

Indigenous Peoples and Co-management of Natural Resources*

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Abstract

This paper seeks to understand the concept, justification, and operation of co-management. Furthermore, we like to explore how indigenous peoples may take part in the management of natural resource through the mechanism of co-management. Finally, we will assess how co-management may be applied in Taiwan and what potential barriers may be in the way.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

United Nations Declaration on the Rights of Indigenous Peoples, 2007

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Consultation without power is not joint management, and can continue paternalistic administration of indigenous peoples' homelands by outsiders, ultimately undermining their self-determination, ways of life, and existence as peoples.

Stan Stevens (1997: 284)

Introductions

The idea of “co-management,” variously known as collaborative management, co-operative management, or joint management, is the effort to reform the management of natural resources in terms of mechanisms of participation and responsibility, in order to improve economic governance (Bèné & Neiland, n.d.: 9). Particularly, the focus is on the sharing of power and responsibility between the government and the community (p. 48).

Traditional modes of resource management are largely government-based. At the other extreme of the spectrum is community-based. While the management style of the former is from top to down, that of the latter is from down to top. While maintaining participation of the government and the community in the process of management, co-management is a compromise of the two extremes (Figure 1). At this juncture, the community we refer to here may be the locality or the indigenous peoples.

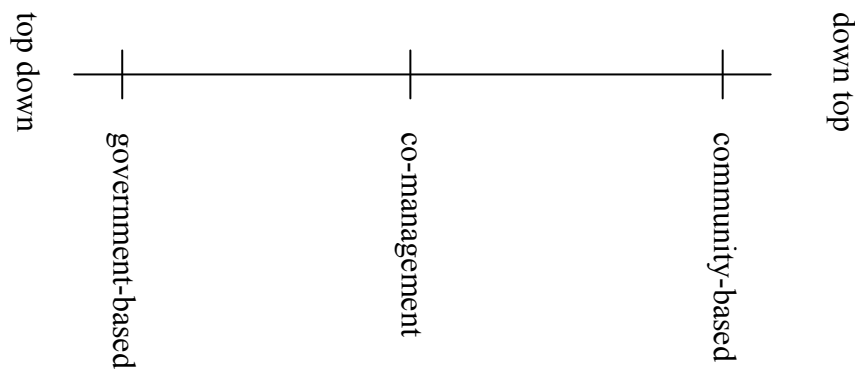


Figure 1: spectrum of management

Conceptually speaking, co-management is different from community-based management, where the decision-maker is confined to the local community, indigenous peoples, or traditional leaders, such as tribal chiefs or heads of the band while the government reframes from the management of natural resources. Therefore, the tenet of co-management is to rectify the monopoly of the government in the decision-making process of selecting proper management models of natural resources (Bèné & Neiland, n.d.: 47-48).

At this moment, three inter-related political science come to the fore: governance, participation, and co-management (Bèné & Neiland, n.d.: 43). First of all, while governance reform is the ultimate goal for co-management, good management would include participation, responsibility and transparency. Secondly, concrete mechanisms of co-management are expected to further economic efficiency, social justice, and sustainable environment. As Goetze (2004: 2) points out, traditional models of management for natural resources, emphasizing economic efficiency or benefits from environmental protection and thus neglecting the rights, needs, and interests of the local community, especially the indigenous peoples, is against the promotion of social justice.

Since the early 1980s, nonetheless, such settlers' states as Australia, Canada, New Zealand, and the United States have adopted the doctrine of co-management in the management of natural resources. In particular, the government of Canada deems co-managements arrangements as "modern treaties" between the government and the indigenous peoples.

In Taiwan, Article 22 of the *Indigenous Fundamental Law* (2005) officially stipulates the establishment of co-management mechanisms:

When the government is demarcating certain areas for the purpose of creating national parks, national scenery areas, forest areas, ecological conservation areas, playground areas,

and other resource governance administrations, it ought to obtain agreements from local indigenous peoples, and to establish mechanism of co-management.¹

In recent years, the Council for Indigenous Peoples, highest level of the government organ in charge of indigenous affairs, has undertaken six inter-ministerial talks with concerned ministries regarding a *Draft Ordinance for Co-management*. With strong objections from other ministries, the CIP was forced to submit the draft to the Committee for Enacting the Indigenous Basic Law in 2006. At the meeting, the then Premier Su Jen-chang appointed a minister without portfolio for further deliberations. A coordination meeting was called upon later on. Officially, there was no consensus reached. Nonetheless, it was resolved by the chair that some wordings of the draft be revised.

Apparently, facing forceful pressure from other ministries, the CIP announced the promulgation of the *Ordinance for Natural Resources Co-management in Indigenous Peoples' Areas* in late 2007.

Legitimacy and Desirability of Co-management

We may look into indigenous peoples' participation in management of natural resources from its legitimacy and desirability. If we classify indigenous peoples' rights to environment into substantive and procedural ones, participation in management of natural resources is procedural one. In *Our Common Future*² released in 1987, the UN World Commission on Environment and Development (Brundtland Commission), while recognizing how indigenous peoples' traditional knowledge may contribute to improvement of management of natural resources, suggests members states include indigenous peoples in the policy making process of natural resources.

¹ It is the author's translation.

² It is also known as *Brundtland Commission Report*, or *Brundtland Report*.

In the *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (1989), the International Labor Organization (ILO) stipulates that:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. (Art. 7.1)

Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. (Art. 7.4)

Further, in its *Rio Declaration on Environment and Development* (1992), the United Nations Environment and Development Conference emphasizes the role of indigenous peoples in environmental protection (Principle 10), and expects members states to encourage indigenous peoples to take part in sustainable development (Principle 22). Meanwhile, *Agenda 21* (1992) details norms for procedural rights to environment and devotes a whole chapter to enshrine the role of indigenous peoples. What is noteworthy, such ideas as “partnership” and “empowerment” are embraced in this historical document.

Moreover, in the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (1998)³, the United Nations Economic Commission for Europe (UNECE) stipulates the rights to information, decision-making, and judicial protections in the policy making of environmental protection. Finally, the *United Nations Declaration on the Rights of Indigenous Peoples* (2007) regulates that that indigenous peoples have the right to participate in decisions that may affect their rights (Art. 18), and that the government need to consult the indigenous peoples for projects on their lands (Art. 32.2).

³ It is also called *Aarhus Convention*.

We now turn to the desirability of co-management. In general, the upmost justification for the emergence of co-management mechanism is exhaustion of and conflict over use of natural resources. First of all, it is because of lack of efficiency in current practices of management that leads to the expectation that bringing in indigenous participation and traditional knowledge would make improvement.

Proponents of co-management enlist the concept of “common property resource” invented by Ostrom (Cummings, 1998). It is formulated this way: since the utility of individual consumption generally outweighs costs paid, it is consequently expected that there would be overuse of natural resources. In the past, economists would recommend nationalization or privatization: while the former may lead to the issue of unequal distributions, the latter at times bump into the difficulties of information capabilities, monitoring, and administrative costs (Cummings, 1998: 12). All these considerations contribute to the rise of co-management as the leading paradigm of natural resources management (Bèné & Neiland, n.d.: 43).

Secondly, from the perspective of participatory democracy, either in the lens of decentralization or of devolution, if indigenous peoples are to control the uses of natural resources on their traditional territories, they may be in a position to repeal the paternalistic mode of decision-making enjoyed by the government. Therefore, co-management is a way to exercise empowerment on the part of indigenous peoples (Cummings, 1998: 15).

Finally, establishing mechanisms for co-management of natural resources may also have the meaning of cultural preservation. If indigenous peoples are forbidden to gather herbs, harvest food, fish, or hunt on their traditional territories, related traditions could have ceased to exist (Cummings, 1998: 15). In this regard, co-management serves as a compromise between resource exhaustion and cultural extinction.

Doing Co-management

There is a rich literature on implementing mechanism of co-management (Saskatchewan Indian Federated College, 1996; Ingle, et al., 199; Borrini-Feyerabend, 2000; Berkes, et al., 2001; Phillipson, 2002; Borrini-Feyerabend, et al., 2004; Pomery & Rivera-Guieb, 2006; Tyler, 2006). The natural resources concerned include national parks, ecological conservation areas, fisheries, forestry, and reindeers. Following the studies by Ingles et al. (1999), Borrini-Feyerabend (2000), and Goetze (2004), we may disentangle the manifold deliberations into the following dimensions: motivations and goals (why), procedure (how), agreements (what), organizations and institutions (who), and context (where, and when).

(1) Motivations: In the beginning, we need to ascertain the reasons for implementing co-management: mismanagement of or conflict over use of natural resources. Not until we discover the underlying motivations, we may arrive at the goals for co-management, such as protection of natural resources, coordination of uses, integration of management, conflict resolution, sustainable development, or protection of indigenous rights (Goetze, 2004: 9-10).

(2) Procedures: The promotion of co-management may be largely divided into organizations, negotiations, and implementation. While we go about the business of organizations, what we are preparing is partnership; when conducting negotiations, we hope to arrive at some forms of co-management agreements; and finally, when implementing the mechanisms, we are learning by doing (Borrini-Feyerabend, 2000: 27-51).

(3) Agreements: An agreement is the backbone of any co-management mechanism that would guide the decision-making of the future co-management board. It is usually composed of definitions of important terms, basic principles, precise goals, applicable domains, management structure, and implementation (Goetze, 2004:

10-12).

(4) Organizations and institutions: This is about the above-mentioned concept of management structure, where the relationships among the entities or stakeholders are agreed upon. Particularly, we need to decide the qualifications, representativeness, roles, and authorities of the members of the co-management board (Goetze, 2004: 12). In the past, stake-holders were dichotomized into the governments and the community. Under the latest scheme, this duality has been transformed into a multi-polar one, where outsiders (including non-governmental organizations, and scholars), and other stakeholders (including tourism business, industries, and non-indigenous residents) are added (Bènè & Neiland, n.d.: 46).

In the following, we use a spectrum of power to present different formats of co-management board (Figure 2):

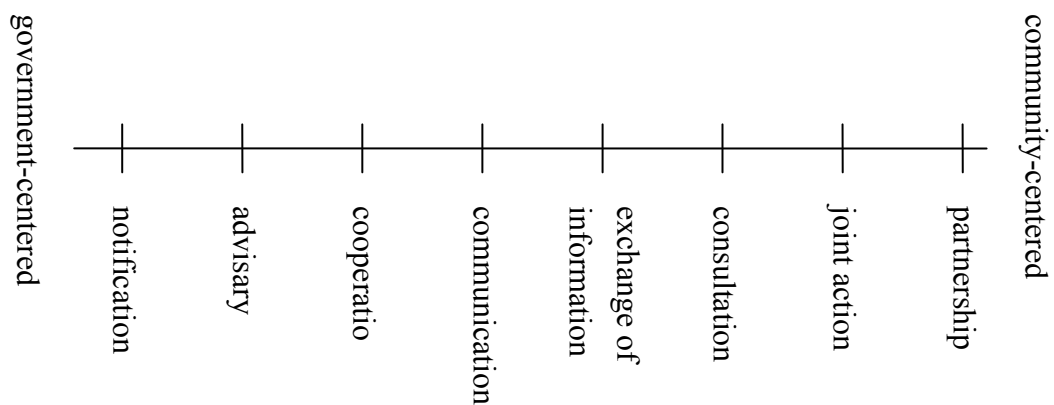


Figure 2: Power of Co-management Boards

(5) Contexts: Generally speaking, the occasions when mechanisms of co-management would arise are conflict resolution and comprehensive challenges of land rights waged by indigenous peoples. When we face the former, the task is simply the consideration of management efficiency, ecological crisis, or conflict of resource uses. Therefore, mechanisms of co-management are by and large expedient ones for crisis, in the hope that conflict may be turned into procedural operations

(Rusnak, 1997: 6-8). On the other hand, as the Canadian cases have illustrated, mechanisms of co-management have been contemplated as parts of comprehensive agreements for land settlements and/or self-government between the governments and indigenous peoples, so that disputes would be resolved once and for all and that relationships between the governments and indigenous be improved (Rusnak, 1997: 8; Craig, 2004: 14).

Experiences from Canada and Australia

At this section, we will look into how Canada and Australia have involved indigenous peoples in the practice of natural resources co-management.

1. Mechanisms of Co-management in Canada: There are three types of co-management mechanism in Canada (Craig, 2002: 14-15): The first type is included within agreements on comprehensive land claims, including *James Bay and Northern Quebec Agreement (1975)*, *Nunavut Land Claims Agreement (1983)*, and *Innuialuit Final Agreement (1984)*. The second type is embedded as parts of self-government agreements, for instance, *Nisga'a Agreement (2000)*. The third type pertains to crisis management, such as Beverly-Quaminirjuaq Caribou Management Board, and that for Gwaii Haanas National Park.

The legal foundation of the former two mechanisms is the *Calder v. Attorney-General of British Columbia (1973)* case, whence the Canadian government is forced to enter into agreements on comprehensive land claim. Moreover, the *Constitutional Act (1982)* also recognizes the indigenous peoples' land rights:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Here are some characteristics of major co-management mechanism:

(1) The *James Bay and Northern Quebec Agreement (1975)*: The Quebec government reached this agreement with the Crees on forestry, mining, power, and community development in 2002. The Quebec government and the Crees would recommend 5 representatives to serve on the Cree-Quebec Forestry Board. The chair is recommend by the minister of natural resource after consultations with the Crees, and then appointed by the Quebec cabinet. Even though the board enjoys tremendous power of policy-making, its function is basically a consultative (Craig, 2002: 23-24).

(2) The *Inuvialuit Final Agreement (1984)*: This federal agreement establish several co-management mechanisms to deal with issues on environmental protection, fisheries, and hunting, including the Fishery Joint Management Committee, 2 Wildlife Management Advisory Councils, the Inuvialuit Game Council, the Research Advisory Council, and 6 Inuvialuit Hunters and Trappers Committees. The indigenous peoples also participate in two advisory committees on environmental planning and development: the Environmental Impact Screening Committee, and the Environmental Review Board. Each committee is composed of 7 members, where the government and indigenous peoples would recommend 3 members each, with the chair appointed by the Federal government subject to consent by indigenous peoples (Craig, 2002: 26-27).

(3) The *Nunavut Land Claims Agreement (1983)*: Although this is in essence a land claims agreement, several co-managements are laid out, including the Nunavut Wildlife Board, the Nunavut Water Board, the Nunavut Impact Board, and the Nunavut Planning Commission. On all co-management boards, both the government and indigenous peoples share equal numbers of members (Craig, 2002: 30-31).

(4) The *Gwaii Haanas Agreement (1993)* : According to this agreement between

the Canadian government and the Haida Nation on, the traditional area Gwaii Haanas is appropriated as the site of an oceanic national park. The Archipelago Management Board is an advisory body based on consensus. While the government and indigenous peoples would appoint 2 representatives each, the dual chairs are recommended by each party.

2. Mechanisms of Co-management in Australia: Since the pass of the *Aboriginal Land Rights (Northern Territory) Act (1976)*, and the *Native Title Act (1993)*, the Australian government has been inclined to enlist land use agreements to settle land claims disputes with aboriginal peoples. Further, since the *Environmental Protection and Biodiversity Conservation Act (1999)* orders that aboriginal members ought to constitute the majority of the co-management board, the government is obliged to face the legitimacy issue of national parks on aboriginal lands, and thus begins to underscore potential contributions from aboriginal peoples to environmental protection (Craig, 2002: 45-47).

Smyth (2001) classifies national parks in Australia into four types according to four criteria, whether aboriginal peoples own land rights of the national park, whether aboriginal members constitute majority of the board, whether aboriginal peoples would rent back the land to the government, and whether aboriginal peoples would receive annual fees from the government (Table 1):

Table 1: Co-management Models for National Parks in Australia

Models	aboriginal land rights	majority on the board	re-rent to the government	annual fees
Gurig	√	√	×	√
Uluru	√	√	√	√
Queensland	√	×	√	×
Witjira	×	√	√	?

source : Smyth (2001)

(1) Kakadu National Park : This national park was set up in pursuant to the *National Parks and Wildlife Conservation Act (1975)* in 1978. The co-management model adopted here pertaining to the old-styled Uluru one: roughly half of the lands belong to aboriginal peoples, whose land trust then rent back the lands to the government for 99 years. According to the lease agreement, the government agrees to guarantee non-commercial uses of aboriginal peoples, including hunting, gathering, traditional and religious uses. The park also assures to hire and train aboriginal peoples for park maintenance, and to share profits (Craig, 2002: 51-53).

The Kakadu Board of Management, in charge of drafting the 5-year management plan, is made up of 14 members appointed by the federal government, where none less 10 members should be aboriginal peoples. Aboriginal communities are equipped with a 43-member Aboriginal Consultative Committee, who would cruise local communities and pass aboriginal opinions to the co-management board (Craig, 2002: 53-55). Even though the park has recognizes aboriginal interests, it has yet failed to consider aboriginal rights (Craig, 2002: 57).

(2) Gurig National Park: This is the first national park that implements co-management in Australia, where lands are turned to aboriginal land trusts, aboriginal traditional hunting and fishery rights are recognized, and the park pledges to train and hire local aboriginal peoples. The Board of Management, responsible for making up management plan, and operation of the park, is composed of 8 members, with a half recommended by traditional land owners, and the half appointed by the Northern Territories government (Smyth, 2001).

(3) Nitmiluk (Katherine Gorge) National Park : The park was proclaimed in 1989 after years of aboriginal movements for land claims. While most of the lands belong to aboriginal land trusts, they are rented back to the government for 99 years. Traditional owners, while retaining rights to culture, habitation and hunting, enjoy

profits from admission and camping, professional trainings and hiring. The Board of Management has an aboriginal majority, where 8 out of 13 members are traditional land owners, and one is local resident (Smyth, 2001).

(4) Uluru-Kata Tjuta National Park⁴ : It is the pioneer of the Uluru model of co-management. While the lands are owned by aboriginal land trusts, they are rented back to the government for 99 years. The co-management board has 6 out of 10 members from aboriginal traditional land owners (Smyth, 2001).

(5) Queensland : The provincial government passed the *Aboriginal Land Act (Qld) (1991)*, and the *Nature Conservation Act (Qld) (1992)* in earlier 1980s to regulate aboriginal land rights, including those within national parks. However, as the federal government thereafter enacted the *Native Title Act (1993)*, aboriginal peoples are hesitant to which routes are more beneficial for rights protections and participation in resources management. Meanwhile, the Queensland government is undertaking revisions of relevant acts, however, without much concrete progress (Smyth, 2001).

(6) Witjira National Park : In order to enhance aboriginal participation, the South Australian government has made efforts to improve management of national parks since the 1980s. Currently, under the leasing agreement, the Witjira Board of Management is made up of 7 members, where 4 are traditional owners of aboriginal lands (Smyth, 2001).

According to the above observations, we may classify the structure of a co-management board into three key dimensions: power, compositions, and decision rules. First of all, if the number of indigenous members is no less than half of the seat, it may enhance indigenous participation since indigenous members may discover that they are in a better position to lead the conduction of the meeting.

⁴ Elsewhere, Mootwingee National Park and Booderee National Park share similar mechanisms of co-management (Smyth, 2001).

Secondly, even if the indigenous members are in the minority of the co-management board, they may at least passively boycott the tyrant of majority if the decision rule is special majority or consensus. In other words, only if the indigenous peoples are furnished with some forms of minority veto can they wield substantive influence on decision-making.

Final but not the least important is the power entrusted to the co-management board. If the role of the board is merely advisory, indigenous participation is nothing but token showcase to demonstrate facades of democracy. As a result, even though the indigenous majority may have successfully arrived at some conservation plan that is conducive to more efficient management, it may still be at the mercy of the non-indigenous park head or the minister who has the final saying.

From the above discussions, we may conclude that the most important dimension of a co-management board is whether it is delegated with decision or advisory power. Secondly, decision rules also are crucial in the sense that an indigenous minority may wrestle veto if consensus is sought.

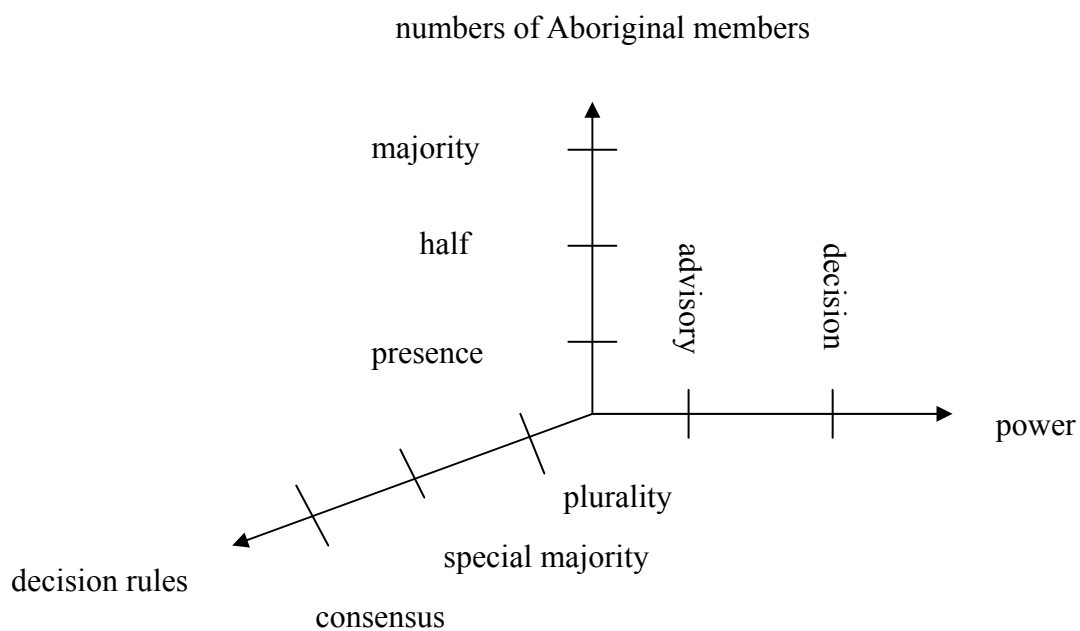


Figure 3: Structure of Co-management

Co-management Practices in Taiwan

As mentioned earlier, the *Indigenous Fundamental Law* (2005) orders that concerned ministries, in collaboration with the Council of Indigenous Peoples, ought to draft ordinances on the establishment of co-management mechanisms before such management organs national parks are declared (Article 22). Accordingly, the CIP has no choice but to prepare a *Draft Ordinance for Co-management* for other ministries' adoption. Although a dozen of inter-ministerial meetings have been called by the CIP's Working Group for Enacting the Indigenous Basic Law since 2006, these ministries have refrained from making any commitment, and thus none in any format has come to existence some far as the three-year duration of grace has passed. Here are some procedural and substantive objections provided so far.

The most astonishing rationale underlying the resistance to provide for a co-management regulation is the doubt of the wisdom of the *Indigenous Fundamental Law* in the beginning. Since it had been sanctioned by the cabinet after inter-ministerial discussions before it was sent to the Legislative Yuan for inter-party negotiations, committee deliberations, and the whole-house approval, its' legitimacy is beyond any question. It is curious why the non-elective bureaucrats are in a position to boycott the implementation of any legislation at all.

Some agencies argue that the draft ordinance for co-management is not feasible considering the protection of national interests. More concretely, they paternalistically assume that the protection of indigenous peoples' rights is invariably incompatible with the guardianship of national interests, such as environmental protections, and thus decide not to act upon the law. Curious enough, are indigenous interests not parts of national interests when the latter is contemplated? Apparently, most agencies consider indigenous peoples aliens from other planets rather than their own compatriots. Still, even if there appear to be some unavoidable conflicts of

goals, such as development *versus* conservation, indigenous peoples deserve restitutions in whatever formats for their sacrifices of inherent rights, for instance, rents accruing from the leasing of their traditional lands, preferential hiring on the park, and sharing of revenues from eco-tourism.

The second disagreement is based on the assumed principle that the enactment of any law ought not to be retroactive. In other words, some agencies claim that their mechanisms of resource protection have long been put into practice long before the law was enforced and thus ask for exemption. Nonetheless, we must point out, it is because the indigenous peoples are dissatisfied with current arrangements of “consultations” that leads to Article 22 of the *Indigenous Fundamental Law*, in the hope that concerned agencies would take indigenous interests into consideration when making resources management planning on indigenous lands.

From our understanding of the idea of non-retrospectivity, the purpose is to protect the rights of people from infringements by the government, not to protect the interests of governmental agencies. Since current practices of natural resources management may have deprived indigenous peoples from enjoying their rights, the proposed co-management ordinance is actually designed to rectify those felt deprivations. Also, it is understood that new laws prevail over early laws and that specific laws outweigh general laws, what are require in the *Indigenous Fundamental Law* ought to take precedence over laws, such as the *Forest Law* (revised 2004), and the *National Park Law* (1972).

Finally, it was challenged that both the *Indigenous Fundamental Law* and the *Draft Ordinance for Co-management* are based on the unenforceable *United Nations Draft Declaration on the Rights of Indigenous Peoples*. However, as the Declaration was passed by the U.N. General Assembly in 2007, no excuse is morally admissible.

Aftermaths

As chairman of the CIP's Administrative Sub-committee of the Working Group for Enacting the Indigenous Basic Law, the first author did manage to resist the attempted deletion of clauses favorable to the indigenous peoples on the *Draft Ordinance for Co-management*. To the surprise of everybody, the CIP, without the formal approval of the Committee for Enacting the Indigenous Basic Law ordered by *Indigenous Fundamental Law*, rushed the promulgation of the *Ordinance for Natural Resources Co-management in Indigenous Peoples' Areas* in November 2007. Some crucial wordings on co-management mechanisms valuable to indigenous peoples are missing from the text. For one thing, current resource management agencies are not required to set up co-management board. Even if one is required for the newly established agency, it is an advisory rather than decision-making body.

It is curious enough why the outgoing Democratic Progressive Party government, which had repeatedly declared his determination to protect indigenous rights, would have hastened the promulgation of this executive order which is against the spirit of both the *Indigenous Fundamental Law* and the *United Nations Draft Declaration on the Rights of Indigenous Peoples*. Even though the Chen Shui-bien administration had been besieged by a divided government, with the position wresting a majority in the Legislative Yuan, in the past 8 years, no executive order is subject to legislative approval before its promulgation. The only logical explanation left is electoral calculation before the coming presidential election. In the end, what President Chen and the DPP had pledged turned out to be the emperor's new clothes.

How about the role of the CIP, the least powerful ministry in the government? Are its interests congruent with those of the indigenous peoples? Neither voice, nor exist has been witnessed. How about the loyalty? Still, to whom?

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