

New Delhi Guidelines on the establishment of National Institutions on the Rights of Indigenous Peoples, New Delhi, October 18-19, 2008

Regional Conference on the Role of the National Institutions on the Rights of Indigenous Peoples

Introduction

At the Regional Conference on the Role of the National Institutions on the Rights of Indigenous Peoples¹ held in New Delhi, on 18-19 October 2008, the representatives of indigenous peoples participating in the conference unanimously welcomed the contributions made by UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Prof James Anaya; Chairman of the National Commission on Indigenous Peoples of the Philippines and member of the United Nations Permanent Forum on Indigenous Issues, Mr Eugenio A Insigne; Member of the Governing Council of the National Foundation for Development of Indigenous Nationalities of Nepal, Mr Arjun Limbu; Member of the National Commission for Protection of Child Rights of India, Ms Dipa Dixit; Representative of the Delegation of the European Commission to India, Mr Hans Schoof; and former Special Rapporteur on the right to adequate housing, Mr Miloon Kothari.

The representatives of indigenous peoples participating in the conference adopted the following guidelines which they understand to reflect the minimum standards for the establishment of any National Institutions on the Rights of Indigenous Peoples (NIRIPs). These guidelines are designed to be of use to all who are concerned with promotion and protection of the rights of indigenous peoples, in particular, the governments and the United Nations bodies and agencies.

New Delhi Guidelines on the establishment of National Institutions on the Rights of Indigenous Peoples, New Delhi, October 18-19, 2008

I. The significance of National Institutions on the Rights of Indigenous Peoples

1. Since the adoption of the United Nations Paris Principles on National Human Rights Institutions in 1991, a number of National Human Rights Institutions have been established by the governments across the world.
2. A number of National Institutions on the Rights of Indigenous Peoples have also been established by the governments across the world.

¹ . The Regional Conference was organised by Asian Indigenous and Tribal Peoples Network.

New Delhi Guidelines on the establishment of National Institutions on the Rights of Indigenous Peoples, New Delhi, October 18-19, 2008

3. The establishment of the National Institutions on the Rights of Indigenous Peoples reflects a policy shift of the concerned governments from assimilation of indigenous peoples to recognition of the rights of indigenous peoples to all human rights and fundamental freedoms.
4. There have also been significant legal developments at international level enhancing the rights of indigenous peoples including the UN Declaration on the Rights of Indigenous Peoples, ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries and a number of international instruments which refer to indigenous peoples.
5. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity and that indigenous peoples are equally entitled to all these rights.
6. It is recognized that the National Institutions on the Rights of Indigenous Peoples have an important and crucial role to play for recognition, promotion, protection and implementation of the rights of indigenous peoples including the UN Declaration on the Rights of Indigenous Peoples.
7. The United Nations bodies especially those relating to indigenous peoples like Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples of the UN Human Rights Council have a role to play for promotion and establishment of the National Institutions on the Rights of Indigenous Peoples.
8. The UN agencies should encourage States and include the establishment of the National Institutions on the Rights of Indigenous Peoples in their technical cooperation programmes.

II. Guidelines on the establishment of National Institutions on the Rights of Indigenous Peoples

Chapter I: Constitution of a National Institution on the Rights of Indigenous Peoples

- (1) The National Institutions on the Rights of Indigenous Peoples (NIRIPs) should be constitutional bodies mandated to protect, promote and defend human rights, fundamental freedoms and other rights and interests of the indigenous peoples with due regard to their beliefs, customs, traditions and institutions and shall exercise the powers conferred upon, and perform the functions assigned to it.

New Delhi Guidelines on the establishment of National Institutions on the Rights of Indigenous Peoples, New Delhi, October 18-19, 2008

- (2) The NIRIPs shall reflect plurality and representation of indigenous communities;
- (3) The Chairperson, members and Chief Executive Officer shall be indigenous persons.
- (4) The NIRIPs shall have offices in the territories of indigenous peoples.

1. Criteria /Qualifications

- (1) The Chief Commissioner and the Commissioners must have experience and expertise on indigenous peoples' issues including the experience working with an indigenous community for substantial period of time and/or any government agency involved in indigenous peoples' issues, the ability, integrity and standing for selflessness to the cause of justice for the indigenous peoples.
- (2) The composition of the NIRIPs shall reflect the diversity of the indigenous peoples including gender, ethnicity and geographical regions.

2. Procedure of appointment of members

The members of the NIRIPs shall be appointed by the head of the State on the recommendation of a committee comprising of the representative of the government, leader/s of the opposition in the National Parliament and representatives of indigenous peoples.

The procedures of appointment shall be public through issuance of a notification through publication in all national newspapers and other communication systems like internet inviting recommendations from indigenous communities for appointment and filling up the vacant posts of members of the NIRIPs as well as inviting comments from the indigenous peoples (individuals and organizations) on candidature of all the nominees and the details of the nominees including names, address, educational qualifications, work experience etc. before appointment and the information pertaining to all the nominees shall be made public.

3. Resignation and removal of members

- (1) The members of NIRIPs may, by notice in writing under his/her hand addressed to the Head of State, resign his/her office.

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

(2) The members of NIRIPs shall only be removed from his/her office by the initiative of appropriate authority or upon recommendation by any indigenous community on the ground of proven misbehaviour or incapacity after the apex court, on reference being made to it by the appropriate authority, has, on inquiry held in accordance with the procedure prescribed in that behalf by the apex court, reported that the members of the NIRIPs, as the case may be, ought on any such ground to be removed.

(3) The Head of State on the advice of the appropriate authority may by order remove members of NIRIPs as the case may be;

- (a) is adjudged an insolvent; or
- (b) engages during his/her term of office in any paid employment outside the duties of his/her office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence involves moral turpitude.

4. Procedure to be regulated by the NIRIPs

The NIRIPs shall regulate its own Rules of Procedure.

5. Officers and other staff of the NIRIPs

- (1) The NIRIPs shall be made available:
 - (a) an officer who shall be an indigenous person and serve as the Chief Executive Officer
 - (b) such investigative staff and officers as may be necessary for the efficient performance of the functions of the NIRIPs.
- (2) The NIRIPs may appoint such other administrative, technical and scientific staff as it may consider necessary.

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

6. Offices and departments of the NIRIPs

The NIRIPs, among others, shall have the following offices which shall be headed by indigenous persons and be responsible for the implementation of the policies hereinafter provided:

- a) Policy, Planning and Research and Advocacy office will be responsible for formulation of appropriate policies and programs for indigenous peoples such as, but not limited to, the development of a Five-Year Master Plan for the indigenous peoples. The NIRIPs shall endeavor to assess the plans and make necessary rectifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the government in the formulation of appropriate legislation on indigenous peoples;
- b) Education and Culture Office will ensure effective implementation of the education, cultural and health rights of the indigenous peoples. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the indigenous communities, especially in areas where existing educational facilities are not accessible to members of the indigenous groups. It shall administer all scholarship programs and other educational rights intended for indigenous people's beneficiaries in coordination with the Ministry of Education, Culture and Sports and other related agencies. It shall also undertake special programs to preserve and promote the languages and traditional knowledge of the indigenous peoples.
- c) Office on Socio-Economic Services and Special Concerns will coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the indigenous peoples to ensure that the same are properly and directly enjoyed by the indigenous peoples. It shall also be responsible for such other functions as the NIRIPs may deem appropriate and necessary;
- d) Women Rights Cell which, among others, shall design and implement the programmes of the NIRIPs pertaining to indigenous women.
- e) Youth and Child Rights Cell which, among others, shall design and implement the programmes of the NIRIPs pertaining to indigenous youths and children.

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

f) Office of Empowerment and Human Rights will ensure the enjoyment of the human rights and fundamental freedoms by the indigenous peoples. It shall, among others, undertake capacity building programmes, participation of indigenous peoples at all levels of decision-making and intervene against violations of the rights of indigenous peoples.

g) Administrative Office, among others, shall provide the NIRIPs with economic, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services.

h) Legal Affairs Office shall, among others, advise the NIRIPs on all legal matters concerning indigenous peoples and providing legal assistance to indigenous peoples in litigations.

i) Other Offices - The NIRIPs shall have the power to create additional offices or regional offices in all development regions or wherever it may deem necessary.

7. Consultative Advisory Committee

(1) It shall be the duty of the National Institutions on the Rights of Indigenous Peoples to establish a Consultative Advisory Committee of indigenous peoples which shall have the mandate to:

(i) advise the NIRIPs on matters relating to the problems, aspirations and interests of the indigenous peoples; and

(ii) ensure indigenous peoples participation for appointment of the members of the NIRIPs;

(2) The Consultative Advisory Committee shall ensure equitable representation of gender, ethnicity and geographical diversity.

Chapter II: Functions and Powers of the NIRIPs

8. Functions and powers of the NIRIPs

(1) The National Institutions on the Rights of Indigenous Peoples shall be informed and consulted by the government on all major policy matters affecting indigenous peoples.

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

- (2) The NIRIPs shall have quasi-judicial and quasi-legislative powers and functions and the duty of the NIRIPs shall include:
- (a) To serve as the primary government agency through which indigenous peoples can seek government assistance and as the primary agency medium, through which such assistance may be extended;
 - (b) To monitor, review, and assess the conditions of indigenous peoples including existing laws and policies pertinent thereto and to propose relevant laws and policies to ensure their proportionate participation in national development;
 - (c) To coordinate, formulate and implement policies, plans, programs and projects of the government s for the economic, social and cultural development of the indigenous peoples and monitoring the implementation thereof;
 - (d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
 - (e) To inquire into specific complaints, on receipt of complaints or *suo motu*, with respect to the violations of the rights and safeguards of the indigenous peoples;
 - (f) To receive complaints and/or take *suo motu* action and inquire into non-implementation of the services provided by the government and compel action from appropriate agency.
 - (g) To participate and advise on the planning process of socio-economic development of the indigenous peoples and to evaluate the progress of their development;
 - (h) To study and make recommendations for sustainable development of indigenous peoples;
 - (i) To discharge such other functions in relation to the protection, welfare and development and advancement of the indigenous peoples;
 - (j) To discharge such other functions in relation to the protection, welfare and development and advancement of the indigenous peoples as the case may be, subject to the provisions of any law made by Parliament;
 - (k) To convene periodic conventions or assemblies of indigenous peoples to review, assess as well as propose policies or plans;

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

- (l) To update the scheduled list of indigenous peoples through identification and recognition of the unidentified and unrecognized ones;
- (m) To recognize, promote and protect traditional wisdom and knowledge of the indigenous peoples and prevent transfer of such knowledge and wisdom to non-indigenous peoples/areas without benefit sharing and ensuring full respect for the right to free, prior and informed consent;
- (n) To act as the regulating agency for implementation of programmes or projects by non-governmental organizations and the private sector;
- (o) To promulgate the necessary rules and regulations for the implementation of the rights of indigenous peoples;
- (p) To secure the assistance of the government departments to enforce the orders of the NIRIPs; and
- (q) To constitute one or more Sub-Committees for purposes of research, investigation, review and monitoring of social, economic, cultural and civil and political rights of the indigenous peoples.

9. Powers relating to inquiries

- (1) The NIRIPs shall, while inquiring into any complaint have all the powers of a civil or criminal court whichever applicable in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any documents;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing summons for the examination of witnesses and documents; and
 - (f) any other matter which may be prescribed by the parliament;
- (2) The NIRIPs shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the NIRIPs, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information as legally provided.

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

(3) The NIRIPs or any other officer specially authorised in this behalf by the NIRIPs may enter any building or place where the NIRIPs has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject as provided under law.

(4) Every proceeding before the NIRIPs shall be deemed to be a judicial proceeding and the decisions of the NIRIPs shall be appealable only before the apex court of the country.

Chapter III: Procedures

10. Inquiry into complaints

(1) The NIRIPs while investigating into non-implementation of safeguards available to the indigenous peoples under the Constitution or any law for the being in force may initiate an inquiry by its own investigation department or other agency of the government as the NIRIPs deems fit to inquire into the complaints of violations of the rights of indigenous peoples;

(2) Were the inquiry discloses violation of rights of the indigenous peoples or negligence in the prevention of violation of the rights by a public servant, the NIRIPs may take appropriate actions/measures as may deem fit against the concerned person or persons;

11. Annual and special reports of the NIRIPs

(1) The NIRIPs shall submit an annual report to the Parliament and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Government shall submit a memorandum of action taken or proposed to be taken on the recommendations of the NIRIPs and the reasons for non-acceptance of the recommendations, if any.

Chapter V: Finance

12. Financial autonomy

The National Institutions on the Rights of Indigenous Peoples shall have financial independence:

**New Delhi Guidelines on the establishment of National Institutions on the Rights of
Indigenous Peoples, New Delhi, October 18-19, 2008**

(1) The Government shall after due appropriation made by Parliament by law in this behalf, pay by way of grants such sums of money as the NIRIPs may present in a budget to the Government annually.

(2) The NIRIPs can directly receive additional funds from any source as donation, assistance, grants etc.