Recognition of Indigenous Peoples’ Customary Land Rights in Asia

Asia Indigenous Peoples Pact (AIPP)

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Executive Summary

In Asia, various legal instruments have been used to recognize indigenous peoples within the legal framework of State. States have recognized indigenous peoples through constitutional provision, special laws, and court decisions and/or through ratification or adoption of international instruments. However, legal recognition by states does not always guarantee the full range and enjoyment by indigenous peoples of their individual and collective rights as provided in international instruments such as the UN Declaration on the Rights of Indigenous Peoples.

Indigenous peoples in Asia have developed their particular customary land use and tenure systems through time, which have existed since time immemorial and continue to be practiced until today. These customary land use systems are largely community-based and managed according to the livelihood needs and practices of the community. Generally, the right to use and manage the land and resources is regulated collectively within the community and allows equal opportunities to community members for access to resources. Ownership rights over a particular resource or stretch of land depend on the nature of the land or resource and is handed down or transferred from generation to generation. Different land use patterns and complex land ownership systems are found, which may include individual, clan and community ownership. Individual tenure is usually practiced over paddy terrace fields or residential or settlement areas. Collective rights may exist at different levels and may be vested on the whole community or part of it, such as a clan or kinship group.

Governments in Asia have passed laws and policies promoting the recognition of indigenous peoples customary rights to their land and resources. A key development in some countries is state recognition of communal land or collective rights over land and forests. However, there is clearly weak implementation of these laws. In spite of the existence of these laws and policies recognizing customary land rights, indigenous peoples in Asia continue to face land dispossession and destruction on a wide scale due to large-scale development and resource extraction by state and private business interests in their traditional territories.

Consequences of such land dispossession and land use change are grave for indigenous peoples, especially for indigenous women. These include loss of access to the primary source of their traditional livelihoods, triggering a situation of food insecurity, destruction of forests and the loss of biodiversity upon which many indigenous peoples rely on for their survival. Poverty and social breakdown also result due to a disruption of traditional social structures and values. These impacts are aggravated by continuing challenges such as negative attitudes and discrimination towards indigenous peoples, lack of awareness and understanding of the UN Declaration on the Rights of Indigenous Peoples and lack of political will by governments to fully implement state laws and policies. In some communities, indigenous organizations are also not strong enough to assert their rights.

The recognition, protection and fulfillment of indigenous peoples’ right to land is crucial, not only for their physical but also for their cultural survival and wellbeing. States need to respect the economic, social, cultural and spiritual values and importance that indigenous peoples attach to their lands, territories and resources, and take immediate steps to ensure the full exercise of indigenous peoples’ customary land rights for their sustainable development, peace and security.
Background and Context

Indigenous peoples are distinguished for their unique cultures, distinct identities, and valuable traditional knowledge and practices. It is estimated that the total population of indigenous peoples worldwide is around 370 million, which is 5% of the global population. It is also estimated that 15% of the poorest of the poor are indigenous peoples. Asia is home to two-thirds, estimated at around 260 million, of the world’s indigenous peoples population.¹

The use of the term “indigenous peoples” is contentious in Asia. Many governments in Asia claim, "We are all Indigenous", while some states say that they don’t have indigenous peoples in their countries. However, it is a fact that there are distinct groups within these countries with their own languages, cultures and territories that distinguish themselves from the broader populations in their respective countries and assert themselves as indigenous peoples. They are identified by different names - ethnic minorities, Hill tribes, Scheduled tribes, Tribal people, Highland people, Adivasis and Janajati, Orang Asli, Masyarakat Adat, etc. However, many indigenous peoples do not appreciate the use of some of these terms, as they imply notions of cultural inferiority, primitiveness or backwardness.²

While almost all states in Asia voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007, many still refuse to respect and implement the collective rights of indigenous peoples to their lands, territories and resources and to self-determination. Most Asian states, underpinned by legal systems inherited from colonial times, have arrogated upon themselves the right to allocate, regulate and determine land and resource ownership, use, control and development.³

Thus, the application of the concept of indigenous peoples as recognized under international human rights instruments remains a major and critical concern for millions of indigenous peoples in the region. The continuous denial by states of their indigenous peoples as distinct peoples, who have been systematically discriminated and marginalized, goes against the very principle of achieving social justice as affirmed by the UN Declaration on the Rights of Indigenous Peoples.

Legal Identities of Indigenous Peoples in Asia

The formal legal recognition and status granted by Asian states to indigenous peoples varies from country to country. In a number of countries, indigenous peoples have constitutional recognition, while in others they are not mentioned in the fundamental law of the land. Within the legal framework of the State, various legal instruments have been used to recognize indigenous peoples, including through Constitutional recognition, recognition by special laws, recognition through court decisions, and recognition through ratification or adoption of international instruments. However, legal recognition, even when conferred does not always guarantee the full range and enjoyment of individual and collective rights. In some Asian countries, it is limited, conditional or is not properly implemented. It also does not extend to all indigenous peoples within the country. Often, it is disregarded when state or private business interests prevail. The absence of formal legal recognition often results in indigenous peoples being denied many basic rights and services including collective rights guaranteed by national and international human rights law.⁴
The table below summarizes the status of legal recognition of indigenous peoples in the different countries in Asia.

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal recognition of indigenous peoples and related Issues</th>
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<tr>
<td>Indonesia</td>
<td>The Constitution (Article 18 B-2) recognizes and respects traditional communities and their customary rights where these exist and as long as these are in accordance with the societal development and principles of the state. Some laws on agrarian reform (Decree 9/2001), agrarian regulations (Act 5/1960) and human rights (Act 39/1999) give implicit, though conditional, recognition of some rights of “masyarakat adat” or custom law-based communities.</td>
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<td>Malaysia</td>
<td>The Federal Constitution uses the term ‘native’ to refer to the heterogeneous indigenous people of Sarawak and Sabah (Article 161A) and provides special protection for the natives of Sarawak and Sabah. The recognition in the Constitution however, does not go hand-in-hand with the measures to ensure they are given the necessary support and respect related to other recognized rights, including lands and territories, traditional ways of life or papers as proof of citizenship. The Sarawak Land Code of 1958 severely limits the recognition of native customary rights to land. Many indigenous peoples, especially from remote areas, have great difficulty getting their citizenship papers due to late registration of birth or to poor access to the registration department. At the national level, there is an emerging body of law recognizing and reaffirming protection for native customary title rights, based on interpretations of the Federal Constitution, common law and international customary law.</td>
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<td>Philippines</td>
<td>The rights of “indigenous cultural communities/ indigenous peoples” are constitutionally guaranteed (Article 2, section 22) and enabled through Republic Act 8371 or the Indigenous Peoples’ Rights Act [IPRA]. The IPRA protects and promotes indigenous peoples’ cultural integrity, the right to own and develop their ancestral lands/domains, and the right to free and prior informed consent (FPIC). However, the implementation of FPIC has been manipulated and the recognition of ancestral land and ancestral domains has been very problematic, resulting in conflicts and gross violations of land rights.</td>
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<td>Taiwan, China</td>
<td>A number of specific laws, e.g. Indigenous Peoples’ Basic Act 2005, Education Act for Indigenous Peoples 2004, Status Act for Indigenous Peoples 2001, protect indigenous rights, including the Constitutional Amendments (2005) on indigenous representation in the Legislative Assembly, protection of language and culture and political participation. Unfortunately, serious discrepancies and overlapping in legislation, coupled with only partial implementation, have stymied progress towards self-governance and sustainable development of indigenous peoples. In addition, only 14 indigenous peoples are officially recognized, and at least nine Ping Pu (“plains or lowland”) indigenous peoples are still claiming for recognition as indigenous peoples.</td>
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<td>India</td>
<td>Only 461 ethnic groups of the estimated 635 groups are acknowledged as Scheduled Tribes or adivasi, the terms by which indigenous peoples are known. There is a constitutional provision which recognizes the customary laws in North East India such as Article 371A for Nagaland and Article 371G for Mizoram. But the same indigenous groups who are outside the states of Nagaland and Mizoram cannot exercise this entitlement as it is the other state laws that apply to them. Another provision includes the Autonomous District Council in Sixth Scheduled areas and Panchayats Extension to the Scheduled Areas Act in Fifth Scheduled area, which allows autonomy or local self-governance in tribal/adiwasi areas. However, autonomy or self-governance is not fully realized because of weak implementation and it is the state governments that always control its function.</td>
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<td>Japan</td>
<td>Since 2008 and after over 100 years of forced assimilation and discriminatory policies, its legislative body, the Diet, finally voted to recognize the Ainu as “an indigenous people with a distinct language, religion and culture.” However, issues remain in terms of their education, socio-economic status and quality of life or their right to their territory.</td>
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<td>Cambodia</td>
<td>The 2009 National Policy on Development of Indigenous Peoples uses the term “chun-cheat daoem pheak tech” which literally means “minority original ethnicity” in its documents to refer to peoples who are not Khmers, Chams, Chinese, Laos, Thais, or Kinh (Vietnamese). This term is also used in the 2001 Land Law and in the 2002 Forestry Law.</td>
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<td>Vietnam</td>
<td>In Vietnam’s Constitution (Article 5), indigenous peoples are referred to as “ethnic minorities” who “have the right to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures.”</td>
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<tr>
<td>Country</td>
<td>Status and Challenges</td>
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<td>Nepal</td>
<td>At least 39% of the total population is recognized as indigenous peoples, and the government has ratified ILO Convention 169 on Indigenous and Tribal Peoples. However, indigenous peoples have the least meaningful political representation in the country, with their freely chosen representatives largely excluded from the constitution-making process. A new Constitution is soon to be promulgated and indigenous peoples are campaigning for the right to self-government under a federal system of government in order to have control of their social, cultural and political development.</td>
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<td>Laos PDR</td>
<td>The government does not use the term indigenous peoples, making self-identification and self-determination a major problem. Under its Constitution, Laos is defined as a multi-ethnic society where all “ethnic groups” have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation (Article 8).</td>
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<td>Thailand</td>
<td>The new Constitution recognizes “traditional communities” but not the term “indigenous peoples”. Many of the over half a million stateless population are indigenous peoples (UNHCR report 2014), as almost half of them are not citizens. Its 2007 Constitution is silent on citizenship rights, and the country is not part of any international convention regarding statelessness. Due to the lack of citizenship rights, the indigenous peoples are considered “illegal aliens” and have been subjected to arbitrary arrest, discrimination, denial of basic rights and social services, such as education and healthcare, freedom of movement, and land ownership.</td>
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<td>Bangladesh</td>
<td>Has not conferred formal legal recognition to indigenous peoples in the manner of their choice. The Constitution of Bangladesh refers to them as “tribes, minor races, ethnics sects and communities” (Art 23A), an amendment in 2011, which was condemned by Indigenous peoples throughout the country.</td>
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<tr>
<td>Myanmar</td>
<td>Has not conferred formal legal recognition to indigenous peoples in the manner of their choice.</td>
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The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 26 states: “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”

Notwithstanding legal recognition or non-recognition by states of their identity and land rights, indigenous peoples in Asia continue to practice their own customary laws and systems defining and regulating ownership and access rights to land, territories and resources.

Indigenous peoples developed their customary land use systems through time, based on the livelihood needs and practices of the community. Varying and complex land use and ownership systems are found in different indigenous communities, which may include individual, clan and community-owned land. Most of these systems are community-based and collectively managed, meaning that the right to use and manage the land and resources is regulated collectively within the community to allow equal opportunities to community members.

Ownership rights over a particular resource or stretch of land depend on the nature of the land or resource and the relationship that had evolved between the community members and the particular resource or tract of land. For example, in shifting cultivation, ownership of the land may be individual but the community maintains traditional usufruct rights over the cultivation areas, which are managed collectively by the community and not by the individuals. On the other hand, grazing areas may fall under community tenure but the community recognizes certain grazing rights of individual families due to a long relationship evolved over that area. These relationships are handed down or transferred from generation to generation with the acquired knowledge of that particular resource.

Most indigenous agrarian societies recognize individual tenure, particularly over paddy terrace fields or settlement areas where land has been developed as permanent family assets. Very common also is the individual right over perennial plants, like fruit trees. Individuals may have developed orchards or agro forests, which may not necessarily imply that they have ownership rights over the land on which they grow. Common resources like water sources or community ponds that are located in individually owned land are not included under the purview of individual ownership, which means that they cannot be claimed as individual or private resources, as they are meant to serve the whole community.

Collective rights over land other than paddy fields are common among indigenous societies. In many cases, these even include land for shifting cultivation. Such collective rights may exist at different levels. The collective in which these rights are vested may be the whole community or part of it, such as a clan or kinship group. For example, in the Cordillera region, Philippines, watershed forests are communally owned and managed by the whole community, while woodlots are collectively owned and managed at the level of a clan.
Case 1: Customary Forest Management of the Dzao and Thai People in North-West Vietnam

The Culture Identity and Resources Use Management (CIRUM) conducted a research in 2012 on the customary law in forest resources use and management among the ethnic minorities of North-West Vietnam. The case study found that the Dzao people in Ta Phin and the Thai people in Muong Phang continue to keep alive their beliefs, values and norms with respect to natural resources that guide them to interact with nature in a harmonious way.

Customary laws on forest management define rules and regulations on forest classification and ownership. Forests belong to the community and are given to them by their ancestors to whom they are deeply attached and from whom they derive their current identity. The ancestors have given them the land and established the relationship with supra-natural entities on which the community relies for protection, safety and its resources. Forests are classified based on spiritual values and interests of the community as a whole.

On forest land allocation and management, forest land is allocated based on ancestral borders, actual needs and with consent from all villagers. Certain forest areas are prohibited to be allocated to households due to their spiritual significance for the whole community. Taking this into account is important for the safety and wellbeing of all and hence widely accepted. Village elders and chiefs are the key actors in allocating forest resources, overseeing the management and use and ensuring that customary law is respected. They play a key role in settling disputes over natural resources. Beliefs and intrinsic values also make people consciously or unconsciously apply customary rules for the protection of natural resources. Natural resources are inhabited and/or protected by supernatural entities, and hence cannot belong to anyone. The rules and customs to interact with the nature are governed by the supranatural powers. All aspects related to allocation, land use purposes, benefit sharing, etc., must be discussed and agreed upon by all villagers with transparency.

Community is self-reliant and takes care of itself through traditions and indigenous knowledge. Respectful interactions with natural resources is an intrinsic driving force because it denotes respect towards the supranatural powers like the three Mother Spirits of Land, Forest and Water; and resources must be taken and used with modesty. Benefit sharing should be for all, equal and based on actual needs. All community forests are open to all to enjoy its benefits.

Case 2: Customary land ownership in the Cordillera, Philippines

a. Land tenure system among the Applai/Kankanaey of Northern Sagada

The Applai/Kankanaey are indigenous people in Sagada, Mountain Province in the Cordillera region of northern Philippines. For them, land is used for residential lots, rice fields (kapayewan), grazing land (pastulan), hunting (paganupan), woodlots (kaewan/batangan) and watershed (pagpag).

There are four types of land ownership rights in Northern Sagada - individual, clan, dap-ay and community owned, which are utilized and managed for particular purposes. Communal land called saguday is either clan-owned (saguday di sinpangapo), community-owned (saguday di umili), or dap-ay owned (saguday di dumap-ay). Dap-ay refers to the indigenous socio-political system and structure among the Kankanaey, which governs over a cluster of households in the community. It is led by a council of traditional elders who collectively decide on matters concerning its members, or dumap-ay, through consensual and democratic deliberations.

Individual land ownership is bequeathed over ricefields, residential and camotal land (land planted to sweet potato or camote). Individually held land can be acquired through inheritance or through occupation and work based on the principle of owning the land that one has worked on.

Clan-owned communal land covers woodlots, residential lots, and parcels of land found amidst woodlots that one works on and eventually owns. Clan-owned land either originated from land bequeathed by the ‘dumap-ay’ due to a gallant deed done by a member of the clan, or from land individually acquired by one member of the clan and co-worked and co-owned by the clan members. Rules govern the ownership, acquisition and use of this land. It cannot be sold in order to keep the land for the use...
of clan members in the present and the next generation. Anybody who is a member of the clan can cultivate any portion of the land but shall not consider it as his or her own lot.

Dap-ay owned communal land refers to woodlots and residential lots used by members of the dap-ay. One who has done good deeds or gallant acts for the benefit of the community may be bequeathed with land by the ‘dumap-ay’.

Community-owned communal land called ‘saguday di umili’ refers to watersheds, water sources, grazing lands and sacred lots including burial grounds, ceremonial and ritual healing sites. Any part of this land can be bequeathed to a member who performed good deeds or gallant acts for the good of the whole community. Being community owned, anybody from the community can gather firewood from this land. However, permission has to be given by the caretaker, who is appointed by the elders of the dap-ay and barangay leaders to guard the communal land.

As a rule, land cannot be sold as it is preserved for children and their children’s children. This specially refers to ‘saguday di sinpangapo’, ‘saguday di dumap-ay’ and the ‘saguday di umili’. Private land can only be sold and transferred following the rule that the priority buyers are the immediate relatives in the family to which the land belongs.

b. The Bontok System Of Land Use And Ownership

The Bontok are an indigenous people of the Northern Luzon Cordillera in the Philippines. Bontok anthropologist June Prill-Brett writes that each of her people’s villages “is an autonomous agricultural community that is socially, politically, and economically independent of all others.” Traditionally, the Bontok have a complex land use system combining rice cultivation on irrigated terraces with shifting cultivation, the breeding of livestock like pigs, buffalos and cattle, and hunting and gathering of forest products. The Bontok, according to Prill-Brett, “view the land as a gift from ‘the one in the highest’. To them land is a source of life; ‘it belongs to no one or to everyone.’” Nonetheless, the Bontok have rules specifying community members’ rights to land and resources within the village. Bontok communities recognize three categories of land rights, each with its own rules of ownership and succession:

**Lamoram.** This is communal land; it belongs to all village members. Lamoram include forests and hunting grounds, smaller woodlands, pasture land and village settlements.

**Tayan.** This is land that was once part of the communal domain but has been segregated as the property of a kinship group. Usually, it is land that was cleared for shifting cultivation. The descendants of the person who did the work now have the right to use that land. But tayan can, instead, be a woodlot, a pasture, or a fishing site that has been used continually by several generations of only one kinship group, and so has become the group’s property.
State policies recognizing customary rights to land and resources

Governments in Asia have passed laws and policies promoting the recognition of indigenous peoples' customary rights to their land and resources. These laws have largely been won through the collective and sustained struggles of indigenous peoples for State recognition of their rights.

In the Philippines is the Indigenous Peoples Rights Act (IPRA) of 1997 that recognizes both collective and individual rights over the ancestral domains and lands of indigenous peoples through issuance of Certificate of Ancestral Domain Title (CADT) and Certificate of Ancestral Land Title (CALT). However, the process of obtaining a CADT or CALT takes a long time and is expensive because of the bureaucratic red tape and the large amount of proofs required of the claimants. On average, this process can take between two and three years. In many cases in the Cordillera Administrative Region, the process has already gone on for more than ten years yet remains uncompleted. In many cases, the communities applying for a CADT face considerable problems arising from conflicts with adverse or bogus claimants and government agencies, in particular the National Commission on Indigenous Peoples (NCIP) and the Department of Environment and Natural Resources (DENR). For example, ancestral domain claims often overlap with protected areas and reservations, preventing the issuance of the CADT. Local governments and companies sometimes oppose the issuance of CADT due to commercial interests. The NCIP generally colludes with interest groups instead of living up to its mandate to support the indigenous communities. Even when indigenous communities already possess a CADT, they are often faced with pressure from corporate interests wanting to access natural resources within their ancestral domain.

In Cambodia, the 2001 Land Law recognizes the collective rights of indigenous communities to their traditional lands. Also, indigenous communities are entitled to register their communal land and receive a collective land title for the protection and management of their traditional lands to meet their needs. It has been more than a decade since the land law was passed in 2001, however only eight communal titles have been granted so far to the indigenous communities. Also, the process involved to get the title is time consuming and not community friendly. In addition, indigenous peoples areas are being constantly exposed to the economic land concessions in different parts of Cambodia in a systematic manner. This demonstrates that the government is not keen to provide collective land titles to indigenous communities but instead is more interested to privatize indigenous lands and sell them to make way for economic land concessions.

In Indonesia, the Constitutional Court has ruled that customary forests are not state forests, thereby recognizing the rights of indigenous peoples over their customary forests. However, the government has yet to draft the operational guideline for the implementation of that decision. A few months after the Constitutional ruling, the Minister of Forestry issued a letter stating that for the Ministry to determine customary forests, the local governments need to set up regulations to identify customary forests. Indigenous peoples in Indonesia are concerned that this will be a long and difficult process that will ultimately provide a leeway for the states to give large tracts of forest areas to companies. Therefore, indigenous peoples of Indonesia are demanding the immediate implementation of the Constitutional Court’s ruling at both the national and local levels by handing over the ownership and management of around 40 million hectares of customary forests to their communities.

In Malaysia, the Court of Appeals in Sarawak has upheld the ruling of the Sibu High Court that the pemakai menoa (territorial domain) and pulau galau (communal forest reserve) are part of Native Customary Rights (NCR) land. This ruling sets a precedent for the more than 200 NCR land cases in Sarawak, Malaysia which are pending in the high court. Meanwhile, the National Human Rights Commission of Malaysia [SUHAKAM] conducted a national land inquiry to tackle the more than 2,000 complaints related to native customary rights from 2002 to 2010. The inquiry showed that authorities have adopted different definitions of Native Customary Rights (NCR) land. It was also seen that the opening of plantations has resulted in destruction of graveyards, crops, loss of livelihoods and traditional ways of life and that forest reserves have included NCR land. There is no mechanism to provide feedback on proposed commercial development projects and compensation for land loss or damages is either delayed, unpaid or not commensurate to the loss of revenue or loss of communal life. In addition, there have been administrative delays in the processing of land applications, survey and land inspection. SUKAHAM has thus recommended for the government to recognize native customary rights land as central to indigenous peoples' identity and to provide remedies for land loss, development imbalances and administrative issues.
In India, the Forest Rights Act (FRA) of 2006 provides for the forest rights of adivasi/tribal peoples as a means to support their livelihoods. The FRA stipulates that gram sabhas or village councils are responsible for granting or withholding consent for all the projects. However, the government of India is now mulling a proposal to amend the FRA and exempt certain projects such as roads, railways, electricity and irrigation from the need for a village council vote. Adivasi leaders and activists consider that this is contrary to the letter and spirit of the FRA and will result to the further marginalization and dis-empowerment of the adivasi and tribal peoples as well as to serious adverse impacts to the environment.

Case 3: Non-recognition of Adivasi rights in Sundargarh district, Orissa, India

Background: The issue of governance in Scheduled Areas has been a long-standing issue in India that has been mired in constitutional violations and government apathy. One such case is the Sundargarh district in Orissa, which was declared as a scheduled district in 1950. Since then, its administrative setup should be in accordance with the provisions of the Fifth Schedule and Article 339 of the constitution of India. After the Orissa Estates Abolition Act of 1951, all general laws were applied in the state, including administrative and land governance. Subsequently, outsiders (non-tribals) were settled in these scheduled areas, violating Article 19 (5) of the Constitution of India and depriving the interests of the scheduled tribes. After the 73rd Constitutional amendment, the Panchayats Extension to the Scheduled Areas Act, 1996 (PESA Act) was enacted to govern the rural areas of the Scheduled Areas. However, the Government of Orissa has not implemented the PESA Act till today and traditional villages in the scheduled areas were not recognized as per the provisions of Section 4(b) of the PESA Act. In 2003, the Government of Orissa passed an Act relating to municipal corporations, applying it to entire state, including scheduled areas. This is totally in violation of the Article 243ZC(3) of the Constitution of India, which states that only the Parliament is authorized and competent to make laws relating to the governance of urban areas in scheduled areas.

Rourkela Steel Plant. The Rourkela Steel Plant (RSP), one of the most advanced steel plants of the world, was constructed during the 1950s and 1960s at Rourkela, Orissa. The construction itself and several phases of modernization of the plant at later times were done mainly with technical and financial assistance from Germany. RSP was the first integrated steel plant in the public sector in India. RSP is considered a success story and the city is one of the growth centers of India. Large areas of lands were illegally alienated to make way for the construction of RSP. In the name of national development, hundreds of thousands of adivasi people were displaced from their ancestral land and livelihood, without proper compensation and rehabilitation. Displaced families were brought to faraway resettlement colonies without even basic amenities in place, and this condition largely continues till date. Thereafter, most of the ancestral lands were alienated and illegally settled by non-tribals. Land for land compensation was not made in proper relation to quality and quantity of the land acquired. Most of the displaced families also did not get employment in the steel plant. Contrarily, non-Adivasis and other non-affected people got employment on the basis of fake displacement certificates. Till today the RSP has not been able to provide all the displaced people either with jobs or land. The majority of the Adivasi population had no share in the economic development of this region. They had been forced to give up their ancestral lands and many of them are still date struggling for their rightful claims to assets and livelihoods lost through the eviction.

Latest issue: The peoples’ movement under the banner of Sundergarh Adiwasi Mulwasi Bachao Manch has been protesting since 2014 against the unconstitutional conversion of schedule areas into corporation areas and the forceful acquisition of adivasi land by the Rourkela Steel Plant. The people of Sundergarh are demanding for the immediate cancellation of an order by the Orissa government to include more Gram Panchayat (scheduled areas) into the newly formed Rourkela Municipal Corporation (RMC), which they said is in violation of the constitution.

On December 20, 2014, thousands of affected adivasi people peacefully demonstrated and submitted a memorandum addressed to the chief minister of Orissa seeking clarification regarding the formation of the Rourkela Municipal Corporation and demanding the cancellation of the notification on or before December 31, 2014. However, the State government failed to respond to the pleas of the people of Sundergarh, forcing them to call for an economic blockade on January 20, 2015. Sundergarh Zilla Adiwasi Mulwasi Bachao Manch has been leading the struggle in a peaceful manner. They have submitted a memorandum to the President and also the prime minister of India requesting for immediate action on the matter as the issue has become a bone of contention in Scheduled Areas.
All these years, the adivasis have been peacefully occupying their land and now suddenly they are being asked to vacate the land. In the villages of Dumertabarkani and Barkaniajharia tuli, more than 250 adivasi households are being forcefully evicted by the RSP in collusion with the administration without any prior notice. Thus they are vehemently protesting through road blockades, press conferences and public meetings to ask the state government to immediately repeal the notification acquiring scheduled area land for the Rourkela Municipal Corporation. Ahead of the protests, 15 leaders were picked up by police, and on the protest day, the tribals were “mercilessly lathicharged.” The people of Sundergarh carried out the economic blockade on January 20 and 21, 2015, after which hundreds have been jailed and charged with different offenses. Seven innocent villagers were arrested on their way to a picnic on January 20, 2015. There is a very tense situation in the villages right now as the police are constantly hounding the villagers with brute impunity whenever they try to ask for answers to these violations.

Nearly 3,000 people from the affected region have joined the protest, demanding an immediate stop to the construction of boundary walls and efforts to evict the villagers forcefully. Hundreds of police armed with guns and teargas have been deployed in strategic positions surrounding the villages. The peaceful protestors are merely armed with the Indian flag and black headbands mourning the death of the Indian constitution. Children in school uniforms, mothers with infants tied to their bosom, elderly with only will power to fight for their future generation have all come together in this call for justice.

**Threats to indigenous peoples’ Customary Land Rights**

In spite of these laws and policies recognizing customary land rights, indigenous peoples in Asia continue to face land dispossession and destruction of their traditional territories from large-scale development projects and resource extraction by state and private business interests. This is seen in the accelerated encroachment of extractive industries, infrastructure, national parks and other development projects into indigenous peoples’ land, a trend that has been called “development aggression” by indigenous peoples.
Development Aggression

In Cambodia’s Prey Lang Forest region, home to the Kui indigenous peoples, official land grants of tens of thousands of hectares of forests have been given for mineral extraction, timber and rubber plantations. This has forced many Kui people to give up their traditional livelihoods. Likewise, expansion of oil palm plantations in Malaysia and Indonesia is also taking away forestlands of indigenous peoples. Another major source of destruction of indigenous lands and resources is large scale-mining. More than a hundred corporate mines are currently operating in indigenous territories in Asia. However, not a single company has undertaken a credible process of obtaining the free prior and informed consent (FPIC) of affected communities. In Northern Maluku, Indonesia, PT Nusa Halmahera Minerals (PT NHM), an Australian gold mining company has been operating in the indigenous Pagu territories since 1997. The company started its work without any consultation with the indigenous Pagu. The mining activities caused the loss of forests and the livelihoods of community members. Rivers and ocean areas in the Pagu territories are poisoned with cyanide and mercury resulting in health problems among the community people, as they consume fish and water from the rivers.

These forms of development aggression in the territories of indigenous peoples are destroying the intimate relationship between indigenous peoples and nature, affecting their culture and traditions, increasing conflicts, insecurity and health problems, causing forced displacement, and ultimately threatening the livelihoods, identities and survival of indigenous peoples.

Imposition of National Parks and Conservation Areas

Many countries in Asia are vying to increase the size of their terrestrial protected areas (parks and conservation areas), to 10 – 12 percent of their total land area. These protected areas often overlap with forest areas that indigenous communities have been preserving for generations. However, due to the non-recognition of traditional land tenure systems, these areas are often gazetted as protected areas without the free, prior and informed consent of communities. Such an imposition will result in the restriction of indigenous communities’ access rights or the denial of their land tenure rights, with serious implications on the food security of indigenous peoples. There are many cases of indigenous communities’ eviction from national parks in Thailand, Malaysia, Indonesia and Laos. Likewise, indigenous women and girls are also being subjected to sexual violence by guards and personnel of national parks when they go to gather non-timber forest products, as in the case of Nepal and Cambodia.

Misunderstanding indigenous peoples’ traditional land use and livelihoods

Indigenous peoples’ traditional land use systems, particularly shifting cultivation practiced in most countries in Asia, have long contributed to sustainable livelihoods, food security, natural resource management, and biodiversity conservation and enhancement. The traditional knowledge, cultural, spiritual and nutritional values attached to these livelihood systems demonstrate that they are not merely a technique of land use but a way of life for indigenous peoples. However, government policies are still in place that directly aim to eradicate shifting cultivation or rotational agriculture and prohibit the gathering of non-timber forest products in the name of environmental conservation. This has resulted in the criminalization of indigenous peoples’ livelihoods and many of them have been jailed and penalized, such as in Indonesia and Thailand. Further, indigenous communities are often resettled resulting in loss of land and the traditional knowledge attached to the land use.

Energy projects displacing indigenous peoples from their lands

Indigenous peoples’ lands and forests are being expropriated for large-scale energy infrastructure development like mega hydropower dams without their free, prior and informed consent (FPIC). Meanwhile, the energy to be generated will be transmitted to urban and industrial centers or exported to neighboring countries. The classification of large dams as clean energy under climate change mitigation has been taken as a new license to build more than 200 large dams across Asia. The construction of large dams has already displaced at least 40 million people worldwide, many of who are indigenous. These activities are causing adverse environmental, economic, social and cultural impacts on indigenous peoples’ livelihoods and traditional occupations. In Vietnam, over 90,000 people, mostly, ethnic Thai, were relocated to make way for the Son La Hydropower plant, which a Vietnamese scientist said left many without access to agricultural land by 2010.

In the Malaysian state of Sarawak, the Sarawak Government and state-owned company, Sarawak Energy Berhad (SEB), are collaborating to build a series of up to twelve large-scale hydroelectric dams as part of an industrial development initiative called the Sarawak Corridor of Renewable Energy (SCORE). Inundating an area of more than 2,100 square kilometers, the dams will submerge forests, cultivated areas, and villages, forcibly displacing tens of thousands of indigenous people from their customary lands. The hydropower projects are proposed for the purposes of exporting electricity to neighboring Brunei and Indonesia, and to generate power for resource-intensive
industries, including steel, aluminum, silicon and timber processing. To date, three large hydroelectric projects, the Batang Ai, Bakun and Murum dams, have already been built in Sarawak. However, the recently completed Murum Dam is yet to begin operating due to technical design flaws, while the Bakun Dam is not operating at full capacity because of an insufficient demand for the electricity. The existence of excess unused power potential and the lack of evidence of demand-side needs for more power mean that there is no clear rationale for proceeding with the construction of more dams.\textsuperscript{21}

Likewise, the proposed construction by PhilCarbon of a series of huge commercial wind farm towers in the fragile mountain ranges of Sagada and Besao in the Cordillera Region, Philippines for power generation will have serious adverse impacts on the environment and sustainable livelihoods of indigenous peoples. While wind is supposed to be a form of renewable energy, it is not automatically viable and socially acceptable, especially if it threatens indigenous peoples, is destructive to the environment and is driven by business interests over the indigenous communities’ interest, needs, control and management of their resources.

Increasing insecurity of indigenous leaders and activists

Indigenous peoples have long been fighting to defend their lands and forests against mining, logging, plantation and other extractive industries in the region. However, human rights violations against indigenous peoples who have been protecting their territories and forests are increasing. The recent report “Deadly Environment” by Global Witness has reported the killing of 102 environment and land defenders including indigenous peoples in the ASEAN region from 2002-2013. The culture of impunity for the perpetrators and the lack of political will to deliver justice for those killed in conflicts is prevalent, which in turn is deterring others from protecting their rights to the environment and land. Human rights violations of indigenous peoples such as killing, land grabbing, militarization, torture, rape and sexual harassment of indigenous women, among others are prevalent in South Asia as well.\textsuperscript{22}

Particular Concerns of Indigenous Women

Indigenous women possess rich indigenous knowledge in protecting, developing and using forest resources. Indigenous knowledge contributes to the maintenance and preservation of biodiversity and sustainable forest development. Indigenous women’s traditional knowledge and practices have been found to be a suitable way to secure food, conserve their culture and traditions, and contribute to sustainable natural resource management in their community. Indigenous knowledge on forest management has proven to be applicable and appropriate to local conditions. It is comprehensive because it has been developed over a long period of time and can be easily applied as a basis for solutions to local problems.

Generally, except in a few cases, indigenous women do not have ownership of land, even though they are usually the ones who manage and work on the land. Even under customary law of indigenous peoples, it is the men who mostly occupy leadership and decision-making positions in the community. Indigenous women are often not allowed equal rights as indigenous men in decision-making on community matters, including land ownership.

Indigenous women are disproportionately affected by the loss of land and the advent of private companies for resource extraction in indigenous territories. Because they are the ones who collect forest resources and fetch water for their families, indigenous women are the first to be affected and are the most disadvantaged by environmental degradation of forests and limited access to natural forest resources. It is understandable that their concerns about forest degradation are increasing as logging activities and mining are going on at an enormous scale in their places. Women also become vulnerable to exploitation once displaced from the forest and their traditional livelihoods because they are usually not skilled to do other jobs. Indigenous women are losing their important role and traditional knowledge on food production and natural resource management, especially as they cannot continue to practice and transfer this knowledge to the younger generation. They become vulnerable to problems like sexual abuse, harassment and increasing cases of violence against women and girls as they become economically disempowered when displaced outside their homes and territories.
Case 4: Economic Land Concessions – A Threat to Indigenous Women’s Natural Resource Management in Cambodia

In Cambodia’s Prey Lang Forest region, home to the Kui indigenous peoples, official land grants of tens of thousands of hectares of forest have been given to private corporations for mineral extraction, timber and rubber plantations. From 1996 to 2013, 117 companies were granted economic land concessions (ELC) totaling 1.5 million hectares. Indigenous peoples’ lands, forests, farms, grasslands, sacred sites and burial grounds have been taken over without proper and meaningful consultation, and without seeking and obtaining the consent of the villagers as required by the Sub-decree on ELCs.

Land loss due to ELCs has adversely affected the livelihoods of Kui indigenous peoples in Preah Vihear province. Kui women are particularly vulnerable. The concessions disproportionately impact on the land rights, means of subsistence and practice of the traditional occupations by Kui women. The destruction of their resource base - land, waters and forests - has led to loss of food sources and livelihoods. Destruction of the forest and difficulty in accessing the forest restricts the use of natural resources, gathering of resin, wild foods, wildlife and traditional medicine. The desecration of the spirit forest, culturally-significant sites and burial grounds is a violation of their right to freedom of belief and their cultural rights. As a consequence, spiritual beliefs and practices are marginalized and under threat of erosion. The clearings have also caused a shortage of water supplies that are important resources for women for their home-keeping and health. Intra-community conflicts have also come up among villagers because of the perceived benefits from the concessions and the harassment they face when they claim their rights. Because of this, indigenous women face the threat of food insecurity, loss of their traditional occupations and other negative impacts of natural resource extraction.

In Ratanakiri province, indigenous women are facing many difficulties such as low yield of their agricultural crops, which is not enough to meet their daily needs, especially for those with many family members and without extra income. As a result, many of them are forced to sell their land to be able to buy food, build houses or buy other materials needed in the family. Recently, much of the land has become private concession land. Even though some plots have not been cultivated with crops, the indigenous women are not able to collect any forest products because the new land owner controls that part of the forest. The living condition of the indigenous peoples is getting worse from day to day. Many are not able to do rotational farming because of having only a small plot of land left and the declining fertility of the soil.

Continuing challenges in the recognition of customary land rights

Negative attitudes still prevail towards indigenous peoples, preventing the full recognition and respect of their rights. Some government officials, and the mainstream society in general, discriminate and are not fully aware of indigenous peoples rights to land and resources, leading them to remain indifferent to indigenous peoples’ issues and concerns. There is generally a lack of awareness and understanding of the UNDRIP, both by state and non-state actors.
Some countries have guaranteed lands rights to indigenous peoples through their laws and policies. However, due to the lack of political will, governments fail to fully implement these laws and policies that recognize and protect the customary land rights of indigenous peoples. Instead, governments issue permits and licenses to private companies to undertake extractive and destructive development activities in indigenous peoples’ areas without genuine consultation and consent. FPIC by indigenous communities is often engineered or manipulated to “legally” allow the exploitation of resources by corporations in the ancestral domains of indigenous peoples such as in the Philippines. There is also the lack of effective grievance mechanisms wherein indigenous peoples can claim reparation for the violation of their rights.

One of the reasons why governments do not recognize or protect indigenous peoples land rights is because many indigenous communities do not hold formal land titles. In addition, the process of issuing titles recognizing collective land rights of indigenous peoples is often seen as too complicated. Individual land rights recognition is simpler and is often favored over the issuance of collective land titles based on the customary law of indigenous peoples such as in India, or Cambodia.

Another challenge is that in some countries in Asia, indigenous peoples organizations and institutions are not organized or strong enough to assert for their rights. The implementation of the land rights in the country also depends on how strong indigenous peoples movements are, how much they know about their rights and how much they are able to claim these rights.

Conclusion and recommendations

The recognition, protection and fulfilment of indigenous peoples’ right to land, territories and resources is crucial, not only for their physical but also for their cultural survival and wellbeing. This right is fully recognized by international human rights instruments and national laws in several countries. However, the exercise and enjoyment of indigenous peoples rights as demonstrated in this report continue to face serious challenges. States and other development actors need to respect the economic, social, cultural and spiritual values and importance that indigenous peoples attach to their lands, territories and resources, and take steps to recognize indigenous peoples identities and customary land rights. Some recommendations towards this end are:
1. For States to implement properly and immediately the national laws recognizing the land rights of indigenous peoples, in accordance with the customary ownership, use and management of indigenous peoples as well as with international human rights standards, in order to ensure the security of land tenure of indigenous peoples. Ensure the proper conduct of participatory mapping and demarcation of indigenous territories with the full and effective participation of indigenous communities including indigenous women.

2. States, corporations and international financial institutions, investment bodies and other development actors shall ensure the application of Free, Prior and Informed Consent (FPIC) as a minimum requirement for any project proposed to be implemented in the territories of indigenous peoples, in line with the UN Declaration on the Rights of Indigenous Peoples, and the state commitments in the World Conference on Indigenous Peoples (WCIP). In this context, States shall declare a moratorium on extractive and other projects with serious adverse impacts to indigenous peoples and immediately undertake the FPIC process, as well as independent and credible social, environmental and cultural impact studies with the effective participation of indigenous peoples.

3. For States to stop prosecuting and criminalizing indigenous leaders and communities in their legitimate actions to defend their land rights. Further, the militarization of indigenous peoples lands, resulting to massive human rights violations with impunity should be halted. Instead, prosecute human rights violators, compensate victims, and rehabilitate damaged properties and livelihood sources as a result of military actions in indigenous territories.

4. For States to review and repeal unjust laws and policies that are inconsistent with the land rights of indigenous peoples, including the prohibition of the practice of sustainable traditional livelihoods and sustainable resource management systems such as the declaration of national parks and protected or conservation areas in indigenous peoples’ customary lands without their consent; the prohibition and restrictions on sustainable practices of shifting cultivation/rotational agriculture and gathering of non-timber forest products among others; and fully recognize the roles and contributions of indigenous women in sustainable resource management, and ensure their effective participation and representation in all decision making processes relating to lands, territories and resources.

5. For States and UN agencies to include key targets and indicators on the land security of indigenous peoples in the Post-2015 Sustainable Development Goals in line with the State commitments in the WCIP including on data-disaggregation for ethnicity/indigenous status.

6. For States to implement the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” of the Food and Agriculture Organization (FAO), in partnership with indigenous peoples and other stakeholders with the overall goal of helping countries improve their governance of land tenure so as to ensure better food security of their population with special attention given to smallholder farmers, indigenous communities and women’s rights.

7. For National Human Rights Institutions to incorporate the rights of indigenous peoples and conduct open and transparent national land rights inquiry and issue reports similar to the ones held in Malaysia and Indonesia; and for states, corporations and other development actors to implement the recommendations arising from such inquiries and reports.

8. For States, and development actors to acknowledge, recognize and protect traditional knowledge, livelihoods and sustainable resource management systems of indigenous peoples, and to protect and enhance the full participation of indigenous women in resource management programmes and measures.

9. For development actors, civil society organisations including human rights and development institutions to support indigenous peoples’ movements, organisations and communities in claiming and defending their land rights such as institutional building, strengthening indigenous institutions, capacity building, campaigns and advocacy activities relating to land rights and issues, solidarity and technical support, among others.
Endnotes:

1 Asia Indigenous Peoples Pact (AIPP). Overview of the State of Indigenous Peoples in Asia. May 2014

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10 AIPP. Paper on Safeguards 2014

11 AMAN Online Petition to the President of Indonesia Susilo Bambang Yudhoyono; Regents/Mayors in Indonesia and Governors in Indonesia (https://www.change.org/p/indonesia-government-implement-the-constitutional-court-s-decision-no-35-ppu-x-2012-and-immediately-adopt-the-bill-on-indigenous-peoples#petition-letter)


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18 While Order 64/2014 stated that the encroachers into protected areas shall be punished according to the law, Order 66/2014 stated that the poor and settlers who have lived in areas overlapping with protected areas before the policies were announced would not be affected. http://www.prachatai.com/english/node/4618

19 IWGIA, AIPP, IKAP. Briefing Paper: Shifting Cultivation And Climate Change. UNFCCC Intersessional Meeting, Bangkok 2009

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AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples movements as a platform for solidarity and cooperation. AIPP actively promotes and defends indigenous peoples rights and human rights, sustainable development and management of natural resources and environment protection. Through more than two decades, it has developed an expertise in grassroots capacity building, advocacy and networking from local to global levels and strengthening partnership with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 14 National Formations, 15 Sub-national Formations and 18 Local Formations. Of this number, six are Indigenous Women’s Organizations and four are Indigenous Youth Organizations.

Our Vision

Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity and enhancing their sustainable management systems of lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission

AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

Our Goals

- To empower indigenous peoples in Asia to promote and defend their human rights and fundamental freedoms and claim legal recognition to their identities, collective rights under UNDRIP and other international human rights instruments
- To build the broadest solidarity and cooperation of indigenous peoples in Asia to strengthen indigenous movements
- To promote and protect the integrity of nature and the environment and enhance the sustainable resource management systems of indigenous peoples including their traditional knowledge, food sovereignty and biodiversity by having full control over their land, territories and resources.
- To attain full and effective participation and representation of indigenous peoples, particularly indigenous women and youth at all levels of decision-making
- To strengthen solidarity and cooperation with other social movements towards achieving equity, equality, peace, democracy and justice

AIPP Programme:

Human Rights Campaign and Policy Advocacy
Communication and Development
Regional Capacity Building
Environment
Indigenous Women
Organizational Strengthening

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organizations of the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD) and the World Intellectual Property Organization (WIPO).

AIPP is also a member of International Land Coalition and Global Environment Facility NGO Network.