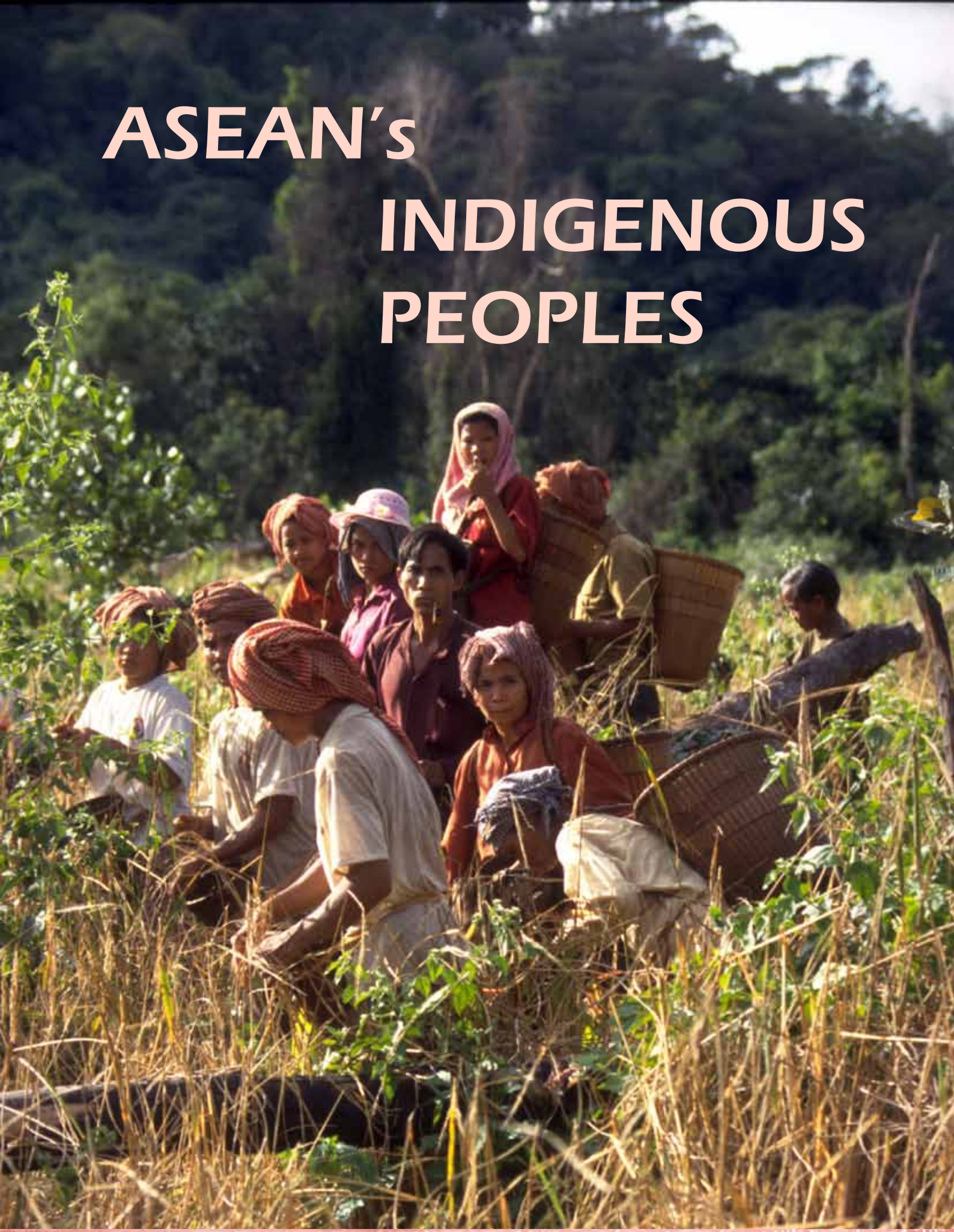
ASEAN's INDIGENOUS PEOPLES



AIPP IWGIA FORUM-ASIA

WHO WE ARE - THE INDIGENOUS PEOPLES IN SOUTHEAST ASIA

We are using the term Indigenous Peoples with a meaning that is different from that given in many dictionaries, or how it is understood by many governments. Over the past decades, the concept of Indigenous Peoples has evolved beyond the original meaning found in dictionaries, and it is now well established in international law. That is why we are writing it with capital initial letters.

It is a foreign term for most of us, and it is often difficult to translate into our own languages. Some governments in Southeast Asia use names to refer to us collectively - like “ethnic minorities”, “hill tribes”, “native people”. There are also the names given by outsiders, some of which are not appreciated by many of us, since they often imply notions of cultural inferiority, being “primitive” or “backward”. Examples are *chuncheat* (meaning “ethnicity”, or literally “national people” in Cambodia) or *sakai* (literally meaning “slave”) used in Thailand for some hunter-gatherer groups. We ourselves though prefer to use the names which our ancestors have given us.

We have our own distinct language, culture, customary laws, and social and political institutions that are very different from those of the dominant ethno-linguistic groups in our countries. Self-identification is crucial for us. When we call ourselves Indigenous Peoples we do not mean to claim to be the only people native to our countries. In most cases we are the “aboriginal” or “native” people of the lands we live in, and other people have come to settle there later. But we have also lived side-by-side with other peoples, native to their own lands, who however do not call themselves Indigenous Peoples. These are usually the dominant people, who have the economic and political power in our countries.

In some cases, we are forced to leave our lands because of violent conflicts, and to move to another country, like to Thailand, Vietnam or Laos. In these countries, we are clearly not the first inhabitants, the original or native people. But we strive to continue with our way of life and keep our traditions and practices alive and we still remain Indigenous Peoples.

Most of our people are small in numbers. Some have populations of just a few thousand or even just a few hundred. While we find an enormous diversity among Indigenous Peoples, common to us all are the strong cultural attachment to and the dependence of our livelihoods on land, forests or the sea and the natural resources therein. Our ways of life, spirituality and identity is very much attached to our territories, and displacement from our territories does not just imply the loss of livelihood, but of our identity and therefore is a threat to our very existence as peoples.

HOW DO WE DISTINGUISH OURSELVES FROM ETHNIC MINORITIES?

Though both ethnic minorities and we, Indigenous Peoples, face the same experience of discrimination and marginalization, we are very different in terms of our rights and our identity.

Ethnic minorities are people with certain common traits that set them apart from the majority in a society. Minorities can be identified in terms of language (like French speakers in Switzerland or Canada), ethnicity (like the Chinese in many parts of the world) or religion (like the Christians in Muslim dominated countries or the Muslim in Christian dominated countries). Minorities often suffer from discrimination and they struggle for the protection of their rights and their participation in the larger society. The United Nations Organization has responded accordingly and adopted the Minority Declaration (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities). Important to note is that the Minority Declaration refers to the individual rights of members of minorities; they are referred to as persons and not as collectives, as peoples.

We Indigenous Peoples, on the other hand, have our *collective rights* recognized by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UN General Assembly in 2007. The UNDRIP sets the minimum standard for the protection of the collective rights of Indigenous Peoples, and provides the necessary measures to address our particular situation in rectifying the historical injustices and discrimination committed against us.

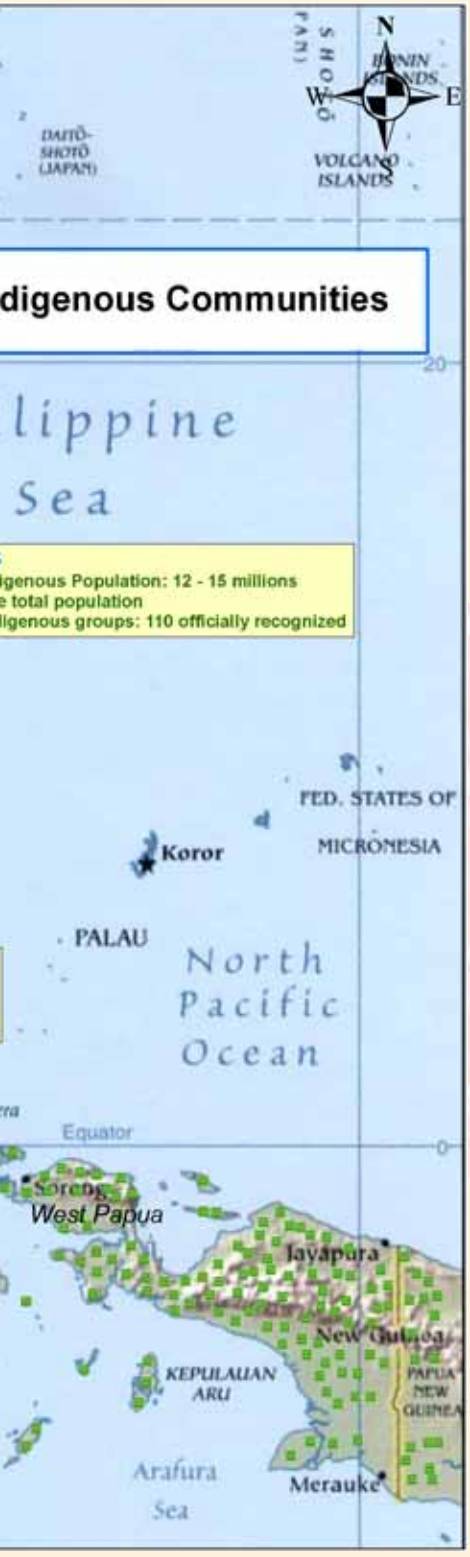
WHAT ARE OUR COLLECTIVE RIGHTS?

The collective rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) are not new rights but are our inherent rights which are already also contained in various other international instruments such as, among others, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of all forms of Racial Discrimination.

Right to Self Determination

Article 3 of the UNDRIP particularly states that, "Indigenous Peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." And article 4 elaborates that "in exercising their right to self-


MYANMAR
Estimated Indigenous Population: 14.4 - 19.2 millions
30-40% of the total population
Number of Indigenous groups: 135
LAOS
Estimated Indigenous Population: 2.4 - 4.8 millions
35 - 70% of the total population
Number of indigenous groups : 49 officially recognized
VIETNAM
Estimated Indigenous Population: 10 millions
13.8% of the total population
Number of Indigenous groups: 53
(54 includes the majority Kinh)
CAMBODIA
Estimated Indigenous Population: 197,000
1.34% of the total population
Number of Indigenous groups: 24
THAILAND
Estimated Indigenous
Population : 1.1 millions
1.5% of the total population
Number of Indigenous
Groups : 34
BRUNEI DARUSSALAM
Estimated Indigenous Population: 71,000
16.7% of the total population
Number of Indigenous groups: 8 (7-11)
MALAYSIA
Estimated Indigenous Population: 3.4 millions
12% of the total population
Number of Indigenous groups: 97
INDONESIA
Estimated Indigenous Population: 50 -70 millions
20 - 29% of the total population
There are more than 700 indigenous groups but
the government recognizes only 365 ethnics and
sub-ethnics as "Isolated Adat Communities"
PHILIPPINES
INDIA
BURMA
LAOS
THAILAND
VIETNAM
CAMBODIA
MALAYSIA
BRUNEI
PHILIPPINES
INDONESIA
SINGAPORE
Taiwan
Changsha
Kunming
Fuzhou
Taipei
Xiamen
Shantou
Kao-hsiung
Hong Kong S.A.R.
Macau S.A.R.
Nanning
Zhanjiang
Hanoi
Haiphong
Mandalay
Akyab (Sittwe)
Vientiane
Vinh
Hue
Rangoon
Bassein
Moulmein
Nakhon Ratchasima
Bangkok
Tavoy
Phnom Penh
Ho Chi Minh City
Long Xuyen
Manila
Phuket
Songkhla
George Town
Banda Aceh
Medan
Ipoh
Kuala Lumpur
Singapore
Kota Kinabalu
Sarawak
Kuching
Borneo
Kalimantan
Zamboanga
Davao
Cagayan de Oro
Bacolod
Iloilo
Cebu
Manado
Palu
Toraja
Kendari
Ambon
Maluku
Padang
Sumatra
Palembang
Jakarta
Semarang
Bandung
Java
Surabaya
Denpasar
Kupang
Dili
East Timor
Ujungpandang
Banjarmasin
Java Sea
Banda Sea
Flores Sea
Sulu Sea
SPRATLY ISLANDS
PARACEL ISLANDS
BABUYAN ISLANDS
NICOBAR ISLANDS (INDIA)
ANDAMAN
Gulf of Thailand
Gulf of Tonkin
Tropic of Cancer
Okinawa
Naha



determination, have the right to autonomy or self-government in matters relating to their internal and local affairs," In article 46, the Declaration however stresses that nothing in the Declaration may be interpreted as implying for anybody the right to engage in activities which threaten the territorial integrity or political unity of States. By far most Indigenous Peoples are therefore in agreement that their self-determination is to be realized within the context of existing Nation States.

Right to Land, Territories and Resources

This right is stipulated in Articles 25 and 26 of the Declaration according to which "Indigenous peoples have the right to lands, territories and resources. States shall give legal recognition and protection to these lands, territories and resources with due respect to customs and traditions of Indigenous Peoples to land tenure systems".

Right to Free, Prior and Informed Consent (FPIC)

FPIC means that Indigenous Peoples have the right to accept or reject a project or any other form of intervention in their communities and territories, or that they define the conditions for the project implementation based on their collective decision making processes. Of particular importance is Article 10 which states that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return".

HOW MANY INDIGENOUS PEOPLES ARE THERE IN SOUTHEAST ASIA?

An estimated 2/3 of the total 300 million population of Indigenous Peoples worldwide live in Asia. Few States in Southeast Asia however recognize Indigenous Peoples, and even if they do, our identity has not been taken into account during preparations of national censuses. It is therefore very difficult to give accurate or even approximate figures for the populations of Indigenous Peoples in the Southeast Asia region.

The map presents a compilation of some of the information available on the number and diversity of Indigenous Peoples in Southeast Asia. The figures provided have to be taken with caution, however. They have been retrieved from various sources, which are often diverging considerably, and in many if not most cases are best based on informed estimates.

Right to Development

Several articles in the Declaration refer to development (articles 3, 20, 21, 23, 29 and 32). In sum, these articles provide that Indigenous Peoples have the right to maintain and develop their political, economic and social systems and institutions and to secure their own means of subsistence and development, including the freedom to engage in traditional and other economic activities. Those deprived of such means are entitled to just and fair redress. They have the right to determine and develop priorities and strategies for their

own development and to be actively involved in health, housing and other economic and social programs which, to the extent possible, they will administer through their own institutions.

Cultural Rights

This right is stipulated in Article 8 of the Declaration which states that, "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and States shall provide effective mechanisms to prevent and provide redress to forced assimilation."

WHAT ARE OUR COMMON ISSUES?

We, the Indigenous Peoples of the ASEAN nations, have parallel histories of struggle for the recognition and affirmation of our identity as distinct peoples with our own particular lifestyles, social, cultural and political systems. In varying degrees but certainly similar in experiences is a thread of common issues that bind us in our continuing endeavor against marginalization and discrimination and for the recognition of our rights.

Non-recognition as Indigenous Peoples

Already early on in the work on the draft of the UNDRIP, several Asian governments have expressed their reservation with regards to the application of the concept of Indigenous Peoples to their countries. And right after the declaration was adopted by the UN General Assembly, this position was reiterated by representatives of Asian countries. In short, their position is that the lack of a definition prevents a clear understanding of who the Declaration applies to, and that based on existing definitions, like, for example, that of the ILO, it can be concluded that their nation does not have any Indigenous Peoples, or that all its citizens are equally indigenous. This is an unfortunate interpretation that ignores the evolution of the meaning of Indigenous Peoples within international law over the past two decades, and above all it does not do justice to the right of Indigenous Peoples to self-identification.

As a result of the refusal to recognize the validity of the concept by most Asian governments, the applicability of the UNDRIP to their countries is also rejected. This denies our protection by the very instrument that governments have jointly developed with Indigenous Peoples to address the discrimination and injustice we are still suffering from.

The non-recognition as Indigenous Peoples based on the claim that all citizens in Asian countries are "equally indigenous" betrays an underlying assimilationist attitude of the respective State, which is itself an expression of the still prevailing discrimination of Indigenous Peoples within mainstream society in most nations of Southeast Asia. None of the ASEAN countries has any explicit assimilation policy anymore, but many government programs, like compulsory education, relocation or infrastructure program, supposedly meant to "develop" and thus benefit "backward" communities, are powerful forces the lead to the loss of our culture and identity and our assimilation into mainstream society.

In Thailand, almost half of the indigenous population does not even have citizenship even though they would qualify according to the law. The problem is that they do not have adequate documents such as birth registers. The absence of citizenship is one factor that renders the Indigenous Peoples in Thailand even more vulnerable to human rights violations.

Violations to our Right to our Land, Territories and Resources

The concept of land and territories has many dimensions that are vital to Indigenous Peoples' collective identity. The matter of historical connection and deep affinity to our land and territories which we have managed and controlled in our own sustainable ways is a reason for our persistence to hold on to these. Land is our source of life, the basis of our livelihood and our identity. The UNDRIP fully recognizes the importance of land, territories and resources for Indigenous Peoples. This is further emphasized by the recognition of Indigenous Peoples right to Free Prior and Informed Consent (FPIC) as requirement to safeguard our right over our land, territories and resources and our right to self determination. This includes our right to define our own approaches to and plans for development.

Development Aggression

Indigenous Peoples often live in areas rich in natural resources, which have become targets of resource extraction and development programs by governments and multinational companies. In the name of modernization and development of the nation our communities are faced with the impact of mining and logging, large-scale plantations and infrastructure programs. These projects are implemented without consultation and consent from the affected communities and causes massive displacement of indigenous communities and consequently to the loss of their livelihood, culture and identity. The following provides a few examples of the forms of imposed development on indigenous communities in the ASEAN region.

In **Cambodia,** Economic Land Concessions (ELCs) for commercial plantations such as rubber, cassava, corn for biofuel etc. have been granted on indigenous communities' lands. According to the Ministry of Agriculture, Forestry and Fisheries (MAFF), as of May 2010 ELCs have been given to 85 companies covering a total land area of 956,690

ha located in 16 provinces.[1] There are many reported cases of forced eviction of indigenous communities as a result of the granting of ELCs.[2] The number of concessions for mining is also increasing. Since 1996, Indigenous Peoples in Ratanakiri, Mondulkiri and Stung Treng provinces have experienced devastating social, economic, cultural and environmental impacts from hydropower projects being built and operated upstream on the Sesan, Srepok and Sekong rivers in Vietnam and Lao PDR. Studies are currently being carried out for seven additional large dams on these three rivers inside Cambodia. Members of ten Indigenous Peoples live along the Sesan, Srepok and Sekong rivers in Ratanakiri, Stung Treng, and Mondulkiri provinces of north-eastern Cambodia .

In **Indonesia,** over 7.5 million hectares of land are already covered by oil palm plantations.[3] Many of these plantations have been established on forest land traditionally used by Indigenous Peoples. Reports published in recent years show that land acquisition and the establishment of oil palm plantations go along with serious abuses of the right of local communities, many of whom belong to Indigenous Peoples. Their land is often taken without their free, prior informed consent and without due payment. [4] In addition to this, Indigenous Peoples in Indonesia have over the past decades suffered severely from the impact of mining, logging, trans-migration and other forms of development projects.

In **Laos,** a recent moratorium on land concessions has temporarily stopped the rapid expansion of plantations, mostly for rubber, which the country has experienced over the past few years. In mid-2009 it was estimated that there were already 180,000 ha of rubber plantations in Laos, up from a negligible amount just five years earlier.[5] A temporary slow-down of the implementation of the Lao government's plan for hydro-electric dams has been brought about by the recent global financial crisis. But there are signs that this is again changing and that the Xekong 4 and Nam Kong dams, which would both heavily impact on Indigenous Peoples in the Xekong River Basin, are going to be built.[6]

Malaysia has an estimated 4 million hectares of oil palm plantations.[7] As in Indonesia, they have in most cases been imposed on indigenous communities, without

their free prior informed consent and due compensation. Particularly worrying are the recently announced new mega-dam projects in Sarawak. After the forced relocation of 15,000 indigenous villagers for the controversial Bakun dam project, the government of Sarawak state has announced plans for 12 more mega-dams in its Corridor of Renewable Energy (Score). The proposed massive dams are intended to generate cheap electricity for Malaysia's manufacturing industries, which are intended to be relocated to the state, and for China's rapidly expanding economy. An investment of US$11 billion has been pledged by the State Grid Corporation of China (SGCC). The number of people who will face eviction is still unclear, but the scale of the impact on indigenous communities will certainly be immense. According to the Financial Times of London up to 608,000 people may face relocation.[8]

Since 1990, the **Philippine government** has approved more than 300 mineral production sharing agreements and four financial and technical assistance agreements. The latter contracts allow foreigners to own mining operations. Between January and March 2010, the Mines and Geosciences Bureau (MGB) has already approved 20 new exploration permits covering a total area of 122,000 hectares nationwide. Mining applications cover already over 40% of the country's total land area.[9] Much of this mineral rich land is located in the ancestral domains of Indigenous Peoples, with up to 60% of ancestral domains impacted by mining applications and 39 of the 63 government priority mining projects directly overlapping ancestral domains.[10] By June 2010, the Philippine government has awarded 157 Certificates of Ancestral Domain Title (CADT) covering a total of 4.294 million hectares. There are however still many ancestral domains that remain unrecognized and unprotected. The awarding of a CADT has also not been sufficient in protecting indigenous communities from encroachment by mining companies since the National Commission on Indigenous Peoples has shown to manipulate the legally mandated FPIC process in favour of the companies rather than the indigenous communities whose interests it is supposed to defend.

In the **Mekong Region**, the implementation of the Greater Mekong Subregion (GMS) Program involving six countries – Cambodia, China (specifically Yunnan and Guangxi provinces), Laos, Myanmar, Thailand and Vietnam – has contributed to the rapid economic growth in most of these countries but has negatively impacted indigenous communities. The project is funded by Asian Development Bank (ADB) and started in 1992 with an ambitious vision of integrating the six countries into a single borderless economy[11]. It also aims to enhance poverty alleviation, the protection of the environment, sustainability and human resources. The GMS Program resulted in the building of roads, bridges, dams, airports, ports, hotels and casinos across the region and has brought about international agreements on trade, energy, tourism and environment between the various Mekong governments.[12] While undoubtedly contributing to economic growth it also led to increased socio-economic inequality, deforestation, decline in health of rivers, and loss of biodiversity. As the Participatory Poverty Assessment of the ADB for Lao PDR in 2006 has shown, in many rural areas the poor are generally either the same or worse off than before. The conclusion drawn in the poverty assessment report for Laos very much apply to indigenous areas elsewhere in the GMS program area as well as the ASEAN

region in general: The survey showed *"that poor villagers increasingly experience difficulty in providing food for their families. Natural resources were said to be seriously depleted in almost all locations and many people are casting aside traditional religious values and aesthetic appreciation of natural systems in a competition for the remaining forest products and wildlife. Cultural checks and balances are being replaced by monetarily grounded attitudes of 'first come first serve' and 'live for today'. Ecologically sound livelihoods are being replaced by ecologically destructive ones that involve a high degree of risk. Subsistence economies are being replaced by economies of survival."*[13]

Non-recognition of our Traditional Livelihood Practices

Traditional economic practices like shifting cultivation,[14] which is one of the most common forms of land use among Indigenous Peoples in the entire Southeast Asian region, have come under increasing pressure by restrictive government policies. Due to the lack of accurate statistical data the total number of shifting cultivators in Southeast Asia is unknown. It has been estimated to lie somewhere between 14 and 34 million,[15] most of whom belong to Indigenous Peoples. In the name of forest conservation and development, colonial and post-colonial governments in Southeast Asia have since more than a century devised policies and laws seeking to eradicate shifting cultivation. [16] Many of the arguments brought forward against shifting cultivation – that it is an economically inefficient and ecologically harmful practice – have been proven inaccurate or outright wrong.[17] Notwithstanding all evidence, however, attitudes by decision makers and, consequently, state policies have hardly changed.

In Laos, the eradication of shifting cultivation for forest conservation has been one of the justifications for the government's large-scale resettlement program which is severely affecting indigenous communities. In other countries indigenous farmers are fined or arrested for practicing shifting cultivation. This happens rather frequently in Thailand. In 2008, for example two Karen farmers were put to jail for preparing their shifting cultivation fields. They were accused of contributing to the degradation of national forest land, damaging a water source and causing rise in temperature. Even though their cases have been dismissed early this year the arrest seriously traumatized them, and like so many other indigenous shifting cultivators they will have to live in constant fear of reprisal from the authorities while pursuing their traditional livelihood practice.

The current climate change discourse has taken the debate on shifting cultivation to the global level, reinforcing existing prejudices, laws and programs with little concern for the people affected by them. Now, shifting cultivation is bad because it causes carbon emission and thus contributes to climate change. Thus mitigation actions like REDD unjustly target shifting cultivators as "drivers of deforestation" even though it has been shown that its contribution to deforestation is minimal.[18]

Migration and Forced Resettlement

Various factors lead to increasing migration of Indigenous Peoples from one country to another. Since the middle of the 19th century, state repression and violent conflicts in China, and after the middle of the 20th century in Myanmar have forced large numbers of Indigenous Peoples to abandon their villages and seek peace and security in neighboring countries. Post-independence conflicts in

Laos had a heavy toll on the indigenous Hmong people due to the involvement of some of them in the US-led anti-communist "secret war". Many have fled to neighboring Thailand and were later resettled in western countries.

Extreme poverty is also another reason for migration among Indigenous Peoples within a country or abroad. The increasing scarcity of land and resources compels many of us to migrate to urban centers where, due to the lack of education, language and other skills most end up doing low-paid menial work. Some have opted for employment overseas to augment income to support their families as in the case of Indigenous Peoples in the Philippines and Thailand. Migration however has considerable socio-cultural costs for Indigenous Peoples. Many have difficulties in adjusting to a new and often hostile environment and they suffer from the loss of family and community ties. The communities back home in turn suffer from the drain of manpower, causing hardship especially for the elderly and lack of guidance for the children.

Some governments in Southeast Asia have launched large-scale internal resettlement programs for various purposes, all with severe consequences for Indigenous Peoples. Between the 1950s and 1980s, state-sponsored transmigration programs for non-indigenous settlers by the government of Vietnam to the Central Highlands, by Indonesia to West Papua, Kalimantan and other outer islands, or by the Philippine government to Mindoro, Palawan and above all Mindanao have resulted in massive loss of land of indigenous communities and severely altered the demographic composition of the transmigration areas in favour of the non-indigenous settlers. These programs have now all been abandoned but the indigenous communities in the affected areas are still suffering badly from their legacy.

Forced resettlement of indigenous communities is occurring in many ASEAN countries, often in connection with large infrastructure programs. The Lao government has launched a comprehensive, country-wide resettlement program where almost all of the people affected belong to Indigenous Peoples. At the beginning of the 1990s, when the program was launched, the Lao government planned to resettle 180,000 households totalling 1.5 million people, of which 60% should be resettled before the year 2000. The target has not been achieved and two new resettlement plans have been made with a total of 211,125 people included in the first resettlement plan for 2001 to 2005. An estimated 683 villages, with a total of 164,285 people, were

supposed to be resettled during the second plan between 2006 and 2010. Figures on the actual number of people resettled are not available.[19]

Forced resettlement is not an official policy but part of the overall "development" program of the Lao government. Through the program the government aims to eradicate shifting cultivation and the production of opium, and it is supposed to provide the resettled people better access to services and the market, and to improve their standard of living, health, food productivity and food security. However, studies have shown that in most cases the contrary happens. Resettlement programs have led to increased poverty, malnutrition, a higher mortality rate and a general deterioration in the health of affected villagers. Furthermore, they often have a negative impact on the environment, running counter to another stated objective: the conservation of forests.[20]

Violations to the Rights of Indigenous Women

Indigenous women and children belong to the most vulnerable sectors of society and thus should be given special protection. However, this does not happen and they continue to suffer from violations to their rights by both the State and their own communities.

Despite their important contribution to agricultural production and subsistence activities of the family, women in most traditionally male-dominated indigenous communities in the ASEAN region are only marginally involved or are fully excluded from decision-making processes at local and national levels. Regarded as inferior and weak, they have virtually no voice in the political affairs of the community and country. Violence against indigenous women, like bride kidnapping, forced marriage and domestic violence, are also practices that still persist in some indigenous societies.

Indigenous women in the rural areas are hardest hit by poverty. In general, poverty affects women more severely than men since the burden to provide for the family rests more heavily on women, while decisions affecting domestic economy and even most crucial issues directly affecting women like reproduction are taken by men. Poverty and the lack of access to basic services such as health and education for indigenous women are prevalent in almost all ASEAN countries but most pronounced in Laos and Vietnam.[21]

In situations of internal conflict and intense militarization such as in **Myanmar** and to a lesser degree in the **Philippines**, indigenous women and girls fall prey to sexual harassment, rape and other forms of atrocities at the hands of state security forces. There are reports that the practice of the Burmese Army to execute village heads has affected the traditional Karen culture with women now being appointed village chiefs as they are seen as less likely to be killed. However, this change has put women in the frontline of human rights abuses. These abuses constitute crimes against humanity and war crimes which the women chiefs are compelled to witness like crucifixions, people burnt alive, rape, including gang rape, many forms of torture, including beatings and water torture, people buried up to their heads in earth and beaten to death, arbitrary executions, beheadings and forced labor. The women chiefs have been deliberately targeted for gender-based violence, including gang-rape. Pregnant and nursing women chiefs have been subjected to forced labor and grueling interrogation.[22]

In **Malaysia**, the State has relegated its duty of providing services to its Indigenous Peoples to corporations which it allowed to log its forests, build dams and establish plantations in indigenous territories. The rape of Penan women and girls by loggers of Samling, a timber conglomerate operating in Sarawak, is directly due to the vulnerability created by the issue of accessibility to educational facilities for Penan communities, the discrimination and neglect of the State, and the overall lack of protection of the rights of indigenous communities.[23]

Trafficking of indigenous women and children has become a major problem as well. In Myanmar's borders with China and Thailand, 133 verified and suspected cases of trafficking involving 163 women and girls from Kachin and Northern Shan State were documented between 2004 and 2007. Of the confirmed cases, 90 were sold to men in other countries as forced brides and 94% of the women were sent to China.[24]

Threats and Violence against Indigenous Human Rights Defenders

Our struggle against development aggression and assertion of our collective rights has led to many violations of our civil and political rights. This includes threats, intimidation, harassment, arbitrary arrest and extrajudicial killing of human rights defenders and our leaders.

In **Sarawak, Malaysia,** 15 indigenous leaders who were submitting their petition letter to the government against the proposed construction of dams which will affect their communities were arrested for illegal assembly and detained for eight hours last 2009. They were released but still have to appear in court to face their charges.

In the **Philippines,** indigenous leaders who were at the frontline against mining and development aggression in the Cordillera became victims of extrajudicial killing and enforced disappearance. Among the over 70 reported cases of extrajudicial killings of indigenous leaders nationwide is that of Markus Bangit, a well-known indigenous leader of the Cordillera Peoples' Alliance, who was killed along with an innocent bystander in 2006 when he and his son were on their way to the city from the province. James Balao, another prominent indigenous leader and human rights defender of the Cordillera region, was abducted by alleged State forces in 2008 and has never been seen again up to date.

The Imposition of Protected Areas

Laws and policies legislated by States without obtaining the Free, Prior and Informed Consent of indigenous communities have greatly affected our lives. Policies on the establishment of national parks and protected areas have caused forced relocation, destruction of livelihood, and arrest of many indigenous villagers living in these areas. This resulted to increased food insecurity and poverty and alienation from our lands and resources that we have taken care of for so many generations.

Arrests for violation of forest and wildlife conservation laws are common in Thailand. In 2006, for example, five Lisu people were arrested by the officers of the Wildlife Preservation Authority and the OmKoi District Administrative Authority in OmKoi district in Chiang Mai province for violating the Forestry Act and the Wildlife Preservation and Protection Act. Those who were arrested were actually residents of that area from 1989 to 1994 but had been resettled by the government to an area not suitable for cultivation with the promise that they will be given compensation and alternative sources of income. The authorities however failed to honour these promises and the villagers had no other choice but to move back to their original village and start cultivating their fields again.

With the implementation of climate change mitigation schemes like Reducing Emissions from Deforestation and Forest Degradation (REDD) Program by governments in the ASEAN region we fear even harsher restrictions on the use of our land and natural resources, which will greatly impact our way of life and livelihood security.

WHAT ARE THE IMPLICATIONS OF THE ASEAN FOR INDIGENOUS PEOPLES IN SOUTHEAST ASIA?

The ASEAN has made some progress in integrating human rights as part of its framework. In all its documents, however, including its Roadmap for an ASEAN community 2009-2015, which is a very critical document for the establishment of an ASEAN community, it does not refer in any way to Indigenous Peoples and our recognition as *distinct peoples with inherent collective rights over our lands, territories and resources.* This despite the fact that all ASEAN member states have voted in favour for the adoption of the UNDRIP.

The ASEAN Charter

The Charter codifies past agreements within ASEAN and reiterates the principles of cooperation and relationship contained in its basic documents: declarations, agreements, conventions, concords, treaties and other instruments. These basic principles are: sovereignty, equality, territorial integrity, non-interference,

consensus and unity in diversity. These principles define how Member States relate with each other but not how to deal with their respective citizens or the collective constituency of the whole bloc. It lays down the rights of the Member States but not of its citizens. It lacks clarity on the participation of its citizens in its structure and processes, and has no provision for disciplinary action and dispute resolution mechanisms for violations of its Charter by its member states.

The Charter only provides the ASEAN with a legal personality as a bloc in its conduct of business with outside countries and other regional blocs, especially in seeking trade and economic agreements. It also allows it to develop its structure in order to achieve the regional community it envisions in the ASEAN Vision 2015.

The Charter states the upholding of the UN Charter and international law to which the ASEAN member states subscribed to. While this is a progressive reference framework of ASEAN, most member-states have poor performance record on their human rights obligations relating to the International Convention on Civil and Political Rights (ICCPR), and Economic, Social and Cultural Rights (ESCR) and the International Convention for the Elimination of Racial Discrimination (ICERD) among others. Further, most member-states also continue to ignore their moral obligation to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that is intended to pave the way for achieving social justice for Indigenous Peoples after centuries of oppression and exploitation. As parties to the adoption of the UNDRIP, the Member States of the ASEAN have the moral obligation to implement the UNDRIP just as they do with the Universal Declaration on Human Rights, which is also a non-binding agreement. Furthermore, the various articles of the UNDRIP cover issues which are already included in other, directly binding international human rights instruments like covenants and conventions. Thus, the UNDRIP is indirectly legally binding.

It is imperative thus to strengthen and broaden the lobby and advocacy of civil society organizations and Indigenous Peoples to pressure ASEAN to abide by the UN Charter and to International human rights instruments not only in words but in action through national legislations, policy formulations and concrete measures for its operationalization.

Para 2 of Article 2 of the ASEAN Charter states the overarching principle and framework for cooperation and non-intervention in the internal affairs of the ASEAN member states. This means that ASEAN as a regional intergovernmental body cannot impose sanctions to any of its members even if they are violating their international human rights obligations, like in the case of Myanmar.

The Charter promotes a people-oriented ASEAN and “encourages” all sectors of society to participate in and benefit from the integration and community building processes. However, it does not spell out specific mechanisms for the full and effective participation of the peoples of the ASEAN particularly of the leaders and representatives of peoples organizations and movements including Indigenous Peoples.

The criteria for representation in the ASEAN organs is not transparent and there are no clear criteria to ensure effective and inclusive representation. It is more as political appointments and not on individual integrity relating to transparency and accountability, proven expertise or outstanding track record of good performance and professionalism and pro-poor commitment among others.

With this the functioning of the ASEAN bodies will be more dominated by the political agenda and personal interest of those appointed.

The Charter promotes a market-driven economy which has shown to pose serious threats to indigenous communities if there are no safeguards in place to protect our rights. In general, the Charter completely is devoid of any reference to measures for maintaining economic equity and social safeguards.

The ASEAN Community

The ASEAN Community envisioned to be achieved in 2015 is to be a "concert of Southeast Asian Nations, outward-looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies." This Community has three Pillars: the ASEAN Economic Community (AEC), the ASEAN Political Security Community (APSC) and the ASEAN Socio-Cultural Community (ASCC). Each of the pillars has its own respective Blueprint. These three Blueprints contain policies/ goals, technical arrangements, action plans and review mechanisms. They also establish clear targets and timelines for implementation, and have pre-agreed flexibilities to accommodate the interests of all ASEAN member states. The Blueprints are binding to all member states.

1. The ASEAN Political Security Community (APSC)

The ASEAN Political Security Community aims to promote cooperation in political development and inter-state solidarity (settlement of intra-regional differences). Its main elements are: political development, shaping and sharing of norms, conflict prevention, conflict resolution, post-conflict peace building, combating terrorism and implementing mechanisms. The principles of non-interference, consensus decision-making, national and regional resilience and respect for sovereignty are reiterated in this Community.

Non-discrimination as to gender, race, religion,

language, or social and cultural background in participating in, and benefiting from, the process of ASEAN integration and community building is affirmed. Tolerance, respect for diversity, equality and mutual understanding are aspirational goals.

Although human rights and fundamental freedoms, rule of law, good governance and democracy are mentioned, these are to be taken "with due regard to the rights and responsibilities of States".

One of the aims of the Political Security Community is to promote and protect human rights and fundamental freedoms of the peoples of ASEAN. Along this line, the establishment of the ASEAN Inter- Governmental Commission on Human Rights (AICHR) is a step in the right direction. However, its present mandate is too weak in terms of human rights protection. This means that it may document and inform about human rights violations but cannot in any way enforce adherence to human rights standards among member states. It is thereby important to continue to advocate for a stronger mandate of the AICHR for human rights protection including the protection of the collective rights of Indigenous Peoples.

The Political Security Community also seeks to promote understanding and appreciation of political systems, culture and history. However, this mainly refers to the dominant and mainstream political systems, cultures and history. Indigenous Peoples across ASEAN are not even acknowledged and recognized for their own customary laws and political systems and history of struggles in asserting their collective identities and dignity as distinct peoples.

While it promotes peace and stability by addressing religious and ethnic conflicts, it does not account for the root causes of conflicts, nor does it provide for measures to address these based on the principle of respecting human rights, and upholding justice, equality and non-discrimination.

The APSC is also committed to the promotion of good governance and principles of democracy, but it again does not include reference to recognizing and respecting the collective rights of Indigenous Peoples as distinct peoples within the ASEAN.

In addition, the proposed ratification and full implementation of the ASEAN Convention on Counter-Terrorism is a potential tool for further political repression among indigenous leaders and communities and other human rights defenders and civil-society leaders in Southeast Asia.

In sum, the Political Security Community Blueprint has no mention at all of Indigenous Peoples, who are also part of the ASEAN Community, and how it will address the crosscutting human rights issues of Indigenous Peoples in the region.

2. The ASEAN Economic Community (AEC)

The ASEAN Economic Community (AEC) embodies the economic integration envisioned by the ASEAN leaders by 2015: "an open, outward-looking, inclusive, and market-driven economy". The elements of the AEC are:

- a single market and production base;
- a highly competitive economic region;
- a region of equitable economic development; and
- a region fully integrated into the global economy

Its Priority Integration Sectors are: agro-based products, air travel, automotives, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, wood-based products, and logistics

The promotion of a *single market* and production base means promoting a market-driven economy based on free trade: the free flow of goods, services and capital (investment) however will be detrimental to poorer, smaller economies. The AEC Blueprint only provides protection for end-users, i.e. consumers, but not producers.

The market driven economy being promoted by the AEC endangers indigenous communities as our lands and territories will be used and exploited in the name of development that is not benefiting us. In fact, it is leading to increasing gaps between the rich and the poor, further marginalizing Indigenous Peoples. It completely ignores the right of Indigenous Peoples over their land and resources and gives no regard to the practices of self-sufficiency and sustainable resource management systems of indigenous communities. Further, it does not provide for measures for economic equity and social safeguards. The International standards include the requirement for the Free Prior and Informed Consent (FPIC) for indigenous communities on development projects, programs and policies that affect them and the AEC must conform to this as well. Policy against displacements of indigenous communities without their consent should be put in place and enforced.

3. The ASEAN Socio-Cultural Community- (ASCC)

The ASEAN Socio-Cultural Community (ASCC) envisages a community of caring societies and founded on a common regional identity, with cooperation focused on social development aimed at raising the standard of living of disadvantaged groups and the rural population, and it shall seek the active involvement of all sectors of society, in particular women, youth, and local communities.

Its main aims are the promotion of human rights and social justice, human development and security, narrowing the development gap, ensuring environmental sustainability, and building an ASEAN identity.

The ASCC Blueprint covers a wide variety of issues such as poverty, health, disaster management, education, food security, social impact of integration, environmental sustainability, migrant labor, women and children's rights, science and technology.

The ASCC Blueprint does include references to respect for rights and fundamental freedoms and promotion and protection of human rights and social justice, with specific mention of disadvantaged, vulnerable and marginalized groups. Although no direct mention of Indigenous Peoples is made here, the State neglect, non-recognition, human rights violations and discrimination we are constantly facing make us fall within this category. The actions foreseen under Social Justice and Rights, however, are rather addressing symptoms than underlying systemic factors like issues of access to justice, conflicting interests between Indigenous Peoples and corporations, or participation in decision making.

The ASCC Blueprint further provides for social welfare protection which includes enhancement of people's livelihoods but fails to acknowledge sustainable livelihoods of Indigenous Peoples.

In terms of education, it only talks of the mainstream education and does not refer to issues that are critical in a region so diverse in languages, like the provision of mother tongue education. Instead, it emphasizes the use of English as an international language at the work place, which implies fewer chances for employment for members of less educated, marginalized communities.

The ASCC Blueprint does mention the social safety net and protection against negative impacts of globalization, but it does not refer to any concrete and substantive measures for social safeguards.

The reference to regional food security ignores the production aspect, i.e. the threats of trade liberalization to small farmers and traditional livelihoods, and thus food security of Indigenous Peoples.

In the section addressing the promotion and protection rights of vulnerable sectors of the society, only the rights of the welfare of women, children, elderly, persons with disabilities and migrants are mentioned, and there is no reference to Indigenous Peoples.

Finally, while the promotion of corporate social responsibility and environmental protection is included there is also no mention of concrete measures to ensure compliance of corporations in the ASEAN region with social and environmental safeguard standards.

CONCLUSION

The ASEAN's Charter and Roadmap for an ASEAN Community are full of progressive language, expressions of good intentions, but lack any substance with respect to upholding and ensuring people's rights, interests and welfare. While the measures to promote development, economic growth and prosperity of the member states are rather clearly spelled out, the declared promotion of peace and social security and the upholding of human rights in the future ASEAN Community so far remain mere rhetoric.

Indigenous Peoples are not at all mentioned or referred to in any ASEAN document, even though we are an integral part of the ASEAN Community and among its most vulnerable sectors, whose interest the ASEAN has committed itself to protect. The failure of the ASEAN to address the plight of its Indigenous Peoples despite its expressed commitment to human rights and social justice is a shortcoming that needs to be corrected urgently. Unless Indigenous Peoples are fully recognized as integral part of a culturally diverse ASEAN, and unless Indigenous Peoples' collective rights and identity are respected, ASEAN's goal of deveopment with equity, democracy and respect for human rights cannot be achieved.

OUR CALLS TO THE ASEAN MEMBER STATES

1. **To initiate dialogues at the local, national and regional levels with Indigenous Peoples' representatives to address their legal recognition as distinct peoples with collective rights under international human rights standards and norms.**
2. **To review the national legal framework of each ASEAN member State with a view of incorporating provisions of the UN Declaration on the Rights of Indigenous Peoples especially to the right to lands, territories and resources, to self- governance, and cultural integrity while at the same time repealing/ revising laws and policies that violate these collective rights.**
3. **To immediately implement the requirement for the Free Prior and Informed Consent (FPIC) of indigenous communities especially in relation to the planning and implementation of development projects affecting them.**
4. **To establish effective mechanisms at the local, national and ASEAN level for the full and effective participation of Indigenous Peoples on matters that concerns them, as well as in addressing their urgent concerns relating to their rights and welfare.**
5. **For the members of AICHR to conduct dialogues and meetings with indigenous leaders and representatives at the national and regional levels for the inclusion of the human rights concerns of Indigenous Peoples in the work-plan of the AICHR.**
6. **To designate a focal person for indigenous issues amongst the members of the AICHR towards the formation of a Working Group on indigenous issues to conduct studies on the situation of Indigenous Peoples in ASEAN in relation to the ASEAN Charter and Three Pillars.**

References

1 Ministry of Agriculture, Forestry and Fisheries (MAFF): http://www.elc.maff.gov.kh/overview.html

2 See for example the case of 270 families in Srey Cha Commune, Snoul District, Kratie Province http://escr.omct.org/action-files/cambodia/2010/02/d6103/

3 Colchester, Marcus 2010. Palm oil and indigenous peoples in South East Asia. Land acquisition, human rights violations and indigenous peoples on the palm oil frontier. Forest Peoples Programme. Draft, p.4 http://www.forestpeoples.org/documents/prv_sector/oil_palm/palm_oil_ips_se_asia_ILC_MC_jul10_eng.pdf

4 Ibid. p.12

5 Baird, Ian 2009. Laos, in: The Indigenous World 2010. Copenhagen: IWGIA, p. 376f

6 Ibid. p. 378

7 Colchester, Marcus 2010, op.cit. p.4

8 The Independent 2 January 2010: http://www.independent.co.uk/environment/borneo-megadams-proposal-raises-fears-for-tribes-wildlife-1855847.html; IPS News January 17, 2010: http://ipsnews.net/news.asp?idnews=50005; Environmental Development in Malaysia January 27, 2010: http://envdevmalaysia.wordpress.com/2010/01/27/mega-dams-may-displace-600000/

9 De la Cruz, Jhong 2006. Five Years Down the Drain for Indigenous Peoples. http://www.bulatlat.com/news/6-24/6-24-sip.htm

10 Philippines Indigenous Peoples ICERD Shadow Report for the consolidated fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth Philippine ICERD periodic reports. Submission to the Committee on the Elimination of all forms of Racial Discrimination 73rd Session, 3rd to 28th of August 2009, p.v

11 Ransley, Carol et. al. 2008. A Citizen's Guide to the Greater Mekong Subregion – Understanding the GMS Program and the role of the Asian Development Bank, p. 17.

12 Ibid. p. 15.

13 Ibid. p. 28.

14 Another term commonly used for this form of land use is swidden agriculture. Rotational farming is now increasingly used to emphasize the cyclic and thus sustainable nature of traditional, established form of shifting cultivation, which contrasts with the expansive pioneer shifting cultivation that has been partly the cause of the prevailing prejudices against shifting cultivation.

15 Mertz, Ole et.al. 2009. Who Counts? Demography of Swidden Cultivators in Southeast Asia. *Human Ecology* 37, p.286

16 See e.g. Fox et. al 2009, Padoch et. al. 2007 in general, IWGIA 2007 for Laos, Pulhin et. al. 2005 for the Philippines, Laungalamsri 2005 and Forsyth 1999 for Thailand, Phuc 2008 for Vietnam, or Dove 1985 for Indonesia, cited in: Erni, Christian 2009. Shifting the Blame? Southeast Asia's Indigenous Peoples and Shifting Cultivation in the Age of Climate Change. Indigenous Affairs 1-2/2009. Copenhagen: IWGIA

17 See e.g. Dove 1983, 1985, 1996; Padoch 1985; Forsyth 1999, Laungaramsri 2005, Nielsen et.al. 2006, Forsyth and Walker 2008., cited in: Erni, Christian 2009, op.cit.

18 Erni, Christian 2009, op.cit., p. 42

19 Anonymous 2007. Development-induced Resettlement and Social Suffering in Lao PDR. Indigenous Affairs 4/07, p. 25

20 See e.g. Goudineau, Y., 1997: *Resettlement and Social Characteristics of New Villages: Basic Needs for Resettled Communities in the Lao PDR*. Vientiane, UNESCO-UNDP, 2 vols.; Alton, C. and Houmphanh Rattanavong, 2004: *Service delivery and resettlement: options for development planning*. Final report, Livelihood study. UNDP/ECHO, Vientiane, Lao PDR, 30 April 2004

21 Luong Thu Oanh 2010. IFAD Country Technical Notes of Vietnam. p. 4

22 Indigenous Peoples Issues and Resources March 2010. Ethnic Karen Women Village Heads Targeted For Systematic Abuse By Junta's Troops Across Eastern Burma. http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=4175:ethnic-karen-women-village-heads-targeted-for-systematic-abuse-by-j untas-troops-across-eastern-burma&catid=62:southeast-asia-indigenous-peoples &Itemid=84

23 A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: http://www.scribd.com/doc/33986536/A-Wider-Context-of-Sexual-Exploitation-of-Penan-Women-and-Girls-in-Middle-and-Ulu-Baram-Sarawak-Malaysia

24 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

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