

INTRODUCTION

PROJECT PROPOSAL – COMPARATIVE ANALYSIS: CULTURE, CUSTOMS, AND TRADITIONS OF INDIGENOUS PEOPLES

DEFENDING DIVERSITY: CASE STUDIES

Saami Council, Swedish Section

I. BACKGROUND

There are an estimated 300 million indigenous peoples living in approximately 70 countries in the world, mainly in developing countries. They have diverse cultures, traditions, and languages, and are among the poorest and most disadvantaged, living as they often do, in remote isolated areas. They are also often marginalized from socio-economic and political processes that affect their well-being and their lives, and seldom have rights over their lands and their resources. Yet, in many countries around the world, this is changing, and new developments challenge the existing status quo of marginalization and isolation. Increasingly, indigenous peoples are making themselves heard, and the Saami Council believes that this new approach to national and international development is worthy of increased focus and attention.

Within this context, there have been a number of recent developments indicating a new avenue to harmonious and peaceful inter-ethnic co-existence. There is growing recognition of the rights of indigenous peoples to their culture, their traditions, their resources, and to their right to have their voices heard and their views taken into account. With this as an integral principle to its work, the Saami Council seeks to initiate a process of analysis and examination of different indigenous cultures and traditions within the rights framework as a means of drawing attention to the issue of cultural preservation and ethnic diversity.

Directly or indirectly, indigenous peoples have been influenced by the pervasive influences of the market economy, and they, too, have had to respond to such challenges and devise their own approaches, which are practical yet culturally appropriate. These approaches have, as yet, not been documented or researched in a methodical and substantive manner, and although some material does exist on the subject, none have been undertaken within the framework of customary and national law, nor with an indigenous orientation and perspective.

II. JUSTIFICATION

The Saami Council believes indigenous peoples' culture, customs, and traditions is an issue that deserves greater attention and further work. In today's world of globalization and rapid communication between countries

and continents, the need for knowledge and understanding of other cultures is even more critical. This is even more relevant when viewed within the context of recent developments in the law and policies of many countries demonstrating the diversity and range of indigenous culture, customs, and traditions including, but not limited to, the following examples: The Native Title Act and related developments recognizing the rights of the Australian Aborigines to their ancestral lands; the recent legislative reforms in the Philippines to recognize ancestral domain (the Indigenous Peoples' Rights Act); the relationship between national law and *adat* law in Indonesia and Malaysia; the role of the traditional indigenous authorities in many parts of Latin America (e.g., Colombia); recent developments in the South African region (e.g., recognition of traditional authorities and a regional human rights charter which is in process); the partial recognition of indigenous land rights and recent conclusions of a peace process in the Chittagong Hill Tracts of Bangladesh and in Guatemala); and the current developments relating to the customary rights of the Saami in Finland, Norway, and Sweden.

These are but a few of the recent initiatives that are currently in process and it is necessary that they are researched, analyzed, and recorded. This should not be carried out in isolated incidents or through an ad hoc approach, but systematically, as part of an ongoing process for greater recognition and respect among different cultures. There is at present a momentum for democracy and participation and for peoples' rights to be taken into greater account in national policy processes and in the internationalization of trade.

The Saami Council strongly believes that such an initiative would facilitate a better understanding of the historical and cultural context of indigenous peoples, and help us look beyond our own borders and listen to the voices of the marginalized and dispossessed peoples. It has therefore, secured the funding for a comparative study to address the issue of indigenous culture, customs, and traditions within the context of recent developments in this field – from a legal perspective. The project will be in the form of case studies that will be analytical and descriptive, while at the same time attempting to draw lessons from the experiences of indigenous peoples in this process. The Saami Council will be the main implementing agency, in cooperation with indigenous experts knowledgeable about the law and culture of their own peoples, and with practical experience in dealing with such issues.

III. FOCUS

The aim of the study is to place indigenous cultures and traditions firmly on the developmental agenda, from a legal perspective. By examining their ways of life, their cultures and traditions, their customs and laws, and their strategies for survival, the studies will draw lessons from past experiences as a way of identifying practical approaches to cultural survival. The orientation will be to highlight the positive contribution indigenous peoples have made, and continue to make, to law and democracy within the context of cultural preservation and customary law.

The focus of the study is to compare the experience and traditional knowledge of indigenous peoples in protecting their cultures, customs, and traditions. This will be based on case studies from selected areas, within the conceptual framework of cultural preservation and customary law. A common element will be to examine how this is, or can be, conceptualized within a legal regime including both national and international law.

The different sections will include analysis on the collective aspects of issues crucial to indigenous rights such as self-determination, land, the environment, culture, and intellectual property. Gender will also be included as a mainstream cross-cutting issue. The contributors will be selected on the basis of their experience and expertise, complemented by their powers of analysis and legal reasoning.

There will be in-depth analyses of the impact of development and globalization on indigenous cultures and traditions, and the strategies that have enabled these cultures and traditions to survive (or not, as the case may be). The emphasis will be to research, analyze, and document indigenous culture, customs, and traditions, and to come forward with key recommendations for the best strategies to ensure that these peoples survive into the new millennium.

The orientation of the studies, to the extent possible, will be forward-looking, as a way to draw attention to the flexible approaches taken to co-exist and complement each other in a peaceful manner. The study also aims to initiate a process of participatory engagement whereby both indigenous and non-indigenous peoples will be better informed about the relationship between culture and customs, and how these two concepts interact in the preservation, or destruction, of indigenous peoples.

A video will also be made to visually demonstrate indigenous cultures, customs, and traditions. The impact of visual productions in complementing, and more graphically, demonstrating key issues cannot be underestimated and this will be of major assistance in more easily communicating the nature and objectives of the key concepts. This will be of singular importance in demonstrating the role and effects of development and globalization on indigenous cultures, customs, and traditions and will complement and add to the impact of the study, including its participatory aspects.

The project will be implemented in selected countries in Africa, Asia, Europe, and South America. This includes Kenya (Maasai); Bangladesh (Jummas); Philippines (Cordilleras); Saami (Finland, Norway, Russia, and Sweden); and Latin America (Guatemala and Nicaragua).

IV. OBJECTIVES

The following are the objectives of the project: (1) to document the relationship between indigenous customs, cultures, and traditions in a legal framework; (2) to provide a comparative analysis of indigenous customs, cultures, traditions, and identity, including both individual and collective aspects; (3) to identify key elements for effective protection of customary

laws and practices, including within the context of international and national law and policy; (4) to provide a practical tool for action-oriented research and policy-making; and (5) to stimulate further interest and action in the field of indigenous customs, culture, traditions, and law. These inter-linked objectives will serve as the guiding principles for the study.

The study also aims to contribute to the ongoing standard-setting process at the United Nations, namely the continuing discussions on the Draft Declaration on the Rights of Indigenous Peoples (DDRIP), which includes a number of specific references to indigenous culture, customs, and traditions, and also to the collective aspects of indigenous rights.

It will also make a positive impact on other international processes relevant to indigenous peoples, including the U.N. Working Group on Indigenous Populations (WGIP), which has a number of ongoing studies relevant to indigenous culture and traditions, including studies of land rights; indigenous heritage; treaties, agreements, and other constructive arrangements; and the recently established Permanent Forum for Indigenous Peoples. It is expected that the Permanent Forum will consider and coordinate operational and substantive work on indigenous peoples. A study analyzing indigenous cultures, customs, and traditions within a legal framework will facilitate the work of this proposed body in better understanding the complex nature of indigenous issues and the intricacies inherent within any key concept.

This project will also contribute to the work the International Labor Organization (ILO) has conducted on indigenous peoples, in particular, within the framework of its international labor standards. The ILO has the distinction of having adopted the two international instruments exclusive to indigenous peoples: Convention No. 107 on Indigenous and Tribal Populations (1957) and Convention No. 169 on Indigenous and Tribal Peoples (1989) (which revises Convention No. 107). As legal instruments with international scope and relevance, these conventions are extremely important to indigenous peoples' rights, and both include specific references to cultural promotion and protection, recognition of indigenous customs and traditions, and customary law.

The main objective of the comparative study is to focus attention on the issue of the importance and prevailing nature of culture, customs, and traditions in any society from an indigenous perspective, and with indigenous peoples as both subjects and objects. The study will be implemented on the fundamental basis that indigenous peoples have the right to have their voices heard and recommendations taken into account in the process of socio-economic development, which also includes cultural survival. It will provide a platform for discussion and action with the engagement of indigenous peoples from its conception, thereby paving the way to more action-oriented policies and plans for action.

The main reasons for the Saami Council to identify this issue as urgently requiring further research and documentation is due to the lack of accurate and substantiated data and information on this subject, and the need to fill this gap. This project is specifically designed for this purpose, thereby having a considerable potential to stimulate constructive measures at the

international level and is aimed at strengthening the conceptual framework for legal approaches to this key question.

The entire process will be implemented by and for indigenous peoples, as a building block in strengthening the capacity of indigenous peoples to be more proactive in their development, and in developing exchanges and cooperation between and among different indigenous communities and peoples – an area that is seldom explored and developed. This participatory approach will also have the added impetus of strengthening indigenous peoples' capacity to identify the manner and approach for their development, and in presenting a novel approach to the issue of indigenous customs and traditions, both from an individual and collective perspective.

V. METHODOLOGY

The project will include a comparative study on indigenous customs, culture, and traditions with the following components: (1) a general introduction and descriptive section providing background information to the issue and an overview that highlights common issues and convergences as well as different approaches; (2) selected case studies focusing on the development and dynamics of culture, customs, and traditions, and on identifying key elements; (3) a participatory workshop to introduce the report and the findings and recommendations; and (4) a video documenting specific issues which are an integral part of the study.

The aim of the video component is to ensure that the issue reaches a wider audience, including the E.U. countries and the developing world. This will considerably enhance its impact in terms of raising awareness about indigenous culture, customs, and traditional rights in the globalized world.

The study will include the findings and analysis of the different case studies, including future trends in indigenous rights. It will be in different sections, each one focusing on different elements of collective rights with an introductory section providing an overview of the issue and a concluding section identifying ways forward. The study will be both analytical and practical, including both the research and historical perspective as well as the present situation, with clear guidelines outlining how this issue can be better understood and recognized. The report will address the issue of indigenous culture and traditions, and provide guidelines for their survival.

The case studies will include the following components: (1) importance of culture, its role, and impact; (2) traditions – how they are practiced; (3) role of traditional institutions; (4) indigenous law and practice; (5) jurisprudence; (6) national law and policy; (7) impact of development and globalization; (8) role of women; (9) strategies for survival; (10) lessons learned; and (11) future trends. In addition to these specific components, the studies will also include background information on history, culture, the economy, society, and other such general information.

VI. ACTIVITIES

The strategy employed will include the following:

Initial Phase (months 1-4): during this period, the project will be initiated. The conceptual framework for the study will be finalized and contributors selected, contacted, and contracted;

Introductory Workshop (month 5): this period will have the aim of introducing the contributors to each other and to the issue in a comprehensive and participatory manner. It will provide them with an opportunity to discuss and elaborate on the subject prior to commencing their research and writing. It will also help each contributor identify how best to approach their specific substantive issue, and also highlight areas of possible overlap and duplication and how and if this can be avoided. This workshop will also facilitate cooperation and networking among the contributors;

Implementation Phase (months 6-13): during this period the study will be researched, analyzed, and prepared. A first draft will be submitted to the editor/coordinator for comments, and finalized during this period;

Final Phase (months 14-17): the study will be edited and finalized during this time, with the participation of the contributors, and printed. Translations into Spanish and French will also be undertaken during this phase;

Presentation Workshop (month 18): there will be a workshop towards the final stages of the process to formally present the study and its findings (in English, French, and Spanish). This workshop will be for a wider audience with the contributors presenting their perspective on the issue and engaging in dialogue and discussion to make better and more widely known the issue, as well as the inherent legal and political connotations. In this way, the publication will serve as a catalyst for further discussion and action on the subject of indigenous culture, customs, and traditions – a key issue in indigenous rights.

The central element in this process will be the development of linkages between and among different indigenous peoples in seeking to protect and promote their rights at the global level, which is important in today's world of globalization. This study will be part of a process working toward indigenous self-empowerment. In addition, it will be a practical application of the principle of meaningful participation, one that is gaining ground as the indivisible and common denominator for all indigenous projects supported by international donor agencies.

The project will also aim to include the following elements:

Legal: to highlight the different issues inherent within the conceptual legal framework of indigenous culture and traditions;

Educational: to increase awareness and understanding of indigenous rights (for both indigenous and non-indigenous peoples);

Capacity-building: to provide a space for indigenous peoples to research, analyze, and write about their own rights from their own perspective;

Networking: to enable indigenous peoples to develop and strengthen linkages with other indigenous peoples, thereby stimulating creative approaches to this issue;

Consultative Group: to establish an informal group of indigenous experts on indigenous rights for consultation and advice at the national, regional, and international level.

VII. RESULTS

The expected results of the project include the following: (1) a publication on indigenous peoples and collective rights, which will provide a unique perspective on this issue and raise awareness of this issue. This will be in English, French, and Spanish, and will be a valuable educational asset in research and documentation; (2) a video on the issue which can be a tool for raising awareness of indigenous peoples' culture, customs, and traditions, and their relevance (in the E.U. and elsewhere); (3) the establishment of an informal consultative group of indigenous experts on indigenous customary rights; (4) there will be increased networking and cooperation between and among indigenous peoples, as well as with international organizations interested in the issue; (5) greater cooperation between the E.U. and indigenous peoples, in particular within the context of developmental and technical assistance; (6) generating increased attention and awareness of the issue by engaging in a participatory approach which includes workshops and other such activities, many of which will be carried out in the indigenous areas with community involvement; and (7) to make a contribution to the U.N. Decade for Indigenous Peoples and thereby, contribute to U.N. standards and processes relevant to indigenous peoples.

VIII. SUSTAINABILITY

A key element in this project is the implementation process, which includes local experts who are knowledgeable and experienced with respect to the issue. These individual experts will be able to research and orient their component of the project in a manner that is appropriate to their national and local socio-cultural characteristics, and that takes note of key developments at both of these levels. This participatory process will also have the advantage of bringing the studies closer to the people concerned as a way of ensuring

that the approach and orientation are appropriate to the circumstances, the communities, and location. This will also have the added value of strengthening local participation and involvement, thereby enhancing the sustainability of the project.

It is well known that with participation and involvement comes ownership. Therefore, one of the reasons for the modalities selected is to secure the sense of ownership as a means of facilitating the success of the project (which includes follow-up of the key recommendations and ways forward which will be outlined in each component of the project). It is envisaged that this approach will be a major factor in ensuring full active participation of the key actors in the process.

IX. ABOUT THE CONTRIBUTORS

S. James Anaya is the Samuel M. Fegtly Professor of Law at the University of Arizona. Of Purepecha and Apache ancestry, he teaches and writes in the areas of international law, constitutional law, and on issues concerning indigenous peoples. Among his numerous publications is the book *Indigenous Peoples in International Law* (Oxford Univ. Press 1996). Professor Anaya received his B.A. from the University of New Mexico (1980) and his J.D. from Harvard (1983). He was on the law faculty at the University of Iowa from 1988 to 1999, and has been a visiting professor at Harvard Law School, the University of Toronto, and the University of Tulsa. Prior to becoming a full-time law professor, he practiced law in Albuquerque, New Mexico, representing Native American peoples and other minority groups. He was the lead counsel for the indigenous parties in the landmark case of *Awas Tingni v. Nicaragua*, in which the Inter-American Court of Human Rights upheld indigenous land rights as a matter of international law.

Mattias Ahrén is a Saami from the Swedish side of Sápmi. He holds LL.M.s (Master of Laws degrees) from the University of Stockholm and the University of Chicago. Ahrén has served as a Junior Judge at Stockholm County Court, and was an associate at the law firm of Mannheimer Swartling and Danowsky & Partners in Stockholm. In 2001, he joined the Saami Council as the head of the human rights unit. Ahrén has written articles and reports on human rights and indigenous peoples, including articles on indigenous peoples' rights to their traditional knowledge and cultural heritage. He also represents the Saami Council at international fora. Ahrén is a member of an expert committee responsible for drafting a Nordic convention between Finland, Norway, and Sweden on the rights of the Saami people.

Raja Devasish Roy is the traditional chief of the Chakma in the Chittagong Hill Tracts, a semi-autonomous region in Bangladesh. He trained as a barrister-at-law at the Inns of Court School of Law, London, and holds a B.A. (Hons) in law from the University of Kent at Canterbury, U.K. as well as a diploma in legal studies from La Trobe University, Australia. Roy has served as the Chakma chief for over twenty-five years, and has presided over a traditional juridical system of customary rules and helped enforce them by resolving disputes brought before him. At times, through judicial decisions,

he has also indirectly played a role in facilitating reform of some of these laws. As chief, Roy is an ex-officio adviser to the Ministry of Chittagong Hill Tracts Affairs for the Government of Bangladesh and to the Regional Council and Hill District Councils. He also serves as an active member of a number of indigenous organizations including Taungya, the Hill Tracts NGO Forum, and the National Adivasi/Indigenous Peoples' Forum. He has published extensively on indigenous rights and practices law in the High Court Division of the Supreme Court of Bangladesh.

G. Nasieku Tarayia is the first Maasai woman lawyer from the Kajiado District in Kenya. She is currently the Deputy Managing Director of a financial institution working to alleviate poverty by making loans to rural individuals. Tarayia works in close cooperation with the Indigenous Information Network, an indigenous organization that educates indigenous women about their legal rights and creates awareness about their participation in civil society issues. She is the chair of the board of governors of the only Maa Girl Child Secondary School in Kajiado Central, and sponsors the education of girl children rescued from forced marriages. Tarayia participates actively in indigenous events both in Maasai land (among the Maasai of Narok, Samburu, Laikipia, Kajiado, Trans-mara, Loitai, Larusa and Naivasha), and internationally. She is currently undertaking an M.B.A. program at the University of Nairobi.

Romeo Tiu López is a Maya K'iche and received his law degree from the University of San Carlos in Guatemala. He has served as a district judge for many years, including in Totonicapán and Sololá. He also worked with the U.N. Verification Mission in Guatemala (MINUGUA), including at the Office of Indigenous Affairs, and as a consultant on customary law. Tiu López has served as legal adviser to indigenous organizations, including the Consejo Maya, local councils in Totonicapán, and to the Commission for the Defense and Promotion of Indigenous Rights (WUKUB'NOJ). He is also a member of the National Commission on Access to Justice and the Academy of Maya Languages. Tiu López has written extensively on customary law and indigenous rights including *Customary Law in Guatemala* (1996), and *The Forests of Totonicapán: Juridical Aspects of Forest and Hydro-resources* (Flasco, Minugua & Cintierra eds., 2003).

Jose Mencio Molintas is an Ibaloi of Benguet Province, Cordillera Administrative Region, in the Philippines. He is a lawyer by training and practices law in Baguio City. Molintas is an active member of a number of organizations working on indigenous peoples rights in the Philippines, including the Cordillera Peoples Alliance (CPA) and PANLIPI – Tanggapang Panligal para sa Katutubong Pilipino (the Legal Assistance Centre of Indigenous Filipinos). He was formerly the Chairperson of CPA.

Chandra Roy is an indigenous lawyer from the Chittagong Hill Tracts, Bangladesh. She received her LL.B degree from Punjab University, Pakistan and holds an LL.M in international law from American University, Washington, D.C. She has worked at private law firms in the United States and in Argentina, and for non-governmental organizations including the Minority Rights Group, London. Roy also worked at the Standards Department the International Labour Office (ILO) and helped establish a

project to increase awareness of ILO standards relating to indigenous peoples. Her publications include *Land Rights of the Indigenous Peoples of the CHT* (IWGIA 2000) and *The International Labour Organization: A Handbook for Minorities and Indigenous Peoples* (ASI-MRG 2002). Roy currently works as a consultant based in Oslo, Norway and was responsible for conceptualizing and coordinating this project.

