

Asia Indigenous Peoples Pact

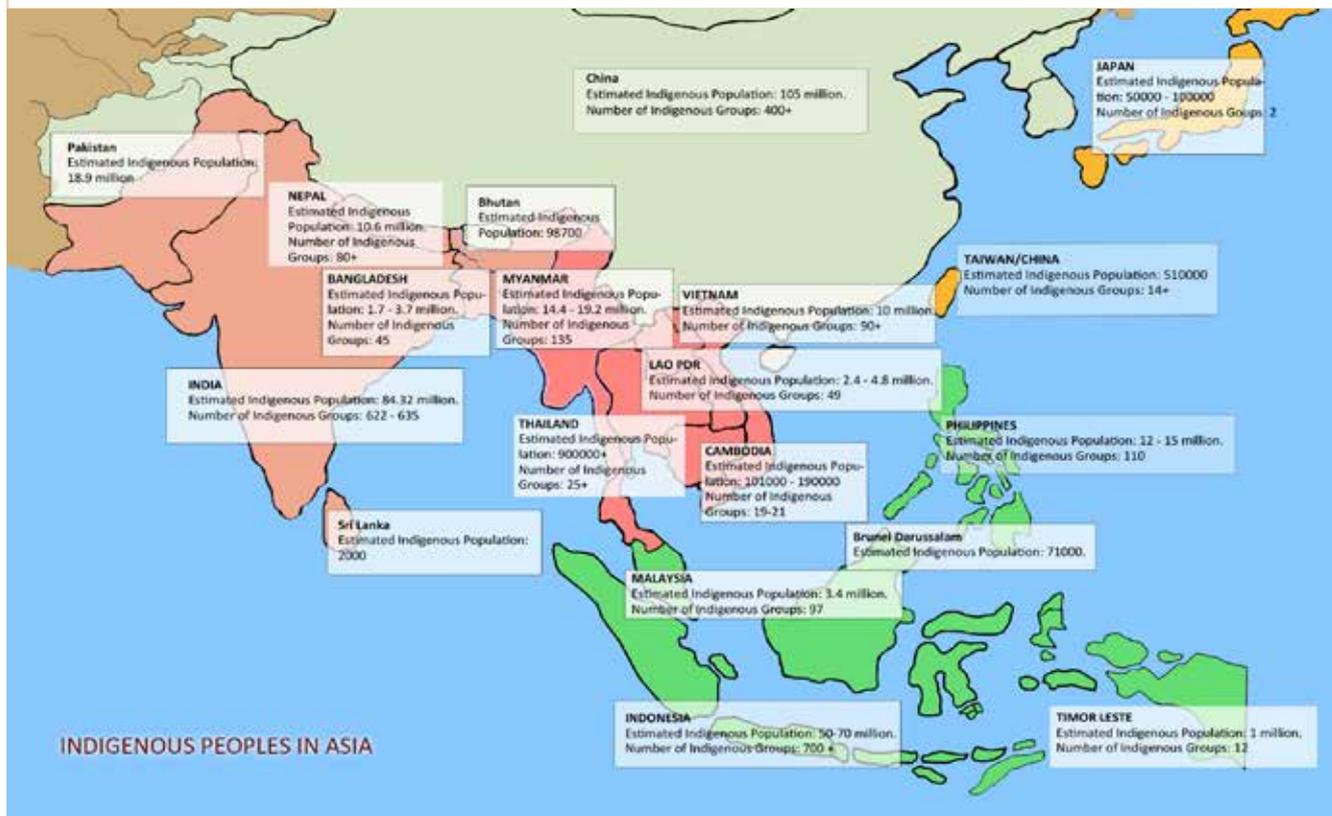
www.aippnet.org

May 2014



Overview of the State of Indigenous Peoples in Asia





Introduction

Two-thirds of the approximate 370 million self-identified indigenous peoples are in Asia, enriching the region's enormous cultural and linguistic diversity. They have strong cultural attachment to and livelihood dependence on land, forests and waters, and the natural resources therein. They have unique collective historical connections with, and ownership of their territories that have continuously been developed and maintained through complex and diverse customary land and resource use management systems that are repositories of tangible and intangible wealth.

There are different names, that governments and others use to refer to indigenous peoples collectively – like “ethnic minorities”, “hill tribes”, “tribal people”, “highland people”, “aboriginal people”, “native people”. Some of these terms are not appreciated by many indigenous peoples, since they often imply notions of cultural inferiority, “primitiveness” or “backwardness”.

In Asia “indigenous peoples” as a term is contentious. The fact remains, however, that the individual and collective rights of peoples who self-identify as indigenous peoples are being violated on a daily basis. All too often, their territories are sacrificed and expropriated for state-sponsored development and corporate projects that lead to gross and wide-scale violations of their collective rights, especially regarding their lands, territories, and resources. The unilateral declaration of national parks and conservation areas, the granting of concessions for mining, logging, plantations, and other extractive industries—as well as

infrastructure development for national development—have dispossessed and marginalized many indigenous peoples in Asia. The militarization of indigenous territories in response to protest actions has also resulted to serious violations of their civil and political rights including killings, arbitrary arrests and torture. These impositions and outright non-recognition of their rights are causing widespread and escalating conflicts, forced displacements, massive environmental degradation, food insecurity, ethnocide, and the weakening of the distinct socio-cultural systems and cohesion of indigenous peoples. These are making them even more vulnerable to human rights violations, especially where it concerns indigenous women.

Although 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 refuse to respect and implement the indigenous peoples' collective rights, especially to their lands, territories and resources and to self-determination. Several Asian states, underpinned by legal systems inherited from colonial times, have arrogated to themselves the right to allocate, regulate and determine land and resource ownership, use, control and development. These systems, imposed on indigenous peoples, often do not recognize the historical and customary use of lands and resources that they have nurtured and managed for centuries based upon their inherent rights and traditions. This has also led to the loss of these peoples' cumulative collective indigenous knowledge and worldview that have enabled them to sustainably develop their fragile homelands and unique cultures over the centuries.

However, amidst the continuing violation of their rights, indigenous communities and organisations in Asia have continued to gain strength in recent years. More organisations are being established at the local, sub-national and national levels, including among the indigenous youth and women. In Nepal, indigenous representatives are campaigning to have distinct representation of indigenous peoples in the Constituent Assembly, although their demand for a federal system based upon indigenous identity remains as a huge challenge. In Indonesia, the National Alliance of Indigenous Peoples in the Archipelago [Aliansi Masyarakat Adat Nusantara, AMAN] has won its case in the Constitutional Court through its declaration that customary forests are not state forests, affirming indigenous peoples' customary rights over their forests.

Indigenous peoples in Asia have also increased their engagement and participation in regional and international bodies, including with UN agencies and processes. With their sustained advocacy for full and effective participation on the issue of forests and REDD+ (Reducing Emissions from Degradation and Deforestation), they have gained representation in national REDD+ bodies, such as in Vietnam, Cambodia, Nepal and Indonesia. They continue to contribute to the inclusion of indigenous peoples' rights and concerns in the negotiations on the Climate Change and Biological Diversity Conventions, among others. They have been engaging, along with civil society organisations, with the Association of South East Asia Nations (ASEAN), particularly with the ASEAN Intergovernmental Commission on Human Rights (AICHR), although indigenous peoples remain invisible in

the ASEAN Human Rights Declaration and in the work of the AICHR.

The regional umbrella organization, Asia Indigenous Peoples Pact (AIPP), is part of this growing movement, with 47 members in 14 countries. With its program expansion in partnership with more than 80 organisations and institutions from the local to global levels, it is strengthening cooperation and solidarity of indigenous peoples in the region and beyond. This cooperation is further advanced through its established networks in cooperation with other organisations and institutions: the Indigenous Peoples Human Rights Defenders Network (IPHRD), Indigenous Voices in Asia Network (IVAN), Climate Change Monitoring and Information Network (CCMIN) and Asia Indigenous Peoples Network on Extractive Industry and Energy (AIPNEE).

Given the tremendous needs of Asia's indigenous peoples, AIPP is focusing on awareness raising and capacity building at the grassroots level and sustained lobby advocacy and networking at the national, regional and international levels on human rights, environment, climate change, indigenous women's empowerment, sustainable development and related issues. Key activities include the production of popular educational materials for indigenous communities, community seminars, trainings, workshops, institutional strengthening, mainstreaming of indigenous women's rights and concerns, exchange visits, dialogues and engagements with relevant bodies, processes and mechanisms.

However, as this briefing paper shows, indigenous peoples in Asia still have a long way to go in realizing their collective rights, especially to their lands and resources. This overview presents the state of indigenous peoples in the following key areas: legal recognition; right to lands, territories and resources; situation of indigenous women; human rights, militarization and national security; environment and climate change; and sustainable development and related issues.

Legal Recognition

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 invisible in the fundamental law of the land or the use and applicability of the term "indigenous peoples" remains contentious. 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, and often it is glossed over 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 based upon national and international human rights law.

In Indonesia, the Constitution (Article 18 B-2) recognises 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.

Malaysia’s Federal Constitution recognises the notion of indigenous peoples to an extent (Articles 160(2) and 161(A)). However these articles are contentious (as in the case of Sabah natives), incomplete (as in the case of a number of Sarawak natives being left out in the detailed list), and non-inclusive (as in the case of the Orang Asli being completely omitted). 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 recognised rights, including lands and territories, traditional ways of life or papers as proof of citizenship. 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.

In the Philippines, 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 and land rights has been very problematic and manipulated resulting to conflicts and gross violations of their land rights.

A number of specific laws in Taiwan/China (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 recognised, and at least nine Ping Pu (“plains or lowland”) indigenous peoples are claiming for recognition as indigenous peoples. Similarly in India, only 461 ethnic groups of the estimated 635 groups are acknowledged as Scheduled Tribes or adivasi, the terms by which indigenous peoples are known.

In Japan, 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, socioeconomic status and quality of life or their right to their territory.

In Cambodia, the 2009 National Policy on Development of Indigenous Peoples uses the term “*chuncheat 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. 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."

Both Bangladesh and Myanmar have not conferred formal legal recognition to indigenous peoples in the manner of their choice. The Constitution of Bangladesh, which did not vote on the adoption of the UNDRIP, refers to them as "tribes, minor races, ethnic sects and communities"(Art 23A)¹. This amendment in 2011 has been condemned by indigenous peoples throughout the country.

In Nepal where a new Constitution² is soon to be promulgated,³ the 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. However, in spite of the fact that at least 39% of the total population is recognised as indigenous peoples, and the government has ratified ILO Convention 169 on Indigenous and Tribal Peoples, they remain having the least meaningful political representation in the country, with their freely chosen representatives largely excluded from the constitution-making process.⁴

In some countries the term indigenous peoples is not used or recognised, making self-identification and self-determination a major problem. The government in Laos does not use the terminology, and 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).

In Thailand, which recognizes "traditional communities" under the new Constitution but not the term "indigenous peoples," many of the over half a million⁵ 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.

The non-applicability of the concept of indigenous peoples as recognized under international human rights instruments remains a major and critical concern for millions of indigenous peoples. The idea that all citizens of a state are indigenous and thus entitled to the same rights has been used as a justification for denying recognition of particular indigenous peoples, as in Indonesia⁶ during the Universal Periodic Review by the UN Human Rights Council in 2012, in India⁷, in Bangladesh¹ and in China. Consequently, those governments have rejected calls for the recognition of the collective rights by groups identifying themselves as indigenous. The continuous denial by these states of their indigenous peoples as distinct peoples, who have been systematically discriminated and marginalized, is against the very principle of achieving social justice as affirmed by the UN Declaration on the Rights of Indigenous Peoples.

Lands, Territories and Resources

"Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." (UNDRIP Article 26, related Article 25)

Land and related resources are of fundamental importance to indigenous peoples. These constitute the basis of their economic livelihood and are the source of their spiritual, cultural and social identity. Indigenous peoples in Asia however continue to face land dispossession and destruction from large scale development and resource extraction by state and private business interests in their traditional territories. Custom-based indigenous land rights are often reduced to mere concessions and revocable licences or privileges. A related threat is the general trend to favour individual land ownership over collective land rights, as it opens up their lands and resources to privatisation and sale for similar development. Despite their call to governments to respect UNDRIP and its provisions on free, prior and informed consent, various policies are being put in place in the name of national economic development that leads to loss of their lands and cultures, ultimately undermining their survival as distinct peoples.

In Vietnam, over 90,000 people, mostly ethnic Thai, were relocated to make way for the Son La hydropower plant that Vietnamese scientists said left many without access to agricultural land by 2010. In Cambodia's Prey Lang Forest region, home to the Kui indigenous peoples, official land grants of tens of thousands of hectares of forest for mineral extraction, timber and rubber plantations have forced many to give up their traditional livelihoods. From 1996 to 2013, 117 companies were granted economic land concessions (ELC) totaling 1.5 million hectares (Ministry of Agriculture, Forestry and Fisheries) or over 50% of the arable land in Cambodia,⁹ many of these indigenous lands. Although the Cambodia government declared a moratorium on ELC issuance in May 2012, the procedure for a review of existing ELCs has created conflicts within communities. This has included privatization of traditional communal lands and threats and intimidation to communities and their representatives who refused individual land titles and fought to reclaim their communal land. In these conflicts, local and national authorities were supported by ELC companies.

Some indigenous communities in Cambodia have registered their protest against land concessionaires this year. In a complaint filed against the World Bank's private lending arm, International Finance Corporation (IFC), 17 indigenous communities of the Jarai, Tumpun and Katchok peoples in Ratanakiri province protested illegal land seizures by the Vietnamese company Hoang Anh Gia Lai (HAGL), in which IFC is an investor through a Vietnamese equity fund. HAGL's land concession took over their farm and pasture lands and destroyed forests and sacred sites, resulting in their loss of territory, livelihoods and cultural practices. The complaint, which called for the return of their lands, accused IFC of investing in companies that are in violation of Cambodian and international law as well as its own environmental and social policy safeguards.

Oil palm plantation expansion is also taking away lands of indigenous peoples in Malaysia and Indonesia. Already minuscule, state land allocation in these countries for indigenous peoples' use is further being reduced by their oil palm production, which accounted for 85% of

total world palm oil production in 2009-2010 (FAO). In Peninsular Malaysia, only around 20,000 hectares¹⁰ of state lands are set aside as federally administrated and reserved for indigenous peoples' occupation and use; this constitutes only 15 percent of the settled village area. In Indonesia, land acquisition for the establishment of oil palm plantations has led to serious abuses of the rights of local communities. On March 6, 2014, a member of the Suku Anak Dalam indigenous community was killed and five others were injured during a clash with security forces on an oil palm concession owned by PT Asiatic Persada in Sumatra. Further, a recent Constitutional Court decision declaring that customary forests do not belong to the state is in danger of not seeing full and proper implementation. In response to a case filed by indigenous peoples, the Court issued a judgment on May 16, 2013 affirming the right of 40 million indigenous peoples in Indonesia over their forest lands¹¹. Local governments however are reluctant to issue the implementing guidelines for the recognition of customary forests to indigenous peoples. In addition the government is pushing ahead with its Master Plan for the Acceleration and Expansion of Indonesia's Economic Development, which includes destructive projects such as the MIFEE plantation project and Urumuka and Mamberamo hydropower dams in Papua, and plans to expand large-scale mining operations in Central Kalimantan, all in areas of indigenous peoples.

Another major source of destruction of indigenous lands and resources is large-scale mining operations, with mining being one of the region's growing economic sectors. Of the more than a hundred corporate mines currently operating in indigenous territories in Asia, not a single company has undertaken a credible process of obtaining the FPIC of affected indigenous communities. In fact, some governments have even provided security services to these companies in the face of growing resistance of indigenous peoples and other affected communities (e.g., in Indonesia and the Philippines). The use of military and paramilitary forces to protect mining operations has resulted to massive human rights violations such as extrajudicial killings, torture, arbitrary arrests and detention of indigenous peoples, as well as sexual violence and abuse of indigenous women.

In the Philippines, said to host one of the world's biggest deposits of undiscovered minerals especially of gold and copper, 60% of its predominantly indigenous northern Cordilleran region is covered by either mining operations or mining applications. Communities who have resisted mining were met with repression and militarization of the region. Most of the killings of indigenous leaders and members of peoples organizations, numbering 44 in the 45 months of the current administration, were in response to mining resistance.

In Thailand, despite some positive developments with recent policies relating to indigenous peoples, such as Cabinet Resolutions restoring traditional livelihoods of the Chao Ley and Karen in 2010, no real improvements have occurred.

In Odisha, India, where the Dongria people had for years opposed a planned mine by Vedanta company, only 12 of 100 affected villages were consulted by local authorities despite a landmark Supreme Court ruling in April 2013 ordering community consultation before the mine project could proceed. A 2011 International Labour Organisation report¹ on India's

indigenous population claimed that more than half of the country's mineral wealth was obtained by violating the rights of tribals.

Indigenous peoples in Asia may face even more land loss and destruction with the coming ASEAN economic integration. This goal involves massive infrastructure development in energy, transport and communications that will not only cut through traditional territories but exploit their natural resources such as minerals and river systems to boost power demand. Among the planned infrastructure are the ASEAN power grid, Trans-ASEAN Gas Pipeline, ASEAN Highway Network, Singapore-Kunming Rail Link and regional telecommunications networks. In the Mekong region, construction of two of 11 long planned hydroelectric power projects in the Lower Mekong River, nine in Laos and two in Cambodia, has started to displace indigenous and local communities. Many of these development projects and the resources to build them are in indigenous territories.

Human Rights, Militarization and National Security Laws

The human rights of indigenous peoples encompass not only individual civil and political rights but also collective rights, which include those to land and resources, to free and prior informed consent and to participation in decision making. Many of the human rights violations they face stem from the non-recognition of their collective rights to lands and resources. This leads to forced eviction from their traditional land, displacement and militarization, which in themselves are grave violations of their individual and collective rights. Military and other paramilitary and security forces have been used to quell local resistance to development projects, resulting to wide-scale violations of their civil and political rights including criminalization and vilification of their legitimate actions.

In 2013, at least 97 cases of human rights violations committed against 102,621 indigenous persons were reported in nine countries in Asia (Indigenous Peoples Human Rights Defenders Network). Fifty-nine cases were violations of individual rights with 11,624 victims, and 38 cases were violations of collective rights involving 90,997 people. The individual rights violations related to abduction, arbitrary arrest and detention, harassment and intimidation, extrajudicial killing, indiscriminate firing and bombing, use of persons as human shields, destruction and divestment of property, torture, and for women, rape and sexual harassment. On the other hand, the most common violations of collective rights were land grabbing, forced displacement and FPIC violations, mostly due to economic land concessions for plantations, mines, dams and other energy and resource extraction projects. These violations were aggravated by non-compliance with their right to full and effective participation in decision making in matters that concern them and racial discrimination.

Also of concern is the rising count of indigenous peoples human rights defenders among human rights victims. Around 4,000 IPHRD suffered various forms of human rights violations including physical assault, abduction and extra-judicial killing over the last three years (IPHRD Net). The latest victim is William Bugatti who was shot dead in his home province in the Cordillera region, Philippines in April 2014.

These cases have so far received little official action. At least 35 of the 97 cases, through letters and petitions, were submitted to national authorities and human rights bodies handling indigenous peoples' rights and concerns (IPHRD Net). Except for the Philippines' Presidential Commission on Human Rights which actively responded and provided updates to letters submitted, these have gotten only minimal or no response at all from higher government authorities.

Also a threat to indigenous peoples' rights are national security laws that Asian governments have enacted in the global fight against terrorism. Generally expanding governments' powers of arrest and detention and to curb basic freedoms of expression, assembly and association, these laws have been used to suppress local resistance and to justify unlawful detention, killings and militarization. In some of these laws, terrorism is defined only in broad terms as in Indonesia and Bangladesh, which go against internationally acknowledged human rights standards. The Anti-Terrorism Act 87 of Bangladesh, which effectively allows for criminalisation of all forms of peaceful protest, is not compatible with the principle of legality embodied in the International Convention on Civil and Political Rights (Article 15), which requires that both criminal liability and punishment are defined by clear and precise provisions in the law that was in place and applicable at the time the act or omission took place. In Indonesia, the Parliament introduced retroactive laws after the bloody Bali bombings that, contrary to existing criminal laws, allow the death penalty to be imposed and lower certain evidential thresholds.

In Malaysia, the Security Offences Special Measures Act also fails to meet international human rights standards in several key ways, including by allowing police to detain suspects incommunicado for 48 hours and allowing detention without charge or access to courts for up to 28 days, increasing the risk of torture. Police forces have come under a cloud of suspicion not only for acts of brutality but for causing the death of persons held in their custody, mainly at police stations. From 2009 to August 2013, according to a statement by Malaysia's Home Minister, police shot 124 persons including four indigenous persons¹³. There is no entity that examines security force killings. In November 2013, the police also arrested 10 Penan protesters in Murum who staged blockades for several weeks to protest the Sarawak government's plan to relocate them in order to continue the construction of a hydroelectric dam that is flooding villages and has displaced more than 1300 Penan.

In India, the amended Unlawful Activities Prevention Act (UAPA) retains the ban on 32 organizations proscribed under the repealed Prevention of Terrorism Act, of which 11 are organizations of various ethnic minority groups from the northeast. The amendments to UAPA expand the definition of "person" to include "an association of persons or a body of individuals whether incorporated or not." The Act was invoked in the arrest of ethnic minority activists in the state of Manipur in the northeast, among them Dr. Binayak Sen who was arrested in May 2007 by the Chhattisgarh government and whom 22 Nobel Prize winners demanded to be released in a letter to the Indian Government saying "he [was] charged under two internal security laws that do not comport with international human rights standards." Such broad powers, combined with the 2008 UAPA amendment, which authorizes increased detention periods, may instill fear of detention and deter people from freely exercising their

right to associate.

In addition, India's Armed Forces Special Powers Act, which also has vaguely formulated provisions and grants extraordinary powers to the armed forces, has been applied in so-called "disturbed areas" including Manipur, resulting to human rights violations with impunity. This Act, which has sparked numerous protests such as a longstanding hunger strike in Manipur by Ms. Irom Chanu Sharmila, has been at the heart of concerns about human rights violations in the region; among these are arbitrary killings, torture, cruel, inhuman and degrading treatment and enforced disappearances.

Indigenous Women

Indigenous women play a major role, with distinct responsibilities, in the food production and sustainable management of resources in their community. The non-recognition of indigenous peoples' collective rights over their land, territories and resources thus denies them this role and their position in society. As a consequence, their knowledge and skills in subsistence agriculture are considered irrelevant or even unscientific. The destruction of forests and other natural resources from which they have developed their knowledge and expertise also results in loss of valuable traditional knowledge. With the loss of access and control over land and resources and of subsistence economies, indigenous women's role and participation in sustainable development is compromised. Furthermore, they often face discrimination in accessing education, health services and in decision-making.

Indigenous women, by virtue of their gender and ethnicity, bear particular impacts and increased vulnerability from the consequent loss of traditional livelihoods, displacement, conflict and increasing poverty. In Laos, they have been forced to become migrant workers and daily wage earners in cash crop plantations. In countries with conflict areas, they also fall prey to sexual harassment and rape by state security forces as in Myanmar and the Philippines. In northeast India and Myanmar's indigenous territories, trafficking of indigenous women and children for sexual exploitation and forced labour has become a major issue¹⁴. Trafficking also happens because an increasing number of indigenous women is encouraged to seek work in urban centers or overseas to support their families. With limited skills and knowledge of the realities of urban living, they frequently end up as abused domestic helpers or victims of sexual abuse including rape, are forced into prostitution or become mistresses.

Indigenous women who oppose development projects on their lands suffer intimidation and even death. In southern Philippines, Juvy Capion, a leader of a Blaan indigenous group resisting mining operations and her two sons were shot dead in their homes on October 18, 2012¹⁵. Women leaders of the Bong Mal Blaan who complained to their village head against the entry of the mining company SMI into their territory were ignored primarily because they were women and also because he was in favor of the mine project.

Further, indigenous women face discrimination and violence from within their own societies. In some communities, women are considered inferior to men and are excluded from participation in decision-making in community affairs. In many indigenous societies, politics

and thus all public affairs are dominated by men, and women are only marginally or not involved in decision making in customary institutions like village or tribal councils. This continues to be the case where these institutions have been replaced by state administrative systems, such as local government bodies. Even though women have the right to vote and formally have equal access to respectable positions, they do not participate actively, and thus local governments are often dominated by men.

Land is a critical resource for a woman in the event of separation, divorce, abandonment, multiple marriage relationships or death of her husband. But property rights is another area of discrimination for indigenous women. In Central India and rural areas in Nepal, witch-hunting is rampant in many indigenous villages against widows who have inheritance from their husbands,¹⁶ among many other reasons. In Laos, with the exception of the Brao peoples, women are consistently disadvantaged with respect to land and property rights in divorce, widowhood and singlehood. Widows tend to be dependent on their children, as a wife is primarily seen as a guardian of the children's inheritance rather than an independent inheritor. Indigenous women in Cambodia however have gained some headway, with the country's Land Law providing for joint land ownership by husband and wife and for titles to bear both their names.

Bride kidnapping, forced marriage and domestic violence also still persist in some indigenous societies. In Myanmar's borders with China and Thailand, of 133 verified and suspected cases of trafficking involving 163 women and girls from Kachin and Northern Shan State documented in 2004-2007, 90 in the confirmed cases were sold to men in other countries as forced brides; 94% of them were sent to China¹⁷.

Legal policy frameworks and indigenous peoples' legal status also present obstacles to women's access to social services, especially adequate healthcare. In the Philippines, there is no systematic recording or registration of births among all Mangyan communities (AIPP submission to UNPFII, January 2014), which is a barrier to much-needed health services, apart from their unaffordability, far distance and language barrier. In the same vein, the long standing problem of citizenship rights for indigenous peoples in Thailand where almost four out of 10 have no citizenship (David Feingold, Trafficking and HIV/AIDS Project Coordinator, UNESCO Bangkok), makes them ineligible for basic social services, including healthcare, education and income generating activities. Indigenous women in Southeast Asia also face higher rates of HIV/AIDS and sexual violence as a result of tourism (AIPP Statement, Commission on the Status of Women, 58th session November 2013). Even with the ratification of the Convention for the Elimination of Discrimination Against Women (CEDAW) by most states in Asia, the conditions of indigenous women as women have not significantly improved.

Nevertheless, some progress has been achieved in indigenous women's political participation. In the Philippines, 5% of the budget of national agencies and local government units is allocated for gender and development. The country has a Magna Carta on Women, which guarantees the protection of the rights of women and Anti-Violence Against Women and

Children Law that provides for a Women and Children's Protection Desk in police stations manned by female personnel.

A significant number of indigenous women are part of the Constituent Assembly in Nepal's current redrafting of its Constitution under a democratic system of governance. In India, the Ministry of Law is harmonizing all laws and acts with international human rights principles and policies related to gender equality and gender justice. Among these are the Panchayati Act 1996 which ensures political rights to women, Dowry Prohibition Act 1961, laws relating to violence against women including the Witch Hunting Prohibition Bill of 1999, Sexual Harassment of Women at Work Place, and Protection of Women from Domestic Violence Act of 2005. In the state of Jharkhand, a recent Supreme Court decision on the tribal local council governance includes a provision that 50% of "tribal Council" members shall be women.

In general however the awareness of women's rights and respective national laws and international legal instruments such as the Convention for the Elimination of Discrimination Against Women (CEDAW) ratified by most Asian countries and UNDRIP among indigenous women is fairly low.

Environment and Climate Change

Despite having one of the smallest carbon footprints, indigenous peoples bear the brunt and burden of the impacts of climate change and the effects of flawed solutions being implemented to mitigate it. Their traditional lifestyle and customary resource management systems provide for a prudent and sustainable use of resources, in which they take and replenish only what they need. However with the degradation and loss of their lands and environment due to wanton resource extraction, their vulnerability to extreme weather conditions has increased; at the same time these have reduced their capacity to cope and adapt to climate change. Many indigenous peoples in Asia are becoming climate change victims, and coping with its impacts has led to additional physical and financial burdens for both men and women.

In last year's most devastating and record-breaking typhoon Haiyan, which killed more than 6,000 people and rendered 4 million homeless in the Philippines, indigenous communities particularly the Tagbanua in the Calamian Group of Islands and the Tumanduks in Panay Island were among the victims and the least served in terms of relief and rehabilitation. In Nepal's Tanahu Distri, Magar women in Setang Village are facing scarcity of drinking water and have to walk an hour every day to reach a water source. Those in Mustang District on the other hand now have to rely on rain instead of snow for their water supply, as rainfall has increased while snowfall has declined. The changed climatic condition has also forced them to replace their traditional house roofs of stone-mud with corrugated tin, which means additional expenses as well as loss of traditional knowledge associated with usage of mud and stone in house construction.

However, not only are indigenous peoples suffering from climate change impacts, the solutions for mitigation being widely promoted and implemented are compounding their plight. Among these are biofuels, hydroelectric power dams and geothermal plants as alternative energy sources, and carbon sinks and forest conservation programs for carbon sequestration. These

mitigation measures are causing more destruction of indigenous communities and their territories, as ancestral lands and forests are being expropriated for biofuel plantations (soya, sugarcane, jatropha, oil palm, corn, among others), other renewable energy projects (hydropower dams, geothermal plants) and carbon sinks without their free, prior and informed consent. In Borneo, Malaysia, 10,000 indigenous people were displaced in 2011 by the Bakun dam that flooded 700 sq km of land. Indigenous peoples in Indonesia and Malaysia have lost forest lands because of palm oil plantation expansion. Biofuel plantation expansion is estimated to displace some 60 million indigenous peoples in Asia.

Conservation programs of governments and their partners (e.g., national parks and protected areas) have also impacted heavily on indigenous peoples. Forest-dependent indigenous peoples, as well as those relying on coastal resources, have been forcibly evicted from conservation areas as they are considered destroyers of nature. Indigenous peoples are treated as enemies of conservation and, as a consequence, their sustainable resource management systems and traditional livelihoods have been curtailed and even criminalized. The eviction of indigenous peoples and prohibitions of their livelihood activities in conservation areas have resulted in food insecurity, loss of biodiversity and conflicts, among others. On the other hand, commercial logging and commercial fishing, which impact negatively on the environment, and indigenous peoples' rights and livelihoods, take over their lands and waters and continue unabated.

Yet indigenous peoples have traditional knowledge that can contribute to viable solutions for the problems caused by climate change. In Bangladesh, villagers are creating floating vegetable gardens to protect their livelihoods, and in Vietnam, communities are planting dense mangroves along the coast to diffuse tropical storm waves. Indigenous peoples in Asia have long been collectively and sustainably managing their forest resources, contributing to the abatement of greenhouse gases. But this has not been sufficiently recognized and compensated by the United Nations Framework Convention on Climate Change (UNFCCC) and other multilateral and bilateral agencies.

Despite bearing the brunt of climate change impacts and solutions as well as having knowledge that can potentially address these problems, indigenous peoples have very little participation in UNFCCC negotiations and decision making processes. It is only through the International Indigenous Peoples Forum on Climate Change established in 2000 that indigenous peoples around the world have been able to sustain their lobby and advocacy in UNFCCC meetings and sessions. The advent of REDD+ in the climate change negotiations has created some space to raise indigenous issues and concerns and to collaborate at different levels with government and UN agencies and civil society organizations. However, while they are now represented in the UN-REDD Programme and in the World Bank's Forest Carbon Partnership Facility and Forest Investment Programme, most of their concerns, especially in relation to recognition of their forest and related collective rights as raised by indigenous peoples in REDD+ countries like Nepal, Myanmar, Cambodia, Indonesia and Vietnam, have yet to be fully addressed. Thus their engagement in REDD+ processes will continue to focus on the resolution of these issues.

Sustainable Development and Related Issues

As stewards of their territories and nurturers of their homelands, Asia's indigenous peoples have been contributing to sustainable development through their own traditional knowledge and practices. Traditional knowledge, especially of indigenous women, has been critical in the food security of indigenous peoples, enhancement of biodiversity, practice of herbal medicine and innovation of indigenous technologies. Traditional occupations, which are based on a sustainable use and management of their natural resources, are still the chief sources of livelihood of most indigenous peoples in Asia, accounting for 50 to 95 percent of indigenous livelihoods.

These sustainable practices and accompanying knowledge however are being lost as indigenous peoples lose their lands and their resources are destroyed by economic projects. In the pursuit of national development, governments in Asia have partnered with international financial institutions such as the World Bank and Asian Development Bank whose projects (e.g., large dams, land concessions, commercial agriculture and even conservation programs) have subjected indigenous peoples in many countries to displacement and loss of traditional livelihoods, among others. Although IFIs have their own safeguard policies that purportedly aim to protect the rights of affected indigenous peoples and prevent harm, the provisions on the respect for the collective rights of indigenous peoples, especially to their lands, territories and resources, are weak and their implementation, problematic. Even with the claims of both WB and ADB to have contributed significantly to poverty alleviation and national development, these continue to have adverse impacts on indigenous peoples who have largely become the victims and not the beneficiaries of their development interventions. Indigenous peoples persist in demanding greater accountability of the World Bank and ADB under a human rights-based approach to development.

More of this kind of development is expected to be seen in ASEAN, now considered as the center of economic growth amidst the global economic crisis. With the drive for sustainable development, ASEAN is exerting all efforts to achieve a single market economic community by 2015. It aims to achieve this through increased investments in the mineral, energy and transport infrastructure sectors, with physical connectivity of ASEAN countries to be done through a multi-modal transportation system through land, water and air, and the so-called "green economy."

For indigenous peoples in ASEAN, the avowed rhetoric of sustainable development as people-centered and for environment protection is merely lip service. There are no specific policies and measures for legal and environmental protection of indigenous peoples' rights over their lands, territories and resources. The development approach of ASEAN is based on a failed model of economic growth that puts emphasis on capital-intensive, large infrastructure projects such as energy, transportation and mining that largely benefit big business corporations and those in power. Sustainable agricultural production for food sufficiency is sacrificed for biofuel plantations and production for export. The grand plan of ASEAN in the name of sustainable development is likely to cause further exploitation of resource-rich indigenous territories,

human rights violations and conflicts, widespread disasters, as well as the further marginalization of indigenous peoples who remain invisible in ASEAN.

While indigenous peoples' lands and resources are exploited for "national development," they remain part of the most marginalized sector. This invisibility is reflected in the poor state of social services among indigenous peoples in Asia, especially in education and health, which belies the social benefits touted by this kind of development. Indigenous peoples rank disproportionately high in most indicators of poor health, according to the UN Secretariat Department of Economic and Social Affairs. In a district in Vietnam's northern Ha Giang Province, only 24 percent of households have potable water and none have latrines or toilets. In Thailand where a significant number of hill tribes peoples are not citizens, many do not have access to healthcare. Indigenous peoples are also at risk for preventable sexually transmitted infections due to lack of education, geographic isolation and prejudice, according to the Joint United Nations Programme on HIV/AIDS. The International Fund for Agricultural Development states that more than forty percent of hill tribes women and girls in Thailand who migrate to cities for work end up in the sex industry. Resettlement further increases health vulnerabilities. In the Greater Mekong region, home to 95 ethnic groups in Myanmar, Cambodia, Laos, Vietnam and Thailand where a lot of resettlement is occurring due to development projects or government policy, health education is also often not conducted in native languages.

The lack of recognition of their legal status also puts the health of millions of indigenous peoples across Asia at risk, according to experts, as it hinders data collection, making their medical problems invisible in most national health surveys. Without adequate data, their specific health problems and interventions cannot be sufficiently determined.

In education, children from ethnic minorities and indigenous groups are the largest population at risk of not attending school. Indigenous students have lower enrolment rates, higher dropout rates and poorer education outcomes than non-indigenous people in the same countries. In the Philippines where indigenous peoples generally live in geographically isolated areas with a lack of access to basic social services, they have the least education among all ethnic groups. Despite the Millennium Development Goal to achieve universal primary education by 2015, many indigenous children are being left behind.

In general indigenous peoples' experience is that most education systems and available curricula do not, at best, reflect their cultures and values; and, at worst, devalue their competences, cultures, languages and lifestyles.

Recommendations

In light of this present state of indigenous peoples in Asia, the following recommendations are made:

For Asian States:

1. To establish mechanisms for sustained dialogues and consultations with indigenous peoples in their countries on ways and means to foster better relationships with them, and to enable them to fully exercise their civil, political, economic, social and cultural rights and their collective rights as indigenous peoples in a truly non-discriminatory manner, free from all forms of discrimination whether based on race, ethnicity, religion, spirituality, class, caste, gender, age, disability or otherwise.
2. To duly demarcate indigenous peoples' lands and territories in accordance with customary law and process consistent with UNDRIP and ensure the protection of these lands and resources from expropriation, exploitation and designation as conservation areas or national parks without their free prior and informed consent.
3. To ensure access to justice for indigenous peoples including indigenous women through formal justice institutions, national human rights institutions and other forms of redress, including by taking into account indigenous peoples' customary laws, institutions and processes.
4. To exercise political will to end impunity and undertake concrete measures to stop militarization of indigenous territories, prosecute human rights violators and ensure justice, reparation and rehabilitation to human rights victims.
5. To ensure that territories of indigenous peoples in Asia be free of state military interventions and that military bases, camps or military training centres installed in indigenous territories without their free and prior informed consent be removed immediately.
6. To adopt their post-2015 development agenda and approaches in such a manner that they respect and support holistic and ecological practices of indigenous communities, adopt pluralistic legal frameworks that acknowledge customary tenure, resource management and sustainable use practices, for the wellbeing of all.
7. To ensure the participation of indigenous youth and women in decision-making processes affecting them, including through provision of adequate resources and space for such participation; and to strengthen the implementation of the Convention for the Elimination of Discrimination Against Women.
8. For the ASEAN Intergovernmental Commission on Human Rights to recognize the rights of indigenous peoples in the ASEAN Human Rights Declaration, and establish a Working Group on Indigenous Peoples; and for the South Asian Association for Regional Cooperation to establish a human rights commission and a Working Group on Indigenous Peoples.

For UN Agencies, Funds and Programmes:

1. To develop or strengthen particular programmes at the national and regional levels in partnership with indigenous peoples in addressing their needs and priorities; and to designate IP focal persons among their staff at the national and regional levels.
2. To raise awareness and implementation of their respective Indigenous Peoples' Policies and Guidelines by states and their partners at the national and local levels.
3. To support data disaggregation on indigenous peoples at the national level especially in developing Human Development Index and appropriate indicators on the development and wellbeing of indigenous peoples in line with the recognition and exercise of their individual and collective rights.
4. For UNDP to revive the Regional Indigenous Peoples Programme and ensure appropriate funding and the development of its programme in partnership with indigenous organisations.
5. For international development agencies to adopt their post-2015 development agenda and approaches in such a manner that they respect and support holistic and ecological practices of indigenous communities, adopt pluralistic legal frameworks that acknowledge customary tenure, resource management and sustainable use practices, for the wellbeing of all.

Indigenous peoples in Asia reiterates the immediate implementation of the recommendations of the UN Permanent Forum on Indigenous Issues to Asian governments in 2007 as well as the recommendations contained in the 2012 Asia Declaration for the World Conference on Indigenous Peoples (WCIP) and the 2013 Alta Outcome Document.

Asia Indigenous Peoples Pact
May 2014

Endnotes:

- ¹ Article 23A, inserted through the Constitution (15th Amendment) Act, 2011, reads: “The culture of tribes, small ethnic groups, ethnic sects and communities: The state shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”
- ² 2007 interim Constitution of Nepal, article 35, paragraph 10, 2007, article 45 «Legislature – Parliament», paragraph c., article 21 «right to social justice» and article 33, d., article 35, paragraph 14., part 7.
- ³ Nepal for the first time officially recognised and listed 61 indigenous peoples groups in 1996 and 59 indigenous nationalities in 2002 under the National Foundation for Development of Indigenous Nationalities Act of 2002. However, controversial recommendations for a revision of the list have recently been made.
- ⁴ Human Rights Council, Fifteenth session, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya A/HRC/15/37/Add.1, par. 282-290.
- ⁴ UNHCR, <http://www.unhcr.org/pages/49e489646.html>, accessed 4 April 2014.
- ⁶ General Assembly, Sixty-first General Assembly Plenary, 13 September 2007, *idem.*, In 2010, an indigenous community was granted a collective title for the first time. Protection of indigenous peoples’ land rights is, however, vastly inadequate and threatened by the increase in granting of concessions for plantations, mining and hydroelectric dams.
- ⁷ “General Assembly Adopts Declaration on Rights of Indigenous Peoples”, (GA/10612), 13 September, 2007, Department of Public Information, New York. As cited in Bengt G. Karlsson, “Asian Indigenousness: The Case of India” (2008) 3:4 *Indigenous Affairs* 26.
- ⁸ The Bangladesh Presentation to the (United Nations) Working Group on Indigenous Peoples, on Friday 2 August 1985 in Geneva. In Reply to the Submissions made by The Anti-Slavery Society and the representative of the Chittagong Hill Tracts, Ven. Agga Vansa Mahathera. See online: < <http://cwis.org/GML/UnitedNationsDocuments/#wgip13> >
- ⁹ 12th Permanent Forum on Indigenous Issues Joint Intervention: Tribal Link Foundation, Asia Indigenous Peoples Pact, Cultural Survival, College at Brockport May 22 12th session: New York, NY 20-31 May 2013 Agenda Item 7 (b) Dialogue with the Special Rapporteur on the rights of indigenous peoples.
- ¹⁰ Colin Nicholas, 2000, *The Orang Asli and the Contest for Resources*, IWGIA and Centre for Orang Asli Concerns, Copenhagen and Subang Jaya
- ¹¹ [Case No.35/PUU-X/20](#); (May 16, 2013), Mahkamah Konstitusi Republik Indonesia [Constitutional Court of the Republic of Indonesia], accessed 3 April 2014.
- ¹² India today, <http://indiatoday.intoday.in/story/a-report-by-international-labour-organisation-states-that-indias-mineral-wealth-is-obtained-by-violating-tribal-rights/1/128945.html>, accessed 3 April 2014.
- ¹³ <http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220209.htm>, Feb 27 2014.
- ¹⁴ IWCF and AIPP 2010.
- ¹⁵ AIPP, Briefing Paper: *Indigenous Women in Asia - Challenges in their access to justice*, 6 March 2013.
- ¹⁶ PFII/2012/EGM, United Nations, Department of economic and social affairs, International Expert Group Meeting, *Combating violence against indigenous women and girls: article 22 of the UNDRIP*, 18-20 January 2012.
- ¹⁷ Miley, Misti 2008. *Indigenous Peoples’ Human Rights Report in Asia 2008. An Introduction and Overview of the Situation of Indigenous Peoples in Burma*, p. 81

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 is actively promoting and defending indigenous peoples' rights and human rights; sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/ networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Asia Indigenous Peoples Pact (AIPP)
108 Moo 5, Tambon Sanpranate, Amphur Sansai
Chiang Mai 50210, Thailand
Tel: +66(0)53380168 Fax: +66(0)53380752
Website: www.aippnet.org Email: aippmail@aippnet.org
www.iphrdefenders.com
www.iva.aippnet.org
www.ccmin.aippnet.org

The Asia Indigenous Peoples Pact (AIPP) established the AIPP Printing Press to generate resources to support the Indigenous Peoples Human Rights Defenders Network and those facing serious threats due to their human rights work.

