:

- Right of the State to control land and other resources
- Rights allocated to business groups before IPRA
- Land claims of non-indigenous peoples who acquired land from indigenous peoples
- Rights given through other State instruments, e.g Certificate of Land Ownership Award (CLOA) from the Department of Agrarian Reform

(DAR) and stewardship certificates from the Department of Environment and Natural Resources (DENR)

☐ Rights of indigenous peoples to their ancestral domain as embodied in Certificate of Ancestral domain Claim (CADC) and later on, Certificate of Ancestral Domain Title (CADT)

Note to the Facilitator

Other case studies of legal pluralism in different countries in Southeast Asia may be found in the book Divers Paths to Justice: Legal pluralism and the rights of indigenous peoples in Southeast Asia published in 2011 by Asia Indigenous Peoples Pact (AIPP), Forest Peoples Programme (FPP), The Center for People and Forests (RECOFTC), and Rights and Resources Initiative (RRI).

An example of recommendations made to the UN Permanent Forum on Indigenous Issues on how to address legal pluralism (regalian doctrine and

---

Annex 3

Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples). Intervention under Agenda Item 3 of the 11th Session of the United Nations Permanent Forum on Indigenous Issues, May 7-18, 2012, UN Headquarters, New York

---

d. Implications for Indigenous Peoples

Legal pluralism or the simultaneous operation of State and customary law in a certain country or territory has serious implications for indigenous peoples. Among these implications are the following:

☐ Insecure tenure over lands, territories and resources prevent enjoyment of fundamental rights and freedoms embodied in UNDRIP

☐ Without secure land rights to lands, territories and resources, indigenous peoples' right to self-determination, as well as rights to food, livelihoods and cultural integrity, among others, are likewise jeopardized.

☐ State duty to respect, protect and fulfill the rights of indigenous peoples is not realized

Thus, customary governance of indigenous peoples over their lands, territories and resources needs to be strengthened and secured vis-a-vis statutory laws, in order to be consistent with international law and the international commitments and obligations of the government with regards to indigenous peoples rights.

Furthermore, respect and recognition of customary law by the State should not result in State regulation of customary law. For instance, State-defined processes for obtaining free, prior and informed consent (FPIC) of indigenous communities should be in accordance with their customary practices on giving consent and not impose a process that suits the interests of the corporations or investors that want to encroach on indigenous peoples' lands. Likewise, recognition by the State of ancestral land rights of indigenous peoples should be based on native title or the recognition that the indigenous peoples owned the land even before the wider nation state was established, and should not mean that it is the State "granting" ownership of the lands to indigenous peoples.

It is necessary to clarify and distinguish the areas of jurisdiction of customary law and State law. It is the duty of the State to protect indigenous peoples against third party violations. Acceptable mechanisms should be established to address conflicts in law and access to justice of indigenous peoples.

e. Varying degree of persistence of traditional governance vis-à-vis State structures

The degree of persistence of traditional governance and customary law vis-à-vis state structures may vary from area to area and from people to people, ranging from persistence to erosion depending on the extent of cultural assimilation and disintegration of cultures of indigenous communities.

Degrees of persistence

☐ At one end of the range are fully intact indigenous communities where indigenous customs are still fully practiced by the people and are dominant over structures and systems imposed from the outside.

☐ Another degree is the parallel co-existence of indigenous and State structures, and where there is an interface and the two systems interact according to the need and interest of the community.

☐ In other communities, there is the dominance of state structures where the indigenous system has been overtaken by the current government system. Indigenous socio-political institutions still exist but are not officially or fully recognized, or they may be recognized, but their role, functions and power are diminishing in the community.

☐ At the other end of the range are communities where indigenous cultures and customary laws have already been eroded, weakened and lost. Most, if not all, indigenous traditions are already destroyed, and languages and indigenous cultures have been lost. This situation would require different strategies to revive the indigenous cultures that have been lost.

Note to the Facilitator

Case studies of the persistence and erosion of indigenous socio-political systems may be presented such as the *bodong, dap-ay* and *ator* in the Cordillera, Philippines; the Longhouse and Headman in Malaysia. It would also be good for the participants to share how traditional elders are selected and how they continue to practice their leadership roles to illustrate the persistence of indigenous practices.

Activity: Role Playing – Comparison of Traditional Indigenous Self-governance and State Governance (1 hour)

1. Divide the group into two. One group will act as indigenous elders or traditional leaders in an indigenous community. The second group will act as local and national government officials.

2. Identify an issue in the community that the each group needs to make a decision on, for example a mining project being introduced into the community. The groups are given 10 minutes to prepare and 15 minutes each to present their role-play.

3. After both groups have presented, the facilitator asks the participants to identify the major differences between the two groups in terms of: process of decision-making, who are involved in decision-making, how is the decision arrived at, what are the considerations in making a decision, whose interest does the decision represent or favor, and what is the final outcome of the decision-making.

4. During the discussion, the facilitator writes down key words of major differences on the board under two columns, one for traditional governance and another for state governance.

2. Good Governance and Challenges Faced by Indigenous Peoples

Activity: Key Words in Understanding Good Governance

1. Using meta-cards of 2 colors, the participants write down key words to describe their idea of good governance. On a separate card, they write key words identifying the main problems they have encountered in relation to good governance by the State.

2. The participants post their cards on the board in two columns – one for ideas on good governance and one for problems. The facilitator reads each of the cards aloud and clusters similar ideas together.

3. The facilitator synthesizes the discussion by identifying the major concepts of good governance and the major problems mentioned by the participants.

Input:

Good governance is a continuing concern, not only of government officials but also of indigenous peoples and their communities. It is necessary to grasp the concept and principles of good governance, in order to guide local and national government officials, as well as indigenous peoples organizations and leaders in their work.

Characteristics of Good Governance

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

Figure 1: Characteristics of good governance

Note to the Facilitator

Annex 4 contains a summary presentation of good governance – its definition, attributes, principles and links with human rights and development. This material is useful as a reference for discussion or as an input for the participants, while making sure to simplify the concepts to be appropriate to the background of the participants and to give concrete examples from the experience of indigenous peoples.

Annex 2: On Good Governance

Principles of good governance[5]

Participation

Participation by both men and women, and by the different sectors in society, e.g. youth, farmers, workers, indigenous peoples, professionals, etc. is a key cornerstone of good governance. Participation could be either direct (meaning everyone concerned has a direct role in decision-making) or through their legitimate intermediate institutions or selected representatives. It is important to note that representative democracy does not necessarily mean that the concerns of the most vulnerable sectors in society would always be taken into consideration in decision-making. Participation needs to be informed and organized. This means that there is freedom of association and expression on the one hand, and that, on the other hand, the people are organized for them to be able to express their views and participate in decision-making.

Rule of law

Good governance requires that there are fair legal frameworks that are enforced impartially, meaning without giving favor to a particular group or sector. It also requires full protection of human rights, particularly those of minorities and the most vulnerable sectors, including indigenous peoples. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

Transparency

Transparency means that decisions are taken and enforced in a manner that follows rules and regulations, and that would stand the scrutiny of anybody. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media.

---

[5] UN Economic and Social Commission for Asia and the Pacific.
http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

Responsiveness

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe. Matters needing urgent attention are addressed promptly or immediately, without undue delay.

Consensus oriented

There are several actors, stakeholders and as many points of view in a given society. Good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community.

Equity and inclusiveness

A society's well being depends on ensuring that all its members feel that they have a stake in it and that they do not feel excluded from the mainstream of society. This requires that all groups, but particularly the most vulnerable including indigenous peoples, are given equal opportunities to improve or maintain their well being.

Effectiveness and efficiency

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

Accountability

Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization or

institution. In general an organization or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.

Challenges Faced by Indigenous Peoples in Realizing Good Governance

While much has been said about promoting good governance, it is a fact that good governance has not been realized in most, if not all, indigenous peoples communities. Among the major problems and challenges faced by indigenous peoples in relation to good governance are the following:

1. Conflicts between customary and state governance

Some examples of conflicts that indigenous peoples encounter between their customary governance systems and state governance are the following:

- Decision-making and selection of leaders in indigenous peoples traditional governance is done through consensus, while selection of State officials is usually done by elections (which are often manipulated) or appointment by higher authorities. State officials are then required to enforce whatever is written in State law, which often conflicts with customary law.
- Under customary governance, land ownership and recognition of land is based on occupation, utilization and creation since time immemorial. On the other hand, State governance recognizes land ownership through possession of government-issued tenurial instruments, such as land titles and tax declarations as a proof of ownership and payment of taxes.
- Customary governance recognizes comprehensive indigenous peoples' rights to land and resources, while the State has a fragmented concept of ownership of land and resources. Different State laws govern ownership of different types of land and resources, e.g. forest lands, mineral lands and sub-surface resources, water resources, etc.
- Collective responsibility is the norm under customary governance, and indigenous leaders are accountable to the whole community. Meanwhile, under State governance, the accountability of a certain government official is usually to his boss or to whoever appointed him/her into position.

- The right to free, prior and informed consent before any development takes place in indigenous peoples lands is an inherent right that is being asserted through customary governance. However, this right is most often disregarded in the implementation of development projects and extractive industries in indigenous peoples' territories.

- Indigenous peoples' rights are inherent, as they exist since time immemorial. However, the State has a view that the rights of indigenous peoples are only those that are granted by the State.

2. Non-recognition of indigenous socio-political systems by the State

Some examples of the non-recognition of indigenous socio-political systems and institutions are the following:

- Structures of the government bureaucracy are created and imposed by the State on indigenous peoples communities, despite the existence of indigenous socio-political structures.

- Policies are made at the national level or State level and imposed down to the local level, without consideration for existing local customary governance systems

- State structures are not comprehensive and fragmented, i.e. there are separate members of different special bodies, unlike the traditional system where all leaders are collectively involved in the comprehensive governance in the community

- Roles and responsibilities of people in government (officials, representatives, employees) are defined according to their official mandate or job description, which they need to comply with.

3. State upholds interests of those in power

Some examples and instances when the State upholds the interests of those in power over the interests of indigenous peoples are the following:

- State deception is strong; laws and programs that are supposed to benefit indigenous peoples are usually full of loopholes and are used to further exploit indigenous peoples, e.g. Indigenous Peoples Rights Act and the National Commission on Indigenous Peoples in the Philippines.

- Divide-and-rule tactics are often used among indigenous peoples, and between indigenous peoples and non-indigenous people. Non-

indigenous people are often organized by government agencies to work in favor of large companies against the interests of indigenous peoples.

☐ Because of connivance of government officials with private corporations, companies and private entities, the government and its instrumentalities such as the military and police often give favor to large companies over indigenous peoples' interests.

☐ When laws are formulated and/or amended, local people are most often not consulted; thus the laws usually serve to benefit the rich, the elite and those in authority. There is a need to see to it that laws are formulated and implemented for the interests of indigenous peoples and are not used against them.

4. Patronage politics

Patronage politics means that political power is used to control appointments into position or office and to give out benefits or privileges as a means of gaining loyalty for politicians or patrons. This is experienced in the following instances:

☐ Community leaders and indigenous representatives in local government are trained to be loyal to the government officials in power.

☐ There is a "Yes Men" culture among some leaders from indigenous communities who always say "yes" to the high command of the political party, which often is negative for indigenous peoples' rights.

☐ Community leaders are used as tools or as agents of graft and corrupt practices.

☐ National politicians use money, projects, position and promises to influence local government officials.

☐ Vote buying, bribery and coercion are rampant in the election and appointment of officials into government positions and offices.

☐ Use of projects and funds to get the support of local officials for national political parties or personalities.

Because of the above-mentioned challenges, it is necessary for indigenous peoples to actively engage in the political arena and to take steps to overcome these problems. In this way, indigenous elders and leaders could be able to contribute towards the recognition, respect and fulfillment of indigenous peoples' rights and to the realization of good governance in our communities.

C. Strategies for Engagement of Indigenous Peoples with State Governance Structures

Indigenous peoples have long been involved in many ways with State structures, activities and processes. In our own communities, indigenous peoples, in one way or another, interact and engage with local government officials and bodies on various economic, social, political and cultural matters that affect their lives. It is important for indigenous peoples and communities to be active participants at various levels of governance in matters affecting our day-to-day lives and our futures.

Indigenous peoples have an important role to play in political advocacy not only for good governance, but more so for the recognition, protection and fulfillment of indigenous peoples rights.

The goals of indigenous peoples in engaging with State structures are:

☐ To gain recognition and protection for indigenous peoples' human rights and claims for justice;

☐ To promote good governance and demand accountability of government officials;

☐ To work together with other sectors in society including the government, for genuine democracy, non-discrimination, justice and equity, and for pro-people and self-determined development.

Indigenous peoples have a major contribution to make in achieving these goals. Therefore, we have a central, not marginal, role to play in decision-making processes that affect our futures.

The local and national government bureaucracy is an important arena of struggle, in which indigenous peoples need to engage. However, it is important to remember that there are limitations in engaging inside formal State structures because of the numerous problems and challenges mentioned above.

One such trap that we should guard against when engaging with the government is the co-optation of local indigenous leaders. It is often the case that when local indigenous leaders get elected as officials in the government bureaucracy, they tend to forget their indigenous values and interests and only do their jobs as government officials. Sometimes, they even turn against their community when deciding on matters affecting indigenous peoples' rights.

The right approach in dealing with government officials would be to influence those individuals who hold strategic positions in the local and national government bureaucracy and get them to support indigenous peoples rights and interests. In this way, they will be able to overcome the limitations and weaknesses of working inside the bureaucracy, while taking advantage of the strengths and opportunities in the different branches and agencies of the government.

A general note on lobbying and participation in government decision-making processes is that the use of these mechanisms to influence decision-makers is more effective if combined with other forms of advocacy strategies. For instance, activities such as mass mobilizations, campaigns and use of the media could generate wider public attention and exert greater pressure on government decision-makers to take decisive and appropriate action.

Who can engage with government processes and agencies?

☐ Indigenous leaders
☐ Indigenous officials in government
☐ Indigenous organizations
☐ Indigenous men, women, youth and other sectors

How to engage with government processes?

Indigenous peoples need to get involved and engage with the various political arenas and at all levels of governance, from local, to national and international. It is necessary to become familiar with the workings of the different political arenas and levels of engagement to be effective in our political advocacy for indigenous peoples rights and good governance.

Political advocacy may be done in different areas of local, national and international relations. Each political arena has its own political dynamics that need to be considered. There is a need to subject each arena to an analysis of strengths, weaknesses, opportunities and threats in order to decide in which arena indigenous peoples could most effectively engage.

Because each political arena has its distinct characteristics, effective political advocacy requires detailed knowledge and familiarity with the pertinent political actors and processes.

Different branches and levels of government

There are different levels of government bureaucracy from the local level to intermediate and national levels. There are also different branches of government at all levels, namely:

- Legislative branch: responsible for the formulation of laws and policies of the state
- Executive branch: responsible for the implementation and execution of laws, policies and programs of the State
- Judicial branch: responsible for justice and interpretation of the laws of the State, including mediation and conflict resolution
- Military and law enforcement bodies, i.e. the police force: responsible for the enforcement of government policies

It is necessary to assess the opportunities and constraints for engagement of indigenous peoples in these different branches and levels of government, given the particular situation and context that we find ourselves in. This can be done by:
- Identifying our specific objective of what we want to achieve,

☐ Identifying which particular branch of the government it would be most fruitful to engage with,

☐ Identifying what is harmful and what is helpful for us internally, e.g. within our own organization or community,

☐ Identifying what is harmful and what is helpful for us externally, e.g. in theZ particular government office targeted or in the wider environment or society, e.g. media, academe, NGOs who can either help or impede our work.

Activity: SWOT Analysis - Assessing Opportunities for Engagement of indigenous Peoples with Local Government (1 hour 30 minutes)

1. The participants are divided into 3 groups: Group 1 will tackle the legislative arena, Group 2 the Executive Branch and Group 3 the judiciary.

2. With the objective of advocating for indigenous peoples rights and good governance, each group will identify the strengths, weaknesses, opportunities and threats faced by indigenous peoples in engaging with the particular branch of the local government. The following matrix may be used.
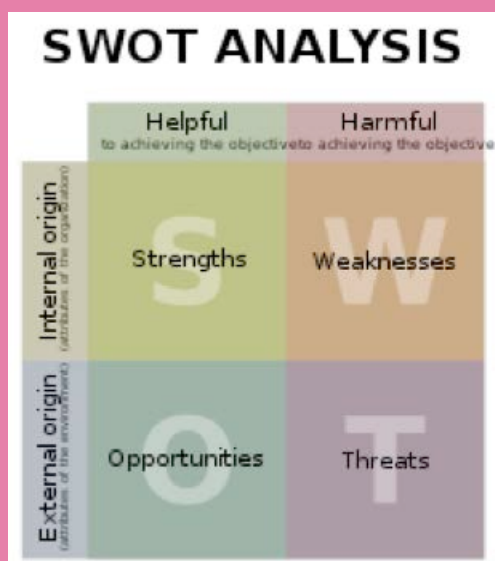
3. Each group is given 30 minutes for the discussion, then 15 minutes each to present their results to the whole group.

4. The facilitator summarizes the reports of the three groups by identifying the major strengths, weaknesses, opportunities and threats faced in the legislative, executive and judicial arena, which indigenous peoples need to take into consideration when formulating strategies of engagement with the government.

In this way, we will most likely be able to plan appropriate actions and strategies in order to achieve our objective of advocating for indigenous peoples rights and promoting good governance.

The following activity helps the participants identify the strengths, weaknesses, opportunities and threats faced by indigenous peoples when engaging with the different branches of the local government.

Various ways of engagement with government

There are various ways of engagement that we can consider in order to maximize the opportunities open to us in the local and national government. The following ways may be considered:

1. Gaining indigenous peoples' representation in government positions through:

☐ Participating in elections to gain seats in government, e.g. municipal, provincial, district or state elective positions

☐ Representation of indigenous elders at the village or even higher levels of government, e.g. mandatory indigenous peoples' representation in areas where they are found

☐ Participating in local special bodies for indigenous peoples, e.g. local government development committees, peace and order committees, etc.

☐ Giving space for traditional indigenous elders to participate in local government structures or consultations, e.g., having elders sit as members of the justice committee of the local government

Some general considerations and requirements in trying to gain government representation are:

☐ Be prepared to compete with other politicians in gaining elective positions.

☐ It is important not to be drawn into the usual practice of politicians in campaigning for elections, e.g. spending much money, buying votes, use of guns, goons and gold in order to win.

☐ Beware of possible co-optation or manipulation of indigenous leaders who are successful in getting elected or appointed into government positions

2. Policy reform and lobby work

Policy reform and lobby work are done in order to:

- ☐ Formulate or identify a legislative reform agenda and lobby policy makers to adopt or advance this agenda
- ☐ Engage, influence and lobby local government units and representatives to advocate for indigenous peoples' rights. Local government representatives and units are closer and more accessible to indigenous peoples' communities and can be approached anytime.
- ☐ Influence local government officials to combat cronyism, nepotism, patronage politics, which is common or rampant in the government.
- ☐ Develop autonomy or self-rule, and recognition of indigenous practices in local government
- ☐ Influence local government units or officials to recognize the role of elders, women and youth. Public consultations with elders, women and youth need to be done when deciding on community matters, social problems, and other issues.

Some considerations and requirements in lobbying and participating in policy reform:

1. Why do we need to participate in government decision-making process?

Every day, government officials make decisions that can have a significant impact on people's health, well-being, and natural environment. For example, each of the following actions could affect a community:

- ☐ The passage of a new law by parliament;
- ☐ The enactment of regulations by a government agency;
- ☐ The issuance of a permit by a local board or official; or
- ☐ The failure of a government official to enforce environmental laws.

Because government decisions can influence people's lives in so many different ways, it is crucial for communities to participate so that their concerns can be voiced out in the decision-making processes.

Often, the law itself establishes formal mechanisms for the public to use and express their views such as public hearings or public consultations. There are also informal mechanisms to use for influencing government decisions.

It is thus important for community leaders to know and be aware of the different mechanisms for participation in government decision-making at the

local and national levels, and how to make use of these mechanisms to promote, protect and advance the recognition of their rights, welfare, concerns and issues.

2. What is lobbying and how to lobby?

Lobbying is the process of trying to persuade legislators such as members of parliament, government officials at all levels, politicians or other decision-makers to take a course of action that the advocate recommends. This can be to adopt a new law, repeal a law and or adopt a new policy, revise or amend a law. A person who lobbies seeks a specific action.

3. A general guide on the steps for lobbying:

a. Draw up the list of officials/individuals you will lobby and collect information about their background and potential position or stand to your requested action.

b. Based on your list, make a plan on how best to approach them individually by starting first with your potential allies. Examples on different ways to approach officials:

  □ Request the support of an ally or someone known to the official to arrange a meeting/appointment; or present/discuss your issue to get some initial feedback on the opinion of the official;

  □ It is not easy to attract the attention of decision-makers. Hence, it is advisable to establish contact with their secretary/employee who can be sympathetic to your cause/issue. They can be very critical in gaining the support of the official and also influencing the staffs of other officials you will also be lobbying.

  □ Arrange meetings with decision-makers in formal (their office) or informal settings (restaurant or quite public place) where appropriate; and

  □ Explore avenues where you can interact with decision-makers by knowing their activities/schedules. For example, you may attend his inauguration of a school, etc. However, do not be intrusive or extra-aggressive as this may cause consternation and be counterproductive.

c. When you do lobby work, make sure you have written materials or documents to submit relating to your issue and requested action.

d. Lobbying work is not confined in meetings with decision-makers, but also includes the court of public opinion. By getting the active support of donors, members of the media and influential individuals, and generating public attention and concern, the advocate is indirectly taking steps to persuade/exert pressure to decision-makers to take action.

e. All types of decision-makers can be lobbied. A person or organization with the power to make a decision that can benefit or otherwise affect the advocate and his or her goals can be lobbied. They can be traditional leaders, newspaper editor/publisher, church leaders, and representative of donor agencies/organizations, NGOs etc. However, use common sense when determining whether attempts to persuade particular people and institutions can or should be made.

3. Advocacy campaigns

Advocacy means actively speaking out and doing actions on a certain issue or concern to generate awareness, draw attention and support of the wider public, and influence or change a government decision or policy. It also refers to the mobilization of people for a desired action related to that issue.

Advocacy campaigns are a series of collective actions to achieve a common objective. Engaging in advocacy campaigns involves a combination of different forms of actions and strategies to be implemented for a period of time in order to reach the objectives or goals. There could be some long-term goal that can only be achieved through a sustained and long-term advocacy campaign such as legislative and policy reforms. However, there can also be specific objectives under the long-term goal that can be reached in shorter period of time.

Some key strategies can be combined for a more effective advocacy campaign. Examples are demonstrations, pickets, rallies and other collective actions of the people that are used to exert pressure on the government to act on a certain demand. Advocacy of legislative or policy, judicial, executive or administrative action on an issue usually entails a rather long and sustained multi-faceted campaign. For it to be effective, it should be well planned.

There are important considerations and requirements in planning an advocacy campaign in order to be effective. These are:

a. Gather complete information on the focus issue of the advocacy campaign.

b. Identify the affected communities and make sure that they are aware of the issue, know their sentiments and whether they are prepared to act on it.

c. Assess the political situation. Determine which government offices your campaign should address and which government officials would likely be your allies, and which of them are your adversaries. Also determine how much political space is open to you in your prospective conduct of a campaign. Assess whether you should prepare for repressive action on the part of the state and or what actions are more appropriate or effective given the political situation.

d. Assess the condition of your campaign machinery, e.g. personnel, time, resources

e. Based on an assessment of campaign needs and capacity, determine the scope or targeted time frame and coverage of your campaign, identify potential allies, strategies/activities and actions, risks, and potential consequences in case of success or failure.

These considerations will determine the details of your advocacy campaign plan.

4. Networking and building alliances

Building alliance refers to bringing together individuals and or organizations to pursue a common cause, stage common actions and activities towards a common goal/objective. This also includes individuals who can make specific contribution or role in the advocacy campaign and or reaching the objectives/goals. There is a need for building alliances with local government officials, representatives and personnel in order to gain more support for indigenous peoples' rights advocacy

In building alliances, it is necessary to know your friends and enemies, in order to form the broadest unity with your friends and isolate or neutralize your enemies.

Some general considerations and requirements in doing advocacy campaigns and building alliances are:

1. Why network and build alliances?

For indigenous peoples, establishing alliances with like-minded individuals and organizations is important for the following reasons:[6]

- ☐ It creates strength and power in numbers by adding voices and resources;
- ☐ It increases access to policy-makers;
- ☐ It expands an advocate's base of information and expertise;
- ☐ It creates new networking and partnership opportunities;
- ☐ It generates cost-saving opportunities;
- ☐ It allows for a division of labor and less duplication of effort; and
- ☐ It leads to an exciting sense of "synergy"—the whole is greater than the sum of its parts.

2. With whom should indigenous leaders/organizations/ communities build alliances and network?

A natural starting point for identifying potential allies is to consider individuals and organizations dedicated to achieving similar goals. This can then be broadened to individuals and organizations that can play or contribute to specific needs, or can help address key problems or challenges in implementing an advocacy campaign and meeting the set objectives. Alliance building and networking should be done not only at the local level but also at the sub-national, national and international levels, based on your capacity to also sustain your allies and network. Various levels of allies and networks can provide different and complimentary forms of support.

> ### *Note to the Facilitator*
>
> More detailed discussion and references on Advocacy and Alliance-building may be found in the "ILI Training Manual on Leadership Training for Indigenous Peoples", which may be used in this section. Also refer to Module on Advocacy in the education manual "What to do with REDD? A Manual for Indigenous Trainers" for more requirements and considerations in doing

---

[6] Janice Forsythe. A Guide to Coalition Building.
(http://www.cypresscon.com/coalition.html)

5. Legal tactics in the judiciary, executive and legislative departments such as filing of court cases, complaints, petitions, recall initiatives, public hearings, etc.

Some examples of legal tactics that have been done are the filing of test cases or judicial cases in the courts using customary law:

- For land cases, civil cases or local disputes, indigenous peoples usually prefer to have these settled using the traditional justice system because it is cheaper. However, higher courts usually do not recognize the decisions of the native court. Thus, an option is to go to the high court even though it is expensive and the process is time-consuming. Decisions by the high court are stronger and they can impose fines and penalties such as compensation, which the companies have to comply with.
- Now, there is increasing use of customary law for filing cases in government courts. For example, in Malaysia, there have been several cases of using native customary laws under the native court ordinances for filing cases in the High Courts.
- An example of filing a test case in the court happened in Sagada, Mountain Province, using the Indigenous Peoples Rights Act (IPRA) to defend the traditional use of forest resources for building houses of indigenous people. The military and the Department of Environment and Natural Resources (DENR) confiscated the chainsaw of the people who were cutting wood in accordance with the customary practices of the community. Because of this, the people planned to invoke the IPRA to file a case in the court against the military and DENR in order to assert their right to cut the wood. However, the case did not continue because the people in the DENR national office did not want to risk questioning the IPRA. Instead, they returned the chainsaws to the people.

Participation in public hearings is another legal tactic that can be used in the legislative and executive branches of government. This is a mechanism where community leaders and members can express their views as well as alternative solutions to a problem.

- Some countries have mechanisms for public hearings arranged by government officials to get the opinion of the public on a particular issue or action. Parliamentarians can call for the public hearing for legislative action, e.g. proposed bill on environment protection; as well as

government officials in executive agencies on certain concerns, e.g. public health and safety. Local government officials can also call for public hearings on local issues or concerns, e.g. tourism business regulations; reforestation programmes, etc. It is thus important for indigenous leaders to be aware of laws and regulations, and their rights to public participation through public hearings.

6. Capacity-building and orientation on indigenous peoples' rights for local government officials, personnel and indigenous leaders

There is still a lack of awareness on indigenous peoples' rights among government officials and personnel at the local up to national levels. Thus there is a need to conduct orientation and education on indigenous peoples rights for government officials and personnel.

It is also necessary to do capacity building for indigenous elders, leaders and communities on local governance in order for indigenous representatives in local government to be capacitated and supported to voice out the concerns and sentiments of the community people.
Many local government officials and representatives need to be empowered so that they are able to execute and legislate laws that are favorable for indigenous peoples. In places where indigenous peoples are the majority, many local government officials and personnel are indigenous themselves and so they need to be educated on indigenous peoples' rights and issues.

Among the activities that could be conducted for indigenous representatives in local government in order for them to build their capabilities to advocate for indigenous peoples' rights and to be oriented on their indigenous values are the following:

- Indigenous peoples' rights orientation, especially in relation to land rights
- Value-formation or re-orientation on indigenous values
- Training on using the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and other international and national laws on indigenous peoples
- Skills training on doing advocacy and legislative work

7. Accessing government funds for community development and indigenous peoples' needs

One of the most important roles of local government officials is to make local government funds available for community development projects identified by

the community and indigenous elders themselves in order to address their needs and welfare. This can be done by:

- Identifying development needs through democratic consultation and decision-making
- Ensuring that FPIC is obtained according to indigenous systems and practices
- Identifying possible financial resources available through a review of the budget
- Making the necessary resolutions for a development project to be initiated and implemented
- Lobbying the appropriate government bodies to assist in the development project
- Implementing a project with the participation of the concerned indigenous community and people

8. Drafting and filing of resolutions and ordinances recognizing indigenous peoples' rights

Local and national government officials are in a position to draft, file and adopt resolutions to address the concerns of indigenous peoples. Some examples of resolutions that could be drafted and filed by local government units and officials to promote indigenous peoples rights are the following:

- Declaring sacred places as community property
- Maintaining communality of territory instead of privatization
- Declaring a moratorium on mining applications by large-scale mining corporations in farming communities
- Declaring a ban on logging in forests where indigenous peoples have ownership rights through native customary rights.
- Recognizing indigenous socio-political systems or institutions as part of the State structures at the local level, e.g. Mataguan Bodong Council in Tabuk City, Kalinga
- Opposing joint ventures between land owners, government agencies and companies in projects that are detrimental to indigenous peoples

Many other resolutions, ordinances, executive orders or legislations can be done by indigenous leaders or allies in government positions, depending on the particular needs and issues in a locality. It is necessary to be creative and to think of all possibilities for stretching the law and making it responsive to indigenous peoples' interests.

9. Strengthening of indigenous knowledge, practices and socio-political systems and conduct of education on indigenous peoples' rights

In order to protect and promote indigenous knowledge, systems and practices, it is necessary to document and strengthen indigenous values in the communities. Some suggestions on how to do this are the following:

- ☐ Traditional elders are given a consistent role in the performance of traditional rituals, and in the teaching and practice of social values so that these knowledge, practices and roles will not be lost. Traditional elders are given a role to help develop appreciation among the youth of indigenous systems and practices of local governance.
- ☐ The local government can conduct education and training among the elders and community people, as many of them are illiterate and are unaware of their rights.
- ☐ Establish an indigenous cultural center, where youth, women and elders can all participate and where they can conduct lessons on indigenous languages, culture, knowledge systems in natural resource management, social values in all ways of life.

10. Demanding land rights recognition through community mapping and documentation of indigenous knowledge

Community mapping is a tool that has proven to be useful and effective in:

- ☐ Cultural strengthening through the transmission of oral traditions
- ☐ Documentation of customary land uses and values, culturally significant places and resources, including sacred sites and monuments
- ☐ Documentation of external threats and competing claims
- ☐ Assessment and monitoring of changes in land use and land tenure on indigenous territories, and other important biodiversity and traditional knowledge indicators
- ☐ Delineation of boundaries of the domain, for FPIC requirements and processes
- ☐ As a tool for policy dialogue with local government units and other government agencies concerned with sustainable development plans and land administration
- ☐ As a tool for land use planning and self-determined development
- ☐ Demanding recognition of land rights based on indigenous land concepts and boundaries.

D. Sharing of Good Practices and Lessons Learned in Engagement with the National and Local Government

Activity: Sharing of Good Practices and Lessons Learned

This is the time for the participants to share their own experiences and learn from the experiences of others in engaging with the government in advocating for indigenous peoples rights.

Volunteers from among the participants can be chosen to share particular experiences using different strategies on various issues of indigenous peoples in their communities.

Other case studies from experiences of others can also be shared such as:

Philippines: On partylist representation in Congress

Malaysia: filing of legal cases in the High Court using customary law

North East India: on political advocacy and campaign for recognition of IP rights to forests

Thailand: On community mapping

E. Planning Ways Forward

Activity: Planning Workshop – Next Steps in Indigenous Peoples Engagement in Local and National Government

1. The participants are grouped according to their organization, community or places of origin.

2. Each group will identify a priority objective that they want to achieve within the next 6 months to 1 year, and plan how to engage the government in order to achieve their identified objective.

3. Each group reports the result of the workshop discussion to the whole group

4. The facilitator puts together a plan based on the results of the workshop. The matrix below may be used for planning.

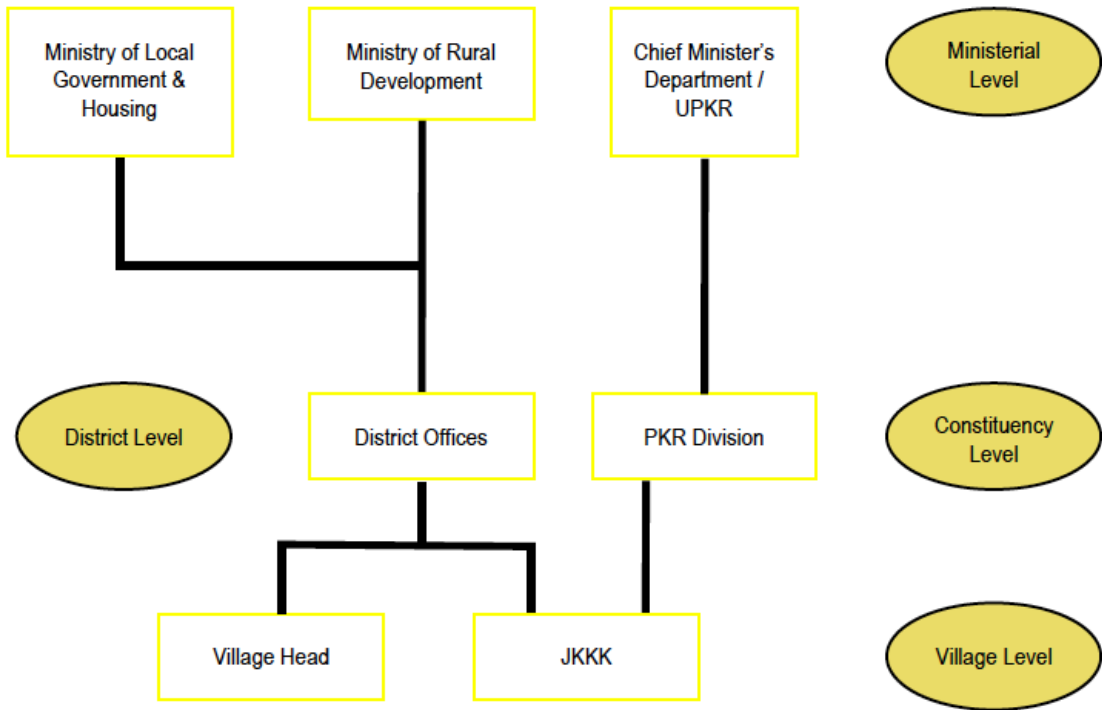| Objective	Strategy	Activity	Target groups	Tasks	Persons responsible

Annexes

ANNEX 1

STATE GOVERNMENT ADMINISTRATIVE STRUCTURE RELATED TO INDIGENOUS PARTICIPATION IN LOCAL MINESTERIAL LEVEL IN SABAH, MALAYSIA

A. GOVERNMENT ADMINISTRATIVE STRUCTURE AT THE STATE LEVEL

THE MINISTRY OF LOCAL GOVERNMENT AND HOUSING

In 1979, the Unit for Native Affairs was established under the Ministry of Local Government and Housing. This unit was tasked to supervise and administrate all matters relating to native affairs and law. Essentially, this consisted of the native administration system, which was established by the colonial rulers and is still in use in the districts and villages. Each district has a Native Court, which is headed by the District or Native Chief, who presides over court hearings with other Native Chiefs and their representatives. Although less frequently used than before, the Native Courts are still an important avenue for the rural indigenous communities to get access to justice under laws that they can more readily understand and that better reflect their lifestyles and values.

The Native Affairs Council under the Ministry is responsible for all matters pertaining to customary laws and *adat* of the natives. It is headed by a President

(usually the Minister) who is assisted by the State Secretary, the State Attorney-General, the Permanent Secretary of the Ministry, a Secretary and not more than six other members who have special knowledge of native customary laws. All members, except the ex-officio members, are appointed by the Head of State on renewable two-year terms. The Secretary, who is a native, and usually a government servant and several other staff, handle the day-to-day affairs of the Council.

THE MINISTRY FOR RURAL DEVELOPMENT

The main objective of the Ministry for Rural Development is to establish a strong planning and coordination machinery that is sensitive to the needs of the rural communities. It does not implement projects and programs on its own, but works with the District Offices and other government agencies at the district and village level. Its main contact with the rural communities is through the JKKK, which number over 3,000 all over the State. The Community Development Unit of the Ministry is responsible for the registration and administration of the JKKK. It also conducts courses to ensure that JKKK members know their roles and responsibilities.

UNIT PEMIMPIN KEMAJUAN RAKYAT
(PEOPLE'S DEVELOPMENT LEADER UNIT)

The Unit Pemimpin Kemajuan Rakyat, or UPKR, was established in 1981. It was perceived by the then-incoming government that there was a need to "assist the people to utilize the facilities and benefits provided by the government" (IDS 1992). The Unit's main function is to ensure that the people understand and support government programs and projects, and that they benefit and participate in the planning and implementation process. The Unit, which is under the Chief Minister's Department, does this through the PKR Division offices of each constituent. There are 48 constituencies in the State.

B. GOVERNMENT ADMINISTRATIVE STRUCTURE AT THE DISTRICT OR CONSTITUENCY LEVEL

THE DISTRICT OFFICE

There are 21 District Offices and 7 sub-District Offices throughout the state. The District Officer still plays an important role in Local Government in the districts. Almost all district administrative matters are under the supervision of the District Officer, including the Native Courts and District Councils. The District Officers also play an important role in the selection of the Village Heads, who usually regard the District Officers as their "chief". The District Office handles the payment of allowances for the Village Heads and the JKKK chairperson.

The Village Heads, JKKK and District Officers work closely on the minor rural development program and other special allocations for rural development. Proposals from Village Heads and JKKKs come to the District Officers first, who do the necessary preliminary processing. Thus, most Village Heads and JKKKs try to maintain a good relationship with the District Officers.

THE PKR DIVISION

The PKR Unit in the Chief Minister's Office has a Division in every electoral constituent. A Pemimpin Kemajuan Rakyat, or PKR, who is usually the constituent head of the political party in power, heads it. A typical set-up of a PKR Division at the constituency level has a PKR, assisted by a Community Development Officer (CDO), a number of junior staff who cover each of the zones in the constituency, and support staff at the office. These personnel are appointed either by the Establishment Office of the Chief Minister's Department or by the Cabinet. All these posts are temporary in nature.

C. ADMINISTRATIVE STRUCTURE AT THE VILLAGE LEVEL

THE VILLAGE HEAD

Any village with more than 250 people or about 50 households, except in certain isolated villages, is entitled to one Village Head and a JKKK. The Village Head is responsible for issues pertaining to *adat*, allocation of land, and land applications. In most cases, The Village Head is politically appointed with no term limit. However, in some cases villagers still select the Village Head themselves.

THE JAWATANKUASA KEMAJUAN DAN KESELAMATAN KAMPUNG (JKKK)

The JKKK is headed by a chairperson who is politically appointed for two years at a time. The structure of JKKK and the issues it deals with vary from community to community, depending on how active and well-organized the community is. In some communities, the JKKK deals only with security and development issues. In other communities, there are several sub-communities, each responsible for other issues pertaining to culture, education, welfare, and women's affairs.

The JKKK is expected to meet once a month. The minutes of the meeting are sent to the Ministry of Rural Development through the District Office. The JKKK are supposed to receive basic training on how to set up and run a community but only some do because the Ministry can only conduct a limited number of trainings per year.

ANNEX 2

On Legal Pluralism

"Legal pluralism is everywhere. There is, in every social arena, a multiplicity of legal orders, from the lowest local level to global level. There are village, town, or municipal laws of various types; there are state, district or regional laws of various types; there are national, transnational and international laws of various types. In many societies, there are also other forms of law, like customary law, indigenous law, religious law, or law connected to distinct ethnic or cultural groups within a society.

"These coexisting bodies of law may make competing claims of authority…. This potential conflict can generate uncertainty or jeopardy for individuals and groups in society who cannot be sure in advance which legal regime will be applied to their situation. This state of conflict also creates opportunities for individuals and groups within society, who can opportunistically select from among coexisting legal authorities to advance their aims. " [7]

"Instead of looking for clearly defined rules within a single, coherent legal system, it is more useful to recognize the ambiguity of rules, and the multiplicity of legal systems. This ambiguity and pluralism gives scope for human agency… [that] is critical for dealing with uncertainties that arise from environmental fluctuations, livelihood changes, social and political upheavals, and other sources.

"…we have seen many cases in which power differences and social relations obstructed the actualization of rights, especially for women or low-status groups. In other cases, local and customary users have lost access to resources when outsiders or those with greater access to courts or government agencies have used statutory law to override property rights based on other legal frameworks.

"Externally-defined laws (from the government, projects, or newly developed organizations) can strengthen customary property rights (e.g. by recognizing rights of indigenous peoples) or even provide disadvantaged groups with additional bases for claiming property rights, and thereby increase their bargaining power in negotiations for resources. Such law then becomes a 'resource' that can be used by the disadvantaged groups in their struggles over natural resources (F. von Benda-Beckmann and van der Velde 1992). However, for this to

---

[7] BRIAN Z TAMANAHA. Understanding Legal Pluralism: Past to Present, Local to Global.

be effective, new laws aimed at strengthening the rights of the poor or other marginal groups must be accompanied by programs to create awareness by all parties, so that the new laws can be cited and accepted in the negotiation process."[8]

[8] CAPRi WORKING PAPER NO. 22. Legal Pluralism and Dynamic Property Rights Ruth S. Meinzen-Dick and Rajendra Pradhan. CGIAR Systemwide Program on Collective Action and Property Rights. Secretariat: International Food Policy Research Institute 2033 K Street, N.W. Washington, D.C. 20006 U.S.A. JANUARY 2002

ANNEX 3

Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)

Intervention submitted by Cordillera Peoples Alliance during the 11th Session of the United Nations Permanent Forum on Indigenous Issues, May 7-18, 2012, New York

Thank you, Mr. Chair, for this opportunity to contribute information on the impacts of the Doctrine of Discovery among indigenous peoples in Asia.

The Doctrine of Discovery is practiced in the Philippines through the concept of *jura regalia* or the Regalian Doctrine. This concept refers to royal rights claimed by the King of Spain during the 16th century by virtue of the discovery and conquest of the Philippines by Spain. Consequently, all lands in the colony were declared the exclusive patrimony and dominion of the Spanish Crown. The Regalian Doctrine became the basis for subsequent laws, which, through the years, have deprived the indigenous peoples of lands held long before the coming of the Spanish colonizers.

Under the Regalian doctrine, private title to land must be traced to some grant, or title, given by the Spanish Crown or its successors, the American Colonial Government, and thereafter, the Philippine Republic. This is in direct conflict with indigenous peoples' concepts of land rights and ownership, which are based on customary occupation and use. The Regalian doctrine is still in effect today and the Philippine constitution contains provisions stating that all lands of the public domain and all natural resources belong to the State. To quote Section 2 of the Philippine Constitution: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State…. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations…." Hence, the Regalian doctrine is a colonial imposition that historically marginalized and dispossessed us from our ancestral lands, resources and territory. It is the root cause of the systematic violation of our collective rights to our ancestral lands and self-determination.

Today, the Regalian Doctrine is at the core of the ongoing conflicts between indigenous peoples and the Philippine government on ancestral land ownership and self-determined development. On one hand, indigenous peoples are asserting the right to land and self-determination when confronted with destructive development projects such as mining, logging, plantations, dams and other forms of extractive industries and development aggression. On the other hand, the government insists on the right and power to take over indigenous peoples' land and resources for exploitation by private corporations, these being part of the public domain. This clash of concepts has caused numerous conflicts and resulted in serious violations of the inherent rights of indigenous peoples enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international laws.

At this point, we wish to highlight yet another existing legal doctrine, as opposed to the Doctrine of Discovery. This is the Doctrine of Native Title, arising from a US Supreme Court decision in 1909 written by Justice Oliver Wendell Holmes on a case filed by my great grandfather, indigenous Ibaloi leader Mateo Cariño, vs. the US colonial government in the Philippines. In 1903, the US colonial Government expropriated the ancestral lands of the Cariño family for the establishment of a US military base known as Camp John Hay. Mateo Cariño filed suit against the Insular Government for this illegal taking of his family's pasturelands. The legal case, Cariño vs. Insular Government, went through the court system and reached all the way to the US Supreme Court, which finally decided in Mateo Cariño's favor. In 1909 the US Supreme Court declared that "… when, as far back as testimony or memory goes, that land has been held by individuals under a claim or private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land…. Law and justice require that the applicant should be granted what he seeks, and should not be deprived of what by practice and belief of those among whom he lived, was his property." (Cariño vs. Insular Government)

The US Supreme Court recognized that indigenous peoples in the Philippines, privately owned our lands, because these had never been part of the public domain prior to the coming of the Spanish colonizers.

The Doctrine of Native Title marks a significant victory in the struggle of indigenous peoples for the recognition of the land rights. The Cariño decision was the basis for the definition of Native Title under the Philippine Indigenous

Peoples Rights Act (IPRA) of 1997. Indigenous peoples in the Philippines have effectively used the Doctrine of Native Title to assert our rights over ancestral domains through self-delineation and self-declaration of Native Title in accordance with customary law. We have been able to do this, in spite of the non-issuance by the government of Certificates of Ancestral Lands or Domain (CALT/CADT), which have proven ineffective and divisive, not to mention the long tedious process that indigenous peoples have to undergo to prove their ownership of the land and acquire a CALT/CADT.

With this background, we now forward the following recommendations to the UN Permanent Forum on Indigenous Issues:

1. Abrogate the Doctrine of Discovery in all its forms, including the Regalian Doctrine in the Philippines, which has been instrumental in the violation of indigenous people's rights to land and self-determination since colonial times until the present. Initiate measures of redress to correct the centuries of injustice committed against indigenous peoples using the Doctrine of Discovery.

2. Uphold the Cariño decision and Doctrine of Native Title. Recognize indigenous peoples' rights to their ancestral lands in accordance with customary laws and concepts of land tenure and native title.

3. All laws and policies anchored on the Regalian doctrine must be reviewed and reversed in order to be consistent with the UNDRIP.

Thank you all for your attention and consideration.

Annex 4

On Good Governance

Source: Office of the United Nations High Commissioner for Human Rights
http://www2.ohchr.org/english/issues/development/governance/

What is good governance?

There is no single and exhaustive definition of "good governance," nor is there a delimitation of its scope, that commands universal acceptance. The term is used with great flexibility; this is an advantage, but also a source of some difficulty at the operational level. Depending on the context and the overriding objective sought, good governance has been said at various times to encompass: full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.

However, there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights. The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

Key attributes of good governance

The concept of good governance has been clarified by the work of the former Commission on Human Rights. In its resolution 2000/64, the Commission identified the key attributes of good governance:

☐   Transparency

- ☐ Responsibility
- ☐ Accountability
- ☐ Participation
- ☐ Responsiveness to the needs of the people

By linking good governance to sustainable human development, emphasizing principles such as accountability, participation and the enjoyment of human rights, and rejecting prescriptive approaches to development assistance, the resolution stands as an implicit endorsement of the rights-based approach to development.

Resolution 2000/64 expressly linked good governance to an enabling environment conducive to the enjoyment of human rights and "prompting growth and sustainable human development." In underscoring the importance of development cooperation for securing good governance in countries in need of external support, the resolution recognized the value of partnership approaches to development cooperation and the inappropriateness of prescriptive approaches.

How are good governance and human rights linked?

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures.

On the other hand, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.

The links between good governance and human rights can be organized around four areas:

- ☐ **Democratic institutions**

When led by human rights values, good governance reforms of democratic institutions create avenues for the public to participate in policymaking either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes, especially locally. Finally, they may encourage civil society and local communities to formulate and express their positions on issues of importance to them.

Service delivery

In the realm of delivering state services to the public, good governance reforms advance human rights when they improve the state's capacity to fulfill its responsibility to provide public goods which are essential for the protection of a number of human rights, such as the right to education, health and food. Reform initiatives may include mechanisms of accountability and transparency, culturally sensitive policy tools to ensure that services are accessible and acceptable to all, and paths for public participation in decision-making.

Rule of law

When it comes to the rule of law, human rights-sensitive good governance initiatives reform legislation and assist institutions ranging from penal systems to courts and parliaments to better implement that legislation. Good governance initiatives may include advocacy for legal reform, public awareness-raising on the national and international legal framework, and capacity-building or reform of institutions.

Anti-Corruption

In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation to shape anti-corruption measures. Initiatives may include establishing institutions such as anti-corruption commissions, creating mechanisms of information sharing, and monitoring governments' use of public funds and implementation of policies.

Good governance, human rights and development

The interconnection between good governance, human rights and sustainable development has been made directly or indirectly by the international community in a number of declarations and other global conference documents. For example, the Declaration on the Right to Development proclaims that every human person and all peoples "are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development" (article 1). In the Millennium Declaration, world leaders affirmed their commitment to promote democracy and strengthen the rule of law as well as to respect internationally recognized human rights and fundamental freedoms, including the right to development. According to the United Nations strategy document on the millennium development goals (MDGs), entitled "The United Nations and the MDGs: a Core Strategy', "the MDGs have to be situated within the broader norms and standards of the Millennium Declaration," including those on "human rights, democracy and good governance."

The concept of good governance in the main international human rights instruments

From a human rights perspective, the concept of good governance can be linked to principles and rights set out in the main international human rights instruments. Article 21 of the Universal Declaration of Human Rights recognizes the importance of a participatory government and article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. The two International Covenants on Human Rights contain language that is more specific about the duties and role of governments in securing the respect for and realization of all human rights. Article 2 of the International Covenant on Civil and Political Rights requires states parties to respect and to ensure the rights recognized in the Covenant and to take the necessary steps to give effect to those rights. In particular, states should provide an effective remedy to individuals when their rights are violated, and provide a fair and effective judicial or administrative mechanism for the determination of individual rights or the violation thereof. Under the International Covenant on Economic, Social and Cultural Rights, states are obliged to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means.

The human rights treaty monitoring bodies have given some attention to the different elements of good governance. In general comment No. 12, on the right

to food, the Committee on Economic, Social and Cultural Rights stated that "Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all." The Committee on the Rights of the Child has on several occasions addressed the issue of governments' capacity to coordinate policies for the benefit of the child and the issue of decentralization of services and policy-making. It has also addressed corruption as a major obstacle to the achievement of the Convention's objectives. The Human Rights Committee generally addresses issues related to the provision of adequate remedies, due process and fair trial in the context of the administration of justice in each state. It regularly emphasizes the importance of independent and competent judges for the adequate protection of the rights set forth in the Convention.