



**Being “Indigenous” in Indonesia and the Philippines:  
contradictions and pitfalls**

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In recent years, a number of groups in Southeast Asia have tapped into the international discourse, networks, and instruments on “indigenous peoples” to gain leverage over their national governments and improve their political, social and economic status. Yet, in the context of Southeast Asia, such labels and categories create important contradictions, and even pitfalls. Who is indigenous? Who came first? Indonesia and the Philippines are artificial constructs, as legacies of colonial boundaries that were later raised to the status of “nations” by post-independence political leaders. Who is an Indonesian or a Filipino has varied through time, as well as who is “indigenous.” Filipinos and Indonesians are constituted by a variety of regionally and linguistically distinct peoples for whom local identities have remained sometimes equal or more important than “national categories.” Almost all of these groups claim long ancestral ties to their region. In this context, how can claims of “indigeneity” be made and provide leverage for distinct political status?

Some ethnic groups in Indonesia and the Philippines have claimed an international status as “indigenous” in order to increase their leverage in their negotiations with the state. In the Philippines, the “Igorot” people of the Cordillera have mobilized since the 1970s to claim rights to ancestral lands. Papuans in Indonesia have participated in international forums to make similar claims against the state. They have more forcefully made claims to self-determination but they have shared similar claims to land rights, protection of culture, and preservation of their traditional ways of life as the people of the Cordillera.

The strongest political asset for these groups has been the increasing recognition of indigenous rights by the United Nations. Since the formation of the Working Group on Indigenous Populations in 1982, numerous groups have made claims to the status of “indigenous peoples” to present their case at the United Nations and gain international support for their claims. In June 2006, the United Nations Human Rights Council, at its first meeting, adopted the draft *UN Declaration on the Rights of Indigenous Peoples*, which had been discussed at the Working Group on Indigenous Populations for over a decade. Indonesia supported the motion while the Philippines abstained. (UN Human Rights Council 2006) The UN General Assembly considered the declaration at its meeting on November 20-21, 2006 and decided to defer its consideration to allow for more consultation. The rise in international status of indigenous groups have given this particular category of ethnic groups greater leverage to make claims from their respective states.

The status of “indigenous group” in the Philippines and Indonesia, however, is highly contestable. No groups can claim prior occupation of territory since they were all present in the archipelago before colonial times, except the Chinese who migrated at various historical time periods. Unlike Latin American countries, there was little mixing between colonial rulers and local populations and few mixed peoples remained at the time of independence.<sup>1</sup> In Indonesia, the category “indigenous” was used, instead, to differentiate “non-indigenous” Chinese immigrants -- whether Indonesian citizens or not -- from all other Indonesians after independence.

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<sup>1</sup> In the Philippines, boundaries between the *mestizo* and non-*mestizo* groups remained blurred and so disappeared after independence.

As a result, the capacity of groups to use international leverage in these countries is limited. States can manipulate definitions of “indigenesness” to deny aspects of claims made by these groups, and they can even deny recognition to groups making such claims. Although it does not erase the ability of these groups to gain some support internationally, the effectiveness of this support for negotiating domestically is much more limited than in North America, Latin America, or Australia where indigenous groups and associated characteristics are much more clearly defined. The Filipino and Indonesian states have responded very differently to claims by indigenous groups, despite similar conditions. They illustrate the difficulties encountered for indigenous groups in Southeast Asia.

### **Indigenous Peoples and their international recognition**

In the last two decades, indigenous peoples have gained increasingly strong presence and recognition on the international stage. Prior to the 1980s, there were very few instruments that could be used by indigenous peoples to make claims against states where they reside. The dramatic shift, which was epitomized with the adoption by the Human Rights Council of the *Declaration on the Rights of Indigenous Peoples*, has increased very significantly the leverage of indigenous peoples to negotiate improved conditions.

The United Nations Working Group in Indigenous Populations (WGIP) created a new forum in which organizations of indigenous peoples could present their grievances. Prior to 1982, there were few instruments available to indigenous groups to promote their interests. International conventions on the prevention of discrimination against minorities were weak instruments in as much as they were targeted at redressing the status of minorities and making them equal to majority groups. Indigenous groups, instead, sought additional protections that could allow them to preserve their group’s identities and preserve livelihoods in situations where their survival was threatened. (Sanders 1989: 406)

The WGIP is unique in the UN system as it has been very open to hearing a large number of indigenous organizations. In other UN forums, only states, accredited international NGOs, and a handful of other actors could formally intervene. The sessions of the WGIP opened up opportunities for groups to make their cases heard and raised as an international profile. It has created an incentive for groups to cast themselves as indigenous in order to advance their cause.

Gaining recognition as a different category internationally has been accompanied by a set of standards deemed necessary to protect indigenous peoples. Definitions of indigenous peoples vary considerably but they are generally associated with a territorial occupation by a socially organized group that becomes dominated by an external cultural or ethnic group, and that continue to live according to social customs that differ from those of the state within which they live. It is the protection of these livelihoods, traditions and customs that distinguishes them from other minorities, and that are considered to require different instruments from measures to defend minorities rights more generally.

One of these instruments is self-determination, which has created some controversy for some governments. Hyndman nicely summarizes the political power and

sensitivity involved in using the label “indigenous *peoples*”. He notes that early documentation of the United Nations Working Group on Indigenous Populations uses the term *populations* to avoid the connotation of a right to self-determination implied in the use of *peoples*. By contrast, the Charter of the World Council of Indigenous Peoples uses a definition that emphasizes unique characteristics, social traditions and even language “which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others.” The association with a right to self-determination has been one of the strongest obstacles to recognitions of rights of indigenous peoples. Article 3 of the *Declaration on the Rights of Indigenous Peoples* recognizes a right to self-determination and article 4 the right to exercise autonomy as well as to obtain funding to implement this autonomy. (Cited in Hyndman 1991: 169)

In Asia, this poses a particularly difficult problem. Indigenous peoples in the Americas and parts of Europe are easily recognized and identified as such. Their histories differ substantially from the generations of settlers who have come to occupy most of the land. They also live in relatively separate locations, are often marginalized, and much poorer than the majority of the population. Groups from Asia came later than others to the WGIP and mobilized much less internationally within the indigenous movement. Concerns with groups in Asia was mainly pioneered by European support organizations, many of which sponsored the first indigenous groups from Asia to attend meetings of the WGIP. Furthermore, it was primarily the groups from Asia from which conceptual issues arose. Groups presented themselves as indigenous while their governments would deny their status. (Sanders 1989: 416-417)

In Indonesia and the Philippines, populations scattered across the archipelago were present well before colonialism. They sometimes shared some common political institutions with other groups, a lingua franca, or religion, yet they remained distinct in terms of language, socio-political organizations, ways of life, and sometimes even religion. Colonial occupation created a new administrative and political layer that laid the basis of a shared experience, gave a common language, and even forced a certain amount of cultural homogenization—in the case of Christianization in the Philippines—but it did not eliminate the distinctiveness of ethnic groups, nor were they displaced from their territorial homelands. As a result, the sharp distinction in the histories of indigenous peoples in other areas of the world is not reproduced in these countries. It is the blurring of the boundaries between indigenous and non-indigenous groups, and bases upon which “indigeneity” can be contested, that has given the Filipino and Indonesian states the ability to manipulate definitions, and limit the growing international norms associated with indigenous groups. They have also made particular efforts to limit the reach of self-determination, most clearly in the case of Indonesia.

### **The “Igorots” of the Philippines**

In the Philippines, the Igorot have been the most active in using “indigenous rights” to gain leverage against the Filipino state. Their first mobilized politically in the 1970s, as the Marcos government penetrated the Cordillera region of Northern Luzon with development projects that significantly disrupted local livelihoods. In their opposition to the state, the Igorot joined the Communist insurgency but also organized themselves effectively to gain international support through forums for indigenous

peoples. By the mid-1980s, their international lobbying with the UN Working Group on Indigenous Populations as well as domestic pressures gained them increasing recognition by the anti-Marcos opposition. For the first time, the Philippine Constitution of 1987 recognized rights for indigenous peoples, including the Igorots. Subsequently, the Philippine state adopted legislation that gave very strong recognition and rights to the peoples of the Cordillera. Nevertheless, the Philippine state simultaneously avoided supporting international legal instruments that might undermine its control over the definition, characteristics and limited rights granted to the Igorots. This strategy has been accompanied by significant contradictions in the implementation so far of legislation conveying indigenous peoples' rights to the Igorots.

The term "Igorot" refers to the peoples of the Cordillera mountain range of Northern Luzon. They are comprised of seven distinct groups that include the Ibaloy, Kankana-ey, Ifugao, Bontok, Kalingas, Itneg and Tingguian. Although they have common characteristics, they also differ in terms of their management of communal lands, customs, and socio-political organization. Historically, they also shared many characteristics with the lowlanders of Luzon. They became more clearly demarcated from other groups when they remained isolated and autonomous from Spanish colonial rule, thereby retaining customs, livelihoods and access to communal lands.(Prill-Brett 1994: 689)

The Igorot began to mobilize against the Philippine state in the 1970s, when development projects in the Cordillera threatened their access to ancestral lands and resources. Under Spanish colonialism, the Regalian doctrine stipulated that all lands were public unless they were registered formally with the state. After a brief interlude, when American colonial rulers made some steps in the direction of recognizing communal ownership of land, the Philippine state returned to the Regalian doctrine after independence. This regime of land ownership did not affect the Cordilleran peoples until the 1970s, when the Marcos government began to engage in large projects on what it considered to be public land, even if it had long been occupied by the Igorot.

The Chico dam project in the late 1970s was the most controversial one in this respect. Funded by the World Bank and Asian Development Bank, the project led to the displacement of 100,000 people in the Cordillera. Presidential decree 410 established that land occupied by the Igorot was part of public domain since there were no private titles. It gave ten years for groups to obtain certificates of land occupancy if they wanted to preserve their ownership and access. At the end of the ten years, however, no individual or group had even applied because of the numerous constraints built into the application process itself. Early protests were met with arrests, despite the fact that the Igorot basically submitted peaceful resolutions against state's exploitation. Similar protests were launched against the logging concessions and the establishment of a pulp mill and rayon fibre plant by the Cellophil Resources Corporation (CRC). Eventually, the Igorots formed a resistance movement and allied with the Communist New People's Army against the Filipino state. (Hyndman 1991: 173; Prill-Brett 1994: 693-694)

By the 1980s, the Igorot had formed structured organizations that began to mobilize support among the political opposition in the Philippines, while also seeking support in international forums. The Cordillera People's Alliance (CPA) and the Cordillera Bodong Association were two major organizations formed in the early 1980s. These coalitions were primarily concerned with securing their rights of access and

occupation of ancestral lands, but their demands began to broaden and include requests made by indigenous peoples in other countries. The Cordillera People's Alliance made the broadest claims. In a first Cordilleran People's congress, it made demands for cultural self-determination, regional autonomy and rights to ancestral lands for the Igorot. It also created the Cordillera People's Liberation Army (1986), which opened up an armed front against the Philippine state.

In 1984, Igorot representatives for the first time made an appearance before the UN Working Group on Indigenous Populations, which was formed in 1982. In their statement, they mentioned as their most important grievances the absence of rights to ancestral domains, rights to the utilization and management of resources on these lands, the non-recognition of the viability of their socio-political structures, the lack of adequate representation, the disrespect and non-recognition of cultural identity and integrity, as well as the militarization of their region.(1984) In subsequent years, Igorot groups continued to make similar requests for support from the UN WGIP.

Domestically, lobbying the political opposition proved successful. When the Marcos regime fell and Cory Aquino became president, there was a breakthrough in the recognition of indigenous peoples. The new constitution of 1987 explicitly recognized indigenous groups and their rights to ancestral lands.<sup>2</sup> Subsequently, the Philippine Congress approved acts leading to the creation of autonomous regions in the Cordillera, subject to a successful plebiscite.

The debate over the creation of the autonomous region, however, showed a gap between the Philippine state and Cordilleran organizations in terms of their respective understanding of rights for indigenous peoples. The state had created interim organizations – the Cordilleran Administrative Region, 1987 and the Cordillera Regional Consultative Commission (CRCC), 1988-- who were the main supporters of the state's Organic Act for the creation of an autonomous region. The CRCC had proposed a federalist solution that was rejected by the central government but they nevertheless supported regional autonomy as an alternative. The state, however, retained control over ancestral domains and natural resources, which was a strong reason for the CPA's rejection of the Organic Act. There was strong opposition from the Cordillera People's Democratic Front as well, which continued to press for armed resistance. This strong coalition worked against the Organic Act so that Cordillerans rejected regional autonomy by 70 % in the January 1990 plebiscite. An Autonomous Region was subsequently created only in Ifugao province, where support had been sufficient. (Hyndman 1991: 178-182)

The management and recognition of ancestral lands was assigned to the Department of Environment and Natural Resources (DENR) instead of being devolved to the Cordillera Autonomous Region or another administrative body controlled by the Igorot. In 1990, the DENR created a special task force to identify and delineate ancestral land claims of groups in the Cordillera and issue certificates of recognition.(Prill-Brett 1994: 695) Under Republic Act No. 7576 of 1992 (the National Integrated Protected Areas System Act), the role of the DENR was confirmed. Although ancestral domains and customary rights were to be recognized, the authority to establish rules and regulations over these lands remained with the DENR. (UN CERD 1997a: 12)

Under the Ramos administration, the Philippine state pursued contradictory policies toward the Cordilleran people. The 1995 Mining Act gave the government

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<sup>2</sup> See section 22, art. 11; section 5, art. 12, section 6, art. 13.

powers to allocate rights to mining companies, including lands located in the Cordillera. At the same time, the government adopted the most progressive piece of legislation on indigenous peoples anywhere in Asia, and one of the most progressive in the world. The Indigenous Peoples' Rights Act (IPRA) was largely considered a new step by which the state not only recognized indigenous peoples but gave them legal measures to protect their rights to ancestral lands, exploitation of natural resources, their traditional ways of life, customs, and socio-political structures. Mining, logging or other development projects on ancestral domains could only be pursued with the consent of indigenous communities. One significant limitation was embedded in the legislation itself, as section 56 provided for the respect of property rights already allocated within ancestral domains. The implication was that companies that had ongoing projects in the Cordillera, including those who had only recently obtaining rights by the 1995 Mining Act, could continue their activities without seeking consent from indigenous communities. In itself, this implicated already a good portion of ancestral lands. (Stavenhagen 2004: 11)

The poor implementation of IPRA also shows that the Philippine state attempted to limit its actual effectiveness and to interpret it narrowly, while symbolically giving recognition to indigenous rights for the Igorot to appease them. From the beginning, there were impediments to the implementation of the main agency responsible for protecting indigenous rights, the National Commission on Indigenous Peoples (NCIP). Its most important task was to issue Certificates of Ancestral Domain Titles (CADTs). Its budget, however, was withheld during the time of its investigations and, at the end, the task force created two new bodies that largely replicated the work of the NCIP, and contributing to further administrative overlap and bottlenecks. By 2000, not a single CADT had been issued. (Castro 2000: 41-45) It continued to experience problems with funding and bureaucratic obstacles, so that it was not able to "consolidate its specific role and leadership in the promotion of indigenous peoples' rights within the framework of the Administration." (Stavenhagen 2004: 10)

Some of the obstacles in implementing IPRA have come from the indigenous communities themselves. For instance, not all Cordilleran groups supported IPRA after it was passed. New coalitions, such as the Coalition for Indigenous Peoples Rights and Ancestral Domains and the National Coalition of Indigenous Peoples of the Philippines gave their support. At least one more established organization, however, the CPA, called for the Act to be repealed and called it instead a "tool of the US-Estrada regime to stem the Indigenous Peoples' movement." Moreover, the free and informed consent by indigenous peoples for access to land and resources by private entrepreneurs had been subjected to bribery and corruption from within the communities. "Tribal dealers", negotiating on behalf of particular indigenous communities, have exploited the process to gain personal advantages at the expense of benefits to the broader communities whom they claim to represent. (Castro 2000: 42-50)

To a large extent, however, the Philippine state has pursued policies that significantly undermine the implementation of IPRA. Existing projects relating to logging, mining, agribusiness plantations and other development projects have continued to affect the livelihoods of local communities, contributing to the destruction of the environment on which they depend. Communities have been slow to make official claims to ancestral lands because they of a general mistrust of government agencies and office holders, who have abused their position in the past to divert land away from legitimate

owners in such claims processes. The militarization of indigenous areas has also contributed to transgressions of existing laws and disregard for established rights. Sweeping operations have been used to clear the way for development projects, thereby leading to destruction of local property and displacement of communities. The Philippine government has justified these operations in its struggle to combat armed insurgents in the Cordillera but such practices also disguise economic interests as well. The Special Rapporteur for the United Nations reported that counter-insurgency operations led to numerous human rights violations, including arbitrary detentions, killings of community representatives, mass evacuations, destruction of property, and forced disappearances. The creation of para-military units among indigenous communities worsened the situation as many of the units used their power to gain control over the leadership of the communities and manipulating them thereafter. (Stavenhagen 2004: 8-24)

The Philippine state is able to shield itself from international criticism to some extent by exploiting ambiguities embedded in the discourse about indigenous peoples. The very definition of indigenous peoples in the Philippines suggests a much less defined boundary between these groups and other Filipinos. The State defines an indigenous cultural community as a “homogenous society, identified by self ascription or by others, who have continuously lived as a community on community bounded and defined territory, sharing communal bonds of language, traditions, and other distinctive cultural traits, and who, through resistance to the political, social and cultural inroads of colonization, became historically differentiated from the majority of the Filipinos”. They attribute these differences to the differentiated pattern of Spanish colonialism, and the development and population movements that occurred as a result (UN CERD 1997a: 8) Such a view leads the state to deny accusations of racial discrimination on the basis that all Filipinos belong to the “same racial stock, the Malays.” Differences between the “majority of Filipinos” and Muslims as well as indigenous communities lies in the fact that they “tenaciously cleaved to the indigenous Filipino cultural heritage” during the long history of colonialism. (UN CERD 1997a: 3) Such a definition has raised some questions and comments in UN forums, such as the UN Committee on the Elimination of Racial Discrimination, where the Philippine state has continued to press such a view against more usual categorization of indigenous peoples as much more distinct from majority populations. (UN CERD 1997b: 4)

As a result, the delineation of who is indigenous is not entirely clear. The UN Special Rapporteur, after having investigated the situation of indigenous peoples in the Philippines, concluded that “no consensus as to exactly who are indigenous peoples in the country. Indigenous identities probably continue to be constructed and reconstructed amid demographic changes, political exigencies, and religious dimensions....” (Stavenhagen 2004: 8) The Cordillera People’s Alliance, in a report in coordination with the International Working Group on Indigenous Affairs (IWGIA), recognizes that who is “indigenous” has been contested, according to different definitions. According to its own categorization, the CPA estimated that only 68% of indigenous peoples have been recognized by the Philippine state. (2005: 118-119) Such an ambiguity has opened up possibilities for denying recognition of indigenous claims and softening those made on the basis of discrimination by diverting attention to social disparities while diminishing the relative importance of cultural distinctions and claims to distinct customs.



The Philippine's official response to the UN Human Rights Council's adoption of the *Declaration on the Rights of Indigenous Peoples* is revealing. The declaration was adopted by almost all countries on the Council but the Philippines abstained. In its statement of the reasons for abstaining, the Philippine representative explained that "his delegation would have liked time to ascertain that the draft was fully compatible with the Constitution and legislation of the Philippines and to enable national implementing agencies to discuss its legal and policy implications."(UN Human Rights Council 2006: 7) Although one could interpret the statement in different ways, it does reinforce the preceding analysis suggesting that the Philippine state is reluctant to adopt a definition of indigenous peoples that might force a broader recognition than has already been extended.

Such a definition might suggest, as well, a much clearer and distinct division between the Cordilleran peoples and other Filipinos, therefore undermining the state's view that ultimately there are all one people, at some level. The implication is much greater in the case of the Muslims, if self-determination were combined with the idea that they are not the same people as the Filipinos, but similar consequences could occur for the Cordillerans, who can then exercise much greater claims to autonomous decisions and non-interference from the central state over their lands and resources. It is also unlikely that the Philippine state would want to be constrained in the kinds of rights it has already extended and within which it has been able to weave through its economic and security interests.

### **Papuans in Indonesia**

Papuans have had much more difficulty in obtaining recognition and gaining rights than the Igorots. They share many characteristics that are similar to them and to other indigenous peoples, namely a distinct culture, continual occupation of lands, a marginalized status, and infringement on their lands by the state. In addition, they have been displaced by migrants and can claim to be racially very distinct from other Indonesians. Yet, the Indonesian state has been far more reluctant to extend the kinds of rights obtained by the Igorots. Although special autonomy has been granted, it has not been accompanied by any formal recognition of indigenous status that could extend to recognized claims to land, natural resources or self-determination. The Indonesian state, in fact, has been much more able to manipulate concepts of "indigeneity" to limit claims made in that name.

The Papuans have strong claims to make as "indigenous peoples". Constituted of a large number of cultural communities living mostly in the highlands of the Western part of the island of New Guinea, the Papuan identity evolved mainly as a result of contact with Dutch colonial rulers and subsequently the Indonesian state. Scattered across an inaccessible landscape, most of these communities were never reached by the Dutch and were only barely contacted by the Indonesian state after the integration. In fact, the territory of West New Guinea was mainly neglected by colonial rule and it was only in the 1950s that the Dutch attempted to educate a Papuan elite and include it in its colonial administration. For the most part, communities in the highlands continued their livelihoods pretty much untouched by the outside world.

Papuans, instead, became marginalized and displaced mainly as a result of their integration to the Indonesian state. Even though they had never been part of the same administrative colony as other subjects of the Dutch East Indies, Indonesian rulers made claims to Papua in terms of a shared experience of Dutch colonial rule and of past linkages between Papua and other parts of the archipelago, such as Maluku. Indonesian nationalism developed a discourse that characterized Papuans as having been part of past empires, such as Mahapahit, and having the same origins as the other peoples of the Indonesian archipelago.

When the Indonesian state integrated Papua, therefore, it extended its authority of with the same logic of a single, united nation as in the rest of the country. Integration was ratified by the United Nations after the 1969 Act of Free Choice, which was a highly disputed process. Almost immediately after integration, Papuans began to mobilize politically under the banner of the Free Papua Movement and through various forms of local protest. The Indonesian state nevertheless refused to recognize any distinct status to the Papuans, any particular rights, or any protection of land ownership and access. Instead, it proceeded with strongly integrationist and assimilationist policies that included the imposition of a national curriculum, the denial of local content or local languages in the education system, a standardized set of administration and political institutions identical to those for the rest of the country, with the implication that the central government retained fiscal, political and administrative control over all important issue-areas.

The management of land and access to natural resources was fully subsumed under the authority of the central government. As specified under the original Constitution of 1945, natural resources were part of the public domain and were exploited according to policies set at the centre. The most important impact of these policies were the establishment and exploitation of the Freeport-McMoran mines, which led to several decades of protests by Papuans for the lack of compensation, consultation, displacement, and failure to benefit locally from the investment. During the 1980s, the government also promoted a transmigration program by which people from heavily populated areas of Java were encouraged to move to Irian Jaya (the province's name at the time). The government claimed whole areas for these transmigration sites without regard to whether Papuans made any claims to ownership or access.

Migration in all of its forms was encouraged within a logic of a single nation, and without consideration for its impact on local culture, social organizations, or livelihoods. From the Indonesian state's perspective, Irian Jaya constituted a vast area of relatively empty lands, sparsely populated, and with vast possibilities for economic development. Moreover it promised to relieve the stress on resources and land in other parts of the archipelago. As a result, spontaneous migration grew steadily for three decades after integration to Indonesia, so that Papuans almost their majority status in their territory. Urban centres became mainly populated by migrants while Papuans remained relatively isolated in highland areas.

Resistance to the Indonesian state was framed from the beginning in terms of self-determination and contestation of integration to the Indonesian state. Papuans denounced the process by which the Act of Free Choice was adopted. The most visible form of resistance was a loosely organized Free Papua Movement, which remained an umbrella organization for several small resistance groups. They were not well armed,

fairly disorganized, and never mounted a significant military challenge against the Indonesian state. A few peaceful protests consisted of raising the Morning Star flag, the symbol of independence.

The most significant challenge to the Indonesian state came after the fall of the authoritarian regime, in the form of a large civilian movement. Initially, an elite group of 100 delegates from all sectors of Papuan society met with President Habibie to discuss their grievances. During the meeting, they shocked the new President by declaring their desire for independence. This event marked the beginning of a large movement to demand a referendum on the future status of Papua, self-determination, and redress for past injustices. In a show of strength, two Papuan Congresses drew thousands of people in 2000, who then elected a Presidium of the Papuan Council (PDP) to make claims to self-determination.

The Indonesian state initially responded positively to this mobilization but then cracked down on nationalists and proposed a special autonomy deal as a compromise. President Wahid had been relatively sympathetic to claims made by the Papuan people and saw the open expression of their grievances as a positive outgrowth of the new democratic environment. He was severely criticized, however, by the People's Consultative Assembly, the highest legislative body, for allowing a secessionist movement to flourish in Papua. Under pressure from the Jakarta political elite, he was forced to reverse his approach and to approve a crack-down on the movement, whereby leaders of the PDP were arrested and prosecuted, and the vocal demands for self-determination were curtailed. Instead, the government sponsored legislation on special autonomy, which did not recognize a right to self-determination but did create institutions to represent the Papuan people and gave them increased powers in a large number of jurisdictions.

The Special Autonomy Law of 2001 provided, on paper, a large number of new powers for Papuans. The Papuan government obtained jurisdiction over all matters except foreign policy, defense, monetary and fiscal policy, religion, and justice. A new assembly was also created. The Papuan People's Assembly (Majelis Rakyat Papua, MRP) was meant to represent *indigenous* Papuan groups and included local customary groups, as well as religious and women's groups. Its mandate was to promote and protect the rights and customs of the Papuan people. It completed the the Papuan People's Representative Assembly (DPRP), the official legislature of the province. In fiscal matters, the law provided large new revenues for the province. The most important source of revenue was from the exploitation of natural resources, particularly mining. Papua was to receive 80% from mining, forestry and fisheries, and 70% from oil and gas exploitation. In addition, a greater proportion of tax revenues were to accrue to the province. (Bertrand 2004)

The law, however, fell short of providing any special status to Papuans as indigenous peoples, and to convey any rights in this respect. Customary groups were given representation in the MRP but the legal clout of the assembly is ambiguous. Most of its powers are rights of consultation and approval on issues related to native rights and only in relation to special regulations for implementation of the Special Autonomy Law, which means that it might become a powerless body as the DPRD is likely to be able to supersede its decisions in many areas. Since the DPRD has a large number of representative who are not indigenous Papuans but who live in the province, it is unclear

the extent to which the Special Autonomy Law actually has increased the ability of Papuans to protect their livelihoods, their culture, and manage their affairs.

Most damaging, the state implemented other laws that undermined the ability of special autonomy to represent Papuans as a people. Law no. 45, 1999 on the division of Papua into three provinces was revived in 2003 after being placed on hold following protests when it was first past. President Megawati passed decree no. 1, 2003 that reaffirmed the division of the province. When renewed protests emerged, particularly over the creation of the province of Central Irian Jaya, the latter was postponed indefinitely. The province of West Irian Jaya was created nevertheless. With this division, there is no assembly or body that can represent the Papuan people as a whole.

Furthermore, there are a number of issues that remain unresolved. Papuans obtained no powers to manage the migration of peoples from other islands, and therefore could continue to see their relative numbers decline. Papuans also did not obtain explicit rights to land or to the exploitation of natural resources on Papuan territory, thereby limiting the ability to curtail further mining developments in the area that could threaten their livelihoods.

The Indonesian state essentially sought to give more powers to Papuans as a means to curtail the secessionist movement, but has refused to give recognition to an “indigenous” status that might increase the Papuans’ leverage in their demands. The special autonomy law follows a general policy for decentralization and devolution of powers that has been applied to all provinces of Indonesia. Although there are some special provisions mentioned above, it is not evident that the two provinces in Papua have obtained vastly greater powers than other provinces in Indonesia. Furthermore, the Papuans as a people have obtained more powers of consultation but few real powers to initiate policies to protect their specific interests. The new legal framework still falls well short of self-determination.

Papuans have been limited in their ability to use international forums on indigenous rights to create pressure on the Indonesian state. They have presented their grievances in some forums but they have mainly emphasized self-determination and a contestation of their integration to the Indonesian state, rather than projecting themselves with the shared agendas of indigenous peoples, as the Igorots have done in the Philippines. Furthermore, the Indonesian state has been able to manipulate definitions of “indigenous” peoples, in order to promote a vision of indigenous peoples rights consistent with its policies on Papua.

A review of the evolution of statements by Papuan groups and the Indonesian state reveals the divergence in perspectives on indigenous rights, and the limited ability of Papuans to use international tools to advance their cause. Papuans first presented their case in international forums on indigenous peoples at the 3<sup>rd</sup> session of the Working Group on Indigenous Peoples in 1984. In their statement, they contested the legitimacy of the Act of Free Choice and the UN support for integration to Indonesia. A large emphasis was placed on the disappearances and killings allegedly perpetrated by Indonesian armed forces, relying heavily on a report from the Anti-Slavery Society that took up the Papuan cause and raised international awareness in the previous year. They also briefly mentioned the repression of expression of Papuan culture, the seizures of land for mining and transmigration sites, as well as the refugees flowing across the border to Papua-New

Guinea in response to ill-treatment. These themes were to be developed more fully over time, with different emphases. (Free Papua Movement 1984)

The following year, in the same forum, strong emphasis was placed on the effects of transmigration. At this point, international NGOs had focused their criticism on the World Bank funded transmigration program in Indonesia, and Papua was cited as the region most deeply affected by the program. The language used resonated with familiar themes in the discourse on indigenous peoples

This transmigration is having a devastating effect on us, the Papuan people: Our land is taken away from us. For us, like for so many other tribal peoples, present here, land has an eternal value and it is really unthinkable to see our land as a saleable property. The land belongs to our ancestors and we have only the right to use it to live and to survive. But transmigration needs the land and it is taken away by force. This is only possible under heavy military repression.

Subsequent paragraphs emphasize how Papuans have always lived “in harmony” with their living environment, which is being destroyed as “thousands of hectares of virgin rainforest are knocked down by small but strong bulldozers.” In relation to the penetration of the market economy that has accompanied in-migration, they argue that “

Our economic system is ruled out by the transmigration. In our traditional culture, we always share whatever we have in our communities and in cooperation we are self-supporting and don't know "poverty". We only become "poor" when we get forced to participate in the money-economy. (1985b)

There is clearly an emphasis in portraying the plight of the Papuans in relation to broader issues resonant among indigenous peoples elsewhere, namely the encroachment on ancestral lands, displacement and marginalization, and the incompatibility between modern forms of economic development with the local traditional customs and economic systems.

For the Indonesian government, such claims were rejected on the basis of the inapplicability of the “indigenous” label to differentiate Papuans from other Indonesians:

As a country which is composed of many different ethnic groups, indigenous to our various regions, Indonesia is one of the first countries, since its independence in 1945, to pledge solemnly in its Constitution and its State Philosophy, the Pancasila, the support of the principles of a just and civilized humanity governed under democracy with social justice for all people. Based on these principles, Indonesia, does not, and will not, tolerate any discrimination of rights or treatment of its people. On the contrary, it encourages the development of pluralistic communities led by the deliberations among representatives and conforming to the national motto "Unity in Diversity".

The promotion and protection of the cultural identity of all ethnic groups in Indonesia are guaranteed in Article 32 of the

Constitution, which states that the government shall advance the national cultural heritage of Indonesia. National culture expresses the personality and vitality of the entire people of Indonesia. The ancient and indigenous cultures which form cultural peaks in all the regions throughout Indonesia are part of the national culture.(1985a)

The statement clearly enunciates the Indonesian state's position, which is congruent with its view of a single nation. The Indonesian nation is viewed as being composed of a large number of different ethnic groups, all of whom are indigenous to the archipelago and who occupy particular regions of the country. Papuans in this respect have the same status as other groups and therefore should be treated equally. For the Indonesian state, equality of treatment implies making compromises to secure the interests of the nation, which include economic development and political stability. Measures taken to homogenize political institutions, prevent the mobilization of a secessionist movement, allow vast investment in the mining sector, and transmigration were justified in terms of these national goals. Within this logic, there is no basis upon which Papuans can claim to have a greater say in the management of land, resources, culture, or political representation than other groups in the archipelago.

These relative positions were maintained in the subsequent decades. The Free Papua Movement continued to criticize the Act of Free Choice and pressed for self-determination. Criticisms of the transmigration program were linked to displacement from "ancestral land", and a threat to the entire culture. The Indonesian government also maintained its position that all peoples of Indonesia were indigenous. At the 13<sup>th</sup> session of the WGIP in 1995, many indigenous groups complained that their right to self-determination could not be obtained because their governments did not recognize them as "indigenous". Indonesia joined countries such as Bangladesh and India in arguing that all peoples had been living on the land for thousands of years and therefore no peoples were more indigenous than others.(United Nations Commission on Human Rights 1995)

The demise of the authoritarian regime of President Suharto and the democratization of Indonesia after 1998 vastly expanded the ability of Papuans to mobilize. Most of these changes occurred domestically, as a civilian movement mushroomed and became institutionalized in two large congresses of the Papuan people in 2000. The creation of alternative structures, such as the Presidium of the Papuan Council (PDP), gave Papuans a renewed set of organizations that could claim legitimate representation. A number of NGOs also became active in documenting various human rights abuses and lobbying internationally. For instance, the legal-aid organization ELSHAM-Papua has been particularly active in this respect. As for the Free Papua Movement, it significantly reduced its activities and respected the new leadership role of the civilian movement.

In February 2002, the PDP organized a conference of indigenous peoples of Papua, which led to the creation of the Dewan Adat Papua (DAP, Papuan Customary Council). The DAP is composed of representatives of all 253 Papuan tribal groups. The leadership of the DAP became increasingly significant after the Indonesian government cracked down on the PDP leadership. One interesting corollary of its establishment was the overlap in representation. It was deemed necessary to have a separate entity to

represent Papuan groups as *indigenous tribal groups*, whereas the PDP embodies democratic representation of all Papuans without regard to tribal group differences. This adds a layer of complexity to the “indigenous” category.

The establishment of the DAP consisted of a strategic attempt to mobilize Papuans in terms of identities as “indigenous”. Its role was to protect the environment, the land, sea and natural resources of the Papuan people; provide respect for the territorial rights of all indigenous groups in Papua; and broker the development of natural resources with external actors for the benefit of all Papuans.

The DAP’s role in promoting self-determination added more ambiguity to the objectives of the Papuan people. In international forums, Papuan leaders always emphasized the right to self-determination of Papuans as a people. The DAP, however, has a mandate to respect the right of self-determination and autonomy for each tribe. The possibility of implementing self-determination and autonomy to all 253 groups in Papua does raise the question of its feasibility and its implications for the actual institutional significance of exercising such a right.(Mandowen 2005)

Internationally, interventions by various Papuan groups multiplied after 1998. The DAP made frequent appearances before the Permanent Forum on Indigenous Issues as well as the Working Group of Indigenous Populations. There were many more groups making representations for Papuans in international forums. For most of the 1990s, one organization represented Papuans at the WGIP, the West Papua Peoples’ Front. In 2001 and 2002, ELSHAM Papua, a legal aid organization, made appearances at the Forum. In 2003, six organizations from Papua made presentations. ELSHAM’s statement is illustrative of the themes being addressed by these organizations. It emphasized the rejection by Papuans of the Act of Free Choice and denounced the violence perpetrated against civilians by security authorities, the law splitting the province into three, as well as the increasing presence of non-Papuans in the province. Demands were made for a referendum to exercise the right to self-determination and Indonesia’s ratification of various human rights treaties. This latest demand has been increasingly heard by Papuan leaders, eager to use Indonesia’s adherence to human rights international law and norms as leverage for their case.(2003) At the 10<sup>th</sup> session of the Working Group on Minorities, Yan Christian Warinussy from the Institute of Research, Analysis and Development for Legal Aid, manokwari (LP3BH) stressed the same points as the previous years, with updates on recent developments in the province. (2004b) In the 2006 session of the Working Group in Indigenous Populations, four organizations represented Papuans, including the DAP, the Bureau of Consultation for West Papua Indigenous Community Development, West Papua Indigenous Community Development, and the Association of West Papua Students.

With the creation of the DAP, there was a rise in the discourse favoring themes relating to indigenous peoples. As Victor Kaisiëpo from the DAP declared at a seminar UN sponsored seminar on indigenous peoples in 2003, part of the role of the council was to “revive and empower the traditional institutions” of Papuans. “...*adat*-branches are to make the Papuans proud again of their traditional heritage,” with a deliberate strategy to create a “parallel civic society” organized around the revival of traditional, indigenous institutions.(Kaisiëpo 2003) This strategy was certainly reflected in some of the public statements and subsequent interventions before international forums. In its public statements in English, the DPA frequently used “indigenous peoples of Papua” to refer to

the 253 group represented in its body, thereby equating “adat” or “customary groups” with “indigenous peoples”. In the 12 August 2005 statement by the DPA, for example, which symbolically “returned” the Special Autonomy Law of 2001 to the Indonesian government, the protests at the failures of Special Autonomy and of addressing Papuan demands was made repeatedly in the name of the “indigenous peoples of Papua”. (Papua Customary Council 2005) In a presentation before the Permanent Forum in Indigenous Issues, Benny Wanda, the chari of Demmak (The Koteka Tribal Association) raised the usual issue of the Act of Free Choice, demands for self-determination and displacement, but used language that resonates with issues of ancestral lands and traditional livelihoods disrupted by external intervention:

“Since the Indonesian invasion, successive regimes in Jakarta, from Sukarno and Suharto to Megawati and Yudhoyono, have pursued a policy of settling a million Javanese in our lands but West Papua is our land, it is the home of our ancestors and it is sacred to us. For thousands of years we have taken care of our mountains and rivers and forests. We know that we are not Masters of Nature but part of Nature. We know that the Earth is our Mother because she gives us everything we need to live”. (2006)

The close association made between nature and peoples’ livelihoods was a way of casting Papuans in the same light as indigenous peoples in Australia or the Americas, whose traditional lifestyles were close to nature in comparison with overseas settlers.

The Indonesian government, on the other hand, has continued to side-step issues of indigenous rights, by redefining the category while giving its support for indigenous peoples’ issues. In 2004, its position had not changed substantially from statements made before 1998. The Indonesian delegate at the UN Permanent Forum on Indigenous Peoples contested the report in which the Forum expressed concern for human rights violations in West Papua. The delegate rejected the criticism, however, because the issue was framed in terms of Papuan peoples’ attributed status as indigenous peoples. The view was that “[a]s a matter of principle, Indonesia’s 500 ethnic groups were all regarded as equally indigenous; any reference in the Forum’s report was therefore irrelevant.” (2004a)

Similarly in its report to the United Nations Convention on the Elimination of all Forms of Racial Discrimination, submitted in 2006, the Indonesian government portrayed itself as a “multicultural” nation. It stated that Indonesia has about “1072 ethnic and sub-ethnic groups” across the archipelago and provides a list of the 100 most populous, in which the Javanese are the largest group followed by a long undifferentiated list. The report indicated “four principles used to determine one’s ethnic group (*masyarakat adat*) i.e. names, languages, environment, and customs.” It mentioned new legislation to protect ethnic groups. As part of this legislation, no distinctions were made between indigenous and other groups. Instead, there were distinctions between *masyarakat adat* and *masyarakat adat terpencil* (isolated or remote ethnic groups). The report used “ethnic group”, “traditional communities” and “indigenous peoples” interchangeably at times, which adds to the conceptual confusion. (UN CERD 2006: 6, 17)

Conceptual manipulation helps to differentiate the Indonesian case from other states. For the Indonesian government, an *adat* group refers to an ethnic or tribal affiliation. *Adat* in the Indonesian language is most closely translated as customary law, and was formally institutionalized as such under Dutch colonial rule. Various ethnic groups were seen as holding their own customs and traditions that were upheld and



codified during the colonial period. Remnants of these practices survived the advent of the independent, which then replaced customary law by a uniform legal system for all Indonesians. *Adat* was allowed to survive in villages in restricted realms. Even village communal land practices, family law, and religion were replaced by state legislation. After democratization, an *adat* movement began to resurface. Across Indonesia, several groups requested the restoration of customary laws at the village level. These demands were made from a number of different ethnic groups. This usage of *adat* has been consistent with the usage of *masyarakat adat* to denote an ethnic group. From this definition, all ethnic groups in Indonesia are given this particular label.

In their documentation, Papuans use the term, however, to refer to “indigenous peoples.” *Masyarakat adat* is used no longer to denote ethnic groups in general but only those that fall under the category of “indigenous”. In the common usage of the term, this leads to a significant ambiguity. While it can share with the broader concept the connotation of peoples who have preserved their local customs and traditions, at the same time it does not mean that a more restrictive sense of indigenous peoples is understood by the term. As a result, the Indonesian government can claim that all groups are indigenous, and can point to all ethnic groups in Indonesia as having traditions and certain customs, as well as identities based on certain lands. Most groups also still have people living in villages where these customs would have been more strongly preserved, and where unique social and cultural institutions would still be preserved (or revived in some respects).

The conceptual confusion is compounded by the usage of indigenous and non-indigenous applied to a different context in the last several decades. The Indonesian word for indigenous is *pribumi*, which was used as a category to differentiate all Indonesians from the ethnic Chinese (*non-pribumi*), who were categorized as such by the authoritarian regime of President Suharto because of their origins as a migrant group, irrespective of how long ago they actually migrated to the archipelago. In this respect, the distinction emphasizes groups who have had a clear territorial location in the archipelago, from the ethnic Chinese who were dispersed and mainly urban based. These distinctions were institutionalized in legislation and the categories were used to discriminate against the Chinese.

In recent years, the Indonesian government has eliminated officially the *pribumi/non-pribumi* categories from its legislation, but it has not filled the conceptual void to identify groups as “indigenous” along different criteria. It also revoked presidential decrees placing restrictions on certain traditions and religious practices of the Chinese, reviewed its legislation to eliminate discrimination, and eliminated requirements that Chinese carry proof of Indonesian citizen. The government justified these changes to the UN CERD in the following terms: “This is to ensure equal treatment and services for all the peoples of Indonesia in the field of government, social services and development and the elimination of all discrimination based on tribe, religion, race or place of origin.” (UN CERD 2006: 26) While it has contributed to improving the status of the Chinese, it has also reinforced the government’s conception of all ethnic groups being equal in Indonesia. With the inability to use the word *pribumi* to identify indigenous groups, it has resorted to *adat*, with the connotation of all ethnic groups being *adat* people. For Papuans and other groups seeking to be recognized internationally and

domestically as indigenous groups to gain certain particular rights, such as self-determination, such a conceptual field becomes difficult to negotiate.

In this respect, the Indonesian government justified its support for the Declaration on the Rights of Indigenous Peoples. It voted in favour of the Declaration, since it could then define the groups to which the Declaration could apply and interpret the Declaration in a way that fits its own conceptual categorizations of “indigenous peoples.” In explaining Indonesia’s support for the declaration, the Indonesian delegate also emphasized that “the principle of self-determination set out in the draft declaration should not be construed as authorizing or encouraging any action that might dismember or impair totally or in part the territorial integrity or political unity of sovereign, independent States.”(UN Human Rights Council 2006: 7)

## **Conclusion**

The *UN Declaration on the Rights of Indigenous Peoples* provides a strong new instrument for indigenous groups. They obtain rights to self-determination, autonomy, recognition of their culture, rights to retain their lands and gain access to natural resources, as well as other rights. The rationale for the Declaration is to eliminate the discrimination and oppression that has been particularly destructive of indigenous peoples’ livelihoods. Their particular vulnerability, as well as their particular history of displacement mainly from colonial occupation, prompted the United Nations to develop particular standards for indigenous peoples that are separate from other peoples and minority groups.

In Asia, however, the reach of these standards is somewhat limited and constrained by the difficulties of identifying clear criteria for indigenous groups. Many Asian states have contested the very definition of indigenous groups in their countries on the basis that there are no identifiable prior groups.

The Philippines and Indonesia illustrate the complex conceptual negotiations pitting groups such as the Igorots and Papuans against their respective states. With IPRA, the Igorots have gained more rights than any other indigenous groups in Asia. Yet, the Philippines state was one of the few which abstained in the voting on the Declaration. It did so because it feared the legal implications of the Declaration on its domestic laws and Constitution, according to official statements. The way in which indigenous groups have been defined in IPRA suggests a much greater continuum on the status of indigenous groups with other Filipinos, refusing to make a marked distinction and preferring instead to reaffirm the common origins of all groups. By doing so, the Filipino state can limit the emphasis of autonomous institutions on building institutions to represent a distinct cultural group and stress instead their instrumentality in allowing the Igorots to catch up to other Filipinos. It allows the Filipino state to continue to make claims to land and natural resources, where it is needed for the benefit of all Filipinos.

The Indonesian state has much more strongly contested demands made for special rights to indigenous peoples. Papuans increasingly used international networks and forums to cast their demands within the discourse of rights for indigenous peoples. Originally, they more strongly made claims to rights of self-determination of peoples as part of the decolonisation process and rights of peoples more broadly, but they have increasingly subsumed this view under the umbrella of an indigenous rights discourse.

More frequent appearances at the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues, combined with the creation of the DAP, illustrate this trend. They have faced, however, strong resistance from the Indonesian state, which has continued to promote the view that all ethnic groups in Indonesia are indigenous and therefore the basis for making special claims is unfounded.

The Indonesian state has been able to exploit the ambiguities of the conceptual field. The different usage of *adat*, and *masyarakat adat*, have sufficiently strong connotations that significantly broaden the understanding of indigenous groups to reach a very broad spectrum of groups. It has allowed the Indonesian government to give its support to the UN Declaration, and to claim its support to issue of indigenous peoples, by developing legislation targeted at *adat* groups. By doing so, it can place emphasis on common issues of access to land and preservation of certain customary practices in villages across Indonesia, instead of differentiating a particular sub-set of people as indigenous relative to others. Given the past usage of indigenous to differentiate all non-Chinese Indonesians from the Chinese, it has been able to claim new standards of equality for all groups, and side-step issues pertaining to more vulnerable groups, such as the Papuans. Most importantly, it has provided a basis for rejecting claims to self-determination that depart from its own understanding of local autonomy, thereby squarely rejecting Papuan appeals.

The effectiveness of the UN instruments to protect indigenous peoples is limited in Asia because the definition and applicability of the category can be contested. Contesting claims by indigenous peoples is much less feasible in countries where there are clear demarcations between indigenous and non-indigenous peoples. In the case of Asia, who is “indigenous” is not entirely clear and therefore can be manipulated by states intent on limiting rights extended to particular groups. While the Filipino state has gone the furthest in adopting legislation that recognizes claims of indigeneity and indigenous rights for the Cordilleran people, at the same time it has reserved an area of ambiguity that can be exploited. As for the Papuans, the prospects for using international instruments on indigenous peoples to their advantage are far less promising.

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