Environmental Management & Indigenous People:
What ships sail in our seas?

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Outline

1. Objectives & Introduction

2. Indigenous Environmental Management

3. Thematic Case studies
   - Biodiversity Conservation
   - Intellectual Property Rights & Trade
   - Human Rights and Justice
   - Environmental Security & Climate Change

4. Overall Flaws & Root Causes

5. Recommendations

6. References
Objectives

1. To examine the situation of indigenous peoples and their relationship to environment

2. To discuss the extent to which indigenous people’s concerns have been incorporated into international law.

3. To identify weaknesses in application of indigenous people’s rights for environment management in Int. Env. Law
Introduction

- Indigenous people number over 370 million (Westra 2007). 90% of the total population in Pacific

- Inhabitants of major/remote biomes of the earth

- Have a distinct culture specific to land and territories (Meyer 2001)

- Are economically disadvantaged or isolated
Skin colour map for indigenous people
Predicted from multiple environmental factors

From lightest ... ... to darkest skin

Source: Emmanuelle Bournay, UNEP/GRID-Arendal

Indigenous Environmental Management

- 80% of Latin America’s natural forest is now under indigenous control (White & Martin 2002).

- In PNG, communities co-manage resources Wildlife Management Areas

- Some conflicts remain

- Loss of traditional knowledge is devastating impact on all biological diversity (UNEP 1999)
‘Rights of indigenous people and communities must be protected’

NON-GOVERNMENTAL organisations worldwide want the draft document on the Global Programme of Work on Protected Areas to strongly reflect the rights of local communities and indigenous peoples.

The document, over 300 pages long, is being finalised by delegates at the Seventh Conference of Parties (COP7) to the Convention on Biological Diversity (CBD) held here.

NGOs have collectively urged the assembly of 188 countries to ensure that local and indigenous communities are consulted before the creation of protected areas, which will affect their homes and livelihoods.

“Take should be free and prior informed consent of indigenous and local communities for any projects and plans relating to their territories and resources in and around protected areas,” a joint NGO statement said.

They are also against governments turning over the management of protected areas to the private sector through concessions and leases, as this ends up depriving indigenous peoples of their rights and causes a greater loss of bio-diversity through ill-planned programmes.

The International Indigenous Forum on Bio-diversity said forcible resettlement of native and local people only increased their poverty and should be stopped. Forcible resettlement destroyed their traditional way of life and limited their income-generating options.

“If State-parties are serious about poverty alleviation, forcible resettlement of indigenous peoples for conservation must be abandoned,” they said.

They also want to be allowed to continue using their native customary laws, and for indigenous women to be allowed in decision-making as they were users and cultivators of the land.

Recognising native rights over land and bio-resources was paramount before moving on to other aspects of the Convention, such as technology transfer and equitable sharing, said Debra Harry of the Indigenous Peoples Council on Bio-Colonialism.

“We oppose patents on bio-resources and until indigenous rights are respected in the CBD, it is premature to even start discussions on access and benefit sharing,” she said.

While Governments are keen to adopt the document, several are objecting to the setting of targets and timelines for implementation, preferring instead to let countries individually decide their own timeframes.

NGOs, however, want these to be decided at the global level and adhered to.

Developing countries also want commitments from richer states to provide funding assistance and technology transfer to help poorer nations implement the protected areas programme. They stressed, however, that the technology must be suitable and agreed to by recipient nations and in accordance with their capacities.

Delegates are also hammering out another document on protecting mountain bio-diversity, as mountain and highland regions are the head sources of rivers, and how well they are protected has direct effects on lowland areas.

‘Use funds to make firms appreciate environs’

Source: CBD 2004
Indigenous People as subjects of International Law – Historical Context

1993: UN Draft Declaration on the Rights of Indigenous Peoples for basic rights and fundamental freedom

1992: UNCED & Agenda 21 elevates environmental management & development relations


1983: UN Working Group on Indigenous Populations recognises non-dominant sectors & need to preserve ethnic identity

1965: International Convention on the Elimination of all Forms of Racial Discrimination - right to own a property without discrimination

1957: ILO Convention on Indigenous and Tribal Populations in Independent Countries recognised right of ownership and land rights
Thematic Case Studies

1. Biodiversity Conservation

2. Intellectual Property Rights & Trade

3. Human Rights and Justice

4. Environment Security & Climate Change
# 1. Biodiversity Conservation

- Biodiversity laws has the most important claims of indigenous peoples
- **UNCBD Article 8(j): preserving knowledge/ innovation for sustainable use and conservation; equitable sharing of benefits**
  - from involvement to active & responsible management
  - approval in the application of knowledge BUT this implies that local knowledge is protected only if it has a value
  - No specific rights stipulated – certain degree of control & protection
  - Idea of benefit sharing remains vague
- **Article 15: national sovereignty, Prior Informed Consent (PIC), Access & Benefit Sharing (ABS) & Mutually Agreed Terms (MATs)**
  - focus on state ownership NOT local rights
  - isolates knowledge and practices from access to genetic resources
  - makes PIC optional to Parties
  - legal capacity of developing countries to regulate bio-prospecting
#2. Intellectual Property Rights & Trade

- CBD COP 3 impact of IPR on achievement of objectives (Decision III/17)
  - no specific means of protection
  - subsequent treaties to support IPR (article 16/5)

  - Tests practical solutions rather than issue identification
  - IGC policy making process lacks participation of indigenous people
  - current IP system provides inadequate protection of TK and facilitates its misappropriation
#3. Human Rights and Justice

- **Participation & access to information:**

- **Justice against eco-crimes and eco-violence:**
  - Negligent harms of the magnitude of industrial disasters (Bhopal, Chernobyl)
  - Direct and Indirect forms of harmful/criminal aspects of eco-footprint crimes (*Wiwa v. Royal Dutch Shell Case History*)
  - Illustrate crimes against humanity
#4. Environment Security & Climate Change

- Detrimental impacts on infrastructure and traditional indigenous ways of life in polar regions and islands (IPCC 2007)

- Indigenous peoples are observers of climate changes and also actively adapt to the changing conditions (Griffiths 2008).

- Global and regional policy frameworks lack explicit plight of indigenous people
  - adaptive responses and mitigations of indigenous and other local peoples receive far less attention in IPCC (Salick and Byg, 2007)
  - Bali Action Plan, UNFCCC COP 12 and REED discussions reference indigenous peoples and local communities (decision 2/CP.13) BUT lacks effective commitments and safeguards on rights, equity and governance issues
  - REDD incentives run the risk of violation of customary rights (Eliasch Review, 2008)
Overall Flaws & Root Causes

- Top-down policy-making often serves to reinforce the unequal *status quo* in indigenous environmental management

- Regimes discriminate against indigenous interests, and linked to ‘indigenous knowledge piracy’ and eco-crimes

- Legal regimes lack specificity covering diversity of indigenous environmental issues

- Lack of effective negotiating capacity of national/international representatives

- Lack of transparency and mutually agreed procedures
Recommendations

- Adopt and apply human rights, ecosystem and participatory approaches
- Apply biological/ecological integrity model to legislate indigenous rights (Westra 2007)
- Ensure all international environmental policies and instruments apply the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Conjoined research and action with indigenous peoples
- Enable indigenous peoples informed and effective participation in the UNFCCC/WIPO/TRIPS processes
- Ensure multilateral development banks and development agencies fully implement relevant social and environmental safeguard policies
- Establish working groups among indigenous peoples at the national level to monitor and influence government environment policies
“We should talk not only about livelihoods but also education. We need equity in education. We need to be empowered by education”

(India Participant, Forum on Indigenous Issues 2008)
References


CIEL. 2007. What is the real relationship between the CBD working group on access and benefit sharing and WIPO and WTO? Washington, DC : Centre for International Environmental Law


