



Indigenous Peoples and Peacebuilding

A compilation of best practices



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**Oficina de Promoció de la Pau
i dels Drets Humans**



“Indigenous Peoples
and Peacebuilding:
A compilation of
best practices”

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Table of contents

Introduction	5
1 Indigenous Peoples and Peacebuilding: A compilation of best practices	7
Part 1: Concepts and Debates	15
a. The United Nations and Indigenous Rights: Who are the Indigenous Peoples?	17
b. United Nations and Peacebuilding	23
c. Indigenous Peoples and Peacebuilding: A theoretical framework	27
Valuing Human Rights in Peacebuilding, Michelle Parlevliet	29
Indigenous Peoples and Lasting Peace: The role of Indigenous Peoples and rights in building a more inclusive society, Farid Benavides	35
Part 2: Cases, Best practices and Conclusions	41
1 Constitutional Processes, Indigenous Rights and Peacebuilding	43
Key issues in addressing Peacebuilding in Constitutional Processes. The Case of Bolivia, Carlos Vergara	45
Indigenous Peoples in Bolivia, Luis Basteiro	57
Support to the transitional process of the democratic model in Bolivia: Promoting the change in peace, Santiago Daroca	61
Indigenous rights in Bolivia, Juan Pablo Chumacero.	63
Constitutional Processes, Indigenous Peoples Rights and Peacebuilding in The Philippines, Domingo Nayahangan and Masli Awingan Quilaman	69
2 Peace Processes, Indigenous Rights and Peacebuilding	75
Peacebuilding as a challenge in Guatemala, Lucia Xiloj and Christina Elich	77
Conflict and Indigenous Peoples in Guatemala, Salvador Marti	91
The politics of conflict: Drawing lessons from the Bagua Case, Carlos Alza.	97
Indigenous Politics and Conflict in Peru, Claire Wright	109

3	Reconciliation Processes, Indigenous Rights and Peacebuilding.	115
	Justice, Dialogue and Reconciliation: Global approaches aimed at establishing harmony and featuring the involvement of victims and civil society, Jordi Palou	117
	Reconciliation in the Rift Valley, Climate Change and Population Movement, Jerotich Seii Houlding	125
	The experience of Kenya National Commission on Human Rights (KNCHR), Fatuma Ibrahim Ali	137
4	Other UN approaches	145
	UNDP and Indigenous Peoples: From policy to implementation, Beatriz Fernandez.	147
	The United Nations Permanent Forum on Indigenous Issues, Broddi Sigurdarson	155
5	Compilation of best practices	173
6	Document of conclusions	181
7	Participants list	189



Introduction



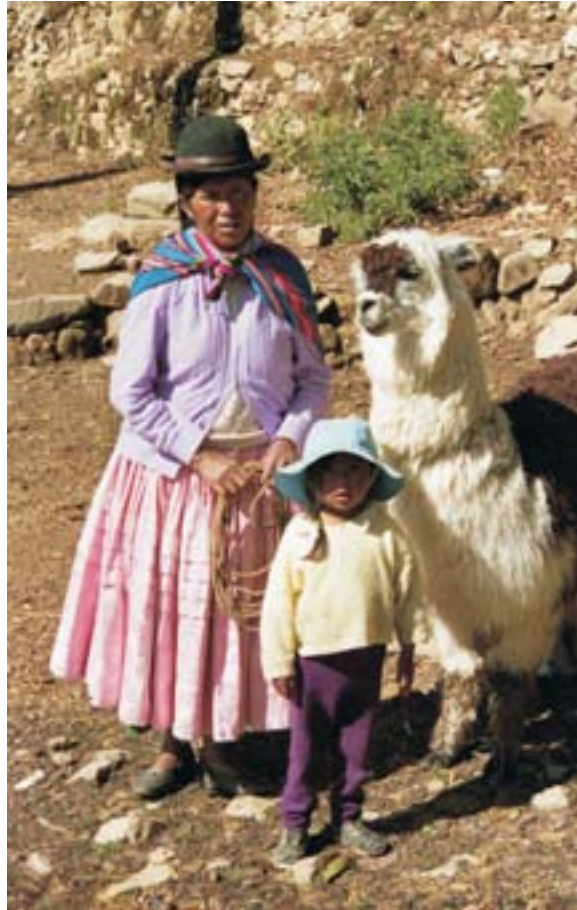
1. Indigenous Peoples and Peacebuilding: A compilation of best practices

Addressing the deep rooted structural causes of violent conflict in a comprehensive manner is regarded as the key principle of the UN approach to peacebuilding. Reducing the risk of lapsing or relapsing into conflict, strengthening national capacities for conflict transformation, and developing governmental and civil society skills are some of the objectives that fall within the peace consolidation strategy. The promotion and protection of human rights represents the key step towards sustainable peace as the violation of fundamental rights is often amongst the root causes of violent conflict.

The relevance of the promotion of human rights as an instrument for peacebuilding is even higher in the context of indigenous rights because they are often linked to grievances related to the conflict. Some of these grievances have been highlighted in the United Nations Declaration on the Rights of Indigenous Peoples (2007) which makes clear reference to “historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”.

This publication is the result of the Barcelona workshop on Indigenous Peoples and Peacebuilding that was held from 9th to 13th November 2009. The workshop aimed at exploring the interrelation that characterizes indigenous rights and peacebuilding, by identifying and sharing some of the best practices that have emerged from past and current peace processes.

Some of the common discrimination that Indigenous Peoples face and that were analyzed



during the workshop include participation in public life, use of land, cultural violence and racism.

From a theoretical perspective, the workshop focused on the benefits of integrating indigenous rights in the peacebuilding approach, and pointed out the conflict potential that disregarding this dimension implies. From a more practical point of view, the exchange amongst participants helped to improve knowledge on how to integrate indigenous perspectives into peacebuilding efforts.

Introduction



The workshop provided an overview of two complementary dimensions when dealing with these issues. The first addressed the relationship between peacebuilding and human rights, while the second referred to the role of Indigenous Peoples (IPs) in sustainable peacebuilding proposals.

It is widely thought among scholars and practitioners that **peacebuilding is concerned both with the so-called negative peace** (end of violence) **and the positive peace** (addressing underlying causes of conflict including development of social justice and political participation). In this view, peacebuilding addresses three types of violence: *physical* violence, *structural* violence and *cultural* violence (beliefs and value systems that can be subject to prejudice and become part of a discourse prompting violence), as well as the relational aspects that are guiding these kind of violence patterns. These three types are highly relevant for Indigenous Peoples, who have been heavily

marginalized during centuries as a minority in their own countries, or even as a majority lacking the most fundamental rights.

This is **how protecting human rights becomes a fundamental instrument for peacebuilding**, as we are speaking about populations that have suffered a prolonged denial of Human Rights that has become the cause and consequence of protracted conflict.

In current times, when considering protection of human rights in the context of peacebuilding, one of the most important elements to look at seems to be the **structural accommodation of diversity**, that means entrenching diversity in state institutions and laws. Supporting access to resources, promoting genuine views and practices of peacebuilding, and fostering indigenous national participation, appear to be necessary elements in order to understand and encourage attempts at peacebuilding from an indigenous point of view.

From a general point of view, however, there is great **controversy** in addressing this so-called “accommodation” of diversity in the case of Indigenous Peoples, as while for some this might encompass unacceptable conditions in order to be included in existing social structures, for others it might be perceived as a threat to existing positions of power and privilege.

More concretely, as the demands of Indigenous Peoples deal with a wide range of rights going from self-determination, autonomy, defending cultural rights, to the right to the territory or the right to their own development, any attempt to evaluate the results of peacebuilding efforts in terms of IPs must bear in mind some key debates:

1. **The question of whether Indigenous Peoples want be “included” in already existing social structures.** Would they rather want to build a new society? In this debate the core issue is the comprehension of the right to autonomy/self-determination, the right to territory and the right to their own model of development.
2. Ensuring new IPs’ legal framework should not mean undermining the enjoyment of rights of non-IPs’ communities. Moreover, within a community, **individual rights** should not be confronted to collective ones in the name of a so-called improvement of justice.
3. The depiction of Indigenous Peoples as **minorities** appears not to be appropriate, not only because IPs are the majority in some countries, but also because it does not take into account the complexity of the IPs’ vision that goes beyond existing minority protection instruments. This also relates to the challenge of addressing not only symbolic issues but also material questions (land, resources, etc.).
4. Is there a real **indigenous public agenda**? A diversity of views and opinions make it difficult to evaluate whether there is a real capacity of mobilization of Indigenous Peoples and whether it is possible to address common challenges.
5. The question of how to address at the same time relations between institutions, **government and civil society** within a state, in order to support peacebuilding initiatives in terms of IPs.

Constitutional Processes

The first session of the Workshop focused on countries where a constitutional process is taking place, or has taken place in the past, in order to accommodate indigenous peoples’ rights. The selected case studies were **Bolivia** and the **Philippines**.

Looking at what could be a good practice in this context, the first important factor is the **support from the international community**, and particularly the role of United Nations in promoting indigenous rights through different instruments (its corpus of declarations, resolutions, and recommendations, developed since the end of the eighties - namely the UN Declaration on Indigenous Peoples and the ILO Convention, the principle of a free, prior and informed consent) and its continued and impartial assistance before, during and after the constitutional process.

Apparently, this has been a fundamental element of the political process that took place in Bolivia over a period of two and a half years, while negotiating a new constitution. The initial confrontation among actors, the use of violence and the tendency to impose definitive solutions without searching for innovative ideas, were finally transformed in a process of democratic dialogue and compromise.

From a domestic point of view, **the constitutional process can become a conflict prevention mechanism**. Rebuilding the legal system and adapting constitutional provisions to ordinary legal instruments represents, therefore, a good practice. The promotion and continuous support to **dialogue** among all actors does not seem to be just a common, good practice, but is actually an imperative requirement.

The **mainstreaming of indigenous issues** within the constitution to ensure their political representation and participation (at a national and local level) and the commitment of all actors are also core elements of this process. However, the development of secondary legislation seems to be equally important in the mid-term, in order to foster the aforementioned link among institutions, government and civil society.

Best practices also include the creation of legal instruments (Indigenous Peoples Rights Act (IPRA), National Commission on IPs). These instruments were able to mainstream indigenous issues and strengthen indigenous presence and political representation. The challenges continue however to be important, as the 2007 report of the Special Rapporteur on Indigenous Peoples of the Philippines documented an under-funding of this kind of institution. The well-developed non-governmental organization (NGO) community has for years actively lobbied government authorities to address the claims of Indigenous Peoples.

As previously stated in the introduction, in order to address indigenous rights in a constitutional process, the use of **a human rights-based approach rather than an indigenous rights-based approach** is recommended, avoiding the creation of separate rights for IPs and the supremacy of collective rights over individual ones. To overcome this situation, the UNDP team in Bolivia supports the articulation of indigenous municipalities within a central state, allowing the creation of space for debate and consensus. The following years will show whether this initiative permits protests to be turned into proposals.

The challenge of **combining new and old institutions** appears to be a fundamental issue in the near future. Political participation, access to economic resources as well as linking the private and public sectors are issues that must not be underestimated. In the case of the Philippines, a national consensus was reached on the recognition of ancestral territory and the distinction between individual rights (land) and collective rights (domain). Addressing **claims** instead of **rights** has prompted a first step towards a solution that is acceptable to all.

Parallel systems and value codes appear to be able to coexist with ordinary institutions. This issue requires creativity and imagination as there is no recipe for preserving indigenous rights without taking into account human rights as the basic ones. Application of an **indigenous justice system and fostering autonomy is now the main challenge** to be addressed. Yet, indigenous autonomy represents a social innovation only if it manages to deepen the democratic process, and not if it eventually leads to further polarization.

Peace processes

The second set of cases addressed during the workshop has in common the fact that they experienced a violent conflict where IPs were involved.

From a theoretical point of view, there are some **general attributes** that can be outlined when dealing with a peace process. The selection of the appropriate timing to start peace negotiations seems to be fundamental. There is a necessity to define what the different phases of a peace process are (confidence building, dialogue, negotiations, agreement, implementation) and the difference that dialogue and negotiations might imply.

The development of the process includes making both parties build, with facilitation, a road-map (including un-negotiable issues). Positive attitudes in the negotiation phase, in order not to give a substantial importance to violence, can ensure that everyone has something to win (results cannot be win-lose but imperatively win-win). Addressing the root causes of conflict was also identified as essential for a good guidance to peace. Finally, elements such as the implementation of peace agreements, monitoring and follow-up sometimes become even more fundamental. A long term process is needed to continue searching for solutions, to consolidate best practices, eliminate contested laws and promote continuous dialogue among parties.

The selected cases were Guatemala and Peru. It is useful here to recall at least one of the arguments stressed in the opening session of the workshop: talking about protracted conflicts and prolonged denial of Human Rights requires enhanced work towards building peace through the promotion of human rights.

In this context, beyond the negotiation, it appears to be necessary to look at the **complexity** embedded in instruments for reconciliation, and to clarify concepts and institutions (consultation, previous agreements, civilian oversight, etc.). Great importance has to be given to the participation of **civil society** in the process, which involves consultation on proposals with civil society networks and including other voices in political decisions.

In the case of Guatemala, good practices include the use and ratification of ILO Convention no. 169, the use of existing international law instruments, and the implementation of the peace agreements under the supervision of the UN. This shows the importance of the international community's action in these kind of processes. However, there is a necessity to focus on IPs in the whole process of designing actions and to enhance the effectiveness of donor contributions by convincing them to support indigenous oriented programs.

On the other hand, when violence is directed against those who are excluded, and society is characterized by profound exclusion and antagonism, there is a lack of willingness by the government to implement indigenous rights. As it was said with regards to the case of Peru, the state is seen as absent, disjointed and arbitrary. **Promoting and facilitating sustained dialogue becomes** one of the most important and necessary actions.

Nevertheless, the intervention of other institutions must not be neglected, as the Peruvian case shows. The **role of the Ombudsman** in this country has appeared to be of substantial influence during the crisis in the city of Bagua in 2009. In this case, the increasing polarization around the development model (as there is an increasing emphasis on the extractive industry), the necessity to build an indigenous public policy agenda and the conflict management capacities were at stake. The Ombudsman's task concerning mediation, mapping of conflict and raising awareness on promoting dialogue was crucial. This leading capacity combined with other measures to give good results in the Bagua crisis: some commissions were created by the government and the Parliament, along with four working groups on the cross-cutting issues underlying the conflict, i.e. truth, legislative decrees, consultation, and development plan for Indigenous Peoples.



Reconciliation processes

Reconciliation initiatives in a context of peacebuilding mean bearing in mind that, for some actors, the administration of justice can be incompatible with peacebuilding venues. This **argument** is contested by those who look at issues like the following ones: the focus on the process instead of the result, the conception of the reconciliation as a circular and not a linear process, its content, as well as its goals and timing. All these factors are crucial to the final and tailor-made process that a post-conflict society will be able to assume, as the case of **Kenya** showed.

Starting from the bottom, the human rights based approach seems to be the most appropriate perspective to overcome the apparently insoluble contradiction of targeting reconciliation and justice goals at the same time. It also appears that reconciliation is only possible when it goes with special and specific **support of the affected communities**, as the difficulties of the Kenyan

Introduction

case suggest. Fostering a constructive, accepted and smooth process that includes civil society and instruments that help to identify the actors and their needs appears to be fundamental (situation analysis and dialogue and communication). Some of the key elements that might be included within this scope are paying attention to the **involvement of women** in the reconciliation process, and the enhancement of **empathy and compassion**.

From the institutional perspective, this example also proves that the existence of diversity requires a **balanced attitude** between community based reconciliation and national reconciliation. In Kenya every community considers itself as indigenous. From a general point of view, **reconciliation initiatives** such as the ones built in South Africa (Truth and Reconciliation Commission), Peru (Truth and Reconciliation Commission) or Kenya appear to be a good practice, as they build peace through victims' testimony, reports and trials, or investigations and testimonies such as the Kofi Annan mediation (Peace accord, Waki commission in Kenya). Nevertheless, we must remember that reconciliation must be thought of as a tool in a stable peace process, just like the search for truth.

Finally, engaging parliamentary committees and assessing past peacebuilding initiatives when addressing the relationship between society and executive power seem to be a best practice in a reconciliation context. Other instruments fall into the area of **awareness**, as for example, using the media to document, developing a reform of schoolbooks and curricula, or working together

among institutions, national commissions and the international community.

One of the key issues that emerged from the debate concerns the term "reconciliation" in itself: it is important to ensure that every party adopts the same meaning for the term. It is likely that the concept of **conciliation** would suit more the process we are referring to when we speak about Indigenous Peoples, as they have always lived separately from the non-indigenous community, and this would be a first step towards accommodation.

One of the last sessions of the workshop was devoted to lessons learned from the different cases and presentations. This session highlighted some well-known facts: facing situations involving indigenous rights and peacebuilding, mean accepting that there is no magic formula nor unique model. Some indications can however be useful when dealing with this issue: knowledge about the different stages of the process that we face (be it constitutional, peace or reconciliation) appears to be absolutely necessary, just as the choice of timing is critical when launching new initiatives. At the level of international community action, some recommendations emerge: the importance of consistency in the message that both the UN and donors or NGOs provide, that have to be constructed upon a good analysis of the situation. Last but not least, developing in-house capacity seems to be a mandatory element as it allows empowerment of indigenous populations and enhances dialogue amongst different actors.





This publication has two parts. In the first section, “Concepts and Debates”, a theoretical approach/background is given on the following key points: International Human Rights, indigenous rights and minority rights (clarification of basic concepts), UN and indigenous rights (including regional institutions), peacebuilding, UN and peacebuilding, methodologies and related tools, inter-relationship between human rights and peacebuilding.

Two introductory approaches provided a concrete framework for the workshop: the first showing the link between human rights and peacebuilding, and the second defining some key elements in analyzing sustainable peace and indigenous peoples.

The second part of the publication, “Cases, Best practices and Conclusions” includes the cases that were presented at the workshop, a complete list of the identified best practices, and the main conclusions of the meeting.



Part 1

Concepts and Debates



**a) The United Nations and
Indigenous Rights: Who are the
Indigenous Peoples?**



Even though the UN has been working on Indigenous Peoples' rights for quite a long time, a common definition of Indigenous People has not been reached. In fact it seems to be widely agreed that there is no need for such a definition in order to work on indigenous rights.

Even if there is no such definition there has been some work done towards the identification of who are indigenous people. It is worth mentioning in this sense the ILO *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*¹, the *Study of the Problem of Discrimination Against Indigenous Peoples*² by former Special Rapporteur Jose R. Martinez Cobo and the *Working paper on the concept of indigenous people*³ by the Working Group on Indigenous Populations.

The main arguments derived from these documents show some characteristics:

- Presence in the country or territory prior to colonization.
- Cultural distinctiveness which may include aspects of social organization, language, modes of production, laws, institutions and spiritual values.
- Self identification.
- At some point have suffered or still suffer from marginalization and discrimination.

The UN has been working on indigenous rights for a long time. As a result of this work some assessments, recommendations, bodies and mechanisms have been created in order to work

1 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

2 <http://www.un.org/esa/socdev/unpfii/en/spdaip.html>

3 <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/129/80/PDF/G9612980.pdf?OpenElement>

towards the end of all forms of discrimination against Indigenous Peoples and to enable their full development.

There are two main documents regarding indigenous rights within the UN System. The first one is the aforementioned ILO *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* adopted in 1989, entering into force in 1991 which is legally binding for those countries that have ratified it. The second one is the *United Nations Declaration on the Rights of Indigenous Peoples*⁴ passed by the General Assembly in 2007.

Aside from the documents dealing specifically with Indigenous Peoples there are a number of documents and instruments within the UN System which provide provisions for the protection of Indigenous Peoples rights:⁵

- The Convention on the Rights of the Child (1989)
- The Convention on Biological Diversity (1992)
- Agenda 21 (1992)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural rights (1966)
- The International Conference on Population and Development (1994)
- The UNEP Malmoe Ministerial Declaration (2000)
- The Beijing Declaration and Platform for Action (1995)

- From UNESCO:
 - The Universal Declaration on Cultural Diversity²⁴ and its program of action (2001)
 - The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
 - The Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
 - Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

In addition to the documents produced within the UN System, some instruments and bodies have been created to deal with indigenous issues:

Working Group on Indigenous Populations

It was established by ECOSOC in 1982. The Working Group on Indigenous Issues was to be the focal point of the UN System for the protection of Indigenous Peoples' rights. It consisted of five independent experts who were the members of the Sub-Commission on the Promotion and Protection of Human Rights. The Working Group was discontinued in 2007 in the context of the change from the Commission on Human Rights to a new body, the Human Rights Council, which created the Expert Mechanism on Indigenous Rights in 2008.⁶

Special Rapporteur

As part of the system of thematic special procedures, the Commission on Human Rights established in 2001 the Special Rapporteur on the situation of human rights and fundamental freedoms of the Indigenous People. The Mandate was renewed in 2004 by the Commission and in

4 The full text of the Declaration is available from: www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

5 UNDG Guidelines for Indigenous peoples' Issues http://www.undg.org/docs/8646/UNDG_Guidelines_indigenous_FINAL-01FEB08.pdf

6 <http://www2.ohchr.org/english/issues/indigenous/groups/groups-01.htm>

2007 by the Human Rights Council. So far there have been two Rapporteurs: Dr. Rodolfo Stavenhagen, from 2001 to 2008, and currently Prof. James Anaya.

Expert Mechanism on the Rights of Indigenous Peoples

As mentioned above, in 2007 this body was created to substitute the Working Group on Indigenous Peoples as a subsidiary body of the Human Rights Council. It is composed of five experts; it provides its thematic expertise in the manner and form requested by the Council. To this end, it focuses mainly on studies and research-based advice. Additionally, the Expert Mechanism may also suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.⁷

Other initiatives

The UN has also undertaken the initiative to proclaim two international decades of the world's Indigenous Peoples through General Assembly Resolutions.⁸ The first ran from 1995 to 2004 and the second started immediately after, in 2005, and will go until 2014. The goal of dedicating decades to indigenous issues was to underline and raise awareness about the ongoing discrimination and lack of fulfillment of the rights of Indigenous Peoples.

Important contributions to the work on indigenous issues and indigenous rights have also come from the different agencies, funds and organizations within the UN System, according to their fields of expertise as well as through international conferences. The most evident case is ILO but others come from UNESCO and WHO and from international conferences such as: Environment and Development (RIO, 1992), Population and Development (Cairo, 1994), World Summit for Social Development (Copenhagen, 1995), on Women (Beijing, 1995) or the United Nations Conference on Human Settlements (Istanbul, 1996).

The United Nations have undertaken some work to promote development as a tool of empowerment for IP in order to end discrimination. It is worth mentioning the UNGD Guidelines on indigenous issues⁹ which provides useful information on how to approach indigenous issues with a rights based approach in mind.

7 <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/index.htm>

8 Resolution A/RES/49/214 <http://www.un.org/documents/ga/res/49/a49r214.htm>

9 <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>



**b) United Nations and
Peacebuilding**

Definitions and concepts

There are many possible definitions of peacebuilding and varying opinions about what it involves. The term itself first emerged over 30 years ago through the work of Johan Galtung, who called for the creation of peacebuilding structures to promote sustainable peace by addressing the “root causes” of violent conflict and supporting indigenous capacities for peace management and conflict resolution¹.

Peacebuilding became a familiar concept within the UN following Boutros Boutros-Ghali’s 1992 report, *An Agenda for Peace*, which defined peacebuilding as action to solidify peace and avoid relapse into conflict. In 2000, the *Brahimi Report* defined it as “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war”.² The UN’s understanding of peacebuilding has continued to evolve ever since.

The Secretary-General’s Policy Committee has described peacebuilding as follows: “Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives.”³

Since the concept of Human Security has now emerged to design the complex of interrelated threats associated with civil war, genocide, and the displacement of populations, there is a tendency to the progressive redefinition of



traditional understandings of security and peace that affects the concept of being “secure”, from an individual to a collective perspective.

The political context of Peacebuilding

The initial post-conflict period in most countries is characterized by significant insecurity and political uncertainty. Peace processes can advance, but they also often suffer periods of regression. Many countries are governed by transitional political arrangements until the first post-conflict elections are held.

So the success of peacebuilding depends in part on the political will of those involved (national governments, donors, the UN itself), in part on effective leadership (by national governments and within the UN), and on resources like human capital or donor financing.

1 “Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding” Johan Galtung, 1975

2 The Report of the Panel on United Nations Peace Operations is available from: www.un.org/peace/reports/peace_operations/

3 Decision of the Secretary-General’s Policy Committee, May 2007

Essential features of Peacebuilding

National ownership

Peacebuilding is primarily a national challenge and responsibility. It is the citizens of the countries where peacebuilding is underway, with support from their governments, who assume the responsibility for laying the foundations of lasting peace. National ownership is essential to success.

National capacity

National capacity development must be central to all peacebuilding efforts from the very start, as part of the entry strategy, not the exit. This is a challenge, especially in the early days when peace is fragile and national capacity is severely limited. Nevertheless, peacebuilding must focus proactively on (re)building national capacity, otherwise peace will not be sustainable. To support this effort, an assessment of existing capacities must be conducted early on.

Common strategy

Inclusive peacebuilding involves many actors. The key to effective peacebuilding lies in an agreed common strategy, nationally owned, with clear priorities, against which the UN, the international community and national partners can allocate resources.⁴ The common strategy should be:

- nationally owned. This requires an inclusive planning process, with many and diverse stakeholders consulted as the strategy is developed.
- based on a thorough assessment of the country's situation (often a Post-Conflict Needs Assessment), including analysis of conflict drivers, risk, etc.

4 "Peace-building strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities." SG's Policy Committee, May 2007



**c) Indigenous Peoples
and Peacebuilding:
A theoretical framework**

Valuing Human Rights in Peacebuilding

Michelle Parlevliet



Wider context: Indigenous Peoples, violent conflict and Peacebuilding¹

There is increasing recognition of the plight of Indigenous Peoples around the globe, and it is well-established that Indigenous Peoples are amongst the most heavily affected by violent conflict. Indigenous populations are seldom represented at the highest level of political leadership in contexts of protracted social conflict. In the midst of violence they find themselves more often than not targeted by different warring parties. Unfortunately, however, the growing awareness of the need to pay attention to the dignity, rights and interests of indigenous populations in situations of conflict and efforts to

build lasting peace, has not as yet been translated into the adoption of wide-ranging practical measures. Any effort in gathering best practices from around the world is therefore very important, and can make an important contribution to improving peacebuilding.

1. Peacebuilding and Human Rights

Many recognise intuitively that human rights and peacebuilding are closely linked, and that one cannot exist without the other. Indeed, the Universal Declaration of Human Rights of 1948 associated the protection of human rights with the prevention of violent conflict. Its preamble states that, "it is essential, if man is not to have

¹ This presentation draws on previous publications by Michelle Parlevliet, including 'Rethinking Conflict Transformation from a Human Rights Perspective,' in Berghof Handbook for Conflict Transformation, Sept 2009 (available at www.berghof-handbook.net) and 'Bridging the Divide. Exploring the Relationship between Human Rights and Conflict Management,' in Track Two, Vol. 11 No. 1, March 2002, Centre for Conflict Resolution, South Africa: pp. 8-43.

recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

Despite this clear statement informed by World War II, there has been much debate on the question whether and to what extent the protection and promotion of human rights is truly necessary for efforts to address violent conflict and build peace. In the past, many argued that the normative nature of human rights standards would complicate the practical demands of peacemaking. After all, ending violent conflict would require sitting down with some pretty nasty characters, responsible for much bloodshed and destruction. How could one reconcile this with the values, principles and entitlements contained in human rights standards? Shouldn't we just forget about those lofty aspirations and get on with the business of establishing peace?

Over time, awareness has grown that when we speak of building peace in a society affected by violent conflict, we do not only aim for stopping the fighting. However important it is to protect people from further abuses and to end the physical violence, this in itself is not sufficient to prevent a relapse into violent conflict, ensure a level of stability, and create the basis for future development. In order to achieve those objectives, we need to address the underlying causes that gave rise to the conflict. For example, it is questionable whether one could define Sri Lanka after the demise of the Tamil Tigers as a 'country at peace.' The Tamil Tigers have been defeated and have seemingly disappeared, and as such the large scale violence has abated. Yet the underlying grievances that caused the Tamils to take up arms in the first place, are by and large still there, creating ongoing resentment amongst the Tamil population of Sri Lanka. As such, it may only be a question of time before new violence again erupts.

Thus, the desired 'peace' we seek to build is meant to have a certain quality: it has to go *beyond* the absence of violence and include also the development of social justice and political

equality. This includes harmonious relationships between the different individuals and groups in society, and the availability of mechanisms through which grievances and discord can be managed in non-violent ways. This kind of peace is often called 'positive' peace, to capture that it is defined by the *presence of certain conditions*, rather than just by the *absence of violence* (the latter is usually referred to as 'negative peace.'). As Pauline Baker said, "*peace is no longer acceptable on any terms; it is intimately linked with the notion of justice. Conflict resolution is not measured simply by the absence of bloodshed; it is assessed by the moral quality of the outcome.*"² Thus, peacebuilding is not just a political undertaking, but a moral one too.

2. Positive and Negative Peace; Three Forms of Violence

As noted above, 'peacebuilding' is concerned with both negative peace and positive peace – with stopping violence and addressing the underlying conditions that gave rise to the conflict in the first place. Peacebuilding is thus concerned with both direct, physical violence, and with what has been called '*structural violence*.' This kind of violence is built into the structures of society, so that certain groups of people have systematically less opportunities to develop their full potential.

But peacebuilding also seeks to address a third type of violence: namely '*cultural violence*.' By this we mean the belief systems, values, prejudices and attitudes that exist in society which facilitate violent behaviour and violent structures. For example, after a woman has been raped, people in her community may say 'well, she shouldn't have been out at night by herself at that time,' or 'she was asking for it, wearing such a short skirt.' Such statements reflect norms and beliefs existing in that community – and often in society at large – that suggest that violence against women is acceptable in certain circumstances, and that women should only behave in some ways and not in other ways. Another example can be drawn from Nepal, where strong belief systems

2 Baker, Pauline. 1996, "Conflict Resolution versus Democratic Governance: Divergent Paths to Peace?" In Crocker, C. and Hampson, F. (eds.), *Managing Global Chaos: Sources of and Responses to International Conflict*. Washington DC: United States Institute of Peace: pp. 563-571.

have existed about who is deemed superior, and fit to govern, and who is not – and whose interests can be ignored or should be protected. When the war started in 1996, many of those affected at first were from indigenous nationalities and low-caste groups. Because those in power deemed such communities inferior, the state was not particularly concerned about the use of violence against them. Such groups and individuals did not really count in the eyes of the political elite in the capital, which of course hardly included any members of such marginalised communities.

Of course, it must be pointed out that such ‘cultural violence’ is generally not outspoken. Nor are such beliefs written down anywhere as formal political ideology. Still, it is present nevertheless, and it skews the chances of those in society who do not belong to the dominant group.

Each one of these three types of violence has a clear human rights dimension:

- in physical violence, the rights of an individual or group are violated;
- in structural violence, the rights of individuals or groups are denied by the way society functions and the state is organised;
- in cultural violence, the humanity and dignity of individuals and groups is denied, so they are not treated with respect due to them as human beings, and are subject to discrimination.

The different kinds of violence are highly relevant for Indigenous Peoples: they are usually subjected to a combination of all three types of violence. In sum, peacebuilding deals with the physical consequences of conflict, and the structural, relational and cultural roots of conflict.³

3. Human Rights Violations as Consequences and Causes of (Violent) Conflict

That is where human rights come in, or rather, why human rights are so important to peacebuilding: human rights are at stake at both

levels of the peacebuilding agenda (negative and positive peace).

When we speak of stopping violence, we target the manifestations, or the consequences, of conflict: the human rights violations and abuses that are taking place in the midst of conflict. This hardly requires explanation: continuously, there are news reports from around the world which recount the consequences of violent conflict in terms of loss of life, mass movements of people, destruction of livelihoods and civilian infrastructure. Many of these violations are highly visible. They may include excessive use of force by the police against civilians, intimidation of political opponents, rape, summary executions, torture and censorship. But manifestations of violent conflict are not confined to violations of civil and political rights; the destruction of schools and health clinics affects social and economic rights, as does the displacement of civilian populations.

On the other hand, when we focus on underlying causes, we realise that a sustained denial of human rights often lies at the root of conflict. For example, a country’s legislative and policy framework may be biased against certain identity groups, which leads to their political, economic and social exclusion and marginalisation. Or, certain regions in a state are consistently less developed than other regions, and the marginalised regions happen to be those where the majority of citizens do not belong to the politically dominant group. In such situations, a prolonged denial of human rights is embedded, or built into, the structures of society and governance in a country – in terms of how the state is organised, how institutions operate, and how society functions. Such conditions create structural fault lines in society. They may be less visible at first sight, but they provide fertile ground for the outbreak of violence. When different kinds of marginalisation and deprivation overlap with one another, this provides a particularly volatile set of conditions: for example, when one identity group is not only economically marginalised, but also excluded from participation in political processes,

3 Miall Hugh, Ramsbotham Oliver, and Woodhouse, Tom (1999) *Contemporary Conflict Resolution*. Cambridge: Polity Press: pp. 186-188.

and is prohibited from speaking its own language and/or practising its own culture.

In 2001, the previous UN Secretary-General, Kofi Annan, identified four 'key structural risk factors that fuel violent conflict' in his first report on the Prevention of Armed Conflict. He identified the following:

- inequity (disparities amongst identity groups);
- inequality (policies and practices that institutionalise discrimination);
- injustice (lack of the rule of law, ineffective and unfair law enforcement, inequitable representation in institutions serving the rule of law); and
- insecurity (lack of accountable and transparent governance and human security).⁴

Each of these causes can be traced back to human rights concerns related to security, identity, participation, non-discrimination, well-being, and freedom. Indigenous Peoples often experience some or all of these conditions in the societies where they live.

4. Human Rights Protection as a Form of Peacebuilding

Because the sustained *denial* of human rights is often a structural, root cause of violent conflict, it follows that sustained *protection* of human rights is essential for dealing with conflict constructively. Institutionalising respect for human rights through, for example, constitutional endorsement of human rights, an independent judiciary, and the establishment of an independent human rights commission with adequate mandate, powers and resources, helps to limit the power of the state, protects citizens against abuse, and allows them a large measure of freedom and participation in public affairs.

When considering the protection of rights in the context of peacebuilding, it is particularly important to pay attention to what has been called 'the structural accommodation of diversity.' This means formally entrenching inclusiveness and respect for diversity in the political system, state institutions, and the law.⁵ This is essential because communal groups tend to be the primary actors in conflict taking place within a country: they are usually mobilised around a strong sense of identity to raise grievances related to deprivation.

It is for this reason that the OSCE High Commissioner for National Minorities has focused extensively on the need to protect minority rights in diverse societies – even though his mandate is conflict prevention. Protecting the rights of minorities and indigenous peoples is generally less easy than it sounds: because these groups are often heavily marginalised, protecting their rights involves a challenge of the status quo and it will upset power relations. Consequently, those who are in positions of power and privilege, are likely to perceive this as a threat. Nevertheless, the existing potential to destabilise a fragile situation is not a reason to avoid working in this area (protection of minority and Indigenous Peoples' rights). Instead, it is important to be prepared for the political sensitivity of such efforts and to be aware that it may generate tension at the local or national level; one needs to anticipate challenges that may arise when undertaking such initiatives and plan strategies to address them.

5. Dimensions of Rights in relation to Peacebuilding

So far, I have mostly emphasised the importance of *legal protection* of human rights for peacebuilding, or what we can call the 'rules dimension' of human rights. This 'rules dimension' refers to human rights in terms of the formal legal standards that outlaw certain behaviours and actions on the part of the state (and non-state actors) and demand others. Thus, these are rights

4 Annan, Kofi. 2001, *Prevention of Armed Conflict. Report of the Secretary-General to the United Nations General Assembly and Security Council*. Document A/55/985-S/2001/574. New York: United Nations, p. 24: par 100.

5 Nathan, Laurie. 2000. "The four horsemen of the Apocalypse: The structural causes of conflict in Africa." *Peace & Change*, Vol. 25, No. 2, April: pp. 188-207, p. 200-201.

as contained in international instruments, domestic legislation, and are (or should be) enforceable through a court of law.

Yet it is well-known that the law has limitations. In many societies experiencing or emerging from violent conflict, the most vulnerable members of society may have little access to the law; an effective judicial system may not exist; or the existing judicial system may sustain or reinforce discrimination. At times, laws may still contain biases against certain people – and even if progressive legislation does exist, the state may not be willing or able to implement or enforce such legislation. For example, discrimination against a Dalit or Janajati is seldom prosecuted in Nepal despite such discrimination being outlawed.

Thus, however significant the rules dimension of human rights in peacebuilding, it is not sufficient. Over time, I have therefore come to believe that other dimensions of human rights are also important for peacebuilding.

In peacebuilding, attention must also be paid to human rights by addressing the structural division of power, resources and opportunities in society, and to the mechanisms that exist to handle conflicts that may arise in this regard. After all, if human rights are to have meaning beyond the paper on which they are written, peacebuilding must facilitate the development of legitimate, capable and independent institutions that can support the realisation and orderly expression of rights and secure remedies.

In addition, we need to recognise that human rights have a relationship dimension – rights govern the interaction between state and citizens, and amongst individuals and groups in society. Basically, human rights are concerned with how people should be treated – by the state and by one

another, so that their dignity is respected, their integrity remains intact, and so that they can fulfil their full potential. Peacebuilding must thus involve efforts to build healthy, non-violent, and respectful relationships both vertically (between state and citizens) and horizontally (between individuals, and within and between groups). Ultimately, building lasting peace requires that the various groups in society, and people at large, recognise their interdependence and appreciate it, and learn that coexistence is not only necessary but also possible and valuable.

Finally, it is important to consider *how* the underlying causes of conflict are addressed. This can be referred to as the ‘process dimension’ of human rights: human rights values and principles – such as dignity, participation, transparency, accountability, inclusion, protection of marginalised voices – must be integrated in peacebuilding efforts at various levels of society. After all, the sustainability of peace does not only depend on the *contents* of that peace, but also on the *process* through which it was reached: if key stakeholders at local or national level consider the process flawed, this will undermine the legitimacy and sustainability of what was agreed.

This multi-dimensional understanding of human rights has been very helpful in my work in conflict transformation and peacebuilding. Speaking of building a ‘just and sustainable’ peace, means ensuring that rights become a living reality for all in society. Therefore, it is necessary, when identifying good practices in relation to Indigenous Peoples and peacebuilding, to remember the importance of human rights in peacebuilding. In addition, make sure that you do not only focus on the ‘rules’ dimension of rights, but also consider questions of institutions, relationships and process.

Indigenous Peoples and Lasting Peace: The role of Indigenous Peoples and Rights in Building a more Inclusive Society

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Indigenous Peoples and Peace Building: A
Compilation of Peace Practices
9-13 November 2009



Picture taken from CRIC's webpage

c) Indigenous Peoples and Peacebuilding: A Theoretical Framework

Sustainable Peace

- ▶ What is Peace?
 - Negative Peace
 - Positive Peace
- ▶ What is Sustainable Peace?
- ▶ Causes of Conflict
 - Ethnic Conflicts
 - Frustration of Human Needs
 - Environmental causes
 - Historical causes of conflicts

What are the elements of sustainable peace?

- ▶ Human security/state security
- ▶ Links between development/democracy/human rights/peace
 - Agenda for Peace (1992)
 - In Larger Freedom (2005)
- ▶ Good Governance: To build more democratic institutions.
- ▶ Conflict Prevention:
 - ▶ Transformation of conflict.
 - ▶ Peace as a process
 - ▶ Personal, structural, and cultural level
- ▶ Sustainable Peace and Sustainable Development

How can indigenous mobilization and indigenous rights help achieving the goals of sustainable peace?

- ▶ History of Indigenous mobilization
- ▶ Worldview of Indigenous rights: The Fourth Way to achieve sustainable peace
- ▶ Protection and Promotion of Indigenous Rights
 - Right to territory
 - Right to autonomy and selfdetermination
 - Right to their own model of development



Rights of Indigenous Peoples

- ▶ What does it mean to be indigenous?
 - ▶ ...those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (Martinez Cobo, 1984).
- ▶ Right to Territory
 - Access to land
 - Access to natural resources
- ▶ Right to Autonomy/Selfdetermination
 - Indigenous populations and indigenous peoples
 - People, peoples, nations
 - Right to selfdetermination in international relations
 - The Plurinational State and the right to selfdetermination
- ▶ Right to own model of development

Attacks on the Rights of Indigenous Peoples

- ▶ Territory
 - Megaprojects
 - Water, oil and other resources
- ▶ Autonomy and Selfdetermination
 - False view of indigenous peoples as seeking independence
 - State's understanding of the right to be consulted
- ▶ Neoliberal forms of development v Alternative models of development

Risks in Understanding Indigenous Rights

- ▶ The discussion between multiculturalism and interculturalism
- ▶ The idea of the ecological native (Ullóa)
- ▶ The idea of the permitted indian (Rivera Cusicanqui/Hale)

Challenges for International Cooperation

- ▶ Support to access to resources
- ▶ Support to indigenous views and practices of peacebuilding (Guardias Indígenas – The Fourth Way)
- ▶ Support to indigenous national participation
- ▶ Support to indigenous mobilizations
- ▶ Support to common understanding of right to be consulted

- ▶ “Guardar, cuidar, defender, pervivir, soñar los propios sueños, oír las propias voces, reír las propias risas, cantar los propios cantos, llorar las propias lágrimas” (Guardia Indígena del Cauca, 2009).
- ▶ “Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons or property will be safe” (Frederick Douglas, 1818-1895).



Part 2: Cases, Best Practices and Conclusions



1. Constitutional Processes, Indigenous Rights and Peacebuilding





Key issues in addressing Peacebuilding in Constitutional Processes.

The Case of Bolivia

10 November 2009

Carlos Vergara, DPA

Constitution = Carta Magna

- It defines the composition of the State: e.g., Pluri-national Republic
- It regulates the relations between the State and its population, including individual and collective human rights
- Relations among the Powers of the State (e.g., impeachment process);
- The “rules of the game” for political participation (e.g., composition of the State Powers, Organs and Institutions);

Indigenous rights

- **International Human Rights instruments**
- **1970s = indigenous movements**
- **1980s = networking of IPOs**
- **1980/90s = Central American Peace Process**
- **1989= ILO Convention 169**
- **1992= Rigoberta Menchu's Nobel Peace Prize**
- **2007 = UN Declaration on the rights Indigenous Peoples.**

Constitutional reform in the Americas

- **Canada Constitutional Act 1982**
- **Colombia 1991**
- **Venezuela 1999**
- **Ecuador 2008**
- **Bolivia 2009**

Key issues

- Constitutional provisions regarding indigenous issues:
- 3 main categories:
- Inspiring elements: Preamble
- Explicit recognition of collective rights:
- Explicit recognition of political rights

Inspiring elements

- These are inspiring elements of the overall text, as part of the preamble
- Example: Bolivia (2009).
“ El pueblo boliviano, de composición plural, desde la profundidad de la historia, inspirado en las luchas del pasado, en la sublección indígena anticolonial, en la independencia, en las luchas populares de liberación, en las marchas indígenas, sociales y sindicales, en las guerras del agua y de octubre...y con la memoria de nuestros mártires construimos un nuevo Estado”.

Explicit recognition of Collective Rights

- Recognition and promotion of language and culture;
- Right to education
- Right to maintain ancestral medical practices
- Promotion of native science
- Right to ownership of land and revenues derived from it
- Right to promote own economic practices

Explicit recognition of political rights

- Right to political participation.
- Representation in government institutions.
- Provisions for decentralization, including the establishment of indigenous autonomy
- Indigenous jurisdiction.
- Indigenous rights as inspiring principle in the country's foreign policy.

The Case of Bolivia

BOLIVIA BASIC DATA

- Total population estimated 9.8 million.
- Approximately 60 % identify themselves as indigenous
- Main groups Quechuas, Aymaras and Guaranies.
- Approximately 30 % identify themselves as mestizos and 10 % as whites.
- GDP per capita US\$4,345
- HDI 113th out of 182 countries

Social, economic and cultural context

- **Ethnic, cultural and geographic divisions**
 - Indigenous majority vs. mestizos
 - Highlands (west) vs. lowlands (east)
- **Persistent and high levels of poverty (60%) concentrated in indigenous and rural populations**
- **Large regional, ethnic and socioeconomic inequalities (Gini among highest in world) (59.2 in 2006)**
- **History of political conflict and violence (average of one new conflict per day over the last 25 years)**

Election of President Morales

- **Elected by 54% in Dec. 2005**
 - First indigenous president in country with long history of discrimination and exclusion of indigenous majority.
 - Largest margin of victory in history of Bolivian democracy
- **Ambitious agenda of radical political, economic and social change**

Main Issues of reform/conflict

- Greater inclusion of indigenous people/culture in all spheres of life (idea of 'pluri-national' state)
- Re-election of President
- Greater regional autonomy vs. centralized control
- Redistribution of wealth, esp. land vs. protection of private property
- New Constitution as embodiment of these changes
- Actors in conflict
 - Central Government
 - 'Social movements' (indigenous organizations and labour and peasant unions)
 - Opposition parties
 - Regional governments (Santa Cruz, Beni, Pando, Tarija)
 - 'Civic committees' seeking greater autonomy

Key issues for the UN to make a difference in Bolivia

- **Development with radical change in vision**
 - Economic growth and individual wellbeing
 - Equality
 - Harmony among people and between people and nature
 - Rescuing/reinforcing ancestral and indigenous culture and practice
 - Strengthening sovereignty
- **Peace and dialogue**
- **Strengthening democracy and respect for human rights of all**

Escalation of conflict: August 2007 – October 2008

- **August 2006:** Opening of the new Constituent Assembly. MAS without 2/3 of required majority.
- **Nov.-Dec. 2007:** Constituent Assembly approves text of new constitution excluding opposition; violence in Sucre and Oruro. [the new constitutional text needed to be approved by Parliament, in which the MAS did not have the 2/3 majority].
- **May-June 2008: opposition's retaliation:** illegal referenda on regional autonomy in opposition departments unrecognized by Government.
- **August 2008:** Recall Referendum ratifying both President and opposition Prefects; Government attempts to impose Constitutional Referendum by decree. **OAS observed the recall referendum.**

Escalation of conflict: August 2007 – October 2008

- **September 2008:** UNASUR special meeting.
- **Sept.-Oct. 2008:** National Dialogue between Government and opposition prefects, subsequently between Government and opposition parties in Congress, with UN, OAS, UNASUR, EU and churches as observers/facilitators
- **21 October 2008:** National Agreement on text of proposed new Constitution and promulgation of law calling for referendum → end of violent confrontation
- **25 January 2009:** Constitutional Referendum held in a peaceful and transparent manner.

Referendum on the new Constitution (January 2009)

- 62% YES/ 38 % NO
- Although the majority of the population ratified process of change, the results showed regional polarization.
- 81 % approved referendum on the maximum extension of land holdings at 5,000 hectares
- A new Constitution was approved with the institutional structures of the old “regime”.
- No major legislative adequation during 2009.

Elections under the new Constitution

- General elections taking place on 6 December 2009.
- New Constitution includes larger indigenous representation in the new Pluri-National Parliament (members to elected in Dec. 2009).
- The new Parliament includes representatives from Bolivia's 36 indigenous nations. However, the Constitution does not specify the number of seats. It only states that “these seats will be allocated for places where indigenous peoples constitute a minority”.
- While indigenous peoples have requested 29 seats in the new Parliament, the Government's bill included only 14. The GoB's proposal created some tensions with indigenous groups, which are one of the strategic allies of President Morales' movement. The opposition submitted a counter-proposal, lowering the number of seats for indigenous peoples.
- UN technical assistance to the National Electoral Tribunal.

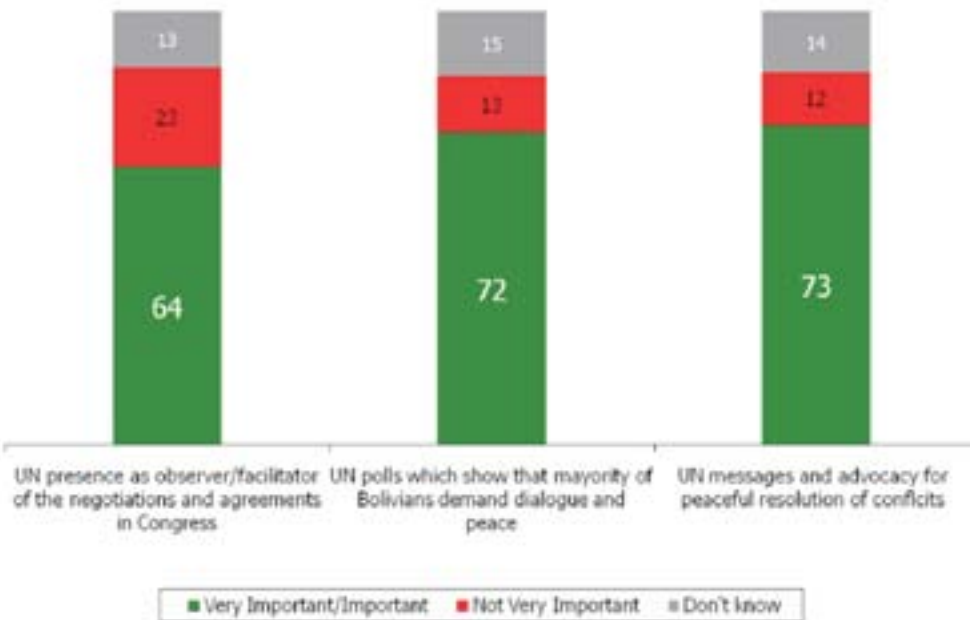
UNCT Action

- **Intelligence gathering and analysis of political situation (PAPEP), including periodic opinion polls**
- **Advocacy for dialogue (through media and with political actors)**
 - Disseminating opinion polls demonstrating public demand for peace and dialogue
 - Campaign 'CONVIVIR'
- **Humanitarian aid to Pando and human rights monitoring, documentation and protection**
- **Accompaniment and facilitation of National Dialogue**

Incidence of UN action in media and political actors

- **Prominent coverage of survey results demonstrating public demand for dialogue and peace**
- **Moral support and pressure toward dialogue and agreement; providing bridge between actors (recognised by both sides and by media and public)**
- **October PAPEP opinion poll on role of UN: 64-73% recognise importance of role in data gathering, advocacy and observation/facilitation of dialogue**

PAPEP opinion poll on role of UN



Lessons for the UN

- **General**

- Consistency and coherence of message: same for all audiences and from all parts of UNCT
- 'Being there' in key/difficult moments with relevant messages and interventions
- Need for in house capacity for political analysis and action (PAPEP)

- **From the National Dialogue**

- The national actors determine whether and how to dialogue
- International community is there to support: accompaniment, promote trust and transparency, facilitate communication, moral support/pressure at key moments
- Most important: being there = commitment, caring
- Being many and diverse helps (more weight, diversity of experience and perspectives)

Lessons for UN

- **UN has special weight and therefore responsibility**
 - We represent all countries
 - Universal values and principles → the best of humanity
 - This is still felt at country level

Lessons for the UN

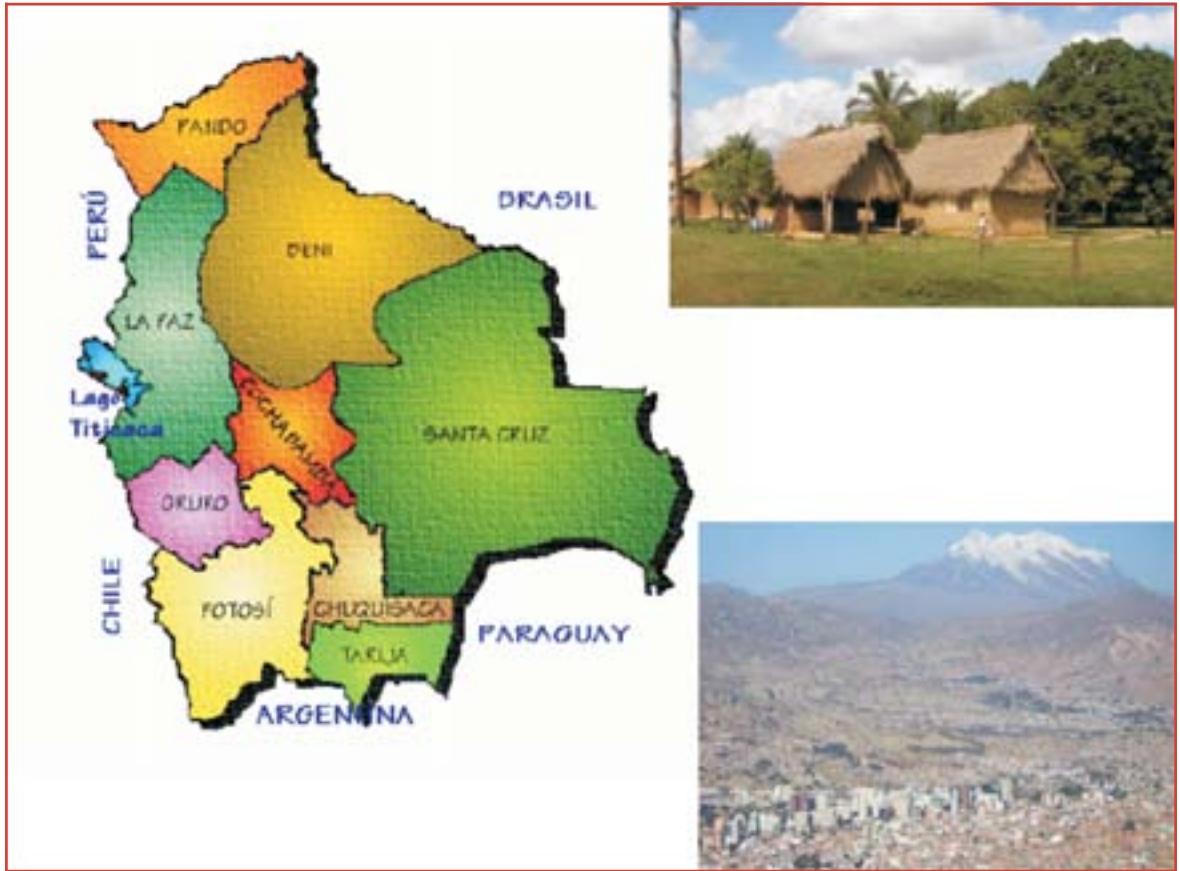
- **Priority to Bolivia: demonstration of sustained interest at highest levels, resource allocation including human resources: important as example to rest of Latin America:**
 - First government led by indigenous President – important it succeeds
 - Importance of demonstrating it's possible to make real progress toward equality and inclusion in most inequitable region in the world
 - Importance of demonstrating this can be done while also strengthening democracy and respect for human rights
- **Timely, continuous and consistent messages to Bolivian Government, coordinated with UNCT**
 - All possible support to effort toward change (inclusion of indigenous people, new development paradigm, etc.)
 - Importance of achieving change through democratic means, respecting the rights of all

Indigenous Peoples in Bolivia

Luis Basteiro

Agència Catalana de Cooperació al desenvolupament





How to become a main political actor...?



From 1952 revolution... to katarism



From katarism... to the indigenous movements



1. Constitutional Processes, Indigenous Rights and Peacebuilding

From the indigenous movements to the MAS victory



From MAS victory... to a brand new Constitution



SUPPORT TO THE TRANSITIONAL PROCESS OF THE DEMOCRATIC MODEL IN BOLIVIA: PROMOTING THE CHANGE IN PEACE

UN-Bolivia Joint Programme
(UNDP, UNICEF, OHCHR, UNODC,
UNIFEM)

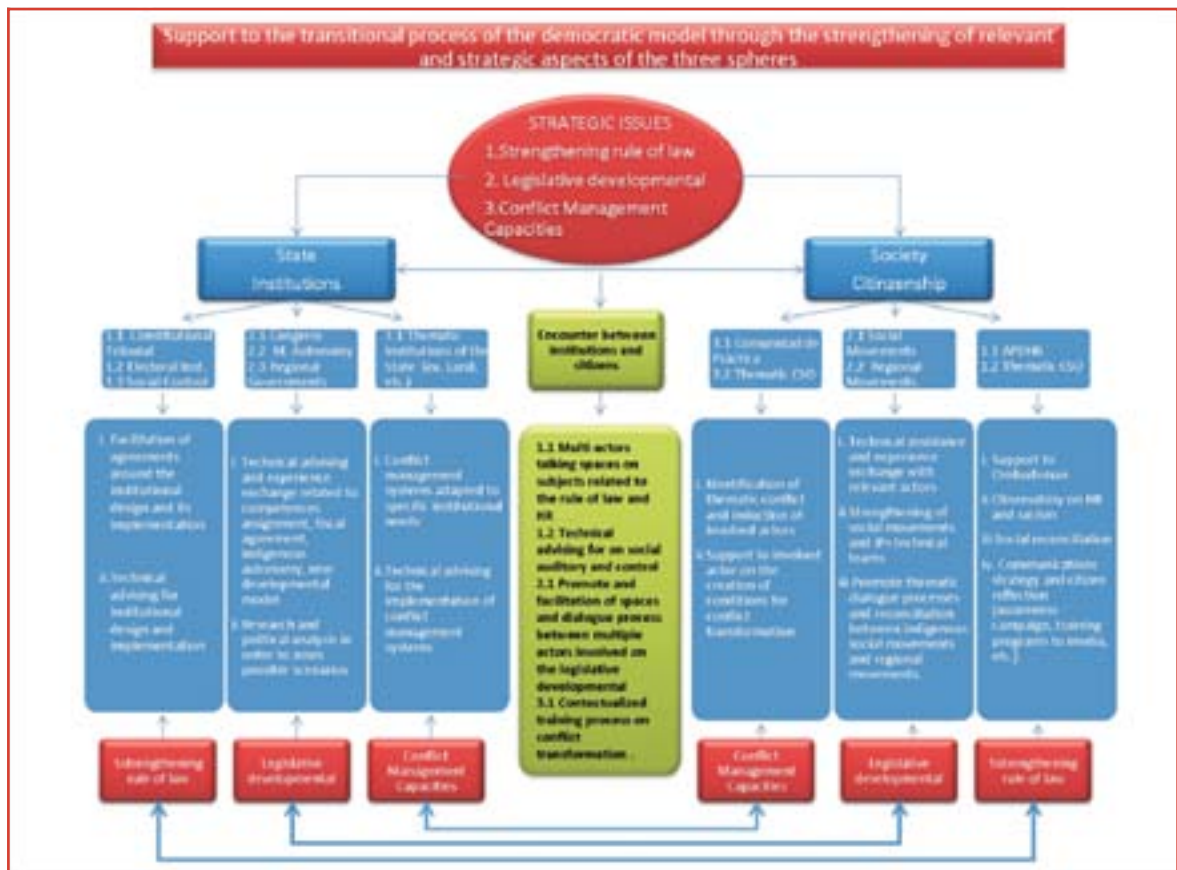
UNDP-Spain MDG Achievement Fund
Santiago Daroca Oller

Context Analysis

- Bolivia is passing through an exceptional transition process, which aims to pass from representative to participative democracy model, which actively promote direct civil society participation on decision making processes
- Risks of the transition :
 - Just symbolic changes
 - Increase the cleavages
 - Violent vindication of social demands
- The transition faces challenges on three spheres:
 - On the State (Institutional design)
 - On the Society (civil society capacities, citizenship)
 - On the sphere of encounter between institutions and citizens

Objective of the Joint Programme

Support to the transitional process of the democratic model through the strengthening of relevant and strategic aspects of the three spheres in order to reduce the risks of the transition as well as to promote and facilitate consensus among multiple actors in the articulation of national plans and priorities, especially where lack of consensus may generate tensions that block the achievement of the MDGs

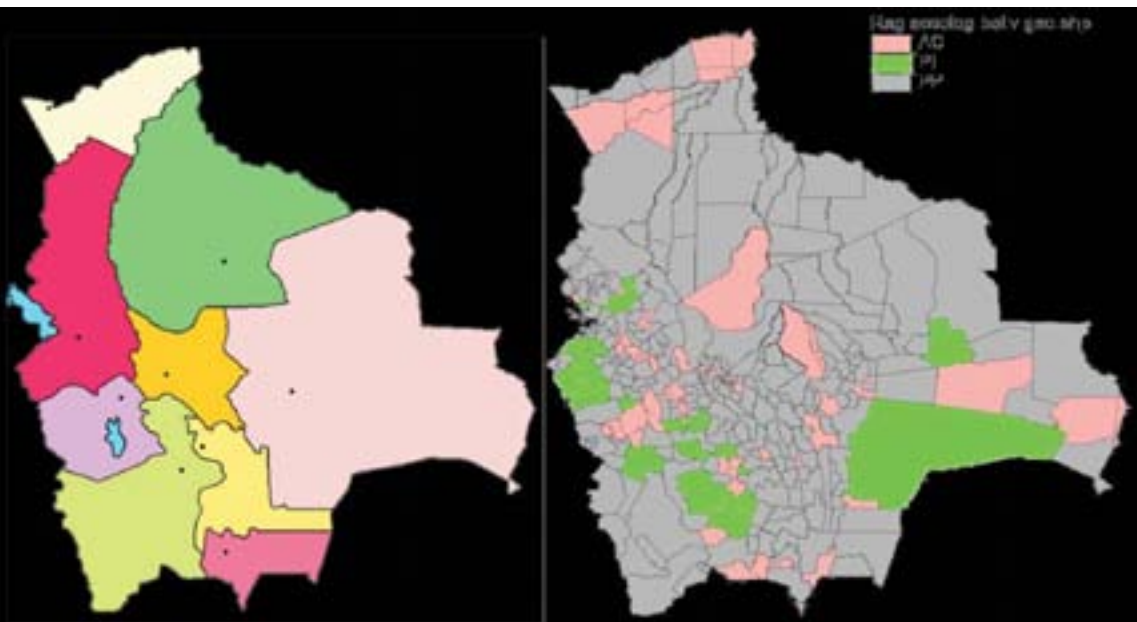


Indigenous rights in Bolivia

Juan Pablo Chumacero
Fundación TIERRA – Bolivia



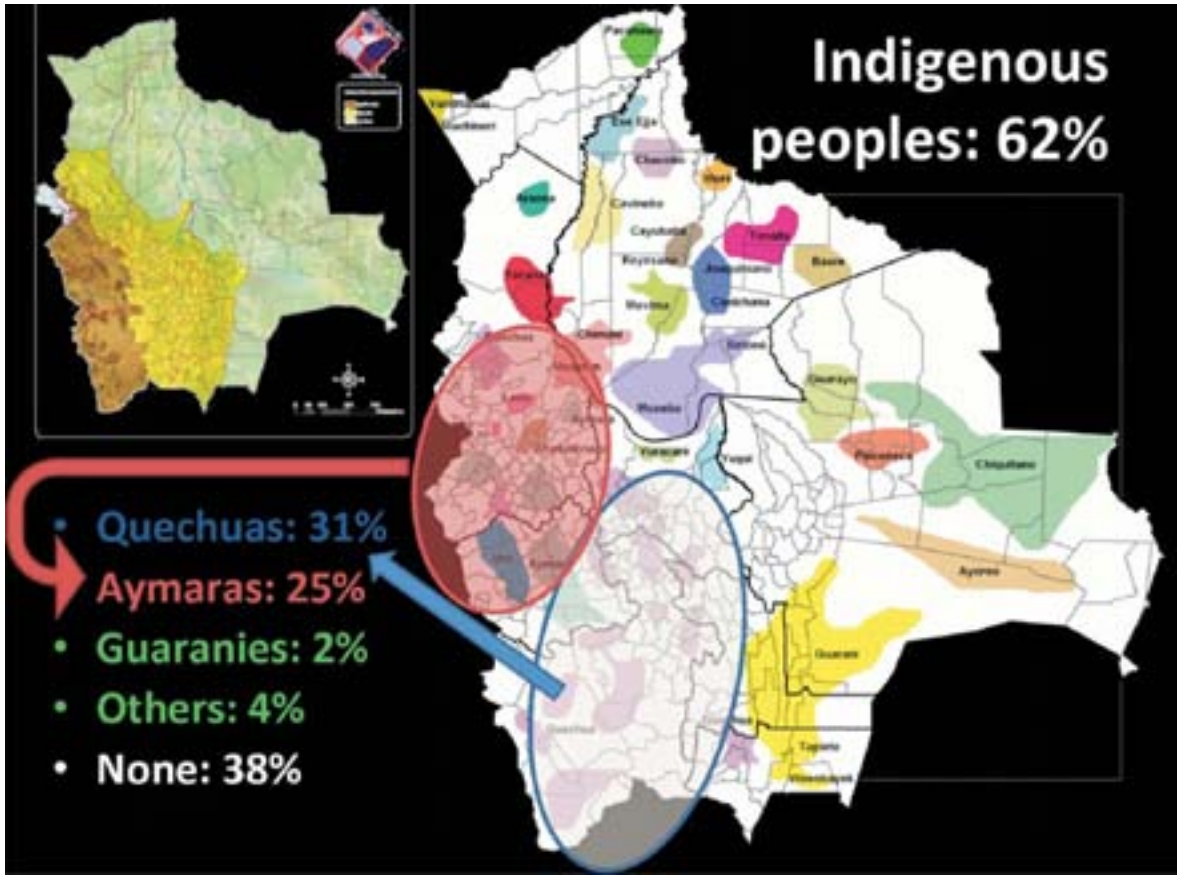
www.tierra.org



- 109 millions of hectares
- 9 departments and 327 municipal governments

1. Constitutional Processes, Indigenous Rights and Peacebuilding


Cases, Best Practices and Conclusions 2



New Constitution

Nation: collectivity that shares cultural identity, language, Tradition, institutions and territory

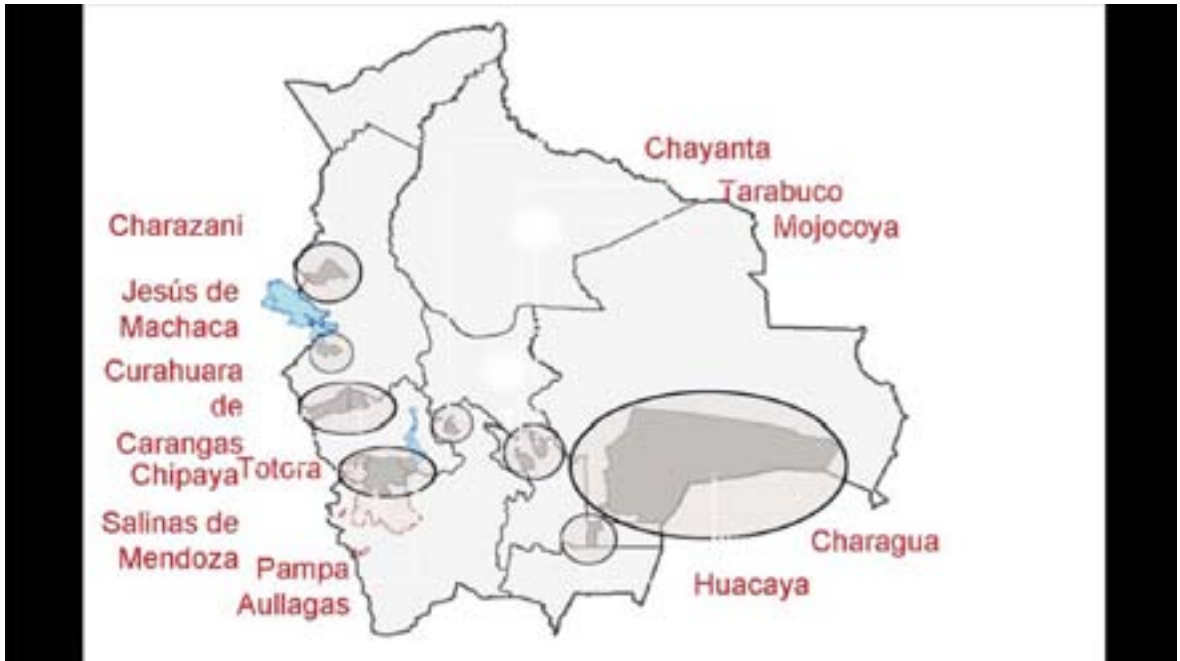
- ✓ **Art 1.-** Bolivia: ...Communal, Pluri-national and intercultural STATE. (eco, pol, leg cult pluralism)
- ✓ **Art 2.-** Recognition of **pre-colonial existence** of nations and Original – Indigenous – Peasant peoples and their right to:
 - Territory
 - Self determination, autonomy and self government
 - Recognition of their institutions
 - Culture
- ✓ **Art 3.-** Bolivian nation conformed by all Bolivians (male and female) and original – indigenous – peasant peoples and nations, which conform the Bolivian People
- ✓ **Art 29.-** To be consulted and participate on benefits of non renewable natural resources; and exclusive use of renewable natural resources



Indigenous autonomy

(at municipal and indigenous territory level only)

Department and municipal autonomy	Indigenous autonomy
<ul style="list-style-type: none"> • Decentralized system • Liberal (western) election system • Ordinary justice • Development policies articulated between levels of autonomy • National policies on natural resources exploitation 	<ul style="list-style-type: none"> • Indigenous self government • Election of their authorities in function of their own practices • Communal, indigenous justice • Territorial management with identity • Design of their own development • Access and use of natural resources



12 municipal governments ready to the indigenous autonomy referendum in December



- ✓ How to match public work and national interest with self indigenous governments
- ✓ How to innovate democracy
- ✓ How to establish limits to indigenous organizations
- ✓ How to determine the most proper election system
- ✓ How to assign competences in order to favor equity, economic growth, development and poverty reduction
- ✓ How to do all of these without violence



The discussion of indigenous autonomy implies tensions, internal negotiations and fights for power

Indigenous autonomy would be a positive innovation only if it deepens Popular Participation and democracy and increases the wellbeing of rural population



1. Constitutional Processes, Indigenous Rights and Peacebuilding

Constitutional processes, Indigenous Peoples rights and peacebuilding in the Philippines

Masli Quilaman and Domingo Nayahangan

1. Historical Background

Long before the Philippines came under Spanish colonial rule in 1521, the inhabitants of this country already had their own form of government and justice system within their distinctive ancestral domains/territories. They managed their own economies and traded with other nations.

However, their socio-economic, cultural, political and even religious environment begun to change when the colonial regime introduced the *Jura Regalia* or *Regalian Doctrine* which essentially declared that all lands colonized by Spain belong to the Crown. As a consequence, the people living in these conquered territories who constituted a majority of the Filipino population eventually submitted to colonial rule and embraced various aspects of the way of life of the colonizers, including Christianity.

But in the hinterlands and in a few coastal enclaves, an entirely different case unfolded. The people in these places generally and valiantly resisted colonial occupation. Free from any external intervention, the people were able to keep much of their indigenous way of life, holding on to their customary laws and traditional beliefs, leadership structure, governance practices and justice system, including the mechanisms for conflict resolution and peacebuilding.

Thus was born the minority-majority dichotomy of the Filipino people, with those who belong to the former constituting the present day Indigenous Peoples (IPs) and those who belong to the latter constituting the mainstream Filipinos.

There are at present 110 IP groups in the Philippines who live in clearly defined territories all over the Philippine Archipelago. They number about 14 million or 16 percent of the current Philippine population of 86 million.

The Christianized Filipinos later waged war against their colonial masters in a bid to regain their independence. But their struggle was soon overcome by events, particularly the coming in 1898 of another colonial power, the United States of America, to whom Spain eventually ceded its colonial rule over the Philippines.

It was during the American occupation that the cornerstone of the constitutional process for the recognition of Indigenous Peoples rights and peace building was laid out. This was in the form of a landmark decision of the US Supreme Court in a case lodged by a Filipino tribal elder in 1909 entitled *Carino vs Insular Government* recognizing the Indigenous Peoples' "Native Title" to their ancestral lands/domains. In making this decision, the Supreme Court noted that the territories of the Indigenous Peoples, who were then called non-Christian tribes/national minorities/indigenous cultural communities, have never been subjugated by Spain and therefore remained privately owned and not part of the public domain under Spanish rule.

Unfortunately, while the US Insular Government upheld the Indigenous Peoples' ownership of their ancestral domains, the realization of this important policy did not come easy. Starting in the American regime itself, encroachment into the lands of the hapless Indigenous Peoples took place relentlessly and were perceived to be sanctioned by the Government. Invoking official sanctions, wave upon wave of migrants from all over the country came to settle in these ancestral domains. They were followed by multi-national corporations and big domestic businesses who started to occupy vast portions of these territories for business purposes. The practice somehow continued under the Philippine Republic as the same ancestral territories became the site of various development projects which more often than not ran counter to the interest of the Indigenous Peoples.

These incursions became the root cause of conflict between and among the Indigenous Peoples, migrant settlers and government as the former continued to defend their ancestral territories through various forms of resistance.

In the face of this continuing conflict, Government and non-government institutions have since been struggling to keep the peace with different kinds of interventions. But it was the Philippine Constitution of 1987, an offshoot of a bloodless people power revolution held in one section of the Epifanio de los Santos Avenue or EDSA in Metro Manila and was aimed at toppling the dictatorial regime then gripping the country, that had the potency to give added strength and legitimacy to peacebuilding processes concerning the Indigenous Peoples at both community and national levels. The Constitution has for the first time in the country's history contained explicit provisions for the recognition and promotion of the rights of Indigenous Peoples within the framework of national unity and development. It also has provisions mandating the State to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being, and that Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domains.

Moreover, the Constitution provided that the State recognize, respect and protect the Indigenous Peoples' right to preserve and develop their cultures, traditions, and institutions, and consider these rights in the formulation of national plans and policies.

2. Peacebuilding in the Context of the Indigenous Peoples

Significant insights on peacebuilding in the context of the Indigenous Peoples may be drawn from experience in the Cordillera Administrative Region, particularly among the different Indigenous Peoples inhabiting the entire length and breadth of the Cordillera Mountain Range. At the core of this experience is how the Indigenous Peoples engaged in peacebuilding while protecting and expressing

their own rights, individually and collectively. These Indigenous Peoples understood and observed their human rights in an unmistakably unique way given the manner by which their history has unfolded.

One unmistakable factor that could be cited in the context of this discourse was the deep understanding by these different tribal communities of their individual and collective rights and their ability to defend these rights. There were large and small, powerful and weak, rich and poor tribal communities living in large and small ancestral domains or territories. Yet they were able to develop mechanisms by which to co-exist, resolve their differences and, if need be defend their collective interests from common adversaries. They had their way of resolving conflicts among themselves and maintaining unity in the face of their diversity.

In this democratic space the concept of individual human rights and community rights found root and gave birth to responsive peacebuilding mechanisms. Given the corresponding duty and responsibility to protect and promote these rights, powerful tribal communities cannot just run roughshod over small or weaker ones because the members of each community know where their rights begin and where they end.

The council of elders relate that part of the peace building mechanisms are the clearly defined rules of engagement in case of conflict. Conflicting parties, for example, are enjoined from destroying rice fields and other sources of food or livelihood and from harming women and children. This is how deep the Indigenous Peoples are committed to uphold honor and dignity in their day to day life and in times of conflict (*Fidelisan vs. Dallikan*).

The practice and concept of collective community control and ownership of natural resources within ancestral domains (like forests, water sources, mineral deposits, communal irrigation canals and the like) are collective rights to which general adherence is a must. Violations of this norm are rare and when they happen, they are resolved as speedily as possible through community peacebuilding and peacekeeping processes i.e. *bodong and tuntungan*.

Individual human rights with no strong community rights to serve as their counterbalance could become tickets to unbridled socio-economic and political privileges. Without the corresponding collective rights the exercise of this individual right can lead to abuse and destruction.

These are the rights, the systems of governance, the traditional knowledge systems and practices and the mechanisms for peacebuilding of the Indigenous Peoples that the Constitution aims to uphold, recognize and protect. Given their uniqueness and profound meaning, these are very much a part of the national heritage. Through the Constitution, these indigenous norms are now part of the legal system of this country and they will long make the national awareness of the legacy of the Indigenous Peoples alive.

3. The Sagada Peace Zone

The interconnection of indigenous peacebuilding mechanisms and constitutional processes is exemplified by the 'peace zone' initiative of the Indigenous Peoples in the Municipality of Sagada, Mountain Province, one of the known eco-tourism destinations in the Cordillera Region of northern Philippines.

The Indigenous Peoples in Sagada have been cited in various fora for their community-based conflict management and peacebuilding mechanism. When they pushed forward their concept of a 'peace zone' during the post EDSA Revolution in the trying years of the late 1980's towards the early 1990's, the community did not only provide a social mechanism for survival but also a means of reviving the customary way of peacebuilding. This peacebuilding mechanism works by asserting community rights which are protective of the interest and welfare of all members of the community amidst all forms of conflict.

Shown below is a brief description of the 'peace zone' concept being practiced and promoted by the Indigenous Peoples in Sagada:

3.1 The Sagada Peace Zone is a community based peacebuilding mechanism conceived and consolidated through a process of dialogues with warring armed parties. The dialogues consisted of sectoral, multi-sectoral, and community meetings

aimed at building support groups and partners for peace. The primary purpose of the peace zone concept was to protect the lives, properties, and rights of the civilian population in the midst of an armed conflict.

3.2 This peacebuilding concept came handy in 1988 following a series of armed encounters between the Armed Forces of the Philippines (AFP) and the rebellious New Peoples Army (NPA) took place close to and within the town center resulting in the deaths of innocent civilians including women and children. Finding the need for popular intervention to put a stop to the killings, different sectors and groups started meeting and discussing the issue separately and as a whole community. Before long they agreed to unite on several basic principles:

- The supremacy of civilian interests over those of the armed groups or parties must be asserted at all times.
- It is imperative to recognize and promote internationally recognized rules of war.
- Sagada is a demilitarized zone and must be free from armed groups except those who are passing through or in transit. Members of the AFP or the NPA may enter the zone to buy their needs or be treated in the community hospital for any ailment as long as they do not carry or display their firearms.
- The people of Sagada upholds democratic principles and ideals and respects different or opposing political views.
- Sagada is ready to serve as a venue for any kind of peace talk or negotiation arising from various types of conflict, including tribal war or even political feud. (As an application of this principle, Sagada hosted the negotiations for the release of 7 Philippine National Police personnel held prisoners by the NPA in 1993. And, more recently in 2005, Sagada was the venue for the initial talks between tribal leaders of the warring Botbot and Betwagan tribal communities).

3.3 During the height of the community's quest for peace, a multi-sectoral body called the Municipal Peace Committee (MPC) was organized to coordinate the operationalization of the Sagada Peace Zone. Composed of representatives of the mainstream church present in the community, the

local government unit, traditional elders, women, youth, and the professional sector, the MPC also served as the voice of the community in the peace building process.

3.4 In various meetings and conferences the warring parties expressed opposition to the declaration of the Sagada Peace Zone, viz:

- High ranking officials AFP saw the Sagada peace zone concept as a handywork of local leaders or officials who are either communists or under the influence of the NPA in the area. They wanted to see the Sagada community cease being parochial and be an active participant in the fight against the insurgency.
- Similarly, the NPA declared that the Sagada peace zone concept was a part of the Government's strategy of waging an all-out war against the insurgents and was also a part of the low-intensity conflict scheme being supported by foreign intelligence agencies.

3.5 In the face of these challenges, the community strengthened its position and in the process gained greater empowerment by declaring that any party who does not recognize the collective quest for peace through the peace zone will lose the respect of the community members. Realizing once more that indeed peace does not come in a silver platter, it has resolved to struggle for it over time.

3.6 The Sagada community sought partners for peace among local and international peace advocates. These support groups or partners provided the much needed political, material, and sometimes financial support for the Peace Zone.

3.7 The originality of the Sagada Peace Zone was highlighted by its strong cultural foundation, specifically the customary principles of honor and dignity (*dayaw*) in peace or in war.

3.8 The Peace Commission of the Philippines and the Philippine Senate eventually gave official recognition to the Sagada Peace Zone through separate resolutions.

3.9 Today, there is relative peace in Sagada as evidenced by the prolonged absence of armed encounters in area. But the community leaders and members are firm in their belief that peace

building is a continuing process directed towards addressing the root causes of conflict.

The constitutionally-upheld principles of the Sagada Peace Zone concept as well as the experience and lessons derived from it later formed part of the basis for the conceptualization and passage by the Philippines Legislature of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act (IPRA) of 1997. Under the IPRA, indigenous knowledge systems and practices (IKSP), including peacebuilding mechanisms and justice systems are recognized as part of the national legal system.

The IPRA recognizes four (4) bundles of rights. These are:

- a) Right to Ancestral Domains – This right provides the IPs with security of tenure over their ancestral domains (collective territory) and lands (landholdings of families and clans and the sustainable use of the resources therein. It likewise recognizes the IPs right of ownership of the ancestral domains/lands; right to develop these territories; right arbitrary removal from these territories; right to regulate the entry of migrants into these areas; right to resolve land conflict using customary law; and right to redeem these lands lost through unjust transactions, among others.
- b) Right to Self-Governance and Empowerment – This right ensures respect for indigenous socio-political, cultural and economic systems. It mandates the provision of capacity building services to community members, including the opportunity to participate in decision-making processes that affect them.
- c) Right to Social Justice and Human Rights – This bundle of rights shield the Indigenous Peoples from discrimination in all its form. It provides for the enjoyment of basic human rights and standards by the IPs.
- d) Right to Cultural Integrity – By these rights, the IPs are able to preserve and promote their indigenous culture, including historical and archeological relics, community intellectual property, indigenous knowledge systems and practices and biological and genetic resources.

By and large, the IPRA had the effect of keeping the peace between and among the IPs and other communities, agencies of the Government as well as the business sector. It has helped tremendously to bridge the gap that for a long time existed between the Indigenous Peoples and the Government caused by the perceived disregard by the latter of the rights of the former not only as human beings but also as citizens of the country.

To ensure its effective implementation, the IPRA created the National Commission on Indigenous Peoples (NCIP) and gave it corresponding powers and responsibilities.

4. Lessons and good practices generated

Various stakeholders are one in the belief that the constitutional process attendant to the foregoing account on the Indigenous Peoples struggle for the recognition of their rights has had lasting significance. It has not only changed the way Indigenous Peoples are regarded in Philippine society dramatically but also yielded a number of lessons that could guide similar processes over time, as follows:

The Constitutional Process

4.1 The recognition of Indigenous Peoples rights that have been suppressed for centuries does not come easy. For it to happen, no less than a national consensus for change in the social order, often through a constitutional process, may have to take place (Post–Edsa Revolution spirit).

4.2 Indigenous Peoples development processes that are anchored not on rights but on mere social amelioration programs are only palliative. The same development processes can only be lasting if they are provided to the Indigenous Peoples as a matter of constitutional right.

4.3 Ownership by the Indigenous Peoples of relevant constitutional provisions recognizing their rights is crucial. Thus the participation of the Indigenous Peoples in the constitution-making and subsequent processes is imperative.

4.4 A sustained multi-sectoral advocacy of Indigenous Peoples' rights by the Indigenous Peoples themselves and concerned multi-sectoral groups makes the constitutional process alive and responsive. The constitutional process cannot be left to the Government alone.

4.5 The constitution, by itself, cannot effectively respond to the aspirations of the Indigenous Peoples unless its relevant provisions are translated into operational terms through enabling legislation. This lesson is exemplified by the enactment of the IPRA and its Implementing Rules and Regulations (IRR).

The Peacebuilding Process

4.6 The IPs have a strong sense of individual and collective rights over what they believe belongs to them such as ancestral lands and domains. All their other rights somehow relate to this concept. To them, a genuine recognition and respect of their ownership rights is a prerequisite to peace.

4.7 Any kind of peacebuilding with the IPs must consider the IPs' own peacebuilding mechanisms.

4.8 Peacebuilding with the Indigenous Peoples has validated the effectiveness of the six paths to peace laid out in "Towards a Culture of Peace" by Swee Hin Toh:

- Dismantling the culture of war (no bearing of arms in the peace zone)
- Living with compassion and justice (indigenous sense of empathy and fairness)
- Building cultural respect, reconciliation and solidarity
- Promoting human rights and responsibilities
- Living in harmony with the Earth (land is life)
- Nurturing inner peace (indigenous spirituality)

4.9 At the core of the most effective strategies for peacebuilding with IPs are a number of imperatives, including the rationalization of natural resources use, the strengthening of community-led peace initiatives and the enhancement of the community's stewardship and governance system.

4.10 In peacebuilding processes involving IPs, the most effective facilitating factors are the rich natural resources, the presence of organized groups such as peoples organizations and non-government organizations, the cooperation of the local government units and inter-agency collaboration. Inaccessibility, prejudice, patronage politics, corruption, involvement of insurgents and the vulnerability of organized groups external pressure are the most important hindering factors.

4.11 Some of the key elements that underpin peacebuilding processes include the IPs' participation in crafting the peace agenda, inter-cultural dialogue for healing and reconciliation, tapping indigenous mechanisms for peace, promoting peacebuilding champions, collective conflict analysis and putting in place peacebuilding sustainability mechanisms founded on the indigenous culture.

Lessons Learned for the UN

From interventions that worked:

4.12 It is imperative for the UN to stay neutral in relation to the stakeholders and to play a facilitative role in the process. The UN must meet the expectation of stakeholders to serve as the provider of international standards, values and principles from which constitutional and peacebuilding processes could be anchored e.g. the ILO Convention (No. 169) on Indigenous and Tribal Peoples in Independent Countries, the UN Declaration on the Rights of Indigenous Peoples

and other relevant Conventions and Recommendations and Treaties.

4.13 The UN can also contribute significantly to the constitutional and peacebuilding processes by providing facilitative support services e.g. technical inputs, resource mobilization, consultancy, coordination, etc. It is in a good position to rally international support for the necessary constitutional and peacebuilding processes.

From interventions that did not work:

4.14 UN intervention can be counterproductive or less productive when it is perceived as biased and/or imposing and prescriptive.

4.15 UN intervention is less productive when it is not coordinated with the various concerned agencies and stakeholders.

Overall, constitutional processes must address the root cause of conflict involving the IPs. As an international group of IP leaders declared in one forum: 'We looked at our past and saw that the roots of conflict in our lands are found, firstly, in our common histories of external and internal colonization and, secondly, in the continuing process of dispossession from our territories and resources; our identities, languages, cultures and knowledge; thirdly, the historic and on-going denial of the right of Indigenous Peoples to self-determination'. (Declaration of the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples. Manila, Philippines, December 8, 2000).



2. Peace Processes, Indigenous Rights and Peacebuilding

Peace Processes, Indigenous Rights and Peacebuilding

Peacebuilding as a challenge in Guatemala


Guatemala, Iximulew, Kab'Iajuj' K'at

Barcelona, November 11, 2009
Lucía Xiloj Guin and Christina Elich

The Peacebuilding is still a challenge in Guatemala



- Guatemala, is located in Central America.
- Has approximately 13 million people
- Over a 60% of Guatemalan people are indigenous, who are divided in 24 linguistic communities



A map of Guatemala divided into regions, each labeled with an indigenous group or language. The regions include: Itza (blue), Ingles y Español (black), Garifuna (yellow), K'iche' (green), K'aqchikel (purple), Mam (orange), Queqchi' (red), K'iche' (green), Achi (purple), Focomchi' (light blue), Chorti' (red), Sipakapense (green), K'iche' (green), K'aqchikel (purple), Focoman (orange), Mam (orange), Tzutujil (light blue), Español (black), and Xinca (green).

- K'iche
- K'aqchikel
- Mam
- Queqchi'

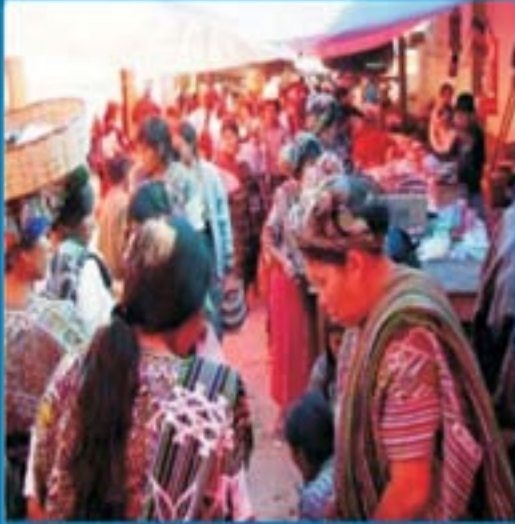
36 years of internal armed conflict (1960-1996)



Approximately:

- 200,000 people were killed.
- Thousands disappeared
- More than a million displaced
- 83% of victims were Mayans

Peace Negotiations (1987-1996) and Peace Accords (1994-1996)



- Framework agreement for the search for peace through political means
- Global agreement on Human Rights
- Agreement for the resettlement of uprooted population

Peace Accords (2)



- Agreement on the establishment of a Truth Commission for the historical clarification of the violations to human rights and violent actions that have caused suffering to the Guatemalan population

Peace Accords (3)



- Agreement on Identity and Rights of indigenous peoples
- Agreement on Social and Economic Aspects and Agrarian Situation

Peace Accords (4)



- Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements
- Agreement on a Firm and Lasting Peace

Memory of Silence, Truth Commissions Report (CEH, 1999)



- CEH Conclusions
- CEH Recommendations
- Progress
- Lessons learnt
- Obstacles
- Actions

CEH Conclusions (1)



- The structure and nature of economic cultural and social relations are marked by profound exclusion, antagonism
- The violence was fundamentally directed by State against the excluded.

CEH Conclusions (2)



- Concentration of productive wealth
- State involved as an instrument for the protection of the exclusion and injustice structure system.

CEH Conclusions (3)



- Protest
- Political instability
- Repression
- Military coups
- Movements proposing economic, political, social and cultural change

CEH Conclusions (4)



- Relationship between the State and the indigenous population of Guatemala has subsisted within an environment of racism, inequality, and exclusion.

CEH Recommendations (1)



- Ratification of corresponding international human rights instruments
- Investigation and analysis of the violent events of the past

CEH Recommendations (2)



- Protection of the individual and collective rights of indigenous population
- Respect for cultural plurality
- Promotion of intercultural relations

CEH Recommendations (3)



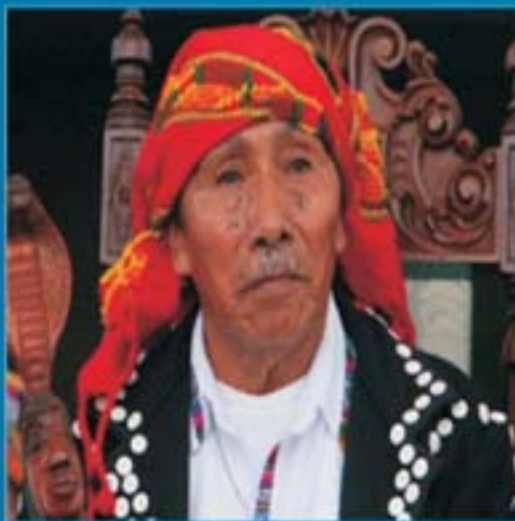
- Structural reform, mainly in the military and judiciary branches
- Encouragement of mutual respect
- Strengthening of the democratic process

Progress (1): Peace Accords Compliance General



- Operational Accords almost fully complied – negative peace
- Substantive Agreements encounter serious delays in compliance – positive peace

Progress (2): Agreement on Identity and Rights of Indigenous People



- Effort to change thinking, attitudes and behavior.
- Promote the classification of ethnic discrimination
- Few commitments
- Does not address the structural problem of racism

Lessons learnt



- Need to reduce prejudices & stereotypes
- Need for strategic litigation: territory and natural resources, discrimination, claims
- Education as instrument for change of mind maps
- Strengthen capacities of indigenous organizations

Obstacles: Right to be consulted



- Legislative and administrative measures
- Mega-projects
- Incentive of development and progress
- 36 consults, only in 2 cases indigenous peoples recommendations respected

Community Consultation (2)



- Not binding
- Use and abuse of the justice system by foreign companies
- Criminal persecution of community leaders
- Continuous violation of the rights of indigenous people (structural)

UN Actions (1)



Joint UN Programme (2009-2012) funded by Norway for the full realization of indigenous rights in

- Justice, strategic litigation, UNHCHR
- Bilingual & Intercultural Education, UNICEF
- Political Participation, UNDP
- Gender & Environment

UNDP Actions (2)



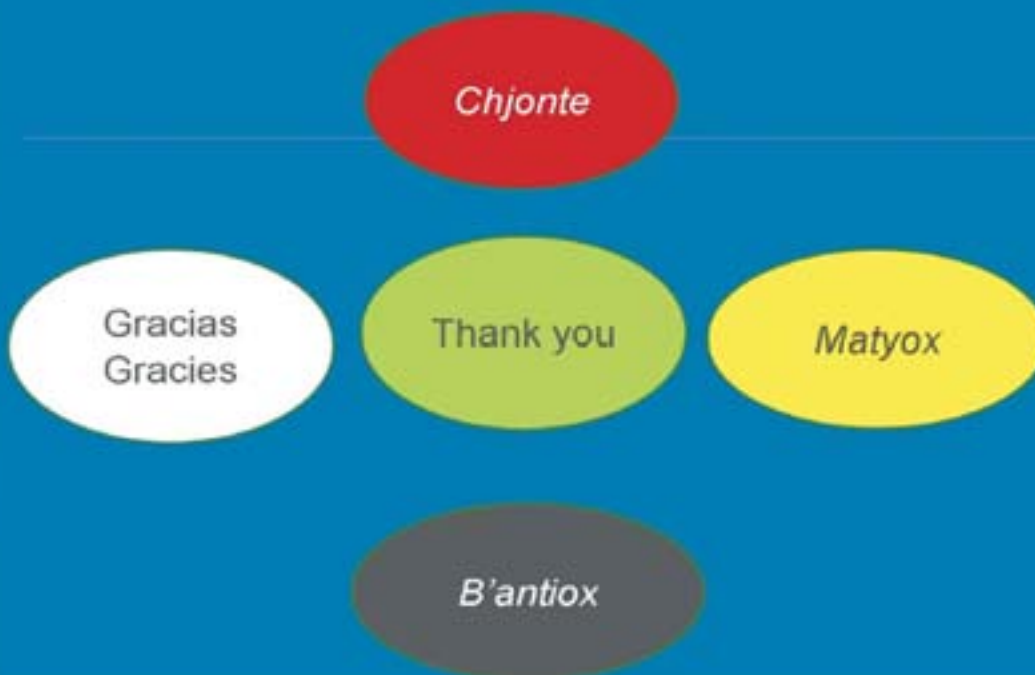
- Ch'umilal Jab' – Rain of stars, destinies and missions in Maya K'iche: design of an innovative model for cooperation in Transitional Justice, Harmony and Wellbeing, based on a synergy between Maya World Vision and HR based approach – 2008-2009
- Publication of Maya Cosmovision, Raxalaj K'aslemalil – 2007
- DIGAP – 2001 - 2009
- PROEIMCA 2004 - 2009
- Human Development Report on Plural State - 2005

Lessons Learnt on UN Actions

- Indigenous Peoples need to be the leading actors in investigation, design, implementations and evaluation of actions, "by" and "with" instead of "for" and "on" to enhance real participation
- As UN, we need to convince donors to support integral holistic indigenous oriented programmes, not (only) occidental sector focused projects
- As UN, we need to promote and facilitate meaningful dialogue, interactions and decision making between indigenous authorities and State institutions to improve realization of indigenous rights

Lessons Learnt on UN Attitude

- As UN, we need to add value to indigenous knowledge, not necessarily apply affirmative action, to become a more inclusive, representative, diverse and wise organization
- As UN, we need to be example, not predicate to States policies and practices that we hardly apply internally, especially regarding recruitment of indigenous consultants and staff
- As UN, we need to listen and respect more and talk and presume less, use our strength and power to accompany and facilitate realization of indigenous peoples collective dreams and act less to purchase our individual ones



Conflict and Indigenous Peoples in Guatemala

The Barcelona Workshop on Indigenous
Peoples and Peacebuilding
9-13 November 2009
Salvador Marti

Background: the Conflict in Guatemala

- 36 years of armed conflict (with two waves of guerrilla activity).
- The second wave deeply affected the indigenous population, particularly in the regions of Petén, San Marcos, Quiché and Verapaces.
- Indigenous communities had a complex relationship in the war, participating in the guerrilla as well as in self-defence groups (PACs). They have been interpreted in different ways by observers ("Between two armies" Stoll, "Me llamo RM y así me nació la consciencia" Burgos, "Los días de la selva" Payeras).
- The end-result was genocide: thousands of dead, disappeared and displaced.

The role of the State, the guerrilla and other actors... searching for Peace

- A large (1982-1996), complicated and tiring process (in which the civil government enjoyed little autonomy).
- The agreements were a result of the context, rather than the skills, wishes or perseverance of particular actors.
- The context was determined by:
 - a) The regional situation (peace processes in Nicaragua and El Salvador, under the guidance of Esquipulas II),
 - b) The end of the Cold War (89) and the decline of left-wing models. This led to the demand of indigenous rights rather than socio-economic questions.
 - c) The role of the international community in accompanying/leading the process.

What do the Peace Accords say?

...Are too ambitious and idealistic because has been difficult to make these promises into a reality...

Immediate results

- A excellent role of a committed and mobilized civil society (unveil the truth REMHI / CEH & *retornos*)
- A limited role of the State (reforms of the security forces, land distribution, education...)
- An important role of the International Community (they gave support in reconstruction)
- The role of the citizens was practicaly non existent (The referendum of 1999)

Results in the mid-term

- Political actors: break-up of the left (URNG, ANN, Winaq) and the rest of the political system?
- Institutions: a weak Rule of Law
- Policy: limited social investment and an increase in punishment for mara gang members
- On the symbolic level: "*el indio permitido*"

Why were there such poor results for the Indigenous Peoples of Guatemala?

For internal reasons:

The lack of cohesion (various communities, peoples, languages, interests...).

The situation of poverty, exclusion and organizational dispersion.

Victimization, violence, fear... legacies of the conflict.

For external reasons:

The scarce support by the majority *ladinos* citizens for the demands (or desires) of the Indigenous Peoples.

The disappearance of allies as a result of disintegration (the left) and a change of focus (the decade of Indigenous Peoples was over)



Are there any lessons to be learned?

- Don't create high hopes if there is no correlation of forces strong enough to fulfill promises.
- Don't confuse a positive set of circumstances (first half of the 1990s) with a correlation of forces... *don't confuse a good day with a bright future*
- Don't presume that a committed, mobilized and open civil society represents the majority of citizens.
- Don't trust the promises made by States: sometimes language is used as a mask...

Is there any hope?

- The emergence of new indigenous actors
- The creation of local and global indigenous networks as well as social capital
- Infrapolitics: *why should we think that the Indigenous Peoples are going to tell us what is going on... when they have only been able to preserve what they have kept hidden.*

DEFENSORIA DEL PUEBLO




The politics of conflict

Drawing lessons from the Bagua Case (Peru)

Carlos Alza Barco
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Current Adviser of the Ombudsman
carlos.alza@pucp.edu.pe

Barcelona, 11th/11/2009

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Content

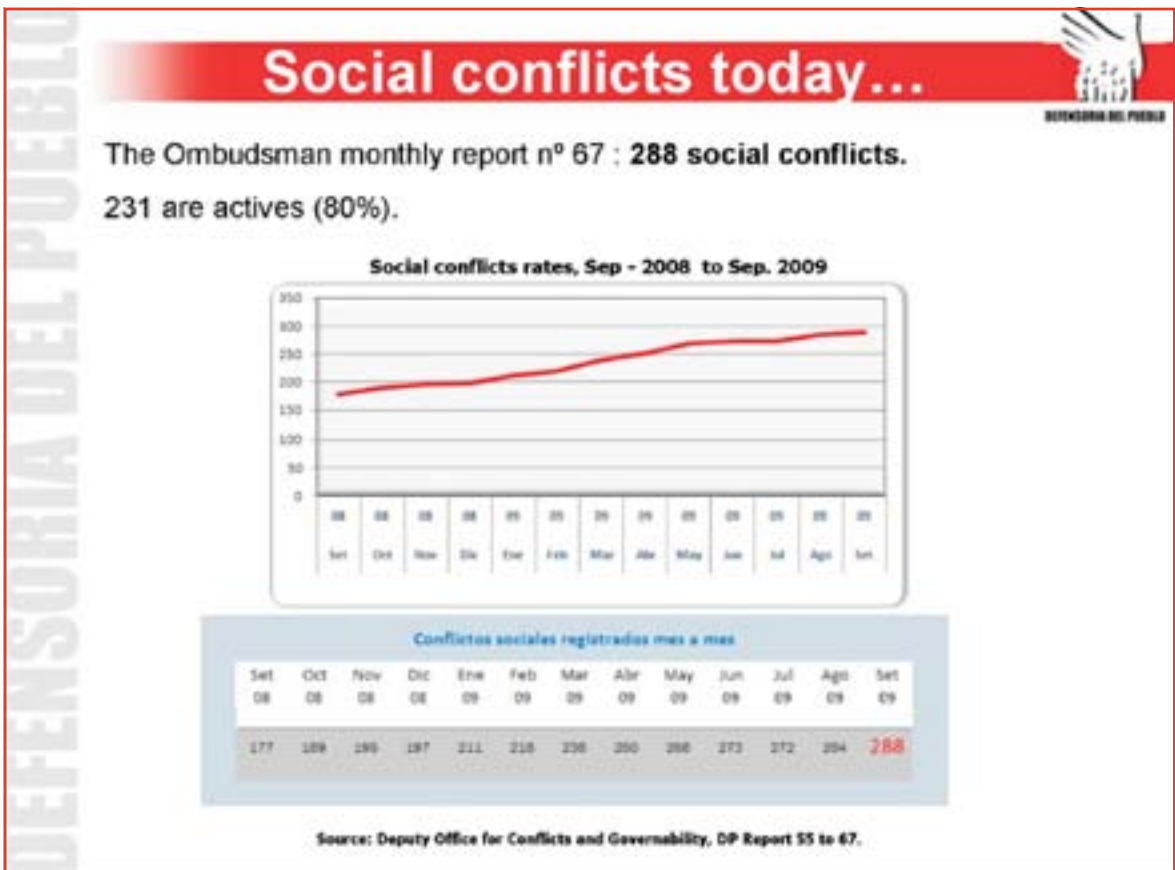
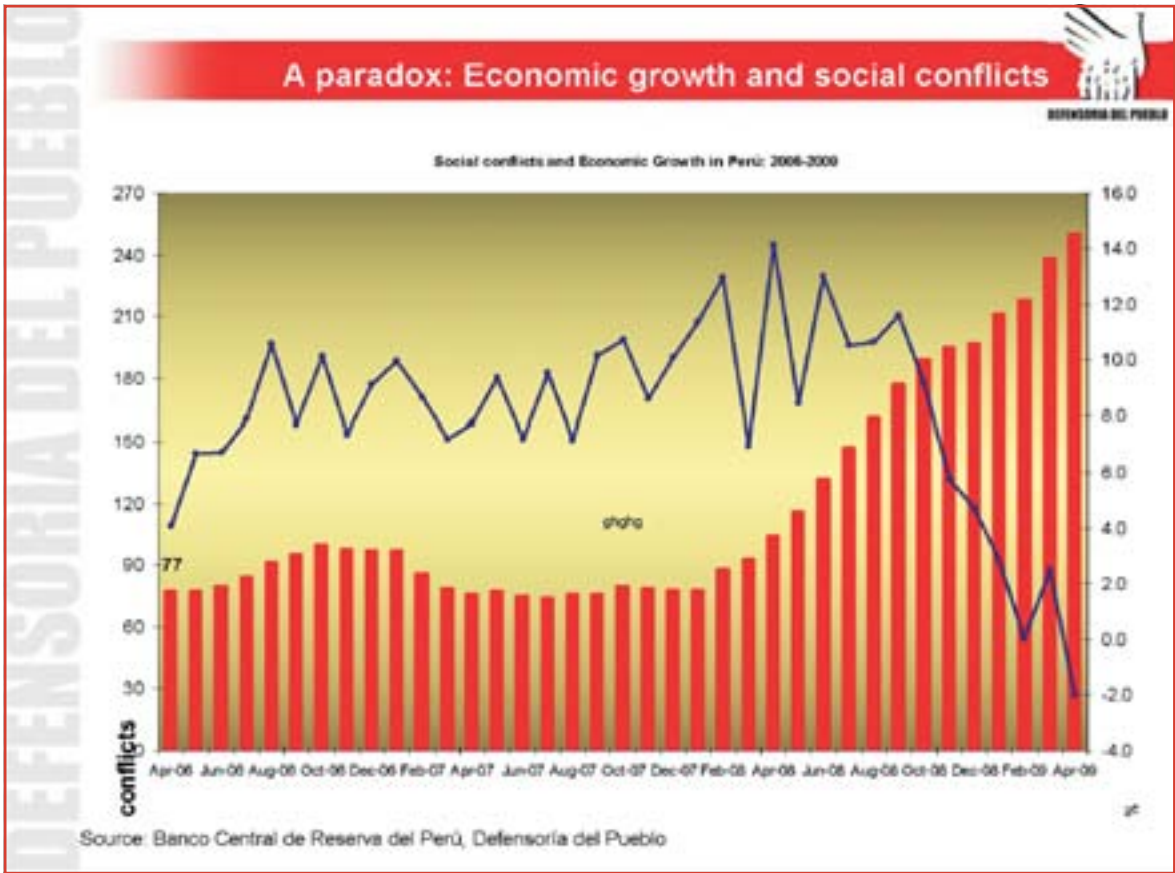
1. The context
 - a. Some data
 - b. A history of violence
 - c. The key previous events
2. The Bagua episode
3. Drawing lessons from experience



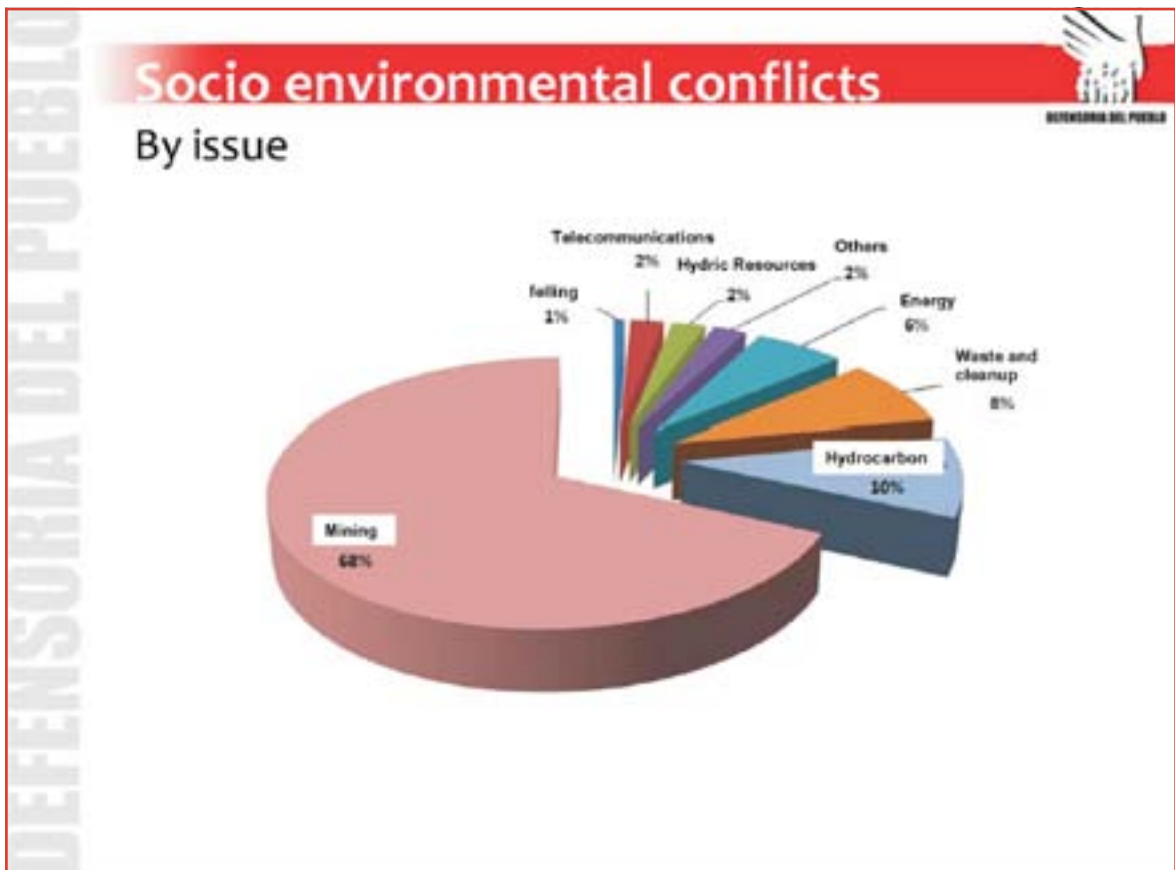
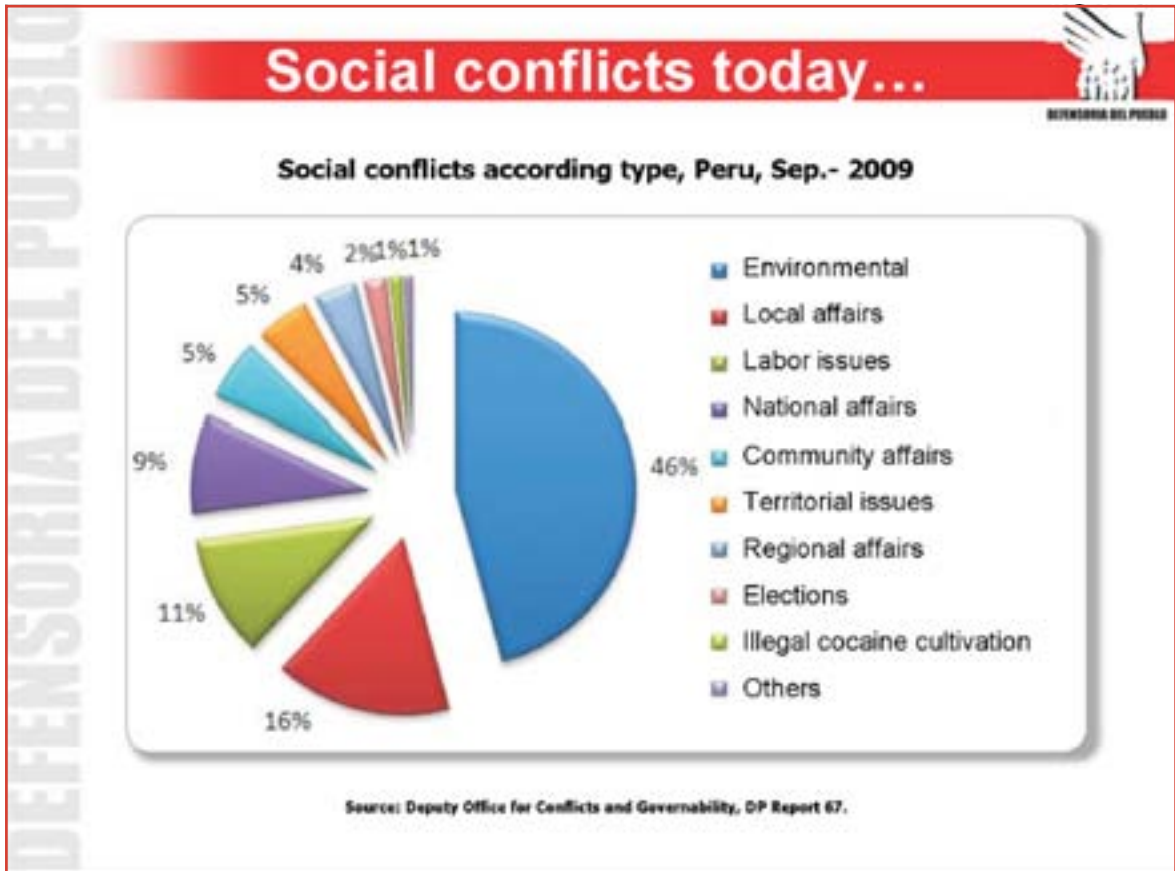
a. Some data

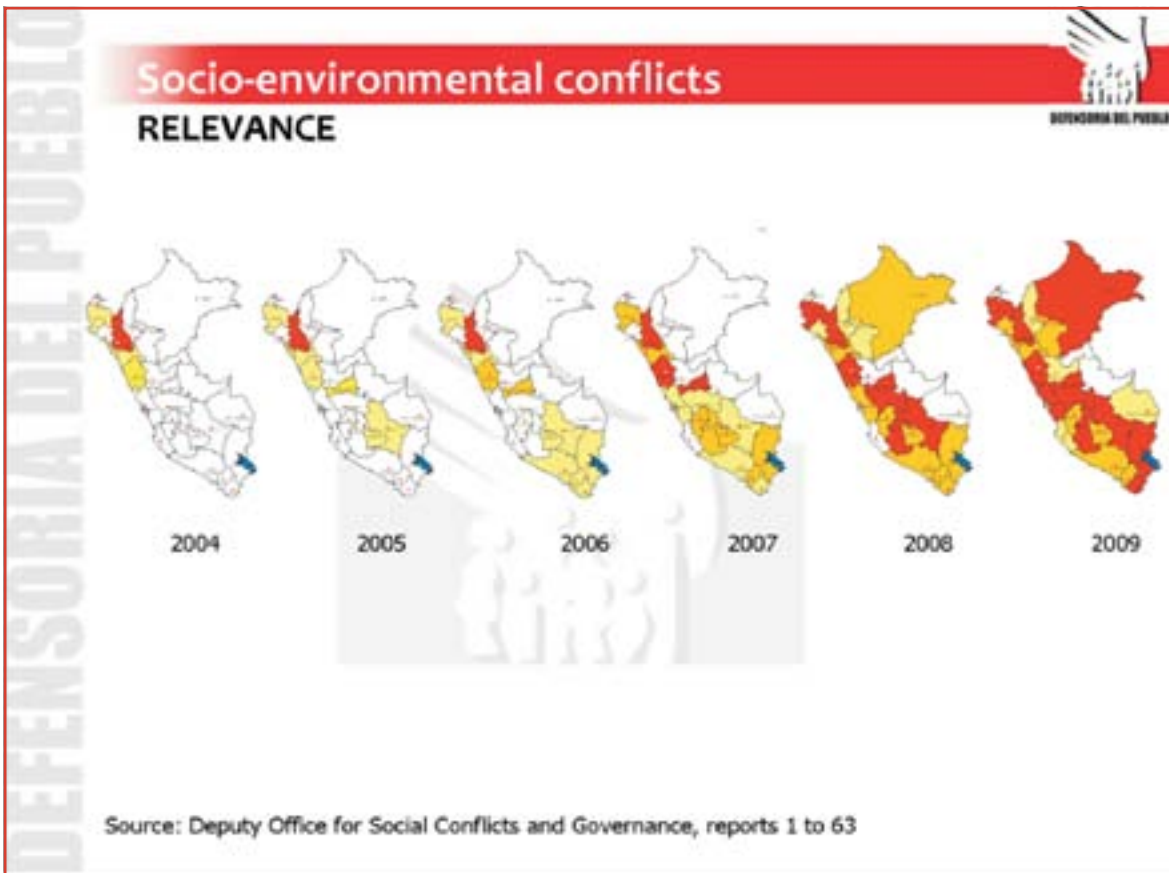
- 70 million hectares of the Amazon
- 3.5 million inhabitants in the Amazon (13% of the country wide population)
- 1509 indigenous communities
- 332,975 indigenous persons

PERÚ
Región Selva
Superficie: 77 528,030
Porcentaje: 90,32%
del territorio nacional



2. Peace Processes, Indigenous Rights and Peacebuilding






The State like a central part

Citizens perceive the State as:

- Absent
- Disjointed
- Arbitrary

(Alza, 2008. Aula Magna, PUCP)

b. A history of violence



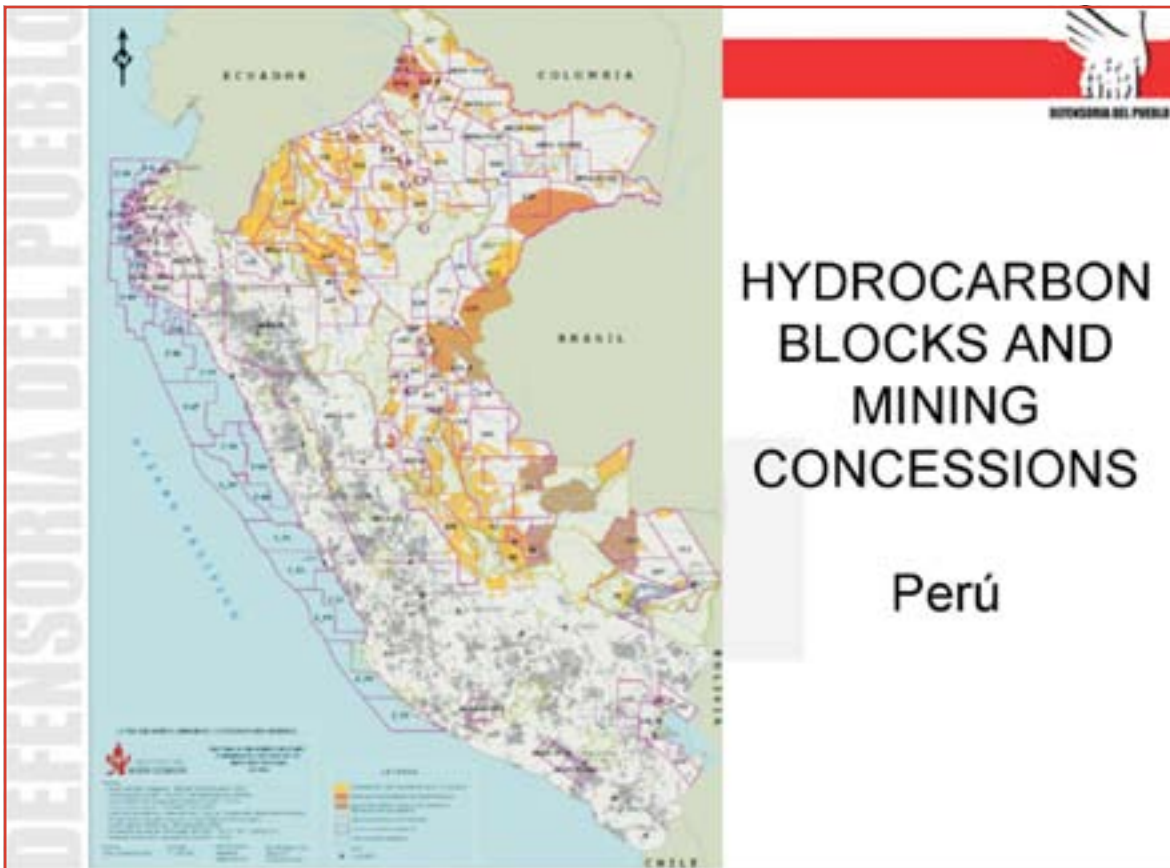
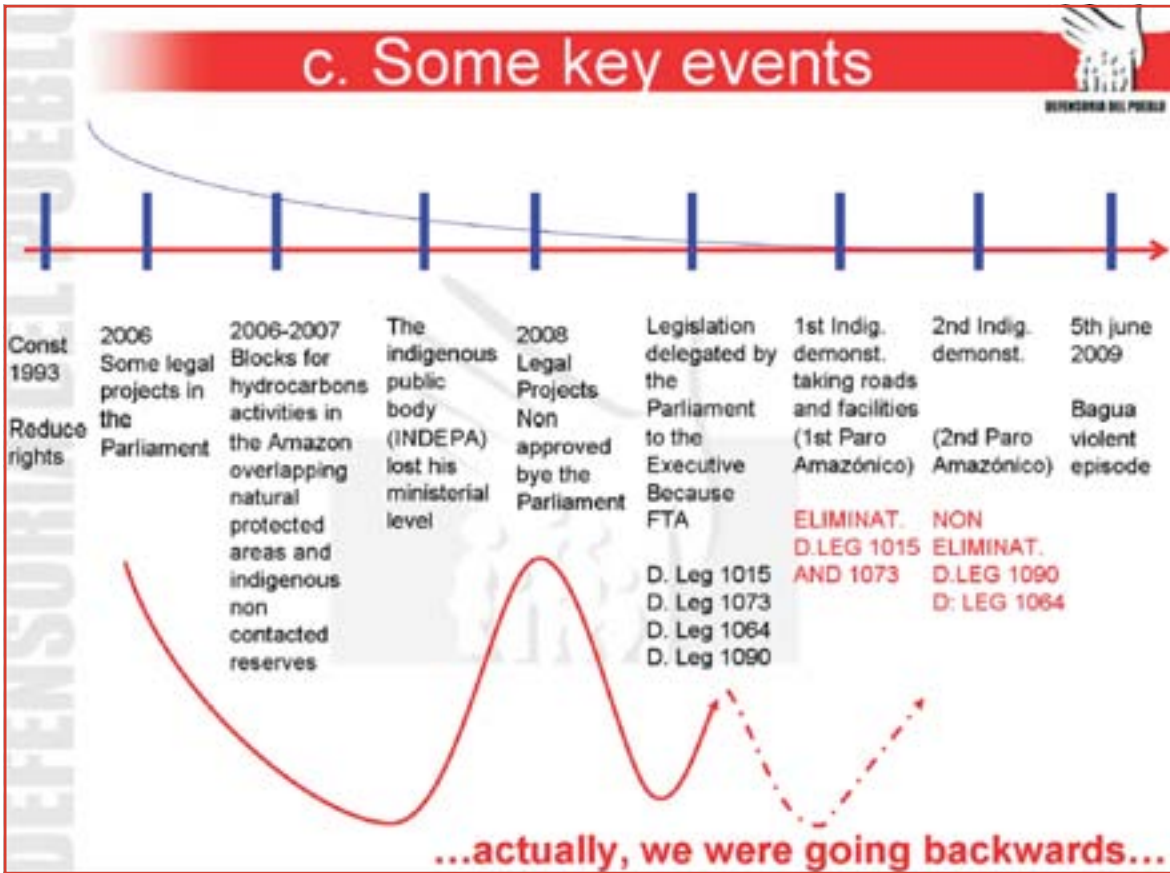
- From 1821 – Physical violence
- The whole republican history - structural violence (including terrorism)
- XX c. beginning - by rubber economy
- ...and nowadays – strong physical, economic (extractive industries), structural and epistemic violence

c. Some key events




Const 1920 Const 1933	Natives Comm. Act (1974)	Const 1979	1993 The 169 Convention ILO	INDEPA (Indigenous Peoples public body with ministerial level)	2007 Declaration about Indigenous People (UN)
Legal existence Of indig. Comm. Protection of land	Ancestral rights to territory and resources				

Formally, we were going forward...






II. THE BAGUA EPISODE

5TH JUNE 2009



The main actors

Government

- FTA and extractive industries as priorities
- No dialogue
- Aggressive language
- Use of force (Emergency State)
- Parliament non-decision
- Criminalization of protest
- Ministry requested the dissolution of AIDSESEP

The Indigenous peoples

- Non organised and fragmented
- Non public policy agenda
- Institutional weakness
- Double discourse during negotiations
- Non negotiation



33 deaths
(23 policemen, 5 civil, 5 indigenous)

200 persons injuries
(82 with fire weapons)

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Prevention and international support



Prevention (red light measures)

- Ombudsman reports, letters and meetings with the Prime Minister and to the Parliament Press
- Civil society actions

Humanitarian intervention

- Catholic church
- Ombudsman

International intervention

- Support to the Ombudsman Office, Government and Indigenous organisations (UNDP)
- Special Rapporteur for Indigenous Peoples
- FIDH report



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Peacebuilding Mechanisms



- Elimination of contested laws
- Creation of dialogue spaces
- Commission created by the Executive Power
- Commission created by the Parliament
- The Ombudsman report and follow-up
- 4 working groups (Mesas)
 - Truth
 - Legislative decrees
 - Consultation
 - Development Plan for Indigenous Peoples

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III. DRAWING LESSONS

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Learning from experience...

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- "With a violent conflict, everybody loose"
- Polarization around the development model (something to discuss??)
- How to build an indigenous public policy agenda
- Definition of the role of the different actors (Gov. Civil Soc. an indig. organisations)
- Straighten institutional framework
- Dialogue spaces need resources
- Criminalization of protest do not help
- The process has to deal with non democratic leaderships

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Learning from experience...



- Need to clarify concepts and institutions (consultation, previous agreement, civilian oversight, territory, land, etc.) (ILO-UNDP support)
- Human Rights National Institutions (Ombudsman) may have an active intervention
- International intervention is needed (fast and supportive)
- Need of social support (promotion among citizens a human development vision)
- Conflict management capacities are needed

So close to the heavens,
so far from Lima....

Indigenous politics and conflict
in Peru

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Introduction: Peru in context

- Socio-historical background
- Indigenous Peoples today: Amazon and Highland groups
- Conflict: disputes over resources in indigenous territories.
- A by-product of these conflicts: ethnic identity discourses in the highlands
- Conclusions and future perspectives

No-one wants to be Indian Part 1

- Project to assimilate indigenous peoples into the Peruvian nation.
- Rénique (2004): emphasis on becoming Peruvian rather than being indigenous. Fight for citizenship in the 19th Century.
- Sociologists and historians: endemic racism in Peru, which has historically been linked to violence. Ignorant, poor etc.
- Despite indigenous mobilisations in the 1960s, Agrarian reform of 1970s -> peasants/campesinos.
- Left-wing linked to class rather than race then declined completely under Fujimori (1990s).
- But: Manrique (2004): during 200 years of Independence, the majority of conflicts have been ethnic-racial in nature.

No-one wants to be Indian Part 2

- The effect of the political violence of the 1980s and 1990s on Peru's indigenous population and capacity to mobilise.
- Comisión de la Verdad y Reconciliación (2003): 69,280 victims.
- 75% of the victims were native quechua speakers from the Andes (ie indigenous). Activation of historical racism.
- Mass immigration to Lima from the Andes.
- Formation of the "cholo" identity, indigenous people caught between crossfire.

The current situation

- World Bank: between 25 and 46% indigenous population depending on criteria.
- Valdivia (2003): extreme poverty is three times higher amongst the indigenous population than the non-indigenous population.
- Amazon groups (nativos) and the AIDSESEP.
- Highland groups (campesinos) and the CONACAMI.
- No real representation at the national level politics despite local-level movements. Quechua Representatives suffer racism.
- Etnocaceristas lack credibility. MIAP has been sidelined and internally divided.

Common source of conflict

- Disputes over natural resources in indigenous territories.
- January 2006 75 conflicts - September 2009 288 conflicts in Peru.
- Vast majority of conflicts are over the environment and natural resources (46% in September 2009).
- 2006, Law 28736 to protect indigenous peoples but does not protect their territory. Problem: lack of consultation, multinationals just have to stage information workshops.
- Bagua (Amazonas) – June 2009.
- Sicuani (Cusco) – October 2008 and June 2009.
- Problem: radical measures, discourses and criminalisation of protest.

Conflict resolution?

- Defensoría del Pueblo, 2004 +: increasing role in conflict resolution.
- Conflicts tend to last for years, Camisea gasline in Amazon has been in regular conflict since the 1980s and mining activity in Espinar since the 1990s.
- Lack of information and participation on the part of communities; attractive packages offered by multi-nationals.
- Government intervenes only when conflict turns violent.
- UN: nearly 90 projects as of 2008 directed at indigenous peoples. Conflict prevention rather than resolution.

A by-product of these types of conflict

- Highland groups are starting to present themselves as indigenous rather than peasants.
- Sicuani, Cusco. 2007 campesinos -> 2008 indigenous peoples.
- Lawyers and references to ILO Covenant 169.
- Does this reflect a change in attitudes? Not necessarily. Particularly due to radical discourses and measures.
- Racism still persistent.
- Lack of political allies to assume discourse and carry it forward.

Conclusions and future perspectives

- Conflicts becoming increasingly ethnic. Their peaceful resolution depends on:
- the degree to which mechanisms for participation and consultation can be created and respected.
- the decentralisation process that began in 2003.
- change in attitudes on the part of national political elites.
- the possibility of new political parties that incorporate previously excluded sectors and unite divided social movements.
- improvements in access to the justice system and education to incorporate multi-culturalism (CVR).
- the role of international actors and Peru as a priority eg UN, NGOs.



3. Reconciliation Processes, Indigenous Rights and Peacebuilding

Justice, Dialogue and Reconciliation: Global approaches aimed at establishing harmony and featuring the involvement of victims and civil society

Jordi Palou

1. Introduction

Several studies are known to state – either explicitly or in a veiled manner – that the path of the administration of justice stands at odds or is even incompatible with peacebuilding venues. In fact, this situation is very often regarded as a dilemma. Aware of the strain that can possibly arise, not just from the differences between these two ways, but first and foremost among the different players and professionals involved in the latter, this short paper aims at contributing elements that can integrate both approaches. The paper argues – forcibly in a short and incomplete manner – how the system of observance of human rights in place for the last sixty years, and the recent emergence of victims as international players - together with other individual and collective players from civil society and ethnic groups-, can offer more integrative approaches to reconcile both paths under the common umbrella of non-violent conflict resolution.

Above and beyond the decisive involvement of governmental players and of international, regional and universal institutions, a crucial question arises: what role do non-governmental players have? What role do the latter play – not only in generating, fostering, channeling, neutralizing or perpetuating violent conflicts of today's day and age, but also in preventing, handling, solving or transforming them in a non-violent way? We refer here to national and transnational civil societies, to victims both as individuals or collectively, to ethnic groups and peoples, or even to multinational companies, some of which hold more power, more resources and more leverage and influence than many nations in the planet. What role do victims

play or should play, both in the processes of justice as well as in peacebuilding processes? Should they be involved, and, if so, how and to what extent? Regarding **processes of justice**, what role do victims play or should play in investigating or revealing hidden truths or truths that have been concealed about the violent conflict and in the fight against impunity? What role, more specifically, in investigating, producing and/or enabling evidence; in pressing direct or indirect charges for international crimes or systematic human rights violations, in indictments in application of current international law – or the rising ability to improve or create new concepts of international law? What role should victims play in matters dealing with moral and/or material compensation or damages, among others? All of the above refers to their potential involvement in universal and/or international justice processes which apply international law to the more serious international crimes, such as genocide crimes, crimes against humanity, war crimes – including gender crimes and large-scale pillage of natural resources -, torture, etc.

When it comes to peacemaking and peacebuilding, what role do victims play – or could play – in the following areas: in national and international negotiations, in mediation and reconciliation related to violent conflict; in processes of multilateral dialogue at varying levels; in other peacemaking or peacebuilding processes in a general sense; in initiatives known as preventive of future violent conflict; in the process of transformation of existing violent conflict; in moral and/or material compensation and damages; in post-conflict or post-war rehabilitation; in security systems and systems of protection of human rights; civil diplomacy; historical memory; processes of truth, forgiveness and reconciliation; in the restatement of the Rule of Law; in the political system, the security and defense systems, in humanitarian crises, among others?

These questions could broaden to include the potential involvement of other non-governmental players, especially that of national and international civil society. Clearly, the answers to these questions will affect, in fundamental ways, both the processes of justice and/or peacebuilding themselves as well as the outcome of their outcome.

2. Civil societies, victims, justice processes and peace processes

2.1) CIVIL SOCIETY, VICTIMS AND JUSTICE PROCESSES.

Undoubtedly, civil society at large, and victims in particular, have gone from being mere spectators falling prey to violent and/or armed conflict to getting actively involved at varying lengths in processes of justice and/or peace. Their participation has also extended to exerting an increasing influence on political and democratic processes related to armed or diplomatic intervention in armed or violent conflicts, both at the national and international levels. Many governmental players, formal diplomacies, as well as national and international organizations have not concealed their misgivings as they watched these developments, often perceiving them as invasive of a turf which ‘does not belong’ to victims or civil society, but rather only to those “with the knowledge and expertise” and those “who count.” On the other hand, many other governmental players, formal diplomacies, as well as national and international organizations follow this process with careful attention and even foster this development within the periods of time and frameworks that institutions and civil society have agreed on.

It is not my intent to be exhaustive, but with regard to Spain¹ and other countries with **Roman-Germanic or continental justice systems** which to varying degrees allow for victims to participate and be legally represented in processes of justice, it is worth highlighting the decisive involvement and intervention shown by Argentina’s ‘Madres y Abuelas de la Plaza de Mayo’; by

Spanish, Argentine and Chilean victims; Spanish and Guatemalan Maya victims; Catalanian, Spanish, Rwandan and Congolese victims; Tibetan victims; Palestinian victims, etc – all of them with regard to their roles in articulating, presenting, investigating – and even filing formal charges – in processes of universal justice in application of current international law. In turn, given the practices of the Nuremberg and Tokyo Trials, or of *ad-hoc* Courts for the former Yugoslavia and Rwanda, or of other mixed courts, most of which were inspired on the Anglo-Saxon system of justice where the intervention or legal representation of victims is deemed unthinkable, the new International Criminal Court has created a new system of justice. A hybrid between the Continental and Anglo-Saxon systems, this new system marks the first time ever that an international court offers victims² the real possibility of participating and having legal representation –albeit in a more restricted way than in continental national systems of justice.

2.2) CIVIL SOCIETY, VICTIMS AND PEACE PROCESSES

Likewise, it is worth noting the increasing involvement which representatives of civil society – including victims and relatives of victims – are having in peace processes, as well as the impact that their participation can make on the latter. Several different scholars investigating these processes have underlined in their empirical studies that participation of civil society in peace negotiations makes it easier for agreements to be more feasible and sustainable³. There is no shortage of examples showing that representatives of civil society have made important contributions to formal peace talks in countries as diverse as Sierra Leone, Liberia, Burundi, Aceh or Uganda.

1 See Articles 101 and 270 of the Criminal Procedures Act in agreement with Article 23,4 of Spain’s Organic Law of the Judiciary (L.O.P.J.) concerning international crimes mentioned there. For a more detailed analysis of the established rule and of universal justice trials featuring the involvement of victims in different countries; see Martínez, 2008, Pages 10-11; as well as Palou-Loverdos, 2007, Pages 60- 63.

2 See Articles 68, 69 and concordant articles of the Statute of Rome of the International Criminal Court and Rules 63, 85 and concordant rules of the Rules of Procedure and Evidence of the ICC, as well as Article 42 and concordants of the Regulation of the Trust Fund for Victims (http://www2.icc-cpi.int/NR/rdonlyres/OCE5967F-EADC-44C9-8CCA-A7E9AC89C30/140126/ICCASP432Res3_English.pdf) (June 4 2009 search). 108 countries have signed the ICC’s Statute of Rome, 30 of them are African nations, 14 are from Asia, 16 from eastern Europe, 23 nations are from Latin America and the Caribbean, and 25 nations are from Western Europe and elsewhere.

3 Pfaffenholz, Kew and Wanis, 2006.

In these cases they have to varying degrees strengthened the content of the agreement, expanded and reinforced their legitimacy, as well as created conciliatory and integrative dynamics between the parties more reluctant to reach an agreement⁴.

3. Hunger and thirst for justice and peace: do the goddesses struggle or cooperate?

We hear it again and again everywhere on our planet. Literally and figuratively, the world starves and thirsts for justice and peace. In past papers I have talked about notions of law and mediation, looked at their etymological roots and principles, and delved into the symbols linked to mythological characters mentioned since times immemorial.⁵ Both Goddess Ma'at or Goddess Themis, who stand for the administration of justice among clashing parties, hold a sword as their major symbol. On the other hand, Goddess Nefertem or the Goddess of Temperance, who stand for mediation and enabling peacebuilding among opposing parties, feature water as their main symbol. Whether acting as ruling judge or as facilitator/restorer, this third middle character standing between the two adversary parties who represent the duality of the conflict, makes use of tools and symbols which are at the same time analogous and different. Since times past, human beings have satisfied their hunger by resorting to sharp and cutting linear elements, such as the flint, teeth or knives – tools which find their equivalent in the sword that rules justice between the two weighing pans of a scale. To quench thirst, human beings have used flexible, round elements, such as their hands, a leaf or a bowl, to contain water - element akin to the liquid that flows between the two amphorae of Temperance.

Justice and law experts, on the one hand, and experts in mediation and peacebuilding, on the other, often claim their respective venues and methods to be the most efficient when it comes to tackling or managing, solving or transforming violent conflict. When mediators, negotiators and facilitators of peace processes step in, legal professionals frequently regard them to be meddling with the evidence or sentences they have had a hard time securing. This is particularly the case when there is talk of possible peace agreements that would allow for partial or total amnesties or impunities. In turn, once they have reached an agreement with one or many key players in an armed or violent conflict, peace-builders or peacemakers perceive any arrest warrants, trial orders or sentences resulting from legal proceedings held in application of international law to be an outright attack to the peace process or to their hard-won agreements. Such tensions don't merely arise between these two fields which seem to start apart in terms of their methodology, principles and dynamics. They also appear within a same field, for example, between retributive and restorative justice; or between those which advocate abiding by the guidelines of the Rule of Law or those which focus on the range of measures known as Transitional Justice⁶ which comprises a useful mix of judicial and non-judicial measures centering on the responsibility for international crimes of the past. This approach includes initiatives for criminal accountability; truth commissions, reparations programs; reform of the security and judiciary sectors; demobilization and integration of ex-combatants and community-based justice initiatives⁷, among others. Legal professionals are well aware that during the course of the legal proceedings⁸, they sometimes need to replace the sword with the water. Peace-builders, in turn, know that they more often than not have to brandish the sword when negotiating, mediating

4 Hayner, 2009, Pages, 12-13.

5 Palou-Loverdos, 1999, Pages 88-109; and Palou-Loverdos, 2006.

6 See Lekha, Martin-Ortega and Herman, 2009, Pages 3-4.

7 See, op.cit., Negotiating justice: guidance for mediators, Pages 11-12.

8 Especially in the case of protected witnesses or particularly traumatized victims.

or facilitating among opposing parties⁹, for the benefit of the two parties involved, the process itself and the actual outcome. There is increasing agreement that mediators should not validate an agreement between the parties which grants amnesty to the perpetrators of the most serious international crimes¹⁰, since this would prove unacceptable to both the international community and the United Nations system.

Some authors point to these tensions or alleged dilemmas and conclude, through various arguments, that we are better off saying that the systems complement each other. They argue that establishing one single model applicable on a universal scope is ill-advised. It is preferable, they continue, to devise a distinct, custom-tailored approach to suit each individual territory, taking into account the historical cross-roads, the potential players, as well as the content, magnitude and degree of the violent conflict at stake, while at the same time bearing in mind certain principles or guidelines derived from past experience.¹¹ Although there doesn't yet appear to be consensus on this approach, it would seem advisable for the two goddesses to work with each other in a joint effort to alleviate –as much as possible – humankind's hunger and thirst in body

and soul. In their endeavor these deities should make available their complementary venues of peaceful justice¹² and just peace¹³, placing truth as the cornerstone and backbone of all other principles, interests and needs.

4. Rwanda/Democratic Republic of Congo: a two-track approach combining the mechanisms of transitional justice

This paper does not attempt to make even a brief analysis of the large scope of the conflict which has raged in Rwanda and in the Democratic Republic of Congo,¹⁴ nor of the number of peace processes conducted and/or stalled there.¹⁵ Nor, for that matter, can it look at the various interventions which international justice venues (International Criminal Court for Rwanda) undertook to investigate the countless international crimes perpetrated in Central Africa. Causing the death of almost 8 million people - Rwandan, Congolese, Burundian, Spanish, Canadian, Belgian and British victims, among others – this conflict has claimed the lives of more civilians than any other conflict since the Second World War¹⁶.

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- 9 Mediators or facilitators must occasionally resort to 'sharp tools' in order to maintain the balance between the parties, ensure one party's capacity of self-determination, preserve respect towards both parties' dignity and face and react to issues of responsibility for serious international crimes, among other similar situations.
- 10 See *op.cit.* Priscilla Hayner, Pages 6-7; and Mónica Martínez, 13-14.
- 11 *Op.cit.*, Monica Martínez, 2008, Pages 12-13 and 15-17, Priscilla Hayner, 2009 pages, 5-6 and 20-22, ; Chandra Lekha Sriram-Olga Martin Ortega and Johana Herman, 2009, pages 2-6. Pages 12-13 and 15-17, 5-6 and 20-22, 2-6.
- 12 That is, justice processes not centered on repression, punishment or revenge, (while not disregarding applicable sentences) but carried out by adversarial means, with all due guarantees and respect for fundamental human rights. These justice processes establish an internationally accepted criterion to determine responsibility and put an end to the impunity of perpetrators of serious international crimes- all along taking the utmost care to address the basic needs of the people and adhere to the truth of the facts.
- 13 That is, peacebuilding processes that don't aim at securing partial and provisional agreements that may only make do. Rather, those processes which strongly observe the principles of mediation, reconciliation or the facilitation of dialogue, while at the same time not leaving out issues of social justice and formal justice in order to merely reach a visible agreement (particularly issues that address the granting of amnesties and the establishment of some kind of accountability for the most serious international crimes). Likewise, these approaches take great care to address the basic needs of the people and adhere to the truth of historical processes.
- 14 For more information on the alleged war crimes and a factual and judicial analysis, see: Palou Loverdos, 2007.
- 15 Although a wide range of violent incidents have continued to occur in Rwanda since October 1, 1990, the UN and many international NGOs consider there aren't any violent conflicts or systematic violations of human rights which deserve special attention; in addition, most peace experts don't mention the Arusha Peace Agreement in their papers. The Arusha Agreement had been subsequently frustrated by several episodes, especially by the April 6, 1994 assassination of the presidents of Rwanda and Burundi that unleashed the infamous genocide in Rwanda as well as the chain of ongoing serious international crimes in this country and in the Democratic Republic of Congo which have only recently been subject to formal investigation.
- 16 For a condensed analysis of the conflict and the two strategic paths used to transform it through the impetus given by civil society and victim: http://www.veritasrwandaforum.org/material/sintesi_en.pdf

This paper merely looks at a modest but forceful example of a joint initiative where civil society and the victims of this conflict¹⁷ have come together to create a mixed approach which combines the path of justice with that of peace¹⁸ in an attempt to transform the conflict by non-violent means and achieve its resolution for the benefit of current and future generations in Central Africa. The initiatives, as we will see, do not aim at becoming a universal model to be applied on a global scale. Rather, they represent an example of how the venues of justice, on the one hand, and those of dialogue, on the other, can enhance and reinforce each other in order to reconstruct the social, political and economic fabric of a society devastated by armed conflict.

4.1) THE JUSTICE APPROACH AND THE STRUGGLE AGAINST IMPUNITY FOR INTERNATIONAL CRIMES IN CENTRAL AFRICA

At the end of the nineties a number of prominent personalities, victims, relatives of Spanish, Rwandan and Congolese victims, national and international non-governmental organizations and some public institutions – all of whom constitute the organization International Forum for Truth and Justice in the African Great Lakes Region – joined forces and resources to initiate an international process to investigate major international crimes perpetrated in Rwanda and the Democratic

Republic of Congo between October 1990 and July 2002¹⁹ (start of the International Criminal Court's temporal competence) and which had not been subject to investigation by any national or international jurisdictional body. In 2005, after years collecting information and documentary evidence and gathering witnesses, these parties filed a lawsuit at the Spanish courts in application of the principle of universal justice. On February 6, 2008, after years conducting their formal investigative proceedings, the Spanish courts issued a Bill of Indictment and international arrest warrants against 40 top officials of Rwanda's²⁰ incumbent political-military helm. They were charged with international crimes of genocide, crimes against humanity and war crimes, among others, which had allegedly been perpetrated during the afore-mentioned period in Rwanda and the Democratic Republic of Congo²¹.

17 Since the need to invest in peace will briefly be discussed later on, we make here a preliminary mention of the fact that the annual budget of this transitional justice project has ranged from Euro 60,000 to 120,000 for the last eight years. By contrast, see Point Nr. 5 of this paper.

18 To cite another example, in Colombia, institutional bodies have opted for using transitional justice mechanisms even though many experts believe this is happening at a time when the conflict is still alive (and hence talk of transition and post-conflict proves difficult). In this case, it is the government and its branches that hold this commitment, basing it on the Law of Justice and Peace passed in 2005 which the Colombian Constitutional Court reinterpreted in a resolution the following year. To this effect, see Felipe Gómez Isa, *Paramilitary Demobilization in Colombia: Between Peace and Justice*. Working Paper Nr. 57, April 2008. Rwanda and the Democratic Republic of Congo are both at different phases; it is difficult to speak of post-conflict situations in their case as well. Especially in Rwanda; no process of transition has taken place. The two-path initiative explained in this section thus applies mechanisms of transitional justice to a situation of conflict where there is in fact an absence of transition. In contrast to Colombia, the initiative originates in the involvement civil society has had and coordinated at the national and international levels.

19 For more information: <http://www.veritasrwandaforum.org/querella.htm>. (June 4 2009 search).

20 At least 9 of them are away from Rwanda, holding important positions, even within the UN organization: 4 of them work for the hybrid peace-keeping forces in Sudan (UNAMID), including a Rwandan army general who is the second commander of such forces. A fifth one serves at the demobilization arm of the UN Development Program (UNDP) in Nepal. Several public institutions have formally requested the UN to destitute them and turn them over to justice (see all at: http://www.veritasrwandaforum.org/dossier/resol_Ban_Ki_Moon_es.pdf). (June 4 2009 search).

21 See judicial resolution: http://www.veritasrwandaforum.org/dossier/resol_auto_esp_06022008.pdf; see summary of judicial action and bill of indictment: http://www.veritasrwandaforum.org/material/press_release_080208_eng.pdf (June 4 2009 search). See also mistrust of Rwanda and African Union related to universal and international justice initiatives, (Martin Vidal, 2008), pages 3-6.

4.2) THE CHANNEL OF DIALOGUE AMONG MEMBERS OF RWANDAN SOCIETY.

Aware that the justice approach represented an important yet insufficient step towards transforming the Rwandan conflict, preventing further violent incidents and overcoming the tragedy of the two former decades, a group of prominent members of Rwandan civil society living abroad set out to start a dialogue from exile. Two persons initiated the dialogue: the Hutu president of a victims' association who lived in Brussels and the Tutsi former plenipotentiary ambassador of the current Rwandan government to the United Nations who lived in New York.

In 2004 ten Rwandan men and women of the diaspora met for the first time at a meeting organized by international facilitators in Mallorca (Spain). The Rwandans, both Tutsi and Hutu, were able to ascertain the different ways in which they each understood Rwandan history and the past according to their own personal, family and community experiences. At the same time, they also discovered the extent to which they agreed on constructive proposals for the future. In 2006, after two years in the works, a second encounter by then referred to as the Intra-Rwandan Dialogue took place in Barcelona (Spain), giving rise to the International Network for Truth and Reconciliation in Central Africa. Twenty Rwandan nationals, both Hutu and Tutsi from the diaspora and the Rwandan heartlands, took part in this event. The meeting was organized with the sponsorship of Nobel Peace Prize nominee/candidate Juan Carrero and the support of both Nobel Peace Laureate Adolfo Pérez Esquivel, present at the meeting, and of the President of Senegal Abdoulaye Wade. The protocol of findings of the 2006 event, which called for a more inclusive Inter-Rwandan Dialogue— served as the foundation for the talks held at five subsequent meetings entitled Dialogue Platforms in 2007 and 2008²²:

These five events took place in Washington DC for 20 participants from the USA and Canada; in Amsterdam for 20 participants from Holland, Belgium and Germany; in Orléans (France) for 20 participants from France and Italy; in Barcelona, where the Platform for Rwandan women was held; and finally in Kinshasa (Democratic Republic of Congo) where a special *ad hoc* platform was organized for Congolese participants coming from the eastern region of this country bordering with Rwanda.

In 2007 the Spanish Parliament extended its support to this initiative and passed a resolution where all political parties unanimously agreed to offer technical, legal, diplomatic and political support and urged to take it to an international²³ level.

In early 2009 the eighth Dialogue held in Mallorca, Spain, featured the participation of thirty Rwandan men and women from all Rwandan ethnic groups- Hutu, Tutsi and Twa-, as well as two Congolese, who had come from Africa, Europe and North America. Celebrating five years since the dialogue started, they agreed to formally ask a Central African government to hold a Highly Inclusive Inter-Rwandan Dialogue, and request institutional and financial support from the international community.²⁴ During the course of these five years, almost 150 Rwandan leaders have participated in the process. Among them, it is worth noting the involvement of two former prime ministers, various former cabinet ministers, former ambassadors, political leaders, representatives from civil society, from victims' as well as human rights organizations, from institutions devoted to peace and economic research. All of the above have set their eyes on the future and on carrying on this inter-Rwandan dialogue as the legitimate foundation upon which to build a new Rwanda that can be widely accepted by all political, ethnic, social and economic groups as well as by the international community.

22 With the support of, among others, Nobel Peace Laureate Adolfo Perez Esquivel; and of Federico Mayor-Zaragoza., former UNESCO Secretary General (1987-1999), President of "Cultura de Paz" and co-chairman of a top level UN group of Alliance of Civilizations.

23 See original Proposal of Non-Legislative Motion of support to Intra-Rwandan Dialogue dated April 25 2007: http://www.veritasrwandaforum.org/dosier/congreso_diputados_eng.pdf (June 4 2009 search).

24 All documents with Findings and Proposals of the eight Intra-Rwandan Dialogue sessions to date (2004-2009) are available in several languages at: <http://www.veritasrwandaforum.org/dialogo.htm> (June 4 2009 search).

5. Investing in global peace processes

Numerous studies study and analyze military expenditures worldwide. Military spending for 2007 alone, for example, reached 1,339 trillion dollars²⁵. That same year, 61 “peace operations” were carried out worldwide (41% of them in Africa), deploying a total of 169,467 people in missions which were almost entirely military: 119 countries sent troops, military observers or police officers totaling 150,651 people, a stark contrast to the 18,816 civilians²⁶ overall.

There is no knowledge about the existence of studies that look at the amount spent worldwide on national and international processes of justice. Yet, if we want to have a rough idea of the huge disparity between military spending and expenditures on justice, we only need to point out the annual budget of the world’s leading international court: in 2009, the International Criminal Court, which is currently investigating four major situations in the Democratic Republic of Congo, in Uganda, in the Central African

Republic and in Sudan, has a total budget of Euro 101.229.900²⁷. Compared to military spending, this amount is clearly a drop in the bucket - even if we compare it to military spending in Spain which accounts for 1% of military expenditures worldwide²⁸.

Many scholars and experts on peace and peaceful conflict resolution continue urging for an increase and restructuring of private and public investment in favor of peace²⁹. Investing in global peace processes is imperative. There are no studies which look at how much has been invested in theoretical analysis, research,³⁰ infrastructure and the practical implementation of the different venues for peacebuilding worldwide. It took ages before a global criminal Court was created, and even now, it still needs to grow, become stronger and spread out around the world. We need to roll up our sleeves to establish a true Global Center for Peace and International Conflict Mediation. This center should be the outcome of an international agreement between the different countries of the world, have an adequate and sufficiently-endowed budget³¹, and operate in a concerted effort with regional and global institutions, governments,

25 See Stockholm International Peace Research Institute, *SIPRI Yearbook 2008*, Catalan translation, Fundació per la Pau 2008, -Petter Stalenheim, Catalina Perdomo e Elisabetk Sköns- Page 10. This organization notes that military spending increased by 6% in 2007 compared to 2006, and by 45% since 2008, and that it accounted for 2.5% of the Global Gross Domestic Product, or US\$ 202 per capita worldwide. Spain ranks 15th in terms of military spending, with military expenditures of 14.6 billion dollars that constitute 1% of the total amount spend worldwide.

26 Op.cit., Sharon Wiharta, Pages 7-8. There is no information about the cost of the 61 afore-mentioned peace processes which were primarily carried out by military parties. Furthermore, it is sometimes difficult to tell whether these operations were aimed at maintaining peace or at securing geostrategic military objectives. While serving in Sudan for the UNAMID, four Rwandan military officials were prosecuted in February 2008 (see footnote Nr. 20). Months later, on September 3, 2008 the US Department of State made a donation of military equipment worth US\$ 20 million to the Rwandan defense force led by one of the above-mentioned prosecuted officials, whose UN appointment in Sudan was, in fact, ratified by UN Secretary General a few weeks later and extended for an irrevocable 6-month period until March 2009. (see official information from the US Embassy in Rwanda: http://rwanda.usembassy.gov/u.s._embassy_donates_equipment_to_the_rwanda_defense_forces).

27 See Report of the Assembly of Member States of the International Criminal Court ICC-ASP/8/5 dated May 13 2009, http://www2.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-5-ENG.pdf (June 4 2009 search).

28 This amount pales when compared even to weapon sales figures of leading North American weapon manufacturer Boeing which had a turnover of 30.69 billion dollars in 2006. Op. Cit, SIPRI, Page 12. See an other example: African Union-United Nations Hybrid Operation in Darfur (UNAMID) approved budget for \$1,569.26 million (A/C.5/62/30) for financing that mission from July 2007 to June 2008 (see: <http://www.un.org/Depts/dpko/missions/unamid/facts.html>, June 4 2009 search). UNAMID was established by the Security Council, in resolution 1769 (2007) for an initial period of 12 months, to help achieve a lasting political solution and sustained security in Darfur. This budget provides for the deployment of 240 military observers, 19,315 military contingent, 3,772 United Nations police, 2,660 formed police units, 1,542 international staff, 3,452 national staff, 548 United Nations Volunteers and 6 Government-provided personnel. In addition, the budget includes 55 international and 30 national staff under general temporary service (see <http://www.un.org/News/Press/docs/2007/gaab3828.doc.htm>, June 4 2009 search).

29 See, as example, Anatol Rappoport, 1989.


30 See Escola de Cultura de Pau, 2008, Page 13. This study shows that most Spanish research centers do not reveal their budgets, but notes that the budget of four centers totaled 6 million euros.

31 To set it in motion, it would suffice that all countries contribute 0,1% of what they presently allot to military spending and earmark it to establish and authorize the first annual budget of this Global Center.


public and private entities. It should be authorized to intervene within the framework of accredited international experts – governmental, non-governmental and independent- , work on the basis of multidisciplinary teams comprising people from different geographical, social, racial, ethnic, religious and intellectual backgrounds and viewpoints, and focus on preventing violent conflict and on solving and transforming conflict by peaceful means. We cannot wait for ages, we cannot even wait for decades. We are jointly responsible for making it happen in the next decade -for the sake of the earth and all present and future generations.

References

- Gómez Isa Felipe, *Paramilitary Demobilization in Colombia: Between Peace and Justice*. Working Paper Nr. 57, April 2008;
- Hayner Priscilla, *Negotiating justice: guidance for mediators*, Centre for Humanitarian Dialogue y International Center for Transitional Justice, February 2009;
- Lekha Sriram Chandra, Martin-Ortega Olga and Herman Johanna, *Just Peace? Peacebuilding and rule of law in Africa*. The Centre on Human Rights in Conflict. University of East London, Policy Paper nº 1, January 2009;
- Martin Vidal, *African mistrust of “Northern Justice”*. Fundación para las relaciones internacionales y el Diálogo Exterior, December 2008;
- Martinez, Monica, *Making Justice Work: accountability and complementarity between courts*, Fundación para las relaciones internacionales y el Diálogo Exterior, Working Paper nº 60, September 2008;
- Palou-Loverdos Jordi, *Mediació i Justícia*, Revista Perspectiva Social nº 42, 1999;
- Palou-Loverdos Jordi, *Mediación en conflictos: hacia un bumeran armónico*, Universidad Bolivariana de Santiago de Chile, Revista Polis nº 14, 2006;
- Palou-Loverdos, Jordi, *Esperanzas para la justicia universal*, Abogados, Revista del Consejo General de la Abogacía Española, número 42, febrero de 2007;
- Palou Loverdos Jordi, *Crímenes de guerra contra españoles, ruandeses y congolese en África central (1990-2006): El conflicto de los grandes lagos desde la perspectiva de los derechos humanos y el derecho internacional humanitario*, Revista Electrónica de Estudios Internacionales nº 13, 2007;
- Pau Escola de Cultura de, *La investigación sobre la paz en España*. Generalitat de Catalunya, Departament d'Interior, Relacions Institucionals i Participació-Oficina de Promoció de la Pau i dels Drets Humans, Documento de Trabajo nº 2, octubre 2008;
- Pfaffenholz Thania, Kew Darren y Wanis Anthony, *Civil society and peace negotiations: why, whether and how they could be involved*, Oslo Forum 2006, www.osloforum.org;
- Rappoport Anatol, *The origins of violence. Approaches to study of conflict*. World Peace Academy, 1989;
- Stalenheim Petter, Perdomo Catalina and Sköns Elisabetk. Stockholm International Peace Research Institute, *SIPRI Yearbook 2008*.



IOM • OIM




Reconciliation in the Rift Valley, Climate Change and Population Movement

Indigenous People and Peacebuilding

Presenter: Jerotich Seil Houlding

12th February 2009



IOM • OIM

Pastoralism in the Horn of Africa

- The Horn of Africa contains the largest grouping of pastoralists in the world. Concentrated in some of the most arid regions of the continent.
- The semi-arid and arid areas in the Horn make up 70 percent of the total land area.
- In Kenya, Pastoralism provides an average of 20 to 30 percent of the GDP.
- ASAL supports 25 percent of Kenya's population and half of its livestock.
- ASAL constitutes 439,000 sq km of land mass; equivalent to 80 percent of Kenya's total land area.


**Security in Mobility**






Regional Partnership for Disaster Preparedness and Risk Reduction on Climate Change, Mobility and Cross Border Security in the Horn of Africa



**Security in Mobility initiative**

In April 2009, UNOCHA, IOM, UNEP and ISS initiated a regional partnership to advocate for disaster risk reduction and preparedness strategies on climate change, cross border mobility and insecurity in pastoralist communities across the Horn of Africa.





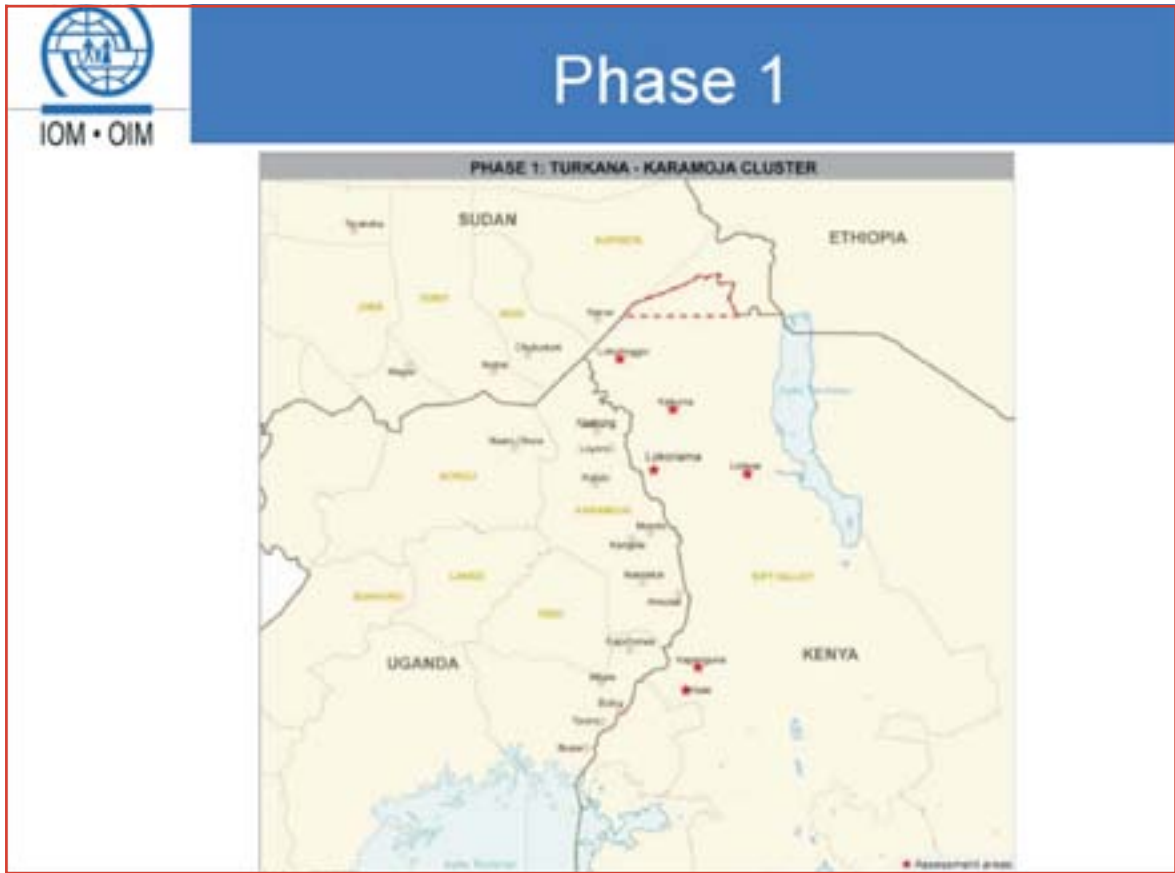
Project Objectives

1. To promote pastoralists' internal and cross-border **mobility as a climate change adaptation strategy**.
2. To advocate **regional reconciliation bearing in mind** cross-border security concerns with **pastoralists' livelihood needs** including cross-border mobility in search of water and pasture.
3. To support regional governments to develop a **regional normative framework on migration and mobility** for pastoralists to ensure protection and enhance cross border security.



Security in Mobility Findings





Turkana-Karamoja Cluster

The Karamoja Cluster is commonly understood to refer to the border lands that straddle South West Ethiopia, North West Kenya, South East Sudan and North East Uganda; inhabited by pastoralists some of who share a common history, lineage and culture.

The section includes four photographs: a person walking in a dry landscape, a person standing in a field, a group of people, and a group of people in traditional attire.



IOM • OIM

Findings: Drought, Migration and Conflict

- Pressure on increasingly scarce resources is the key trigger of most conflicts in the region.
- Water shortage and depleted pasture for livestock leads to migration to more fertile areas within Kenya or across the border - a coping strategy that has been used for generations.
- Communities have had long-standing, 'historical' tensions and conflict over resources, chronic drought has significantly increased the frequency of pastoral movements and the duration of time spent in 'foreign' territory, where they encounter other communities equally struggling for survival. The resultant conflict leads to higher losses of livelihood assets, as well as widespread internal displacement.



IOM • OIM

Findings: Mobility and Borders

- The mobile pastoral production systems is challenged by internal (district) and sovereign borders, which were demarcated without consideration of pastoralist needs and access/ownership.
- Internationally, while there is the existence of Joint Border Commissions, there are no provisions for a framework to address traditional migratory patterns and to ensure security in migration. Despite frequent encounters between communities, there are no modalities for sharing scarce resources across districts and borders.
- Limitations on pastoral movements in search of pasture and water for livestock simply increases insecurity during migration.



IOM • OIM

Findings: Governance, Security and Development

- Limited socio-economic infrastructure such as roads, communication, markets, etc, constrain livelihoods opportunities, increase poverty and even provide an entry point for criminal activity and increased insecurity.
- To safeguard their lives and livestock from attacks by other armed groups, communities have resorted to acquiring arms, leading to the proliferation of illegal small weapons and light arms.
- Ad hoc disarmament operations have had little or no impact in addressing the problem. If anything, they have further constrained coping mechanisms.



IOM • OIM

Suggested Approaches

- Regional policy discussions with an aim to establish a regional framework to regulate and ensure the safe movement of pastoralists. Development of a regional policy that recognizes pastoralists' need for security in mobility;
- Mapping of natural resources to establish modalities managing natural resource sharing among communities and across districts/borders;
- Regional mapping of illegal firearms; and
- Coherent regional disarmament along with an increase in security personnel on the ground.



Suggested Approaches

- Diversification of livelihoods / alternative livelihoods creation;
- Integrating security and development. Provision of basic services and development, including water (boreholes and pans), infrastructure (roads, communication for early warning, schools, hospitals), education, development of livestock-and other markets;
- Common projects with neighbouring communities to promote peaceful coexistence;
- Environmental conservation education; and
- Kakuma refugee host communities: need for a concerted effort among humanitarian agencies to provide a holistic, sustainable response, through long term development programming.



Phase 2 and Phase 3

- Marsabit-Mandera Region
- Kenya – Tanzania border areas (Mara – Serengeti – Ngorongoro)

- To be followed by a regional advocacy workshop that will bring in a variety of stakeholders including pastoralist community representatives, government officials, the human rights community, UN, NGO, EAC, IGAD and AU representatives (2010)*



IOM Mandate

- Promote the safe and orderly movement of people within and across borders.

“Managing Migration for the Benefit of All”



Migration and Climate Change

- The single greatest impact of climate change may be on **human mobility** (IPCC, 1990)
- **Migration** has always been and will always be a variable in the interaction between societies and nature
- **Migration** is not simply a failure of adaptation
- **Migration** may be one of the solutions to the challenges presented by climate change



Protection of Climate Change Migrants

“Neither the UN Framework Convention on Climate Change, nor its Kyoto Protocol includes any provisions concerning specific assistance or protection for those who will be directly affected by the effects of climate change.” (IASC Working Paper on Migration/Displacement and Climate Change, October 2008)



Protection of Climate Change Migrants

- **Causes of Movement:** Extreme hazard events, Environmental degradation, Armed conflict over shrinking (or annexed) resources
- **Nature of Movement:** Forced, Voluntary, Temporary, Permanent
- **Legal Framework:** International human rights law; International humanitarian law; International refugee law; subsidiary and temporary protection.



GAPS (in protection)

1. Moving across borders as a result of hazard events does not entitle migrants to admission and stay in another country; and
2. There is a lack of criteria to distinguish between **voluntary** and **forced** movement in hazard related disaster settings.



A Migration Framework for Pastoralists

- Could be mainstreamed into the **Pastoral Policy Framework Initiative** of the AU and address – among other themes:
 - Human Security
 - Climate Change
 - Violence prevention and reduction
 - Small arms reduction and control (DDR)
 - Non violent conflict resolution and peace building
 - Development of longer term vision and policy for community stabilization and sustainable livelihoods



Thank You



Reconciliation in the Rift Valley



3. Reconciliation Processes, Indigenous Rights and Peacebuilding

 **Post Elections Violence**







**WORKSHOP ON INDIGENOUS PEOPLES AND PEACEBUILDING
EXPERIENCES AND BEST PRACTICES: 9TH -13TH NOVEMBER 2009,
BARCELONA.**

EXPERIENCE OF KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR).

BY COMMISSIONER FATUMA I. ALI

Background: Indigenous communities situation in Kenya

- Generally the issue of indigenous people is very sensitive in Kenya since every community consider themselves indigenous
- No formal recognition of indigenous people in Kenya
- A number of communities who have identified themselves as indigenous such as the nomadic pastoralists such as the Turkana, Maasai, Rendilles, Boranas, Gabrah, Sakuye etc. Others are the hunters and gatherers e.g Ogiek, Wattas, Ndorobos.
- Most of these communities live in Trust land or Communal lands. The trust land is under the custody of local authorities who manage on behalf of the communities.
- Few privately ownership of land and group ranches exist.
- Indigenous communities live in arid and semi-arid lands specifically to herd their livestock and in forests for hunting and gathering.
- Most indigenous communities live along regional borders and experience regional border conflicts
- Apply seasonal movements extending across national borders
- Experience intra and inter community destructive conflicts – degrading and inhuman cycle
- Indigenous communities occupy vast, massive, harsh/complex and risk prone regions – very removed from national government structures and service.

Key Human Right Concerns of indigenous communities

- Development Disparities-Most areas inhabited by indigenous communities are chronically underdeveloped in terms of basic infrastructure such as roads, communications and government service provision is extremely weak
- Nationality and identity is questioned by national governments (statelessness)- They go through specific vetting process to acquire identity cards and other national documents
- National education systems does not fit into the lifestyle and the circumstances of the indigenous communities -illiteracy rates are at 87.5%.
- Conflicts has become lifestyle of Indigenous communities –since 40+ years – cattle rustling, banditry, massive killings for pasture, water and grazing territories, etc
- The government is reluctant and regard the livelihood systems of indigenous people is considered primitive and is not given a priority in the national budget.
- Government arbitrary allocates land and other natural resources that belong to the indigenous communities without the participation and consent which result in persistent conflicts and forceful displacements.

Key human rights concerns of IPS

- Government usually handle conflicts in indigenous areas differently- approach is collective punishment
- Government ignores initial start of conflicts in these regions- indigenous peoples fight and brutally kill each other –for too long becomes complex and takes ethnic dimension
- Government intervention is security operations affecting innocent and perpetrators
- Destructive security operations and rampant human rights abuses by security agencies-not peace building

National Commission human rights and peace building initiatives targeting indigenous communities rights

- Mapping of conflict hot spots areas and sustained profiling of human rights aspects and implication of conflicts to the indigenous communities
- Conducted prompt fact finding missions to locations of conflicts –particularly intra and inter communities and state security operations
- Media profiling of the situation of indigenous communities in terms of discrimination and economic/social public service delivery gaps and status-human rights perspectives
- Conducted public inquiry on organised crimes and its effect on human rights – selected indigenous region included e.g MT. Elgon inter communities conflicts - where SLDF killing local communities on unfair and biased land distributions- documented gross human rights violations and use of excessive force by both state actors and local militias

CONTN

- Receive and investigation/documentation of human rights violations against indigenous peoples –individuals and communities on land acquisition and natural resources exploitations –e.g Tana River Sugar Project- identify key human rights claims, duties of state organs and investors , analysis of agreements on projects using human rights standards and single out gaps
- Presentation of commission 's findings on the human rights claims , failures, triggers of conflicts, duties of state organs to its citizens and policy advisory on human rights based approaches to investments, benefits sharing and involvement of indigenous communities
- Monitoring of the implementation of commission policy advice and reconciliation programs
- KNCHR established Minority and Indigenous Peoples thematic area under ESCR section- planned specific activities to promote and protect human rights of IPs

CONTN

- Specific targeting of volatile regions inhabited by indigenous peoples- opened the first regional offices of KNCHR- increasing accessibility to service and provide timely support to peace and reconciliation activities
- North Eastern and Upper East and North Rift regional offices- managed by locals- historically conflict prone areas
- Trained CSOS CBOS and local groups on transitional justice issues- TJRC Act- mandate, how to mobilise various at local levels including IPs , preparation of submissions and actual participation in public hearings
- Targeting to support and facilitate a number of indigenous groups and communities representatives to prepare submissions and views to TJRC
- Organised 3 forums on indigenous peoples rights – roundtable discussion, national and regional training on indigenous rights and sharing of best practices from different regions- funded by KNCHR and ILO Geneva- capacity building and gain insights from other countries and actors. The regional training was attended by some UN agencies and international organisations- profiled the situation and work.

Peacebuilding initiatives

- The commission has identified insecurity and conflict as hindrance to the realization of human rights – particularly for indigenous peoples and poor citizens
- The major issues identified was negative ethnicity and resource based conflicts= land and natural resources
- Bringing the voices of the indigenous communities to the steering committee of the national policy on peacebuilding and conflict management
- Strengthening the existing peace structures on ground- a breed of formal and informal systems-UE and NE regions
- Strengthening interfaith groups and the local elders who are seen to be progressive in peacebuilding
- Civic education on the existing government policies on peacebuilding and conflict management
- Strengthening Coordination of work on NGOs and to identify best practices with other civil society organizations- local level experience sharing
- Documentation and mapping the consequences of conflicts in relation to human rights – using hrba to analysis underlying causes of conflicts, CHs, DBs and their capacities /gaps and recommendations

Peacebuilding initiatives

- KNCHR provided proposals to all newly established commissions- TJRC, National cohesion Commission, - on commission's past reports and findings on various regions and communities e.g indigenous peoples development challenges , persistent conflicts and peacebuilding issues
- KNCHR presented constitutional issues to the review expert with specific recommendations to entrench indigenous communities rights, affirmative measures to redress historical injustices experienced by different groups and building national cohesion
- Commission engaged multinational investors and relevant government actors on the findings of the natural resource based investment conflicts- presented findings, views of communities and rights based proposals on mitigating the conflicts- some of KNCHR proposals were considered- subsequently government cancelled agreement with few investors
- KNCHR sustain monitoring and updates on the various situations –linking peace building with reconstruction/development programs and reforms.

Role of UN Agencies in Kenya

- Presence of major UN agencies in Kenya- very limited or no formal recognition of IPs by country UN bodies- GOK denial
- Each UN agency does its activities – no functional joint agenda on indigenous issues
- ILO Geneva supports number of indigenous organisations addressing IPs rights
- UNDP country office briefly hosted UNIPACK but died silently—no concrete policy and funds allocated for IPs issues-
- My assessment/view of the non-targeting of indigenous peoples rights in Kenya by UN agencies is that indigenous agenda is **TOO HOT OR COMPLEX –fear of the storm-non- formal recognition by the government**
- UN agencies are located in a strategic position and should focus on indigenous communities rights- as a matter of priority

Role UN Agencies in IP rights

- UN agencies should increase employment of indigenous professionals and others passionate on IPs issues
- UN agencies and other key country based actors should appreciate and recognize indigenous communities suffer and experience numerous inequalities, discrimination and exclusion within their countries when compared with dominant groups
- Substantive information and best practices exists particularly in Asia where UN agencies, financial institutions and multinationals have actively involved indigenous communities in development issues which resulted in meaningful gains – opportunity for replication.

Lessons learnt/good practices

- Isolated and targeted those groups who need special focus e,g indigenous communities
- Mapped conflicts and its causes –its implications to human rights, development and delivery of service
- Gather factual and pool of update information on conflict and peace building
- Use human rights based standards and principles to analysis conflicts – provides platform to identify rights violated or denied, who are the most affected, who are the duty bearers/actors, their capacity and challenges/gaps- no blame games but joint engagement by key actors
- Engage both formal and informal /traditional structures in peacebuilding

Lessons learnt/Good practices

- Profiled conflict situations and how it affects groups particularly isolated and far located communities such as Indigenous Peoples
- Used the media to document and release to the national views – creating awareness and diffuse stereotypes, attitudes, etc .
- Engaged parliamentarians and their committees (relevant) on insecurity, conflicts and support required
- Present policy briefs to public actors – NAPHR policy-peacebuilding principles entrenched .

Lessons Learnt/Good practices CONT...

- – assess why past peacebuilding initiatives are not working and what is affecting or hindering- move towards securing ownership and sustainability in peacebuilding and reconciliation of communities
- Link local, regional and national peace building policies and activities – consolidation of efforts, resources and focus = durable peace and security.



4. Other UN approaches

UN(DP) and Indigenous Peoples

From Policy to Implementation
Beatriz Fernandez



Indigenous Peoples and Peacebuilding:
A Compilation of Best Practices*
Barcelona, 9-13 November 2009

Global UN Mechanisms/bodies:

- ▶ UN Permanent Forum on Indigenous Issues
- ▶ Inter-Agency Support Group on Indigenous Issues
- ▶ UN Expert Mechanism on the Rights of Indigenous Peoples
- ▶ Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples
- ▶ ILO Supervisory bodies/other HR treaty bodies/Independent Expert on Minorities



UNDRIP:

Article 40

- ▶ Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.



UNDG Guidelines:

- ▶ Consultation with the indigenous peoples concerned prior to any action that may affect them, direct or indirectly. Consultation ensures that their concerns and interests match the objectives of the activity or action that is planned.
- ▶ Formal recognition of indigenous peoples' traditional institutions, internal justice and conflict-resolution systems, and ways of socio-political organization · Recognition of the right of indigenous peoples to freely define and pursue their economic, social and cultural development
- ▶ Indigenous customary law should be taken into account in conflict resolution decisions.



Rolling out the Guidelines:

Work Plan:

- ▶ **UN Country Team trainings** (Nepal, Philippines, Ecuador); requests from Argentina, Nigeria, Argentina, Honduras, Guyana and Colombia
- ▶ **Creation of Participatory mechanisms/advisory councils** to the UN Country Teams
- ▶ **Technical support/backstopping**



UNDP strategic plan 2008–2011

UNDP will support Governments in the identification of effective interventions strengthening participation by the poorest social sectors ... and indigenous peoples.

Support to mobilize civic engagement among those groups is a basic foundation for strengthening their access to the policymaking process.



policy/human rights

Human development and human rights are interrelated, inter-dependent and indivisible. Human rights norms provide a framework for equality and non-discrimination that ensures that the benefits of human development reach even the most disadvantaged people. They contribute to **legitimacy, efficiency and delivery.**



policy/indigenous peoples

- ▶ Poverty is often deeper and greater
- ▶ Distinct legal status and rights
- ▶ Democratic governance and participation
- ▶ Essential link between human rights and human development
- ▶ Indigenous cultures and diverse knowledge is a resource for the whole world
- ▶ Globalization and recent development has caused marginalization and impoverishment



policy/indigenous peoples/CPR

- ▶ UNDP will seek to better understand the underlying causes of conflict
- ▶ UNDP has a role to play in legitimizing the presence and role of indigenous peoples and their organizations in CPR and monitoring of peace agreements
- ▶ UNDP recognizes the extra vulnerability of indigenous women in crisis situations.
- ▶ Special attention is needed on issues of resettlement/population transfer; and any form of assimilation or integration without free, prior informed consent



policy/indigenous peoples/op

HQ – global level: Global networks and advocacy/Mobilizing resources and platforms, e.g. through trust funds.

Country level: Strengthen capacities of IPOs
Support networking activities among IPOs
Improve capacity of UNDP staff

Regional programming to provide an impartial space for dialogue



practice/global

- ▶ UN REDD
- ▶ MDG Achievement Fund
- ▶ GEF–Small Grants Programme
- ▶ Community–based adaptation project
- ▶ Equator Initiative
- ▶ Political Representation project
- ▶ Global Human Rights Programme
- ▶ UN Programme on conflict prevention and Natural Resources



practice/regional

- ▶ **Asia:** Regional Initiative on Indigenous Peoples' Rights and Development (RIPP)
- ▶ **Latin America:** New initiative to enable spaces for policy dialogue; integration of human rights in development programming; and implementation of the Declaration



the way forward:

- Follow both a targeted and a mainstreaming approach to ensure that indigenous peoples' issues are addressed across critical UN(DP)'s programmatic work.
- Scaling up support for community empowerment to promote principles of national ownership as contained in the UNDP Strategic Plan.
- Strengthen inter-agency collaboration at the country level



The United Nations Permanent Forum on Indigenous Issues

**The Secretariat of the UN Permanent Forum on Indigenous Issues,
Department of Economic and Social Affairs,
United Nations**

Broddi Sigurdarson

Tel: (1) 917 367 5100, Fax: (1) 917 367 5102

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website <http://www.un.org/esa/socdev/unpfii/>

UN Mechanisms and indigenous peoples

- UN Permanent Forum on Indigenous Issues (UNPFII)
- Special Rapporteur
- Expert Mechanism
- Second Decade
- ILO Convention 169
- Convention on Biological Diversity
- United Nations Declaration on the Rights of Indigenous Peoples
- Inter-Agency Support Group

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Mandate:

- a) To examine ways and means of overcoming existing obstacles
- b) To gather, request, receive and exchange information and communications
- c) To formulate recommendations and proposals on appropriate measures
- d) To work in close cooperation, with other special procedures and subsidiary organs

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (cont.)

- Office established in 2001
- The SR works closely with the UNPFII and the Expert Mechanism
- Mr. Rodolfo Stavenhagen (2001 to 2008)
- Mr. James Anaya (current)
- The SR is supported by the Special Procedures Branch of OHCHR

Expert Mechanism on the Rights of Indigenous Peoples

- Established in December 2007
- 5 independent experts
- First Session October 2008
- Mandate:
 - ❖ Provide thematic expertise
 - ❖ Give advice based on studies and research
 - ❖ Suggest proposals

Second International Decade of the World's Indigenous People (2005-2015)

- Proclaimed by the GA (A/RES/59/174)
- Plan of Action launched on 15 May 2006, at the fifth session of the Forum
- Coordinator: Mr. Sha Zukang, USG for Economic and Social Affairs
- The five objectives of the Decade :
 - Promoting non-discrimination and inclusion of indigenous peoples,
 - Promoting full and effective participation of indigenous peoples;
 - Development with identity and culture,
 - Targeted policies, programmes, projects and budgets for the development of indigenous peoples,
 - Strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level.

The Declaration on the Rights of Indigenous Peoples

- Adopted by the General Assembly, 13 September 2007
 - For: 144
 - Abstain: 11
 - Against: 4
- “The 13th of September 2007 will be remembered as an international human rights day for the Indigenous Peoples of the world, a day that the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.”
Victoria Tauli-Corpuz, Chairperson, UNPFII

UN Declaration on the Rights of Indigenous Peoples

Adopted by the GA in September 2007

- **Article 43:** Minimum Standards
- **Article 41:** Contribute to the full realization of UNDRIP by the organs and specialized agencies of the United Nations system and other intergovernmental organizations
- **Article 42:** Promote respect for the full application of UNDRIP

UN Declaration on the Rights of Indigenous Peoples – Cont'd

- **Examples of individual rights**
 - Not be subject to any form of discrimination
 - Receive equal treatment
 - Able to participate fully in public life
- **Collective rights: Peoples, not just people**

Collective rights: Self-determination

- Freely determine political status
- Freely pursue economic, social and cultural development
- Autonomy or self-government
- Formal recognition of indigenous peoples' traditional institutions
- Financing autonomous functions
- Conditions for self-management

Collective rights: Lands, territories and resources

Indigenous Peoples have the:

- Right to lands, territories and resources
- Right to own, use, develop and control those lands, territories and resources
- Right to legal recognition and protection to these lands, territories and resources

Collective rights: Participation

- Consultation
- Full and effective participation
- States shall consult and cooperate in good faith with the indigenous peoples (Article 32)

Collective rights: Elements of Free, Prior and Informed Consent

- No coercion, intimidation or manipulation
- Free, Prior and Informed Consent prior to commencement of activities
- Respect for consultation/ consensus processes
- Disclose all information
- indigenous peoples have the right to say “yes” or “no”

Why there is an ECOSOC body that specifically deals with indigenous issues within the UN?

- “ A success story”, but a long story of the 40 year partnership between indigenous peoples and the United Nations.
- League of Nations (1923-1924)
 - Cayuga Chief Deskaheh's trip to Geneva, representing 6 Iroquois Nations
 - The Maori religious leader, T.W. Ratana, after having been denied access a meeting with King George, traveled to Geneva. (the breaking of the Treaty of Waitnagi of 1840 which guaranteed the Maori ownership of their lands).

Some Facts

- Economically and socially among the poorest and marginalized (indigenous peoples are 5% of the world's population, but 15% of the world's poor)
- Politically excluded from decision-making processes
- Culture and languages suppressed, identity denied
- Facing discrimination, poverty, social exclusion
- Facing high infant mortality and malnutrition, high rate of drop out of primary schools due to culturally inappropriate educational systems...

Some more Facts

- Traditional knowledge been patented or exploited without their agreement
- Genetic resources and pharmaceutical use of plants/animals pirated, then patented by multinational firms
- Militarization of indigenous areas
- Human rights abuses.....

International responses to indigenous peoples demands

- The ILO Convention No.107 concerning indigenous peoples was adopted in 1957, later replaced by the Indigenous and Tribal Peoples Convention No. 169)
 - First international instrument that explicitly addresses the protection of the rights of indigenous peoples (to date, 18 countries have ratified the Convention 169)

Human rights mechanisms and indigenous peoples

- Jose Martinez Cobo's study commissioned by the Sub-Commission of the Protection and Promotion of Human Rights (1971 to 1982)
- The Working Group on Indigenous Populations of the Sub-Commission (established in 1982). The mandates: reviewing developments pertaining indigenous people and standard-setting
- The International Year of the World's Indigenous People (1993, Vienna Conference on Human Rights) followed by the first International Decade on the World's Indigenous People (proposal for the establishment of the Permanent Forum within the Decade)

Who are indigenous peoples and where do they live?

- Elements of common understanding:
 - Martinez Cobo's study (1981-1984)

"...those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems".

Where and how do indigenous peoples live?

- Over 370 million in more than 70 countries
- Speak over 4000 languages (800 in Papua New Guinea, for example)
- Linguistic diversity and biological diversity (complexity of indigenous languages on botanic, zoology, medical and pharmaceutical knowledge, agricultural farming system, traditional hunter-gather way of life...)
- Contribution to the world's cultural diversity and creativity
- Contribution to nation-building processes throughout the history, during the decolonization and beyond..

The United Nations Permanent Forum on Indigenous Issues (UNPFII)

- The UNPFII is an advisory body established by ECOSOC decision (2000/22), reports to Economic and Social Council of the United Nations.
- The UNPFII has held its annual sessions since 2002, attended by over one thousand participants from governments, indigenous peoples' organizations, other inter-governmental organizations, UN agencies, non governmental organizations, academia....

UNPFII membership

- 8 nominated by governments.
- 8 nominated by indigenous peoples.
- The term of membership is 3 years, renewable. Current membership 2008-2010, 6 women and 10 men. They serve in their personal capacity as indigenous experts/experts on indigenous issues.

Current members of the Permanent Forum

- Mr. Simeon Adewale Adekanye, Nigeria
- Mr. Lars Anders Baer, Saami, Sweden
- Mr. Hassan Id Balkassm, Amazigh, Morocco
- Mr. Carlos Mamani Condori, Aymara, Bolivia
- Mr. Eugenio A. Insigne, Tingguian, Philippines
- Mr. Michael Dodson, Yawuru, Australia
- Ms. Tonya Gonnella Frichner, Onondaga, USA
- Ms. Paimaneh Hasteh, Iran
- Ms. Margaret Lokawua, Karimjong, Uganda
- Ms. Liliane Muzangi Mbela, Democratic Republic of Congo
- Ms. Elisa Canqui Mollo, Aymara, Bolivia
- Mr. Andrei A. Nikiforov, Russian Federation
- Mr. Bartolomé Clavero Salvador, Spain
- Mr. Carsten Smith, Norway
- Mr. Pavel Sulyandziga, Udege, Russian Federation
- Ms. Victoria Tauli-Corpuz, Igorot, Philippines

Mandate of the Permanent Forum

- To discuss indigenous issues within the ECOSOC's mandate, including economic and social development, culture, environment, education, health and human rights.
- To provide expert advice and recommendations to the Council and to programmes, funds and agencies of the UN, and
- To raise awareness about indigenous issues,
- To integrate and coordinate activities in the UN system and
- To produce materials on indigenous issues.

Mandated areas of the Permanent Forum

- Culture
- Economic and Social development
- Education
- Environment
- Human rights
- Health

How does the Permanent Forum work?

- Special themes of the sessions:
 - Indigenous children and youth, 2003
 - Indigenous women, 2004
 - MDGs and indigenous peoples, 2005 and 2006
 - Territories, lands and natural resources, 2007
 - Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges, 2008
 - Indigenous peoples: development with culture and identity; articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples
- Major international conferences (Beijing+10, UNDG, WSIS, MDGs,)
- Expert group meetings and technical workshops
 - Data collection and disaggregation
 - Free, prior and informed consent and IPs,
 - MDGs indigenous participation and good governance
 - CBD's international regime on access and benefit-sharing and indigenous peoples' rights
 - Indigenous Languages
 - Development with Culture and identity: Articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples
 - Implementation of article 42 of the United Nations Declaration on the Rights of Indigenous Peoples
- Interactive sessions between indigenous peoples, States, UN agencies, development funds/programmes and Special Rapporteur on the fundamental rights and freedoms of indigenous peoples.

Inter-agency Support Group on Indigenous Issues (IASG)

- Over 30 agencies and others
- Integrate indigenous issues in policy-development, programmes and budgets
- Support to the Permanent Forum on substance

During the session

- The Forum meets for 10 days each year in May (or April) in New York, (or a location to be chosen by the Forum)
- The recommendations are adopted by consensus and submitted to ECOSOC
- Recommendations are policy-making oriented in the form of advice and they are action-oriented for the implementation and follow up of the intergovernmental system, governments, indigenous and other organizations and the private sector.

During the session

- Ideas for recommendations may come from various agencies, indigenous caucuses, governments and of course the Forum members.
- Recommendations cover the mandated areas of the Permanent Forum,
- Recommendations can be addressed exclusively to a particular UN agency or to the whole UN system.

Who participates in the Forum sessions?

- Indigenous Peoples Organizations
- Member States
- UN and other intergovernmental entities,
- Non governmental organizations with ECOSOC consultative status.
- Academic institutions

What happens before the session?

- Various consultations take place, often informally, among indigenous network and caucuses on particular themes or issues
- Prepare documentation based on contribution of agencies and governments on the implementation of the Forum's recommendations
- UN agencies and governments pursue the implementation of the recommendations of the Forum on indigenous issues in various areas, prepare reports/contribution to the UNPFII

What happens before the session?

- Governments adopt or review legislation with a view to recognizing indigenous peoples' rights, adopt other measures, prepare reports for the UNPFI,
- Many other initiatives (indigenous mayors' network in Latin America, fellowship for indigenous students to access higher education, develop culturally appropriate education tools....)
- the Secretariat of the PF advocates implementation of the PFII recommendations, networks, promotes awareness, prepares documentation for the Forum....

Contributions from Member States

- Participate in the deliberations of the Forum
- Review/adopt policy with regard to indigenous peoples
- Develop programmes and projects addressing specific issues related to indigenous peoples
- Pursue implementation of the recommendations of the UNPFII
- Contribute to the Trust Fund on Indigenous Issues

“Recently, the international community has grown increasingly aware of the need to support indigenous people -- by establishing and promoting international standards; vigilantly upholding respect for their human rights; integrating the international development agenda, including the Millennium Development Goals, in policies, programmes and country-level projects; and reinforcing indigenous peoples’ special stewardship on issues related to the environment and climate change.”

Ban Ki-moon, Secretary General, United Nations
Message on the International Day of Indigenous People, 9 August 2007



5. Compilation of best practices

Constitutional process and Indigenous Peoples – A compilation of best practices

BOLIVIA	
WHAT? (instruments, solutions, practices)	HOW? (process to get there)
<ul style="list-style-type: none"> Recognize the priority and legitimacy of the process of constitutional change through public awareness Existing international HR standards and instruments UN Declaration on Indigenous Peoples Secondary legislation (to adapt constitutional provision to ordinary legal instruments) 	<ul style="list-style-type: none"> Timely intervention by international community in case of crisis or bottlenecks Long-term engagement Engaging in dialogue, producing proposals Support to the constitutional process (both political/diplomatic and technical) Promote inclusiveness (bottom-up approach)
<ul style="list-style-type: none"> Rebuild the legal system looking at other examples Constituent assembly process as a conflict prevention mechanism Strong relationship between political leadership (MAS) and civil society Parallel systems and value codes to coexist with ordinary bodies 	<ul style="list-style-type: none"> Collective action in support to institutional approaches (e.g. peaceful demonstration in front of the Parliament to push approval of new Constitution) consultation between government and IPs related civil society ensure initial empowerment through capacity building of IPs to let them articulate needs Indigenous municipalities traditional juridical systems traditional resource management
<ul style="list-style-type: none"> Support of international community to the process (with total respect to Bolivian will) Continued and long-term assistance by the UN Support to the post-constitutional phase 	<ul style="list-style-type: none"> Monitoring of International community (OAS, UN, etc.) Silent/quiete diplomacy combined with flexibility Technical support linked to political support Relationship with media based on coherent messages and not gossip-driven Development of secondary legislation
<ul style="list-style-type: none"> Mainstreaming of indigenous issues in the entire constitution and not only in individual provisions or articles Ensure political representation and participation Ensuring commitment of all actors throughout and after the process Seizing momentum but also keeping it after initial successes 	<ul style="list-style-type: none"> Establish a mechanism that ensure Constituent Assembly approval and Parliamentary ratification (so that the old regimes cannot refuse changes) Precedent empowerment of indigenous peoples Follow-up pressure by the international community Confidence-building initiatives (envisage dialogues spaces) Strategic use of media Respect of international charters

PHILIPPINES	
WHAT? (instruments, solutions, practices)	HOW? (process to get there)
<ul style="list-style-type: none"> • Participation in local government • Establishment of peace zones • Recognition of ancestral domain <ul style="list-style-type: none"> ◦ individual rights (land) ◦ Collective rights (domain) • Territory mapping (satellite) 	<ul style="list-style-type: none"> • Increased participation • Consultation (FPIC) • Legitimate IP Representation • Honest broker
<ul style="list-style-type: none"> • Creating awareness • Indigenous realities • Bring indigenous to Parliament as observers • Negotiation • Champions/icons 	<ul style="list-style-type: none"> • Politicians and non-indigenous society as strategic allies • Showing IP areas to politicians • Work with parliament • Long process with clear demands • Symbolic task of incorporating indigenous demands into the constitution
<ul style="list-style-type: none"> • Creation of specific institutions in charge of the implementation of indigenous issues • UNDP as impartial institution • Focus on claims instead of only rights 	<ul style="list-style-type: none"> • Included in the Constitution • IPRA
<ul style="list-style-type: none"> • Unconventional solutions and ways of doing things (think out of the box) • Collaboration among IP groups • Balance individual and collective rights 	<ul style="list-style-type: none"> • Icons and champions • CERD • Example of land
<ul style="list-style-type: none"> • Creation of the National Commission on IP (IPRA) • Delimitation of ancestral domains with double option: ancestral land (individual) ancestral domain (collective) • Support of traditional culture • Concession of status of autonomy in the regions • Peace zones accepted by government (consensus) • Confidence of the UN as an impartial institution 	<ul style="list-style-type: none"> • Recognition of IP by society • Strengthen presence, representation of IP • Implementation (of peoples developed in IPRA) by government ratifying international conventions and agreements

Peace processes and Indigenous Peoples – A compilation of best practices

GUATEMALA	
WHAT? (instruments, solutions, practices)	HOW? (process to get there)
<ul style="list-style-type: none"> • Ratification of ILO convention no. 169 • Implementation of the peace agreement by the UN • Participation of civil society in the peace process • Explicit inclusion of IPs in peace agreements 	<ul style="list-style-type: none"> • Consultation mechanisms (e.g. IPs Advisory Council) • Specific agreement on IPs rights in the peace settlement
<ul style="list-style-type: none"> • Consultation with civil society networks • Involvement of municipalities • Good selection of representatives of IPs • Thorough implementation of Peace process • Peace process monitoring/mediation mechanisms 	<ul style="list-style-type: none"> • <i>Asemblea de los Pueblos</i> • Referendum • Local consultative bodies • Recruit implementation experts & secure <i>ad hoc</i> funding • Including a non-partisan monitoring party of the peace agreement
<ul style="list-style-type: none"> • Envisage early reconciliation instruments • Take into consideration the “cosmo-vision” of IPs • No “dead points” in the peace process • Political will is secured if it includes the voice of civil society 	<ul style="list-style-type: none"> • <i>Comision de la Verdad</i> (Truth Commission) <ul style="list-style-type: none"> ◦ Not only reports but also communication & outreach ◦ Monitoring of implementation • More effort on de-codification of indigenous values • More optimism through awareness programmes and confidence-building measures • Ensure that civil society itself has political will
<ul style="list-style-type: none"> • Inclusion of relevant actors • Create stakes in the peace process for marginalized groups • Use existing international law instruments • Build spaces for reconciliation 	<ul style="list-style-type: none"> • Create spaces for participation in the peace process • Articulate a project of state reform that has a long-term agenda • Truth commissions

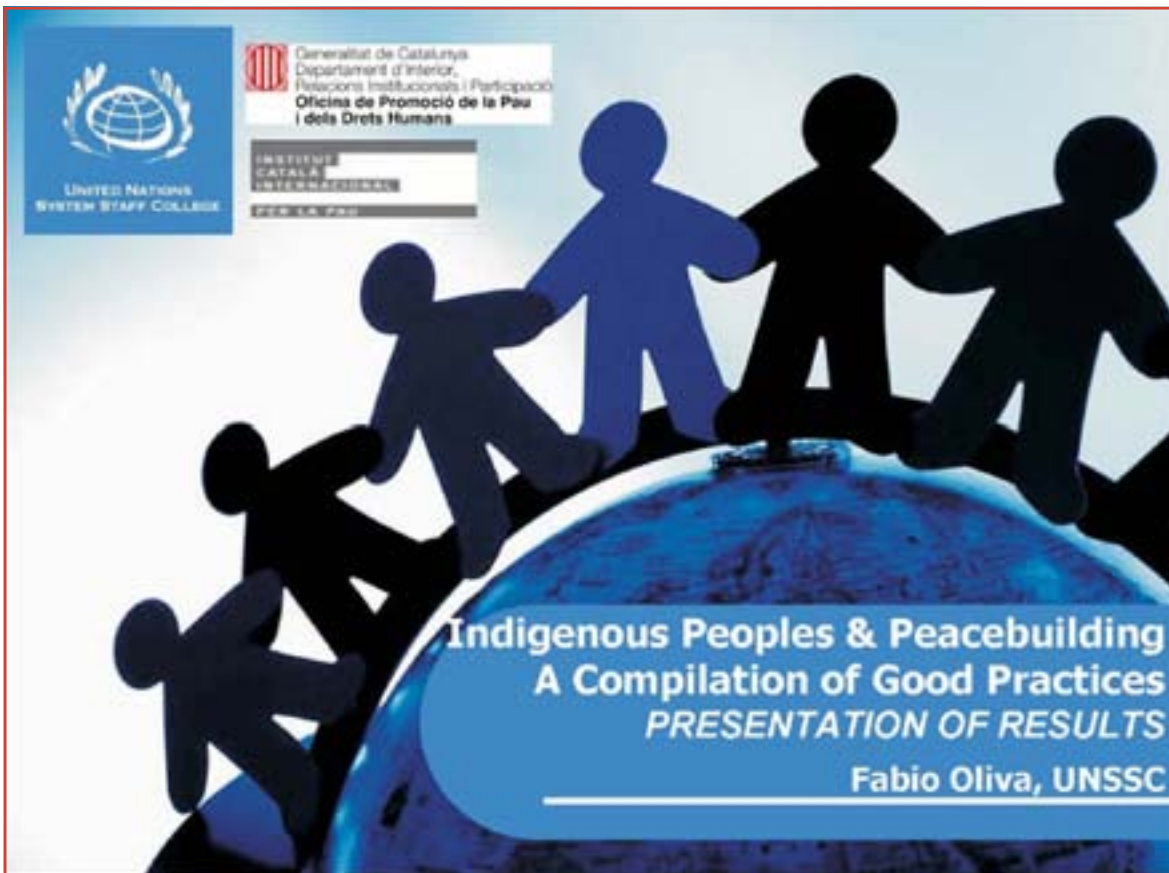
PERU	
WHAT? (policies, mechanism, consultative institutions)	HOW? (process to get there)
<ul style="list-style-type: none"> • Tap on domestic capacities and institutions • Constructive role of media • Facilitate implementation process 	<ul style="list-style-type: none"> • Independent public institutions with the support of the UN • Analyze and produce credible information on sensitive issues • Use technical information and data for implementation
<ul style="list-style-type: none"> • Establishment of Office of Ombudsman • Role of the Special Rapporteur (SR) • International media interest • Civil society participation 	<ul style="list-style-type: none"> • 2/3 majority vote of Parliament • Rapid implementation of SR's recommendations • Good and reliable reporting • NGOs assistance to Indigenous peoples' organizations
<ul style="list-style-type: none"> • Ombudsman • Special rapporteur • Using the UN system capacity • Link IP issues to decentralization process • Support to ongoing initiatives 	<ul style="list-style-type: none"> • Mediation mapping of conflict and raising awareness • Timely emergency visit, specific recommendations and follow-up (it provided framework for addressing IPs issues) • UN instruments <ul style="list-style-type: none"> ○ Human rights based approach ○ ILO convention 169 ○ Global compact (to address issue related to mining and extractive industry) • Promote local governance programs • <i>Acuerdo nacional</i> (National agreement signed by all parties) • <i>Mesa de dialogo</i> (Table of dialogue)

Reconciliation and Indigenous Peoples – A compilation of best practices

VARIOUS CASES	
WHAT? (instruments, solutions, practices)	HOW? (process to get there)
<ul style="list-style-type: none"> • South Africa's Truth and Reconciliation Commission • Peru's Truth and Reconciliation Commission • Kenya 	<ul style="list-style-type: none"> • Victims testimony • Individual & collective reparations • Reports/trials • Database • Museum of Truth (<i>Museo de Verdad</i>) • African Union/Annan mediation <ul style="list-style-type: none"> ○ Peace accord ○ Waki commission ○ Investigation/testimonies • Parliament: reform of electoral commission
<ul style="list-style-type: none"> • Identifying the actors and their needs • Include civil society • Foster a constructive, accepted and smooth process • Gender perspective 	<ul style="list-style-type: none"> • Situation analysis • Group therapy (on sensitive issues) • Chose proper facilitators • Base discussions on human rights • Dialogue and communication with government
<ul style="list-style-type: none"> • Empathy and compassion • Working together among institutions, national commissions and international community • Awareness embedded in education programs 	<ul style="list-style-type: none"> • Documentation • Mapping • Story telling • Cultural immersion • Reform of schoolbooks and curricula
<ul style="list-style-type: none"> • Adequate match between national and local level • Independence of HR/TRC institutions 	<ul style="list-style-type: none"> • Commission at national level to deal with reconciliation • Community level bodies for more personal issues in a preparatory phase • HR commission accountable to the Parliament and not to the government



6. Document of conclusions





Rationale of the workshop

- **Constitutional issues (legal dimension)**
- **Peace process issues (political dimension)**
- **Reconciliation issues (moral dimension)**



PEACE



Objectives & long-term goals

WHAT KIND OF PEACE?

- *Negative peace vs. positive peace*
- What is positive peace? **Peace of a higher quality** that addresses *physical violence, structural violence and cultural violence*
- **Structural accommodation of diversity:** entrench diversity in state institutions and laws
- **Perils of inclusive society:** IPs do not want to be included in already existing social structures. They want to build a **new society**.
- **Indigenous Peoples ≠ minorities.** IPs can be the majority group (e.g. Bolivia)
- **Key rights** common to all cases:
 - Right to territory
 - Right to autonomy/self-determination
 - Right to their own model of development



Challenges & Risks

- Indigenous rights: legal instruments are available but they are **not implemented** nor enforced effectively
- How to combine **new and old institutions** after constitutional reform?
- Address both **material** (land, resources) and **symbolic** issues
- Risk of symbolic changes
- **Permitted indigenous**: accommodating and not vocal
- Increase cleavages/conflicts
- How to ensure that a new IPs legal framework does not undermine the enjoyment of rights of non-IPs communities?
- How to build an **indigenous public policy agenda**?




GPs – Legal / Constitutional processes

- **ILO convention 169**
- **UN Declaration on Indigenous Peoples (2007)**
- Principle of "**free, prior and informed consent**"
- **Human rights approach** vs. **Indigenous peoples rights approach**: do not create separate rights for IPs consider everyone as a human being and apply fundamental rights
- **Constituent assembly** as a conflict prevention mechanism
- **Parallel systems** and value codes to coexist with ordinary institutions
- **Mainstreaming of indigenous issues** in the entire constitution and not only in individual provisions or articles
- Vacuums and gaps left by the Constitution-making process can be filled by the **secondary legislative process**
- Elimination of **contested laws**
- Recognition of **ancestral territory** and distinction between:
 - individual rights (land)
 - collective rights (domain)



GPs - Peace processes

- State institutions → best positioned to introduce change that favor IPs, Local institutions (municipalities) → best level to implement & enforce rights. **Link IP issues to decentralization process**
- **Elections** or **referendum** as popular validation of constitutional process
- Let Indigenous define what **indigenous autonomy** really implies.
- Indigenous autonomy is a **social innovation** only if it deepens the democratic process, and not if it eventually lead to further polarization.
- **Ombudsman** for IPs → successful institution (Peru)
- Invest on the **implementation** of peace processes (people & money)
- Role of the **Special Rapporteur** (SR)
- International **media** interest
- **Civil society** participation and accountability
- Build domestic **capacity for conflict** analysis and **management**
- Rely on **UN Global compact** to address issues related to extractive industry



GPs - Reconciliation processes

- Different models and timing for reconciliation:
- **Reconciliation vs. conciliation** (= accommodation)
- Gender mainstreaming as functional to reconciliation
- Use of **human rights based approach**
- Use of the **media** to document and create awareness
- Engage the **Parliament** and representative committees
- Foster awareness through **education programs** (e.g. revise schoolbooks, update curricula)
- Balance between **community-based** reconciliation and national reconciliation
- **South Africa** (collective & individual reparations), **Peru** (Museum of Truth), **Kenya** (AU/Annan mediation)

 **Lessons learned – Improvements**

- No magic formula nor unique model.
- Choice of timing is critical
- Knowledge of different phases of peace process: confidence building, dialogue, negotiations, agreement, implementation
- Address fundamental causes of conflict
- Rely on domestic capacity
- Improve communication
- International community (UN, donors, INGOs)
 - Coherence of the message
 - Avoid paternalism
 - Analysis of situation
 - In-house capacity for political action
 - Early action
 - Rely on Regional organizations



6. Document of conclusions

 **Thank you for your attention!**



QUESTIONS ?



7. Participants list

Indigenous Peoples and Peacebuilding: A compilation of best practices. Barcelona, 9-13th November 2009

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