

“A CHILD’S FIRST RIGHT”

Identity Rights of Indigenous Children and Young People



Victor P. Karunan

INTRODUCTION

Problem of Definition – Who are they? - “Indigenous”, “Ethnic Minorities”, “Hilltribes”, “Mountain People”?

The United Nations estimates the world’s indigenous population representing over 70 countries to be between 300 and 350 million people, about five per cent of the world’s population.¹ There is no generally accepted definition of indigenous peoples or ethnic minorities, although some elements of a definition are generally acceptable to all. Most sources refer to the ILO Definition of Indigenous and Tribal Peoples as given in Article 1 or ILO Convention 169 of 1989.

Four main elements contribute towards a possible definition of indigenous peoples : pre-existence (i.e, the population is descendent of those inhabiting an area prior to the arrival of another population), non-dominance, cultural difference and self-identification as indigenous.

Many other terms have been used for Indigenous Peoples : Autochthonous, Ethnic Minorities, Tribal People, First Nations, Fourth World, and so on. In 1982, Jose Martinez-Cobo, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities put forward a definition that has been generally accepted as a working definition of indigenous peoples within the United Nations :

*"Indigenous communities, peoples and nations are 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."*²

The conventional definition of indigenous peoples - by governments and international development agencies - is *"a non-dominant group of people with a shared history, language and culture residing in a common geographical area"*. Most governments and some international development organisations however strongly oppose or are reluctant to employ the term "indigenous peoples" most probably because of the connotation of original rights - to land, resources, etc.

¹ United Nations, 2002

² Sadruddhin Aga Khan & Hassan bin Talal, 1987, p.8

Indigenous self-identification is a critical component of the definition. As the ILO Convention recognized “*Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply*”.

In the Asia region, the governments in the Greater Mekong Sub-region (GMS) countries have also adopted varying definitions of indigenous peoples and ethnic minorities. In Myanmar, indigenous peoples are referred to as “*national races*”. In Cambodia, indigenous peoples are referred to as “*ethnic minorities*” and the classical definition is applied. In Laos, they are called “*tribal people*” or “*ethnic groups*” and administratively lumped together into one or two groups depending on their geographical location - upland Lao or highland Lao. In Thailand, indigenous peoples are considered to be “*hill tribes*”, or “*highland Thai*” (a more recent term used). In Vietnam, indigenous peoples are called “*nationalities*” to give them a measure of status, as well as recognition.

The term “*minority*” and “*majority*” can be understood in relation to each other and the specific context in which they are being used, consequently there are many problems related to accurate and useful definitions of minority peoples as a generic group. Thus when using the term “*minority*”, understanding of the context of use is vital. The term minority is often interpreted with the assumption that they are among the poorer and the disadvantaged. There is no established definition of “*ethnic minorities*” in international law. Much of existing literature on minorities includes groups that are referred to as “*indigenous*” or “*tribal*” peoples.

THE IDENTITY CRISIS OF INDIGENOUS CHILDREN

Indigenous peoples – collectively and as individuals – draw their identity and form their world-view from specific historical and cultural contexts that include their own beliefs, values, social organization, language, customs and practices. This rich cultural heritage is carried over from generation and generation – notwithstanding the erosions from external influences and pressures on their lives and their livelihoods. And yet, around the world – in both developed and developing countries - indigenous peoples, especially children and young people, are among the most marginalized groups in society, and their rights – including those to survival and development, to the highest standards of health, to education that respects their cultural identity, to protection from violence, abuse and exploitation and to participation in decision-making that is relevant to their lives – are often seriously compromised and, in many cases, systematically violated and denied.

Compared to non-indigenous children, indigenous children and young people invariably suffer from high mortality rates, lower vaccination rates, low levels of birth registration, lower school enrolment, higher rates of school drop-outs and grade repetition, and poor access to justice systems. Furthermore, indigenous children are also particularly vulnerable to human trafficking, exploitation and the impact of armed conflict and civil unrest. In short, indigenous children continue to experience their basic identity and human rights challenged on a daily basis.

The problem of birth registration

Article 7 of the UN Convention on the Rights of the Child stipulates the right of every newborn child to be registered – *“the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents”*.³ This fundamental right applies to all children below the age of 18 years.

Birth registration is the official record of the birth of a child by a competent state authority. It is a permanent and official record of the child’s very existence. Moreover, birth registration ensures that a child born in society is part of the civil registration system that acknowledges the existence of that person before the law, establishes the child’s family ties and tracks major events in the life of that child towards marriage and death.⁴ The registration of a child at birth ensures a birth certificate for the child – an official and legal document that enables the child to access services from society – including health, education, legal rights, etc.

A child who is not registered at birth does not have proof of its name, its family ties and its legal rights in the society where he/she is born. In other words, an unregistered child is non-existent in society. In some societies where nationality is determined by birth, a birth certificate is the document that generally determines the child’s nationality. Even in societies that apply other criteria, a birth certificate is still the most important documentary evidence of a child’s nationality – as it states the nationality of its parents.

Lack of birth registration is therefore a violation of the fundamental rights of a child to be given an identity at birth and to be recognized as a citizen in society. Article 7 of the UNCRC implies that States within whose jurisdiction a child is born are obligated to make birth registration accessible to all children – including asylum seekers, refugees and immigrants.

Globally, the birth of over 50 million children go unregistered each year – more than 40 per cent of total births. South Asia has the largest number of unregistered children comprising of over 22.5 million, or over 40 per cent of the world’s unregistered children. Sub-Saharan Africa had over 17 million and East Asia and Pacific about 7 million children were unregistered. In the Middle-East and North Africa, nearly one-third of the children born in 2000 – about 3 million – lack legal recognition.⁵

Major constraints faced in achieving universal birth registration include the following

- Lack of awareness of local government authorities, parents and community members of the importance of birth registration
- Complicated, often outdated and centralized administrative policies and procedures for civil registration

³ UN Convention on the Rights of the Child, 1989

⁴ UNICEF, 2002, p. 2

⁵ Ibid, p.8

- Limited infrastructure and resources allocated for birth registration
- High costs of registration
- Lack of legal framework to ensure non-discriminatory and universal registration
- Lack of access for people living in remote and mountainous areas
- Political sensitivities of registration of ethnic groups, refugees, indigenous peoples and displaced populations in some countries.⁶

Birth Registration and Identity of Indigenous Children

Birth registration is lowest among children in remote rural areas and other marginalized communities that are cut-off from mainstream society and health services – which are largely concentrated in urban areas. Indigenous children and children of ethnic minorities constitute a large share of unregistered children in most parts of the world. These include the Kurds in Syria, Tatars in the Ukraine and Russians in Estonia and Latvia, etc. In this sense, children and young people of indigenous communities and ethnic minorities are doubly-discriminated – lacking an identity and claim to their basic rights, as well as discriminated by racism, marginalization and isolation from mainstream communities and societies.

Article 30 of the UN Convention on the Rights of the Child specifically mentions children of minorities or indigenous peoples – *“in those States in which ethnic, religious, linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”*. The Committee on the Rights of the Child pays special attention to the rights of indigenous children in reviewing State Party reports and in its General Comments on the CRC.

Recognising and respecting indigenous identities, languages and traditional knowledge would give strength to indigenous peoples and facilitate their participation in policies and services that affect them.

VULNERABILITY AND EXPLOITATION OF INDIGENOUS CHILDREN AND YOUNG PEOPLE

Indigenous children and young people are among the most marginalized and vulnerable to exploitation, abuse and violence. There are indications that high numbers of the worst forms of child labor among indigenous peoples in many parts of South Asia, Southeast Asia and Latin America. Indigenous and tribal children are found to make up a large part of child labourers in certain risk areas, such as debt-bondage in South Asia, migratory agricultural wage labour in Central America and Mexico, and trafficking in

⁶ UNICEF-East Asia and Pacific, 2003, p???

Southeast Asia. In Latin America, it is estimated that indigenous children are twice as likely to work as their peers. The situation in Africa is not well documented.⁷

A Sub-Regional Seminar on Minority Rights held in Chiang Mai, Thailand, in December 2002 concluded that despite some recent positive developments, Governments of the South-East Asia region still paid insufficient attention to the implementation of the Minorities Declaration. As a consequence, *“stability, rule of law, friendship and cooperation have not yet been well established in South-East Asia”*.⁸ The meeting acknowledged the complexity of definitional issues within the sub-region, and noted that indigenous peoples and minorities were not only excluded from the process of national development, but also continued to suffer from the effects of alienation and of imposed concepts and an imposed framework of development. They faced multiple problems and human rights violations related to their right to legal status and citizenship, education, freedom of expression and mobility, culture and identity, ownership of land and resources, among others. As a result, indigenous peoples and minorities were the most *“disadvantaged, deprived, discriminated, marginalized and excluded”*. The meeting acknowledged the work undertaken by grassroots civil society organizations and NGOs to address these concerns and problems among indigenous peoples and minorities in South-East Asia. Finally, the meeting adopted a set of recommendations for Governments, UN Agencies, National Human Rights Institutions, International, Regional and National Development Agencies, NGOs and others.

INDIGENOUS ADOLESCENTS SPEAK OUT

The most organized expression of advocacy and social mobilization of indigenous adolescents has been in the region of Latin America. UNICEF has supported workshops and forums of adolescents from indigenous communities in various parts of this region. Most recently, a Workshop of Indigenous Adolescents was held in Costa Rica which addressed the problems of protection, health, nutrition, education, identity, culture and territory among indigenous peoples and its impact on adolescents in particular.⁹ This meeting was in preparation for the Ibero-American Meeting of Indigenous Children's Rights which was held in Madrid in July 2005. This regional meeting brought together over 80 indigenous adolescents from 17 Latin American countries to discuss issues related to their identity, culture and development, health and nutrition, special protection, bilingual intercultural education and their visions for the future. Participants presented their Final Recommendations to Queen Sofia of Spain at the conclusion of their regional meeting – which read, in part

“We are children and adolescents from 34 indigenous communities...we live in conditions of exclusion, marginalization, racism and discrimination, which prohibit our development as human beings and citizens who possess specific rights. We want to participate in the construction of a more fair world”.¹⁰

⁷ Bille Larsen, Peter - Indigenous and Tribal Children – Assessing child labor and education challenges, Child Labor and Education Working Paper, ILO-IPEC, p.vii.

⁸ Eide, Asbjorn – “Conclusions and Recommendations of the Sub-Regional Seminar on Minority Rights – Cultural Diversity and Development in South-East Asia”, Chiang Mai, Dec.2002, ECOSOC, 25 April 2003, p. 3.

⁹ “Foro Adolescente”, Newsletter, UNICEF Costa Rica, Issue No.4, July-August 2005, p.1.

¹⁰ Ibid, 5.

POLICY AND PROGRAMMATIC IMPLICATIONS

The Way Forward – enhancing the capacity and involvement of indigenous children and young people in their own development

- Ensuring the rights of indigenous children involved building upon the inherent strength of indigenous communities.
- Families, elders and community leaders play an important role in helping indigenous children and young people discover and positively utilize their potentials and resources – including spirituality, cultural identity and values, a strong bond land and nature, collective memory, and kinship and community.
- Important to recognize the value of indigenous peoples “worldviews”...
- Promote and build upon positive traditional values and practices among indigenous peoples that protects their human rights and empowers them to participate in their own development and the development of society around them.
- UNICEF has put forward four key strategic areas where progress can be made in ensuring the rights of indigenous children are protected and promoted. These include :
 - Promoting the highest standard of health and nutrition – through a constructive dialogue between “traditional” and “modern” medicine and access to basic health care.
 - Guaranteeing quality education – through promoting bilingual, inter-cultural, child-centered approaches with community involvement.
 - Ensuring effective, culturally sensitive protection and support – through building on traditional family, kinship and community networks and support systems, and
 - Giving indigenous children and young people a voice in the decisions that affect them – through providing opportunities and space for free and open communication, advocacy and participation in local, national and global structures and initiatives that affect their lives.¹¹
- *“Indigenous children carry with them a reserve of knowledge that is their special inheritance, and from which we can all benefit”.*¹²

CONCLUSION

Birth registration is a fundamental human right for all newborn children. It opens the door to other rights – such as education, health care, participation and protection from discrimination, abuse and exploitation. Effective birth registration ensures the child’s name and nationality.

Birth registration or the lack of it also has implication for State policy and programmes. The official data and statistics of the country must capture a new member of

¹¹ UNICEF Innocenti Digest, 2003, pp.14-20.

¹² Ibid, p.1

society who is entitled to the rights and the responsibilities of a valued citizen. Only then can the State fulfill its obligations of providing basic services and protection for the citizens. An unregistered child, therefore, is not reflected in official government data and statistics, and consequently, does not benefit from services and protection from the State or other official policies and programmes.

Unregistered children are often invisible, and in some cases, undervalued members of society. Lack of registration and therefore legal identity prevents many of the abuses against children from being adequately monitored and addressed. Lack of registration is both a contributing factor to vulnerability and a result of being discriminated or violated.

REFERENCES

1. Aga Khan, Sadruddin & TALAL, Hassan Bin : (1987) : Indigenous Peoples - A Global Quest for Justice, A Report for the Independent Commission on International Humanitarian Issues, Zed Books, London.
2. ILO-IPEC (2003) , “Indigenous and Tribal Children : Assessing Child Labor and Education Challenges” – by Peter Bille Larsen, Child Labor and Education Working Paper, Geneva
3. Oxfam – International Youth Parliament (2003) : “Indigenous Youth” in “Highly Affected, Rarely Considered – The International Youth Parliament Commission’s Report on the Impacts of Globalisation on Young People”., Sydney.
4. UNICEF Innocenti Research Centre (2002) : “Birth Registration – Right from the Start”, Innocenti Digest, No.9, March
5. UNICEF East Asia and Pacific (2003) : “Regional Atlas”, Bangkok.
6. UNICEF Innocenti Research Centre (2003) : “Ensuring the Rights of Indigenous Children”, Innocenti Digest, No.11, October
7. UNICEF-Costa Rica (2005), “FORO ADOLESCENTE” – Newsletter, Issue No.4, July-August
8. United Nations (2002) : “We are the world’s indigenous peoples”, New York.
9. United Nations (2003) : “Chairman’s Summary of the High-Level Panel and Dialogue on Indigenous children and youth”, Agenda Item 3, Permanent Forum on Indigenous Issues, Second Session, New York, 12-13 May.
10. United Nations (2003) : “Conclusions and Recommendations of the Sub-Regional Seminar on Minority Rights – Cultural Diversity and Development in South-East Asia, Chiang Mai, December 2002” – Asbjorn Eide, Chairperson/Rapporteur, ECOSOC, E/CN.4/Sub.2/AC.5/2003/2, 25 April.
- 11.