

Indigenous Peoples and their Sacred Lands



Photo sources (left to right): Supriyo Chakma; NGOF; AVARD; JKPP; CSRC; and Dave de Vera

Asia is home to about 70% of the world's estimated 370 million indigenous peoples.¹ In Southeast Asia, indigenous peoples comprise as much as 30% of the total populations in Lao PDR and Burma, 14% to 17% in the Philippines, to 1.2% in Cambodia. Their estimated numbers range from a high of 30 to 40 million in Indonesia, to a low of 200 thousand in Cambodia.

In South Asia, indigenous peoples comprise an estimated 37% of the population in Nepal, 15% in Pakistan, 8.6% in India, and 1-2% in Bangladesh.² In terms of numbers, India has the largest indigenous and tribal population in Asia (80 million people), comprised of over 500 distinct communities.³

In light of these figures, the importance of land rights and access to resources by the indigenous populations of Asia cannot be overstated. The seven country papers presented here speak of vast diversity across the different groups who live in varied geographical locations, speak unique languages, practice distinct customs. Yet there are numerous commonalities among them as well – particularly in the types of political, economic,

¹ IFAD. <http://www.ifad.org/english/indigenous/index.htm>

² As culled from various sources. See the list of references cited in An Issue Briefing Paper on Customary Land Rights of Indigenous Peoples, by Antonio B Quizon, former Chairperson, Asian NGO Coalition. See www.angoc.org/prtal/.

³ ILO. <http://www.ilo.org/indigenous/Activitiesbyregion/Asia/SouthAsia/India/lang--en/index.htm>



and sheer survival challenges they all face; and the solutions put forth to address them.

Bangladesh

The situation of indigenous peoples in Bangladesh is typified by the inhabitants of the Chittagong Hill Tracts (CHT) in the southeastern part of the country vs. the plains or lowland people. 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. In contrast, the plains people are considered worse off as they are not accorded similar rights.

Yet, these two groups do share a common fate. IPs' 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. Inevitably, negative impacts have arisen due to the conversion of IP lands to make way for large plantations, forestry projects, extractive industries, development projects, and the like.

Aside from the physical encroachment of development, however, there are other structural causes for Bangladesh's indigenous peoples being alienated from their land. These include the lack of enforcement of the current 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.

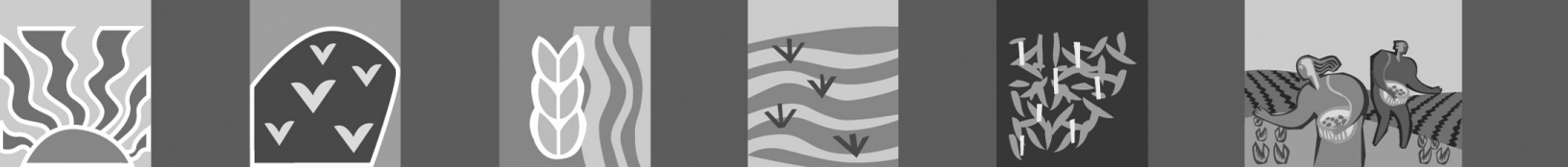
Thus, a land governance system is required to prevent land alienation and to secure the ownership and use of land by the indigenous peoples in Bangladesh. The relevant stakeholders, such as CSOs, government actors, bilateral and multilateral agencies, media, and the academe, are called upon to engage in improving this land governance system.

Like the other countries represented in this journal, Bangladesh has ratified several international agreements which have a bearing on IP land rights. Recently at the national level, the parliamentary caucus on IP issues has begun formulating an act on Bangladesh Indigenous Peoples' Rights.

Cambodia

As the Cambodia paper reports, there is a near universal consensus among domestic and international CSOs, as well as UN agencies, that the laws governing land rights and other customary rights of IPs in Cambodia are very credible and well thought out on paper. The key problem, however, is a near complete lack of implementation of this legal and policy framework in the country.

A case in point is the procedure for application by IPs to obtain a communal land title. In line with the Land Law and the 2009 Sub-decree on Procedures of Registration of Land of Indigenous Communities, the procedure has been spelled out. However, the process has been heavily criticized by IP organizations and CSOs because the procedure is too complicated, time consuming and not culturally appropriate for IP communities.



Recent decades have likewise seen Cambodia's IPs threatened by the granting of Economic Land Concessions (ELCs) and mining concessions, and the establishment of Special Economic Development Zones and large-scale hydroelectric projects – the latter being the major drivers of deforestation and forest degradation in the country. The sad reality is that government at all levels is known to be involved in questionable but lucrative deals with companies applying for ELCs, in a clear case of conflict of interest.

Aside from such loss of their dwellings, means of livelihood and food security, indigenous communities face other woes with the current trends in land development. Among these are the destruction of ancient (sometimes sacred) community landmarks, as well as what has been termed “the monetization of the household economy” – leading to less sharing within the community, encouragement of individual interests over communal ones, and devalued traditional cultural artifacts, clothes, jewelry, gongs, etc. At the same time, exposure of the IP youth to modern media and Khmer culture has contributed to their lessening interest in maintaining their cultural history.

A number of bright spots have emerged, however. An informal group known as the Indigenous Rights Active Members (IRAM) serves as the key indigenous peoples' network in Cambodia, with other grassroots organizations also existing around the country. Various media (particular radio, social media and film) have been harnessed for the cause of IP land rights. One example was a video documentary, *“The Other Cambodia: Indigenous Land and Rights,”* screened in 2013 by the NGO Forum. The documentary presented a very concise and compelling case of land grabbing in the northern regions of Cambodia.

Thanks to the support of IRAM and local CSOs, IPs in the provinces of Rattanakiri and Mondul Kir are engaging in campaigns and are mobilizing to defend their lands, territories and resources. An increasing number of IPs have a very good knowledge about their land and resource rights and are eager to share that knowledge with others in their communities.

India

The term “Scheduled Tribe” (ST) is used to refer to India's indigenous peoples, and appears as such in the country's Constitution. The criteria followed for specification of a community as ST include: “primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large and backwardness.”

India has ratified several major agreements and treaties that have to do with indigenous peoples' rights. Among these are the **International Labour Organization (ILO) Convention 169** which is the only binding international treaty dealing with indigenous peoples and land rights; the **Durban Accord** which is a global commitment for people and Earth's Protected Areas; the **United Nations Declaration on the Rights of Indigenous Peoples** which provides new international guidelines on the right to formulate strategies for the development or use of indigenous peoples' lands and resources; the **Rio Declaration, Agenda 21** and the **Convention on Biological Diversity**.

Such international agreements have not, however, shielded India's STs from the effects of the ‘new land grabbing’ taking place. Just as in other Asian countries, the influx of corporations establishing industrial complexes and mining operations, plus the rise in the growth rate of the urban population with accompanying demands



for housing and other infrastructure, has led the government to acquire land from surrounding rural areas – majority of which are occupied by STs.

Dams and power plants are being constructed at an alarming pace without concern for sustainable development. Professionals and contractors reap huge profits, politicians get kickbacks, while organizations and communities who protest for their rights are considered ‘anti-national.’ Most such displaced communities are again STs.

Prior to that, from 1970 to 2000, large areas of land were declared as protected areas (forest or conservation areas) without adequate compensation paid for those removed from them or settlement of claims. In 2002, there were eviction drives on a massive scale – causing widespread unrest among those who lost their rights, resources or were relocated, and leading to mass movements and resistance to government laws and policies.

There have been positive developments, however. The *Panchayat* Extension to the Schedule Areas (PESA) Act, 1996 was enacted, conceding to the long-standing demand for tribal control over productive land and forest. More recently, due to greater awareness about land rights among IPs and other forest dwellers, the demand for land titles and speedy implementation of the Forest Rights Act of 2006 has increased. Government is also under pressure to follow up the Memorandum of Understanding (MoU) signed by the Minister for Rural Development with participants of the *Jan Satyagraha*, the non-violent footmarch which highlighted the issue of land rights of IPs and received widespread media coverage.

Similarly encouraging have been the establishment of a separate Ministry of Tribal

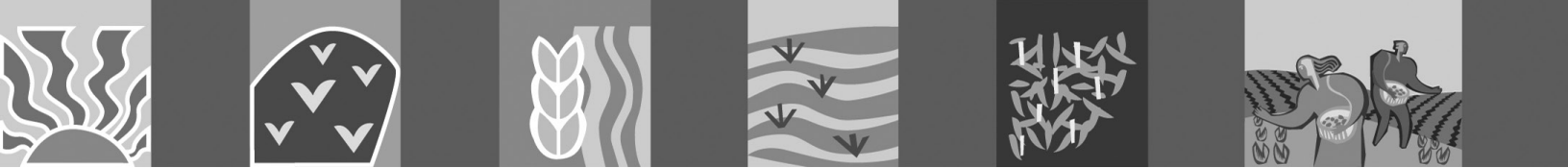
“The IPs need to be at the forefront of mobilization and advocacy efforts for their own rights and need appropriate platforms to voice their concerns.”

Affairs in October 1999; the formation of Integrated Tribal Development Project (ITDPs) in areas where the ST population is more than 50%; and the passage of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Indonesia

The country’s Basic Agrarian Law (BAL), passed in 1960, officially recognized the existence of indigenous communities. In specific articles, it described the rights of indigenous and tribal peoples over customary land, and further stated that the agrarian law that applies to the earth, water and air space is customary law, to the extent that it is not contrary to national and state interests. There was even a provision that third parties should secure temporary transfer of customary land rights each time they use customary lands. However, such provisions were later undermined by the passage of the Basic Forestry Law and the Basic Mining Law both in 1967.

A breakthrough came in 1999, when the *Aliansi Masyarakat Adat Nusantara* (AMAN)/National Alliance of Indigenous Peoples emerged to defend the rights of marginalized indigenous peoples. More significant victories followed, leading to



the House of Representatives now preparing the draft of the Act on the Recognition and Protection of IPs Rights. But despite these developments, the indigenous peoples of Indonesia are still struggling to secure full legal recognition.

Participatory mapping has revealed alarming overlaps among customary land, forest areas and areas granted permits (concessions, mining, palm oil, and industrial tree forest). Such competing claims make it extremely difficult to defend and ensure IPs' rights over managed areas that have been taken over by the government through permits. The Asian economic crisis of 1997/1998 saw the large-scale take-over of land – including customary land – for commercial interests such as the establishment of extensive palm oil plantations. The government facilitated this process by allowing the leasing of state lands to foreign corporations. Unfortunately for the indigenous peoples, part of the land that was allocated to palm oil plantation expansion was on their land.

Mining is another sector that has trampled on indigenous peoples' land rights. Since 2000, mining activities have increased rapidly, with Indonesia becoming the world's largest producer and exporter of coal by 2007 – unfortunately at the expense of increasing conflict over land.

Recent positive steps towards upholding IPs' land rights have been: a) the decision of the Constitutional Court to rephrase a portion of the Forestry Act No. 41/1999 – providing some room for Indonesia's indigenous peoples to obtain legal recognition; b) the issuance of the One Map Policy to come up with integrated spatial data from different stakeholders including indigenous communities; and c) the Geospatial Information Act that allows for a customary area participatory

map to be taken as a thematic map and thus become a reference in managing Indonesian forests.

Another approach to getting indigenous peoples' areas recognized at the national level is going through the Indigenous People and Community Conserved Territory and Areas (ICCAs) to obtain support from the ICCA Consortium, an international association dedicated to promoting the appropriate recognition and support to ICCAs.

Also at the national level, the Indonesian House of Representatives is preparing the draft Act on Recognition and Protection of IP Rights; while at the regional level, Regional Regulations on the Recognition and Protection of IPs Rights have begun to be issued.

Nepal

The indigenous peoples in Nepal can be divided into two distinct regional groups: Hill IPs and *Terai* IPs. The government of Nepal does not, however, officially recognize indigenous territories or community ownership of land.

The Constitution of 1990 and the current Interim Constitution of Nepal of 2007 accept caste, ethnic, linguistic and religious diversities, but fall short of giving due rights to indigenous peoples. As a consequence, there has been no legislation specific to indigenous peoples. All laws, including those on land and natural resources, have deprived such groups of ownership, control and use of their traditionally owned, controlled and used ancestral lands. In 2002, the first law on indigenous peoples was passed. However, it mainly served to establish the Foundation for Development of Indigenous Nationalities.

Meanwhile, nearly all of Nepal's forests and



grasslands have been nationalized in the past half-century, and none have been restored to community ownership. Many indigenous communities who once lived in and around protected areas (PAs such as national parks, wildlife reserves, buffer zones and conservation areas) have been displaced and deprived of their traditional occupations. Further, indigenous communities' access to forests, rivers and wetlands, and farming and foraging lands – that fall within the jurisdiction of PAs – has been restricted and curtailed. Now that such areas have been nationalized, an 'open access' policy to the natural resources that were once managed and protected by the IPs puts these resources at risk of depletion due to indiscriminate over-collection.

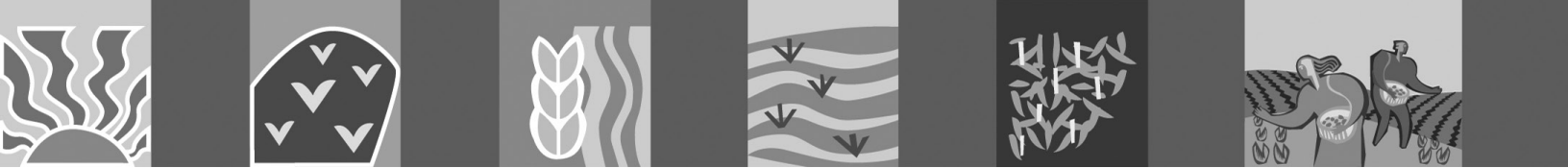
In cases of displacement from customary lands, the mechanisms to compensate or even consult indigenous communities are inadequate or non-existent. As a consequence of losing their land and livelihood, some indigenous people have been forced to become bonded workers in private farms and wealthier households. In IP areas that have been declared as national parks, maltreatment, arbitrary detention and sexual abuse of villagers by park rangers and military officials patrolling the park's premises are commonplace.

In 2008, the UNSpecial Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Nepal pointed out that IPs rank low in all human development indicators, as most IP communities live in conditions of poverty that are double or even greater the national poverty level and that adequate healthcare and educational opportunities are lacking. Land-loss and forced displacement over time has also resulted in lack of citizenship registration of many members of IP communities, rendering them *de facto* stateless.

“The most important linkages IP organizations need to pursue are the ones among themselves. The ability to share information, experiences and lessons learned between the different IP groups will increase the groups’ capacity and will make it easier for the IPs to speak with one voice and decide collectively which issues should be prioritized for the IP agenda.”

These all paint a decidedly grim picture for Nepal's indigenous peoples. However, in recent years, the Government has begun including specific references to rights and needs of indigenous peoples in a number of important legal and policy documents – among them, the country's Constitution and special legislation. The Three Year Interim Plan Paper (2007-2010) likewise contained policies for inclusive development of IPs and other disadvantaged groups.

Several NGOs and advocacy groups, such as the Nepal Federation of Indigenous Nationalities (NEFIN), have emerged. NEFIN is an umbrella organization representing the 59 indigenous nationalities and working towards their upliftment and empowerment. Different multilateral and bilateral organizations, INGOs, and NGOs are likewise working in indigenous peoples' territories in the areas of conservation, sustainable



“[Indigenous peoples’] views on nature are part of their cultural worldview that nature must be protected to ensure their sustainability. Culture is not only seen as a mere collection of rituals but also covers practices regarding the territory and living space that should be preserved and maintained.”

Pakistan

Indigenous peoples in Pakistan are distinct populations in terms of language, ethnicity and belief systems. The systems of oppression that affect them and the history of their people vary.

The ***Kalash*** are the most well-known indigenous group in Pakistan. They are a pagan group practicing an ancient Hindu religion and, due to recent threats they have received from the Taliban, have been given security by the government. The ***Kihals*** and ***Mors***, the fishing communities of the Indus River, have been severely affected by large infrastructure projects. They are a nomadic population, considered “impure” because of their diet, which includes crocodiles. The ***Meghwar***, ***Bheel*** and ***Kohli***, the so-called scheduled tribes of Sindh, are indigenous to the region, predominantly Hindu, and heavily marginalized. Like the ***Kihals*** and ***Mors***, they are considered “dirty” – with the added stigma of the customary practice of untouchability.

The Pakistan paper in this issue presents the ***Meghwars***, ***Bheels*** and ***Kholis*** as a case study on **caste-based discrimination**, due to the distinctiveness and marginalization of these communities. While not focusing on land rights per se, the case study reveals the severity of the outcast status of these scheduled castes – an example of disregard for IPs’ rights, indeed of basic human rights, carried to the extreme.

As scheduled caste members, the ***Meghwars***, ***Kohlis*** and ***Bheels*** have very limited access to health facilities since village health workers often refuse to serve them. Thus, rates of tuberculosis, Hepatitis B and Hepatitis C among these groups are high, as are infant mortality and malnutrition. Education is likewise constrained by lack of schools and teachers, malnutrition among the students, maltreatment (including beating), as well as a discriminatory curriculum with an anti-Hindu bias. It is no wonder, then, that the literacy rate of scheduled caste members is appallingly low.

Shelter is also severely inadequate, with utilities such as electricity, running water (much less potable drinking water), sewage and toilets not available. Scheduled caste housing communities are separate and often located on the outer perimeters of the village.

The case study also mentions severe enforcements against inter-caste marriage, exclusion from the political structure of the state, non-mention in important policy documents, and even denial of relief provisions to caste members after natural calamities.

Sexual abuse and harassment is rife in the scheduled caste community. Sixty percent of bonded laborers are sexually abused; and young girls and women from these communities can be



kidnapped then passed on to employers, or end up in the streets. Scheduled caste members who do manage to secure gainful employment in the public or private sector face discrimination.

Philippines

There are 110 major indigenous groups in the Philippines, most of which depend on traditional swidden agriculture utilizing available upland areas. However, most of these traditional cultivation sites and fallow areas have now been degraded and are further threatened by the influx of migrant farmers who have introduced unsustainable lowland commercial farming practices.

Indigenous peoples' settlements are remote, without access to basic services, and are characterized by a high incidence of morbidity, mortality and malnutrition.

The IPs remain one of the most under-represented sectors in the governance of the Philippines. Without the necessary wherewithal, the sector has not been able to actively participate in the political exercises and as such merely settle for token representation in the legislature and other elective posts in Government. Available opportunities for participation in policy making are limited by the sector's capacity to engage the bureaucracy and the ruling political elite.

Even so, the Philippines holds the distinction of being the first country in Southeast Asia to enact a law recognizing the traditional rights of indigenous peoples over ancestral domains with the passage of the Indigenous Peoples' Rights Act (IPRA) of 1997. Under the IPRA, the disposition of ancestral domains can either be communal ownership or through clan or family ownership. As such, a Certificate of Ancestral

Domain Title (CADT) is issued to a community, while a Certificate of Ancestral Land Title (CALT) is awarded to clan or family claimants.

The first ECOZONES in the country were established in ancestral domains – overruling the rights and ownership of the IPs over such areas. As in the case of the Mining Act, new and more powerful governance structures and planning modalities were put in place, which supplanted the existing traditional leadership structures and resource management arrangements of the affected indigenous communities.

Currently, the Philippines has several active national coalitions of IP communities, the *Katutubong Samahan ng Pilipinas* (KASAPI), the *Kalipunan ng Mamayang Pilipino* (KAMP) and the National Coalition of Indigenous Peoples in the Philippines (NCIPP). Under these national aggruppations are several layers of regional, provincial as well as local indigenous peoples organizations (IPOs) all over the Philippines.

While the IPOs still need to build their capacity, most civil society groups working with the sector now have IP community members among their ranks. In fact in some groups, the majority of the staff and officers of the organization come from the ranks of indigenous communities. ■