

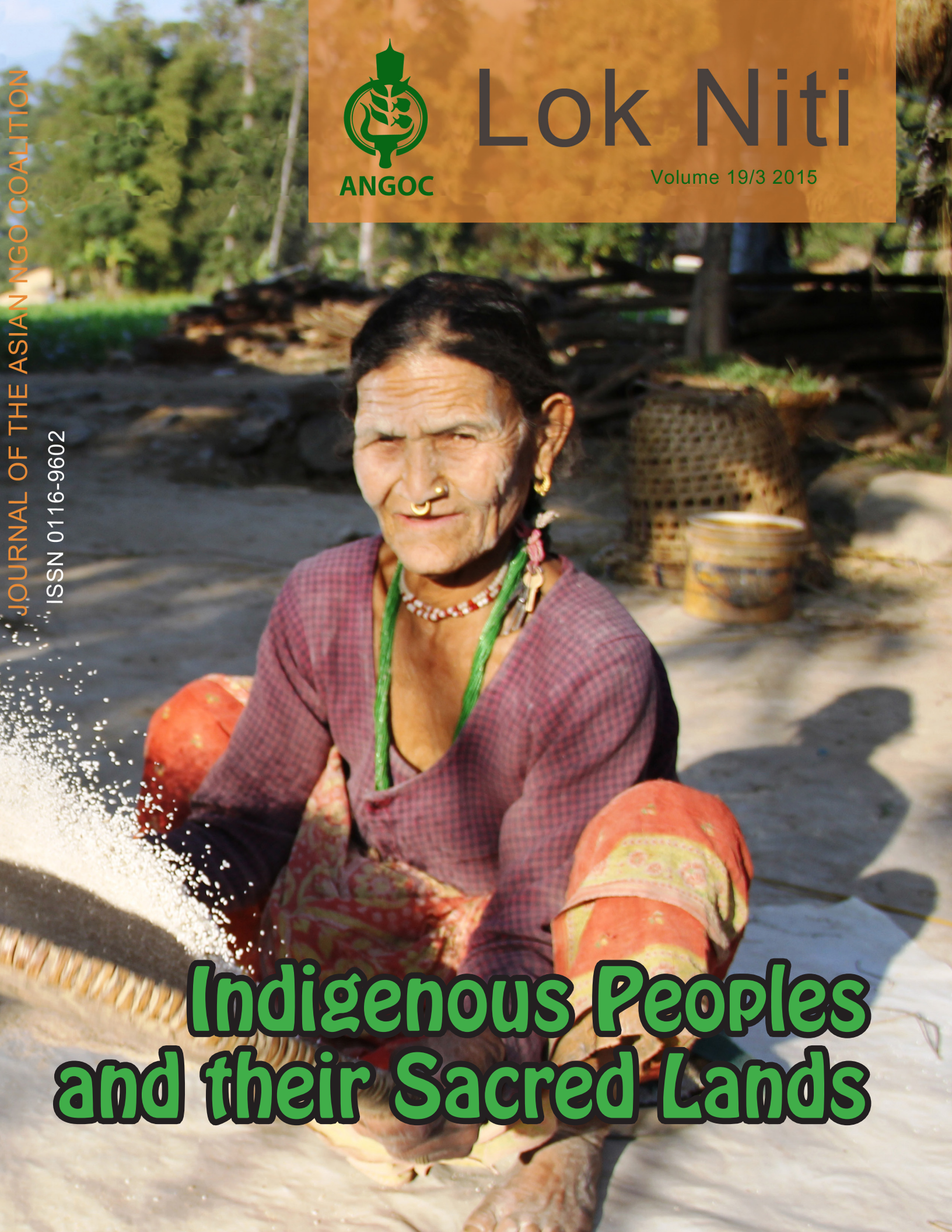
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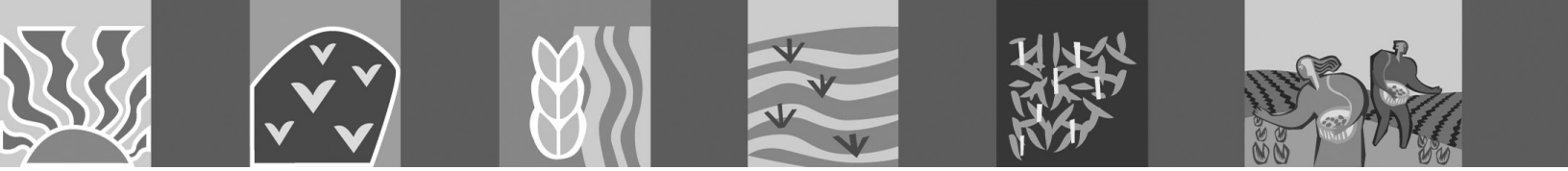


Lok Niti

Volume 19/3 2015



Indigenous Peoples and their Sacred Lands



What is Lok Niti?

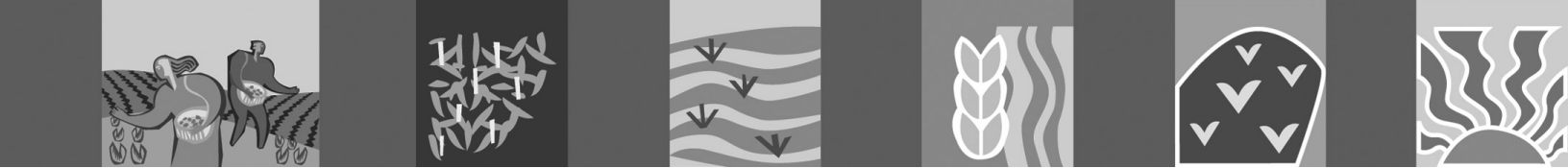
Lok Niti and Raj Niti are terms coined from the Sanskrit by Mahatma Gandhi. Lok Niti signifies people's politics—the people in command and direct governance by the sovereign people, as opposed to Raj Niti—the politics of the nation state or indirect rule by a centralized government leadership based on current “democratic” forms of party and representative political institutions.

This concept of Lok Niti was the political basis of Gandhi's socio-economic “Construction Programme”, which is now known in India as Sarvodaya.

An increasing number of us who are associated with the Asian NGO Coalition (ANGOC) feel that we have begun to find our bearings in the tangled terrain of “development” through commitment to the “gentle anarchism” of Mahatma Gandhi—a body of principles for both personal and social transformation through work in support of decentralized, village community oriented, rural development, guided by the ideals of satyagraha and non-violence and harmonization with both nature and tradition.

Lok Niti is the journal of the Asian NGO Coalition.

— Chandra de Fonseka
former Lok Niti editor-in-chief



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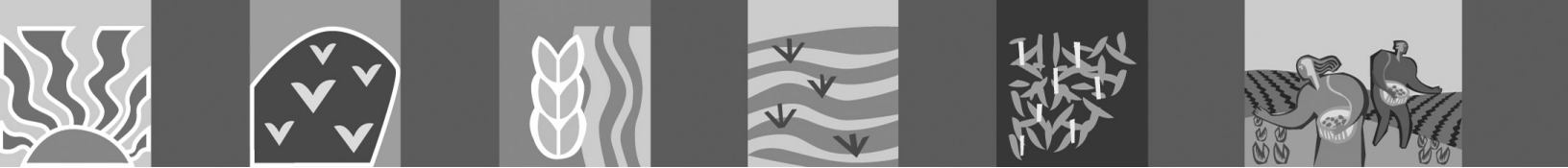
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Cover Photo:

This photo, courtesy of Community Self-Reliance Centre (CSRC), shows an indigenous woman winnowing rice from a middle hill region in Nepal



EDITORIAL

Indigenous. Defined as “originating naturally in a particular place,” it is a term rich with meaning for the communities who survive – physically, culturally and spiritually – off of the land they have occupied for generations. Unlike the non-indigenous who can live a transient existence, moving from one location to another, indigenous peoples are rooted where they are found. They are not *from* a place. They are *of* that place.

It is against this backdrop that this issue of Lok Niti on **Indigenous Peoples and their Sacred Lands** is presented. It contains scoping studies on the situation of communities native to areas in Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan and the Philippines – prepared by the Land Watch Asia (LWA) partners.

The LWA campaign has brought to the fore aspects of land rights and tenurial security that are distinct to special groups – women, victims of the ‘new land grabbing,’ and now indigenous communities. Issues of Lok Niti have been dedicated to each one,¹ shining a light that will hopefully raise awareness on their unique situation with regard to land, and lead to policy change and concrete actions to safeguard what is essentially their basic right.

In the case of IP groups, despite the diversity of locales, languages, customs and beliefs of those in the different countries presented here, their ties to the land are one and the same.

¹ Lok Niti – Land Grab: The Struggle Continues and Lok Niti – Women Stake Their Claim to Land can be accessed at the ANGOC portal <www.angoc.org/portal/>.

This excerpt from the UN Permanent Forum on Indigenous Peoples puts it in the broader perspective:

“Land is the foundation of the lives and cultures of indigenous peoples all over the world. This is why the protection of their right to lands, territories and natural resources is a key demand of the international indigenous peoples’ movement and of indigenous peoples and organizations everywhere. It is also clear that most local and national indigenous peoples’ movements have emerged from struggles against policies and actions that have undermined and discriminated against their customary land tenure and resource management systems, expropriated their lands, extracted their resources without their consent and led to their displacement and dispossession from their territories. Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples’ particular distinct cultures is threatened.”²

As each scoping study reveals, the basic bond to the land that has been the IPs lifeblood for centuries is now gravely threatened by forces far more complex and powerful than they are equipped to face. Other stakeholders in the field of land issues must join forces with them. Civil society groups, government agencies, law and policy makers, and the academe can – and must –

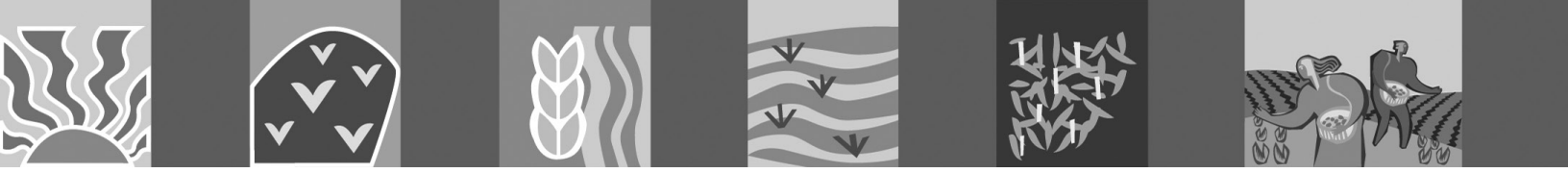
² United Nations Permanent Forum on Indigenous Issues (UNPFII) (2007). *Report on the Sixth Session*. UN Doc. E/2007/43.



play a supportive role for IP groups to muster their inherent knowledge and strengths, and combine these with tools of technology, research, advocacy and even social media to champion their rights to their ancestral domain and its resources.

The issues are complex and many times contentious. This is because we instinctively resist or distrust what we do not understand. As the scoping studies in this journal show, this is true for all parties in the IP-land scenario – whether it is the communities and their leaders, the government, investors and developers. Through the efforts of Land Watch Asia to advocate for accountable land governance in the region, a clearer understanding of the true land situation of the indigenous peoples in each country can emerge. And from that understanding meaningful and constructive action can be taken.

“Originating naturally in a particular place.”
Indigenous. ■



Indigenous Peoples and their Sacred Lands



Photo sources (left to right): Supriyo Chakma; NGO; 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.

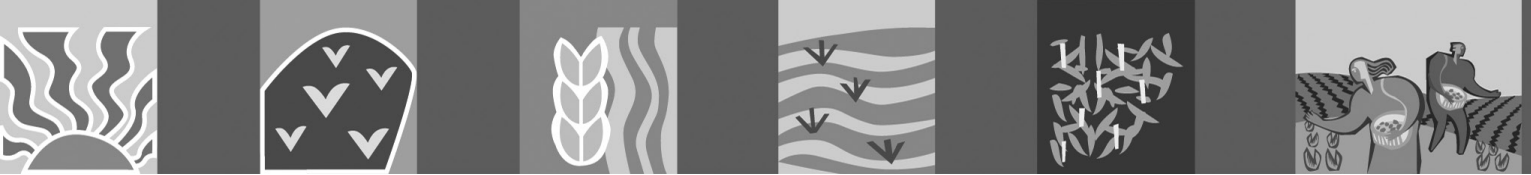
Thus, a land governance system is required to prevent land alienation and to secure the ownership and use of land by the indigenous peoples in Bangladesh. The relevant stakeholders, such as CSOs, government actors, bilateral and multilateral agencies, media, and the academe, are called upon to engage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

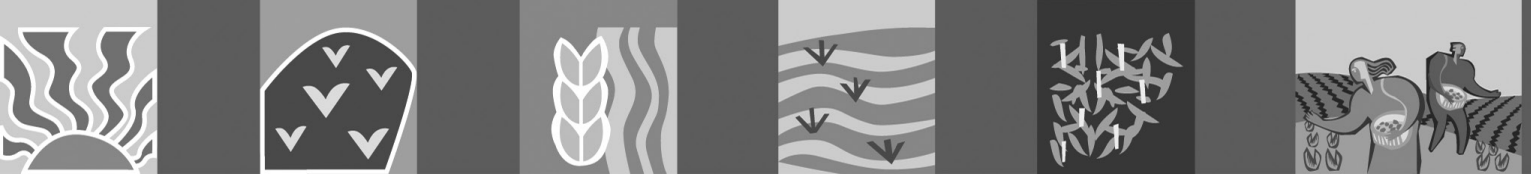
“The IPs need to be at the forefront of mobilization and advocacy efforts for their own rights and need appropriate platforms to voice their concerns.”

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.

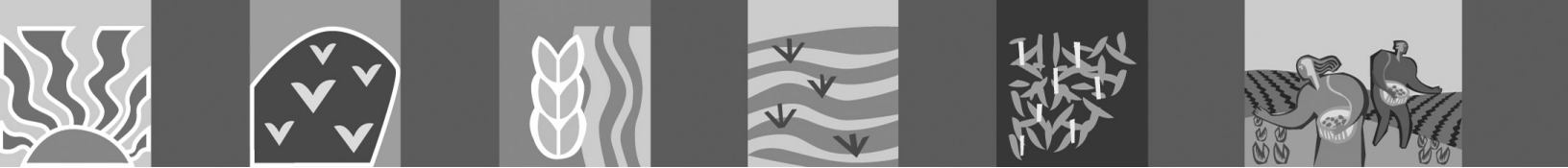
In cases of displacement from customary lands, the mechanisms to compensate or even consult indigenous communities are inadequate or non-existent. As a consequence of losing their land and livelihood, some indigenous people have been forced to become bonded workers in private farms and wealthier households. 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.

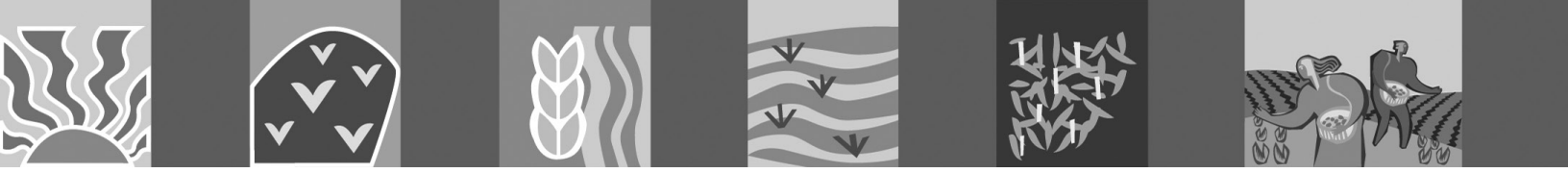
Even so, the Philippines holds the distinction of being the first country in Southeast Asia to enact a law recognizing the traditional rights of indigenous peoples over ancestral domains with the passage of the Indigenous Peoples' Rights Act (IPRA) of 1997. Under the IPRA, the disposition of ancestral 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. ■



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).

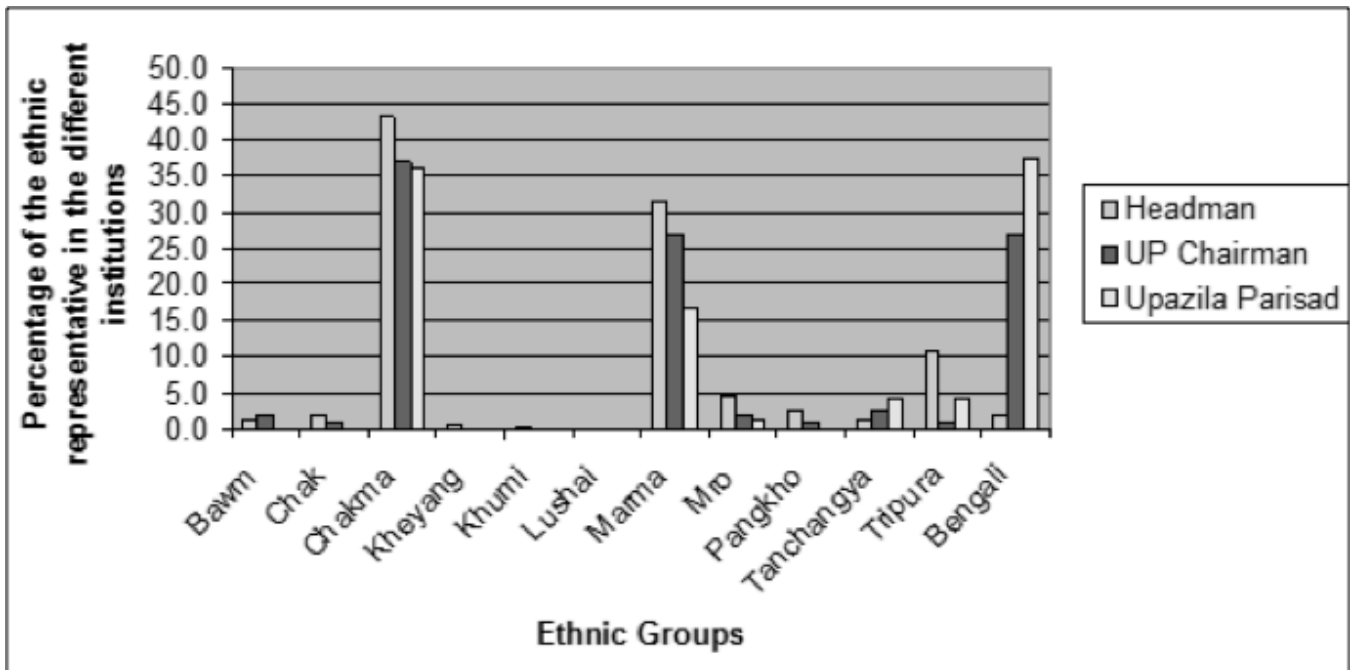
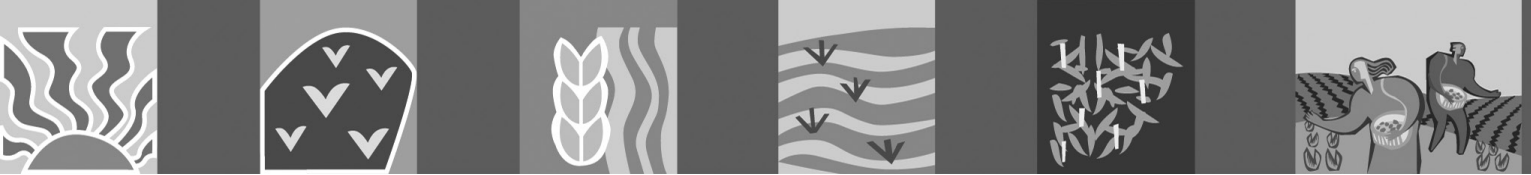


Figure 1. Comparison of ethnic representation in traditional and local government institutions

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.

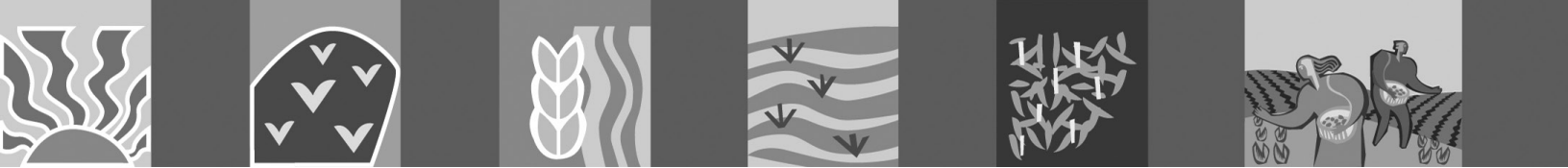
One national law that applies to the plain land IPs is the State Acquisition and Tenancy Act, 1950 but it only identifies 18 ethnic communities that can theoretically claim their land rights. There are many ethnic groups not listed in the Act, thus there is a need to amend the law to cover all ethnic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

Moreover, the Act does not address the customary land rights except holding *raiyats*³ 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).



“In general, some progressive political parties have recognized indigenous peoples as reflected in their election manifesto.”

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

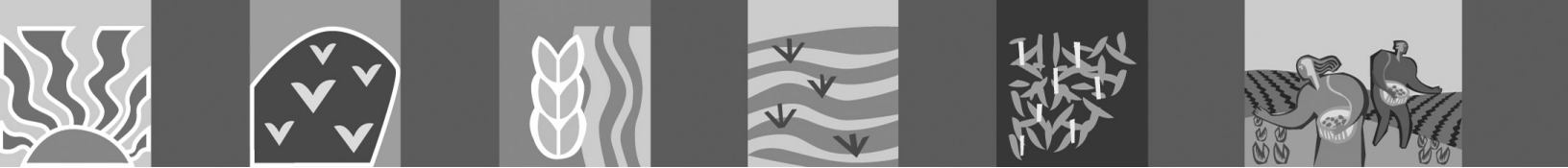
partners. There is no formal mechanism like LCG that deals specifically with their issues.

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.



“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.”

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



“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.”

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.

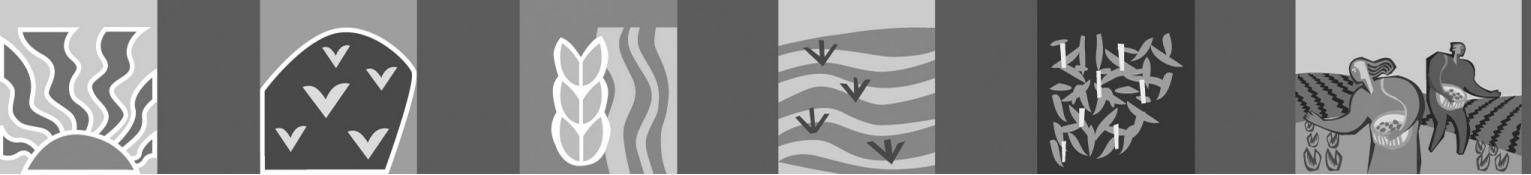
In this regard, the Association for Land Reform and Development (ALRD) has been providing capacity building and organizing trainings, workshops, seminars, and producing publications, etc. for the indigenous peoples’ organizations.

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.

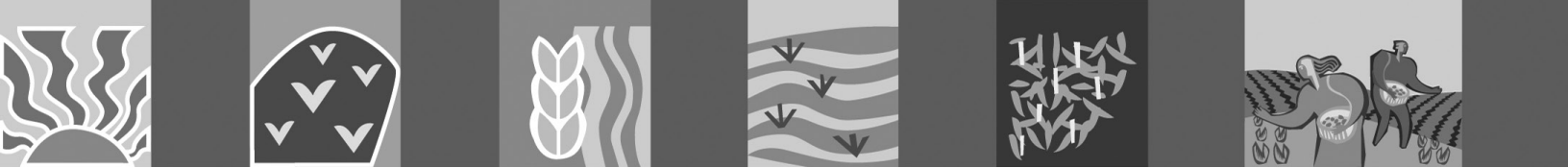
CSOs are also urged to:

- 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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For the complete list of references, please contact the author of this study as indicated at the beginning of the article.



Cambodia



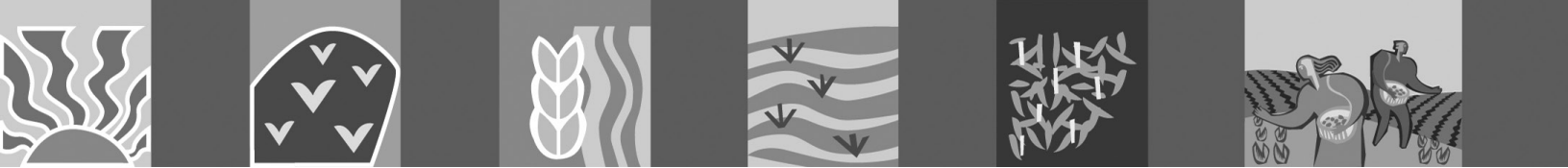
Kui indigenous people walking over what used to be their farmland after it was cleared for the Lan Fen and Rui Feng rubber plantation in Tbeng Mean Chey District, Preah Vihear Province.

Photo by CIYA

According to a study by the International Work Group for Indigenous Affairs (IWGIA) in 2012, there are an estimated 200,000 indigenous peoples in Cambodia, or a mere 1.2% of the country's population. Another report by the NGO Forum of Cambodia (2008) estimates IPs in the country to number from 101,000 to 190,000, or 1.4 % of the population.

The Cambodian government's 2009 National Policy on the Development of Indigenous People (NPDIP) lists 24 different indigenous ethnic groups found in 15 of Cambodia's 23 provinces (World Faiths Development Dialogue, 2008).

Condensed from *Scoping Study on the Access to and Control of Land by Indigenous People in Cambodia* by NGO Forum on Cambodia. For more details of the case, contact: ngoforum@ngoforum.org.kh.



Legal framework related to indigenous peoples' land rights

International law

Cambodia is legally committed to the following international treaties, covenants agreements, and declarations:

- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). *(However, the country has not ratified ILO Convention no. 169, which defines indigenous peoples' rights to lands, territories and resources under international law.)*
- International Covenant on Social, Economic and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Climate Change & REDD+

It has also to be noted that IP rights, including rights to land, territories and resources, are not a special new category of rights but form part of the indivisible human rights of all human beings, which are contextualized to reflect the group and communal dimension of IP way of life.

Accordingly, all the rights of IPs are confirmed and underpinned by major human rights treaties. The Royal Government of Cambodia (RGC) has ratified most of the key international human rights treaties, with a bearing on indigenous peoples' land rights, including the Convention on the Rights of the Child (CRC), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention Concerning the Protection of the World Cultural and Natural Heritage, and the Convention on Biological Diversity (CDB).

None of the international human rights instruments mentioned seem to be effectively enforced in Cambodia. Many of the treaty monitoring bodies and Special Procedures of the UN, such as the Special Representative on Human Rights in Cambodia raised concerns about land grabs and lack of respect for the rights of indigenous peoples to land.

National laws, policies, programs, structures and mechanisms

Land management

Land Law 2001. In 2001 the RGC passed a new Land Law, which classified Cambodian land into five categories: State Public Property; State Private Property; Private Individual Property; Monastery Property, and Collective Indigenous Community Property (Land Law 2001, Art. 16). State Public Property (Articles 15 and 16 Land Law) is land held by the state in public trust, which carries a public interest use.

State Private Property can be privately possessed, sold and owned. According to the Land Law 2001, State Public Property may be reclassified as State Private Property if the property loses its public interest use.

According to the Land Law, any person who enjoyed peaceful, uncontested possession of land – but not State Public Land – for at least five years prior to the law's promulgation has the right to request a definitive title of ownership.

National Policy on the Development of Indigenous Peoples. In 2009, the Ministry of Rural Development (MRD) produced the National Policy on the Development of Indigenous Peoples (NPDIP), which was approved by the plenary of the Cambodian Council of Ministers on 24 April



2009. The main goal of the NPDIP is to improve the livelihoods and accordingly the quality of life of indigenous communities.

Economic Land Concessions

Sub-Decree on Economic Land Concessions (ELCs). The Sub-Decree was adapted by the RGC in December 2005, to establish the legal and regulatory framework for the granting and management of concessions. The following conditions need to be met for an ELC to be granted:

- The land must be classified and registered as State Private land;
- A land use plan must have been adopted by the Provincial-Municipal State Land Management Committee and the proposed use of the land should be consistent with this plan;
- An Environmental Social Impact Assessment (ESIA) must have been completed in relation to the land use and development plan for an ELCs projects;
- The proposed land concession must present solutions for resettlement issues and the government shall ensure that there will be no involuntary resettlement of lawful land holders and that access to private land is respected;
- Public consultations with territorial authorities and residents of the locality on the concession projects have been held (Note that there are no guidelines on how such consultations should be conducted).

ELCs ranging from 1,000 to 10,000 hectares (ha) can be granted to companies. According to article 5 of the Sub-decree, ELC applications should be evaluated in light of the “*promotion of living standards of the people, perpetual environmental protection and natural resources management and avoidance or minimizing of adverse social impacts*”. Under Sub-decree No. 72 on the



A community representative of Prap Tuch in Busra Commune sharing his sentiments about their lands being acquired by another party.

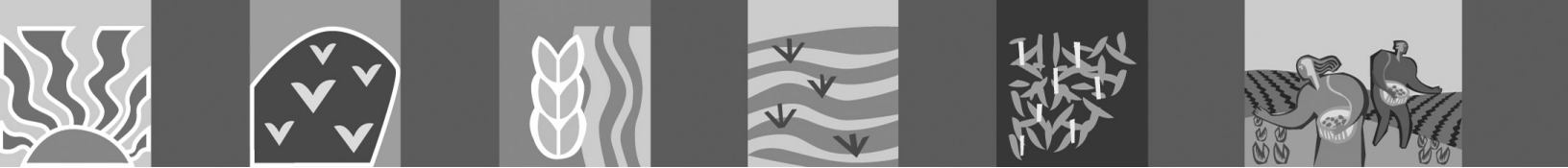
Photo by NGO Forum of Cambodia

Environment Impact Assessment Process, all ELCs have to submit an ESIA study to the Ministry of Environment to receive approval from the RGC.

ELCs and indigenous peoples’ rights

Land Law 2001. The law has specific provisions, under articles 23 through 28, referring to land rights of indigenous peoples. Article 23 defines an indigenous community as made up of “members who manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.”

Article 25 defines the land of indigenous communities as those “where the said communities have established their residences and where they carry out traditional agriculture”. Article 26 confirms that the property right given to the community is a collective one. Article 27 provides for a situation whereby a member of the indigenous community would like to exit that community and claim his part of the property.



Finally, Article 28 confirms the absolute property right by indigenous communities of their land, by stating “No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.”

Forestry Law 2002. This law contains important provisions on traditional use and access rights to forest resources, though these do not include management rights. The law has provisions that allow for the creation and management of community forests, whereby communities are granted an area of the Permanent Forest Reserve to manage and derive benefits from.

Registration, collective land titles and interim measures. In line with the Land Law and the 2009 Sub-decree on Procedures of Registration of Land of Indigenous Communities, the IPs wishing to receive a communal land title need to follow the three steps listed below:

- Identification of indigenous peoples and communities
- Registration of the IP community as a legal entity
- Registration of the collective land title and issuing the title

The whole process has been subject to heavy criticism by IP organizations and CSOs because of the amount of procedural hurdles one needs to overcome in order to go from one step to another.

Directive 01BB. In July 2012, the RGC launched Directive 01BB: Measures Reinforcing and Increasing the Efficiency on the Management of Economic Land Concessions. Among other things, the directive called for increased monitoring of ELCs and reinforced the concept of a “tiger (or leopard)-skin policy”. The policy stipulates that land inhabited by farmers (that also applies to indigenous communities) must be cut out of the

concession areas, leaving areas used by farmers in shapes resembling leopard or tiger using patterns.

Dispute Resolution and Recourse Mechanisms

Cadastral Commission. This body has the competence to identify properties, establish cadastral index maps, issue ownership titles, register land and inform people about the status of each parcel of land.

National Authority for the Resolution of Land Disputes. This Authority is made up of 17 high-ranking officials from various ministries. However, according to observers, its members have largely delegated its tasks, rendering the body ineffective in practice.

Suspension of a concession contract. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has the power to suspend an ELC contract with a company, in cases where the company in question fails to respect the conditions and terms of the ESIA reports or where there are disputes between the local population or other third parties related to a concession land.

Domestic courts. IP communities and CSOs remain very skeptical about the efficiency and impartiality of the Cambodian justice system, which continues to be the subject of concern among numerous actors such as the United Nations.

Policies and laws on agriculture, land use, food security, conservation and forestry, that also have impact on IPs

Rectangular Strategy. The Rectangular Strategy for Growth, Employment, Equity and Efficiency – Phase II is the RGC’s main socio-economic policy



agenda for the Fourth Legislature of the National Assembly (2008-2013). It aims to improve agricultural productivity and diversification, land reform and de-mining, fishery reform and forestry reform. The strategy aims to promote an equitable and efficient system of land management, distribution and utilization. It also undertakes to provide support for land registration and distribution, land tenure security, eradication of illegal settlements and land grabbing.

Royal Government of Cambodia's National Forestry Policy. This document is not so much a policy but "Royal Government on National Forest Policy Statement." Cambodia still needs to develop a comprehensive forestry policy.

National Strategic Development Plan update 2009-2013. According to this policy document, the RGC will "continue to resolve land conflicts by using legal mechanisms to ensure justice coupled with the out-of-court conflict settlement mechanism."

Agriculture Sector Strategic Development Plan 2006-2010. This document has identified the following seven strategic objectives for the agriculture, fisheries and forestry sectors:

- Food security, productivity, diversification;
- Improve and strengthen agricultural research and extension systems;
- Market access for agricultural products;
- Institutional and legislative development framework;
- Land reform - land market development and pro-poor land access;
- Fisheries reform - sustainable access;
- Forestry reform - promote sustainable conservation and management of forests, ensure better management of natural protected areas.

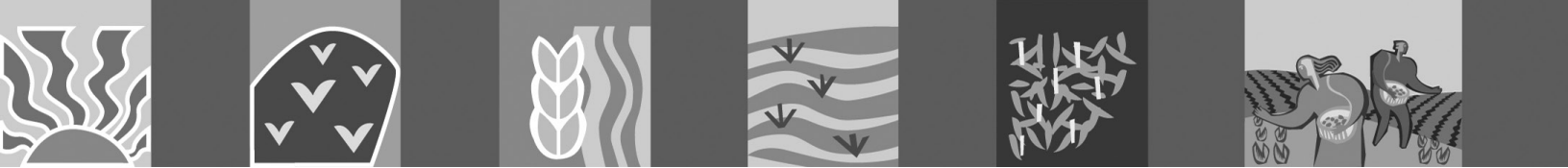
Effectiveness of laws, policies, structures and mechanisms

Lack of implementation of laws and policies re IP land rights. There seems to be 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. Technically, there are few serious criticisms one can make about the relevant laws. The key problem, which has been repeated time and again by most of the stakeholders is a near complete lack of implementation of the legal and policy framework related to IPs' land rights in Cambodia.

The Land Law 2001 recognizes the communal dimension of property rights of IPs, which is a very welcome step. However, since 2001 when the law was passed, only eight IP communities have been awarded collective land titles. More often than not, the authorities disregard the right of indigenous communities, refuse to recognize them as legal entities, and fail to implement measures to protect the land from encroachment by companies before a demarcation and determination of land has been completed (ADHOC, 2013). Often communities report intimidation and threats from the authorities that pressure the community members to settle for individual, as opposed to community, land titles.

The land alienation of IPs was further increased by the launch of Directive 01BB, which lacked clarity from the start and was made even more complicated by numerous policy changes.

Bottom up approach to CLT. Officially the Land Law of 2001 provides for two ways in which communities can acquire a communal land title, that is a top-down approach (whereby the state



“The land alienation of IPs was further increased by the launch of Directive 01BB, which lacked clarity from the start and was made even more complicated by numerous policy changes.”

apparatus initiates the registration process) and the bottom-up approach (whereby the community initiates the process). In practice however, only the latter process is being used.

Disregard for ELC procedures. At the root of the IP land rights concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the granting and management of economic land concessions. Essential pre-conditions to the granting of concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments (ESIAs), are usually not met. Likewise, restrictions on the size and ownership of ELCs have not been properly enforced.

Complicated land-titling procedure. The application process for a communal land title is too complicated, time consuming and not culturally appropriate for IP communities.

Level of awareness/dissemination

CSO-driven education and awareness raising. The level of awareness of indigenous peoples about their rights is usually very low. Exceptions

are communities in the Rattanakiri and Mondulkiri provinces who are very well informed about their land and natural resources rights.

Very little state-driven education efforts. Except for the Ministry of Environment, which has made some efforts at disseminating information regarding the requirements of ESIA prior to granting permissions for development projects, none of the concerned ministries seem to be actively promoting or disseminating the relevant information to indigenous communities.

Lack of access to information. The granting of ELCs to companies has been marred by secrecy and lack of transparency. Some information about ELCs is available on the Government website but the information presented there is by no means complete. There is no Right to Information law in Cambodia and hence, when adversely affected communities request the local or provincial authorities for information about the ELCs granted on their land or in the vicinity of their communities, they are usually met with refusal by the authorities.

Trends

ELCs. Concessions granted to Cambodian and overseas companies are viewed as the biggest threat to land rights, livelihoods and sheer existence of the indigenous groups in Cambodia, as many of the concessions encroach upon and often take over the land used by IPs. This state of affairs also undermines the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law.

Loss of livelihood and adverse impacts on women. In 2012, ELCs with a total area of 17,856 ha were granted over the ancestral land of the



Kui in Prame Commune, District of Tbaeng Mean Chey, the capital of Preah Vihear Province. At the end of 2012, the villagers saw their paddy fields, gardens and around 600 resin trees owned by approximately 74 families cleared off the land. The companies involved also cleared the remnants of an ancient Kui temple, which is a sacred site, and the nearby site of an ancient Kui village.

The ELCs in Prame virtually destroyed the means of subsistence and traditional occupations of the Kui. This in turn has imposed further burdens on the Kui women, who lost their access to food sources and livelihood.

Land speculation. Land concessions also generated land speculation in indigenous areas, further limiting indigenous peoples' access to their traditional lands. Since the granting of the New Cosmos eco-tourism concession in Aural district, Kompong Speu province, Suy indigenous communities have faced land alienation and increased pressure on land available for their use. The commune authority has sold land reserved for future community use, including land used for the collection of non-timber forest products. (Special Rapporteur, 2007)

Illegal logging. According to the latest report by Global Witness (2013), most of the illegal logging is taking place on ELCs granted to rubber and agricultural companies, which use it as a cover to cut down large swaths of forest.

Migration. Land grabs of IP lands strips them of their means of subsistence and forces many to either migrate to cities or to work on rubber and/or sugar plantations.

Intimidation. Incidences of coercion and intimidation are common in these land disputes.

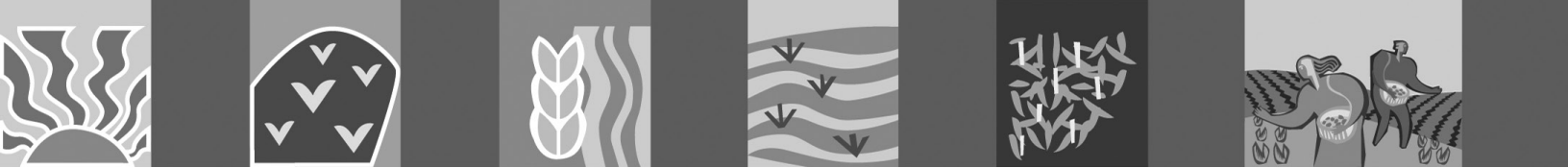
The case of Busra Commune, Mondulkiri province describes how a 10,000 ha rubber plantation is evicting indigenous community members. Some community members reported being forced to "sell" their land to the company. Indigenous people in this case and others report that they are frequently told by Government officials that the land under dispute is state land (even their agricultural land), that they have no rights to it, and thus they have two options: (1) settle now, or (2) risk losing the land in the future without any compensation (IPNN et. al., 2010).

New influences. New influences include the

"Concessions granted to Cambodian and overseas companies are viewed as the biggest threat to land rights, livelihoods and sheer existence of the indigenous groups in Cambodia..."

monetization of the household economy which has led to less sharing within the community, encouragement of individual interests over communal ones, and devalued traditional cultural artifacts, clothes, jewelry, gongs, etc. Exposure of the IP youth to modern media and Khmer culture has contributed to their lessening interest in maintaining their cultural history.

Deforestation, climate change. Economic land concessions, mining concessions, Special Economic Development Zones and large-scale hydroelectric projects are direct drivers of deforestation and forest degradation in Cambodia.



Community representative Horin Ror from Paor village in Ratanakiri stressed the importance of community education by NGOs.

Photo by NGO Forum of Cambodia

Lack of means for sustainable growth. The government’s line of argument and policy position is that ELCs are there to bring in needed jobs and lead to income diversification to the rural poor. However, rights groups maintain that the returns from ELCs in terms of jobs for the local population have been questionable at best, and in most cases have contributed to the further eradication of IP customs and culture.

Assessment of key actors promoting/impeding IPs’ land rights

Government

Ministry of Rural Development. The Ministry of Rural Development (MRD) has the mandate to coordinate, evaluate and implement rural development projects and programs. It evaluates

indigenous peoples’ claims of rights to communal land ownership based on historical occupancy and ancestral connections to the land.

Ministry of Interior. The Ministry of Interior is tasked with registering the IP community as a legal entity, which is a pre-requisite step before the community can go on to apply for a communal land title with the Ministry of Land.

Ministry of Land Management, Urban Planning and Construction. The Ministry is responsible for issuing land titles to IP communities who wish to preserve and use their ancestral lands.

Central Cadastral Administration. The CCA “is responsible for the preparation, coordination and supervision of operations concerning cadastral measurements of immovable property within the Kingdom of Cambodia.”

Forestry Administration. The Forestry Administration is the government authority under the Ministry of Agriculture, Forestry and Fisheries managing forests and forest resources.

Ministry of Agriculture, Forestry and Fisheries (MAFF). The MAFF has the authority and power to grant ELCs to any company interested in development projects, that so often adversely affect IP land rights.

Ministry of Environment. The 2008 law requires the Ministry of Environment to develop a National Protected Area Strategic Management Plan (NPASMP).

Political parties

Cambodia does not have political parties that explicitly support the rights of indigenous peoples. Although there are indigenous representatives



at different levels of the government, they are generally not very vocal about the indigenous peoples' agenda.

While the ruling Cambodian People's Party is behind the passing of the laws and regulations stipulating communal land rights of indigenous peoples, it seems to lack the political will to ensure that these laws are respected and implemented.

The leading opposition party, CNRP, was very vocal about land issues, including "land grabs" in Cambodia, during its election campaign in 2013. Land rights were very much a present issue during the speeches of opposition leader Sam Rainsy, who repeatedly called for an end to land grabs and promised to rescue Cambodia's forests and natural resources.

Local government

Provincial Governors. Under a 2001 Joint Circular of the Ministries of Interior and of Land Management, Urban Planning and Construction, provincial governors are responsible for issuing interim protection letters each time a community files an application for a communal land title.

The provincial/municipal and *srok/khan* Cadastral Offices. These Cadastral offices implement all instructions issued by the Central Cadastral Administration.

Customary/traditional authorities. Traditional authorities tend to have some variation across different communities but generally are composed of a chief elder (*mé kântreanh*) who derives his authority from the local village spirits. The *mé kântreanh* advises on customs, ceremonies and sacrifices, while sub-elders lead dispute resolution cases based on their knowledge of customary law and their reputation.

Local authorities in general. One of the key roles of all local authorities is to support the efforts of IP communities in securing their land tenure and manage their natural resources. However, it is allegedly the authorities at the local level that are most often obstructing/hindering the achievement of land rights by IPs. Village and commune chiefs are often accused of colluding with the authorities higher up in the levels of command, as well as the companies involved with ELCs and other powerful actors.

Donor agencies and international institutions

The relevant financial institutions with policies and/or safeguards on indigenous peoples' rights include: the World Bank (WB), the Asian Development Bank (ADB) and the International Financial Corporation (IFC).

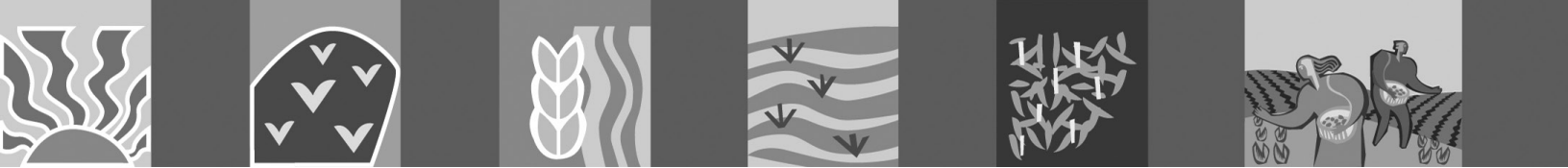
Private sector

The adverse impacts of the private sector activities are felt very strongly and continuously by the IPs across Cambodia. According to rights groups, three quarters of Cambodia's total arable land mass is leased to private companies via ELCs. It is estimated that land grabbing through ELCs has affected 400,000 Cambodians in twelve provinces since 2003.

Private enterprises operating in Cambodia often fail to carry out an ESIA prior to beginning their projects and fail to properly consult the indigenous communities that stand to be adversely affected by their operations.

Civil Society and Social Movements

Indigenous Rights Active Members (IRAM), which was formed in 2003, is the key indigenous peoples network in Cambodia. This is an informal



“According to rights groups, three quarters of Cambodia’s total arable land mass is leased to private companies via ELCs.”

network, composed of indigenous leaders from 15 provinces, and does not have an NGO status as it was not registered with the Ministry of Interior. The network used to be coordinated by the NGO Forum on Cambodia and is now coordinated by the Indigenous Community Support Organization (ICSO).

At the local level, IRAM mobilizes the community and its leaders to advocate for their land rights and natural resource management. Its members also train the IP communities and raise awareness about land rights as well as submit complaints and petitions relevant stakeholders, requesting intervention. In terms of collaboration, IRAM has been cooperating with local authorities, such as the Village Chief and Counselor, for implementation of relevant laws at ground level.

Additionally, IRAM has very strong links and cooperates with IP NGOs at the national level, and also works closely with the media and has developed their strategic action plan.

There are several grassroots indigenous peoples’ organizations and associations in Cambodia. These are: 3 Rivers Protection Network (3SPN), Cambodian Indigenous Youth Association (CIYA) based in Phnom Penh; Highlanders Association (HA), Indigenous Peoples for Agriculture Development in Cambodia (IADC) based in Ratanakiri, Indigenous Peoples’ Rights to Health

(IPRH), based in Ratanakiri and Mondulakiri, and the Organization to Promote Kui Culture (OPKC) based in Preah Vihear.

Key civil society support groups

Indigenous Peoples NGO Network (IPNN). The network works primarily on land rights of indigenous peoples in Cambodia. Its most active members include: Cambodian Human Rights and Development Association (ADHOC), Ponlo Khmer (PKH), Community Economic Development (CED), Centre d’Etude et de Development Agricole Combodgien (CEDAC), Community Legal Education Centre (CLEC), Development & Partnership in Action (DPA), Highlander Association (HA), Henrich Boll Foundation (HBF), Indigenous Community Support Organization (ICSO), My Village (MVI), Non-Timber Forest Products Organization (NTFP), Organization to Promote Kui Culture (OPKC), South-east Development Programme (SADP), Village Focus Cambodia (VFC), and Wildlife Conservation Society (WCS).

How do civil society actors work together and with other actors

IPNN network members. The Land and Housing Rights Network and IP and ELC Network have recently merged to form a Land and Livelihood Network. This network’s members are meeting twice a year to share information, reflect on the strengths, weaknesses, opportunities and threats in each project implementation. Moreover, network members organize meetings to exchange information, discuss outstanding cases and strategy for working together to minimize negative impacts of ELCs such as loss of land, forced evictions and resettlement by promoting the implementation of FPIC, alternative livelihood



options and IP land legalization. Many of the NGOs belonging to the NLPP network organize training and capacity building workshops together at the local and national level. CIYA, ICSO and ADHOC, for example, train indigenous peoples with regard to relevant domestic land laws and international human rights laws and standards at local level.

Indigenous communities. The NGOs working at the local level tend to work very closely with the affected IP communities on the ground. Many of the NGOs belonging to the IPPL network organize training and capacity building workshops for IPs at the local and national level. When they can, they also sponsor local IP community representatives to join trainings and workshops at the national level.

Authorities. CSOs try to engage actively with the local authorities, by inviting local government officials to human rights and land rights trainings and capacity building exercises.

ILO. Local NGOs in Ratanakiri and Monduliri provinces (NTFP, DPA, HA, ICSO in Ratanakiri and MVI, DPA, Vigilance, WCS in Monduliri) are working closely with the ILO on a project which aims to speed up and facilitate the registration of communal land titles by indigenous communities.

Media. CSOs at both the national and local level work very closely with the Khmer-speaking and English-language media in Cambodia. Most of the local NGOs or provincial offices of larger domestic CSOs have the phone numbers for print and radio journalists in the province and in Phnom Penh.

Private enterprises. Many CSOs reach out to companies involved in alleged land grabs and breaches of the relevant laws of Cambodia, with varying degrees of success.

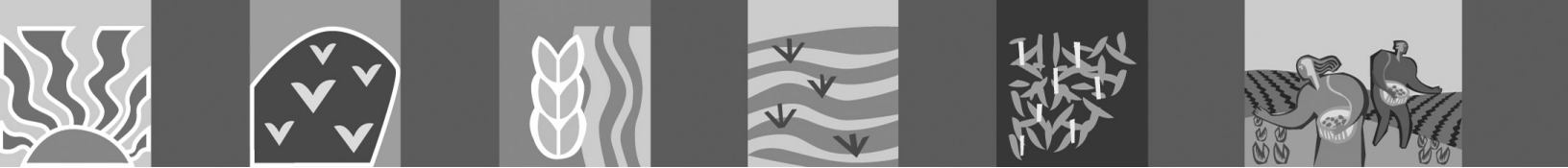
Key issues and gaps in the engagement of CSOs working on land rights, food security and climate change

Lack of follow-up. IP organizations have raised concerns about lack of follow-up and continuity of engagement with the IP communities adversely affected by land and natural resource issues. Sometimes the communities feel they are being abandoned by the NGOs, especially when it comes to protests. They feel the morale of the community is winding down because of lack of NGO support for their protests and other actions.

Lack of (culturally acceptable) communication. Lack of communication of NGOs and information of the affected communities has been raised on several occasions. IP representatives have observed that the communication between relevant NGOs and the community are very patchy and sporadic throughout the process of acquiring a communal land title. It has also been pointed out that NGOs fail to communicate with the IPs in a way which is culturally acceptable and known to the communities.

Some networks are weak. One network member from Kampong Speu province complained that her network was very weak and said that the IRAM network in her area is much stronger. Accordingly, NGOs in the network should strive to work much more closely with and reach out to grassroots organizations, like IRAM.

Women. There seem to be very few NGO initiatives directly aimed at empowering and educating indigenous women. It has been observed that in the communities, where training was provided to women, they were very vocal and active on the grassroots level. IP women's empowerment and education are cross-cutting issues that can



“The Cambodian media is largely considered as being under the influence of the ruling Cambodia People’s Party and therefore not free and independent.”

provide solutions to many of the problems faced by IPs with regard to land rights and natural resources management.

NGOs slow to respond to immediate challenges. It has been pointed out that NGOs can sometimes be slow to respond to certain initiatives introduced by the government or to calls for assistance by the IP community. One such example identified by both the IP community and NGO representatives was the introduction of directive 01BB. When the authorities introduced the directive, NGOs were allegedly very slow to react to the changes in the law and procedure, and did not allocate enough staff and resources to explain the implications of the directive to the affected IP communities.

Language barrier. Some IP members also raised language as a concern when it comes to training and capacity building. Most of the IP community members use their own and unique language to communicate and those who do not speak Khmer seem to miss out on accessing training information. Even if they access basic information at the village level from other IP members, their inability to speak Khmer and the lack of available training in the language they understand hinder them from participating in district or national level workshops and trainings.

Traditional knowledge vs. awareness raising and education. NGOs have promoted democratization of ‘village development actors’ that empowers more community members but does not build on traditional cultural knowledge and the role of traditional authorities.

Range of actions taken by CSOs and IP communities in responding to challenges to the recognition of IP customary rights

Letters of complaint. Most of the CSOs working on IP land rights have assisted IP communities adversely affected by ELCs or illegal logging in sending and/or filing a letter of complaint with authorities at the local, district and national level, as one measure of challenging the lack of respect for their (customary) land rights.

National Authority for the Resolution of Land Disputes. Many of the IP communities adversely affected by land grabs filed complaints with this body but their claims were largely unanswered. This was the case with complaints with the **Cadastral Commission** as well.

Domestic litigation. CLEC is one of the very few organizations in Cambodia that provides pro bono legal assistance to affected IP communities. However, lawsuits against local authorities and/or companies are few and far between mainly due to the fact that courts are often seen as not independent and, in fact, siding with the interests of the rich and powerful in the country.

Protests. Faced with no support from the authorities and no respect of their rights by the company, the IP often turn to protests against the ELCs and the illegal clearing of their land. The protests are held either on the acquired land or in front of village or district authorities’ premises. Protests sometimes escalate into violence.



Information and other requests. In some cases, the IPs gather at the commune office to demand information about the company clearing their land, and at the same time ask that they be allowed to cultivate their crops.

Meetings among IPs, NGOs, authorities and companies. In most of the reported cases of IP land grabs, CSOs played a facilitating role in organizing meetings between all the actors involved in the land conflict, inviting the local authorities and companies claiming the land under ELC. This move has had varying degrees of success in terms of attendance by the companies and local authorities. Even where all stakeholders were present at a meeting, the meeting rarely yielded positive results for the adversely affected communities.

Forest patrols. Some IP communities living in the areas where illegal logging is common organize forest patrols, to ensure that trees are not cut down contrary to the laws of Cambodia and IP customary practice.

Role of media in highlighting issues and influencing public opinion

The Cambodian media is largely considered as being under the influence of the ruling Cambodia People's Party and therefore not free and independent. Accordingly, the Khmer-language media very rarely highlight the land alienation and other customary rights issues faced by IPs across the country. The English-language *Cambodia Daily* and *Phnom Penh Post* newspapers cover news about IPs, and are largely read by the expat community and educated Cambodians.

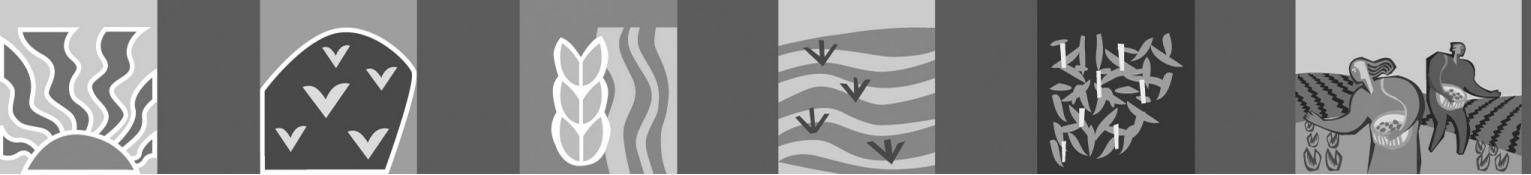
Radio most effective. So far radio proves to be the most important medium with regard to highlighting IP issues. Radio is also the main

media used and fairly easily accessible to IP communities. However most radio programs are in Khmer language, not the indigenous people's languages, furthering the marginalization of women and elders who tend to have a more limited knowledge of Khmer.

Social media. New trends in technology and changes in the demographics of Cambodia mean that an increasing number of people use social media. This trend has been highlighted most recently by the Kingdom's parliamentary elections, which saw thousands of users of the social networking site Facebook sharing information and reporting election irregularities freely. Most CSOs working on IP issues in Cambodia are very active on social media and accordingly have the capacity to fill in the gaps in information regarding IP rights in Cambodia. Having said that, this is the trend in the cities and a lot of work and time is needed before meaningful progress on influencing public opinion regarding IP rights can take place. Most importantly, this medium of sharing information and news will only be really meaningful if it reflects and gives a platform to voices of the IPs, whose land rights are being violated. The need for indigenous peoples' voices to be heard and the importance of empowerment of IPs through their access to and participation in media and the development debate applies to all media types.

Key opportunities and strategies to advance indigenous peoples' customary rights

Involvement of all stakeholders. IP organizations, CSOs, local and central government representatives, and companies applying for ELCs, all need to be involved in joint discussions and negotiations on a regular basis. All stakeholders need to understand and acknowledge that they



are driven by different interests and objectives and that they need to find a common ground – one that follows domestic and international laws and best practices, gives equal weight to all the voices in the discussion and preserves IP lands and culture.

Government for the people. The vast body of literature about the impact of ELCs on IP land rights and recent interviews with CSOs and IP groups confirm that the leading problem with regard to securing land tenure by indigenous communities is the lack of transparency in the granting of ELCs and lax enforcement of the existing laws and regulations. Until and unless these issues and the lack of political will to implement the legal provisions ensuring land rights of IPs are effectively addressed, the secure land tenure of IPs will be very difficult to achieve.

Corporate capture of government at all levels. Another key issue that is intrinsically linked to the lack of enforcement of the current legal regime is the overwhelming problem of ‘corporate capture’ of the Cambodian government. It has been largely documented by CSOs and local media that the ruling political elite often has direct or indirect ties with companies that are interested in investing in

“...the leading problem with regard to securing land tenure by indigenous communities is the lack of transparency in the granting of ELCs and lax enforcement of the existing laws and regulations.”

the land inhabited by IPs. In fact, government at all levels of the chain of command is involved in questionable but lucrative deals with companies applying for ELCs. This evident conflict of interest needs to be tackled and the government needs to introduce legislation regulating human rights impacts of companies on IPs and Cambodians in general.

IP voice and leadership. In order for any meaningful change and advancement of indigenous peoples’ land rights to take place, the movement needs to be led by the IP communities themselves. 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. The IP voice needs to be present in policy considerations at all levels of government, from local through to national authorities. This requires up-scaling empowerment, education and awareness raising among IP communities. As Mr. Vuthy, one of the IRAM members pointed out: *“one of the best ways to empower indigenous peoples is to make sure that they contribute their own financial resources to the community movement fund, so they can use it for various activities and take ownership in it.”* Another key factor needed for the IP movement to grow in strength is the improvement of networking among the IP communities themselves. This is elaborated on in more detail in the succeeding sections.

Greater understanding of IP issues by all stakeholders. Members of relevant ministries, parliamentarians and government officials at local and provincial levels need to have a better understanding of international human rights laws, domestic legal provisions and procedures regarding IP land and resource rights. The same applies to companies, Khmer-speaking media and the general public. Without greater awareness



and understanding of IP issues and processes by all actors involved, IP issues will not receive the attention they warrant.

Independent judiciary. IP land and resource rights will never be fully realized if the courts in Cambodia refuse to follow the letter of the law and choose to follow their personal financial interests. Therefore judiciary reform, training and education of judges is an absolute must.

Best practices' for replication and upscaling

Communal land title registration. The ILO office in Cambodia is working closely with local NGOs in Ratanakiri and Mondulokiri provinces (NFTP, DPA, HA, ICSO in Ratanakiri and MVI, DPA, Vigilance, WCS in Mondulokiri) on a project which aims to incorporate indigenous communities as legal entities under the Land Law 2001, so that they are eligible to apply for a collective title with the MoI. The objective of the project is to have as many communities as possible incorporated legally to facilitate a claim to the Ministry of Land Management to begin the process of securing land titles for indigenous communities (IFAD, p. 21). As part of the project, the ILO has been working closely with the MoI to increase its capacity to deal with applications for a legal recognition of IP communities.

Empowerment through education and awareness raising. IP communities in Ratanakiri and Mondulokiri provinces are increasingly strong and are very vocal about their grievances vis-à-vis land grabs and illegal logging. They organize protests, demand information, issue letters of complaint (with the assistance of CSOs and local activists) and participate in stakeholder meetings.

Community media project. Some of the active members of the IPPN take part in the Community Media Project, which in turn supports IP community initiatives. The Project also promotes IP networks and key community members' voices through radio live talk-show programs, radio and TV productions related to indigenous people's issues meant to raise awareness among the general public and to promote grassroots communication, information and IP voices in the mainstream media.

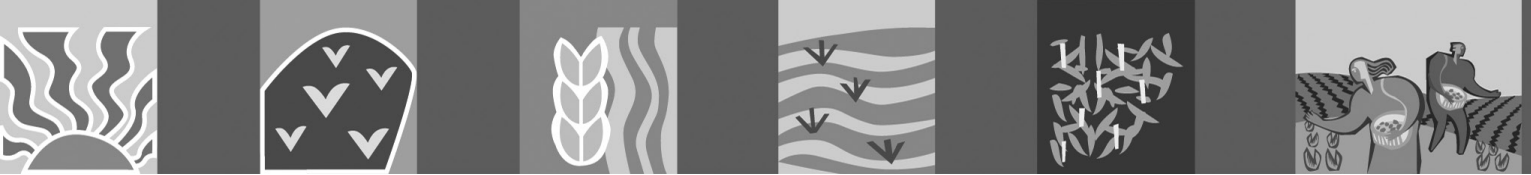
Centralized IP network. ADHOC received funding from the UK Government for a project aimed at connecting IPs from all the provinces across Cambodia. IRAM members are allegedly working on a similar initiative. It could be a good idea for the two organizations to cooperate and join their forces in this very important effort.

Video documentary project. On 9 August 2013 the NGO Forum organized a screening of a documentary "The Other Cambodia: Indigenous Land and Rights." The documentary, which combined efforts by IP activists and a filmmaker hired by NGO Forum presented a very concise and compelling case of land grabbing in the northern regions of Cambodia.

Community empowerment project. ICSO runs a community empowerment project directed at IRAM members. The project provides rights training as well as financial, logistical and mentoring support to IP representatives chosen by the organization.

Strategic linkages to be pursued by IP organizations and CSOs

IPs. 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. It will also add clout to the IP-led movement with the sheer numbers of organizations and people in the network, increasing its leverage at both the national and international level.

Authorities at the local and national. One of the key reasons for the exclusion of IP voices from land rights and other policies affecting IPs and the apparent disregard for their human rights by the authorities is the lack of IP representation at all levels of government, be it at commune, district or national level. It is therefore extremely important for the IPs to take active part in the mainstream electoral process, including running as candidates or forming separate indigenous peoples parties.

Ministry of Land and Natural Resources. Since the Ministry is vested with the final say about when and whether an IP community will receive a community land title, it is of paramount importance for the CSOs and IP organizations to have a good relationship with the Ministry and its representatives.

Judiciary. The courts are the last recourse at the domestic level for IP communities to try and enforce their land and resource rights. Therefore establishing good working relations and linkages with the judiciary is very important. While this process will most likely be very time consuming due to the widespread lack of independence and weakness of Cambodia's court system, it is a step that must be taken sooner or later for meaningful change to happen on the ground.

Donors. IP organizations need to establish strong relations with donor organizations, in order to increase their chances of sustained and direct funding for activities and projects that are designed for IPs by IPs.

Asia Indigenous Peoples Pact. Cited as an example of best practice is the annual Asia regional preparatory meetings to devise strategies and plans of action in relation to the various United Nations mechanisms and procedures as well as other relevant international bodies and agencies, organized by the Asia Indigenous Peoples Pact with the active participation of self-selected representatives of indigenous peoples, indigenous experts and representatives of United Nations agencies.

Specific 'spaces' or opportunities for indigenous peoples' organizations and civil society

Presence of increasingly strong IP movements and networks. The IP communities in Cambodia's Rattanakiri and Mondul Kiri provinces are increasingly strong and well organized. Thanks to the support of IRAM and local CSOs, IPs in these provinces 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. At regional level, the network of indigenous peoples known as the Asia Indigenous Peoples Pact (AIPP) is engaging in numerous processes at regional and international levels to advocate for indigenous peoples' rights to lands, territories and resources, including in the context of climate change and REDD+, resource management, international finance, extractive industries, human rights monitoring, development, support to indigenous women and



human rights defenders etc. (see more at www.aippnet.org).

Change of political landscape and culture in Cambodia. The contested July 2013 elections to Cambodia's National Assembly showed an appetite for change in the way the country has been governed by the ruling Cambodian People's Party. According to official preliminary results, the opposition CNRP party won 55 out of the 123 seats in the lower house of parliament, taking away at least 20 seats from the CPP. If the two parties will be able to resolve the current political deadlock and form a government, the influence of CNRP, which was very vocal about remedying land rights abuses in the country, the climate for promotion of land rights in general and IP rights specifically, could lead to accountability for rights abuses and real change on the ground.

REDD+ as leverage for recognition of rights. The Cambodian Government could prove relatively open to engage in dialogue on forest rights under the REDD+ Cancun Agreement.

Indigenous Peoples' Forum as a networking and leverage platform. IFAD's Indigenous Peoples' Forum, a process of dialogue and consultation between representatives of IPs, IFAD staff and member states also offers a space for IP organization members to share information with each other and to promote their participation in institutional outreach and learning events.

Recommendations

Government

Implementation of the already existing legal and policy framework. While this seems a rather obvious recommendation, it cannot be repeated enough. Secure customary land rights of

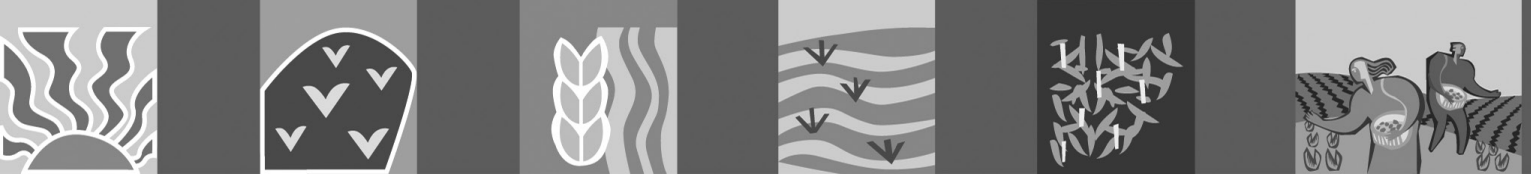
“The Cambodian Government could prove relatively open to engage in dialogue on forest rights under the REDD+ Cancun Agreement.”

indigenous peoples in Cambodia will never really be attainable unless and until the authorities show and exercise the political will to implement the already existing laws and policies.

Regulating company behavior. Another absolutely necessary step for the promotion and protection of IP land rights is the regulation by the RGC of companies coming to invest in Cambodia as well those domiciled in the country.

Protect IP territories. The authorities should take immediate steps to ensure that the territories of indigenous peoples are protected in the interim period prior to the completion of the titling of indigenous peoples' lands required under the 2001 Land Law, including actions listed below:

- Rapidly recognize the indigenous identity of people who self-identify as indigenous peoples through official census, accepting that indigenous communities may also exist within geographic villages.
- Amend the Forestry Law to ensure that indigenous peoples are recognized as traditional owners and managers of the forests they have traditionally used and managed, with at least inherent co-management/ownership rights.
- Ensure that no further concessions are issued or land transferred in areas with indigenous peoples, regardless of whether or not



“The Government should continue to develop and expand bilingual and inter-cultural education for indigenous peoples.”

indigenous communities are registered with government.

- Suspend land, tourism, mining and other concessions and other large-scale development projects in indigenous people’s areas until such time as registration of lands under the 2001 Land Law has been completed.
- Ensure that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous people’s lands and territories.
- Ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous people’s areas, including through restitution of lands taken without indigenous people’s free, prior and informed consent, and the effective prosecution of offenders, including people of power and influence in Cambodian society and the authorities involved in promoting, endorsing, supporting, or benefiting from land transactions in areas of indigenous people’s communities.
- Ensure that claims of intimidation of indigenous peoples attempting to protect their rights are independently investigated and proper action taken to ensure that indigenous peoples may feel free from fear and intimidation.
- Establish a mechanism whereby indigenous peoples who have lost their lands due to the creation of economic land concessions, mining permits, the sale of lands to or by politicians, or any other means, can attain full

restitution of their lands and rehabilitation of lands negatively impacted by subsequent development.

- Address the rights of indigenous peoples, as outlined in the UNDRIP, within the legal framework related to mining in Cambodia.

Amend Sub-Decree on Procedures of Registration of Land of IPs. The government should amend the Sub-Decree to be consistent with indigenous peoples’ rights as defined by international covenants, conventions and declarations.

Swift land registration. The RGC needs to take concerted action to ensure that the titling of indigenous people’s lands under the 2001 Land Law takes place quickly and effectively, with the full and effective involvement of the traditional authorities of the concerned indigenous peoples and in accordance with the relevant norms of applicable international covenants, conventions and declarations.

IP education. The Government should continue to develop and expand bilingual and inter-cultural education for indigenous peoples. It should also devise and implement special education support grants or programs aimed specifically at IP.

Support for IP authorities, culture and custom. The Government should take steps to recognize, empower and build the capacity of traditional and customary authorities to participate effectively in local and national decision-making processes relevant to indigenous peoples, including the drafting of laws and regulations on issues affecting indigenous people’s communities. It should also devise and support programs that encourage the preservation of IP culture and custom in Cambodia.



CSOs

Regular follow-up, communication and support.

CSOs working on IP land rights should support (or keep supporting) the noticeable rise in community demand for empowerment activities as well as the recognition by IPs of their central role in managing advocacy agendas, development, networks and social transformation within their community (as articulated by some IRAM members interviewed for the purposes of this study). Additionally, CSOs should further encourage mobilization and organization at the community level and seek out and identify community leaders (Hutchinson, et. al., 2008).

Forging closer links with IRAM and other grassroots IP organizations.

The Land and Livelihood Program (LLP) network is not equally strong across the country – there are provinces where the network is weaker. In order to fill that gap and enable the CSOs in the LLP network to be effective and responsive to the needs of indigenous communities, closer links should be forged with grassroots IP organizations, like IRAM.

Slight adjustment of CSO-led education initiatives for IP.

It is of great importance for NGOs leading the awareness raising and education among IP communities not to forget to build on traditional cultural knowledge and role of traditional authorities.

Upscaling use of social media. The power of social media should not be underestimated by the CSOs in the LLP network. Many successful advocacy campaigns were born online and, with the change in the way we share information and access news, a Facebook or Twitter presence seems an absolute must for NGOs that want to reach out to a global audience.

Better awareness and understanding of IPs by some CSO workers.

For all CSOs working with IP communities, it is important to consider carefully the role they play and approaches they employ. What may be fairly straightforward for a national Cambodian organization in other parts of Cambodia will require a deeper level of reflection in IP areas, as the organization, program and staff are challenged to understand development from the perspective of indigenous peoples.

Donors

Do no harm. Donors need to make sure that the development projects they are funding are not undermining the land rights and other human rights of IP communities.

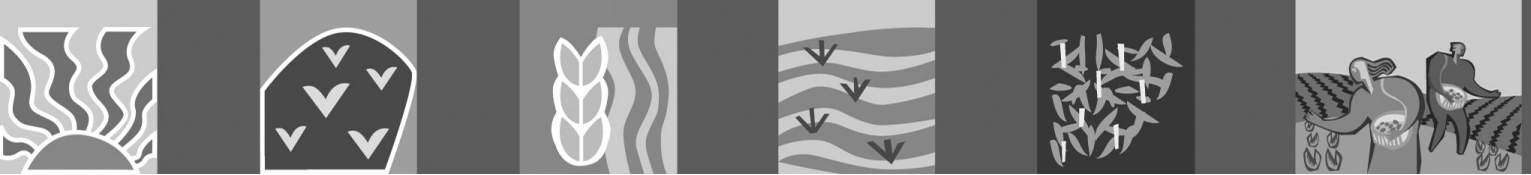
Use donor leverage. Donors are often in a much better position than NGOs to raise concerns over human rights abuses of IPs with the RGC because of their financial relationship with the authorities.

Use human rights standards when negotiating with RGC. Use relevant international instruments and treaties as standards when negotiating with the Cambodian government, including trade issues as well as loan and project assistance.

Build skills and knowledge. Donors should support university scholarships for training IP teachers and other professionals, fund culturally supportive education in local languages as well as encourage female IP education, so that they can later represent the land rights and customary rights interests of their communities (Alcorn, 2001).

Support communication and networking of IPs.

Donors should support networking and other opportunities for IPs to share their experiences



and ideas within Cambodia, in the region, and between IPs from other regions.

Seek creative options for direct funding. A lot of IP communities have a problem registering as a legal entity for the purposes of obtaining a communal land title because of the authorities' drive to suppress IP interests. It is important that donors find ways in which they can support unregistered grassroots organizations, like IRAM.

Create grant making and project processes that fit IPs needs and strengths. Donors need to understand that IP organizations are not necessarily like other NGOs they are working with. Accordingly, there is a need to simplify certain processes, avoid imposing enormous reporting requirements, accept alternative reporting mechanisms, such as videos, and photographs or tapes with recorded oral messages. Deadlines should also be made more flexible to be more responsive to the indigenous culture.

Invest for the long-term. Support creative financing mechanisms for IPs, such as trust funds under IPs' control. Fund core costs for IPs' organizations and train them in sustainability mechanisms. Beyond conventional funding of activities, develop alternative ways to access credit. Nurture indigenous saving societies and credit unions to build financial independence without risking lands as collateral. ■

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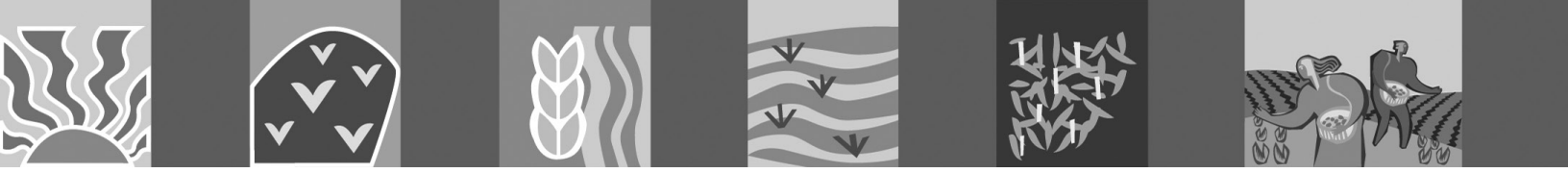


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For the complete list of references, please contact the author of this study as indicated at the beginning of this article.



India

Condensed from the *Study on Indigenous Peoples (Scheduled Tribes of India)* by the Association of Voluntary Agencies for Rural Development (AVARD). For more details of the case, contact: avard@bol.net.in.

According to the portal of the Ministry of Tribal Affairs, the term “Scheduled Tribe (ST)” (used to refer to India’s indigenous peoples) first appeared in the Constitution of India, in Article 366(25). The said Article defined scheduled tribes as “such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.”



Bonda tribe of Malkangiri, Orissa.
Photo by AVARD.



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.

These tribal people, considered to be the descendants of the country's original inhabitants, are largely located in hilly tracts of Central and North Eastern India, Andaman and Nicobar Islands. Small populations are scattered in the hilly tracts of the southern states and Himachal Pradesh. State-wise concentration of ST population is depicted in Table 1.

Table 1. State-wise Distribution of ST Population (%)

Percentage	States
< 10	Himachal Pradesh, Maharashtra, Andaman & Nicobar Is, Andhra Pradesh
10 – 20	Jammu & Kashmir, Assam, Rajasthan, Gujarat
20-30	Jharkhand, Odisha, Madhya Pradesh
30 – 40	Sikkim, Manipur, Tripura, Chhattisgarh
40 – 60	Dadar & Nagar Haveli
60 – 80	Arunachal Pradesh
80 – 90	Nagaland, Meghalaya
90 >	Lakshyadweep, Mizoram

Source: Census of India, 2011

According to the 2011 Census of India, the total population of the STs is 104,281,034, of which 89.97 % are rural-based and the rest (10.03 %) are in urban areas.

Efforts made by the government right from the beginning of the planned era (1951) through various developmental plans, policies, special strategies and programs, have registered a definite quantifiable improvement in the socio-economic status of tribals. However, their quality of life is not yet anywhere near to mainstream society's, as the gap in their socio-economic status continues to prevail.

Status of Indigenous People's Land and Resource Rights

Access to Land and Land Rights

Land is not only an economic asset; its ownership is also socially valuable and often co-terminus with social status. The unequal distribution of land reflects both prevailing social stratification and continuation of hierarchical structures of society. So far as the access of STs to land is concerned, in none of the states are tribal people a significant proportion. A significant proportion of tribal people are concentrated in pockets, generally in hilly tracts with poor soils and low productivity.

The average size of operational landholding for ST is shown in Table 2.

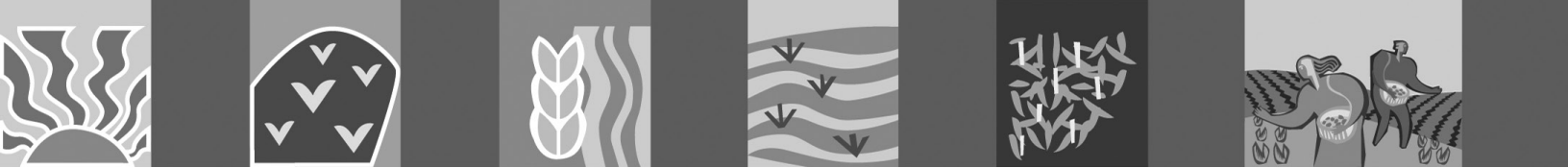
Land Rights

Indigenous land rights are rights of indigenous peoples to land. Needless to say, resource-related rights are of fundamental significance to indigenous peoples for religious, self-determination, identity and economic reasons.

Table 2. Average Size of Operational Land Holding for STs (in ha)

Category	Agriculture Census 2005-06	Agriculture Census 2010-11
Marginal	0.48	0.49
Small	1.39	1.44
Semi-medium	2.67	2.70
Medium	5.76	5.73
Large	16.32	16.02
All Size Groups	1.64	1.53

Source: Agriculture Census 2010-11 (Provisional), Agriculture Census Division, Dept. of Agriculture & Cooperation, Ministry of Agriculture, Govt. of India, 2012.



Land is a major economic asset. The STs depend on natural resources to fulfill their subsistence needs; hunting, fishing and gathering of forest products form the basis of their livelihood.

Customary Laws and the Historical Perspective

Attempts towards erosion of tribals' customary laws date back to colonial rule with the introduction of universal laws against which there was agitation from the tribals. This ultimately resulted to the British providing concessions and autonomy to and recognition of the customs of the tribals. The history of land grab in India dates back to the 17th century with the introduction of the Zamindari¹ system, abolishing the then prevailing Jajmani² relationship by the Permanent Settlement Act of 1793.

Probably, the first legal recognition by the colonizers of the indigenous people of the country was provided through the Scheduled District Act of 1874. Over two centuries of colonial rule enabled concentration of power with a few, thus creating a feudal system that emerged as a great challenge in the post-independence period. Later, in the northeast, the Assam General Clauses Act of 1915 protected tribal customs and practices by restricting the application of provincial laws in the hill areas. The Montague-Chelmsford Reforms of 1919 also made similar provisions. The 1930 Indian Statutory (Simon) Commission

¹ One of the major land revenue systems introduced by British rule where a single landlord is recognized as the owner of a land and provided with rights to collect taxes and rents to peasants on behalf of the British treasury. They are also entitled to give, buy, and sell the revenue collection rights, hence, are granted with secured property of land rights (Sarwar, 2012; Rashid, et. al., 2014).

² A social caste system in India where landowners pay their laborers with grain and straw after harvest (Srinivas, 2002).

recommended the protection of tribal customary rights. The Government of India Act of 1935 accepted it and divided the hill areas into Excluded and Partially Excluded parts and stipulated that no Act of the Central or Provincial Legislature would apply to them unless the Governor in his discretion so decided in view of peace and good governance.

After independence, the fate of tribals rested largely on the framers of the Constitution. The Bordoloi³ Committee was formed during that time to provide inputs to the Constitution from the perspective of the tribals of the northeast region of the country. The sub-committee observed that the people of the region were sensitive towards their land, forest, lifestyle and traditional systems of justice, and thus needed safeguards and protections so as to preserve their way of life. The Bardoloi Committee also made provision for a Regional Council for the tribes other than the main tribe and sought to build up autonomous administration so that the tribal people could manage their affairs in their own traditional ways.

Since colonial rule, it was clear that two regions of the country required different governance structures because of the level of exclusion between the indigenous peoples and the rest of the population. It was for this distinction and following the demand of autonomy by tribal peoples that some special rights were granted for management of natural resources by indigenous peoples. The Uttarakhand Forest Act, 1935; the Santhal Pargana Tenacy Act and the autonomy provided to the north eastern states were some of the examples where colonial rulers provided space to accede to the pressure of rights of the indigenous peoples over the natural resources.

³ An advisory committee on Fundamental Rights of Minorities in the Tribal Areas was constituted in May 1946 by the Constituent Assembly of India.



However, these rights were recognized only after conflict; and were invariably loaded with terms and conditions. These were the Schedule V and Schedule VI areas.

The Constituent Assembly approved separate systems of governance for these two areas. Under Schedule V, the Governor was the sole legislator and competent to make laws on all subjects enumerated under the Constitution. However, the Governor was required to take the advice of the Tribal Advisory Council (TAC) and the assent of the President over legislations. The apathy of governors towards these provisions has been reflected in the Union Minister's letter to governors, reminding them of their role towards the development of the tribals in Schedule V areas.

These provisions provided the basis for the special enactments for certain regions which continued concessions to the tribals even during the post-independence period. Such enactments were later included in the Ninth Schedule to avoid any challenge to the fundamental rights. Article 13 of the Indian Constitution prevailed concerning the validity of such Act (customary laws) unless later repealed by the legislative. Through amendments, the Constitution also recognized the customary law of Nagaland (Article 371a) and Mizoram (Article 371g). However, the struggle for recognition of customary laws (through constitutional amendments) has not been easy. It has been marked by prolonged agitation and incidence of violence⁴. Finally, the Union government had to accede to the demands and provide "extra autonomy" to these areas through provisions of Articles 371a and 371g in the States of Nagaland and Mizoram respectively where no

⁴ The Naga and Mizo Nationalist struggles and the State's response of amending the Constitution to introduce Articles 371a and 371g.

law of the Parliament applies unless approved by the State Assembly.

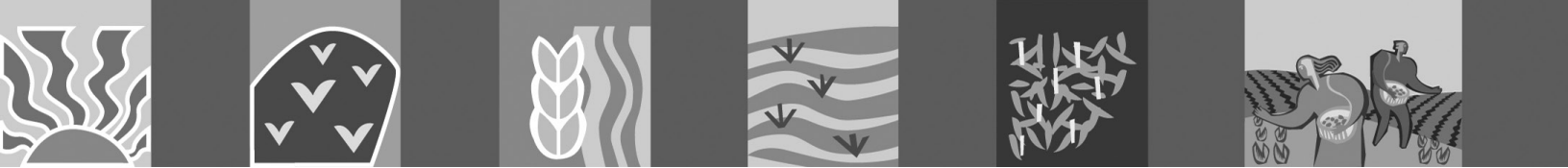
Land reforms in India: Issues and Challenges

Since in the original draft of the constitutional right to property was the fundamental right under Section 19(g), it became increasingly difficult to implement land reforms. Through the first amendment to the Constitution, the Ninth Schedule was added enabling states to enact laws related to land reforms, in contravention to Section 19(g). There are more than 350 state laws under this schedule. India's first several five-year plans allocated substantial budgetary amounts for the implementation of land reforms. However, various studies, including the study of the Ministry of Rural Development, highlighted limited success in land reforms and distribution.

Land acquisitions in the name of 'eminent domain' or 'national interest' has further exacerbated the situation between the landless and the Scheduled Tribes, as a number of studies and experiences from the ground clearly suggest that STs outnumber other sectors of the society as far as displacement is concerned. Inadequate transparency, lack of accountability of officials and limited reach of those displaced led to land grabs.

In comparison to Schedule V areas, the areas under Schedule VI were provided with greater autonomy. Schedule VI areas were vested with powers to legislate, execute and adjudicate. However, the reality is that democracy has not been able to reach the grassroots and governance has been in the hands of the elite and feudal lords.

According to a World Bank report (2007), in the northeastern states, "there is a strong tendency



“Dravidians, the original inhabitants of the country, were pushed down south and farther into the forest areas during the Aryan invasion.”

towards center-led activities through the Forest Act 2006, while more informal community customs and traditions are dying out, thus diminishing options for enhancing livelihoods in the Northeast in a strategic and sustainable manner.”

Continuous Erosion of Tribal Land Rights

Dravidians, the original inhabitants of the country, were pushed down south and farther into the forest areas during the Aryan invasion. The process of usurpation of land rights was further exacerbated by the British colonizers, who enacted laws to manage and control the forests and natural resources.

Later, through various legal enactments such as the Forest Act and Land Acquisition Act, the Adivasis were made encroachers on their land

during pre-independence, and this continued to the post-independence period. The root of the problem is that the right to property is not a fundamental right under the current Indian Constitution. It is now a legal right under Article 300A of the Constitution that no person shall be deprived of property save by authority of law. Under Section 4(i) of the Panchayat Extension to the Schedule Areas (PESA), the authority of law for acquisition of tribal land was provided. The government, having the eminent domain over resources, made acquisition of lands of tribals easy and convenient, which slowly and gradually led to massive land grabs for various purposes such as consolidation of national parks, construction of dams, and mining.

Table 3 compares landholdings of tribals with all India figures for different categories of landholdings.

As far as STs are concerned, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan account for 70 % of the tribal population in rural India. Landlessness among ST households is observed mainly in Arunachal Pradesh (11.2%), Kerala (14.3%) and Mizoram (19.5%). While among Scheduled Castes (SCs), it is high in Arunachal Pradesh (73.1%) and Lakshadweep (100%).

**Table 3. Number and Area of Operation Holdings in India in 2005-06
(Number in thousands) (Area in thousand hectares)**

Category of Holding	ST		All	
	Number and %	Area and %	Number and %	Area and %
Marginal	4,586.16 (49.08)	2,221.51 (14.35)	83,694.37 (64.77)	32,025.97 (20.23)
Small	2,400.31 (25.69)	3,345.80 (21.61)	23,929.63 (18.52)	33,100.79 (20.91)
Semi-medium	1,550.05 (16.59)	4,145.78 (26.77)	14,127.12 (10.93)	37,897.69 (23.94)
Medium	704.03 (7.53)	4,059.72 (26.22)	6,375.34 (4.93)	36,583.40 (23.11)
Large	104.50 (1.12)	1,713.12 (11.06)	1,095.78 (0.85)	18,715.13 (11.82)
All size classes	9,345.05 (100.0)	15,485.93 (100.0)	129,222.24 (100.0)	158,322.98 (100.0)



Causal factors in Post-Independence period that led to further deterioration

Consolidation of forests

Government ownership of forest areas in India increased from 68.96 million hectares (ha) in 1961 to 76.84 million ha in 2001. 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.

This caused huge unrest and disquiet among those who lost their rights, resources or were relocated, leading to mass movements and resistance to government laws and policies. 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 and the minimizing of administrative affairs following the Bhuria Committee Report.⁵

An important change that happened was deletion of Right to Property (Article 19F) as the fundamental right⁶ guaranteed by the Constitution of India in 1978. The reason for this was to ensure land reforms by providing for re-distribution of land holdings under larger population from a few zamindars (land owners). The rights and titles eroded due to notification and consolidation of forests remained unaddressed and owners and settlers of the forest became illegal settlers despite recognition of the same by the central government.⁷

⁵ To make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd Amendment Act, 1992 to Scheduled Areas.

⁶ Forty Fourth Amendment to the Constitution of India.

⁷ Rishu and Aman, 2013 (Under Publication)

Trends

An in-depth study of the situation suggests a mixed trend. The efforts of land grab by corporations to establish industrial complexes and mining operations are increasing. Due to the rise in the growth rate of the urban population, the demand for additional land for housing and other infrastructure has compelled the government to acquire land from surrounding rural areas.

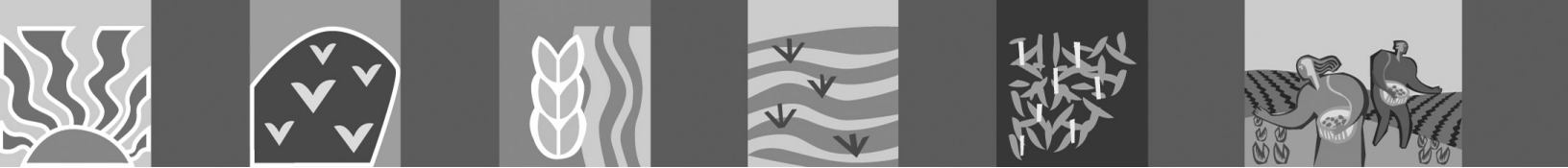
At the same time, due to enhanced levels of awareness about land rights among IPs and other forest dwellers, the demand for land titles and speedy implementation of the Forest Rights Act of 2006 has increased and government is under pressure to follow up the memorandum of understanding (MoU) signed by the Minister for Rural Development with participants of the Jan Satyagraha (non-violent footmarch).

Jan Satyagraha has been a unique experiment by Ekta Parishad with the support of other civil society organizations, including AVARD, in highlighting the issue of land rights of IPs, which received widespread media coverage.

On the whole, the situation seems to be optimistic and is expected to lead to positive outcomes in time.

Legal Framework Related to Indigenous People's Land Rights

Over the years, international development agencies have recognized that development has caused negative impact on indigenous peoples across Asia and Pacific in great measure. The challenge of preventing further impoverishment resulting from environmental degradation and involuntary resettlement, acknowledging the special needs and respecting the rights of IPs



“The International Labour Organization (ILO) Convention 169 is the only binding international treaty dealing with indigenous peoples and land rights.”

and other vulnerable groups, and improving the policies and building the capacity of District Management Committees (DMCs) to manage these impacts is acute (ADB,2009). The Paris Declaration on Aid Effectiveness in 2005 established global commitments for donors and partner countries to improve the management and effectiveness of aid in reducing poverty and inequality, increasing growth, building capacity, and accelerating achievement of Millennium Development Goals. These principles provide a powerful impetus for donors to help foster better integration of social and environmental considerations into developing country partners’ strategies and priorities and to continue and intensify their efforts in relation to harmonizing approaches toward addressing social and environmental issues. The Accra Agenda for Action, adopted in 2008, reaffirmed these principles and further emphasized the importance of country systems.

The International Labour Organization (ILO) Convention 169 is the only binding international treaty dealing with indigenous peoples and land rights. The Convention requires that parties to it respect the cultures and institutions of indigenous and tribal peoples, their right to continued existence within their national societies, their

right to establish their own institutions and to determine the path of their own development.

The Legal Status of Indigenous Peoples in International Law

Colonialism and later the process of independence have been seen as a universal reason across the globe for the limited recognition of indigenous political and territorial rights. The oppressive history has followed another painful regime of development leading to displacement and uprooting of natives. Therefore two streams of development in international law for indigenous people have been undertaken. Firstly, at the level of the United Nations (UN) and ILO, both of which have a long history of developing the definition of “what and who” constitutes indigenous peoples. However, through ILO Convention No. 169 and the draft UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the two main international commitments on the issue of indigenous peoples, the needs for addressing rights and recognition of indigenous peoples have been brought to the forefront.

ILO Convention 169 of 1989 (a revised version of ILO Convention 107 of 1957) defined indigenous peoples as “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (ILO Convention 169, Part I, Article 1a).

On the other hand, consensus on the definition was sought through a series of UN workshops



and delegations. A Voluntary Fund for Indigenous Peoples was established to facilitate the attendance of indigenous delegations. Reports started flowing in from all quarters regarding the role of international financial institutions in financing projects leading to uprooting of indigenous populations. Therefore, in 1991, the World Bank revised its concerns in this area and issued Operational Directive 4.20 on 'Indigenous Peoples.'

The Durban Accord

The Durban Accord is a global commitment for people and Earth's Protected Areas. The IUCN World Congress on Protected Areas, or IUCN World Parks Congress as it has become known, is a 10 yearly event, which provides the major global forum for setting the agenda for protected areas.

The Accord recognizes the contribution of local communities and indigenous people in conservation despite inadequate recognition given to their efforts, protection and support (IUCN, 2005).

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples provides new international guidelines on the right to formulate strategies for the development or use of indigenous peoples' lands and resources. The Declaration also provides guidance with regard to protected areas.

The Rio Declaration, Agenda 21 and the Convention on Biological Diversity all recognize the unique relationship indigenous peoples have with their traditional lands and establish international legal standards that go toward

protecting indigenous peoples' rights to their traditional knowledge and practices in the area of environmental management and conservation.

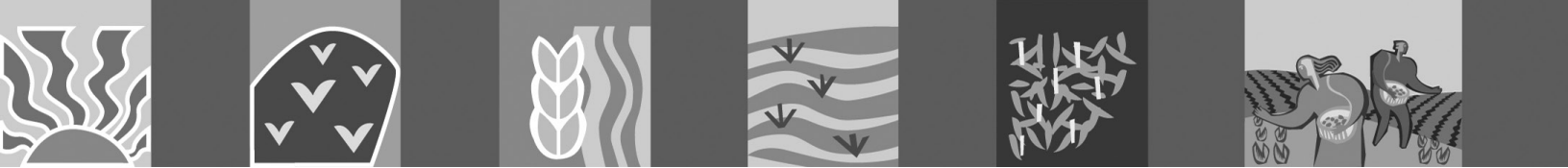
Convention on Biological Diversity (CBD)

The CBD is one of the most widely adopted international agreements providing recognition of legal rights to the indigenous communities. In India, the Biological Diversity Act of 2002 was enacted but implementation has barely been able to take hold. At the international level, the International Indigenous Forum on Biodiversity (IIFB) ensured participation of indigenous people at various forums.

India is a signatory to the Earth Charter (Rio Declaration), a non-legally binding instrument, which has 27 principles. Principle 10 of the Declaration commits a country towards ensuring participation of concerned citizens in environmental issues and access to judicial and administrative proceedings, while Principles 22 and 23 commit a country's efforts towards ensuring participation of indigenous people and other local communities in sustainable management and protection of natural resources of people under oppression, domination and occupation respectively.

UN Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC) adopted in 1992 is aimed at stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Since 1988, indigenous peoples have been participating at UNFCCC Conferences of the Parties (COP) and have released a number of statements and declarations expressing their



“Indigenous women are vulnerable to sexual violence. In areas of conflict, indigenous women often fall victim to abuse by members of the military and are subject to sexual enslavement, forced pregnancy, gang-rapes, sexual mutilation and killing.”

concerns on the implications of climate change policies on their livelihoods and cultures (UN-ESA, 2009).

Translating International Commitments into Reality

Earlier, only in Schedule areas did tribals have ownership over the forest and natural resources. This anomaly has been corrected to a great extent through the Forest Rights Act of 2006. In Schedule VI areas, the rights over resources and their ownership were granted to indigenous peoples. But the Supreme Court of India took away all such rights (T. N. Godavarman vs. Union of India, 1996). Therefore, on one hand the sovereign rights of the state have been asserted. At the same time, through the Rio Declaration, the rights of the indigenous people and the approach to judiciary and transparency had to be ensured. However, the sovereign right over the resources was only seen in the context of outside claims rather than the claims of its own natives over the resources. This selective asserting of rights of the state while ignoring treaties on autonomy of indigenous peoples smells of a double standard.

Indigenous women are vulnerable to sexual violence. In areas of conflict, indigenous women often fall victim to abuse by members of the military and are subject to sexual enslavement, forced pregnancy, gang-rapes, sexual mutilation and killing. “In times of crises, indigenous women are often forced to leave their communities and search for shelters and jobs elsewhere, which results in cultural and spiritual isolation as well as their exposure to sexual trafficking and prostitution and exploitation as domestic workers” (International Women’s Forum, 2006:48).

Article 256 of the Constitution of India empowers the government to make laws to honor commitments made at the international level. However, since most of the international commitments are not translated in the rule of the land, they cannot be judicially challenged. Implementation of most of the non-legally binding instruments also remains largely on paper.

Dams and power plants are being constructed with alarming regularity without a thought being given to sustainable development. Professionals and contractors are reaping the ‘benefits’ – urbanities far away in Delhi get electricity, politicians get kickbacks and applause for the clearance of projects. Organizations and communities who protest for their rights are considered ‘anti-national.’

National laws, policies, programs, structures, and mechanisms

Provision under Article 275 of the Constitution of India

This section provides for grants to certain states that may be charged to the Consolidated Fund of India as grants-in-aid each year, as decided by Parliament. The purpose is to meet the



costs of such schemes of development as may be undertaken by the State for the purpose of promoting the welfare of the scheduled tribes in that state or raising the level of administration of the scheduled areas therein to that of the rest of the areas of that state.

Tribal Advisory Council (TAC)

The Tribal Advisory Council (TAC) was provisioned to be formed in each state with Schedule V areas to provide assured assistance to the development of such areas. However, most of the TACs remained dysfunctional or were not formed at all.

The 73rd and 74th Amendmenst

After the 73rd and 74th Amendments, large-scale administrative and financial powers have been delegated to local bodies constituted all over the country except in the Sixth Schedule areas.

The Panchayat (Extension to the Scheduled Areas) Act, 1996 (The PESA Act, 1996)

The PESA Act of 1996 was initiated after the 73rd Amendment to extend decentralization to Schedule V areas. The Act empowered local village level Panchayats, referred to as Gram Panchayats.

The Civil Rights Act of 1956 and the SC and ST (Prevention of Atrocities) Act of 1989 provided for protection of members of SC and ST communities from non-members through provision of severe punishments. Land transfer from SC/ST citizens to non-SC/ST is not allowed.

Integrated Tribal Development Project (ITDPs)

ITDPs were initiated where the ST population in a block or cluster of blocks was more than 50%.

There are presently 194 ITDPs across the country.
Ministry of Tribal Affairs

In order to give more focused attention to the development of Scheduled Tribes, a separate Ministry of Tribal Affairs was constituted in October 1999. The new Ministry, carved out of the Ministry of Social Justice and Empowerment, is the nodal Ministry for overall policy, planning and coordination of programs and schemes for the development of Scheduled Tribes.

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006

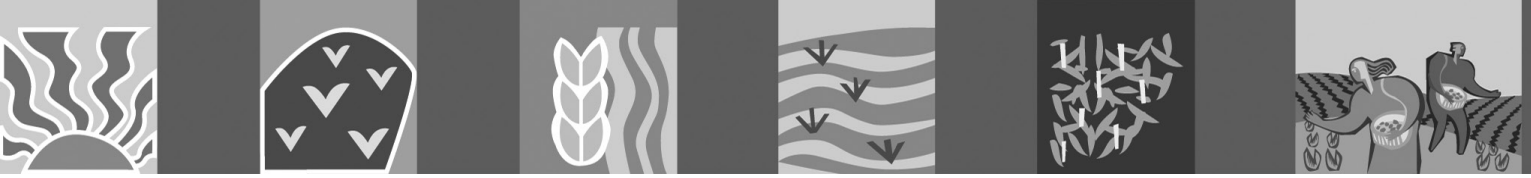
The Forest Rights Act (FRA) 2006 is a historical statutory measure undertaken to undo historical injustice done to tribal communities. As stated in the Act's Preamble, it is "to recognize and vest the forests rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests."

Assessment of Key Actors Promoting/ Impeding IPs' Land Rights

Government

The National Council for Land Reforms was formed in 2008 under the Chairmanship of the Prime Minister to look into unfinished tasks in land reforms.

The Constitution of India provides for special provisions for promoting economic and social development and protection against all forms of exploitation. A special provision of the Tribal Sub-Plan was adopted at the beginning of the Fifth Five Year Plan to ensure funds commitment



for the socio-economic development of tribal communities.

The Rehabilitation and Resettlement Bill, 2007 and The Land Acquisition (Amendment) Bill, 2007 have been merged and drafted into The Land Acquisition and Rehabilitation and Resettlement Bill, 2011 which has been tabled in Parliament. It

“Most autonomous councils have neither nurtured the village level bodies nor institutionalized intermediary bodies covering groups of villages...”

is expected to provide proper rehabilitation policy and packages that affect many tribals across the country.

Political Parties

Land being a contentious issue, no national political party wants to touch it. However, some regional political parties, like Jharkhan Mukti Morcha (JMM) in Jharkhand, include this issue in their agenda. Most of the parties are more along the welfare and development modes, and not in the rights mode.

Local Government

The Panchayati Raj Institutions (PRIs) cover as many as 29 subjects within their jurisdiction. Compared with the Autonomous District Councils (ADCs), which are often at the state government’s mercy for funds, the Panchayat bodies are better

placed on developmental issues both in terms of range of functions and also on the financial front. They are entitled to get funds from the state as well as central government under various schemes. Further, in order to prevent the Panchayat bodies from falling into financial starvation, a Financial Commission has been established.

Women representation is an important contrast between the two laws. Since the tribal traditions do not normally recognize the role of women in social politics, the autonomous councils as well as local bodies in the Sixth Schedule areas are male dominated; women representatives are seen as exceptions rather than the rule. Here, the PRI system scores very high and is far more progressive.

Another contrasting issue is the continuity of the institutions. In case of dissolution of the Panchayat bodies, they must be reconstituted within a period of six months from the date of their dissolution. For district councils, the period for fresh elections is up to 12 months subject to the approval of the state legislature.

Most autonomous councils have neither nurtured the village level bodies nor institutionalized intermediary bodies covering groups of villages, but instead ended up keeping all power to themselves. This concentration of power in the councils has ultimately negated the democratic voice of the ordinary poor tribals and distorted the idea of grass-roots democracy due to dictatorship by a few top council members. This has obviously made corruption and inefficiency widespread in the councils.

Thus, the Sixth Schedule setup did protect land and local traditions of the tribes but could not institutionalize grass-roots or participatory



democracy. Coupled with financial dependency and corruption, this badly hampered the developmental activities.

Donor Agencies and International Institutions

Donor agencies and international institutions have not much role in this sector. However, these organizations are helping in raising awareness and local leadership development through NGO partners. At times, institutions like the World Bank attach some conditions which are mainly directed towards rehabilitation of displaced households.

Private Sector

The private sector is rather involved in impeding the land rights of IPs by grabbing the land for mining and industrial purposes and also by adopting fraudulent means by greasing the palms of corrupt politicians and officials.

Civil Society

Civil society organizations, particularly NGOs like Ekta Parishad, have played a vital role in raising awareness about land rights and organizing people for negotiation with government agencies. Some independent land rights activists are also active in awareness generation and organization of the people in groups to fight for their rights.

Key Opportunities and Strategies to Advance IPs' Customary Rights

Opportunities

Existing provisions like The Panchayat (Extension to the Scheduled Areas) Act (PESA) 1996; the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006 in

its amended form, and the MoU signed by the Minister of Rural Development with Jan Satyagrahis, etc., provide ample scope and opportunities to build up pressure on government to expedite the process of implementation in the larger interest of IPs.

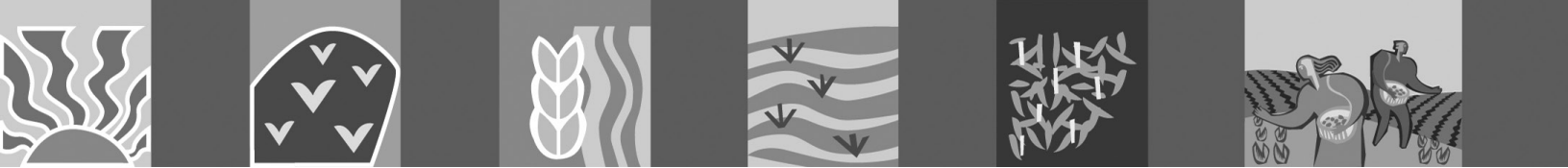
Strategies

- Engage with different political parties to include the issue of land rights of IPs in their manifestos;
- Organize IPs in groups in different linguistic regions along the line of Jan Satyagraha by Ekta Parishad;
- Continue advocacy efforts at Central and State levels for assignment of land titles to landless IPs under the existing Acts;
- Continue advocacy for protected areas for agriculture of IPs with individual and community rights on agriculture land being operated by them;
- Capacity-building of IPs/PRIs by needs-based training, local leadership development and media management to highlight the issue of land rights on a national scale and attract the attention of governments at Central and state levels with strong public opinion as support. ■

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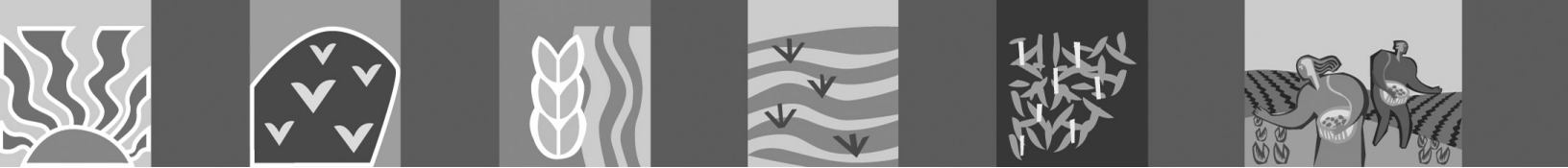
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Indonesia

The Indonesian term ‘*adat*’ means ‘custom’ or ‘tradition’ and brings forth thoughts of order and harmony.

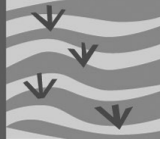
In recent years, however, the same term has become associated with activism, protest and violence, especially in the movement to champion the rights of indigenous peoples (Davidson et al., 2010).

The indigenous peoples’ movement in Indonesia emerged as a response for the accumulation of government negligence through the years, from the issuance of Forestry Basic Laws and Mining Basic Laws in 1967 to the policy on foreign capital investment in 1968 that drove many indigenous peoples away from their land.

In 1999, Aliansi Masyarakat Adat Nusantara (AMAN)/National Alliance of Indigenous Peoples emerged to defend the rights of marginalized indigenous peoples. AMAN stated that, “If the state does not recognize us, then we do not recognize the state” (AMAN, 1999 as cited in Davidson and Henley, 2007).

The movement continues to gather steam, especially following the victory of AMAN and two other IP groups against the use of the phrase ‘customary forest’ – referring to the ancestral forests of indigenous peoples – as ‘state forest’

Condensed from *Scoping Study of Indonesia Indigenous Peoples* by Jaringan Kerja Pemetaan Partisipatif/ Network for Participatory Mapping (JKPP). For more details of the study, contact: erwin_tea@yahoo.com or jkpp@indo.net.id.



that gives the national government superior authority over the land.

More significant victories followed with the House of Representatives now preparing the draft of the Act on the Recognition and Protection of IPs Rights.

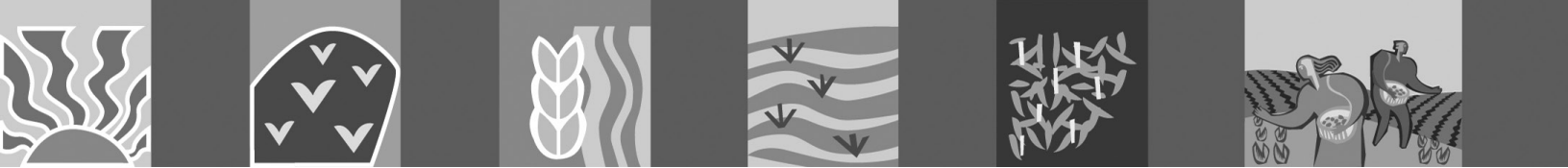
But despite these emerging opportunities, indigenous peoples of Indonesia are still struggling to secure full legal recognition.

JKPP notes that, as of December 2013, there were 5,263,058.28 hectares (ha) of participatory mapped area. Of the number, 4,973,711.79 ha are under customary rights. Further, if the data of customary land are overlapped with forest area map data, around 81% or 4,050,231.18 ha overlapped with forest area and around 2,637,953.94 ha overlapped with land permits (concessions, mining, palm oil, and industrial tree forest).



Indigenous people of the Kapuas Hulu in West Kalimantan.

Photo by JKPP.



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. Thus the struggle to get holistic recognition for indigenous peoples continues and to overcome the challenges will require a great deal of time and effective strategies.

Status of IP lands and resource rights

"This earth is enough to feed any number of people as long as it is fairly managed, but it will never be enough to feed two or three greedy people."

This quote describes the feelings of the Kasepuhan Ciptagelar indigenous peoples in West Java about the unabated exploitation of natural resources. (Suganda, 2009).

For indigenous people, abundant natural resources are God's great gifts to any generation and there should not be any shortage if only humans would take care of them properly. Indigenous peoples know how to do just that due to their belief that there must be a harmonious relationship between man and nature.

The Kasepuhan peoples, for example, do not know the term "production forest," which then makes wood a commodity. For them, a forest is a part of life. They take care of it because it balances the climate; it is home to animals and a source of food and water.

The Haratai South Kalimantan indigenous peoples share the same belief and so do the Guguk rural communities in Jambi, Sumatra. They protect the forest because they believe it should be kept healthy for their children and grandchildren.

Their 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.

Practices of indigenous peoples of Indonesia vary but one thing they have in common is their close relationship with Mother Earth. They have taken care of nature's gifts for generations so they can pass on what they have to their children and grandchildren. Sustainability has always been part of their culture, long before environmental activities and the state had even defined the concept of conservation.

Legal framework related to indigenous peoples' land rights

International laws

ILO Convention 169

ILO Convention 169 is a multilateral convention to address indigenous people issues and it is supposed to be legally binding in countries such as Indonesia that have ratified it.

Among its most significant provisions is Article 5 that states that the Convention respects indigenous/indigenous peoples institutions. It said, for example, that "social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals."

Article 6, meanwhile, states that the government should consult with indigenous peoples through



their representatives regarding policies that affect them.

To apply the provision, governments shall, among other directives under this article, “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.”

Then there is Article 7 that states that indigenous peoples “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.”

Also essential is Article 8 which stipulates that “in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.”

UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is an international human rights instrument that set the minimum standard to guarantee indigenous peoples’ collective rights.

In 2007, the UN General Assembly adopted the Declaration and, in the same year, Indonesia ratified the UNDRIP as well. The adoption was the result of years of discussion and negotiation between the government and indigenous people.

The declaration emphasized that indigenous people are equal with other people, despite

“During the Dutch colonial period, indigenous peoples’ rights in Indonesia were actually recognized.”

the difference in rights recognition, in seeing themselves, and in the way of obtaining respect.

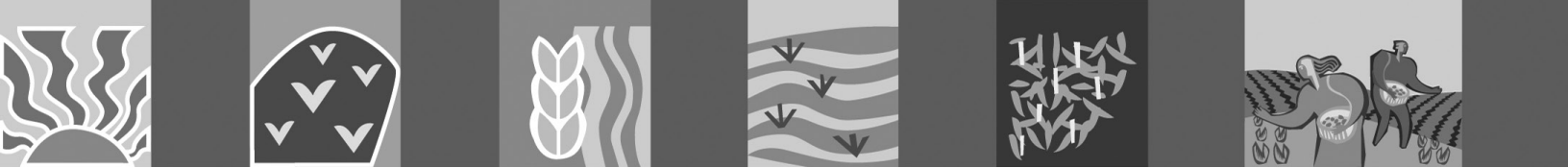
The UN Declaration includes 24 preamble paragraphs and 46 articles that mention and explain international human rights of indigenous peoples. Some are vital in relation to land tenure, area and resources; that indigenous people should not be detached from their land and area; and that the State should provide legal recognition and protection over IPs’ land, area and resources.

The recognition must be implemented with full respect to custom, tradition and land tenure of the indigenous people. Also that indigenous people and each individual own the right not to be a victim of culture annihilation and destruction.

The Declaration is not a legally binding instrument, but it emphasizes the rights in international human rights agreements. Most UN member countries agreed to the content of the Declaration. Thus, the people of a state can employ the Declaration to request the government to fulfill its obligation in recognizing and protecting indigenous peoples’ rights as stated in the articles.

National laws, policies, programs, structures, and mechanisms

During the Dutch colonial period, indigenous peoples’ rights in Indonesia were actually recognized. In 1829, Article 11 of the *Algemeene*



“Recognition of indigenous peoples’ rights over the land was severely eroded by policies on foreign and local investment laid down in the late 1960s to accelerate economic growth in Indonesia.”

Bepalingen van Wetgeving (AB) said that customary law would be followed, along with institutions and community customs, as long as these were not contrary to the general principles of justice.

The Dutch East Indies government also regulated land rights, initially restricting the leasing of lands belong to indigenous peoples.

However, after the enactment of *Agrarische Wet* on April 9, 1870, investors from the Netherlands forced the government to take all the lands. Eventually, the Dutch government imposed *Agrarische Besluit* on July 20, 1870, which meant that customary land rights or *hak ulayat* of indigenous peoples were no longer in place and automatically owned by the government.

The passage of the Basic Agrarian Law (BAL) in 1960 provided some relief because it recognized the existence of indigenous communities, particularly in Articles 3 and 5.

Article 3 describes the rights of indigenous and tribal peoples over customary land, while Article 5 describes 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 is recognition of the ownership and control over customary lands by indigenous communities and that third parties should secure *recognitie* – or the temporary transfer of customary land rights – each time they use customary lands.

Unfortunately, the tenure system as written in the BAL is very different from the tenure systems that exist in indigenous peoples’ communities. BAL recognizes many kinds of rights except communal rights on *hak ulayat*.

Recognition of indigenous peoples’ rights over the land was severely eroded by policies on foreign and local investment laid down in the late 1960s to accelerate economic growth in Indonesia. Following the issuance of these policies, the Indonesian government under the New Order regime issued two prominent sectoral policies with grave effects on indigenous peoples and their right to land.

One of these is the *Undang-undang Pokok Kehutanan (UUPK)* or Basic Forestry Law (BFL) No. 5 of 1967 that defined 143 million hectares (ha) of land or about 70% of Indonesia’s land as state forests and that all of the resources therein belong to the state.

Also issued was Government Regulation No. 21 of 1970 on Forest Concessions, which sought to regulate the rights of indigenous communities to take forest products so as not to interfere with forest concessions.

Another major policy issuance was the Basic Mining Law No. 11 of 1967, which considered all excavations in Indonesia as legal and that the



resources belong to Indonesia, thus the state can use these for the people's welfare. Those who own land on which a mining concession was given would also have to allow the mining activity but would be entitled to compensation. This provision thus clearly states that the use of the land must be allowed even though the land has been occupied and used by indigenous peoples.

The government replaced the BFL of 1967 with a new forestry law in 1999 that stipulated new terms, 'state forest' and 'community forest.' The law also created a category of customary law although the definition was controversial. It said that "customary forest was state forest in indigenous and tribal peoples' territory," which means that customary forests remained controlled by the state.

This definition was challenged in March 2012, following the court petition of AMAN, the Indigenous People Union of *Kanagarian Kuntu, Kampar* district, along with the Indigenous People Union of *Kesepuhan Cisitu, Lebak Banten* to review Law No. 41 on Forestry, which provides that all forests within Indonesia and their resources belong to the state.

The test application involved two issues – the existence of customary forests and the recognition of the existence of indigenous peoples. The Constitutional Court ruled, among others, that while the state has full authority over state forest management, its control over customary forests is limited. Importantly, there was confirmation that indigenous peoples are rights owners. In essence, the Constitutional Court emphasized that indigenous peoples indeed have rights and obligations.

Trends

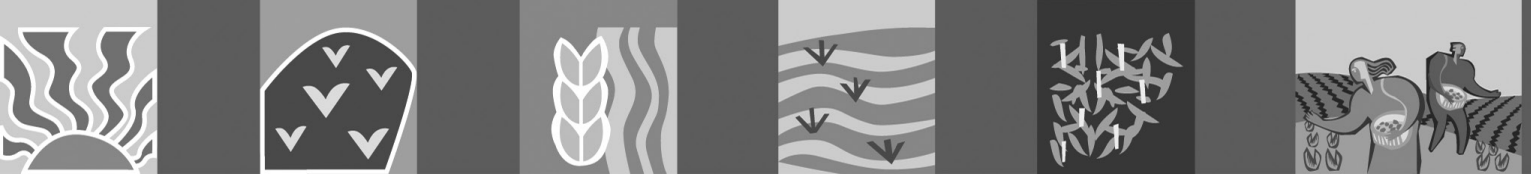
The process of marginalizing Indonesia's indigenous peoples started as early as 1870 when the Dutch government imposed *Agrarische Besluit*, stating that *hak ulayat* of indigenous peoples over their lands were no longer in place in favor of the government.

Accelerating the process were government policies that favored intense agricultural expansion and unabated entry of foreign investors that were attracted to Indonesia's vast land and natural resources, a good portion of which, however, are in lands occupied by indigenous peoples.

The years 1950 to 1975, for example, saw the expansion of agriculture development to forest lands to increase national output. Logging concession permits were likewise granted to companies to further boost the national economy. This expansion picked up pace after the Asian economic crisis of 1997/1998 that saw large-scale land grabbing or the taking over of land – including customary land – for commercial interests such as the establishment of extensive palm oil plantations.

The government facilitated the process by allowing the leasing of state lands to foreign corporations. Unfortunately for the indigenous peoples, part of the land that was dedicated to palm oil plantation expansion was on their land. Palm oil is considered one of Indonesia's major export products.

Based on the data on national plantation areas, the area dedicated to national palm oil plantations as of 2000 was 4,158,079 ha (MoA 2009). In 2012, this increased to 9,560,000 ha (Palm Plantations, 2012).



Based on the allocation of forest use for production in 2010, 97.5% or about 34.3 million ha are managed by private companies. The remaining 2%, or about 678,414 ha, are managed by the community (Resosudarmo et al., 2012).

Of the concession areas for large plantations throughout Indonesia, palm oil plantations accounted for 79% as of 2008 or about 4.5 million ha. Of this total area for palm plantations, 61% are owned by large estates with the rest held by farmer-households (Booth, et. al., 2012).

This unequal distribution is one cause of lingering poverty in Indonesia. Clearly, such government policies that provide control of a large portion of resources by a select few is a major cause of agrarian conflicts today and the continued marginalization of indigenous peoples.

Mining is another sector that has trampled on indigenous peoples' rights. Since 2000, mining activities in Indonesia have increased rapidly, with the contribution of coal and minerals to total government revenue doubling from 3% in 2000 to 6% in 2009 (Resosudarmo, 2012).

In 2007, Indonesia became the world's largest producer and exporter of coal. The sector quickly filled government coffers but unfortunately at the expense of increasing conflict over land (US Commercial services, 2007 as cited in Resosudarmo 2012).

The pace of growth of large-scale agricultural production will likely accelerate even more with the continued implementation of the Master Plan for the Acceleration and Expansion of the Indonesian Economy (MP3EI), issued in 2011 by the Coordinating Minister of the Economy.

The MP3EI is supposed to be the blueprint for the Indonesian economy from 2011 to 2025, but is also regarded as a systemic process of large-scale land grabbing with the state as a principal facilitator.

This policy is described as one way of accelerating Indonesia's economic growth. But for indigenous peoples, MP3EI is an acceleration of the systematic exclusion process that has long hounded them.

Key actors who promote/ impede IPs' land rights

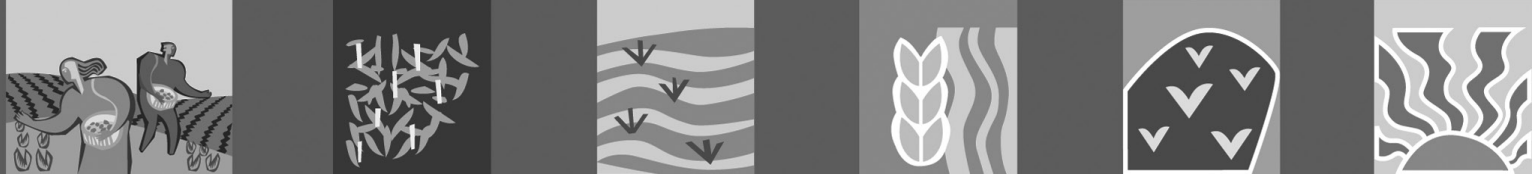
There are many government agencies involved in land policy in Indonesia.

Among these is the Ministry of Forestry, which, however, has declared that it would not move on indigenous people's concerns if there is no response or demand from the region or province.

The Ministry also requires local regulations or decrees from the Governor or Regents on the status of indigenous territories and indigenous people's including the official map delineating the coverage of so-called indigenous territories.

Then there is the Ministry of the Interior, which if it acts positively on concerns of indigenous peoples, can actually assign customary territory.

The Ministry of Environment initiated the implementation of the Indigenous and Tribal Peoples' strengthening through: an inventory of Indigenous and Tribal Peoples, determination of indigenous and tribal peoples and environmental wisdom owned, and then strengthening of indigenous and tribal peoples' capacity through natural resource-based creative businesses.



Key opportunities and strategies to advance indigenous peoples' customary rights

The decision of the Constitutional Court to remove the phrase “customary forest as state forest” from the Forestry Act No. 41/1999 and replace it with “customary forest is forest located inside indigenous peoples’ area” is a big victory in the campaign to get indigenous peoples’ land rights recognized. Such a decision provides some room for indigenous peoples to get recognition for their rights over the land where they live and with which they have close cultural ties.

Realizing that more has to be done, the IP community continues to work hard for the passage of an Act that recognizes and protects IP rights.

Also providing a ray of hope is the Indonesian Constitutional Court Decision No.45/PUU-IX/2011 on forest area. It pushed the government to accelerate the forest area establishment processes.

Likewise cheered was the issuance of the One Map Policy to come up with integrated spatial data from different stakeholders including indigenous communities. Through this policy, community data will be included in the base maps to be integrated into the One Map.

In line with this policy, indigenous peoples and AMAN in particular, together with JKPP, stepped up participatory mapping in IP areas.

JKPP notes that, as of December 2013, the participatory mapped area covered 5,263,058.28 ha. Of the number, 4,973,711.79 ha are under customary right. Further, if the data of customary land are overlapped with forest area map data,

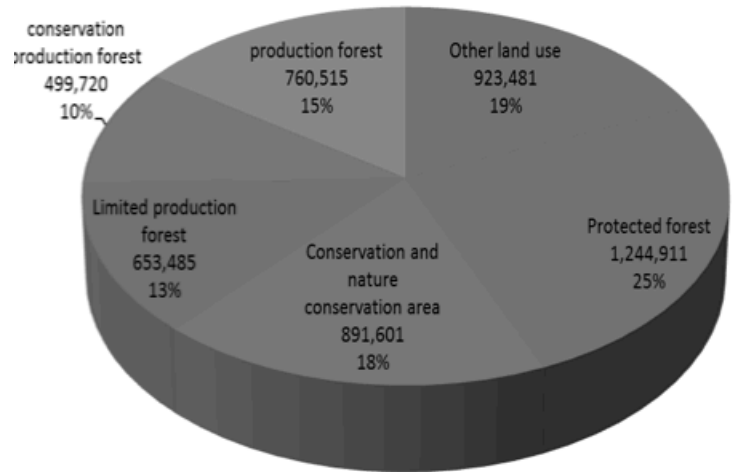


Figure 1. Land uses within the indigenous territory (JKPP.2013)

approximately 81% or 4,050,231.18 ha forest area are located inside customary land.

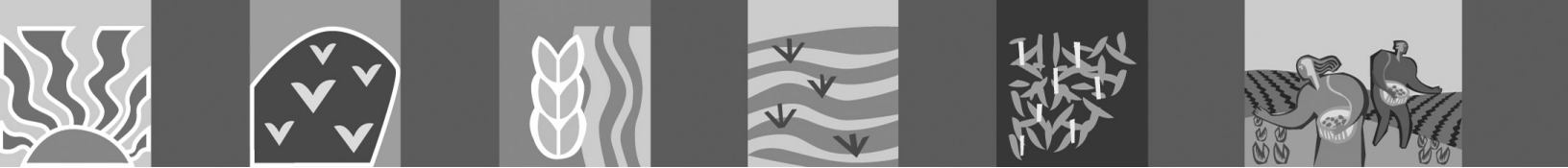
It means that only 19% of the area is left for the IPs to control as their customary areas.

It is also worth noting that close to half of the customary area is covered by permits given to the forestry, mining and palm oil sectors (Widodo, 2014).

The major challenge left following the spread and acceleration of participatory mapping is the recognition of those maps by the government.

Another problem still faced today in the establishment of forest areas and in solving the overlap in Land Cultivation Rights Titles is the need for matching spatial information that can be the common basis for argument of the different stakeholders.

There is also difficulty in getting the participatory mapping of customary areas inputted in the *Jaringan Data Spasial Nasional* (JSDN) or the National Spatial Data Network. Thus, to accelerate the process of recognizing customary



areas of indigenous peoples, Presidential Decree No.85/2007 that paved the way for the JSDN should be withdrawn and replaced with the Geospatial Information Act No. 4/2011.

This Geospatial Information Act states that people have the right to produce thematic maps or geospatial information. In this way, a customary area participatory map can be taken as a thematic map and thus becomes a vital 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 Area (ICCAs). These ICCAs are composed of IP organizations, community-based organizations and civil organizations that support indigenous communities. They get support from the ICCA Consortium, an international association dedicated to promoting the appropriate recognition and support to ICCAs.

During a 2013 workshop in East Kalimantan, the importance of winning legal recognition of the existence of indigenous peoples and their areas was reiterated. Thus, every requirement and procedure to obtain it must be secured.

Such legal recognition is encouraged in the form of provincial government regulations, forest management certifications, village/*kampung* regulations and decision letters from the Ministry of Forestry.

It was also agreed that participatory mapping/documentation should be continued to accelerate recognition, especially on the issue of people-based natural resources.

Meanwhile, efforts to strengthen areas managed by indigenous peoples in Indonesia have emerged

in the last decade in the political process of natural resources management.

One of them is the AMAN initiative to encourage the development of regulation on IP management areas at the national and regional levels.

At the national level, the Indonesian House of Representatives is preparing the draft Act on Recognition and Protection of IP Rights. The draft cannot be separated from the political efforts of IPs in the whole country to attain the constitutional recognition and protection that have not been provided by the government.

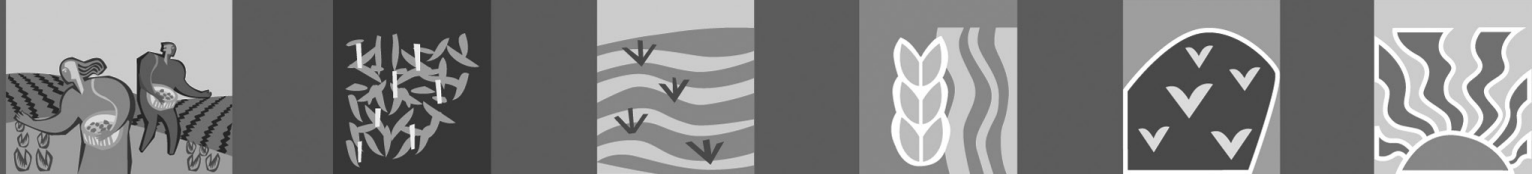
Parallel efforts for regulation and recognition of indigenous peoples' land rights are also happening at the regional level.

Lebak, Kampar, Malinau Regency in North Kalimantan Province have taken initiatives to give recognition and protection to indigenous peoples.

The Malinau Regency, for example, has issued a regional regulation to legalize IPs' areas. Through the Malinau Regional House of Representatives, IPs Groups and AMAN's initiatives, Regional Regulation No.10/2012 on Recognition and Protection of IPs Rights in Malinau Regency was issued at the end of 2012.

The Regional Regulation contains:

1. the principle in recognizing and protecting IPs' rights
2. instituting the position of IPs and their rights of origin
3. IPs' rights over land, area and resources
4. rights in development, spirituality and culture, environment, autonomy, and rights to exercise their customary law and court



5. the process and form of legal recognition for IPs started from the IP identification and verification process, including their rights, with the stakeholders who assist the process ensuring that there are recognition and protection procedures that promote IPs
6. the form of government responsibility in developing and protecting IP existence, the rights fulfillment and the strengthening of IPs identity, assistance for IPs in defending their customary rights, both through litigation and non-litigation processes, and
7. government support in the form of facilities and funding for the efforts to recognize and protect customary rights.

To strengthen the regional regulation on the Protection of IPs Rights, AMAN has proposed two regional regulation drafts to the Malinau Regency House of Representative, again as part of the effort to engage government institutions to officially recognize and advance the rights of indigenous peoples.

Similar efforts can be replicated in other local governments to contribute to the fight for recognition of indigenous peoples' rights over their land. ■

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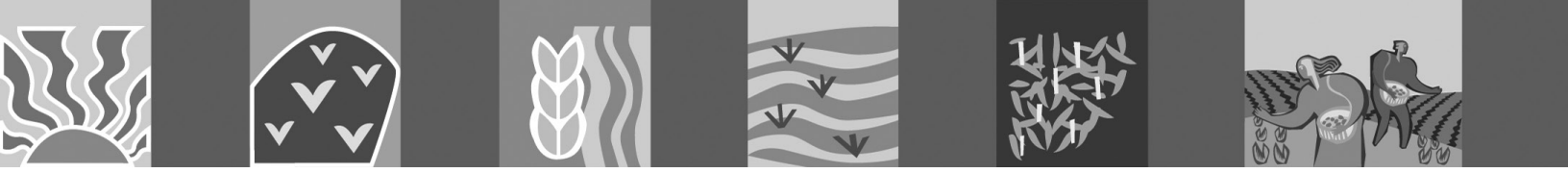
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For the complete list of references, please contact the authors of this study as indicated at the beginning of this article.



Nepal

Condensed from the *Study on Status of Indigenous Peoples' Land and Resource Rights* by the National NGO Federation of Nepal. For more details of the study, contact: info@ngofederation.org.

Nepal is a country of rich ethnic, linguistic, religious, cultural and geographical diversity. Based on the 2011 census, there are 125 different caste groups in Nepal. Out of these, 59 groups belong to IPs as categorized by Nepal Federation of Nationalities (NEFEN).



Tamang indigenous people in Nuwakot District.
Photo by CSRC



IPs in Nepal can be divided into two distinct regional groups: Hill IPs and Terai IPs.

Many indigenous communities, notably the Majhi, Bote, Musahar, Bankariya and others who lived in and around protected areas (national parks, wildlife reserves, buffer zones and conservation areas) have been displaced and have now become landless and deprived of their traditional occupations.

Access of indigenous communities to forests, rivers and wetlands (fishing, watering of domestic cattle), and farming and foraging lands – that fall within the jurisdiction of protected areas (PAs) – has been restricted and curtailed in Nepal.

The government of Nepal does not recognize indigenous territories or community ownership of land. Nearly all forests and grasslands have been nationalized in the past half-century; none have been restored to community ownership.

Customary systems of collective management of land, including forest and rangeland commons, are not recognized in protected areas or the national forest. Indigenous peoples of the Hills and the Terai regions, including Inner Terai, have lost their traditional political system, and with it many aspects of the traditional social structure.

For example, the Tharus (indigenous peoples of the southern plains of Nepal) and other indigenous peoples of the Terai lost control over their ancestral land after the eradication of malaria in the early 1950s. They also lost their traditional social and political structure with the introduction of the autocratic party-less Panchayat system in 1960.

The Limbus of the eastern Hills of Nepal were the last IPs to lose the Kipat, or the indigenous land

tenure system. The district profile of Kanchanpur reveals that the Tharu Chaudhary occupied 82% of the land some 50 years ago. Now they have only 16% (DDC profile).

The government of Nepal has a less than satisfactory track record of implementing international conventions protecting IP rights.

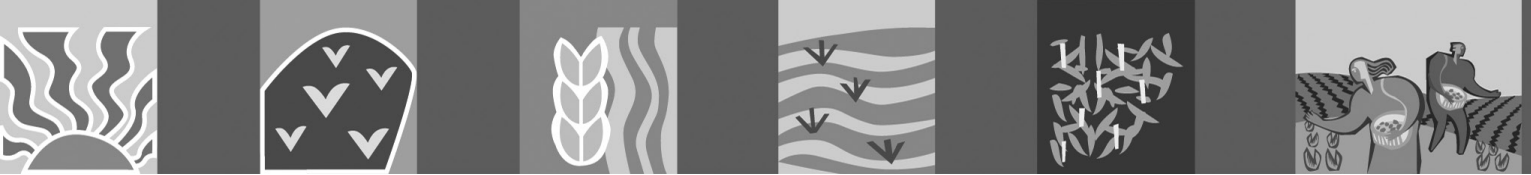
Nepal still needs to implement ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and change existing laws and policies to give due recognition to the indigenous peoples' traditions, customs and land tenure systems.

The existing legislative and policy frameworks for equitable sharing of costs and benefits concerning protected areas in Nepal are inadequate. Growing public protests and local movements in buffer zone areas of Nepal are evident to this end.

Although the government invited a Special Rapporteur on the rights and freedoms of indigenous peoples to Nepal, his recommendations, along with the programs and provisions of the Durban Declaration and Program of Action (DDPA), have yet to be fully implemented.

Nepal's protected areas (including buffer zones) were established by government decrees without free, prior and informed consent by resident indigenous peoples and local communities. The government of Nepal does not legally recognize "indigenous and community conserved areas" as a designation of terrestrial or riparian management or as part of the national protected area system.

As a result of legal and institutional dynamics, indigenous communities around the country have been historically deprived of the lands



“Lack of access to natural resources exacts a particularly heavy toll on those indigenous communities that rely on traditional hunting and gathering practices for subsistence.”

and territories they have traditionally occupied or used, often without compensation. A major turning point in this process was the 1964 Land Reform Act, which nationalized land and terminated traditional collective land tenure systems such as the Kipat.

Without protection for communal lands, individual land holdings were gradually lost due to the absence of titles or insecure titles, abuse and corruption, lack of access to the justice system, and indebtedness.

The high degree of illiteracy among many indigenous groups, in particular the Tharus in the Terai, made them vulnerable to abusive practices and deceit. Displacement was also a cause of land loss during the armed conflict.

Lack of access to natural resources exacts a particularly heavy toll on those indigenous communities that rely on traditional hunting and gathering practices for subsistence. Communities that have traditionally relied on the forests but were not in possession of titles, or lacked resources to compete with private contractors, have lost access to their traditional forest lands.

Many Raji people, for instance, were deprived of their access to herbal medicine, honey-gathering and fishing. The Chepangs, who are traditionally hunter-gatherers and practice a nomadic way of life in the forests, are now under threat of eviction from their ancestral lands.

A case in point is the Chitwan National Park, the subject of a communication sent by the previous mandate holder in 2007 (Anaya, 2008:61). The park was established in 1971 in areas traditionally used and inhabited by the Tharu, Majhi, Bote, Darai and other communities who were displaced to the park’s buffer zone. Even though these communities now enjoy limited access to fishing and other traditional occupations, many individuals displaced from the park area still remain landless and have not been provided alternative livelihoods nor compensation.

The existing benefit-sharing mechanisms are ineffective. A major obstacle in this regard seems to be the composition of the Chitwan Buffer Zone and District Development Committees, in which indigenous peoples are insufficiently represented. Maltreatment, arbitrary detention and sexual abuse of villagers by park rangers and military officials designated to patrol the park’s premises are commonplace. Lack of due process is further reported with regard to offenses dealt with by the Chief Warden, upon whom the National Park and Wildlife Conservation Act vests all law enforcement powers.

The mechanisms to compensate or consult indigenous communities are inadequate or non-existent. As a consequence of land loss and other systemic patterns of marginalization, indigenous people became bonded workers in private farms and wealthier households under the Kamaiya, Kamalari and other systems.



There are numbers of key actors and stakeholders that are directly involved in promoting/impeding IPs land rights in Nepal. They include: government, major political parties, local government, donor agencies and international institutions, the private sector, civil society organizations, NGOs, IP activists and IP-based organizations, and the media.

There are a number of international laws, treaties, and conventions that the government of Nepal has ratified which proffer the ground of enhanced opportunities in advancing the IPs' customary rights in Nepal. Besides this, national laws, acts, policies, programs, structures and mechanisms have also provided opportunities in enhancing IP customary rights.

Legal Framework of IPs' Land and Resource Rights

All indigenous peoples lost ownership and control over their ancestral lands by the 1960s because of the State's predatory land policies, such as Birta (the rulers gave ownership of land to individual Bahuns) and Jagir (land given in lieu of salary) and of the abolition of Kipat (communal/collective land ownership land tenure system) in Nepal (Regmi, 1976).

The land grant and assignment policy followed by the Gorkhali rulers and their descendants, Ranacracy and Panchayatcracy, favored particular classes and communities in the society to the exclusion of others. They tended to be concentrated for the most part among Brahmans, Chhetris and Thakuris, particularly from the western hill areas, who sustained the political authority of the new rulers.

Gurungs, Magars, Tamangs, and Newars generally did not receive such favors (Regmi, 1971). The

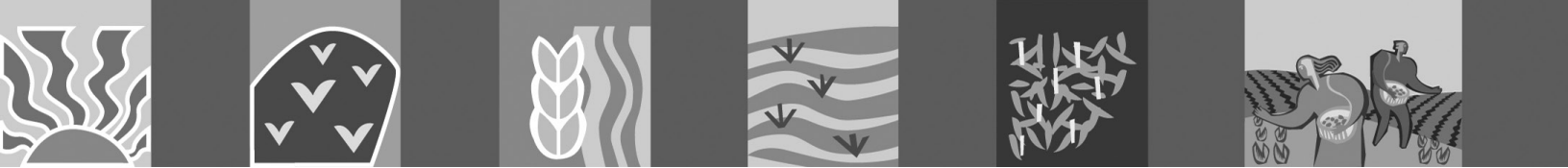
state made a feudal ruling class of landowners based on private property by confiscating the communal lands and forests of indigenous communities, whether they were in hill areas or Terai.

In 1964, a comprehensive series of land reform measures was announced by the government, with the intention of introducing programs such as land ceilings; confiscation of lands over and exceeding the land ceilings as well as uncultivated forest lands; tenancy rights; and the scrutiny of loans and credits in all areas of the Kingdom.

The Land Reform Act of 1964 became successful in converting the last Kipat tenures remaining with Limbus of eastern Nepal into Raikar tenure. At the end of 1968, the central government introduced an amendment to the Lands Act of 1964 which allowed for the sale of Kipat land and the assessment of these lands at the rates of tax equivalent to those prevalent on raikar. The Land Reform came and Kipat land became Raikar, as it seems that the rulers of Nepal were determined to abolish the Kipat system once and for all.

Indigenous Peoples began to lose their ancestral lands with the territorial unification of Nepal in 1769 through land tenure systems such as Birta and Jagir, and because of nationalization of the forests and the creation of national parks, wildlife reserves, protected land and community forest programs. Currently, personal landholding by indigenous peoples is lower than that of the dominant caste groups.

In Nepal all forests are national forests unless grown and registered as private forests. National forests include government-managed, community-managed, leasehold and religious forests. All forests inside PAs and those which



“Nepal’s natural resources, most importantly forest resources, began to deplete rapidly since the IPs lost control over these resources.”

have not been handed over as community forests (CFs), leasehold forests or religious forests are government-managed forests (GMFs). GMFs can be considered strictly protected and broadly managed inside the PA system.

Traditional rights to certain forest products (e.g. thatching grass in the Terai plains) are regulated for specified seasons under the strict supervision of PA staff. Indigenous communities inside and surrounding all PAs have suffered the loss of social and economic welfare and rights, including the loss of life.

Buffer zones around the PAs generally include human settlements, farmlands, common property lands and water bodies, as well as other natural capital upon which indigenous communities have traditionally depended for their livelihoods, cultural activities and recreation.

Basically two distinct types of exclusion due to community management of forests are clearly visible in Nepal. Firstly, the poor and socially disadvantaged within communities remain excluded from mainstream participation and decision-making, and from equitable sharing of benefits accruing from CF management. Landless forest-dependent people suffer the most under CF, as the local CF regulators generally tend not to recognize their traditional use rights (in the name

of the welfare of the majority in the community). Secondly, seasonal and remote traditional forest users are prohibited from exercising their traditional rights to forest use, and this has had serious negative impacts on livelihoods, especially among the high mountain communities. A third type of exclusion from traditional rights to forest use has been accelerated due to the rapid demographic changes caused by market injected urbanization.

Indigenous peoples of the Hills and the Terai regions, including Inner Terai, have lost their traditional political system and many parts and aspects of the traditional social structure.

Nepal’s natural resources, most importantly forest resources, began to deplete rapidly since the IPs lost control over these resources. In the absence of local alternatives, young people from some IPs groups are compelled to join foreign armed forces (India, Britain, Singapore, Brunei).

IP youths seek legal and illegal employment in the Middle East, North America, Europe and Southeast Asian countries.

Nepal’s laws and policies, in the beginning, seem to have granted the right to land, geographical areas and natural resources that fell under the Kipat system under indigenous peoples’ collective rights. After Acts, policies and rules started being formulated, especially with the objective of state management and conservation of forest and natural resources, communities started losing their collective right to develop, conserve, manage and control such natural resources.

In 1964/65, the promulgation of the Land Act seemed to have transferred the collective right over land to individual rights. Due to the then prevalent legal system depriving indigenous



peoples from their land and natural resources, they lagged behind in social, economic and cultural development. The situation is now gradually changing, with growing literacy levels and awareness in indigenous communities. The media is also gradually taking responsibility for voicing the concerns of civil society.

International law and standards on indigenous peoples' rights to lands, territories and resources are found in a myriad of international, regional and domestic instruments, decisions and policies.

Today, several international instruments recognize the strong ties that exist between indigenous peoples and their ancestral lands.

Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169)

The core concepts of the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169) are consultation, participation and self-management. These place a responsibility on governments to consult indigenous and tribal peoples and ensure that they fully participate at all levels of the decision-making processes that concern them.

ILO Convention No. 169 is a wide-ranging convention adopted by member states in Geneva in 1989 and intended to respect, protect and promote the rights of IPs. Implicit to it are a number of core principles. First is the understanding that IP rights are best protected by their participation at all levels of decision-making (Article 6). Second, is the principle of exercising control over development (Article 7).

The ILO Convention (Article 1) sees land as a fundamental criterion for the self-determination of indigenous peoples in their respective countries.

Article 1 also indicates that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

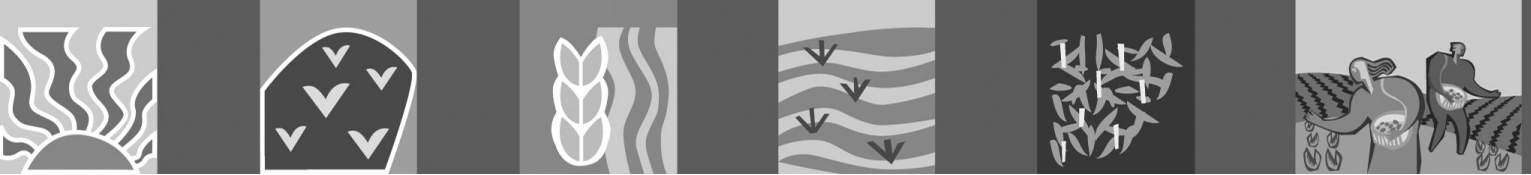
The Convention safeguards the rights of indigenous and tribal peoples (Article 2) to retain their social and cultural identity, customs, traditions and institutions. Articles 14 and 15 give special importance to the cultural and spiritual value attached to their lands or territories and to safeguard traditional rights of ownership and land use.

Similarly, Article 13 provides special importance to "cultures and spiritual values" and "collective aspects" of the peoples' relationship to their lands, and also interprets the term in a wide manner to include "the total environment of the areas."

Articles 13–15, for example, require that the state recognizes and legally guarantees indigenous peoples' rights of ownership and possession of their traditionally owned lands, territories and resources and requires that such guarantees are made effective in fact through demarcation, titling and the establishment of prompt and effective remedies through which IPs can assert and defend these rights in practice.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 14 of this Convention makes a landmark provision relating to lands and natural resources: "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied



by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is a comprehensive list of rights of indigenous peoples. Article 25 recognizes the right of indigenous peoples “to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

Article 26 emphasizes indigenous peoples’ right to “own, use, develop and control” lands, territories and resources.

Article 27 obliges the state to “recognize and adjudicate the rights of indigenous peoples” pertaining to their lands, territories and resources (again, including those that are traditionally and otherwise owned or occupied).

Article 28 addresses the issue of lands, territories and lands taken, used or damaged without the free, prior and informed consent of indigenous peoples.

Article 29 addresses the environmental, conservational and health aspects of indigenous peoples’ land rights.

The duty of states to obtain, or in some cases seek to obtain, indigenous peoples’ free prior and informed consent (FPIC) is clearly expressed in the UNDRIP, especially in relation to indigenous

peoples’ interests over lands, territories and resources (e.g., Articles 10, 19 and 32(2).) The UN Committee on the Elimination of Racial Discrimination’s General Recommendation XXIII (1997) (GRXXIII) recognizes the fundamental nature of indigenous peoples’ rights to maintain and develop the full spectrum of their relationships to their traditional lands, territories and resources.

Durban Accord

Indigenous issues were addressed in the other major outcomes of the Congress, notably in Outcome 5 of the Durban Action Plan and in The Durban Accords. Outcome 5 of the Durban Action Plan states that “The rights of indigenous peoples, mobile peoples and local communities [should be] recognized and guaranteed in relation to natural resources and biodiversity conservation” (IUCN, 2005:224). The Durban Accord recognizes the successes of indigenous and local communities in conserving biodiversity, as well as “their efforts to make protected areas places of natural, cultural and spiritual convergence” (IUCN, 2005: 221). A “Cause for Concern” is that “many places which have been conserved over the ages by local communities, mobile and indigenous peoples are not given recognition, protection and support” (Ibid). It urges “commitment to involve local communities, indigenous and mobile peoples in the creation, proclamation and management of protected areas” (IUCN, 2005:222), as well as more effective benefit sharing and support for CCAs.

The rights over lands and natural resources are enshrined by these international laws, each of which has been ratified by Nepal. The government is duty bound to incorporate these international laws in its national laws and implement them effectively.



However, the general feeling amongst most activists is that there is a lack of political will to implement these laws. There is a compulsion to maintain the status quo and serve the interests of the powerful elite.

The period covered by the Tenth Plan is close to conclusion and many of the provisions have yet to be implemented. New towns continue to emerge on fertile agricultural land and there is ever increasing land fragmentation. The Government of Nepal, the National Land Rights Forum (NLRFF) and the National Land Rights Concern Group (NLRCCG) jointly signed an agreement on 14th September 2006 to form a high level commission on land reform, which to-date has yet to be formed.

2006 witnessed massive political upheaval in the country. Maoist rebels fighting for a People's Republic forged an alliance with the parliamentary parties under a constitutional monarchy. The Comprehensive Peace Accord (CPA) signed between the Nepali government and CPN (Maoist) on 21 November 2006 agreed:

- to adopt the policy of implementing scientific land reform and ending feudal land ownership; and
- to adopt the policy of managing economic and social security including providing land for slum dwellers, bonded laborers, Haliya, Haruwa, Charuwa and the economically impoverished.

Following the Peace Accord, the monarchy was suspended and a roadmap was set forth for a Constitutional Assembly with an Interim Constitution and a rebel-included Interim Parliament. The Interim Constitution 2007 made a commitment in Article 11 under the directive of economic-social transformation, which included the following two motions:

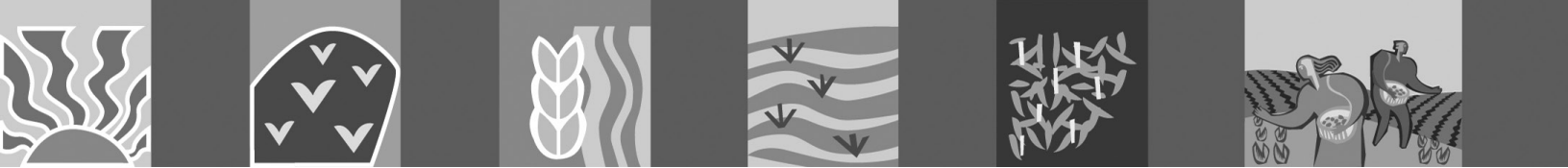
“All laws, including those on land and natural resources, have deprived indigenous peoples of ownership, control and use of their traditionally owned, controlled and used ancestral lands.”

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- to end all facets of feudalism. Structuring and implementing the minimum common program by combined consensus for economic social transformation; and
 - to establish the rights of each citizen on education, health, settlement, employment and food security.

No significant change can be expected until a more stable government is in place. However, there exists a cross-party consensus on tackling land reform. 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 indigenous peoples 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 was not about indigenous peoples' rights; rather, it was about the establishment of the Foundation for Development of Indigenous Nationalities. Although the



“Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the UNDRIP and Convention No. 169 and indigenous peoples’ rights to self-determination.”

foundation is an independent organization, its link with the Ministry of Local Development and its heavy reliance on the Nepal Government for money has turned it into one wing of the Nepal Government working as a bridge between the Government and the indigenous peoples. It has a mandate to implement programs for the development of indigenous peoples and also to make recommendations to the Government on measures to promote the social, economic and cultural development of indigenous groups.

Enforcement of the UNDRIP

In 2008, the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Nepal concluded that, despite significant improvements, the indigenous peoples continue to confront discriminatory social and political arrangements that originated in the past, and whose current manifestations impede their effective control over their lives and undermine their cultural identities. The Special Rapporteur highlighted that indigenous peoples have suffered gradual loss of traditional lands and access to life-sustaining natural resources, and that across the country, they rank low in all human development indicators. The Special Rapporteur

concluded that most indigenous communities live in conditions of poverty that, on the whole, are double or even greater the national poverty level and that adequate healthcare among indigenous peoples is lacking, as are opportunities for education.

Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the UNDRIP and Convention No. 169 and indigenous peoples’ rights to self-determination. The government needs to meet its obligations to indigenous peoples in line with observations and recommendations made by the Special Rapporteur.

Some of the major challenges in effective implementation of ILO 169 Convention in Nepal are presented below:

Dominance of Hindu High Caste: An effective implementation of ILO Convention 169 would require revision of existing laws that contradict various provisions of the Convention. In many cases, it also demands the promulgation of new laws. But the state government overwhelmingly dominated by so-called high caste Hindu groups is not ready to change the existing laws so easily. By the peoples’ movement of 2006, the regime has changed, but the rulers have remained more or less the same. They come from the same caste, same class, same region and same sex with same feudal mentality who are not only reluctant to implement the conventions but also resist change.

Rights to Self-determination and Ethnic Autonomy: Because indigenous peoples of Nepal do not trust the government to share power and implement international human rights conventions, they demand for their own rule through the transformation of state structure.



They demand that the state should be restructured into a federal system that recognizes and ensures ethnic and caste equality, linguistic and cultural rights and historical territories of the indigenous peoples with rights to self-determination.

Lack of Adequate Resources and Effective Mechanisms: The UN and other international agencies that promote these conventions do not have special funds nor do they have any effective mechanism to supervise and monitor the implementation of these conventions. ILO can only provide technical support, but it does not have its own resources. ILO depends upon other donor agencies for financial resources. Dependency naturally limits efficiency and effectiveness.

Lack of Political Will: Generating and transforming political will into action for the bureaucracy is another visible challenge for effective implementation of ILO Convention No. 169. As the political will is not in place, the weak bureaucracy is reluctant to duly implement the international commitment the government has ratified.

Lack of Mechanism: No mechanism is in place that specifically deals with the implementation of ILO No. 169. The National Foundation for the Development of Indigenous Nationalities (NFDIN), a semi-governmental organization that deals with development affairs of indigenous peoples has not been given the mandate to look after the implementation of the Convention and Rights of IPs.

Role of Mainstream Media: More than 90% of the mainstream media is dominated by the so-called Hindu high caste groups which often put indigenous peoples' issues in shadow and declare that "indigenous rights" are discriminatory and

«No mechanism is in place that specifically deals with the implementation of ILO No. 169.

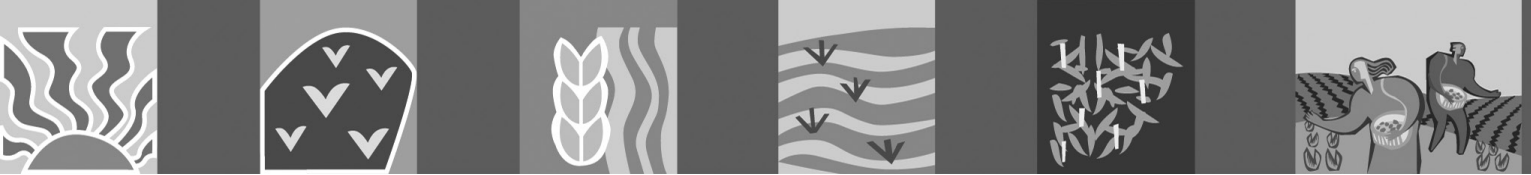
disintegrative for "the national unity."

Non-Support from the mainstream 'Civil Society': In theory, civil society is supposed to be pro-human rights, but in Nepal, civil society is controlled by the ruling social groups who also actively denounce indigenous rights in many ways.

Several NGOs and advocacy groups have also emerged in recent years. The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization of organizations representing the 59 indigenous nationalities, works towards the upliftment and empowerment of indigenous communities.

Similarly, different multilateral and bilateral organizations, INGOs, and NGOs are working in indigenous peoples' territories in the areas of conservation, sustainable development and sustainable livelihoods of people without respecting indigenous issues. There are no existing activities to address indigenous issues such as the Terai Arc Land (TAL) program of the World Wildlife Fund (WWF) Nepal, and the biodiversity translocation program of the International Centre for Integrated Mountain Development (ICIMOD).

Also, researchers and development workers are collecting indigenous information related with natural resources, biodiversity, traditional knowledge, skills, technologies, traditional life style, archaeological research without any legal frame (i.e., free prior and informed consent,



participation in decision making, censorships, co author and ownership of the products and mechanism of benefit sharing, and other ethical issues of indigenous peoples).

National Laws, Policies, Programs, Structures and Mechanisms

In recent years, there has been increased recognition of the multi-ethnic and multi-cultural character of Nepali society and the need for respecting this diversity for political stability and social progress. The Government has included specific references to rights and needs of indigenous peoples in a number of important legal and policy documents. These include the country's Constitution, special legislation, and references in core government planning documents.

Beginning with the Ninth Plan (1992-1997), the Nepal government fully recognized the presence of indigenous communities. Subsequent plans included increasing commitments by the Government to the all-around development and upliftment of indigenous nationalities. In 2000, the Government abolished the Kamaiya bonded-labor system, which mainly affected the indigenous Tharus. The Local Self Governance Act 1999 made special quota provisions for indigenous peoples in elected local bodies. In 2002, the National Foundation for the Development of Indigenous Nationalities (NFDIN) was established. NFDIN is an autonomous governmental body whose aim is to develop and empower the Indigenous Nationalities. Its activities focus on establishing district-based units to monitor indigenous/ethnic programs in 75 districts. However, these units never became operational.

For the welfare of IPs, the government set up a National Committee for Development of

Nationalities in 1997. The parliament passed a bill in 2002 for the formation of a National Foundation for the Development of Indigenous Nationalities, which came into existence in 2003. This foundation has been working for the preservation of the languages, cultures and empowerment of the marginalized ethnic communities.

The Three Year Interim Plan Paper (2007-2010) included the following policies for inclusive development of IPs and other disadvantaged groups: (i) creating an environment for social inclusion; (ii) participation of disadvantaged groups in policy and decision making; (iii) developing special programs for disadvantaged groups; (iv) positive discrimination or reservation in education, employment, etc.; (v) protection of their culture, language and knowledge; (vi) proportional representation in development; and (vii) making the country's entire economic framework socially inclusive. The NFDIN Act 2002, the National Human Rights Action Plan 2005, the Environmental Act 1997 and the Forest Act 1993 have emphasized protection and promotion of indigenous peoples' knowledge and cultural heritage. In 1999, the Local Self-Governance Act was enacted to give more power to the local political bodies, including authority to promote, preserve and protect the IPs' language, religion, culture and welfare.

Forestry

The forest is the main source of most indigenous peoples' livelihoods – providing energy, food, medicine, housing, earnings, fodder for livestock and compost for subsistence agriculture. Forest resources provide 81% of the total fuel supply and more than 50% of fodder for livestock. The forest is also one of the main economic resources of the country, contributing about 14% to national GDP. While revenue from non-timber forest products



(NTFPs), including medicinal herbs and aromatic plants, accounts for 5% of the total national revenue collected from the forestry sector, in certain areas NTFPs alone provide up to 50% of family income.

Forests are within PAs which have technical as well as armed manpower with guard posts at strategic locations and relatively strict instructions to enforce compliance with the law. Buffer zone management frameworks are geared towards creating natural capital and economic opportunities for communities that have lost traditional forest use rights inside PAs, but the issues and concerns of indigenous peoples and local communities have not been resolved properly, including their land rights, compensation for lost sources of income, needs and aspirations. For example, in the past, all parks and protected areas were under the control of indigenous peoples and local communities.

Since the establishment of national parks and PAs, people living within and adjacent to them have been deprived by the management of the collection of medicinal herbs, food materials, fuel wood, timber, fodder and grazing for their animals, which are an integral part of the IPs' lives.

Many places have been developed as urban centers, and parks are controlled by the military. Outside the PA system, GMFs in general suffer from a lack of the capacity and resources of District Forest Offices (DFO) that would be necessary for a reasonable level of management (except in cases where donor assistance has been available, such as in eight districts in central Nepal and four districts in the western region).

The majority of GMFs, especially in the mid and high mountains, have never been subject to any

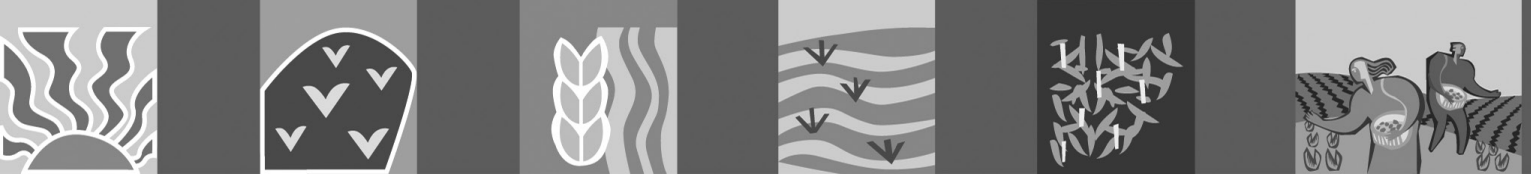
“Many places have been developed as urban centers, and parks are controlled by the military.”

management and protection initiatives since forests were nationalized in Nepal, and therefore face an “open access” situation unless they are handed over as CF or are managed and regulated by local communities traditionally dependent on them.

A widely recognized result of such an open access situation has been the rapid loss of various highly valuable medicinal and aromatic plants (MAPs) from forests. Indigenous communities in the past had practiced traditional methods of regulating the collection and harvesting of such MAPs, but because of the known markets and high prices, these MAPs are now subjected to indiscriminate over collection, which is threatening the resource base. Consequently, there has been a rapid loss of traditional knowledge and practices related to these MAPs.

Enforcement of National Laws, Policies, Structures, and Mechanisms

Some significant progress has been made at the national level in Nepal with regard to customary rights of IPs. This holds particularly true regarding legislative reforms and respecting people's collective rights to land. In many cases, these legislative reforms are a direct consequence of court decisions in favor of indigenous peoples and their demand for the recognition of their ancestral lands. While in other cases, these reforms correspond with changing international



standards. In all cases, these reforms are a direct consequence of indigenous peoples' resistance and demands that their rights be respected, protected and fulfilled.

In 2007 the government of Nepal ratified ILO Convention No. 169 on Indigenous and Tribal Peoples, becoming the first country in mainland Asia to do so, and also voted in the UN General Assembly to adopt the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In early 2008 the government of Nepal agreed to create autonomous states based on ethnicity in at least some parts of Nepal, but what the federal map of Nepal will look like, which indigenous peoples will have autonomous states, and what governance authority will be delegated to them is not yet decided. Collective ownership of forests or rangelands by communities is not recognized in Nepal law. Prior agreements and promises to indigenous peoples recognizing communal lands (kipat) have not been kept and these were nationalized beginning in the 1960s. Large areas of such collective lands have been incorporated in protected areas and the national forest.

Indigenous peoples and other local communities do not have defined legal rights to the use of natural resources in the areas in which they reside, but some uses can be authorized by protected area administrators in some of the national parks and in buffer zones, as well as in the community forests within the national forest.

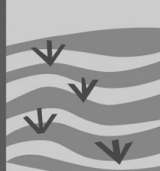
The National Parks and Wildlife Conservation Act of 1973 bans many customary natural resource activities including hunting and grazing. Very limited natural resource use (such as grass harvesting) is permitted in some national parks on a fee basis and subject to limited seasons and quantities. Protests by indigenous peoples have resulted in some increased access to natural

resources in several lowland national parks and wildlife reserves in recent years, but these concessions are not considered rights and in some cases have not been maintained for long. There is no recognition of an inherent right to use plants and animals in traditional religious activities in Nepal.

As a result of a number of legal and institutional dynamics, indigenous communities around the country have been historically deprived of the lands and territories they have traditionally occupied or used, often without compensation.

A major turning point in this process was the 1964 Land Reform Act, which nationalized land and terminated traditional collective land tenure systems such as the kiptat. The Act paved the way for the allotment and distribution of indigenous ancestral lands and, consequently, to the loss of IP's traditional land base. These dynamics were particularly dramatic in the southern plains, where lands traditionally controlled by indigenous communities were lost to migrants from the hill districts in the 1950s and 1960s.

Similarly, the Pasture Land Nationalization Act 1975/2031 B.S. nationalized traditional indigenous pasturelands, some of which were granted to commercial plantations, depriving many communities of their traditional livelihoods. This is the case of the Sherpas, whose traditional yak-raising has been endangered by the gradual loss of their traditional pasture lands. This situation has pushed them into cross-border grazing in Tibet, a practice which is in turn hindered by border policies. Protected areas, including national parks, now constitute approximately 20% of the total landmass in Nepal. Often these areas were created at the expense of indigenous lands. In the Himalayas, most of the land areas of the six existing national parks cover IPs' traditional lands.



The National Parks and Wildlife Conservation Act provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources, while giving quasi-judicial powers to the park chief wardens.

There is no national legal basis for the identification and protection of sacred places or for assurance that indigenous peoples will continue to have access to and control over their management.

IP communities have lost their ownership of these with land nationalization. Villages often no longer have control over decisions about the protection of their sacred sites because new land management institutions in conservation areas, buffer zones, and community forests are based on regional, multi-village governance rather than on governance by individual villages.

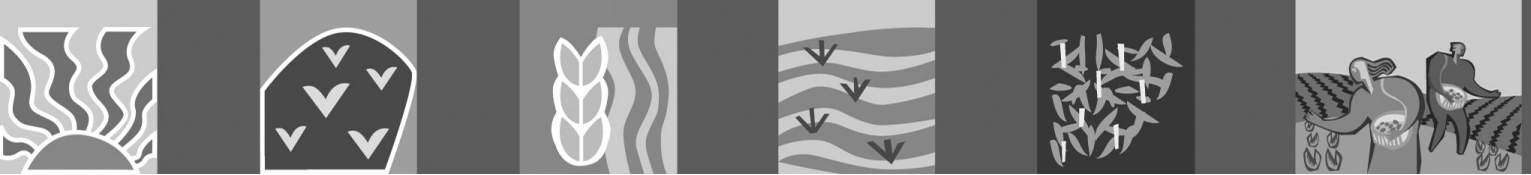
Land-loss and forced displacement over time has resulted in the dissolution of communities, the break-up of families, and the attendant lack of registration of many members of IP communities, making access to simple services such as health and education a challenge, if not an impossibility.

IPs in Nepal are lacking citizenship certificates, and the Government of Nepal has made notable efforts to remedy this situation. But according to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Nepal, an estimated 800,000 individuals still lack citizenship registration and are therefore considered de facto stateless.

The action for claiming land rights in Nepal include: capacity development of activists and community leaders; formation and strengthening peoples' organizations; local level awareness;



Indigenous people of Haku, Rasuwa rally in Dhunch Rasuwa demanding for their land rights.
Photo by CSRC



people's initiatives for policy influencing; filing cases and receiving land ownership, and growth of the movement. For customary land rights of IPs, IP activists and IP-based organizations are taking important initiatives in Nepal.

Most of the forest dependent peoples such as Chepang, Danuwars, Majhis, Bote, Tamangs and policy makers are not aware of the international commitments related to traditional forest related knowledge (TFRK). Thus, policies, plans and programs are not made as per international commitments to achieve the goals set by the international community.

An awareness program regarding existence and importance of traditional knowledge of indigenous peoples should be launched through media. Effective measures should be implemented to recognize, respect, protect and maintain traditional knowledge. ■

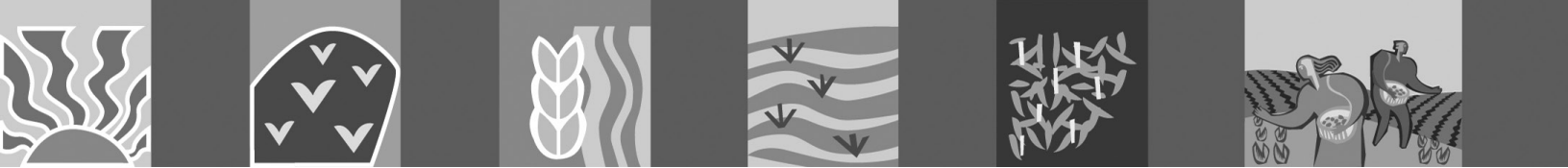
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***For the complete list of references, please contact
the author of this study as indicated at the beginning
of this article.***



Pakistan

The definition of indigenous groups in Pakistan is vague. Under the definitions of indigenous peoples, certain distinct communities can be represented as indigenous in Pakistan. The Government of Pakistan considers indigenous people as tribal.

The Kalash are the most well known indigenous group in Pakistan. They are a pagan group practicing an ancient Hindu religion. Though there have been theories of their Greek/Macedonian origin, scientific evidence belies this claim. Their existence in what is otherwise an increasingly conservative religious atmosphere as well as the threats they have received from the Taliban have given them some international fame. NGOs and other groups are interested in their plight. The government, to its credit, has increased its security presence to ensure their protection.

The Kihals and Mors, the fishing communities of the Indus River, have been severely affected by large infrastructure projects. They are a nomadic population so National Identity Cards are a luxury. The community is considered “impure” because of their diet, which includes crocodiles.

The Meghwar, Bheel and Kohli, the scheduled tribes of Sindh are indigenous to the region and heavily marginalized. They suffer similar abuse as the Kihals and Mors, considered to be “dirty”

Condensed from *Scoping Study on Indigenous People – Pakistan* by the Society for Conservation and Protection of Environment (SCOPE). For more details of the study, contact: scope@scope.org.pk.



with the added stigma of the customary practice of “untouchability.” Majority of them (90%) live in rural areas: Tharparkar and Umerkot in Sindh and Bahawalpur and Rahim Yar Khan in Punjab (Shah, 2007).

There is very little information that brings together the experience of indigenous communities in Pakistan and their interaction with the state. The Kalash have been subject to the most amount of anthropological study, having evoked the curiosity of European scholarly work with their claim to Greek ancestry. There is very little information available on the beliefs and lifestyle of the fishing tribes of the Indus Valley, as very few NGOs and CSOs work with them.

Legal framework related to indigenous peoples’ land rights

International law

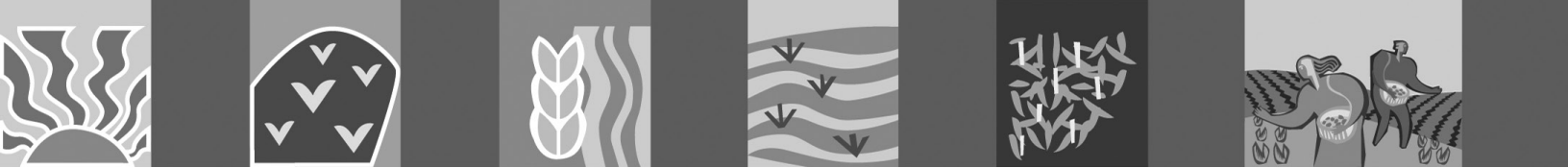
Pakistan is a signatory to the following international conventions, agreements and declarations:

- ***ILO Convention on Indigenous and Tribal Populations*** (Convention No. 107) in 1960. This convention places on the government the responsibility of providing tribal and semi-tribal populations with the tools for development.
- ***Convention on Biological Diversity (CBD)***. Its primary purpose was to ensure the “fair and equitable sharing of the benefits” that accrue from using genetic resources (CBD, 2014).
- ***United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)***. Although the document is not binding as an international treaty, it reflects the spirit of the minimum standard which countries should adhere to when it comes to their indigenous communities. It consists of the ***International***

“There is very little information that brings together the experience of indigenous communities in Pakistan and their interaction with the state.”

Covenant on Economic, Social and Cultural Rights ratified by Pakistan in November, 2008 and the ***International Covenant on Civil and Political Rights*** ratified in 2010. The latter gives every individual freedom of religion, speech, assembly, as well as the right to life, due process, fair trial and electoral rights. The former is a guarantee to such rights as education, health care, labor rights and the right to an adequate standard of living.

- ***Agenda 21*** and the ***Rio Declaration of 1992*** also recognize that indigenous peoples should be given more freedom to manage their land and resources as well as be involved in the decision making process of development projects.
- Article 1 of the ***International Convention on Elimination of All Forms of Racial Discrimination (ICERD)*** of 1966 states that “...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
- ***UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*** of 1992 which protects ethnic, cultural, religious or linguistic



identity of minorities, ensures free expression, association and opportunity for cultural development association of minorities amongst themselves, as well as, ensuring that states allow for education about minorities.

- The **UN 1926 Slavery Convention** or the Convention to Suppress the Slave Trade and Slavery prevents slave trade and abolishes all forms of slavery.
- The **United Nations Supplementary Convention on the Abolition of Slavery** is a more expansive document that covers situations such as bonded labor.
- The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** which was acceded to by Pakistan in 1996, with reservations based on its Constitution.

As a beneficiary of donors, Pakistan is also bound to abide by provisions that safeguard the interest of indigenous communities. The World Bank states that it “...seeks to position excluded groups, such as the indigenous peoples, at the center of the development agenda.” It aims to give indigenous people the tools and capacity for self-development and realizes that the knowledge they hold may be critical to adapting to climate change (World Bank, 2014).

The Asian Development Bank (ADB) is more clear and extensive in its support for indigenous communities. “The ADB’s indigenous peoples safeguards aim to ensure that the design and implementation of projects foster full respect for indigenous peoples’ identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the indigenous peoples themselves so that they receive culturally appropriate social and economic benefits, are not harmed by the projects, and can participate actively in projects that affect them” (ADB, 2014).

National Law and Policy

The 1973 Constitution was an improvement on the Constitutions of 1956 and 1961 because it provided for provincial autonomy and freedoms for ethnic minorities. However, even though ethnic minorities were mentioned, there was very little provision for ethnic minorities and indigenous cultural groups within provincial laws. Thus indigenous groups have to derive their individual and collective rights from the general articles of the Constitution that protect an individual’s freedom.

Article 36 of the Pakistani Constitution obligates it to safeguard the interests of minorities and Article 38 makes the state responsible for taking steps to ensure social and economic equality.

Over the years, Pakistan has had a Ministry of Religious Affairs and Minority Affairs, a Minorities Affairs Division, Federal Advisory Council for Minority Affairs, District Minority Committees, a National Commission for Minorities, as well as, a National Committee on the Kalash People. These were all institutional frameworks to implement constitutional freedoms.

The **National Resettlement Policy** formed in 2002 places strict measures to preserve the communities of indigenous people and ensure fair compensation for any development schemes that adversely affect them.

The third **national report on the implementation of the CBD** published in 2006 states that some goals have been established with regard to maintaining the socio-cultural diversity of local and indigenous communities. The Lok Virsa and the Pakistan National Council of Arts, as well as the Ministry of Culture, Sports and Youth Affairs have the institutional framework to carry



out activities in relation to this. The Pakistan Intellectual Property Organization exists to protect traditional knowledge and practices from corporate patenting.

The *National Climate Change Policy of 2012* has several measures to ensure that indigenous knowledge, practices and species are protected and used appropriately. One specific policy measure states that the Pakistani government will “Ensure close coordination among forest and livestock departments for efficient management of rangelands and other resources while ensuring the rights of the indigenous people.”

The *National Sustainable Development Strategy*, also drafted in 2012, espouses that a clear regulatory process is needed to make sure that indigenous communities who have rights over forestry and rangeland are protected.

Since national policy confuses ethnic minorities and all tribal groups with indigenous peoples, there is limited legislation on the specific cultural rights of indigenous communities. Their land use rights are still unlegislated.

Trends

This report will expand more on Meghwars, Bheels and Kholis communities as a case study due to the distinctiveness and marginalization of these communities.

Meghwars, Bheels, and Kholis

The scheduled caste tribes of Sindh have a distinct religion, culture and language (Dhatki) as compared with those who live around them. They are dependent on the land and have been part of the agricultural system in Sindh for centuries (even becoming landowners for a very brief

“Indigenous peoples in Pakistan are not interlinked in any way and do not work together for their rights. They are distinct populations in terms of language, ethnicity and belief systems.”

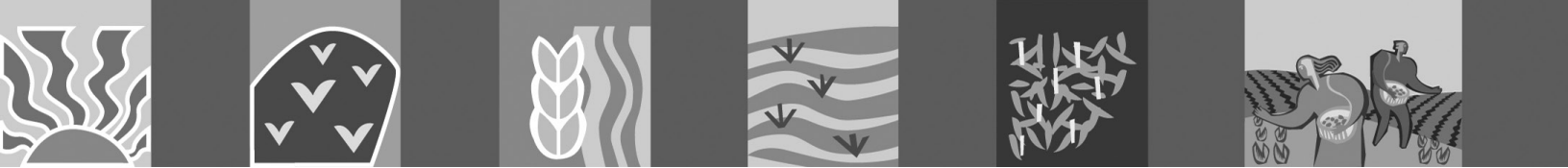
period after the partition). Their low caste makes their religion (Hindu or Muslim) irrelevant. Their beliefs are closer to pre-Hindu animism (Lieven, 2011). The Meghwars, Kholis and Bheels of Sindh suffer from the harsh injustices of both their surrounding environment and society. Thus they can be aptly used as a case study for indigenous communities in Pakistan.

The farmers of these tribes are known as haris of Sindh, referred to as such because of the Hindi word harijan (God’s children) which used to describe the Dalit population. They have been alienated from their livelihood through conditions of bonded labor (Wagha, 2012).

Indigenous peoples in Pakistan are not interlinked in any way and do not work together for their rights. They 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.

History of Land Rights in Sindh

The British instituted a multitude of land governance and taxation mechanisms. In the case of areas where tribal identity and self-



“The zamindar system, originally applied in Bengal, gave the responsibility of the entire village to one landowning family, which naturally created resentment.”

government was strong, the British encountered resistance. They decided to pursue a policy of non-interference. The tribes were allowed to self-govern so long as they formally accepted British rule (Gazdar, 2009:6).

The zamindar system, originally applied in Bengal, gave the responsibility of the entire village to one landowning family, which naturally created resentment. The zamindar became the owner of the land and the hari became the equivalent of a serf. Almost all zamindars were Muslims. The British modified this system to the mahalwari system, where a village was seen as a collective entity and multiple landowners were given the responsibility of collecting taxes (Gazdar, 2009:8).

Two factors were taken into consideration before conferring the title of landlord: (1) possession of the land; and (2) historical rights or claim over it. A record of sale was meaningless as the rigid notions of private property did not exist (Gazdar, 2009:9).

The ryotwari system considered the tiller of the soil as the owner of the soil. Revenue expectations were allotted to specific areas of land and all those working on the land had an incentive to maximize output. Ideally, in Sindh, this would have meant

that the hari, the laborer, was the owner of the land (Gazdar, 2009:11-12).

The debate on land reform did not take into account the conditions of agriculture in Sindh. Though it was accepted that the zamindar was exploiting the tenant, the zamindar’s investment in the irrigation of land, something which was a slightly complex and resource-driven task, was not taken into consideration. Without the state creating the framework to replace the zamindar, the economies of scale made land reform a meaningless proposition (Gazdar, 2009:24-25).

The government of Zulfiqar Ali Bhutto created laws in Sindh that favored the tenant. The cost of input shares was placed on the zamindar and relaxed on the hari. When Bhutto’s government was removed from power, tensions against the military reached a point that it became unforeseeable for the Punjabi landowners to manage their land in Sindh. Many sold their land and moved away. It was under these circumstances that some landless poor, including Bheel families, were able to acquire land (Gazdar, 2009:19).

Later, the input share law that had allowed for a feeling of empowerment amongst the hari was overturned. Most investment in Sindh agriculture was done to favor the existing ruling class or for the government to use as a means to award loyalists (Gazdar, 2009:13).

Property Rights and Bonded Labor

The bonded labor system in Sindh sustains itself because of difficulties in irrigation. The amount of investment required in water and the lack of irrigation in certain areas compelled small farmers to work on larger farms. These farmers were



forced to work for low wages and incurred debts that they did not understand and could not repay. They were treated much like slaves: constrained, imprisoned, chained and even bought and sold (Arif, 2008:24-25).

The Constitution of Pakistan prohibits slavery and contains various articles that impose on the State the responsibility to provide just working conditions (Arif, 2008:26-28). Along with the Bonded Labor Abolition Act of 1992, the State provides ample safeguards against slavery. However, bonded farm labor still exists as landowners claim the relationship is based on the Sindh Tenancy Act. In 2001, a National Policy and Plan of Action for the Abolition of Bonded Labor and Rehabilitation of Freed Bonded Laborers was adopted resulting in amendments to the tenancy law. These included expunging the “temporary tenants” category, accepting as loans between landowner and tenant only that which have been recorded and prohibiting a landowner from extracting labor from a tenant’s family or restricting the movement of the tenant and his family (Arif, 2008:29-31).

The amendments to the tenancy law did not prevent violations. Tenancy agreements were not signed so that a landlord could deny that the hari was a tenant. Under the law, the landlord provides funds for certain inputs, however, landlords charged these on the tenant, and included personal expenses, which led to the tenant being eternally in debt. A tenant is supposed to receive one third to half of the produce but, in reality, only receives daily subsistence or less (Arif, 2008:32-33).

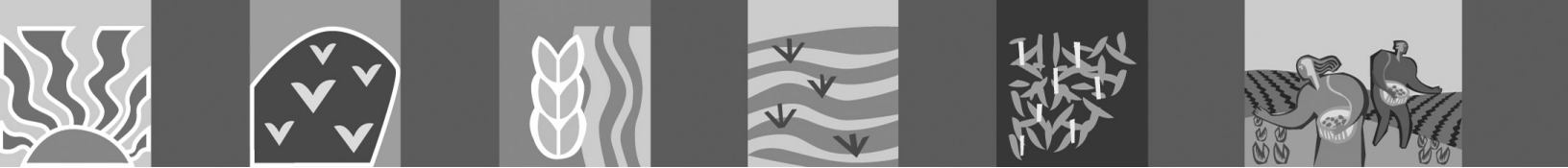
The Tenancy Act was updated in 2013 but the situation remains the same. Land belonging to haris can be occupied by members of the upper caste, since haris have very little legal recourse.

Bonded laborers who have been freed overwhelmingly belonged to scheduled castes. Although they may have been working on the same land for generations, they are not entitled to it in any way (Shah, 2007:7). Only 17% of scheduled caste members own land, of which 90% are between one and five acres and are located in non-irrigated, desert areas. Scheduled caste members receive unequal pay even if they do the same amount of work as members of other castes or Muslims (Shah, 2007:28-29,45).

Pakistan has not been spared from the corporatization of the agricultural sector. In 2011, the United Arab Emirates bought about 324,000 hectares (ha) of land in Baluchistan, Punjab and Sindh (Pesticide Action Network Asia & the Pacific, 2012:3). Al-Dahra, a UAE company, has a land lease agreement for 10 years in Mirpurkhas, Sindh starting from 2007. Export goods included alfalfa and Rhodes grass. Surveyed residents were unwilling to express dissatisfaction with this land lease arrangement perhaps out of fear (Pesticide Action Network Asia & the Pacific, 2012:6-7,9).

However, the consequences of such export-based agricultural production are not hard to predict. Water use is greater for these crops, thus water is diverted to corporate farms. With farmers working on products that are not intended for local food production, they have to purchase items such as flour and vegetables, leaving them at the mercy of price fluctuations. Furthermore, what was previously common grazing land for livestock is now private property, and several residents had to reduce their livestock for fear of imprisonment for making use of “private grass” (Pesticide Action Network Asia & the Pacific, 2012:13-15).

Corporate agriculture comes with mechanized farming techniques requiring less labor. The



“Scheduled caste members have very limited access to health facilities.... Village health facilities often refuse to serve members of the scheduled castes.”

lower caste Hindu groups in Mirphurkhas were extremely unwilling to criticize their worsening situation and grateful that they were not kicked off the land all together (Pesticide Action Network Asia & the Pacific, 2012:10).

Others were not so lucky. A Meghwar village was forcefully evacuated for an intended residential development. Since Al-Dahra has entered the picture, about 100-150 Meghwar and Kolhi families were moved because their homes were on land that is part of the lease agreement (Pesticide Action Network Asia & the Pacific, 2012:16).

Caste Based Discrimination

Meghwars, Kohlis and Bheels reside mostly in rural areas. There are disputes about the size of the population of the scheduled castes, with official statistics limiting their number to about 300,000 out of the Hindu population of about 2 million. Scheduled caste members claim that they comprise the majority of Pakistan’s Hindu population. Census data inquires about religion but does not clearly ask about caste affiliation, so it is not reliable in this regard. Estimates suggest that 70-90% of Hindus in Pakistan belong to scheduled caste communities. If this is true and census data is inaccurate, then marginalization of scheduled

caste members begins from here. Development schemes and quotas for employment are skewed against them (Shah, 2007:17).

Scheduled caste members have very limited access to health facilities. Thus, rates of tuberculosis, Hepatitis B, and Hepatitis C are high, as well as infant mortality and malnutrition. Village health facilities often refuse to serve members of the scheduled castes. Women are forced to turn to midwives of their same caste when giving birth (Shah, 2007:32)

The literacy rate of scheduled caste members is appallingly low: 74% are illiterate, 15% have completed primary school, 4% have completed matriculate, and 1% are graduates (Shah, 2007: 30). Education is constrained by lack of schools and teachers (Shah, 2007:59). Malnutrition and discrimination restricts education further. Children are more likely to be beaten in school. They are expected to sit in the back of the classrooms and are made to clean schools (Shah, 2007:39). Curriculums are also discriminatory with an anti-Hindu bias (Shah, 2007:60).

Shelter is also severely lacking. Their houses are without toilets, sewage, running water or electricity. Portable drinking water is not available. Their housing communities are separate and often located on the outer perimeters of the village (Shah, 2007:32,34).

There are severe enforcements against inter-caste marriage. Scheduled caste members were even being denied relief provisions after natural calamities (Shah, 2007:33).

They are excluded from the political structure of the state. They are not mentioned in political party manifestos. The Poverty Reduction Strategy Papers and the Medium Term Development



Framework does not mention castes. National identity cards can be difficult to obtain because of semi-nomadic lifestyles of tribes or, in the case of bonded laborers, the need for employers to verify permanent addresses. Enumerators who conduct census or compile voters' lists are often from higher castes and can exclude scheduled caste members. Thus, their vote can easily be disenfranchised. In other cases, they are compelled and threatened to vote a certain way (Alaiwah, 2012).

Sexual abuse and harassment is rife in the scheduled caste community. Sixty percent of bonded laborers are sexually abused. Young girls and women from these communities can be kidnapped with no recourse for families. Police will claim that the girl has converted to Islam and married of her own accord. These women can then be passed on to employers or end up in the streets (Shah, 2007:71-73).

No member of the scheduled caste community is employed in law enforcement or judicial institutions of the government. Those who manage to secure gainful employment in the public or private sector face discrimination.

Assessment of key actors promoting/impeding IPs' rights

Government

There is no specific government agency or ministry working with scheduled caste members. A public sector job quota for scheduled caste members was implemented in 1957 but was never instituted and was scrapped in 1998.

Scheduled caste members are threatened with blasphemy laws to ensure their cooperation.

They are also suspected to be Indian RAW agents and mistreated (Alaiwah, 2012).

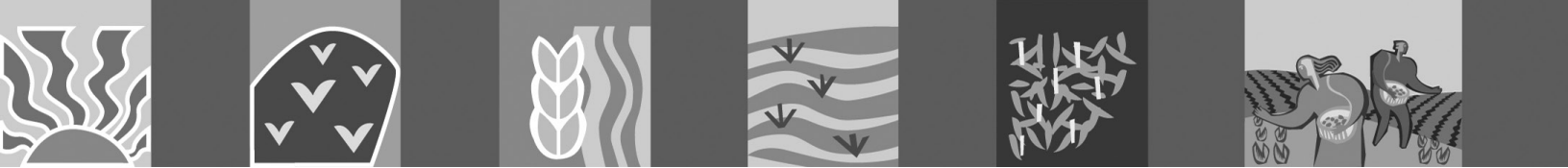
The local governing structure, as well as traditional authorities, continues to practice "untouchability" and treat scheduled caste members discriminatorily.

Political Parties

The Pakistan Muslim League-N (PLM-N)'s manifesto promises the acceleration of the Hindu Marriage Bill. It also promises quotas for minorities in public sector jobs and educational opportunities (PML-N, 2013:45). It states that it will continue its policy of irrigating and allotting land to landless peasants, women haris, and tenants (PML-N, 2013:31). No specific promises were made to scheduled caste members.

The Pakistan People's Party Parliamentarians (PPP)'s manifesto is by far the friendliest manifesto towards minorities, with extensive measures on how to mainstream and protect them including the revival of a National Commission for Minorities and an Equality Commission for fair pay and job concerns (PPPP, 2013:5). It also promises to continue its land reform measures and provide land to landless peasants (PPPP, 2013:42). It mentions indigenous communities in relation to their culture and language, which it promises to preserve through various measures. It does not specifically mention Hindus or scheduled caste members.

Pakistan Tehreek-e-Insaf (PTI)'s manifesto is generally brief and non-specific so does not provide any specific guarantees for indigenous communities, scheduled caste members or haris of Sindh but does promise to "expedite distribution of cultivable state land among landless farmers" (PTI, 2013:24).



The Muttahida Qaumi Movement Pakistan (MQM) is the fourth largest party and is particularly powerful in Sindh. It does not mention scheduled caste members or Hindus but wants to cease the use of the term “minorities” and wants to undo political quotas for minorities (MQM, 2013:29). It suggests amendments to the Tenancy Act, Domestic Violence Act and the establishment of hari courts.

Civil Society and Social Movements

The Scheduled Castes Federation of Pakistan is a forum to raise awareness of issues but its scope and reach is very limited. The Human Rights Commission of Pakistan (HRCP) and the National Commission of Justice and Peace work on human rights and minority rights, and as a consequence deal with some issues of scheduled caste members (Alaiwah, 2012). The Pakistan Institute of Labor Education and Research (PILER) looks into the issues of bonded laborers. The Applied Social Research Centre/Institute of Women’s Studies Lahore produced a short pamphlet in Urdu concerning the issues of scheduled caste members in 2004. Thardeep Rural Development Organization carries out development programs in Sindh and may serve the needs of local scheduled caste members (Alaiwah, 2012). The Sukaar Development Foundation and the Association for Water Applied Education & Renewable Energy (AWARE) also work primarily in Tharparkar and Umerkot.

SCOPE has been working in Tharparkar district for some time, and has developed and implemented projects to work closely with these communities particularly in promoting and protecting their land rights to private land, communal land and exploitation in agriculture labor.

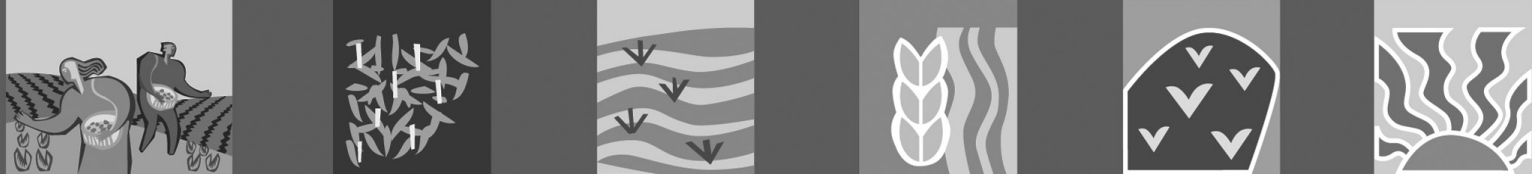
The South Asia Partnership – Pakistan and the Bhit Shah Deceleration & Coordination Council organized a Hari Conference on April 8, 2007. Landless peasants came up with a list of terms that would ease their conditions (Arif, 2008:38-39).

Currently, there are no governmental or non-governmental commissions or groups to monitor instances of abuse against scheduled caste members. The statistics that have been compiled are a result of extrapolation from smaller surveys.

The media can also play an active role in the possibility of a future broad-based social movement. A study of Pakistan’s various English newspapers has shown consistent positive coverage for minorities (Ambreen, 2014). ■

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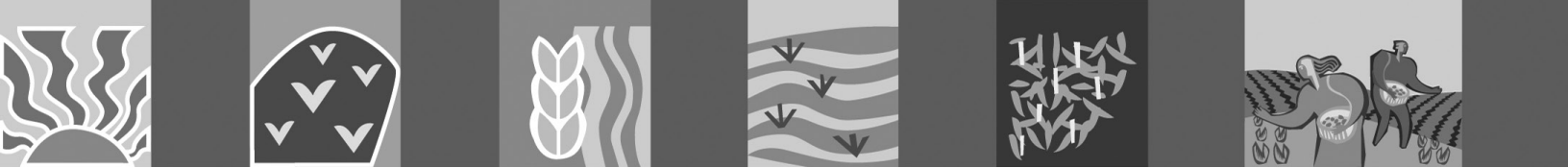
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For the complete list of references, please contact the author of this study as indicated at the beginning of this article.



Philippines

The National Commission on Indigenous Peoples (NCIP) estimates the population of indigenous peoples in the Philippines at between 12 and 15 million distributed into approximately 110 different ethno-linguistic groups or ‘cultural communities’ (Pedragosa, 2012). However, there is no detailed breakdown of disaggregation of data from the Government as of 2015 (Molintas, 2004).

Indigenous peoples are defined by the Indigenous Peoples’ Rights Act (IPRA) of 1997 as “a group of people or homogeneous societies identified by self-ascription and ascription by others, who have continually lived as organized communities on community-bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs (Indigenous Cultural Communities/indigenous peoples) shall likewise include peoples who are regarded as indigenous on account of their descent from populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions,

Condensed from *The Indigenous Peoples in the Philippines: A Background* by Dave de Vera and Shirley Libre of Philippine Association for Intercultural Development (PAFID). For more details of the case, contact: devera.dave@gmail.com or balayluwad@yahoo.com.



Manobo children getting ready for a harvest ritual.

Photo by Dave de Vera

but who may have been displaced from their traditional domains or who may have resettled outside the ancestral domains (IPRA, Chapter II, Section 3h).”

A vast majority of the estimated country’s indigenous peoples reside in the uplands with the remaining biodiverse ecosystems that they claim as part of their ancestral domain (AD).

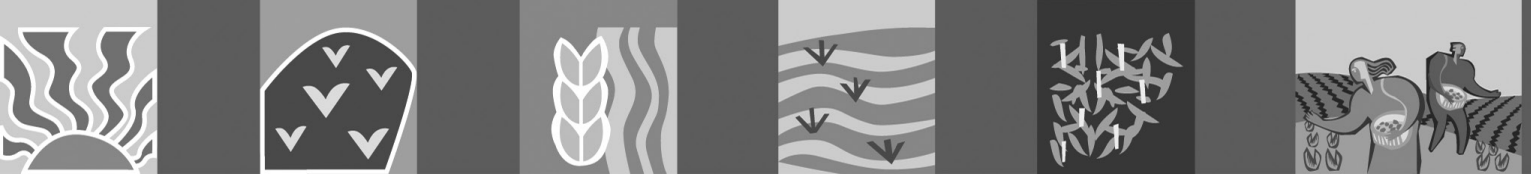
Out of the 128 identified key biodiversity areas, 96 or 75% are within the traditional territories of IPs. Most indigenous communities, however, do not have legal recognition over their traditional

lands, thus limiting their ability to freely conduct their livelihood activities and traditional resource management.

Challenges the sector faces

The destruction of the environment continues at an alarming rate and the loss of its forest cover has increased exponentially in the last two decades.

The country also has to cope with an influx of mining operations and other extractive development activities in its uplands. Further, the demand for land and natural resources continues



“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 IPRA in 1997.”

to rise with the unabated migration of lowland families into the mountains. Thus, there exists a very volatile mix of stakeholders who are in strong competition for the limited resources of the uplands.

Indigenous peoples are especially vulnerable as most of the remaining natural resources in the country along with the ecosystem services that are crucial in ensuring human survival, such as watersheds, are found within the traditional lands of the indigenous communities.

The indigenous people represent a substantial sector of the country’s population (14%). However, in spite of their substantial numbers, they are among the poorest and the most disadvantaged social groups in the country. Illiteracy, unemployment and incidence of poverty are much higher among them than the rest of the population.

Indigenous peoples’ settlements are remote, without access to basic services, and are characterized by a high incidence of morbidity, mortality and malnutrition. There are 110 major

indigenous groups in the Philippines. Most of the indigenous peoples 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.

The IPs remain as 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.

International Policies

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 IPRA in 1997. This should have established the framework for its international policy direction in dealing with issues pertaining to indigenous peoples rights.

Under the stewardship of Ms. Vicky Corpus (current UN Rapporteur for IPs), the Draft Declaration on the Rights of Indigenous Peoples (UNDRIP) was introduced before the historic first session of the UN Human Rights Committee in June 2006. While there was initial hesitation from the representatives of the Philippine Government in the United Nations (UN), the UNDRIP was subsequently ratified by the Philippines.



The Philippines is a signatory to the Convention on Biodiversity (CBD), which lays the internationally accepted standards on the protection of the rights and welfare of indigenous peoples in the conservation of natural resources within their territories.

The CBD also provides a framework for the recognition of Traditional Knowledge Systems as an acceptable and viable option for the management of natural resources and the environment.

However, in spite of the tremendous advances made by the indigenous communities along with their support groups and advocates, the Philippine Legislature has yet to ratify the International Labor Organization Convention 169. The convention (ILO 169) is a legal, international treaty that provides the basic standards to protect indigenous workers within the framework of respect for indigenous and tribal peoples' cultures, their distinct ways of life, and their traditions and customs.

Given the limitations of the Government bureaucracy and the effectivity of international law, the Philippines has been actively complying with its commitments and obligations with the treaties, agreements and declarations that it has signed and adopted.

Ancestral Domains in the Philippines

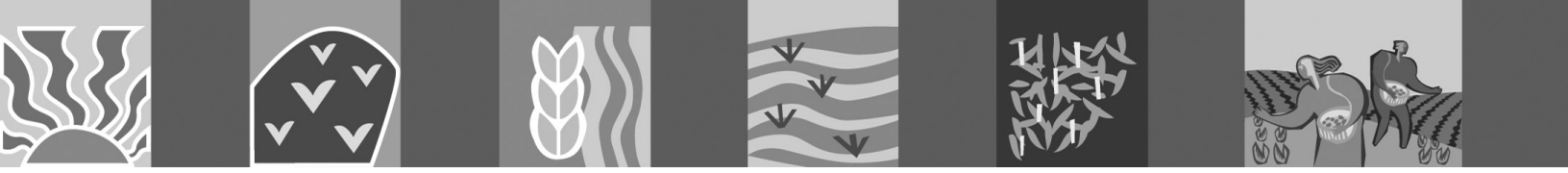
Ancestral domains are defined in the Indigenous Peoples Rights Act as:

“all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their

ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators” (IPRA, Chapter 2, Sec. 3a)

With the Philippines consisting of at least 7,100 islands, ancestral domains come in various forms and configurations. These can be found in the upland ecosystems all the way to the coastal zones of the Archipelago. 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.

As of 2015, the NCIP has issued 158 CADTs and 258 CALTs covering 4,323,728.722 hectares (ha) or 14% of the nation's total land area. These are distributed all over the country with the islands



Manobo IPs posing with their 3D model of ancestral domains.
Photo by Dave de Vera

of Luzon and Mindanao hosting the majority of titles with 77 and 76 CADTs respectively, while the island groups host five ancestral domain titles.

Ancestral Domain and the Environment

A very significant statistic that shows the critical role that the indigenous peoples play in the area of climate change and in the conservation of ecological integrity is the geographical distribution of Environmentally Critical Areas such as Key Biodiversity Areas (KBAs), Protected Areas and Important Bird Areas in the Philippines.

Key Biodiversity Areas are defined by the International Union of Conservation Networks (IUCN) as areas that represent the most important sites for biodiversity conservation worldwide

(IUCN, 2011). Key biodiversity areas are places of international importance for the conservation of biodiversity through protected areas and other governance mechanisms (Ibid).

Protected Areas (PAs), on the other hand, are areas of high environmental significance that have been reserved through executive edict or legislation, while Important Bird Areas (IBAs) are defined as areas recognized as being globally important habitat for the conservation of bird populations. Currently there are about 10,000 IBAs worldwide and form part of a country’s existing protected area network, and are therefore protected under national legislation.

The ancestral domains of indigenous communities in the Philippines cover nearly 25% of the



country's total land area (see Map 1). There are 128 terrestrial sites designated as KBAs covering at least 7,610,943 ha in the country. Seventy-one of these KBAs or 55% of all KBAs overlap with ancestral domain titles. Further, almost 90% of all the remaining forest cover in the country can also be found in ancestral domain areas (see Map 2).

Clearly, with the aforementioned data, a case could be made that the indigenous communities in the Philippines, through their traditional resource management systems, are the actual stewards who provide de-facto governance to the most important and environmentally significant areas in the country. The evidence is clear that the role they play in order to ensure the survival of the country has to be respected and recognized.

National Laws, Policies, Programs, Structures, and Mechanisms

Conservation and Protection Policies

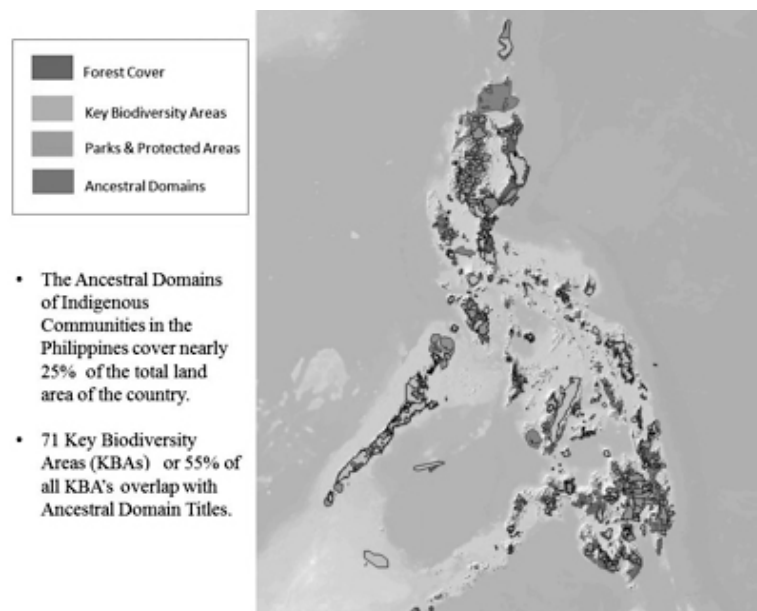
Efforts at conservation or management of natural resources (or a semblance of it) in the country officially began in June 1863 when the Spanish Regime created the *Inspeccion General de Montes*. The Americans renamed *Inspeccion* into 'Forestry Bureau' in 1900. It was reconstituted into the Bureau of Forestry in 1953 and later organized into the Bureau of Forest Development (BFD) in 1975.

With the establishment of the BFD came the much reviled Forestry Code of 1975 which defined that "all lands of at least 18% slope and above are permanently part of the Forest Zone" and as such criminalized the

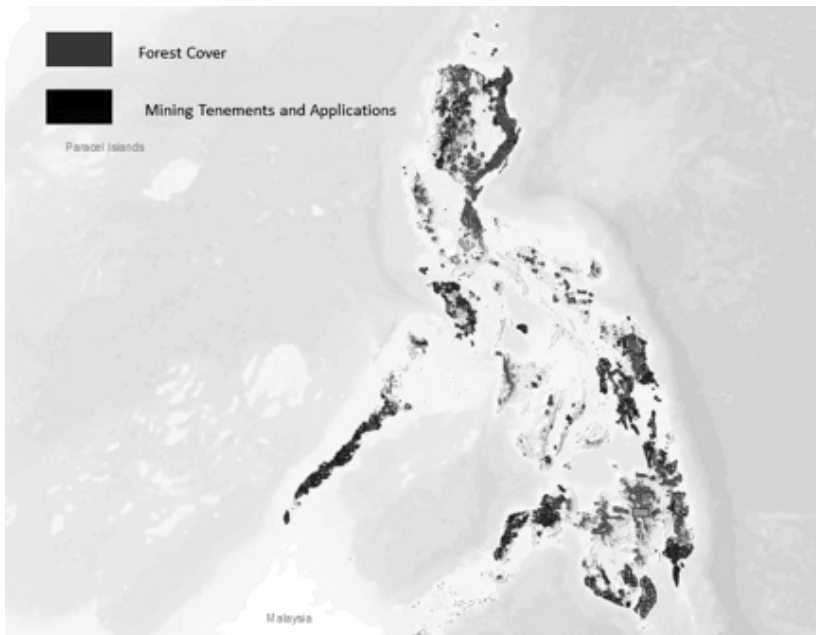
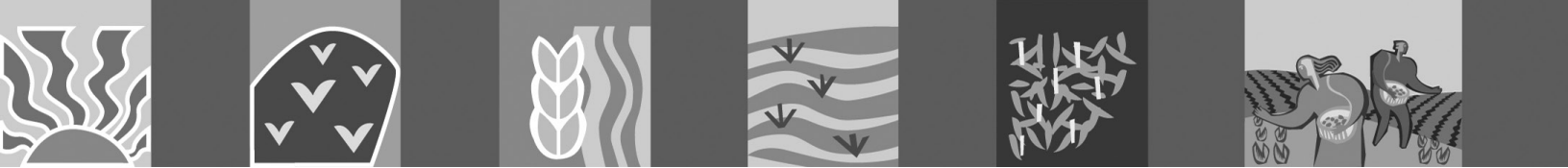
"habitation and occupation of the Forest Zone without the express approval of the Government" (Revised Forestry Code, 1975). The Forestry Code of 1975 effectively rendered the existence of indigenous communities in the forest zone as illegal and provided a penal provision for the "arrest, prosecution and punishment" of violators of the Forestry Code. Under this regime, forest resources were placed under the full control of the state with all processing, distribution and utilization of the forest and its resources becoming the exclusive domain of the Government. Sadly, the Government mindset, which created such a policy environment, prevails in spite of the many advances of the IP sector through the years.

In 1987, the BFD and the Wood Industry Development Authority (WIDA) merged to become the Forest Management Bureau (FMB) and the Protected Areas and Wildlife Bureau was created.

In June 1992, the National Integrated Protected Areas System (NIPAS) was established in the Philippines. In 1995, the Community-Based



Map 1. Areas covered by forest, key biodiversity areas, parks & protected areas, and ancestral domains in the Philippines.



Map 2. Forest cover and mining tenements in the Philippines.
Map by PAFID

Forest Management (CBFM) was adopted as the national strategy for the sustainable development of the country's forestland resources.

It is noteworthy to underscore that under the 1987 Philippine Constitution, the NIPAS Act of 1992 is the very first law of the republic that expressly defines indigenous cultural community "as a group of people sharing common bonds of language, customs, traditions and other distinctive cultural traits, and who have, since time immemorial, occupied, possessed and utilized a territory" (NIPAS Act, Section 4d). The same law provides that "ancestral lands and customary rights and interest arising shall be accorded due recognition" and government shall "have no power to neither evict indigenous communities from their present occupancy nor resettle them to another area without their consent" (NIPAS Act, Section 13).

Notwithstanding the acknowledgement of the rights of IPs in the NIPAS law, there has been

resistance and criticism from the sector regarding the scope and coverage of the law. Most National Parks and Protected Areas are situated within traditional lands and territories. Many communities decry the establishment of new governance structures such as the Protected Area Management Board (PAMB) and the formulation of Protected Area Management Plans as an expression of disrespect and infringement on their rights as the 'owners' of the land.

Extraction, Utilization and Development Policies

The Mining Act of 1985 (RA 7924)

The economy of the Philippines is the 46th largest in the world, with an estimated 2010 gross domestic product (nominal) of \$189 billion. A newly industrialized country, the Philippine economy has been transitioning from one based on agriculture to one based more on services and manufacturing. Hence, the enactment of laws that shall support, enhance, encourage and provide incentives to industries that shall generate the necessary revenues needed by the government to jumpstart its economy.

In a further bid to secure the status of a newly emergent economy, the identification of additional sources of revenue was expanded. Mining was deemed to be the most effective way of generating the needed revenues of the Philippines. In response, the Philippine Government along with the mining industry worked for the passage of a new Mining Law, which would invigorate the underperforming industry in the Philippines. Republic Act 7924 was passed into law in 1985



and it was heralded by the mining industry as the renaissance of the industry in the country. The new Mining Law provided a host of incentives to attract investors to establish their operations in mineralized areas in the country. These included fiscal incentives such as tax holidays, liberal profit sharing arrangements including allowing 100% foreign equity. Further, auxiliary rights consisting of (1) Timber Rights, and 2) Right of Way and Easement were afforded to investors.

Throughout the terms of three Presidents: Fidel Ramos, Joseph Estrada and Gloria Macapagal-Arroyo, the promotion of the mining industry was a major priority. In fact, the government adopted even the official line that “Mining shall be the main driver of development for the new millennium.”

The Mining Act of 1985 has had the biggest impact on the land rights of indigenous peoples. Majority of mining applications and operations are found within ancestral domains and in environmentally critical areas. Serious conflicts have arisen due to the establishment of a parallel and more powerful governance structure by the mining corporations, which often marginalized the traditional authority of the indigenous community. Further, the environmental destruction and introduction of alien value-systems into the ancestral domain of the peoples often resulted in violence and conflicts.

Emergence and Establishment of ECOZONES

Special Economic Zones or ECOZONES are selected areas in the country that are transformed into highly developed agro-industrial, tourist/recreational, commercial, banking, investment, and financial centers, and where highly trained workers and efficient services will be made available to commercial enterprises.

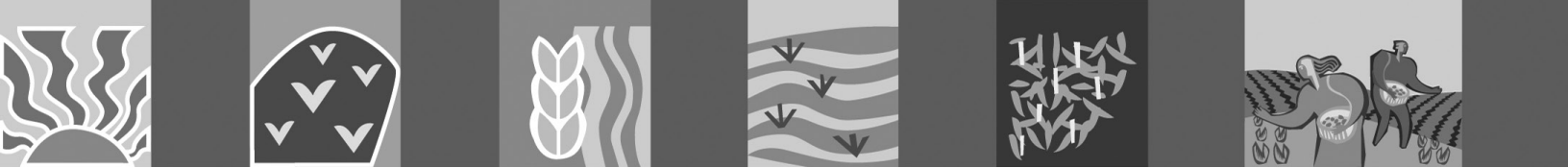
This began with the enactment of the Bases Conversion Act of 1992 or Republic Act No. 7227 which mandated the conversion of US Bases in the Philippines into other productive uses to promote economic development in Central Luzon and created the Subic Special Economic Zone, Subic Base Metropolitan Authority (SBMA) and the Clark Special Economic Zone. This law paved the way for the growth of more ECOZONES through the enactment of the Special Economic Zone Act of 1995 or Republic Act No. 7916.

The first ECOZONES in the country were established in ancestral domains. 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. Moreover, these new ECOZONES did not recognize the rights and ownership of the IPs over their ancestral domains.

The Indigenous Peoples Rights Act (IPRA)

In 1997, the landmark legislation known as the Indigenous Peoples Rights Act (IPRA) was enacted to recognize, protect and promote the rights of indigenous peoples. It is well-documented and there is evidence that centuries before the creation of the Philippine State, the various indigenous communities in the archipelago had been managing these resources since time immemorial through their traditional knowledge, systems and practices. This provided a venue and legal backbone for the recognition of the traditional rights of communities over their ancestral domain.

The IPRA is seen as the most radical policy reform with regard to tenurial security of indigenous peoples in the region. The IPRA goes beyond



“The Mining Act of 1985 has had the biggest impact on the land rights of indigenous peoples. Majority of mining applications and operations are found within ancestral domains and in environmentally critical areas.”

the contract-based resource management agreements between the state and the community as it recognizes the “ownership” of the indigenous community over their traditional territories which include land, bodies of water and all other natural resources therein. Furthermore, the IPRA provides tenurial security to the community with issuance of an ownership title to the concerned indigenous clan or community.

The IPRA included “self delineation” as the guiding principle in the identification of ancestral domain claims. However, due to the lack of resources and skills in the National Commission on Indigenous Peoples (NCIP), the government has not been able to provide the necessary services to the IP sector to realize this mandate and issue the necessary titles.

In its first three years of existence, the NCIP was not able to issue a single CADT, rather it certified community consent for dozens of mining applications, an act which it had no legal power to effect under the IPRA. Initial findings of the Office of the President’s Performance Audit of the NCIP reveal that the agency is ill-equipped, the staff poorly trained and lacking field experience or appropriate cultural sensitivity to handle land

conflicts and issues of resource access affecting indigenous communities.

With an average budget of P500 million for its national operations and a staffing pattern beleaguered by a lack of capacity and skills, the NCIP faces severe constraints in serving the aspirations of the indigenous peoples’ sector. Thus it is actively seeking the help of the private sector, in particular members of civil society who have had extensive experience in the field of ancestral domain claims and community mapping.

Eighteen years hence, so much still remains to be done. To date, very limited development activities in support of the Ancestral Domain Management Plans have been implemented in the IP areas. Problems in the implementation of the IPRA continue to fester and severely limit the capacity of indigenous communities to truly benefit from the mandate of the IPRA.

The inability of the government to fully implement the IPRA in order to address the problems and concerns of the indigenous communities is rooted in conflicting policies, capacity gaps and a questionable commitment to empower indigenous communities.

Ranged against all odds, as of 2015 the following have been awarded; 158 Certificate of Ancestral Domain Titles (CADTs), 258 Certificate of Ancestral Land Titles (CALTs) with a total coverage of 4,323,782.722 ha or 14% of the total land area of the Philippines. There are still 557 applications that are pending or in process with a total area of 2,670,101.20 ha.

Assessment of Key Actors

The most important contributions of the IPRA is the institutionalization of the principle of self-



determination, the recognition of the ‘ownership’ of IPs to their lands and domains and obligation to secure a Free Prior Informed Consent (FPIC) from IP communities for any development activity that may affect them. Henceforth, all laws, policies, and programs have to acknowledge, respect and comply with the above-mentioned principles.

However, there have been loopholes that have been exploited by various interest groups to go around the FPIC requirements. Furthermore, there has been a difficulty in enforcing and implementing many of the progressive provisions of the IPRA mainly due to the unfamiliarity of many state actors along with CSO workers who are expected to advocate for the law and provide support to IP communities.

Admittedly, there is a dearth of development workers who have the capacity to support IP communities and address their land issues. For years, CSO advocacy has mainly focused on agrarian reform issues and paid little attention to IP advocacy, which was left to a small community of CSOs who specialized in indigenous peoples’ rights. There is a need to build support among a broader community of CSOs and build their capacity to enable them to provide services to the IP sector.

At the same time, the front-line implementors of government have not been able to facilitate the implementation of the IPRA and execute what is expected of them by the IP communities due to their unfamiliarity with the law.

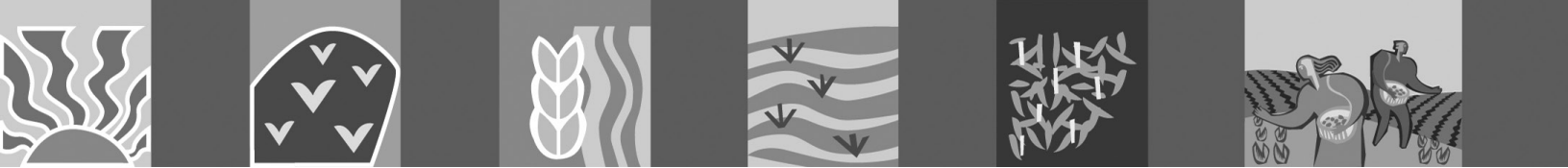
Many applications for ancestral domain titles face opposition from government agencies and local government units (LGUs) who deem the awarding of titles as a threat to their authority and jurisdiction. In other instances, the nature of the opposition is based on the mistaken belief

that IP communities do not have the capacity to manage large tracts of lands; hence, applications for titles should be opposed as these may pose a threat to the conservation of critical natural resources. However, to its credit, the Department of Interior and Local Government (DILG) has recently issued a Memorandum-Circular to all the attached agencies under its jurisdiction, which provides information and enjoins all to comply with the lawful mandate of the IPRA.

The business sector, on the other hand, raises the loss of potential revenue as its basis for opposing the implementation of the progressive provisions of the IPRA. The mining industry has constantly raised the specter of the loss of revenue in areas that the IP communities consider as sacred and ritual areas and are thus declared as off limits to any form of disturbance. The need for a dialogue between the IP sector and the business sector is imperative. The antagonistic position against the rights of IPs is rooted in the lack of understanding and appreciation by the business sector of not only the IPRA but the very nature of the aspirations of the IP sector.

The effectivity of IP leaders to advocate for the full implementation of the IPRA also needs to be enhanced. Nearly two decades since the enactment of the IPRA, many communities are still unaware of the bundle of rights that they are supposed to have and enjoy.

Clearly, there is a need for a concerted effort among many actors to fully realize the mandate of the IPRA. But in order to push for the effective and full implementation of probably the most progressive and ‘pro-people law’ in the Philippines, many limitations and capacity gaps that remain among the concerned agencies and institutions need to be properly addressed.



State of Organizing and role of CSOs in the IP Sector

The enactment of the IPRA has ignited a substantial growth in the number of NGOs and other social development organizations working with IP communities. Prior to the passage of the law there was a dearth of capable groups specializing on IP issues. While the increased number of NGOs working on IP issues bodes well for the future, this has also raised the incidence of conflicts with communities. There have been numerous instances where well-meaning NGOs, with little or no exposure to the cultures and ways of IP communities but very eager to implement projects, have generated local conflicts among community members.

Indigenous communities have clearly benefited from the assistance and support provided by NGOs and other advocates. Currently there are hundreds of indigenous peoples organizations (IPOs) in the country actively engaged in various activities and are in partnership with the civil, development agencies including Government.

Currently there are 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 aggrupations are several layers of regional, provincial as well as local IPOs all over the Philippines.

There still divisions within the indigenous peoples movement in the Philippines. This is expected due to the volatility of the issues that are being tackled by the sector and the intensity of the personalities involved as well. However, it must be said that there are instances where the civil society and government must share the blame in

the furtherance of the divisions among the ranks of the IP sector.

The picture, though, is promising. While there are very strong challenges against the IPs in the Philippines, there are very clear signals that show growth and progress in the sector. 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. Thus, this explains why the IP agenda clearly resonates in most IP support groups' activities and policy directions.

Opportunities and strategies to advance Indigenous Peoples' Customary Rights

The issue of climate change is at the top of the list and acknowledged as the priority agenda of the Philippine Government. In order to ensure the country's adaptability to the effects of climate change, the Philippines is a signatory to many International Covenants and Agreements that provide the international framework to address the impacts of climate change. Most noteworthy of these is the CBD which has set several targets to achieve biodiversity conservation.

Target 11, one of the most important in the CBD, aims to achieve by 2020, that "*at least 17% of terrestrial and inland water, and 10% of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes*" (Convention on Biodiversity, Aichi Target 11).



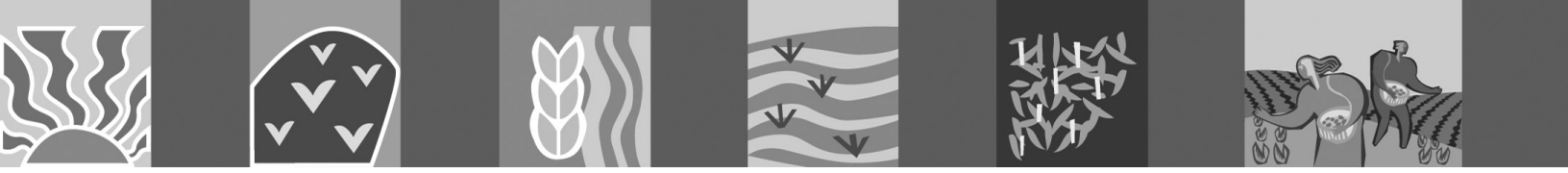
Mulbog IPs in Balabac doing land use domain coding identifying the sacred zones of their ancestral domain.
Photo by Dave de Vera

Target 11 can only be achieved if the Government, as well as other sectors in Philippine society, set in place the proper policies and process for the recognition of the critical role that the indigenous communities play in the protection and conservation of Key Biodiversity Areas (KBAs) in the Philippines. The data presented earlier clearly illustrates the importance of the traditional governance and resource management systems of indigenous communities with regard to the conservation of the environment in the country.

This international commitment to the CBD can provide an opportunity for indigenous communities to work alongside government and lobby for the full implementation of the IPRA.

Under the IPRA, indigenous communities can secure titles and define their own indigenous community conservation areas (ICCAs) and enforce their traditional resource management systems in these areas. Hence, KBAs in the country would be provided with an effective area-based conservation governance measure.

As custodians and owners of the last remaining natural resources in the Philippines, indigenous communities can look at the viability of engaging other sectors and resource-users in demanding and negotiating for payment for ecosystem services (PES). PES are incentives offered to farmers or landowners in exchange for managing their land to provide some sort of



ecological service. They have been defined as a transparent system for the additional provision of environmental services through conditional payments to voluntary providers (Tacconi, 2012).

With most of the water sheds and other viable hydrological sources of the country under the governance of the indigenous communities, systems to recognize and pay for the eco-

system services provided by the IPs in managing and maintaining the resources should be institutionalized. This shall not only give long-overdue justice to the IPs but enable them to secure a stable source of revenues that shall address their socio-economic needs as well as defray the costs of protecting the natural resource and sustain it for future generations. ■

Case Study

THE ANCESTRAL DOMAIN OF THE TAGBANUA OF CORON ISLAND AND THE LOCAL TOURISM

The Calamian Tagbanua inhabit the beautiful limestone island of Coron, one of the Calamianes islands of North Palawan. They consider themselves the caretakers of their *Teeb Ang Suriblayen* (ancestral domain), tasked to maintain the richness and diversity of Earth life for the welfare of present and future generations. This holistic self-concept of ecological stewardship is at the heart of the Tagbanua's traditional resource management and their determination to fight for self-management and tenurial rights over their ancestral domain.

By the mid-1980s the marine resources surrounding the island were being degraded at an alarming rate by dynamite, cyanide, and other illegal and destructive fishing methods. The situation was so serious that the Tagbanua began facing food shortages. Worse, the sacred clan caves where they harvest with care the edible bird's nest were leased out to non-Tagbanua entrepreneurs by the municipal government. Powerful politicians and businessmen are planning to take over the island for tourism development. In response to these ecological assaults, they sought ways to secure their land and resource rights with the timeline presented below.

Major Gains from the Awarding of the CADT

With the issuance of the Certificate of Ancestral Domain Certificate (CADC) in 1998 and the consequent awarding of a Certificate of Ancestral Domain Title



(CADT) in 2002, the Tagbanua have since been able to achieve major gains:

- They were able to convince the government to recognize the local traditional leadership as an “Interim Protected Area Management Board”. The local government also respected and recognized their Ancestral Domain Management Plan, which provides guidelines for the utilization and management of the land and seas and the conservation of the natural resources within the island.



- Most of Coron's forests are still intact. There has been a noticeable decrease in illegal fishing within the reefs inside their marine territories but the limited capacity of the community to physically enforce their regulations have enabled some unscrupulous individuals to take advantage of the situation.
- More importantly, the local tourism industry operators are now required to secure annual permits from the Tagbanua community before they could bring tourists to the island.
- The ecological tourism in the island is now under the full management of the Tagbanua. They opened two lakes, Kayangan and Barracuda Lakes, to visitors and enforced a new set of regulations to maintain the cleanliness and sacredness of the lakes and to minimize the disturbance to the diverse plants and animals living in the lakes and the surrounding forest. They have also developed a system of distributing social benefits to the community from the income of their local tourism.

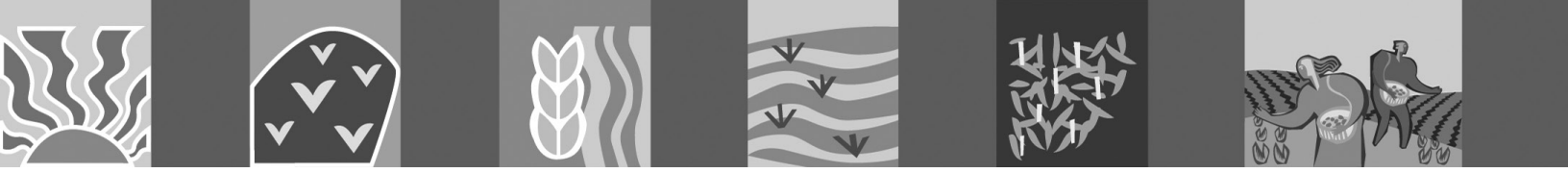
The success of the Tagbanua in securing tenure over their traditional territories has inspired 11 other Tagbanua communities to file claims over their territories. Furthermore, the CADT has provided the Tagbanua of Coron the wherewithal to be respected and be at par with other stakeholders in the area. This new arrangement will go a long way in enabling the Tagbanua to pursue their identified development and conservation priorities.

New Challenges to and Reflections on Indigenous Governance of Ancestral Domains

The management, however, of the Tagbanua Eco-tourism Enterprise from which they earn millions of pesos every year is confronting them with new challenges and deep reflections on the very fiber of their culture, the state of indigenous governance, and the impact of the enterprise on their social and natural environment.

- The enterprise demands a new set of entrepreneurial skills which they have to balance with acquiring skills through training, strengthening of cultural values and traditional management of the elders.
- As the tourism industry grows especially in Mainland Busuanga and Coron, more garbage will be produced and cause pollution in the pristine marine waters and lakes of Coron Island.
- There are community members who are questioning the state of finances and income of

YEAR	Gov't Policy/Program and Tenure Instrument	Actions Taken by the Tagbanua
1982	The Integrated Social Forestry Program of the DENR offered stewardship lease agreements to community organizations through the Certificate of Forestry Stewardship Agreement (CFSA).	<ul style="list-style-type: none"> □ The Tagbanua of Coron Island started organizing and formed the Tagbanua Foundation of Coron Island (TFCI). □ TFCI applied for a CFSA covering 7,748 ha of their ancestral lands to the DENR in 1985.
1990		<ul style="list-style-type: none"> □ The CFSA was approved, covering the whole island of Coron and a small neighboring island, Delian. □ Clan caves where they harvest the edible bird's nest of the balinsasayaw were returned to the ownership of the Tagbanua.
1992	<p>SEP. The Strategic Environmental Plan for Palawan of 1992 or RA 7611 was enacted. This law expanded the definition of ancestral domain to include coastal zones and other submerged areas.</p> <p>NIPAS. The National Integrated Protected Areas System (NIPAS) Act of 1992 or RA 7685 was enacted. Coron Island was listed as part of the Priority Protected Area. This law created the Protected Area Management Board (PAMB) which would be responsible for the management of protected areas.</p>	<ul style="list-style-type: none"> □ TFCI used this act to expand their claim to include their traditional fishing grounds, fish sanctuaries, and diving areas. They began preparing their own management plan, which included these areas. □ TFCI officially demanded that the Island be stricken off as a protected area and removed from the target sites under the NIPAS. □ The TFCI declared instead that the Coron Island is an ancestral domain conserved by the Tagbanua themselves and managed by its own elders.
1993	Department Administrative Order No. 2 of the DENR was implemented. This law provided for a Certificate of Ancestral Domain Claim (CADC) which offered a more secure recognition of ancestral domains.	<ul style="list-style-type: none"> □ The TFCI applied for a CADC to pursue their claim not only to their island but to include as well their ancestral waters. □ TFCI initiated the establishment of SARAGPUNTA, a bigger organization which included the Tagbanua from the other islands in the Calamianes.
1997	IPRA. The Indigenous People's Rights Act (IPRA) of 1997 was enacted. The National Commission on Indigenous Peoples (NCIP) was created as implementing agency. This law allowed the granting of collective and individual rights to land to indigenous peoples through certificates of ancestral domain and land titles.	<ul style="list-style-type: none"> □ The CADC was granted in June 1998 covering 24,520 ha of ancestral land and marine waters, the first its kind in the country. □ TFCI organized workshops to complete their Ancestral Domain Management Plan. Customary laws were codified and included in the management plan. □ The TFCI applied for a Certificate of Ancestral Domain Title (CADT) under the IPRA with the NCIP in 1998.
2002	Administrative Order No. 1 was issued by the NCIP to establish with finality the validity of the CADT as approved by the First Commission.	<ul style="list-style-type: none"> □ The Certificate of Ancestral Domain Title was approved. This is the first ancestral domain title in the world which includes both land and marine territories.



the enterprise. The management team has to find new ways of being more transparent and reporting progress to the community.

- It is important to review the social and economic benefits that are shared with the community members.
- Some members dared open sacred sites such as beaches to tourists which the community elders have not approved. As the local tourism industry grows, the community or some members would be pressured or tempted to open more sacred sites for tourism development. This would challenge the traditional leadership, community harmony and

the traditional values of stewardship and respect over sacred sites.

- The traditional values of the Tagbanua youth working for the enterprise are threatened by the exposure and subsequent succumbing to alcohol, sex and drugs that come along with the growth of the local tourism industry. How will the youth be empowered to face the temptations of this industry? How will they be trained to eventually take over the management of their ancestral domain and the protection of their natural resources in the midst of a totally opposite worldview which is creating changes within that they may not be aware of?

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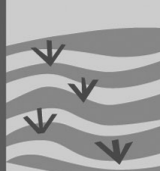
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Community Protocols:

Articulating Stewardship, Asserting Rights and Affirming Responsibilities



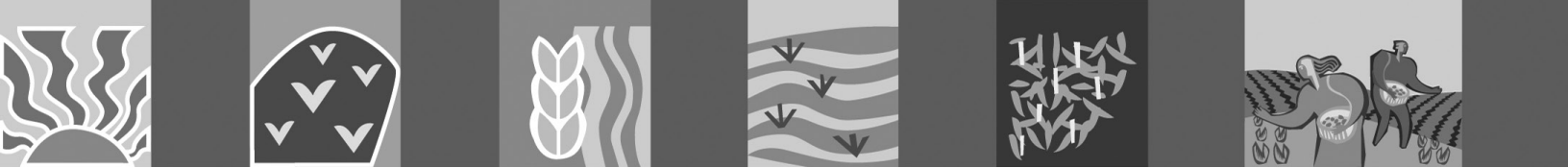
Photo from a paper on Community Protocols by Hally Jonas of Natural Justice

For countless generations, Indigenous peoples and traditional communities have had customary laws and protocols to regulate their own internal conduct and their relations with other communities and outsiders. In today's globalized world, however, customary laws and protocols are often ignored or undermined by more powerful claims to land and natural resources, particularly by large-scale, resource-intensive industries such as monoculture plantations, logging, mining, and infrastructure projects. Indigenous peoples and communities are usually the least involved in decisions that

affect them, but they suffer the most from human rights violations and environmental destruction. Given these imbalances, they are increasingly working to protect themselves and their lands and resources and to drive development on their own terms. Some are doing so by clarifying and enforcing their own customary laws and protocols.

What are Community Protocols?

Community protocols articulate community-determined values, procedures, and priorities.



They set out rights and responsibilities under customary, state, and international law as the basis for engaging with external actors (for example, government agencies, companies, academics, and NGOs). They can catalyze proactive responses to land and resource development, for example, by demanding the cessation of harmful activities or calling for constructive collaboration. As community protocols are increasingly being recognized in national and international law, they acquire additional legal weight as community-defined instruments that external actors must respect and adhere to.

For a brief introduction to community protocols, please view this short film: bit.ly/1lc9YKQ

Examples of Community Protocols

Community protocols are being used by many different communities in a range of contexts (see Figure 2 below), including:

- In India, Pakistan and Kenya, livestock keepers are protecting their migration

routes, grazing areas, animal genetic resources, and ethno-veterinary knowledge;

- In Malaysia, Indigenous communities are calling on government agencies to halt a proposed dam that would inundate their hill paddies, sacred sites, and rich biological diversity;
- In Colombia, artisanal gold miners are underscoring their contributions to their community's livelihoods and the sustainable use of local resources, as well as the detrimental impacts of large-scale mining;
- In South Africa, traditional healers are working with biotechnology companies and state protected area agencies to conserve and retain control over their medicinal plants and traditional knowledge.

Developing and Using Community Protocols

Every process of developing and using a community protocol is as unique and diverse as

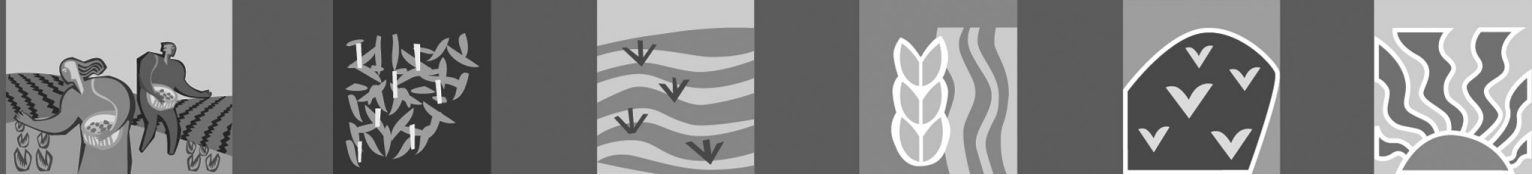


Figure 2. Locations of some community protocols being developed and used

GUIDING PRINCIPLES

The process of developing and using a protocol should be endogenous, inclusive, empowering, and based primarily on the community's own resources and diversity of knowledge, skills, and experiences. It should promote intra- and inter-community dialogue and intergenerational sharing. It should increase the community's agency and capacity to ensure that engagements with external actors take place with honesty, transparency, respect, social and cultural sensitivity, and integrity.

Figure 3. Guiding principles for a protocol process



the community at its heart. As explained in the toolkit for community facilitators (www.community-protocols.org/toolkit), there is no template or way to “do” a protocol. However, there are good practices and principles based on past experience, for example, facilitating the process according to the community’s priorities, timelines, and approaches (see Figure 3). Several methods and tools can be adapted to local contexts to assist with different aspects of a protocol process, including self-determination, endogenous development, documentation and communication, social mobilization, legal empowerment, strategic advocacy, and monitoring and evaluation. A community protocol should not be seen as something entirely “new” but as complementary to existing community initiatives.

For more information about facilitating a protocol process, please read the following article: <http://pubs.iied.org/G03411.html>.

Resources

- Community protocols website
- Brief intro to community protocols
- Toolkit for community facilitators
- Films and photo stories
- Compilation of community experiences

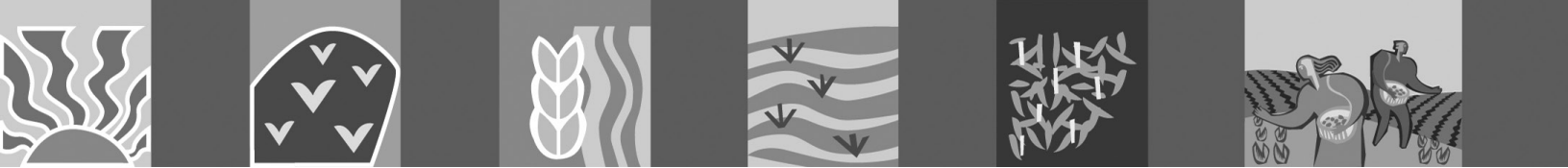
How can ANGOC partners and the Land Watch Asia Campaign get involved?

A global initiative on community protocols, currently coordinated by Natural Justice, supports networks of Indigenous peoples’ and community-based organizations with the following:



- Conducting comprehensive research and producing practical resources;
- Participatory documentation and development of community protocols;
- Using community protocols as the basis for constructive engagement with external actors;
- Building legal capacity of in-country lawyers and advocates, including on international law;
- Peer learning, analysis, and exchange of experiences; and
- Development and dissemination of good practice guidance and lessons

In Asia, Natural Justice has offices in India (Bangalore) and Malaysia (Kota Kinabalu). Our staff lawyers would be happy to discuss community protocols and possible areas for collaboration with any interested organizations in the region. Please contact Holly Jonas (holly@naturaljustice.org) for more information. ■



Free, Prior, and Informed Consent (FPIC): The Philippine Experience

By Sam Pedragosa, PAFID

Free, prior, and informed consent (FPIC) is the “principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use”.¹ International human rights laws recognize FPIC that protects communities from the violation of their rights, especially their land rights.

As its name implies, it has three elements. It is *free* – consent is freely taken and freely given, and free from whatever influence or pressure. It cannot be bought nor sold. It is *prior* – meaning consent is given *before* the action for which you are applying consent is done. Lastly, it is *informed* – based on *full* and unimpeded disclosure. This means the information is *true* i.e., not borne of deceit. Without these three elements, FPIC will be nothing.

FPIC in the Philippines

The Philippine experience of FPIC is a mixture of successes and failures.

FPIC is enshrined in at least two national statutes – the Mining Act of 1995 and the

Based on a presentation given by Mr. Sam Pedragosa at the Land Watch Asia Skills Share Session last 17 January 2014, in Quezon City, Philippines. For more information, you may contact Mr. Pedragosa at sampedragosa@yahoo.com.

¹ Forest Peoples Programme. <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>



Indigenous Peoples Rights Act of 1997 – as well as in numerous administrative guidelines. The current FPIC process is implemented through an Administrative Order that has penal provisions and the force of law.

FPIC is required for all externally introduced activities, including commercial initiatives, development projects, researchers, surveys, meetings, and in some instances, even taking photographs of indigenous peoples.

How has it been implemented?

Most, if not all development activities, i.e. mining, logging, pearl farms, that have been subjected to FPIC have been able to proceed.

However, there have been some successes in using FPIC for communities to regulate bio-prospecting. For example, Datu Vic Saway filed a case versus the National Museum concerning the illegal gathering of floral samples in Mt. Kitanglad.

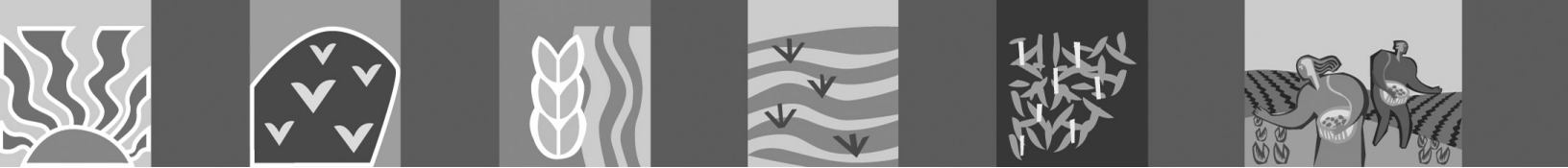
Similarly, some communities that refused to go through the FPIC process have been successful in rejecting the entry of most development activities. The Aetas of Pastolan, Zambales, denied the construction of a gold course by continuously saying no and refusing to engage the government.

Pitfalls of the FPIC

- FPIC has become an instrument used by the government to deny the right of self-determination of indigenous communities.
- Junk science and other deceitful means have been used to derail genuine FPIC. For example, drawing a line separating

the boundary of a mining claim versus an ancestral domain claim excludes the indigenous community from demanding an FPIC. Or the use of deceitful information so an IP community would allow the entry of a mining corporation.

- FPIC has divided communities and damaged people’s cultural ties by using non-traditional processes, such as voting for a simple majority in lieu of consensus-building.
- FPIC has exerted extreme stress on communities, who are forced to make hasty decisions within a very short period of time, hindering them from the benefit of sustained and comprehensive consultations to gain information and gather consensus.
- The FPIC process has shown its vulnerability to hijacking by big businesses wanting a favorable decision. For example, the FPIC’s implementing rules and regulations have been reviewed and amended at least twice upon the insistence of the mining industry, which feel that securing FPIC takes too long for a company. Consequently, the FPIC timeframe has been shortened from 120 days to 90 days.
- Extreme poverty, exacerbated by the lack of government resources, has made communities vulnerable, affecting their resolve in conducting genuine FPIC. To illustrate, mining companies shoulder the the costs for the filing of ancestral domain claims, as well as logistical requirements for an FPIC. Schools, water systems, and livelihood support have been doled out to secure favorable decisions in the FPIC process.



Challenges and lessons

- Consensus-building and decision-making among Indigenous communities are activities bound by culture and tradition. Placing these within the legal framework will restrict the practice of customary laws and the dynamic and adaptable character of indigenous institutions and customary governance systems. As a result, the FPIC regulatory guidelines, rather than reconciling government interventions within the framework of an indigenous community's space, raise the potential for conflict.
 - FPIC should be conducted alongside a community-based and community-controlled Environmental Impact Assessment (EIA) to ensure that all affected indigenous communities are not excluded or marginalized from the FPIC process. Currently, third parties define those affected or those outside the impact areas, and determine those who should be consulted or when the FPIC is mandatory.
 - Conditions that make poor communities as well as governments vulnerable to external manipulation should be addressed if we are to expect a genuine FPIC process.
 - Affected local and indigenous communities must have access to *all* relevant information to ensure *informed* consent.
 - Advocacy for adoption of the FPIC process in international as well as national laws is just part of the struggle. Real work starts with the formulation of the FPIC's Implementing Rules and Regulations and monitoring its on-ground application.
- The FPIC process is not a replacement for strong local and indigenous communities who are still capable of saying no! ■



Founded in 1979, ANGOC is a regional association of 15 national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC network members and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

ANGOC is a founding member of the International Land Coalition (ILC). ANGOC is the regional convener of the Land Watch Asia (LWA) campaign and the Asian Alliance Against Hunger and Malnutrition (AAHM-Asia). ANGOC is also a member of the Global Land Tool Network (GLTN), and the Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium.

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