

Bangladesh

Condensed from *Analysis on the Situation of Indigenous Peoples Customary Land and Resource Rights in Bangladesh* by S. Tripura, S. K. Ripa, and T. Sumaiya of Association for Land Reform and Development (ALRD). For more details of the case, contact: alrd@agni.com.

To the indigenous peoples (IPs) of Bangladesh, land means more than just a natural resource from which they derive their livelihood. Land is also an inextricable part of their identity and culture, as IPs have a deeply felt spiritual and emotional kinship with the earth and all of its fruits. Indeed, long before the arrival of the colonial powers and the implementation of formal ownership structures, the indigenous

An indigenous woman collecting firewood for the forest in CHT.

photo by Supriyo Chakma





peoples were already practicing their own system of communal stewardship over the land and its resources.

Thus it is vital for the survival of the IPs, as well as the survival of their cultural systems, to secure their rights over the land that they have been nurturing for generations.

Status of IP land and resource rights

Bangladesh's population was estimated at 150 million as of 2011 (BBS, 2011). The numbers vary, however, when it comes to the population and groupings of indigenous peoples. Government figures say that there are 1.59 million IPs in Bangladesh belonging to 27 ethnic groups (BBS, 2011). The Bangladesh Indigenous Peoples Forum, however, claims that there are as many as 45 ethnic groups in Bangladesh with a total population of three million.

The greatest concentration of indigenous peoples is found in the Chittagong Hill Tracts (CHT) southeast of Bangladesh. Recognized CHT indigenous communities include the Bawn, Chak, Chakma, Khyang, Khumi, Lushai, Marma, Mro and Tripura.

There are IPs living in other parts of Bangladesh. However, those living in the area covered by the CHT enjoy more rights on land and natural resources compared to the groups living outside the CHT due to their special legal and political status.

The CHT was designated as a separate district in the 1860s to allow *jhum* or shifting cultivation, and the Chittagong Hill Tracts Regulation Act of 1900 restricted non-members of the hill people from entering the region, providing the indigenous

peoples there some form of administrative control over the land.

This special status was abruptly abolished, however, following the turmoil with Pakistan that led to the settlement of Bengali people from the plain land in the hill district, thus trampling on the rights of the IPs over their land and natural resources. Conflict quickly ensued, and it only ended in 1997 with the signing of the Chittagong Hill Tract Peace Accord. A Land Dispute Resolution Commission was established to settle ownership disputes but, unfortunately, none have been resolved so far.

While the situation in the CHT is not ideal, those living in the plains are worse off as they are not accorded rights over land and natural resources. They have been facing marginalization, exclusion and deprivation since the British colonial period. Their relationship with the land was neither recognized nor addressed during colonial rule, although there is a provision in the East Pakistan State Tenancy Act of 1950 that concerns the land transfer system in the plains.

As for the representation of indigenous peoples in traditional institutions and local governance systems, the numbers vary because of the different levels of empowerment, literacy and size. The Chakma¹ and Marma² from the CHT understandably lead in local governments and traditional institutions because of their special status (see Figure 1, next page).

The IPs in the plains also have their traditional institutions that deal with the management of their land. However, their participation in local

¹ Chakmas are the largest ethnic group in Bangladesh concentrated in the central and northern parts of CHT (Bangladesh News, 2008).

² The Marmas are the second largest ethnic group in Bangladesh (Bangladesh News, 2008).

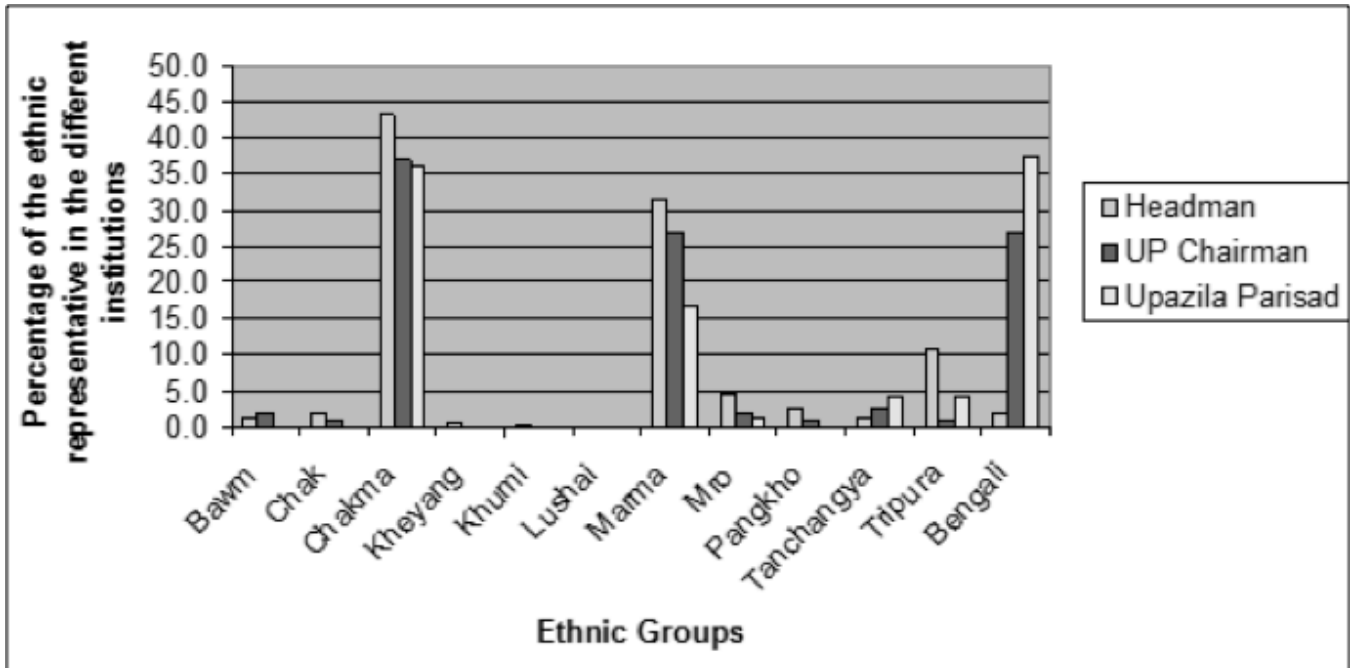
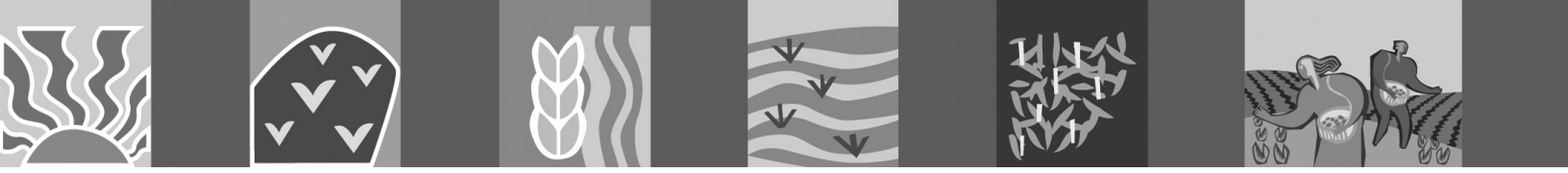


Figure 1. Comparison of ethnic representation in traditional and local government institutions

government institutions is minimal because of their minority position, low literacy rate and lack of leadership. They are unable to compete with the non-indigenous peoples such as the Bengali settlers, thus adversely affecting their ability to fight for their rights over land through traditional governance institutions.

Legal framework

In recognition of the special relationship between indigenous peoples and their land, international and national laws have been passed.

The International Labour Organization (ILO) Convention on Indigenous and Tribal Populations of 1957 (Convention No. 107) was the first legal instrument on the recognition of IPs' rights under the United Nations (UN) system. This convention was ratified by the government of Bangladesh in 1972, a year after its independence from Pakistan.

ILO Convention No. 107 is of utmost importance to the indigenous peoples, since it is the only treaty dealing directly and substantively with their rights, with articles relating to individual or collective ownership rights over traditionally occupied land, and the prohibition on the displacement of populations from their habitual territories.

This was later replaced by the more progressive ILO Convention on Indigenous and Tribal Peoples No. 169, which was adopted in 1989. Bangladesh ratified the convention in 2013. ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples recognize indigenous peoples' land rights.

Considering the crucial importance of lands and territories for IPs, the Convention contains a series of provisions to protect their right to ownership and possession based on the recognition of the historical displacement of indigenous peoples



from their lands and territories, the dependency of their traditional way of life on land, and their vulnerability to loss of land.

As a ratifying country, Bangladesh is supposed to provide a report on the implementation of the Convention principles to the ILO supervisory body. Usually, the reports on the status of the recognition of IPs' land rights fall under two broad categories – CHT and the plain land.

For CHT, the communication between the ILO Committee and the government of Bangladesh covered issues such as the Bengali settlement, recognition of the IP customary land rights and management of the land through the IP headed Hill District Local Government Council, recognition of the traditional economy of the IPs' right to practice shifting cultivation, and their inclusion and consultation in land-related development programs.

The issue of the Bengali settlement and the denial of IP land rights in the CHT is significant considering that the CHT area covers one-eighth of the land area of Bangladesh, although only 1% of the population lives there. The government of Bangladesh settled in the 1980s almost half a million Bengali from the plain land, thus the indigenous peoples have been displaced and continue to face human rights violations.

The ILO Committee even raised concerns over government plans to reforest land in the three hill districts. It strongly recommended that the government consult with the IPs to take advantage of their knowledge and experience and also to address their possible displacement of IP groups.

Indigenous peoples in the plains have received far less attention in the communications between

the ILO committee and the government of Bangladesh, which is unjust considering that some 30 ethnic groups live in the lowlands.

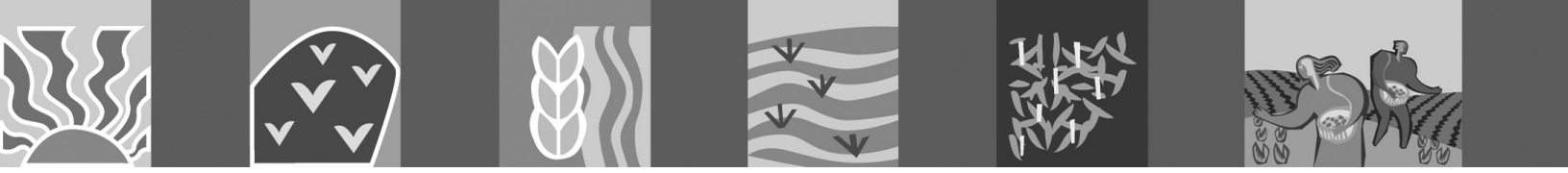
One national law that applies to the plain land IPs is the State Acquisition and Tenancy Act, 1950 but it only identifies 18 ethnic communities that can theoretically claim their land rights. There are many ethnic groups not listed in the Act, thus there is a need to amend the law to cover all ethnic groups in the plains.

Moreover, the Act does not address the customary land rights except holding *raiya*s³ and transfer, purchase and acquisition of land only. Indeed, the application of the Act is severely limited and people are not protected against land alienation. Therefore, the IPs are demanding a separate land commission for the plain land indigenous peoples.

The CHT Accord, meanwhile, is supposed to safeguard the indigenous peoples' land rights. In the accord, the government of Bangladesh recognized traditional ownership rights and management of land, provision to resolve land disputes and the rehabilitation of the India repatriated refugees and internally displaced families.

Despite these laws, however, the trend of land alienation in both the plains and the hills continues due to the absence of the rule of law and effective application of relevant Acts. Exacerbating the situation are government policies such as the social forestry program that will affect the

³ Raiyat is a person who "has acquired a right to hold land directly under the Government mainly for the purpose of cultivating it by himself or by members of his family or by, or with the aid of, servants or laborers or with the aid of partners or bargadars, and includes also the successors-in-interest of persons who have acquired such a right" (Chancery Law Chronicles, 2011).



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traditional *jhum* cultivators in the CHT since there is an objective to “rehabilitate” the shifting cultivators. There is also the declaration that all land is state land and that the ownership of land by tribal people in the foreign zones is “not determined.”

Assessment of key actors to promote IPs’ Land Rights

To promote indigenous peoples’ land rights, it is essential to involve the stakeholders at various levels. To formulate or reform the policy and advocate the implementation of the existing policy, the role of the government’s relevant ministries and departments is highly important.

Besides the government, there are other factors such as local government, traditional leaders, donor agencies, international institutions, the private sector and civil society that influence formulation and reformation of the policy.

Government

The government is the principle actor in determining to execute the relevant land laws or formulate the new land laws effectively. These are the Ministry of Land, Ministry of Law, and Ministry of the CHT Affairs at the policy level which all play a strong role in the formulation of the law and the implementation of existing laws.

The Ministry of Land is of primary importance since it is in charge of land administration, management and development for the benefit of the people of Bangladesh. The responsibilities of this Ministry include the management and settlement of the government-owned lands (*khas* lands), *sairatmahals* (*jalmahal*, *shrimp mahal*, etc.), vested properties, and abandoned properties; collection of land development revenue; land survey; as well as record keeping and updating.

Political parties

The support of political parties is needed to recognize and promote indigenous peoples’ customary land rights. Therefore, it is crucial to inform political parties about IP issues to hopefully secure their political commitment to do their part in helping these peoples fight for their rights over their own land.

In general, some progressive political parties have recognized indigenous peoples as reflected in their election manifesto. These committed political parties could take a lead and raise their strong voice against the violators to prevent land alienation or displacement of the IPs from their homestead or customary land.

Political parties are also urged to help prevent their party members from taking part in land grabbing. If the government and opposition parties will join hands to promote indigenous peoples’ land issues, then the incidence of land grabbing would surely be significantly reduced. Therefore, to advocate for IPs’ land, it is necessary to engage political parties as they do have an input in formulating and subsequently implementing policies.



Local government

The local government in Bangladesh consists of three levels: Union Parishad, Upazila Parishad, and the District Council. These institutions have the power to prevent land grabbing and ensure the security of the indigenous communities. It will be productive to engage all of these levels to prevent the violation of the IP customary land rights and to sensitize them on indigenous peoples' land ownership system and motivate them to engage the indigenous community in development planning and implementation.

Donor agencies and international institutions

There are several bilateral and multilateral development agencies playing an important role in development programs and projects through grants and loans. For this, the Local Consultative Group (LCG) was formed to ensure dialogue and coordination between the Government of Bangladesh (GoB) and Development Partners (DPs) on development issues.

Some 21 bilateral and multilateral development agencies are members of the CHT LCG working groups. Many of these members, such as Canadian International Development Agency (CIDA), European Union (EU), Food and Agriculture Organization (FAO), ILO, United Nations Development Program (UNDP), United Nations Children's Fund (UNICEF) and World Food Programme (WFP), also have their own policies for indigenous peoples to guide the context of development cooperation involving IPs to enhance their participation in the process of development.

However, the plain land indigenous peoples are not getting any attention from the development

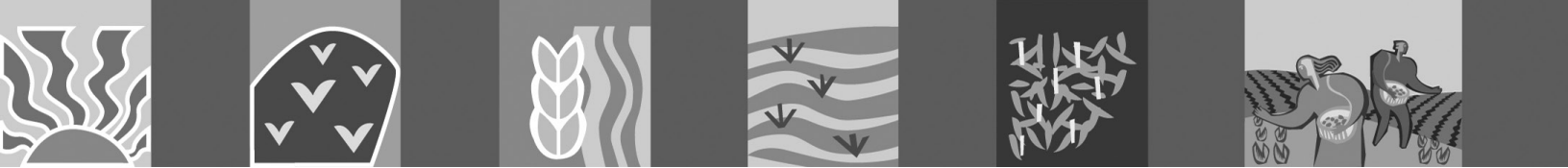
partners. There is no formal mechanism like LCG that deals specifically with their issues.

But generally, a number of development partners are raising the issue of the IPs' rights and development in their dialogues and interfacing with the Government of Bangladesh. Indeed, many development agencies are playing a more positive role in promoting indigenous peoples' rights in Bangladesh.

ILO in Bangladesh, for example, is working to build the capacity to promote ILO policy on Indigenous and Tribal Peoples – IRO 169. The main objectives of the program are to advocate for the Government of Bangladesh to ratify the ILO Convention No. 169 and to sensitize the relevant stakeholders the IP issues to including the promotion and protection of their customary land rights.

On the other hand, UNDP has a special project for the CHT and many bilateral development partners – such as European Union, CIDA, Danish International Development Agency (DANIDA), Norwegian Agency for International Development (NORAD), Japan International Agency (JICA), and Australian Agency for International Development (AusAID) – are supporting the promotion of development and confidence building in CHT.

The policy advocacy work towards the Government of Bangladesh covers issues such as the implementation of the CHT Accord and building capacities of the Land Dispute Resolution Commission and the Internally Displaced Persons & Refugee (IDP & R) Task Force to build the peace. There are also some development programs that are supported by bilateral agencies for both the plain land and the CHT to promote human rights in these areas.



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However, there is a lot of discussion on the role of the international financial institutions, particularly Asian Development Bank (ADB). Since ADB provides financial and technical support to forestry programs, it becomes a key agent in the revision of forestry laws.

ADB and the World Bank (WB), for example, funded a woodlot project for the production of fuel wood and an agro forestry and industrial plantation that have a negative impact on the economic, social and environmental conditions of the indigenous communities (Gain, et. al., 2005).

Private Sector

The private sector, meanwhile, is a major reason why indigenous peoples have been marginalized from their own land. After all, it is the private sector that has been leasing IPs’ customary land for its own commercial interests.

It is known that indigenous peoples’ customary land in both the plain areas and the CHT has been leased out to the private sector by the government in the name of setting up rubber and other commercial plantations and ecotourism projects, among others. The primary beneficiaries

are influential Bengalis with a strong influence on political parties and the local governments.

Therefore, to protect the IPs’ customary land, it is crucial to curtail the influence of private firms and their illegal actions.

Civil Society

In the fight for the land rights of indigenous peoples, it is necessary for civil society groups to come together and raise a unified voice and make it heard at the highest policy levels. Some IP organizations such as the Bangladesh Indigenous Peoples Forum, Jatio Adivashi Parisad, Tribal Welfare Association for the Greater Mymensingh, CHT Citizens Committee, the Movement for the Protection of Forest and Land Rights, and the Headman Association are working for IPs land rights.

They are very active in raising awareness of IP rights among various groups such as the government, media and academe. However, the capabilities of these organizations could still use improvement and they also need greater support from larger, mainstream NGOs to advocate and promote issues on indigenous peoples.

Key opportunities and strategies to advance indigenous peoples’ customary rights

There are international and national laws that aim to protect the indigenous people’s land rights. But these laws have not been upheld, leading to the easing out of many IPs from their land in the name of development and commercial interests.

This alienation of indigenous peoples from their land can be attributed to a number of factors including the lack of enforcement of the current



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tenure system and overlap between formal and customary tenure, multiple land claims, inadequate public administration capacity, corruption, uneven distribution of land, and inadequate legal protection for the poor.

Thus, a land governance system is required to prevent land alienation and to secure the ownership and use of land by the indigenous peoples in Bangladesh. The relevant stakeholders, such as CSOs, government actors, bilateral and multilateral agencies, media, and the academe, etc., could be engaged to improve the land governance system.

Support to building capacities of the Indigenous Peoples’ Organizations

There are many indigenous peoples’ organizations that are closely working with and raising their voice to policy makers on the land issues. Coalitions and networks are being formed among like-minded groups working on land issues aimed at the protection of customary land rights.

Therefore, in some areas, strategic interventions are needed as well as capacity building, both operational and technical, through the provision of training and orientation in the areas of research, networking, advocacy, awareness building programs, among others.

Also needed is the sensitizing of policy makers on the need to amend the current laws or enact laws and policies. Hence, capacity building support for IP organizations is required in order for them to mobilize their issues effectively.

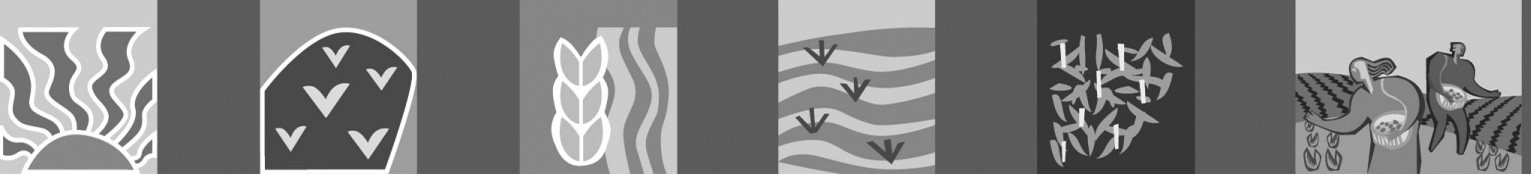
In this regard, the Association for Land Reform and Development (ALRD) has been providing capacity building and organizing trainings, workshops, seminars, and producing publications, etc. for the indigenous peoples’ organizations.

Joint strategic action to influence policy makers on policy development and implementation

Indigenous peoples’ organizations and civil society should together play a mediator role to influence policy at high government levels and ensure the IPs’ land rights.

The respective ministries who are responsible for IP land issues could be provided guidelines to identify issues affecting indigenous peoples and help prevent land grabbing.

There are other ministries and departments with larger responsibilities such as the Ministry of Land, Ministry of CHT Affairs, Ministry of Environment and Forest, and the Ministry of Agriculture. It is recommended that a special cell or unit be put in place in these agencies that will specifically deal with IP land issues.



“Many government officers are not even aware of the IPs’ land issues. In the case of the CHT, government institutions have been given the authority for execution of the mandate rights on land issues. However, these institutions failed due to the absence of elected representatives with adequate knowledge of indigenous peoples’ rights and aspirations.”

It is also recommended that the salient points of indigenous peoples’ customary land ownership patterns and the relevant land laws be made part of the training module used by relevant government agencies.

Many government officers are not even aware of the IPs’ land issues. In the cases of the CHT, the respective government institutions such as the Chittagong Hill Tracts Regional Council (CHTRC) and the Hill District Councils (HDCs) have been given the supreme authority for coordination and execution of the mandate rights on land issues. However, those institutions have failed to manage land issues due to the absence of elected representatives with adequate knowledge of indigenous peoples’ rights and aspirations.

To address these concerns, it is very important to strengthen the engagement with the state policy

makers for the betterment of the IPs through dialogues, workshops, seminars, and trainings to raise awareness and build the capacities of the respective institutions and officials.

Moreover, prior framing or implementation of any IP-related issues is essential to ensure their participation and proper consultation as per the CHT Accord and the ILO Convention.

Specific spaces or opportunities to claim the land rights of the Indigenous Peoples in Bangladesh

There are several entry points to pursue indigenous peoples’ land rights in Bangladesh under the national and international laws which have been ratified by the government. The Government of Bangladesh, for example, is committed to implement the UN Declaration on the Rights of Indigenous Peoples and to ratify the ILO Convention No. 169 on the rights of indigenous and tribal peoples.

The parliamentary caucus on IP issues is also playing a proactive role in the protection of IP rights and is even formulating an act on Bangladesh Indigenous Peoples’ Rights.

Another course of action is to take part in the strengthening of existing institutions such as the Ministry of the CHT Affairs, CHTRC, and HDC, and pushing for real recognition of the role of the traditional leaders, who can ensure the protection of indigenous people’s land rights.

Recommendations

Given the current situation in Bangladesh, it is recommended that the **government**:

- a. Ensure proper recognition of IPs in the constitution.



- b. Establish a national IP commission to work on plain land and CHT IP issues including land holistically.
- c. Give the full authority to the respective autonomous institutions, particularly the Hill District Council.
- d. Include customary land issues in the training curriculum for the government officers concerned.
- e. Rehabilitate internally displaced and landless families with appropriate compensation.
- f. Prepare an authentic issue-based data base for the indigenous peoples.
- g. Provide institutional support to establish an indigenous peoples' research center at the national level.
- h. Activate the CHT Land Dispute Resolution Commission and form a separate land commission for the IPs of the plain land.
- i. Implement the CHT Accord and strengthen the CHT institutions' capacity.
- j. Identify the targets and objectives of the respective ministries and divisions towards the development of the indigenous people.
- k. Establish institutional mechanisms to build the linkage and coordination between NGOs and the private sector to promote IP rights.
- f. Establish a strong linkage within and between IP communities for initiating legal awareness regarding their land rights.
- g. Strengthen coordination among donors on IP issues and monitor the situation regularly.
- h. Play a role in strengthening the parliamentary caucus on IP issues.
- i. Establish an LCG on the indigenous peoples to monitor the situation effectively.
- j. Network with regional and global NGOs/forums/coalitions to establish linkages with international platforms and UN processes, like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Permanent Forum on Indigenous Issues (UNFPII), ILO-169, 107, and the UN Committee on the Elimination of Racial Discrimination (CERD) to hold respective governments accountable to protect indigenous peoples' land rights.

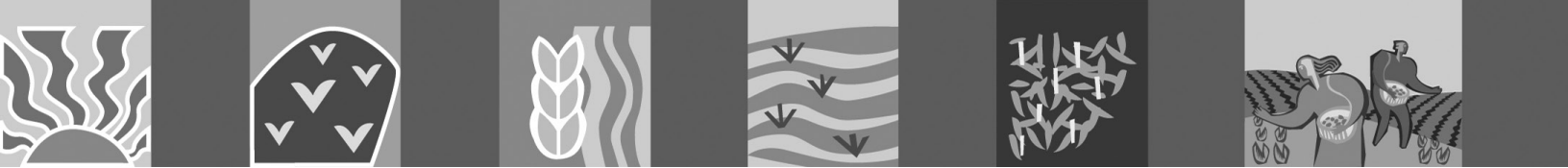
CSOs are also urged to:

- a. Identify the relevant stakeholders and prepare a strategic framework to advocate on land issues.
- b. Form an alliance or coalition with like-minded organizations, persons and institutions.
- c. Orient the indigenous community leaders and youths on land issues.
- d. Extend support to communities' capacity building to lead on land rights issues.
- e. Conduct research on the relevant issues and disseminate these to the relevant stakeholders.

Donors are likewise urged to increase support to the CBOs and IP organizations to protect the indigenous peoples' land rights as per the country strategy. ■

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