

In many parts of the world, indigenous peoples suffer from a history of discrimination and exclusion that has left them on the margins of the wider societies in which they exist. For this reason, they face great difficulties in maintaining and developing their own models of development and are disproportionately affected by poverty and exclusion. Under the basic principles of universality, equality and non-discrimination, indigenous peoples are entitled to the full range of individual human rights established in international law. However, in order to be able to enjoy equal rights as compared with other collectivities, and in order to be able to assert their self-determined development, special measures are required.

This issue of Indigenous Affairs is a combined issue that brings together a mixture of different articles and perspectives on development, self-determination and the role of customary law. The articles touch upon indigenous peoples' economic, legal, social and political development.

Self-Determination and Development

Indigenous peoples, as collectivities, have distinct and unique cultures, systems and world views, and their current needs and aspirations for the future may differ from those of the mainstream population. Indigenous peoples' lives and futures can only be assured through the recognition and protection of not only their individual rights but also their collective rights as distinct peoples. It is thus when their right to self-determination, as enshrined in the UN Declaration on the Rights of Indigenous Peoples, is asserted that indigenous peoples' collective rights can be realized in a meaningful way.

During the whole negotiation process for the drafting of the UN Declaration on the Rights of Indigenous Peoples, indigenous peoples consistently defended recognition of their right to self-determination as a prerequisite to the protection and promotion, as well as exercise and enjoyment, of all their rights. Indigenous peoples insisted that, besides individual human rights, collective rights are a cornerstone of indigenous communities and cultures. Communality and collectivity permeate their spirituality, relationship with the land, ways of resolving conflict, their view on the environ-

ment and their development aspirations. Indigenous peoples' views on the future and desires for increased well-being are, first and foremost, of a communal orientation and linked to the collectivity more than to the individual human being. Increased well-being and control of one's future is the epitome of indigenous peoples' development, whether the emphasis is on economic prosperity, customary laws, conflict resolution or spiritual relations. In this volume, Dalee Sambo illustrates how development is an inalienable right and an integral part of indigenous peoples' self-determination, as stipulated in the Declaration, by using the example of the Alaska Native Claims Settlement Act.

As Victoria Tauli Corpuz¹ has stated on several occasions, there is a need for a human development model that provides indigenous peoples with the possibility of continuing to live on their lands and decide how their natural resources are going to be used, and this means that it has to be indigenous peoples themselves who should decide what kind of cultural, economic, legal and spiritual development they want. Such self-determined development would respect indigenous peoples' culture and identity and would reflect indigenous peoples' own visions, perspectives and strategies.

Most recently, the communality or collectivity of indigenous peoples has been revived within the celebration and respect of "Mother Earth". The concept of Mother Earth as used by indigenous peoples in the Americas contains religious elements but, first and foremost, it represents cultural values and a desire to take care of future generations. Linked to the concept of Mother Earth is the notion of Living Well. Living Well expresses the close relationship between living beings and nature and it links to the historic past of indigenous self-determination before invasion and conquest. It is the opposite of resource exploitation, commercialization and oppression and gives priority to subsistence, and the renewable and sustainable use of nature. In this way, it represents an indigenous form of development as an alternative to Western dominated capitalist development. There are reasons to be cautious, however, with regard to the increasing use of references to the *rights of Mother Earth* within or inter-related to the international human rights framework.

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Although such language may better reflect an indigenous worldview than the language of human rights proper, there is still the question of who the legitimate spokesperson of Mother Earth is. It is therefore important to be wary of the potential implications. The new discourse on Mother Earth Rights must contribute to reinforcing the integrity of the international human rights framework. If it is instead to be used to question the validity of those human rights, this will be a grave setback for respect for human rights, indigenous peoples' rights included. The concepts of Mother Earth and living well are summarized and debated in the articles of Mirna Cunningham and Efrain Jaramillo.

The insistence on collective rights and their linkage to indigenous cultures and traditions is, to a large extent, a survival mechanism. It is an attempt to counter dispossession when constantly under threat from mining, logging, oil palm plantations, etc. In this volume, John Bamba, an indigenous leader from West Kalimantan, Indonesia, gives an important example of how establishing community-based credit unions unites the necessary communal linkage with individual needs for loans.

The Importance of Customary Law for Indigenous Peoples' Development

The indigenous cultures contain strong collective traditions such as sharing, solidarity and community-owned land. Indigenous peoples need to control their own future and development and, to do so, they need to have their customs and traditions recognized. In this respect, customary law is primordial for indigenous peoples' development.

In this volume, the articles on Malaysia (by Jannie Lasimbang), Bolivia (by Elba Flores Gonzales) and Russia (by Natialia Novikova) provide examples of the importance of customary law for indigenous peoples. In Sabah, Malaysia, encouraging moves have been taking place to promote and protect indigenous peoples' traditional system of governance known as *adat* (which includes customary law and the traditional institutions). This can help indigenous peoples in Sabah to retain their traditional ways of life and social traditions. In Bolivia, legal pluralism is now recognized and steps are being taken to legalize the indigenous peoples' justice system. This creates some challenges but also opportunities to develop a new system, which the author sees as characterized by "mutual respect, reciprocity, coordination and complementarity". As for Russia, the author argues that the existing legal system offers room for the inclusion of indigenous peoples' customary

laws and traditions. This could be relevant, especially for traditional forms of natural resource management and regulation of local issues.

In his article, Sing'oei Korir argues that, for indigenous peoples, traditional practices and customary law may be better suited to resolving conflict than the statutory norms. He illustrates this point through the conflict resolution process among pastoralist communities in northern Kenya. As he emphasizes: "Given the non-atomization of individuals in African states and the fact that belonging to groups is still a salient reality, there must be a place for the deployment of community mechanisms in addressing disputes that transcend the individual and have pervasive impacts on the group". In the same line, the article by George Mukundi illustrates the importance of indigenous peoples' laws, traditions and customs for their rights to land and natural resources. The article shows how indigenous peoples' customary laws can protect and promote collective land ownership, control and management, in accordance with their cultures and traditions.

The adaptive and evolving nature of customary law can sometimes be a disadvantage given that, through history, the colonial legal system has occasionally distorted it. The article by Asoka Kumar Sen presents the example of India, where the British colonial system manipulated indigenous customs. As he puts it himself: "...both internal and external forces invented and recreated [customs] from time to time to suit the exigencies of the given community and the imperatives of the colonial state...". However, as Wilmien Wicomb points out in her article, customary law – and the adapting nature of customary law – can also be used by women to promote and protect their rights to access land. According to the author and other researchers, the fact that customary law is not a static body of law and the fact that it is always evolving and adapting to the environment gives women an opportunity to "negotiate change within their communities in order to advance their own position". This mutable nature of customary law can thus also be an asset and contribute to the development of particular groups, such as women or indigenous peoples.

This combined issue of Indigenous Affairs offers a general discussion on possible development models that respect indigenous peoples' rights to self-determination and a specific focus on indigenous peoples' customary law and how such customary law can be built upon in indigenous peoples' pursuit of self-determined development, self-governance, control and management of their territories, and even help them in addressing their own internal challenges, such as resolution of conflicts and women's rights. ○