TILTING THE BALANCE:

INDIGENOUS WOMEN, DEVELOPMENT and ACCESS to JUSTICE


October 30 – November 2, 2012, Chiang Mai, Thailand
TILTING THE BALANCE: INDIGENOUS WOMEN, DEVELOPMENT and ACCESS to JUSTICE

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Overall writers: Bernice See and Charlotte Hinterberger

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Asia Indigenous Peoples Pact (AIPP) Foundation
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Amphur Sansai, Chiang Mai 50210 THAILAND
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Web: www.aippnet.org

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DEVELOPMENT and
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Indigenous women face severe rights violations, because they are women as well as indigenous peoples. The reporting of massive violations of the collective rights of indigenous peoples especially to their land, territories and resources, do not normally account for the violence committed against indigenous women. The very struggle of indigenous peoples to defend and assert their rights is also at the heart of indigenous women's struggle. However, many indigenous women are not yet fully recognized and acknowledged as indispensable partners in advancing indigenous peoples' movements. This includes women's vital roles in promoting sustainable resource management and holistic community development.

In Asia, the imposition of national development plans based on resource extraction are causing conflicts in indigenous territories. Indigenous women suffer related violence due to existing inequalities as well as their active participation in defending collective land rights. This report details the impacts of land grabs on indigenous women in Asia. Consequences including displacement, economic hardship, social disintegration and conflict can lead to conditions in which violence against indigenous women worsens. This is compounded by a lack of access to justice for indigenous communities, particularly women.

However women have power to defend their rights and act. AIPP and the UN Women Regional Office for Asia and the Pacific collaborated to hear from indigenous women survivors themselves, as well as advocates. After listening we discussed how to work together to combat development-induced violence against indigenous women. Listeners and collaborators came from indigenous peoples and women's organisations at different levels. Human rights advocates were involved, including national human rights institutions from Indonesia, Malaysia and Thailand. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, the UN Expert Mechanism on the Rights of Indigenous Peoples, and the Asia Pacific Forum on Women, Law and Development were also represented.

Initially we identified common issues that confront indigenous women when development has been imposed in their communities. We discussed specific ways women have been impacted, their responses to these impacts and challenges they faced based on context. We explored possibilities for learning from others and for collaboration. For some participants, simply knowing they were not alone in their struggle gave strength.

This publication hopefully captures the rich presentations of experiences as well as aspirations of indigenous women across Asia. Undoubtedly, indigenous women remain committed to collaborating at local and national levels to address human rights violations resulting from imposed development. It is imperative for indigenous women to raise their voice and claim their place within the development agenda of governments and other actors. Hopefully this publication will highlight ways that different actors can promote, protect and support the rights of indigenous women.

Joan Carling
Secretary-General
AIPP
AIPP is a regional organization founded in 1988 by indigenous peoples' movements, composed of 46 members from 14 countries in Asia as of its sixth General Assembly in September 2012. It has been working on the empowerment of indigenous women since 2003, beginning with a project training indigenous women in decision-making. In 2009 a core Indigenous Women Programme began, empowering indigenous women through networking, education and capacity building activities. This programme is currently supported by UN Women.

INTRODUCTION

This report on the Southeast Asia Consultation on Development, Access to Justice and the Human Rights of Indigenous Women, is intended as a material to be used by indigenous women, advocates, policy –makers and the public for the promotion, protection and respect of the rights of indigenous women facing violations of their rights due to state and corporate projects coming into their territories. As an advocacy material, the report is organised such that the actions needed to be undertaken by indigenous women and other supporting actors are placed in the first part. Part 1 Ways forward thus contains the consultation outcome document, Southeast Asia Indigenous Women’s Action Points (SEA-IWAP) On Combating Development-induced Violence Action Points and the summary of recommendations from the workshops and testimonies for easier referencing. The Action Points provide the priority areas in which indigenous women want action, support and solidarity. Part 2: Knowing our situation provides the inputs, case studies and testimonies. The first inputs provide the context of the violations of the rights of indigenous women in Asia. To relate to the issue of development, another input was made on indigenous peoples and sustainable development especially that there is an on-going global process of defining a post-MDGs agenda. To provide information on regional and international human rights mechanisms and opportunities for engagement, the following were discussed: Expert Mechanism on the Rights of Indigenous Peoples and its thematic study on access to justice, the Southeast Asia National Human Rights Institutions Forum, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the UN Women Asia-Pacific programmes. The case studies provide more details on the issues being faced by indigenous women due to mines, parks, economic land concessions and plantations. These cases are enhanced by the testimonies of other indigenous women facing the same issues in their homelands. All these depict the obstacles that the women face when they seek justice remedies to violations to their rights as women and as indigenous peoples. Part 3: Our actions will make the difference shares the results of the three workshops conducted on the themes of violence against women, on sustainable development and country strategies for combating violence against indigenous women.

This document is the first step towards raising awareness on violations of the human rights of indigenous women in the name of development. May it inspire others to assist indigenous women to document and seek redress to violations of their rights in the name of development.
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<td>ACMW</td>
<td>ASEAN Committee on the Promotion and Protection of the Rights of Migrant Workers</td>
</tr>
<tr>
<td>ACWC</td>
<td>ASEAN Commission on the Promotion and Protection of the Rights of Women and Children</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<td>ADHOC</td>
<td>Cambodian Human Rights and Development Association</td>
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<tr>
<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
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<td>AIPP</td>
<td>Asia Indigenous Peoples Pact</td>
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<td>AIWN</td>
<td>Asian Indigenous Women’s Network</td>
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<td>AFP</td>
<td>Armed Forces of the Philippines</td>
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<td>AFPPD</td>
<td>Asian Forum of Parliamentarians on Population and Development</td>
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<td>AMAN</td>
<td>Aliansi Masyarakat Adat Nusantara Perempuan</td>
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<td>APF</td>
<td>Asia Pacific Forum on NHRIs</td>
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<td>APWLD</td>
<td>Asia Pacific Forum for Women, Law and Development</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>ASFN</td>
<td>ASEAN Social Forestry Network</td>
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<tr>
<td>BAI</td>
<td>Indigenous Women’s Alliance</td>
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<tr>
<td>BE</td>
<td>Buddhist Era</td>
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<td>BRIMAS</td>
<td>Borneo Resources Institute (Malaysia)</td>
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<tr>
<td>CAFGU</td>
<td>Citizen Armed Force Geographical Unit</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CAVR</td>
<td>Commission for Reception, Truth and Reconciliation (Timor Leste)</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CED</td>
<td>Committee on the Protection of All Persons from Enforced Disappearance</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women/Committee on the Elimination of Discrimination Against Women</td>
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<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<td>CHRP</td>
<td>Commission on Human Rights of the Philippines</td>
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<td>CIYA</td>
<td>Cambodia Indigenous Youth Association</td>
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<td>CNPC</td>
<td>China National Petroleum Corporation</td>
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<tr>
<td>CPD</td>
<td>Convention on the Protection of Persons with Disabilities</td>
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<td>CPP</td>
<td>Cambodian Peoples Party</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSDM</td>
<td>Center for Sustainable Development in Mountainous Areas</td>
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<tr>
<td>CSO</td>
<td>Civil society organization</td>
</tr>
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<td>CSW</td>
<td>Commission on the Status of Women</td>
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<td>DENR</td>
<td>Department of Natural Resources (Philippines)</td>
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<td>DEMD</td>
<td>Department of Ethnic Minority Development (Cambodia)</td>
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<tr>
<td>DID</td>
<td>Department of Irrigation and Drainage (Sabah)</td>
</tr>
<tr>
<td>DFO</td>
<td>District Forest Officer</td>
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<td>DOH</td>
<td>Department of Health (Philippines)</td>
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<tr>
<td>DOLE</td>
<td>Department of Labor and Employment (Philippines)</td>
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<td>DSWD</td>
<td>Department of Social Work and Development (Philippines)</td>
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<td>EIA</td>
<td>Environment Impact Assessment</td>
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<td>EIDHR</td>
<td>European Instrument for Democracy and Human Rights</td>
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<td>ELC</td>
<td>Economic land concession</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>EMRIP</td>
<td>Expert Mechanism on the Rights of Indigenous Peoples</td>
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<tr>
<td>EPD</td>
<td>Environmental Protection Department</td>
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<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
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<td>FIMI/IWF</td>
<td>Foro del Internacional para Mujeres Indigenas/International Indigenous Women’s Forum</td>
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<tr>
<td>FKSH</td>
<td>Feto iha Kbiit Servisu Hamutuk (Timor Leste)</td>
</tr>
<tr>
<td>FLEGT</td>
<td>Forest Law Enforcement, Governance and Trade</td>
</tr>
<tr>
<td>FLTP</td>
<td>Feminist Legal Theory and Practice</td>
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<td>FLTU</td>
<td>Lao Trade Union</td>
</tr>
<tr>
<td>FOKUPERS</td>
<td>Forum Komunikasi Untuk Perempuan Timor Leste / East Timor Women’s Communication Forum</td>
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<tr>
<td>FPIC</td>
<td>Free, Prior and Informed Consent</td>
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<tr>
<td>FSC</td>
<td>Forest Stewardship Council</td>
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<tr>
<td>FTAA</td>
<td>Financial and Technical Assistance Agreement</td>
</tr>
<tr>
<td>GDA</td>
<td>Gender Development Association (Laos)</td>
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<tr>
<td>GRP</td>
<td>Gender Responsive Budgeting</td>
</tr>
<tr>
<td>GPDA</td>
<td>Greater Project Development Area</td>
</tr>
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<td>HA</td>
<td>Highland Association (Cambodia)</td>
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<td>HAS</td>
<td>Highland Agriculture Station (Thailand)</td>
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<td>HR</td>
<td>Human rights</td>
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<td>IADB</td>
<td>Inter-American Development Bank</td>
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<td>ICs</td>
<td>Indigenous communities</td>
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<tr>
<td>ICC</td>
<td>Indigenous cultural communities</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICSO</td>
<td>Indigenous Community Support Organisation (Cambodia)</td>
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<td>ICTJ</td>
<td>International Centre for Transitional Justice (Timor Leste)</td>
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<tr>
<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
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<td>IFC CAO</td>
<td>International Finance Corporation Compliance Advisor Ombudsman</td>
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<td>IFI</td>
<td>International Financial Institutions</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<td>IMPECT</td>
<td>Inter Mountain Peoples Education and Culture in Thailand Association</td>
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<tr>
<td>IP</td>
<td>Indigenous peoples</td>
</tr>
<tr>
<td>IPHRD</td>
<td>Indigenous peoples human rights defenders</td>
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<td>IPRA</td>
<td>Indigenous Peoples Rights Act (Philippines)</td>
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<td>IRAM</td>
<td>Indigenous Rights Active Members (Cambodia)</td>
</tr>
<tr>
<td>IRC</td>
<td>International Red Cross</td>
</tr>
<tr>
<td>ISMI</td>
<td>Itogon-Suyoc Mining Co. Inc.</td>
</tr>
<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
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<tr>
<td>IW</td>
<td>Indigenous women</td>
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<td>IWGIA</td>
<td>International Work Group for Indigenous Affairs</td>
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<td>IWNT</td>
<td>Indigenous Women Network Thailand</td>
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<tr>
<td>IWRAW-AP</td>
<td>International Women’s Rights Action Watch Asia Pacific</td>
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<tr>
<td>JKK</td>
<td>Jawatankuasa Kemajuan Kampung (Village Development and Security Committee, Malaysia)</td>
</tr>
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<td>JOAS</td>
<td>Jaringan Orang Asal SeMalaysia (National Network of Indigenous Peoples- Malaysia)</td>
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<tr>
<td>KALUHHAMIN</td>
<td>Kahugpungan sa mga Lumad sa Halayong Habagatang Mindanao</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>KKNP</td>
<td>Kaeng Krachan National Park</td>
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<td>Komnas HAM</td>
<td>Komisi Nasional Hak Asasi Manusia (National Commission for Human Rights, Indonesia)</td>
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<td>Perempuan</td>
<td>Komisi Nasional anti Kekerasan terhadap Perempuan (National Commission on Violence against Women, Indonesia)</td>
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<tr>
<td>LCMCo</td>
<td>Lepanto Consolidated Mining Company</td>
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<tr>
<td>LGU</td>
<td>Local government unit</td>
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<td>LNFC</td>
<td>Lao National Front for Construction</td>
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<td>LPRYU</td>
<td>Lao People’s Revolutionary Youth’s Union</td>
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<td>LSD</td>
<td>Land and Survey Department</td>
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<td>LTR</td>
<td>Land, territories and resources</td>
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<td>LXML</td>
<td>Lane Xang Minerals Limited</td>
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<tr>
<td>MARDI</td>
<td>Malaysian Agricultural Research and Development Institute</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MOAC</td>
<td>Ministry of Agriculture and Cooperatives (Thailand)</td>
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<tr>
<td>MONRE</td>
<td>Ministry on Natural Resources and Environment (Thailand)</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>MPSA</td>
<td>Mineral Production Sharing Agreement</td>
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<td>MRD</td>
<td>Ministry of Rural Development (Cambodia)</td>
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<td>MRL</td>
<td>Minmetals Resources Limited</td>
</tr>
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<td>MWAU</td>
<td>Myanmar Women’s Affairs Union</td>
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<td>NCAW Lao</td>
<td>National Commission for the Advancement of Women in Lao</td>
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<td>NCIP</td>
<td>National Commission on Indigenous Peoples (Philippines)</td>
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<td>NCR</td>
<td>Native Customary Right</td>
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<td>NGO</td>
<td>Non-Government/governmental organization</td>
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<td>NGPES</td>
<td>National Growth and Poverty Eradication Strategy (Laos)</td>
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<td>NHRC</td>
<td>National Human Rights Commission</td>
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<td>NHRCT</td>
<td>National Human Rights Commission of Thailand</td>
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<td>NHRI/s</td>
<td>National human rights institution/s</td>
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<td>NPA</td>
<td>National Park Act of 1961 (Thailand)</td>
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<td>NPDIP</td>
<td>National Policy on the Development of Indigenous Peoples (Cambodia)</td>
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<td>NRF</td>
<td>National reserve forest</td>
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<td>NRM</td>
<td>Natural resource management</td>
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<td>NSEDP</td>
<td>National Socio-Economic Development Plans (Laos)</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner on Human Rights</td>
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<td>OPKC</td>
<td>Organisation of People of Kuoy Community (Cambodia)</td>
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<td>PACOS</td>
<td>Partners of Community Organizations in Sabah (Malaysia)</td>
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<tr>
<td>PDR</td>
<td>People’s Democratic Republic</td>
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<td>PFF</td>
<td>Police Field Force (Malaysia)</td>
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<tr>
<td>PHV</td>
<td>Public health volunteer</td>
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<td>PRADET</td>
<td>Psychosocial Recovery &amp; Development in East Timor</td>
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<td>PROFOR</td>
<td>Program on Forests</td>
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<td>RC</td>
<td>Resettlement Committee</td>
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<td>REDD+</td>
<td>Reducing Emissions from Deforestation and Forest Degradation + conservation</td>
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<td>RDF</td>
<td>Royal Forest Department</td>
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<td>RGC</td>
<td>Royal Government of Cambodia</td>
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<td>RO</td>
<td>Regional Office</td>
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<tr>
<td>RSPO</td>
<td>Roundtable on Sustainable Palm Oil</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>SAFODA</td>
<td>Sabah Forestry Development Authority</td>
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<tr>
<td>SD</td>
<td>Sustainable development</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>SEA-IWAP</td>
<td>Southeast Asia Indigenous Women’s Action Points</td>
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<td>UNMIT</td>
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<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
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<td>Universal Period Review</td>
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<td>VAW</td>
<td>Violence against women</td>
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<td>Vulnerable Persons Unit of the joint UN and National police force (UNPOL/PNTL) in Timor-Leste</td>
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<td>UN Human Rights Council Working Group on the Universal Periodic Review</td>
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<td>Western Mining Corporation</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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</table>
PART 1. Ways forward

1.1 Action Points

Southeast Asia Indigenous Women’s Action Points (SEA-IWAP)  
On Combating Development-induced Violence

Action Points

Note:

1) This is a summary of action plans that were discussed and shared by participants in terms of a reference point for immediate and medium-term follow-up action. The full proceedings which contain details of the action points shall be distributed at a later stage.

2) These action points are to be implemented by indigenous women’s organisations, indigenous peoples organisations and human rights defenders, advocates of indigenous women’s rights and unless otherwise specified, AIPP shall coordinate the implementation of these action points in cooperation and collaboration with the collaborating partners, co-implementors, interested indigenous women’s organizations and groups, indigenous women’s rights advocates, indigenous peoples organisations and networks, government and intergovernmental bodies and other support groups.

We, indigenous women participants of the Southeast Asia Regional Consultation on Development, Access to Justice and the Human Rights of Indigenous Women, organized by the Asia Indigenous Peoples Pact (AIPP) in collaboration with the UN WOMEN Regional Office for Asia and the Pacific, together with regional and international human and women’s rights experts and institutions, women’s rights and indigenous peoples rights advocates, have gathered together on 30 October to 02 November, 2012 in Chiang Mai, Thailand, to share our situation regarding development-induced violence and human rights-related issues, our strategies in seeking redress for these both in the customary institutions and in state mechanisms, our ideas on what is sustainable development, and agreeing on action points on work to be done to combat development-induced violence and to promote and protect the rights of indigenous women. The common and urgent issue that emerged from the presentations and discussions was that the right to land, territories and natural resources of indigenous peoples are being systematically violated both by states and corporations. This has very serious adverse impacts and consequences to indigenous women, especially in relation to their roles in sustainable resource management, food security, enhancement of traditional knowledge and biodiversity, maintaining community cohesion and cultural heritage, among others. In this context, it was agreed that there is a need to collaborate with each other and with other relevant actors to address this issue and strengthen the capacities of indigenous women to raise their voices and to be empowered to achieve social justice, equality and sustainable development.
In addition to activities and action plans to be undertaken at the local and national levels, the following action points are the key areas of work ahead that everyone agreed to collaborate on.

I. On building the capacity of indigenous women to claim their rights

1. We need to know our rights as indigenous women and as indigenous peoples in the context of individual and collective rights in order for us to claim our rights, transform our societies and advocate for the respect, promotion and protection of our rights;
2. Thus, we must undertake capacity-building processes to strengthen our organizations, unity and cooperation to take leadership positions both in the customary institutions and in local governance, to undertake advocacy, research and documentation, networking and solidarity-building to be able to bring about positive changes in our situation and in our societies.

II. On drawing attention and action to indigenous women’s human rights situation

3. The human rights of Indigenous women are impacted by multifaceted factors. With the alarming and worsening serious implications and consequences of imposed development models, plans and projects to indigenous women, this development-induced violence against indigenous women needs urgent attention, sustained support and collective action. Our active defense of our land, territories and resources against these development projects are responded to with military force, divide and rule tactics, deception and coercion, vilification and resulting to systematic and widespread violations of our individual and collective rights, such as sexual violence and abuse, threats and harassments, killings, forced relocation, destruction of our cultural heritage, lands, territories and resources, traditional and other livelihoods and undermining our indigenous institutions, self-governance and social cohesion, ethnicity and identity, among others.
4. We will undertake active advocacy work at the local, national, regional and international levels in order to draw attention to our serious concerns and to demand the protection of our rights, especially to our lands, territories and resources, as well as to promote our welfare and freedom from all forms of violence by engaging with relevant bodies and mechanisms at all levels.
5. We will speak for ourselves to articulate our situation, analyses and perspectives, demands and recommendations, as well as our aspirations to governments, the legal community, relevant and key development actors, institutions and agencies at national, regional and international levels. We shall develop our communication and media advocacy work to inform and educate the public to mainstream our specific issues and concerns to generate attention and support.
6. We shall build linkages, solidarity and cooperation with other indigenous women in other countries and regions in advancing a common platform, and with women’s movements, organizations and institutions in taking collective actions against violence against indigenous women (VAIW) and in promoting cultural diversity, equality and social justice. In particular, we will actively develop our relations with women’s organizations, networks, movements, advocates, media, at the local and national levels, national machineries for human rights,
women and children, parliaments, UN and IFI country-offices. At the regional-level, we will link up and collaborate with women’s human rights NGOs like Asia Pacific Forum for Women, Law and Development (APWLD), International Women’s Rights Action Watch Asia Pacific (IWRAW-AP) and other women’s network, thematic-based institutions, among others.

### III. Bearing in mind our capacities, resources, needs and priorities, we have adopted the following Action Points.

| Co-implementors | Cambodia: Indigenous Rights Active Members (IRAM) women indigenous leaders, Indigenous Peoples Coalition of Cambodia, Cambodia Indigenous Youth Association (CIYA)  
Indonesia: Aliansi Masyarakat Adat Nusantara (AMAN) Perempuan  
Myanmar/Burma: Women’s League of Burma, Shan Women’s Action Network (SWAN)  
Philippines: Indigenous Women’s Alliance (BAI)- Philippines  
Thailand: Indigenous Women’s Network of Thailand (IWNT)  
Timor Leste: Fetoih Kbiit Servisu Hamutuk (FKSH) “Empowering Women”  
Vietnam: Center for Sustainable Development in Mountain Areas (CSDM)  
Malaysia: Jaringan Orang Asal SeMalaysia (National Network of Indigenous Peoples- Malaysia, JOAS) Working Group on Gender  
Laos: Gender Development Association (GDA) |
| Collaborating partner | UN Women Regional Office for Asia and the Pacific |
| Common issue | Right to land, territories and resources |
| Key themes for collaboration | Land rights (linked to the other rights)  
Violence against indigenous women |

<table>
<thead>
<tr>
<th>Strategies</th>
<th>Activities</th>
<th>Needs</th>
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</thead>
</table>
| **A. Capacity-building**  
Available resource: AIPP modules on leadership, community organizing, UNDRIP |  
- Leadership Training  
- Advocacy Training/Workshop, including the use of media and Information Technology  
- Awareness-raising on indigenous women’s human rights both for women and men, and adat leaders (traditional leaders)  
- Sensitization of authorities, advocates, other CSOs, donors and other actors so that they can support our advocacies |  
- Technical support to facilitate participation including translation |
| **B. Documentation and research** | Research-cum-training |  
- develop a documentation tool sensitized to indigenous women’s situation |
| **C. Advocacy** | 1. Submission of reports at national, regional, international levels  
a. National: NHRIs, ACWC and AICHR representatives, relevant |  
- Advocacy tool to enable indigenous women to do policy advocacy, engage media |
departments/agencies
b. Regional: ACWs, AICHDR, AFPPD
c. International: UN system and processes, including IFIs

2. Engagement with the following:
   a. indigenous peoples who are in the different branches, i.e., legislative, executive and judiciary, of the government at all levels
   b. national machineries – NHRIs, women, children, IPs, etc.
   c. specific government agencies/offices/departments related to IP rights and concerns
   d. NGOs/women’s groups working on shadow/alternative reports

3. Sensitize judiciary system, state security forces

4. Sensitize adat leaders to facilitate transformation of patriarchal adat systems

5. Media advocacy
   - media coverage of issues of indigenous women and indigenous peoples at all levels

D. Campaigns
March 8, 2013: Theme - Role of indigenous women leaders in customary institutions and natural resource management systems
   - Regionally coordinated and locally and nationally implemented
   - Concept note and common statement to be prepared

E. Networking
Targets:
   - Media - develop media advocacy strategies to develop interest on our issues among media; need to engage media so they can also share tips on how we can package our issues for timely media pick-up
   - Country UN WOMEN offices and other UN country-based offices
   - Parliaments
   - NHRIs
   - National machineries on women and children
   - Media
   - Advocates – civil society organisations, NGOs, academe, religious sector, environmental groups, development groups, research institutions
   - Women’s organizations - do a scoping of those who are working on women’s issues, doing the shadow/alternative CEDAW reports, what kind of support they can give, existing resources to support needs of indigenous women

F. Opportunities
   - UN WOMEN training on media gender mainstreaming (Nov 2012)
   - ACWC study on economic rights (2012-2013)
   - Submission of reports to the UN bodies related to IP rights
Periodic reporting to the treaty monitoring bodies
Universal Periodic Review
Special Procedures
EMRIP study on access to justice due for reporting in 2013
World Conference on Indigenous Peoples 2014 and its preparatory processes

ACWC thematic studies:
- Women in political participation and decision-making
- Violence against women
- Climate change
- Economic and land rights
- Trafficking
- Migration
Submission of reports to the ACWC

Asia Pacific Forum for Women, Law and Development (APWLD)
- Collaborative work on indicators for women for the SGDs – focusing on 1. Access to resources - control of and access to land 2. Decent work and living wages, 3. Violence against women and peace, and 4. Political participation
- Feminist Legal Theory and Practice (FLTP) training possibly adapted to indigenous women’s context
- Work on shared issues like land grabbing

**G. Commitments**

UN WOMEN Regional Office for Asia and the Pacific
1) Multi-country studies on the social, economic, political and cultural impacts of land allocations on indigenous women
2) Awareness-raising/training for media on indigenous women’s issues in 2013, and also to invite AIPP to present at the December media training
3) Training on CEDAW shadow reporting and support to shadow report preparations
4) Regional meeting(s) with parliamentarians on the impacts of land allocations/concessions on indigenous women
5) UN WOMEN will also introduce AIPP and its national partners to the UN WOMEN country offices for follow up action at country level.

**H. Tasks**

AIPP: prepare the concept note on the implementation of the action plan for submission to the UN Women by 23rd November 2012

Participants: to provide more information on their cases so that the evidence is complete

UN WOMEN: to introduce AIPP to the UNOHCHR to explore ways in which the trafficking of indigenous women and girls can be addressed, including exploring links with the SR on trafficking of persons, especially women and children; to take into consideration these action points in its 2013 programming (see commitment in G.)

KOMNAS Perempuan: explore possibility of inviting the SR on trafficking in persons, especially of women and children
<table>
<thead>
<tr>
<th>LEVEL/COUNTRY</th>
<th>KEY AREAS OF INTERVENTION</th>
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<tbody>
<tr>
<td>NATIONAL LEVEL</td>
<td>Capacity-building needs</td>
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<tr>
<td>Cambodia: IRAM women leaders, IPCoalition, CIYA</td>
<td>INTERNAL to indigenous women’s organizations:</td>
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<tr>
<td></td>
<td>a. Awareness-raising on women’s human rights and indigenous peoples rights</td>
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<td>b. Leadership training</td>
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<td></td>
<td>c. Advocacy – knowledge and tools for enabling women to do policy advocacy, engage media</td>
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<td></td>
<td>d. Documentation of human rights violations of indigenous women’s rights</td>
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<td></td>
<td>d. Research-cum-training on shadow/alternative reports, submissions to UN mechanisms</td>
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<td></td>
<td>Available resources: AIPP modules on Leadership Training, Community Organising, UNDRIP</td>
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<tr>
<td>Indonesia: AMAN Perempuan</td>
<td>INTERNAL TO INDIGENOUS PEOPLES</td>
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<td>Awareness-raising and gender-sensitization of leaders of traditional institutions, like adat leaders, to transform patriarchal character of customary institutions and systems;</td>
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<td>EXTERNAL</td>
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<td>- Governments, intergovernmental bodies, civil society, women’s organizations and NGOs, human rights organizations, and other advocates who can support our advocacies</td>
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<td>Myanmar/Burma: Women’s League of Burma</td>
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<td>Philippines: BAI</td>
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<td>Malaysia: JOAS Working Group on Gender</td>
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<td>Laos: Gender Development Association</td>
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3. PARTICIPATE IN THE UN WOMEN TRAINING ON MEDIA GENDER MAINSTREAMING
4. CONDUCT A REGIONALLY COORDINATED NATIONAL IMPLEMENTED CELEBRATION OF MARCH 8TH 2013
   - raise the visibility of indigenous women at different levels – common theme for M8
   - some ideas: women leaders in customary institutions, highlight some key leaders in customary institutions; showcase good practices; role of IW in access to justice in the customary system (which is male-dominated); role of indigenous women in customary institutions on the issue of land rights (response to land grabbing, and related issues)
   - each country can have a focus

### ADVOCACY: priority issue - land rights

<table>
<thead>
<tr>
<th>REGIONAL LEVEL</th>
<th>Activities</th>
<th>NEEDS</th>
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<tbody>
<tr>
<td>☐ AICHR</td>
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<td>Preparation of reports, submissions based on the results of the consultation - c/o AIPP</td>
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<tr>
<td>☐ ACWC</td>
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<td>Training on documentation, research, advocacy, media work, including preparation of reports and communications to UN bodies</td>
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<td>☐ ASEAN bodies – ministerial, different sectoral fora</td>
<td>1. <strong>Documentation/research/case studies</strong> – socio-cultural and human rights impacts of land grabs/development on indigenous women as a component of violence against indigenous women (VAIW); Available resources: indigenous women’s organisations and indigenous peoples organizations can translate Result will be used for advocacy: ASEAN and UN 2. <strong>Contribution to the ACWC thematic studies:</strong>  - Women in political participation (what are the challenges faced by indigenous women for effective engagement in the political processes)  - Violence against women (results of this consultation)  - Climate change (indigenous women’s contribution to climate change mitigation and adaptation)  - Economic and land rights (development-induced violence, will submit the results of this consultation)</td>
<td>Technical support to enable/facilitate</td>
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</table>
- Trafficking (of indigenous women and girls)
- Migration (of indigenous women and children impacts: Indonesia, Burma, TL)

5. Convene an Asia Indigenous Women’s Preparatory Meeting for the World Conference on Indigenous Peoples

6. Consultation/roundtable with NHRIs during the Asia Prep meeting in Sabah in 2013 (will insert indigenous women in the agenda)

7. March 8th celebration: develop concept paper on a regionally coordinated celebration of M8 on a general theme with the objective of highlighting indigenous women both locally, nationally and regionally; some proposed themes:
   a. Indigenous women leaders in customary institutions; - highlight some key leaders in customary institutions and the difference they have made in such a position; showcase good practices
   b. Role of indigenous women in access to justice in the customary system (which is male-dominated)
   c. Role of indigenous women in customary institutions on the issue of land rights (response to landgrabbing, and related issues)

8. Explore possibility of a visit from the SR on trafficking to the region:
   UN WOMEN RO will raise the need to look at the trafficking of indigenous women and girls in Asia with the OHCHR Regional Office and explore the possibility of a visit

### INTERNATIONAL LEVEL

| 1. Participation in a side-event in the 6th session of the EMRIP: panel to present the results of this consultation – at least 3 to participate – Thailand, TL, Indonesia, Myanmar, South Asia in line with the thematic study on access to justice (sometime July, Geneva) |
| 2. Participation in the CSW: 2 pax |
| Advocacy targets: CEDAW, CSW, SR VAW and other related to issues of indigenous women (health, food, education, etc.) SR on trafficking in persons, especially women and children |

**participation of indigenous women in different fora**

**Research, documentation and advocacy tools adapted to indigenous women’s needs and situation**

**Invitation to the SR on trafficking - KOMNAS Perempuan will explore possible visit of the latter; UN WOMEN will introduce AIPP to OHCHR RO to explore possibilities for a visit of the SR**
1.2 Summary of recommended actions from the workshops and testimonies

Recommended actions that were proposed by the resource persons and case studies, raised during the workshop and testimonies, and by those discussed in specific sessions. Details can be found in the referred parts of this report.

I. Indigenous women’s organisations, indigenous peoples organizations, advocates, donors and other collaborators, and the public

Advocacy

- Assert indigenous rights to free, prior and informed consent and full and effective participation in decision-making processes. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development, Part 3, 3.3: Workshop results on sustainable development]
- Develop and reinforce indigenous women’s self-esteem and pride in their identity and cultures. [Part 3, 3.1: Workshop results on violence against women]
- Make conscious efforts to change discriminatory and racist mindsets and behaviours. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Push for the implementation of SDGs favourable to indigenous peoples. [Part 3, 3.3: Workshop results on sustainable development]
- Indigenous women’s organizations should work with relevant NGOs to achieve more policy reforms for land tenure and resource rights. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

Capacity-building

- Raise awareness that sexual abuse is a prosecutable and grave crime. [Part 2, 2.1 Session 7: EMRIP thematic study on access to justice and SEANF programmes]
- Raise awareness of the risks inherent in migration work. [Part 3, 3.1: Workshop results on violence against women]
- Raise awareness on the threats and challenges of mining, plantations and development projects and strengthen capacity to negotiate on the kind of development that should take place at the community-level. [Part 3, 3.1: Workshop results on violence against women]
- Develop capacity for indigenous women to access justice in customary, formal, local, national and international arenas. [Part 2, 2.1 Session 1 Part 2: Violence against Indigenous Girls, Adolescents and Young Women]
- Increase indigenous women’s understanding of national laws and policies and their coherence with international human rights and environmental law and instruments including: UNDRIP; ILO 169; CBD; UNFCCC; and UNCCD. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Train women in using grievance or complaints mechanisms, e.g., WB Inspection Panel, IFC CAO (Ombudsman), ADB Inspection Panel, IADB, UN Treaty Bodies. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
Use initiatives to promote transparency and governance on forests including: FLEGT; FSC; Report Card of Global Witness; Governance of Forests Initiatives (WRI); and PROFOR (WB). [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

Enhance capacities of indigenous peoples to adapt to and mitigate climate change. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

Raise awareness and train on the use of multilateral and bilateral policies on indigenous peoples and forests. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

2. Advocates, donors, governments, indigenous peoples and other actors

- Sustained support systems for victims of violence to ensure that women who report cases will be protected. [Part 3, 3.1: Workshop results on violence against women]
- Regard indigenous peoples are partners rather than obstacles to development. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- More exchanges of experiences and knowledge among indigenous peoples and between them and others; more learning exchange visits. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- More substantial dialogues between indigenous peoples and governments, and private sector. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Joint engagement between indigenous peoples and governments for forest and ecosystem protection, conservation and restoration. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Develop enabling conditions to promote local entrepreneurship, community-company partnerships and forest-related initiatives for small and medium-size forest-based enterprises. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Increase indigenous women’s access to finances and markets; support their right to market forest products and services. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Radical restructuring of economic system to work within environmental, social limits regulating corporate behaviour. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

3. Indigenous communities and organizations, indigenous women

- Active engagement with traditional decision-making processes to address customary laws and practices that discriminate and perpetuate violence against women. [Part 2, 2.1 Session 1 Part 2: Violence against Indigenous Girls, Adolescents and Young Women, Part 3, 3.1: Workshop results on violence against women]
- Develop and strengthen indigenous women’s involvement in local governance. [Part 3, 3.1: Workshop results on violence against women]
- Creation of women-friendly spaces at community level to address violence against women and strengthening of existing spaces for women. [Part 2, 2.1 Session 1 Part 2: Violence against Indigenous Girls, Adolescents and Young Women]
- Conduct community-based discussions about how to support children’s education within the community. [Part 3, 3.1: Workshop results on violence against women]
- Local implementation of indigenous peoples’ sustainable, self-determined development including integration of human rights-based, ecosystem and cultural knowledge-based approaches. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
Monitoring and documentation

- Develop better documentation and reporting skills on cases of violence. [Part 2, 2.1 Session 1 Part 2: Violence against Indigenous Girls, Adolescents and Young Women, Part 2, 2.1 Session 4: Indigenous peoples and sustainable development, Part 3, 3.1: Workshop results on violence against women]
- Disaggregate data to specify whether victims are women, girls, adolescents or youth. [Part 2, 2.1 Session 1 Part 2: Violence against Indigenous Girls, Adolescents and Young Women]
- Monitor quality and impact of legal aid for indigenous women to ensure access to justice. [Part 2, 2.1 Session 7: EMRIP thematic study on access to justice and SEANF programmes]
- Develop surveys for monitoring why indigenous peoples, especially youth, are migrating from traditional lands to cities. [Part 3, 3.1: Workshop results on violence against women]
- Enhance indigenous participation in monitoring how UNDRIP and national laws on indigenous peoples, REDD+ safeguards and biodiversity targets are being implemented. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Develop and use indicators of indigenous peoples' well-being and sustainability. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

4. Governments, donors, intergovernmental bodies, and advocates

- Support indigenous peoples’ knowledge and ecosystem management systems and livelihoods. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- National and regional consultations with indigenous peoples on developing sustainable development goals (SDGs) and indicators, following assessment of the Millennium Development Goals (MDGs) for indigenous peoples. [Part 3, 3.3: Workshop results on sustainable development]
- Assess impacts of MDGs on indigenous peoples before moving to SDGs, with a focus on participation. [Part 3, 3.3: Workshop results on sustainable development]
- Improve compliance with international human rights and environmental laws. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Develop justice and redress mechanisms for indigenous women. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]

5. Governments and customary institutions

- Customary and modern courts should be made more accessible to women. [Part 3, 3.1: Workshop results on violence against women]
- Provide accessible or free legal services for redress, protection and support of indigenous women. [Part 2, 2.1 Session 7: EMRIP thematic study on access to justice and SEANF programmes, Part 3, 3.1: Workshop results on violence against women]
- Ensure women’s equal access to land and individual rights to inherit and own land. [Part 2, 2.1 Session 7: EMRIP thematic study on access to justice and SEANF programmes]
- Reform land tenure. [Part 2, 2.1 Session 4: Indigenous peoples and sustainable development]
- Bring perpetrators of violence against women to justice. [Part 2, 2.1 Session 7: EMRIP thematic study on access to justice and SEANF programmes]
- If the justice system is not working at all (neither customary not civil), women will have to create their own justice system. [Part 3, 3.1: Workshop results on violence against women]
PART 2. Knowing our situation

2.1 Inputs

These inputs provided the overall context of violence against women in Asia and information on mechanisms, programmes and opportunities that indigenous women can engage in.

Session 1: Part 1: Empowering indigenous women in traditional customary institutions

Slide 1

EMPOWERING INDIGENOUS WOMEN IN TRADITIONAL CUSTOMARY INSTITUTIONS

Southeast Asia Consultation on Development, Access to Justice and the Human Rights of Indigenous Women

Chiang Mai, 30 October–2 November 2012

By Shimreichon Luithui

Slide 2

OVERALL GOAL OF THE PROJECT

To empower indigenous women to advocate and lobby for the recognition of women’s rights, with focus on violence against women, in the practice of customary laws and local legislations

Slide 3

PROJECT PARTNERS

5 partners in 3 countries:

• Cordillera Women’s Education Action Research Center (CWEARC) and NAKASA in the Philippines
• National Indigenous Women’s Federation (NIWF) in Nepal
• the Adivasi Women Network (AWN) and the Indigenous Women Forum of North East India (IWFNEI) in India

Slide 4

THE SITUATION

Base Line Study’s key findings:

• In all the six project areas customary law and institutions still exist
• Common among them all: customary governance institutions are fully dominated by men
• There is also male bias in customary law on inheritance
• In all the communities involved in the project customary law provides women some protection.
• Domestic violence is among the most prevalent forms of violence in the communities covered by the project
THE SITUATION

- One form of violence against women of particular concern is witch hunting in India and Nepal
- In all areas there is or has been until very recently violence due to conflict and militarization
- Structural violence: unequal distribution of wealth and power

EXPECTED RESULTS

1) Increased capacity and skills of Indigenous women to promote the recognition of their rights in customary laws and local legislations
2) Increased awareness of indigenous communities on the rights of indigenous women and active networking with government agencies, NGOs and other institutions for support and assistance to indigenous women
3) Positive changes in customary laws and adoption of local legislations relating to VAIW and women’s participation in decision making mechanisms.

PRELIMINARY RESULTS 1

1. Awareness, capacity and skills:
   Participants in training sessions and community educational activities
   • Learned about the fundamental human rights, the various laws, policies and programmes that promote and protect women’s rights
   • Discussed gender equality and discrimination in customary laws and traditional institutions

PRELIMINARY RESULTS 2

2. Networking with government agencies, NGOs and other institutions
   • Good relationships and consultation between local project team and the Committee on Women of the Municipal Council of Sagada, Philippines, regarding women’s rights and concerns
   • Women could access livelihood schemes
   • Special radio programme at local Sagada Radio

PRELIMINARY RESULTS 1

• Acquired skills in facilitation, advocacy, lobbying and networking
• Learned to use concrete tools, e.g. writing First Information Reports (FIR) to file cases on domestic violence, kidnapping and other incidents
• Learned to write resolutions, petitions and formal complaints

PRELIMINARY RESULTS 2

• NAKASA, a women’s organization in Sarangani, Philippines, allied with NGOs and other institutions to successfully campaign against militarization
• In Jharkhand, India, formation of women’s networks where there were none before
**PRELIMINARY RESULTS 3**

3. Women’s participation in decision making bodies and subtle changes in customary institutions

- Women gained access to local political institutions in India
- In India, traditional leaders are more aware of and pledged support for strengthening women’s rights in customary law

**CHALLENGES**

- Many barriers to overcome in trying to stop discrimination against women
- Difficulties to address or even discuss domestic violence
- Men are opposed to have women in customary or local decision making institutions; in Jharkhand there is even a backlash
Session 1: Part 2: Violence against indigenous girls, adolescents and young women in Asia

Slide 1

Violence Against Indigenous Girls, Adolescents and Young Women in Asia

Victoria Tauli-Corpuz, Convenor, Asian Indigenous Women’s Network, Exec. Director, Tebtebba

Southeast Asia Consultation on Development, Access to Justice and the Human Rights of Indigenous Women,

Holiday Inn, Chiang Mai, Thailand

30 Oct.-Nov. 2, 2012

Slide 2

OUTLINE

- GENERAL OVERVIEW OF DEVELOPMENT ISSUES OF INDIGENOUS WOMEN
- SITUATION OF VIOLENCE AGAINST INDIGENOUS GIRLS, ADOLESCENTS AND FEMALE YOUTH IN SOUTHEAST ASIA
- CHALLENGES AND WAYS FORWARD

Slide 3

GENERAL OVERVIEW OF DEVELOPMENT ISSUES

- Lingering impacts of colonization and of nation-state building
- Racism and gender and ethnic-based discrimination still widespread
- Dominant neoliberal, economic growth, extractivist development paradigm adopted by most states
- Persistence of indigenous livelihood and economic systems
- Expropriation of indigenous territories for extractive industries (oil, gas, mining, logging)
- Displacements, land grabs, economic land concessions, militarization
- Disproportionate representation of world’s poor (IPs 5%, of world population but 15% of poor)
- Climate change, biodiversity erosion and degradation of various ecosystems inhabited by indigenous peoples (tropical forests, marine)
- Youth population is growing at a faster pace than the available employment opportunities
- Poverty and inequity is being passed on to future generations
- Loss of traditional livelihoods and territories, erosion of traditional cultures and knowledge makes indigenous girls, adolescents and youth socially, culturally and economically vulnerable.

Slide 4

Situation of violence against indigenous girls, adolescents: Definitions

- Adolescent – 10-19 years old: Youth: (UN Definition): ages 15-24
- Child – “(e)very human being before the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”
- Gender-based violence (as provided for by the CEDAW) – includes harmful traditional practices such as early marriage, and female genital mutilation/Cutting (FGM/C)
- Gender-based violence (as captured by the IASG GBV Guidelines) “an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (gender) differences between males and females.
- Violence – (Art. 19 of CRC) – “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”
- Violence (World Report on Violence and Health, 2002) – the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity

Slide 5

Situation of violence against indigenous girls, adolescents: Definitions

- Reproductive rights means that individuals have the right to control their sexual and reproductive lives including in decision making and in determining the number, timing and spacing of one’s children, as well as access to the information and means to exercise voluntary choice.
- The right to sexual and reproductive health as comprising freedom from violence and discrimination and entitlements to reproductive health; maternal and childcare services; access to information; diseases, and breast and reproductive system cancers
- Emergency obstetric services; family planning; safe, legal, accessible abortions; and voluntary and confidential testing, counseling and treatment of HIV/AIDS, sexually transmitted
- Worst forms of child labor (as defined by ILO Convention 182) covering sexual exploitation, trafficking, hazardous work, forced labor or exploitative work.

Slide 6

Situation of violence against indigenous girls, adolescents and young women

- Indigenous women and girls experience multiple layers of discrimination; on the basis of gender, ethnicity, poverty, age, being rural, as migrants.
- Assume multiple tasks; defense of rights as indigenous peoples and ethnic minorities within a dominant society with its repressive or indifferent state apparatuses, discriminatory laws and institutions, and prejudiced public opinion
- Questioning and resisting the static patriarchal perceptions of culture and tradition within their own communities, which justify gendered subordination and violence vs. Indigenous women

SR Violence Against Women Consultations
New Delhi, India, 2008
Situation of violence against indigenous girls, adolescents and young women

- Patriarchy causes differentiated behaviours between the genders leading to sexual discrimination and domestic violence.
- Women regarded as inferior to men, good only for sex or for the home.
- Justifies the right and authority of men to use violence against women and children.
- women tend to see violence against them as something that they should be ashamed of or that it is somehow their fault.

Life approach to Violence vs. Women

<table>
<thead>
<tr>
<th>PHASE</th>
<th>TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prenatal</td>
<td>Prenatal sex selection, battering during pregnancy, coerced pregnancy (rape during war)</td>
</tr>
<tr>
<td>Infancy</td>
<td>Female infanticide, emotional and physical abuse, differential access to food and medical care</td>
</tr>
<tr>
<td>Childhood</td>
<td>Incest and sexual abuse, genital cutting, differential access to food, health care, education, child prostitution, child labour, early marriage</td>
</tr>
<tr>
<td>Adolescence</td>
<td>Dating and courtship violence, economically coerced sex, sexual abuse in workplace, rape, sexual harassment, forced prostitution, early marriage</td>
</tr>
<tr>
<td>Reproductive</td>
<td>Abuse by intimate partners, marital rape, dowry abuse and murders, partner homicide, psychological abuse, sexual harassment in workplace, abuse of disabled women</td>
</tr>
<tr>
<td>Old age</td>
<td>Abuse of widows, elder abuse</td>
</tr>
</tbody>
</table>

ECONOMIC AND ENVIRONMENTAL VIOLENCE

- linkages between high rates of violence and unemployment, loss of livelihoods and worsening poverty among male heads of households.
- the impact of corporate encroachment resulting in additional burdens on women and girls.
- when water sources are contaminated through mining - longer distances in search of water, resulting in loss of school time and exposure to violence enroute to fetching water.
- mining brings transient workers into indigenous communities, exposing women to sexual exploitation and HIV/AIDS (SRIP 2011 Report)

LACK OF BASIC SOCIAL SERVICES

- gender inequality and discrimination create disparities in health status between girls and boys, and lay the foundation for physical, sexual or psychological complications arising from early marriage, adolescent pregnancy
- Spread of HIV/AIDS in the indigenous communities worldwide. (e.g. West Papua with 312 different tribes, HIV rates 15 times higher than in all of Indonesia)
- 2011 UNICEF study showed - access to basic education remains a serious problem among SEA indigenous children

Situation of violence against indigenous girls, adolescents, youth

- VAW vs. indigenous women and girls - based on the multiple linkages between gender, race, nationality, ethnicity, religion, disability, location, caste and class and age
- intersectionality of multiple identities and realities defines nature and impacts of the discrimination and violence and multiplier effects of these

Lack and inappropriateness of basic social services and discriminatory attitudes and behaviour

- Low literacy level, remoteness of abodes, lack of basic social services, highly imbalanced power relations between indigenous peoples and dominant society and between men and women, old and young within indigenous societies.
- Discriminatory attitudes of government and private health workers and education personnel against indigenous women
- Models for providing services to victims of sexual violence mainly from Western countries.
- 2005 Village Census of Ethnic minorities in Vietnam, a Population Council study revealed stark contrasts between the level of secondary schooling between the adolescent female ethnic minority and the Kinh female majority
Women accused of sorcery/witchcraft in many countries are also forced to participate in exorcism ceremonies that may involve a public beating and verbal abuse by shamans or village elders.

The incidences of violence have included: violent murders, physical mutilation, displacement, kidnapping, and disappearances of women and girls.

Forced marriages to the rapist to avoid social disgrace, which is the case in some countries of Asia with girls married off at a very young age, in many cases to marry older men. There is a much higher risk of gender based violence among girls coerced into early marriages.

CRC expressed concern that in Lao early marriage continues to exist within certain ethnic groups even though the practice is prohibited by law. No statistics on the number of such marriages occurring in its territory.

Indigenous communities in the Chittagong Hill Tracts, Bangladesh, Nagas of Northeast India and other tribal groups in India.

Another related discriminatory practice is the dispossession of property for women upon the death of the husband.

Polygamy remains as a practice among some indigenous groups, which forced marriages occur in the region among indigenous girls and women when they are raped and become pregnant. The victims are forced to marry the rapist or suitor to avoid social disgrace.

There is also more equitable division of labour between men and women; Collective and mutual labour exchange practices;
**Situation of violence against indigenous girls, adolescents, youth**

More than one third of young women in the developing world were married as children.

<table>
<thead>
<tr>
<th>Region</th>
<th>Married before 15yo</th>
<th>Married before 18yo</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Asia</td>
<td>14%</td>
<td>28%</td>
</tr>
<tr>
<td>South America</td>
<td>15%</td>
<td>26%</td>
</tr>
<tr>
<td>Central Africa</td>
<td>12%</td>
<td>24%</td>
</tr>
<tr>
<td>North Africa</td>
<td>10%</td>
<td>20%</td>
</tr>
<tr>
<td>South Africa</td>
<td>19%</td>
<td>32%</td>
</tr>
<tr>
<td>Oceania</td>
<td>14%</td>
<td>28%</td>
</tr>
<tr>
<td>Southern Europe</td>
<td>12%</td>
<td>24%</td>
</tr>
<tr>
<td>Western Europe</td>
<td>10%</td>
<td>18%</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>12%</td>
<td>24%</td>
</tr>
</tbody>
</table>

In Thailand, Myanmar, Indonesia and Cambodia, trafficking of indigenous girls aimed at commercial sexual exploitation and housework.

- Nepal - an IPEC Rapid Assessment of trafficking in girls, with specific reference to prostitution, shows the presence of several different ethnic groups.
- Traffickers still continue to purchase Adivasi children and women openly, often at a price cheaper than that paid to “purchase animals”.
- Taiwan - high numbers of indigenous girls have been trafficked to work in the sex industry. While indigenous peoples account for only 1.6 percent of the Taiwanese population, around 20-60% of indigenous women involved in the sex industry.
- Reports of trafficking of children in Thailand, Laos and Myanmar border areas – hard to disaggregate data.
- High rates of indigenous girls and adolescents trafficked for domestic work in city centers.

**TRAFFICKING**

- India, abduction, trafficking of Adivasi girls was linked to brothels and forced “concubinage”.
- UNICEF reported in 2002 that child prostitutes constituted one-third of sex workers plying their trade in the Mekong subregion.
- Surveys indicated that 30 to 35 per cent of all sex workers in the Mekong subregion were between 12 and 17 years of age.
- Thailand, several cases of internal trafficking involved hill tribe girls, aged 12-16 years old.
- Thai Government estimated that there are 12,000 to 18,000 child prostitutes in Thailand.
- Thai officials also estimated that there are 20,000 women and girls trafficked from Burma into Thai brothels (with 10,000 more imported each year).
- ILO data from 2007 showed that there were 21,000 child prostitutes in Java and estimated that 40,000 to 70,000 children were the victims of sexual exploitation at the national level.

**CHALLENGES AND WAYS AHEAD**

- Need to do more research and documentation of cases of violence against indigenous women and girls.
- Generation of disaggregated data on indigenous women, girls, adolescents and youth.
- More active engagement with traditional decision making processes to address customary laws and practices which discriminate and perpetuate violence against women.
- More organizing, awareness raising and general empowerment work amongst indigenous women at the local, national, regional and global level.
Open forum

Issues related to access to justice and responses:

1. **How can women who experienced sexual violence access justice both within the traditional customary system and the mainstream legal system, and how can the customary laws be made to provide access for women whose rights are violated?**

   There is no systematic research on this topic yet that has been conducted on indigenous customary justice systems. However, among the Nagas of Northeast India, both civil and traditional institutions are used. If the case is brought to the customary court, the perpetrators are penalized. However, the victims also go to the civil court, depending on the case. Normally, the legal systems can work, but if the perpetrator is from the dominant society, he will not respect customary law. In the Philippines, in an incest case committed by a grandfather against his granddaughter, the case was brought to the state court because the perpetrator did not want to be tried by the customary institution, which is the council of elders. This is a problem when the perpetrator does want to come under the traditional law because it is not legal and binding. On the other hand, sometimes the customary institutions are very strong and provide penalty, like in another case in the Philippines, where the rapist was banished from town. The challenge nowadays is the weakening and marginalization of customary institutions by the state justice system leading to weakened community sanctions. **What is needed is to make the customary courts more women-friendly, as well as the modern courts**, i.e., less expensive, and render justice for all, not only for the rich. Nowadays, the procedures in the modern courts take a long time before judgments are made, the judicial system is distorted, and only the rich can afford it. These further victimize the women victims. **Maybe women can do something about this. Both kinds of courts have to be strengthened.**

   In the Naga context, women organizations will punish the perpetrator. They will cut the culprit’s ear and hand him over to the police. In Kenya, women will make a procession to the culprit’s house and shame him publicly. The whole issue of domestic violence has now become a private affair, while in the past, it was more a community issue. Thus, in some cases, it is important to go back to the traditional system where justice is collectively handled and delivered.

2. **How do we handle the rapid integration of indigenous communities into the market economy that makes indigenous women and girls vulnerable to and exacerbates sexual violence and exploitation? For example, in the study on child labour in Papua, many indigenous girls were lured to prostitutions because they want to have cell phones. The need for cash is not due to the economic need for food, but it is more the consumerism, the aggressive promotion of modern technologies and the exposure of children to them.**

   These are problems of “development” that comes in the communities, e.g. dispossession, and women becoming sex workers. A solution for this could be to define how development should be done in our territories which includes the protection of children and women against the impacts of such development. For instance, if oil palm plantation is not helping our community then we should not support this kind of development. In the case of violence and violations, documentation and reporting has to be developed. **There has to be a sustained support system for the victims to ensure that women who report these cases are protected with good access to legal help/para-legal support.** Justice has to be ensured. On the other hand, we must realize that the customary law may be less friendly, and thus not favorable to
act on sexual violence, because it is placed within a patriarchal framework. In many instances, the customary institution which is usually male-dominated, would recommend that the perpetrator and victim marry to save face. The whole change has to be brought about along both the institutions and the society themselves because unless this system is transformed, it will remain challenged for women to access justice. Again, with the introduction of wage labor, it is a common practice that women receive less salary than men, even if they are required to do more work. Indigenous women in the labor sector can form unions to make sure they get equal labor rights, wages and benefits with men.

3. How do we deal with cases of violations of indigenous women, especially sexual violence like rape that is happening in mining areas and oil plantations in Indonesia because they do not have access to justice and many women live near these mines?

On the issue of migration, some migrant workers doing not have a work permit, an identity card or birth certificate. The men leave a family at home and then marry again in another place, leaving behind the wife at home - both sides are suffering. What actions can be taken by communities, or by indigenous women themselves?

In Indonesia, there is widespread trafficking of indigenous girls from Indonesia to Malaysia. There is a case in the eastern part of Indonesia where many indigenous girls are sold for 6 Million rupiah (600 dollars), and brought to work in Malaysia, only with their own clothes on, without any possession. An agency takes care of their ID and they are brought there without the parent’s or families consent or even knowledge. In some communities, there is the absence of girls in senior high school as these girls have been brought to Malaysia. Last month, three girls walking to their school were taken by the company to Malaysia. Most affected are under-aged girls who will be transferred from Malaysia to other countries.

In Kachin State in Myanmar, there is a big development project, a monocrop plantation, where women and girls aged 13-50 have been raped many times. They sued in court and went to the authorities, but the authorities did not take any action, so the case remained dormant. The survivors do not know where to take action further, within the customary law or civil court?

In Myanmar/Burma and in other places, if you are in a situation where the justice system is not working at all (neither customary nor civil), indigenous women have to create their own justice system, of course consistent with human rights standards.

Migration question is a big issue for IPs, also trafficking of indigenous women. Prostitution is very much related to an extractive development model looking to extract cheap labour. Men-dominated plantation estates attract the abuse of women. If we cannot strengthen communities, there will be more and more cases like this. It is suggested that we focus on strengthening communities. Otherwise, the same problems will be faced by others in a similar situation. A long term solution is to strengthen our capacity to see what kind of development should take place in our communities. This has to be addressed not only from an indigenous women’s perspective, but from the framework of indigenous peoples rights in general. We have to educate our women so that they will not be duped by perpetrators. They have to develop self-esteem and pride in their identity and cultures, including their right to land, territories and resources.
On the trafficking of indigenous women and girls, there are many existing fora to address the issue but they never reach indigenous women and communities. This means there is a big gap in interventions. In the AIPP project on child trafficking, in North East India, trafficking was so rife. People are promised good jobs and free education for children but the children end up as labourers in exploitative conditions. Everyone wants to have money, so parents encourage their children to go out to the city. The devaluation of our traditions, such as traditional occupations, also aggravates the situation. The project partners found out that cash income is the main motivation for leaving the community for the city. Other factors that contribute to the persistence of trafficking is lack of awareness of the issue and rights, lack of teachers thus children are not in school, as well as the devaluation of traditional knowledge which makes people think that Western education is the only good way to progress. For addressing this issue, the churches, schools, and women’s organizations were found to be good channels for interventions.

4. What can be done to help those being displaced from national parks to live the life they want?

In Kaeng Krachang, the Karen women and communities would like to live their traditional lives but nowadays, their territory have been declared a national park and they had been forcefully evicted, the last time their houses were burned. The elders are worried that the young people go away to the city and forget their unique identity and culture. Particular concern is expressed for the future of the women and children because the women are repositories of knowledge.

On the issue of participation of women in local politics, in Thailand, in the last few years, some women were elected to the local council, but most indigenous women remain excluded, and sometimes this is because of financial restrictions and Thai language illiteracy. Generally, there is an exclusion of indigenous women from the local government administration.

In Thailand, indigenous women have no life security. They work hard, how can they be supported? In many villages, there are no organizations which can help. Indigenous women have no access to education, they often cannot speak Thai, and so the challenge is to support and to empower them. Also the ASEAN is coming, and many Thai majority ethnic would like to buy land from the indigenous peoples for business. It will be very difficult in the future for the indigenous communities to deal with these rapid developments of which they have no control. There is an urgent need to build the capacity of indigenous women and indigenous peoples at the local level to be able to face these developments. The newer generation has more education, but many work in the city. How can we support the local people in the community in terms of livelihood?

The work of the indigenous peoples and women’s organizations should be to look into the situation of the communities, women and children. Indigenous peoples organizations here in Thailand and their advocates have to discuss more with the communities, e.g., about which actions can be taken and supported. If they come up with a plan, the problems can be discussed, e.g., how to educate the children within their community.

In summary, the issues so far raised are: migrants (men abandon their families), issue of rape in monocrop plantations, and issue of widespread trafficking of girls from Indonesia to Malaysia, the issue of the promotion of Karen culture. The critical points that came up from Session are:
1. Trafficking of indigenous women and girls is a serious and wide-spread problem affecting indigenous peoples and it is going to worsen in the ASEAN 2015, as there will be trade liberalism. There should be a clear action plan at the end of the workshop on how to address the problem of trafficking.

2. We should have improved access to justice systems, as this access is very limited for indigenous women. What are the options to seek justice and remedies, what are preventive measures?

Session 4. Indigenous peoples and sustainable development

Indigenous Peoples and Sustainable Development Goals
Vicky Tauli-Corpuz, Convenor
Asia Indigenous Women’s Network

OUTLINE:
I. Definition of Sustainable Development
II. Realities in IP Lands
III. History of Indigenous Peoples’ Participation in Sustainable Development Global Processes
IV. Rio+20 and Sustainable Development Goals
V. Challenges to IPs and Governments

I. DEFINITION

SUSTAINABLE DEVELOPMENT – “development which meets the needs of current generations without compromising the ability of future generations to meet their own needs”

- Supports strong economic and social development,
- Underlines the importance of protecting the natural resource base and the environment.

II. REALITIES IN IP LANDS

- Highest biological and cultural diversity and many of world’s remaining relatively intact ecosystems are in Indigenous Peoples’ traditional territories
- Wealth of indigenous knowledge systems on forest ecology, forest and agroforestry management practices, nutritional, medicinal and other properties of diverse forest products
- Still marginalized and excluded in decision-making processes related to their lands, territories and resources
- Disproportionately represented among the world’s poor: 5% of world’s population but represent 15% of the poorest
- Increased conflicts over lands and human rights violations.
III. HISTORY OF INDIGENOUS PEOPLES’ PARTICIPATION IN SUSTAINABLE DEVELOPMENT GLOBAL PROCESSES

Participation in SD Processes

- Rio Declaration and Principles – Principle 22
- Agenda 21 – Chap. 26, “Recognizing and strengthening the role of indigenous peoples and their communities”
- Convention on Biological Diversity (CBD) – Article 8j and Article 10c
- UNFCCC- UN Framework Convention on Climate Change
- NCCD – UN Convention to Combat Desertification

Processes post Rio

- Rio + 5 – UN General Assembly Special Session (UN-GASS) – Indigenous Peoples’ spoke before the UN General Assembly
- Rio + 10 – Indigenous Peoples’ Global Preparatory Meeting in Bali, Indonesia
- Indigenous Peoples’ International Conference on Sustainable Development – Kimberley Summit/Kimberley Declaration – South Africa
- 2002: Johannesburg World Conference on Sustainable Development (Rio +10)
- Johannesburg Declaration and Plan of Implementation (Official Document)
- Johannesburg Declaration on Sustainable Development Para. 25. *We reaffirm the vital role of the indigenous peoples in sustainable development.*

**1992 Rio Declaration: Reference to Indigenous Peoples**

**Principle 22: Indigenous** people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices.

- States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

**Agenda 21: Chapter 26: Recognizing and Strengthening Role of Indigenous People and Their Communities in Sustainable Development**

**Basis for Action**

- Para. 26.1. Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands... They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment
  - Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination
  - Interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people
  - Need to recognize, accommodate, promote and strengthen the role of indigenous people and their communities
- Para: 26.3. In full partnership with indigenous people and their communities, Governments and... intergovernmental organizations should aim at fulfilling the following objectives:


iii. Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

iv. Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities;

GAINS OF INDIGENOUS PEOPLES

- Strengthened local, national, global organizing and movement building more active and effective engagement, advocacy/lobbying at global and national levels.
- Adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007).
- Establishment of bodies, procedures, and mechanisms, in the UN addressing Indigenous peoples’ issues.
- UN Permanent Forum on Indigenous Issues (UNPFII, 2000)
- UN Special Rapporteur on Indigenous Peoples’ Rights (UNSRIP, 2001)
- UN Expert Mechanism on Rights of Indigenous Peoples (EMRIP, 2007)

CHAPTER 26 of the Agenda 21

vii. Enhancement of capacity-building for indigenous communities, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices, to ensure their sustainable development.

Activities:
The following are some of the specific measures which Governments could take:
a. Consider the ratification and application of existing international conventions relevant to indigenous peoples and their communities (where not yet done) and provide support for the adoption by the General Assembly of a declaration on indigenous rights;

INDIGENOUS PEOPLES KIMBERLEY DECLARATION, 2002

- As peoples, we reaffirm our rights to self-determination and to own, control and manage our ancestral lands and territories, waters and other resources.
- Our lands and territories are at the core of our existence – we are the land and the land is us;
- Distinct spiritual and material relationship with our lands and territories; linked to our survival and to the preservation and further development of our knowledge systems and cultures, conservation and sustainable use of biodiversity and ecosystem management.

KIMBERLEY DECLARATION AND INDIGENOUS PEOPLES’ PLAN OF ACTION


IV. RIO +20 (2012) AND INDIGENOUS PEOPLES

- 2011-2012 – Tebtebba, as co-organizer of Indigenous Peoples’ Major Group participated in all Preparatory Meetings of Rio+20
- Indigenous peoples had called for culture, to be recognized as a fourth pillar, and a transforming dimension of sustainable development – understanding that diverse cultural values and spiritual traditions of humanity shape our relations with nature and promote respect for planetary boundaries.
INDIGENOUS PEOPLES’ KEY MESSAGES

1. Implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including the right to free, prior, informed consent (FPIC)
2. Recognition of diverse local economies, customary resource management and sustainable use practices, and local livelihoods as central to green economies
3. Securing the lands, territories and resources of indigenous peoples against extractive industries, predatory investments and development aggression
4. The recognition of indigenous and traditional knowledge on an equal footing with science and other knowledge systems for 21st century solutions to contemporary crises.
5. Culture as the fourth dimension of sustainable development

Major contents of the Outcome Document of the United Nations Conference on Sustainable Development or Rio+20. ¹

Green Economy in the context of sustainable development and poverty alleviation

58. We affirm that green economy policies in the context of sustainable development and poverty eradication should:
   (j) enhance the welfare of indigenous peoples and their communities, other local and traditional communities, and ethnic minorities, recognizing and supporting their identity, culture and interests and avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication of poverty;

58. We affirm that green economy policies in ... should;
   (k) enhance the welfare of women, children, youth, persons with disabilities, smallholder and subsistence farmers, fishers and those working in small and medium enterprises, and improve the livelihoods and empowerment of the poor and vulnerable groups in particular in developing countries;

Food security, nutrition and sustainable agriculture

“... education and training, knowledge, and appropriate and affordable technologies, including for efficient irrigation, reuse of treated waste water, water harvesting and storage. We reiterate the importance of empowering rural women ... We also recognize the importance of traditional sustainable agricultural practices, including traditional seed supply systems, including for many indigenous peoples and local communities.”

Oceans and seas

175. We commit to observe the need to ensure access to fisheries, and the importance of access to markets, by subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous peoples and their communities particularly in developing countries, especially small island developing States.

We reaffirm the intrinsic value of biological diversity, ...We recognize that traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biodiversity, and their wider application can support social well-being and sustainable livelihoods. We further recognize that indigenous peoples and local communities are often most directly dependent on biodiversity and ecosystems and...

- UN agencies and funds and other multilateral bodies developed their policies and guidelines on Indigenous Peoples (UNDP, IFAD, FAO, UNEP, WB, IFC, ADB, IADB, EBRD, UNDG)
- Used by IPs to monitor how projects in IP territories supported by these bodies adhere to their policies
- Awareness raising activities for govts. and the private sector on UNDRIP and these policies being done
- Indigenous peoples influenced the CBD, UNFCCC and Rio+20 to recognize UNDRIP and integrate some of their concerns and issues
- Aichi Targets of CBD included indicators pushed by IPs to monitor implementation of targets: (e.g. status of indigenous languages, traditional knowledge, traditional livelihoods)
- UNFCCC – (inclusion of Human Rights, REDD+ Safeguards, UNDRIP)
- Increasing use of community participatory 3-D mapping, digitization and resource inventory to show customary land use, customary ownership, ecological features, biodiversity and indigenous knowledge and for regular monitoring of changes
- Active participation of indigenous women in community-mapping processes

V. CHALLENGES

FOR INDIGENOUS PEOPLES

- Enhance local organizing and planning and implementation of indigenous peoples’ sustainable, self-determined development (IPSSDD): Integration of HRBA, Ecosystem approach, culture/knowledge-based approach
- Increasing capacities to do community participatory monitoring of how UNDRIP and national laws on IPs, REDD+ safeguards and biodiversity targets are being implemented
- Work with other NGOs to achieve more policy reforms for land tenure and resource rights
- Understand better national laws and policies and analyze coherence of these with international human rights and environmental law and instruments (UNDRIP, ILO 169, CBD, UNFCCC, UNCCD, etc)
- Use and development of indicators of IPs well-being and sustainability
- Sustained assertion of right to FPIC and full and effective participation in decision making processes and monitoring how these are operationalized
- Use initiatives to promote transparency and governance on forests including; FLEGT, FSC, Report Card of Global Witness, Governance of Forests Initiatives (WRI), PROFOR (WB), etc.
- Awareness raising and training on use of multilateral and bilateral policies on indigenous peoples and forests
- Training on how to use grievance or complaints mechanisms: e.g. WB Inspection Panel, IFC CAO (Ombudsman), ADB Inspection Panel, IADB, UN Treaty Bodies
- Capacity building campaigning and documenting and communicating cases of HR violations, good practices
- Increasing access to finance and markets – right to market forest goods and services
Need to increase more exchanges of experiences and knowledge between indigenous peoples and between them and others: more learning exchange visits.

Need to engage in more substantial dialogues with governments and private sector

FOR GOVERNMENTS

- Carry out land tenure reform
- Improve compliance with international human rights and environmental laws
- Radical restructuring of economic system to work within environmental, social limits
- Regulate corporate behaviour
- Support indigenous peoples’ knowledge and ecosystem management systems, livelihoods
- Develop justice and redress mechanisms
- Conflict management and resolution
- Joint engagement for forest and ecosystem protection, conservation and restoration.
- Conscious efforts to change discriminatory and racist mindsets and behaviours which regard and treat indigenous peoples as backward and obstacles to development to one which regards them as partners
- Develop enabling conditions to promote local entrepreneurship, community-company partnerships and forest-related initiatives for small and medium-forest based enterprises
- Enhance capacities of indigenous peoples to adapt and mitigate climate change.

DAKKEL AY IYAMAN! MARAMING SALAMAT! THANK YOU!

CONTACTS:
vicky@tebtebba.org
Websites: www.tebtebba.org
www.indigenousclimate.org

Discussion:

Updates: From the Rio+20 meeting, the development of specific goals and indicators on sustainable development goals (SDGs) is now being undertaken. The UN Millennium Campaign is undertaking national consultations in Asia now. We are requesting for a separate consultation for indigenous peoples. It is important to make a follow-up on this at the country level, and to have a specific consultation at the regional level. It is important to focus on the specific targets, and at the same time, to develop what indicators and key targets on the SDGs will reflect the aspirations of indigenous peoples and indigenous women. From the MDGs to the SDGs, it is recommended to have an assessment to the MDGs first - what are the gaps and the challenges. The MDGs are inappropriate for our context as indigenous peoples (e.g., the measurement of poverty is 1 USD per day, which means that you are not poor if you are earning more than this). It is necessary to put indigenous peoples’ views, perspectives and goals into SGDs so that the UN will take these into consideration.

For women, the Asia Pacific Forum for Women, Law and Development (APWLD) is working on four key areas in relation to sustainable development. These are

1. Equitable access to natural resources such as renewable energy; land, food, water
2. Decent work, living wage;
3. Peace: eradication of VAW and militarisation
4. Voice: ensuring democratic ownership and meaningful participation of marginalised women and peoples
For indigenous peoples, there are 12 key areas that have been identified and accepted in the UPFII. What needs to be done now is to formulate the key indicators that can reflect these key areas. One process is the Post-2015 process which has an intergovernmental High Level Panel (HLP). Next week, one of our resource persons, Ms. Victoria Tauli Corpuz will speak at a forum in the UK with this HLP to emphasise on the participation of indigenous communities. She said that 80 percent of our effort must be put in strengthening the local community in order to implement our goals at the local level.

The 12 key areas of where we need to develop indicators are as follows:

1. Security of rights to territories, lands and natural resources
2. Integrity of indigenous cultural heritage
3. Gender dimension
4. Respect for identity and non-discrimination
5. Fate control
6. Culturally appropriate education
7. Health
8. Full, informed and effective participation
9. Access to infrastructure and basic social services
10. Extent of external threats (Joan adds: security and peace in our area, as indicators)
11. Material well-being
12. Demographic patterns of IPs

Suggestion on way forward:

- Monitor/assess the indicators in promoting sustainable development. Strengthen capacity to resist the way that the state tries to undermine and violate our collective rights and push for the implementation of SDGs favorable to the IP communities. We should be able to speak for ourselves. One of the indicators is how are we able to represent in the discussion of the SDGs our view at the national, regional and international levels. Indigenous women need to be key players in the process.

Session 7: EMRIP thematic study on access to justice and SEANF programmes

Indigenous peoples’ access to justice

Expert Mechanism 5th session:
- “proposes that the HRC request the Expert Mechanism to prepare a study on indigenous peoples and access to justice given the gravity of the issues facing indigenous peoples, including discrimination against indigenous peoples in criminal justice systems, particularly for indigenous women and youth. Overrepresentation of indigenous peoples in incarceration is a global concern. Good practices, particularly those associated with traditional justice systems, would be examined.”
**Slide 3**

**Indigenous peoples’ access to justice**

HRC Resolution 21/24:
- Study on access to justice in the promotion and protection of the rights of indigenous peoples
- Report to the HRC at 22nd Session (Sept 2013)
- Note sent to Permanent Missions in Geneva to request for input.
- To complete draft by April 2013
- Expert Seminar on 27 Feb – 2 March, 2013 (Columbia University)

**Slide 4**

**Indigenous peoples’ access to justice**

HRC Panel on access to justice: indigenous women a focus (Sept 2012)
- Issues facing indigenous peoples in obtaining access to justice included poverty, illiteracy, poor education, recognition of lands and territories, and self-determination
- IW especially at risk from sexual exploitation, rape & trafficking and often denied access to justice

**Slide 5**

**Challenges in ensuring access to justice**

*interally, safeguarding customary & traditional systems, non-recognition, male-dominated.*
- externally, hampered by racial discrimination, education, language barriers etc
- Structural and practical problems associated with IPs’ access to justice within criminal justice systems – multifaceted.
- Include lack of access to legal advice, cultural insensitivity, insufficient emphasis on rehabilitation and inadequate provision of interpretation.

**Slide 6**

**CEDAW on indigenous women’s access to justice**

- Problems:
  - sexual and domestic violence unpunished
  - discriminatory legal provisions e.g. matrimonial property rights, status and band membership
  - prohibition on all forms of discrimination against women not adopted in domestic laws
  - lack of awareness of rights amongst indigenous women

**Slide 7**

**CEDAW on indigenous women’s access to justice**

**Measures**
- Ensure women’s equal access to land/individual rights to inherit and own land
- Bring perpetrators of violence against women to justice
- Raise awareness that sexual abuse is a prosecutable and grave crime
- Provide access to redress, protection, support and legal aid - free legal services for indigenous women, monitor quality and impact to ensure access to justice

**Slide 8**

**INPUT NEEDED**

1. International Human Rights Framework
2. Issues related to A2J
3. A2J Mechanisms available & Challenges
   -- Customary Mechanisms
   --- Statutory Mechanisms
   -- Interface between Customary & Statutory mechanisms
4. Examples (good & bad)
5. EMRIP Advice (Measures)
More information

- Expert Mechanism website
- OHCHR on indigenous peoples website
  - http://www2.ohchr.org/english/issues/indigenous/index.htm

SEANF Thematic Issues
South East Asia National Human Rights Institution Forum (SEANF) – 5 thematic issues (2012–2016)
- Detention & Torture, Migrant Workers, and Business & Human Rights – KOMNAS HAM
- Indigenous Peoples – SUHAKAM
- Business and Human Rights – CHRP
- Environment/ Climate Change – NHRCT
- Movement of People including Migrant workers, Trafficking and Environment - PDHJ (Timor Leste Ombudsman)

SEANF Thematic Issue on IPs
Objective 1: Strengthening of SEANF as an independent and professional organisation;
- Objective 2 : Strengthening of individual NHRI in the SEA region.
- Objective 3: Mobilising networks with CSOs, APF and ICC.
- Objective 4: Recommending laws, policies, measures and remedies with respect to the protection, promotion and fulfillment of human rights within the SEA region in accordance with international human rights standards.

Relevant Factors when determining whether a practice is good.
- the extent to which Ips were involved in the design of the practice & their agreement to it.
- the extent to which the practice protects/enhances indigenous peoples’ rights;
- the extent to which the practice is considered by others (indigenous peoples, government, NGOs, UN) to be a good practice or have promoted/protected indigenous rights.

Framework - SEANF Paper on Good Practices in Promoting & Protecting the Rights of IPs
1. Introduction
   - Background of NHRI
   - Background on Indigenous Peoples
2. Examples of Good Practices
   - Country Level (NHRI, Government, NGOs, Private Sector etc.)
   - Regional and International Level
3. Lessons Learned from Implementation
4. Recommendations on Moving Forward
5. Conclusion

Timelines
- Aug - Dec 20, 2012 - Completion of draft (RTD at national levels)

March, 2013 – Regional Meeting to share report & Follow-up: co-organised by SUHAKAM and AIPP – NHRI and IPs etc

April 2013 – Publication of Report
Session 13: Sharing of the program of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

By Ahmad Taufan Damanik, Indonesian Representative on Child Rights to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

Background information:

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established during the 16th ASEAN Summit on April 7, 2010 in Hanoi, Vietnam. The ACWC is an intergovernmental consultative body that promotes and protects the human rights and fundamental freedoms of women and children in ASEAN, taking into consideration the different historical, political, socio-cultural, religious and economic contexts in the region and the balances between rights and responsibilities.

The ACWC has been discussed way back at the 10th ASEAN Summit in November 2004 with the adoption of the Vientiane Action Programme 2004-2010 (VAP) which called for the establishment of an ASEAN commission on the promotion and protection of the rights of women and children. This was reiterated at the 14th ASEAN Summit on 28 February – 1 March 2009 in its Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015) which includes the ASEAN Political Security Community (APSC) Blueprint and the ASEAN Socio-Cultural Community (ASCC) Blueprint that reiterated the establishment of an ASEAN commission on the promotion and protection of the rights of women and children as an important measure to ensure equitable development for women and children.

The ACWC aims to uphold, promote, protect, respect and fulfill the rights of women and children in ASEAN to live in peace, equality, justice, dignity and prosperity. In line with this, the functions of the ACWC are, among others, to promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children and develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community. It would also promote public awareness and education of the rights of women and children.

The ACWC, in exercising its mandate, shall keep the public regularly informed of its work and activities through appropriate public information materials produced by the ACWC, and to engage in dialogue and consultation with entities, including civil society and communities, concerning the motion and protection of the rights of women and children.

Priority Issues to be addressed by ACWC in their 5 Year Work Plan
1) Elimination of violence against women and children
2) Right of children to participate in all affairs that affect them
3) Promotion of consultation and dialogue with stakeholders at the national and regional levels
4) Trafficking of women and children
5) Women’s participation in politics and decision making, governance and democracy
6) Promotion and protection of women and children with disabilities
7) Strengthening institutional capacity of ACWC
8) Comprehensive and integrative system of child protection
9) The right to quality education including ECCDE
10) Promoting effective implementation of international and ASEAN instruments related to the protection of women and children
11) Gender equality in education (removal of stereotyping in textbooks and other media; gender equal curriculum and equal access to education)
12) Women and children living with and affected by HIV AIDS
13) Social impact of climate change on women and children
14) Strengthening economic rights of women within the context of feminization of poverty and the rights of women to land and property

From the different testimonies and sharing, there are many development projects that marginalize indigenous cultures, e.g. in Laos and Cambodia, and thousands of people are evicted from their land, because of dam constructions, mining and other development project. Asian countries do not pay much attention to the lives and rights of indigenous peoples. Human rights is a quite a new agenda in ASEAN. There is a big debate on human rights in contrast to so-called ASEAN values. In 2008, the ASEAN charter (already signed by the leaders of ASEAN) mentions clearly about human rights. Then, two human rights bodies were established: ASEAN Intergovernmental Commission on Human Rights (AICHR), and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). In ACWC, there are 2 representatives of each country, one for child’s rights and one for women’s rights, so there are 20 members. There are around 16 mandates that have to be implemented- one is how to make sure that ASEAN countries comply with human rights standards, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

On the other hand, there are challenges. Some principles we have to face in ASEAN: first, there is no procedure, and no complaint mechanisms. So many times, the ACWC cannot accept cases because there is no procedure on handling of cases. The second is that it is not possible to study conditions in other countries: there is the principle of non-interference. Another principle we have to be aware of is the consensus- if one member country does not agree to bring a case (e.g. regarding migrant workers), that issue has to be cancelled. But compared to other bodies, we are more open (e.g. compared to AICHR). It is clearly stated in our Terms of Reference that we are mandated to “enhance the effective implementation of CEDAW and CRC through, among others, exchange of visits”. On the national to regional or transnational level (e.g. UN), we work together with various organizations.

I hope to invite AIPP in the future. The ACWC 5-year workplan includes thematic issues one of which is on “women and land rights”. This is more about how women have equal access to land and property. The other theme is “women and climate change”. Climate change also strikes the lives of indigenous women. Another topic is the “involvement of women in politics”. In a democracy, everyone should be treated equal in the decision-making processes. In all the cases presented, I could not see the government asking for what people need and want. The issue of political participation of women, especially indigenous women, is very important. The last issue focuses on “violence against women”. I hope that within these 4 thematic issues, the cooperation can be established among us, even though the challenges have to be considered. I would like to remind us to think about the girl children who are especially vulnerable.

OPEN FORUM

Joan adds that the ACWC has identified important issues and she recommends that indigenous women be included in the study on land rights and in the area of climate change (in terms of sustainable resource management). In relation to the trafficking of girl children, she express worries that the situation will worsen in ASEAN (borderless region, economic integration), and she wonders
what steps are taken by ACWC, especially in Thailand or Indonesia where indigenous girls do not have no citizenship.

Aleta: also wonders what to do regarding migration, violence against women and trafficking.

Janie: Regarding the thematic studies and what they will found out, it is hoped that the ASEAN will adopt recommendations. Are there other efforts in this regard?

Ahmad: for the inclusion of indigenous women on the thematic studies, he will talk to his colleague, as Indonesia is the lead country. He will discuss that indigenous women should be involved and informed, and this includes climate change. On the trafficking of girl children, the worst cases are reported from Burma, also in Malaysia. There are also diplomatic relationships between countries and it is not easy for the ministers to give clear statements as it will harm diplomatic relationships. It is not satisfying, but we have to realize that. Also for illegal migrants to other countries like Malaysia, and Singapore, there is the problem of ASEAN way-consensus, non-interference. You can say something, but you cannot say something. The agreement must be made in consensus; otherwise we cannot come up with any single agreement. Another very sensitive issue is Islamic law.

Bernice: is it possible to submit our own papers to the issues, also to have an expert meeting and to invite ACWC?

Ahmad: It is possible, also during the next two weeks, on all the issues.

Gizela: reminds that during the referendum time in Timor Leste, there were some children who cannot go home. The problem occurs especially girls when they are forced to become prostitutes. She hopes that there will be a place and time set for discussion with the government. It is important to remind the government on these issues. Is it possible to report cases to Ahmad?

Aleta: wants to refer the issue of indigenous peoples religion because it is not included in the official religions of Indonesia. If they want to make a birth certificate they cannot choose their religion, but have to choose a listed religion so they have to be converted.

KOMNAS Perempuan: children can have a birth certificate, but regarding the marriage of the parents, this may not be acknowledged by the government because their religion is not under the 6 listed religions, therefore children cannot get a birth certificate.

Ahmad: worked in UNICEF on this issue in Timor Leste, also in Indonesia and he found many cases of children who were separated from their parents during the referendum, and from that, he tried to facilitate the communication with the families in East Timor, also with the churches. There is a need to recommends to the government to protect these children in Timor Leste. In 2010, they still made a report on this issue, they still have this point in their national report. But it cannot be made a part of ASEAN yet, as Timor Leste is still not formally a member country of ASEAN. But to the Indonesian government, they sent reports already. Regarding religion, he met many people who face this problem- people have to conform to the dominant religion. If they do not do this, they cannot be registered. So, most of them choose to conform formally but with their daily life remaining unaffected, and still practicing their religion.
Session 15: Sharing of UN Women Asia-Pacific programmes

Overview of UN Women work

Robert Clarke,
Regional Director for Asia and the Pacific
1 November 2012 Chiangmai
At the Southeast Asia Regional Consultation of Indigenous Women

What is UN Women?

UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

Background of UN Women

• Created in 2010 as part of UN reform
• By the UN General Assembly Resolution 64/289
• merged four of the UN agencies and offices:
  □ United Nations Development Fund for Women (UNIFEM),
  □ Division for the Advancement of Women (DAW),
  □ Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI)
  □ International Research and Training Institute for the Advancement of Women (INSTRAW)

In what priority areas does UN Women work?

• Increasing women's leadership & participation;
• Ending violence against women;
• Engaging women in all aspects of peace and security processes;
• Enhancing women's economic empowerment;
• Making gender equality central to national development planning and budgeting;
• Support intergovernmental processes.

The Regional Office for Asia and the Pacific

• Implements programmes on achieving de facto and de jure gender equality
• CEDAW Southeast Asia Programme (since 2004)
• EVAW; Migrant Women Workers; HIV and Gender; Women, Peace and Security

Regional Programme on Improving Women’s Human Rights in South East Asia — CEDAW Phase II [2011-2015]

• Long Term Outcome:
  • Enhanced Southeast Asia regional processes that facilitate CEDAW implementation
• Immediate Outcome:
  • Increased skills and knowledge of government officials and civil society gender experts on CEDAW compliance in development and monitoring new and revised legislative frameworks
  • Increased awareness among formal and informal justice system actors of CEDAW commitments
  • Strengthened monitoring and accountability mechanisms for implementation of CEDAW commitments
Overall Approach

- The work of UN Women is guided by women's human rights framework
- Focus on facilitating the implementation of the norms and standards set out by the CEDAW convention
- Substantive equality and non discrimination
- Application of the intersectional analysis to gender equality - indigenous, ethnic, migrants, rural women, age, social and economic status

Overall Directions

- Support advocacy of IWIW in access to justice, in the context of plural legal systems
- Review of laws, including customary laws on how they promote women's rights and what aspects are harmful to women's rights and do not comply with the norms for gender equality
- Supporting the public hearings and consultations of the IW, EM and stateless persons, IDPs with the MoJ and other government agencies in all countries
- Supporting the advocacy of women's human rights groups and CSOs on their issues of concern at local, national, regional and international levels (CSW, development of SDGs)
- Supporting the strengthening of the IW and EM movements and the organizations - recognizing and taking into account the barriers and limitations that IW and EM have

Regional Activities for IW and EMW CSO

- Skills building on documentation of violations including development induced violence, the impact of development projects and plans on the well being of IPs, in general and through gender lens – enabling IW’s meaningful participation
- Monitoring of gender equality commitments to IW and EMW; CEDAW alternative reports by encouraging preparation of reports on the situation of IW and EMW by IW and EM women themselves
- Encourage their participation in the broader women's movement

Women and Peace and Security

- SCR 1325 and sister on involving women in prevention, during and post conflict situations where many IW and EMW are involved as survivors and as combatants
- Developing and implementing NAPs in Philippines, Indonesia
- Training women participating in peace negotiations – all of them coming from IW and EM groups – Philippines, Indonesia, and now Burma

Cambodia

- Past activities: trained IW activists on relevance of CEDAW and use of CEDAW as a tool for advocacy
- Future plans: Support IW groups to participate in the CEDAW NGO reporting process (CMB’s periodic report is scheduled in the Oct 2013).
- Support capacity building of IW to document the critical issues /violations on land grabbing

Lao PDR

- Past activities:
  - Trained activists from ethnic groups on CEDAW
  - Supported NGO group in research and documentation on EVAW and Migrant Women’s issues (for submission to the CEDAW Committee as two priority issues in the Concluding Observations).
- Future plans:
  - Support in drafting a comprehensive anti GBV legislation;
  - Support capacity building of CSOs in legislative advocacy on this new law
  - Support CSOs to advocate with ACWC and AICHR at national and regional levels, i.e. business and human rights with a gender equality analysis
Indonesia

- Past activities:
  - Support the review of the marriage law and draft law on gender equality
  - Trained activists from AMAN on CEDAW and application to IW issues
- Future plan:
  - Support forums and policy dialogues of IW and other excluded groups on Access to Justice for them
  - Research on women’s A2J in plural legal systems

Philippines

- Past activities:
  - Supported the advocacy by CSO and the National Women's Machinery for the development and adoption of the Magna Carta of Women
  - Trainings on CEDAW through AIWN,
  - Research on indigenous practices form WHR perspective in Mindanao
- Future plan:
  - Support the initiatives to reform the code of Muslim personal laws
  - Research on women's Access to Justice in communities (IW)

THAILAND

- Past activities:
  - Supported the skills building work of IW in documenting WHR violations in hill tribes in Northern Thailand
  - Supported women leaders in communities to build political leadership to run election to Tambon Administration Organizations (TAO). This included IW leaders as well
- Future plan:
  - Community based research on A2J, on customary and traditional legal systems
  - Support the monitoring work of Thai IW groups in the CEDAW reporting process - plan to prepare their own independent CEDAW report

Vietnam

- Past activities:
  - Supported drafting of the gender equality law and DV law through dialogues and hearings in EM regions
  - Legislative review of laws and regulations for compliance with CEDAW and support to the National Assembly's EM Standing Committee; a meeting with the Pramila Patten of the CEDAW Committee is one example
- Future plan:
  - Research of access of EM women to justice
  - Policy dialogues with the government on justice for women of EM; policy forum for policy and law reform to involve WMW

Regional Project
Regional human rights mechanisms

- Long Term Outcome:
  - Reduced discrimination against women in SEA
- Immediate Outcome:
  - Regional human rights mechanisms are capable of addressing critical issues of women's human rights in their programmes
  - CSOs have strong capacities to advocate with the regional human rights mechanisms

In 2013 UN women will support:
- ACWC in carrying out project under its 5 year workplan
- To advance the rights of excluded groups of women:
  - study on economic rights of women, including the right to land and ownership of property
  - Advocacy with the religious and cultural community leaders to promote the advancement of women and girls and eliminate harmful practices
- Support the studies on law reform and on the implementation of laws on VAW and VAC.
2.2 Synthesis of the case studies

2.2.1. Introduction

Case studies were conducted in the five countries – Cambodia, Lao PDR, Malaysia, Philippines and Thailand – on issues that are now increasingly being faced by indigenous women in Asia with respect to development projects, access to justice and the promotion, protection and respect of their rights both as women and as indigenous peoples. Development projects in this context refer to both state and corporate projects that are intended to support national development, i.e., economic growth or national priorities like the establishment of protected areas. These projects include mining, economic land concessions, national parks and plantations. The case studies look into the national legal and policy framework related to indigenous peoples’ rights and concerns as it relates to the situation of indigenous women and also on women’s rights in the respective countries. A community profile is provided for each case in order to establish the context. Information is shared on the development project and the violations that this brings to the rights of indigenous women. Analysis is provided with respect to access to justice for the indigenous women due to the development project. As a final say, indigenous propose recommendations to address their access to justice issues that are induced by these development projects.

In the following, an overview on the community profiles is provided for all cases (Section 2.2.2). This is followed by a synthesis of the national legal framework for each case (Section 2.2.3), a synthesis of the impacts of each development project on indigenous women (Section 2.2.4) as well as of different development-induced violations of their rights (Section 2.2.5). Finally, a summary is given of the international obligation of each government described in each of the studies (Section 2.2.6) and key obstacles identified that hamper indigenous women’s right to justice across countries are outlined (Section 2.2.7).

Subsequently, the case studies are presented in detail for each country, combined with testimonies on other development-induced rights violations faced by indigenous women in South-east Asia (See 2.3).

2.2.2 Profile of the communities

The five case studies provide background information on seven different indigenous peoples and their community profiles: the Kui (Cambodia), the Karen, Lisu and Akha (Thailand), the Kri (Laos), the Blaan (Philippines) and the Dayak (Sarawak, Malaysia).

Kui (Cambodia)
The Kui is one of the 24 indigenous peoples recognised by the Royal Government of Cambodia, part of the 1.34% of the country’s total population of approximately 14 million based on 2008 census. The government collectively refers to indigenous peoples as *chuncheat* meaning ‘national people’. Indigenous peoples prefer to collectively refer to themselves as *chuncheat daoem pheak tech*, meaning original minority ethnic group. The site of the case study is Prame commune, District of Tbaeng Mean Chey, Preah Vihear Province. The commune is composed of three villages all peopled by Kui: Srey Preang, Bothum and Prame proper. It has a total population of 2,680 individuals belonging to 568 families and predominantly young. The Kui have their own traditional political and social systems. There is a public elementary school (Grades 1 – 6). The nearest health facility is about 11 kilometers away. Although there is no public transportation to the three villages, the roads are in very good condition as Prame commune is traversed by the Asian Highway Network.

Most of the Kui in Prame are heavily dependent on the forests. They get their subsistence from rotational rice cultivation, animal husbandry, hunting, honey collection, and gathering different kinds of non-timber forest products for subsistence. Cash income is earned from selling resin they gather from the forests and their own plantations. Kui women are mainly responsible for gathering food from the forests. They collect non-timber forest products like wild vegetables, fruits, honey, mushrooms, and others which form the bulk...
of the family’s food supply. They also gather rather rattan, firewood, and resin. An important member of the Kui community is the Yeak Chaeng or Yeak Chheon Chaeng, a woman spiritual leader who is responsible for maintaining the faith and solidarity of the community. There are parts of the forests which are sacred sites, spirit forests, which are of significance to the Kui spiritual belief. Because of their affinity with the forest, Kui women regularly visit these sites for worship and spiritual renewal which are important for their mental/psychological well-being and community solidarity. However, despite their important role in ensuring family and community food security, Kui women are still marginalized in community decision-making processes. Although most of the adults, including women, can speak Khmer, Kui is the language in daily life in Prame. The three indigenous communities have received a letter of community identity from Minister of Rural Development, and the traditional authorities (committee) have been acknowledged by Commune Council. Since April 2012, two companies which had been awarded economic land concessions (ELCs) have started bulldozing parts of the Kui territory destroying hectares of farm land, resin trees, forests, sacred sites and burial grounds. Because of the National Assembly election on 28 July 2013, there is a lull from the clearing operations. It is expected that the clearings accelerate after the election.

Karen, Lisu and Akha (Thailand)
Mainly in the uplands of northern and western Thailand, various groups of indigenous peoples live who are categorized as “Chao kao” (Thai), or “hill tribes”, such as the Karen, Lisu, Hmong, Lahu, Akha and Mien, amongst others. According to the Department of Social Development and Welfare (2002), their total population is 925,825 in the north and west, but there are still no numbers available for the rest of the country. Almost all of them live in protected areas, including forest reserves, national parks, wildlife preserves. Over the course of time, the term ‘hilltribes’ has become closely connected to negative stereotypes such as opium cultivation and forest destruction. Indigenous peoples prefer the term “chon phao phuen mueang” as the translation of indigenous peoples to refer to themselves. One part of the case study was conducted in the Lisu and Akha villages of Doi Chang and Doi Lan in the Mae Suai District of Chiang Rai Province, in northern Thailand. This is where the Lam Nam Kok National Park, as well as a national reserve forest and forest parks, is located. The livelihood of the Mae Suai Lisu and Akha combine both commercial production of coffee and other introduced temperate-climate crops and products and selling their labor. A Lisu and an Akha woman had been arrested for the crime of encroaching on national parks. The other site in the study is the Kaeng Krachan District, Phetchaburi Province in central Thailand at the Thailand-Burma border where the biggest national park in Thailand, Kaeng Krachan National Park, is located. The indigenous peoples who live here are the Karen who are almost fully dependent on their traditional rotational farming for their subsistence. The Kaeng Krachan Karen had their homes and other properties torched for being located in a national park for several times, the worst being in 2011.

Kri (Laos)
Lao People’s Democratic Republic (PDR) refers to its indigenous peoples as ethnic groups while the peoples refer to themselves by their specific names. The Kri (alternative names: Krih, Kree; Kha Tong Luang, Yellow Leaves) in Laos have a complicated history of migration, and opinions of local and international anthropologists diverge considerably. It is widely agreed that Kri is a Vietic language and belongs to the Mon-Khmer language group, even though it has no written script. Nowadays, the Kri mainly inhabit the provinces of Bolikhamsai and Khammuan near the Laos-Vietnam border. Locals refer to them as ‘Yellow Leaves’, similar to the Mlabri ethnic group in Thailand and Laos, as they build their homes from banana leaves which they leave once these turn yellow. There is no accurate data on the population of the Kri but they are considered one of the least in number among the minorities in Laos.

The Kri depend on the forest, land and rivers for their sustenance, practicing rotational agriculture, forest product gathering and inland fishing. Kri women are especially dependent on mountain rice production, forests and the rivers as their task is to provide for daily food and maintaining the family’s welfare through their swidden and forest food collection. They used the jungle to gather various forest products, vegetables and fruits. The study site is Sepon, Vilabouly District, Savannakhet Province, south-central Laos. The Kri have been relocated from their original villages under the government’s village clustering program by
merging of villages and relocating them to priority zones or focal sites as a means of addressing access to basic services. After the pollution of the river by mining on which they depend for their livelihood, they voluntarily relocated to the mining project’s resettlement site.

Blaan (Philippines)
In the island of Mindanao, Philippines, the indigenous peoples are collectively called Lumad. One of these peoples is the Blaan. Bong Mal, which means “big river” in the local language of the Blaan, is a community that sits at the boundary of three province in Mindanao. It has several “ sitio ” or smaller zones, three of which are the focus of the study - Sitios Bosbang, Alyong 1 and Nakultana. These mountainous areas are home to an estimated 18 Blaan families or clans, with around 170 individual members. Women comprise 40% of the population. They subsist mainly on their own crops such as corn, glutinous rice, root crops and vegetables. They also hunt animals and gather other food and medicinal items from the forests. The Blaan women play a major role in the community as they are the producers of food and nurturers of the family. They do the farm work in their fields and swidden farms or “ uma”, along with the men. The community has a relatively strong functional indigenous knowledge and socio-political systems. They consider the traditional leader, “ fulong ”, as their representative and leader, instead of the official barangay captain of the local government unit.

Blaan women traditionally enjoy an equal status with men in decision-making processes. In their culture of conducting “ kastifun ” or community consultation, all community members, including women and children, are present. Women may freely voice out their opinions during the kastifun. The “ fulong ” may not declare a final decision until there is a consensus of everyone in the community, including the women. Should there be a dissenting opinion, the fulong will talk to that person, until she or he finally accepts the resolution of the community. They also practice “ ksaauf “ or getting permission from the owner before entering his or her house which also applies if one wants to enter another clan’s community. The practice of “ pangayaw “ or waging war is very strong, especially in the past years when mining companies started to encroach in their territory. The threat of displacement from their ancestral domain due to mining has forced the Blaan of Bong Mal to militantly oppose such incursion even declaring ‘ pangayaw ’ (armed defense of their ancestral domain) against the mining company. The state and the company has responded with more militarization and violence. The people have and are experiencing threats, harassments, intimidations, theft, extrajudicial killings, demolition of houses and crop storage facilities, destruction of farms lots and crops by agents of the military and paramilitary, and tribal warriors now declared as “ bandits ” and “ fugitives ” by the state forces and hunted as criminals. Like many indigenous communities in the country, the community of Bong Mal lacks social services from the government.

Dayak (Sarawak, Malaysia)
Sarawak has an estimated population of 2.2 million where the indigenous peoples, the Dayak, form the majority of the population. The generic term “ Dayak ” covers various subgroups, each with its own culture and language. One of these subgroups is the Iban. Eighty percent of Dayak are rural dwellers, subsistence agriculturists, hunters and gatherers. The Dayak are dependent on their land and forests for livelihood. They practice rice shifting cultivation, grow sago palms, fruit trees and vegetables. They collecting forest products while their land and forests also provide them with traditional medicines and wild animals.

The Iban hold customary rights over land and territories that they have inhabited since time immemorial. Like most indigenous peoples of Sarawak, the Iban inhabit traditional longhouses (rumah), communal houses built on stilts that provide shelter for up to 100 families in separate living units. The Iban classify the land surrounding their longhouses under two general categories: the menoa which refers to the collective village territory with its own clear boundaries, and the temuda, which refers to land close to the longhouses, land cleared for farming and land left fallow to regenerate. The temuda extends to an area of communal land for the collection of forest products (fruit, medicinal plants, building materials), for hunting, fishing and to be used as burial grounds. The sites of the study are Rumah Nyawin in Bintulu and Rumah Bangga in Sungai Babai, both in Sarawak. The Rumah Naywin was demolished and the Iban left with a relocation site which does not meet their needs and also does not provide legal ownership. The Iban of Rumah Bangga had to deal with the death of one of their longhouse residents in a botched mission to arrest the protesting Iban
leaders. Although the owners and the majority population in Sarawak, the Dayak are marginalized in both the political and economic life of the state, and at the national level.

*In all of the case studies, it was not possible to get full information on populations, nor disaggregated data with respect to sex and ethnicity.*

### 2.2.3 Legal and policy framework

Each case study further provided a background on the country’s legal environment and legislation affecting indigenous people in general and indigenous women in particular. At the national level, the legal recognition of indigenous peoples with collective rights is not common in the respective countries. The national constitutions in these countries put the overall ownership of the national territory on the state, and gives it the power to regulate the ownership, use, control and access to any and all parts of the national territory. All countries have their national women’s machineries whose main function is the advancement of women’s rights with the formulation of national action plans to operationalise this mandate. On the other hand, Malaysia, Philippines and Thailand have their national human rights institutions to safeguard human rights. The key laws affecting indigenous women in these countries can be summarized as follows:

#### Cambodia

Cambodia recognise indigenous peoples as understood in international law through their legal and policy instruments. This recognition is embedded in their *National Policy on the Development of Indigenous Peoples (2009)*, *Strategic plan for the Development of Indigenous Peoples 2006-2008*, the *2001 Land Law* (Ch. 3 Sec. 2), and the *2002 Forestry Law* (Art. 37). The Cambodian Constitution of 1993 regards indigenous peoples as equal citizens of Cambodia. The National Policy on the Development of Indigenous Peoples sets out policies related to indigenous peoples in the fields of culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy. The 2001 Land Law affirms the collective ownership of indigenous land, recognises traditional land management systems of indigenous communities, and the right of men and women to co-own lands. This law sets the basis for the legal recognition of collective land rights of indigenous communities, and affirms the role of traditional authorities, mechanisms and customs in decision-making processes. The 2002 Forest Law provides for the official recognition of community forestry. The 2005 *Sub-decree on Economic Land Concessions* (ELCs) stipulates that ELCs may be granted only on State private land on the condition that environmental and social impact assessments have been completed with respect to the land use and development plan. The 2009 *Policy on Registration and Right to Use of Land of Indigenous Communities* and the *Sub-Decree on Procedures of Registration of Land of Indigenous Communities (2009)* strengthens the 2001 Land Law on communal/collective land titling.

#### Thailand

In Thailand, the 2007 Constitution includes several provisions that are closely linked to indigenous peoples’ livelihood although it does not recognise indigenous peoples as understood in international law. Article 66 provides the right of local communities to maintain their cultural traditions, as well as to protect and manage their environment and natural resources. According to Article 67, people have the right to participate with the State and communities in the conservation of natural resources under certain conditions. The *Cabinet resolution approved in 2010* stipulates policies on the “Restoration of the Traditional Practices and Livelihoods of Karen people”. However, these affirmative measures are overshadowed by the *Forest Act of 1941* which states that any land not acquired under the land law is considered forest, and therefore belongs to the State. Further, the *National Forest Policy of 1985* tries to frame forest policy within the context of overall national development and emphasizes the importance of a partnership between state and the private sector, meaning business, not indigenous peoples. This policy and all the related laws have been used to criminalise forest-dwelling indigenous peoples who are living in their homelands and practicing their traditional occupations. During the last decades, state agencies like the military and the Royal Forest Department (RFD) had been trying to secure protected areas and to solve conflicts over use-rights by using force, pursuing a strategy of exclusion and enforced resettlement towards the indigenous peoples living the forest reserves.
**Laos**

In Lao PDR, the concept of “indigenous peoples” is not officially recognized. Article 8 of the Constitution of the Lao PDR stipulates that the State pursues a policy of promoting unity and equality among all ethnic groups, and that all ethnic groups have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation. Further, it obliges the State to implement every measure to gradually develop and upgrade the socio-economic development levels of all ethnic groups. Various legal and policy instruments affect ethnic minorities, their livelihoods, living conditions, agricultural practices, village organisation and administration as well as the provision of socio-economic and infrastructural facilities. Directive Order No.92004, Instruction Order on the Establishment of Village and Village Cluster for Merging Administration, is the most important policy in a series of decrees affecting ethnic minority communities. In order to contribute to poverty reduction, it regulates the merging of villages and relocating them to priority zones or focal sites. Directive No.9 is the major policy document cited by provinces and districts to grant concessions in order to turn land into economic opportunities to accelerate national development, as well as to resettle villages. Under national laws, the national territory and the minerals therein are owned by the national community represented by the State as stipulated in the Constitution (Art. 15) and reiterated in the Land Law (No. 01/97/NA 2002) and Mining Law (No. 04/97/NA 1997). The State exercises administrative and regulatory functions over these resources. The state has the right to assign user rights to individuals, families, state and economic organisations. Generalized land classifications used in both forest and land legislation were elaborated by foresters, not ethnic minority groups, mainly in order to abate swidden agriculture. Therefore, they do not mirror ethnic groups’ knowledge of different land types, resource management systems, or of general environmental and soil differences. The legislation does not recognize “communal land” collectively or customarily managed by a village community. Instead, the state claims ownership to all land not registered to an individual or organisation. In Lao PDR, customary tenure rights are not officially recognised even as they remain important to rural communities.

**Philippines**

Like Cambodia, also the Philippines recognise indigenous peoples as understood in international law through their legal and policy instruments. The Indigenous Peoples Rights Act (IPRA, 1997) of the Philippines states that the “State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development” (Sec.2a). This law has general provisions on protecting the rights of indigenous peoples to ancestral domain, self-governance, social justice and cultural integrity. Section 26 states that “indigenous women shall enjoy equal rights and opportunities with men,... in the decision-making process in all levels, as well as in the development of society....” The IPRA has a provision on “Free, Prior and Informed Consent” (FPIC) which is defined as: “the consensus of all the members of indigenous peoples to be determined in accordance with their respective customary laws and practices.” This is required before a development intervention takes place in a community. The National Commission on Indigenous Peoples (NCIP) created under IPRA released administrative orders (2002, 2006, and 2012) to serve as guidelines for the conduct of FPIC in indigenous communities. The Philippines also enacted the Magna Carta of Women in 2009 which contains some provisions for indigenous women specifically found in Chapter V (Rights and Empowerment of Marginalized Sectors), Section 20 (Food Security and Productive Resources), Paragraph (b) Right to Resources for Food production. Indigenous women are viewed as nurturers of resources and have big roles in the food security of indigenous communities. Mechanisms for redress are also available at the local government units (provincial, municipal and police stations) where gender desks are established. Despite the affirmative laws which defend indigenous peoples rights, the Mining Act of 1995 which liberalised the mining industry giving more rights to corporations than communities, is the bone of contention between the state and corporation on one hand, and indigenous communities on the other. The current mining program of the government hinges on the extraction and export of minerals which has not changed since Spanish colonization, and which is done mostly in indigenous lands.

**Malaysia**

Malaysia is a federation with Sarawak as one of the thirteen states and three federal territories that comprise it. The powers of the state governments are limited by the Federal Constitution and under the terms of the Federation. Sabah and Sarawak are entitled to seats in House of Representatives, and the legislative
assemblies of Sabah and Sarawak have the power to make laws on additional matters including native law and custom. Malaysia has a plural legal system and accepts the concurrent operation of distinct bodies of law. In Sarawak, customary laws are officially recognized by the Federal Constitution. Several constitutional provisions protect native customary practices. Traditional indigenous decision making mechanisms, and native authorities and courts continue to administer local community affairs. In several state and federal court rulings, recognition of native titles have essentially been accorded to the lands, territories and resource traditionally owned, occupied or acquired by indigenous peoples, including those in Sarawak. However, federal government and its agencies have refused to accept these legal precedents of decisions of the local courts recognising native titles, and instead require indigenous communities to treat each native title claim as a fresh legal argument. On the other hand, some state courts assert autonomy on how states treat the rights of indigenous peoples to their traditional lands. There are specific national laws, e.g., the Land Code, which protect and promote indigenous peoples’ rights, especially their Native Customary Rights (NCR), including the right to cultivate land, hunting and fishing rights, the right to use land for burial and ceremonial purposes, as well as rights of land inheritance and transfer.

### 2.2.4 Impacts of development projects on indigenous women

The development projects covered in the five cases studies can be summarised as follows: they all are land- and resource-related cases, mostly impinging on access, use, control and the collective ownership of land, territories and resources of indigenous peoples and their impact on indigenous women. Land grabbing, or alienation, in the form of unilateral granting of concessions for plantations, mines and appropriation of indigenous territories for national development and interests, like parks, denies the prior rights indigenous peoples have over their territories and their right to self-determination. It is clear that the indigenous peoples in the case study areas had possession of such territories even before the creation of the respective nation-states. In all cases, the indigenous peoples, especially the women, were not consulted nor did they give their consent for the use of their lands for the projects. In most of the cases, the women came to know of these projects only when they were about to be implemented.

Indigenous women in all the study areas are responsible for home management, ensuring family food security and welfare leading to community food security. They are able to do this through their utilization of natural resources found in their territories, including lands, rivers and forests, flora and fauna for subsistence production, and the collection of wild products. This entails an intricate knowledge of the biodiversity, the soil and climatic conditions, etc., in their territories which had been handed down through generations of practice, and through experimentation, observation and exchanges. Indigenous women in these communities are the repositories of expert knowledge on food, firewood, fibers, and herbs. For those who maintain spiritual sites in forests, like the Kui women, because of their regular presence in the forests, they are also keepers of these spiritual sites. Land and territories also define the identity of the peoples or even individuals therein. Among the Karen, i.e., a newborn baby’s umbilical cord and placenta are placed in a bamboo node, and hung up in a tree. This tree is nurtured as part of the family, and made sure that that no harm comes to it as it is akin to being the person’s twin. The intricate relationship between indigenous women and their territories and resources are the sources of indigenous knowledge that allow the sustainable use of such resources for the present and next generations. In the case studies, it is shown that the Kri, Karen, Lisu, Akha, and Iban indigenous women had been greatly impacted by the development projects that were implement in their land and territories, or that the impact will be of significant proportion, e.g., among the Kui and Blaan. Major impacts experienced by the indigenous women in each country can be described as follows:

#### Cambodia

In Cambodia, the lands, resources and properties included in the ELCs and some of which were destroyed were forests, farms, grasslands, burial grounds, the spirit forest called “Rolumtung”, ancient Kui sacred sites including the remnants of ancient Kui temples called Yaek Chung Kuoy (Grandmother Chung Kuoy) and YaekPluok (Grandmother with grey hair) and other temple ruins, as well as the nearby site of an ancient Kui village as shown by the shards, bones, etc. This has led to loss of food sources and livelihood, access to the spirit forests, sacred sites and other culturally-significant sites. Destruction of the forests and difficulty in
accessing the forest restricts the use of natural resources, gathering of resin, wild foods, wildlife and traditional medicine. The desecration of spirit forests, culturally-significant sites and burial grounds threatens the Kui identity. The destruction of Rolumtung has a direct impact on the solidarity of community as this has taken away some of the venues in which the priestess performs the solidarity rites. The plantations have caused shortage of water supply further burdening the women in their home and health management. Intra-community conflicts have arisen among villagers because of the perceived benefits arising from the concessions and the harassment they face when they claim their rights. Kui women are more severely affected by the loss of natural resources and their access to these than the men because of their traditional role as main food providers and gatherers of forest food products. Apart from direct destruction, the ELCs have fenced part of their concession denying access to the forests and farms by the road. Women now have to travel a longer route in order to reach the extant forests and farms beyond the concessions.

**Thailand**

For the Lisu, Akha and Karen women of Thailand, the denial and restrictions on their access to their lands and forests affects the women in all aspects of their lives. Just like indigenous women in other countries, these women are the main food producers, natural resource management experts, ethno-botanists, and transmitters of culture and indigenous knowledge. The arrests, incarceration, intimidation, assaults, arson and forced evictions by park, police and military authorities not only traumatised the women, but also, caused them lost livelihood, biogenetic resources, food, material culture, income, rest and recreation; extra expenses, additional physical difficulties, more confusion on the law, and devaluation of their worth. The lack of awareness on the laws and policies is making the women offenders even without being aware of it. On the other hand, the government is remiss in its duties to conform to the provisions of the laws to inform, consult and demarcate affected communities in the establishment of parks, and to enforce the laws respecting indigenous livelihoods and natural resource management practices. It has also been remiss in not making its laws aligned with its commitments to international law. The Akha and Lisu women victims in Mae Suai have experienced severe hardships due to the demarcation and ambiguous demarcation of protected areas, and aggravated by their lack of citizenship. In Kaeng Krachan, the violent eviction of Karen from their forest homes in Kaeng Krachan National Park resulted in hunger, poverty and depression among the affected forest-dwellers especially among women who are the traditional knowledge-keepers of forest resources. The KaengKrachan Karen women do not have access to natural resources making it impossible for them to provide traditional food for their families. As farming is extremely restricted, they suffer from food insecurity and increasing poverty. They are living in constant fear and uncertainty due their violent expulsion and the use of force by wardens and the military forces. Almost all of their belongings were destroyed/burned, often, assets inherited from the grandparents and ancestors. Karen women who were forced to relocate cannot find enough jobs to meet their needs because they do not have the necessary knowledge and skill of the market economy which offers the jobs. Also, because of their lack or limited Thai language skills and insecure personal legal status, it is difficult for them to go out and find jobs.

**Laos**

The Kri area people with a very small population that they can be considered endangered. Removing them from their homeland would lead to their extinction as a people. Apart from this fundamental issue, the relocated Kri women face difficulties to meet their food supply and ensure potable water in their homes. Like many indigenous peoples in Laos, they are heavily dependent on natural resources in their territory for their subsistence. Their forced relocation to focal sites due to village clustering has alienated them from their source of identity – their territory. Then again they had to leave these sites because the pollution of the river severely limited their traditional farming practices and subsistence sources, crucial parts of the Kri ethnic identity. As they are injected into a completely new environment, the Kri women are having difficulties to provide for their families as they do not have the necessary skills to compete in the labour market. For instance, they do not have the skills and knowledge for cash crop production, particularly in monocrop plantation. If they employed in this chemical- and technology-dependent mode of production, they do not know the safety measures to protect their health. The environmental differences can cause health problems. Even the diseases, like malaria, are new to the relocatees. Secondly, the design of the relocation area is not culturally friendly for the performance of rituals, and thus, the Kri cultural integrity has been
undermined and threatened. Traditional knowledge and customary land management practices are likely to get lost as they cannot be practiced in the resettlement area. Third, the Kri and other peoples have been lumped together in one hamlet without much consideration for the cultural diversities and sensitivities of each people. Many women now work in the weaving center or as daily workers. As a consequence, community cooperation mechanisms and collective activities have changed. While the mine seems to have more benefits for young single individuals, already married women experience fewer benefits and greater hardship to adjust to lifestyle changes. Older women have gained the least from the mine’s operations as they do not have any direct benefits from the mine. Moreover, their integration into the cash economy forces them to have cash in order to meet their needs, something new compared to the non-cash subsistence economy in the mountains. Now, they have problems with water to keep house and to drink as they have to have cash in order buy water and they have to compete with others for water from wells which is not sufficient for all and it is not clean. This is an added burden to women in the resettlement sites.

**Philippines**

The militarization of the Bong Mal Blaan community in the Philippines because of the mining project worsens the suffering of the Blaan women. Their already marginalized situation due to lack of social services has been aggravated by the presence of military agents in their community who are constantly harassing and intimidating them. Because of military operations, the women have been prohibited by military agents from going to their swidden farms. This has resulted in insufficient food for the family. Even help and relief goods from outside, such as from the church, had been barred from entering the community. The practice of “aksafu” or sharing of food has been limited because of this. The military detachment was erected on a place above the village and near the spring where the community gets their drinking water leading contamination of the water source, not only physically but also spiritually. Water springs are considered sacred which must be kept ‘pure’ by barring the construction of human structures near them. The women now have to get water from a source farther away. With the ongoing “pangayaw” of the tribal warriors, their wives and children have been left vulnerable to attacks of the military. These tribal warriors are now declared as “bandits” and “fugitives” by the state forces and are vulnerable to being executed without due process. There had been incidences where the wife and children of the warriors, who were declared as bandits and fugitives by the government, were intimidated into divulging where their husbands and fathers are hiding. The wife and son of one of the tribal warriors were killed extra-judicially by military forces on October 18, 2012 on the pretext that it was a military operation was after the husband warrior. Houses and crop storage facilities were demolished and farm lots with crops were destroyed. These incidents have not only resulted in insufficient food, but also psychological stress.

**Malaysia**

Iban women in Sarawak are mainly responsible for subsistence production which insures family food security and some cash income from forest products and handicrafts. They now lack access to crucial food sources, sources of income, and can no longer produce their own goods and handicrafts, but most importantly, they lost part of their culture rooted in the NCR and the solidarity they enjoyed before their leader was coopted. The promised 250-hectare land for them by MARDI is nowhere in sight. Family welfare depends on the decisions made by women as they are almost solely responsible for household chores and child-rearing depriving them of time and energy to participate in meetings or attend events where decisions are made and discussions are done that will ultimately affect their status and role of women in that society. Thus, when it comes to community decision-making, they are marginalised. Additionally, most of Iban women do not know how to read and write, and do not know about their rights. They also lack the negotiation skills as they are not exposed to such opportunities. Thus, when the Rumah Nyawin was demolished, mostly women and children were there in that early morning, and they were not able to do anything except to ensure their family’s safety. Until now, they are unable to take any action because they do not know their rights and what actions to take. For the Iban women of Rumah Nyawin MARDI’s appropriation of their NCR land led to the loss not only their rights over their land, but also their temuda (farm), basic source of their livelihood. As one woman describes it: "Our life is very poor and poor life makes us depressed". The women and men of Rumah Bangga fought against Empresa because they knew what they will lose if they do not defend their NCR land.
2.2.5 Violations of indigenous women’s rights

Development-induced violations of indigenous women’s rights identified in each case study can be summarised as follows: the Constitutions of Cambodia, Laos PDR, Malaysia, Philippines and Thailand all contain non-discrimination as a principle, granting all citizens, men and women, ethnic groups, equal rights. Many of the natural resources needed for national development and priorities are now found mostly in indigenous territories. Because the population of indigenous peoples is most often in the minority, these peoples are often sacrificed in the name of development. The greatest impact of these developments is the alienation of the indigenous peoples from their source of identity and subsistence, and the base of their culture including their spirituality. Their eviction from and the destruction of their territories impact on their collective rights as peoples. This is the case of the Kui of Prame in Cambodia whose territory have been handed out for an ELC to the Chinese companies Lan Feng and Rui Feng, the Iban territories to the MARDI and Empresa for plantations, the Blaan territory to the Sagittarius Mines, Inc. (SMI) with the Anglo-Swiss firm Xtrata for the Tampakan Copper-Gold Project, and the Karen in Thailand for national parks and/or forest reserves. The Kri of Sepon have been displaced several times from their original ancestral territory and the Lisu and Akha have traditionally been moving around the Mekong sub-region.

In all cases, there was lack of adequate information shared to the women and their communities beforehand in a language and manner that they would have understood and given in a timeframe that allowed them to analyze the impacts of the development - to either reject, approve or negotiate for better arrangements. Except for the Blaan who have had a long-drawn case, the others only came to know of the projects or the government action, when it was about to be done. For instance, the Kui women came to know of the plantation only when the clearing of their farms and forests was about to start. Iban women only came to know of the MARDI and Empresa plans when their longhouse was to be demolished. The Karen came to know of their eviction when soldiers came and burned their homes despite their having entertained them the day before. The Kri were only informed that their village will be affected by the mining but no input was sought from them on how the relocation will be done. The Lisu and the Akha women of Mae Suai were arrested on the days they were summoned. In summary, violations of indigenous women’s rights in each country comprise the following aspects:

Cambodia
The Cambodian 2001 Land Law guarantee to Kui women that no authority outside of the community may acquire any rights to immovable property collectively belonging to the Kui people has been violated. The government has not provided official recognition of their community forests, which include their spirit forests, in violation of the provisions of the 2002 Forestry Law. No feasibility study and environmental and social impact assessment (ESIA) were conducted to demarcate clearly the perimeters of the concessions before the granting of ELCs. All these are in violation of the provisions of the 2005 sub-decree on ELCs. The sub-decree further requires that these documents must be shared with the affected communities. When the Kui women demanded these documents from the local authorities whose offices are mandated to have them, they were informed that no such documents exist.

Thailand
In Thailand, the arrests, intimidation, assaults and forced evictions by authorities of the Kaeng Krachan Karen is in direct contravention to the Thai Cabinet resolution 2010 on the restoration of Karen livelihood and traditional practices which explicitly grants the Karen people the right to remain on their land and to practice their traditional farming system. Sec. 57 of the 2007 Constitution provides that before any determination of land use is made that affects the material interest of the public, thorough public consultations must be undertaken. Sec. 85 reiterates the above principle of peoples’ participation by averring that the State shall encourage local communities to participate in the determination of measures to conserve and protect the quality of the environment sustainably. Surely the Lisu and Akha in Mae Suai and the Karen in Kaeng Krachan are part of the public who have material interest in the establishment of parks and by their traditional knowledge can contribute to environmental sustainability. This Constitutional
provision has not been used to inform, consult and get the consent of the concerned peoples, even as national parks are being expanded, like Kaeng Krachan. Information on the National Forest Policy and all pertinent laws that affect their lives has not been shared with the Lisu and Akha of Mae Suai and the Karen of Kaeng Krachan. As a consequence, forest dwellers and people relying on forest resources often turn as offenders even without being aware of it.

Laos
In Lao PDR, Kri women are protected under the 2002 Land Law as they are a users of the land of good standing through their subsistence farming and sustainable forest product gathering. They are also assured by the Mining Law that they are entitled to a safe drinking water as mining companies have to guarantee that water quality in its area of operation is safe for human consumption and the environment (Art. 40). The 1997 Mining Law ensures environmental protection and states that studies on the socio-economic impacts of the mining operation, and environmental impact assessment are required for mining exploitation. Despite these requirements, until today, the affected Kri and others do not know if such studies and assessments were undertaken, and if so, what are the results. Remedies to the negative impacts, like the polluted waterways had been communicated to concerned company officials and authorities but no action has been taken, nor is there assurance that action will be taken.

Philippines
In the Philippines, when SMI started its operations in the Blaan territory in Tampakan in 2002, they did not conduct any process to get the free, prior and informed consent (FPIC) of the Blaan. What they did was to connive with fake tribal leaders appointed by the local government unit. Material inducements were given in violation of the Implementing Rules and Regulations of the conduct of FPIC. Some community members were also hired as members of the Resettlement Committee which is tasked by SMI to act as conduit between the affected communities and SMI management to discuss resettlement plans and benefits. In one of the meetings conducted by the RC in the middle of 2012, packed lunches were distributed to community members. They were then asked to sign on a paper, without a heading. They found out later that their signatures signified their consent to the mining project. Personnel of the National Commission on Indigenous Peoples (NCIP) were reportedly present in this activity but were only silent and did not even discuss what FPIC is, as mandated of them. To further confuse and deceive the community into surrendering their lands, the process of “RUSH” was introduced. In this scheme, the community was made to believe by agents of SMI that their lands can be easily taken away from them since they do not have any proof of ownership. To remedy this, it was suggested that they should have their pictures taken in front of their fields. This picture would then become their proof of ownership of the land. However, these pictures where subsequently used by SMI as proof of the community member’s consent to turn over the land to SMI for mining. Those who refused to have their pictures taken were threatened that their homes will be demolished. SMI also imposed a “cut-off date” (March 22, 2012) for the community to express their agreement to their relocation. If not, any structures built or improvements to the land done by the Blaan will not be compensated if they are destroyed once the open-pit mine operations start. The company also offered payment of land within a 20-year lease period but these were rejected. Since displacement from their land is like death, the community decided to put up barricades to prevent the agents of the company from entering their ancestral land.

Malaysia
In Malaysia, The issuance of licenses over NCR lands to MARDI and Empresa and the non-recognition of NCR land of the Rumah Nyawin and Rumah Banggalban are violations of the Constitution and the Sarawak Land Code which protects Native Customary Rights (NCR), including the right to cultivate land, hunting and fishing rights, the right to use land for burial and ceremonial purposes, as well as rights of land inheritance and transfer. The destruction of Rumah Nyawin and the arrest of the leaders of Rumah Bangga are violations of the Federal Constitution which grants the defence of private property. Moreover, despite Malaysia’s national legislation, NCR lands often are not issued titles, or the process is too cumbersome and the Sarawak government continues to consider these native lands as "idle land". This is also because of differences in understanding of what constitutes NCR land among different government agencies. Logging
licenses and provisional leases are often issued out covering also communal land and reserved virgin forests. According to the national legislation, a survey has to be done before the government leases land in order to determine if indigenous peoples have rights over the area. Nevertheless, in case of the affected Iban, areas covered by leases include the Native Customary Rights land. In none of the cases was there an appropriate prior survey undertaken in the knowledge of the longhouse owners. Iban women continue to be discriminated in their access to political life as well as to basic social services despite the avowed pronouncements of the Malaysian government “the various ethnic groups are given the opportunity to participate at every level of political and decision making process as well as administration of the country”.

Further, it claims to have “developed comprehensive policies and strategies for the development of indigenous groups which focuses on uplifting the status and quality of life of the indigenous community via socioeconomic programmes.” Moreover, it recognised the right to shelter and adequate housing being “an imperative aspect of economic, social and cultural rights.” The eviction from and the appropriation of the Iban of Rumah Nyawin from their longhouse and NCR lands, and the attempt to do the same to the and Rumah Bangga Iban in favour of corporate plantations has not given them the opportunity to participate in decision-making nor has it uplifted their quality of life. These government actions, as a matter of fact, have violated their individual and collective rights. Iban women are not able to participate in decision-making because gender discrimination has not been eliminated not only in their culture but in law and practice. In the case of Rumah Nyawin, the Bintulu LSD and MARDI did not ensure that the Iban women were part of the discussions and decisions.

2.2.6 International obligations

The governments of Cambodia, Lao PDR, Malaysia, Philippines and Thailand have also committed to promote, protect and respect the rights of indigenous women and girls under national international human rights treaties. Specifically, all these governments have committed to uphold the rights of indigenous women and girls under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). To combat discrimination based on race, color, descent, national origin or ethnicity, Cambodia, Thailand, Lao PDR, and the Philippines are all States Parties to International Convention on the Elimination of Racial Discrimination (ICERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). All subject countries of the case studies, including Malaysia, are State Parties to the Convention on Biological Diversity (CBD) of which they committed to the conservation, sustainable use and fair and equitable sharing of the use of biological diversity and its components, with due consideration for all rights related to these resources. Further, under the CBD, they are obliged to promote indigenous knowledge and traditional ways of life in natural resource management and conservation and to recognize rights to practice specific cultures and means of livelihood. All these countries have favourably voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. The UNDRIP consolidates all the rights contained in international law as it relates to indigenous peoples into a single instrument.

Cambodia, Thailand, Laos, Philippines, Malaysia

All the countries, as State Parties to international treaties, have violated the rights of indigenous women that they have committed to promote, protect and respect. They are obliged under the CEDAW and ICERD to take measures to eliminate discrimination against indigenous women and peoples due to differences in birth, race, indigenous origin or identity, language, and sex, among others. All enunciate equal rights for all groups, and stipulate that there is no legal discrimination against any person or group. Although most of the States Parties have adopted measures and strategies in their legal policy framework, indigenous women still cannot enjoy equal opportunities and fundamental rights and freedoms as their men. In these countries, indigenous women still belong to the most disadvantaged segment of society, as the national legislation fails to protect their rights and address their specific needs. For instance, facility of indigenous women in the national language is a problem in all the cases, as well as knowledge of their rights. General Recommendation 23 (4d) of the CERD calls on States Parties to take the informed consent of indigenous peoples in decisions relating to their rights and interests. The Kui, the Kri, the Iban, the Blaan, the Lisu, Akha and Karen women and their communities have not given their informed consent on the projects and they remain socially and politically disadvantaged. Their access to political and public life as well as to the
social service system remains limited due to physical, economic, social, political and cultural constraints that had not been addressed effectively by governments. Discrimination prevails, not only in the wider society and among authorities, but also within communities. This is also prevalent within the legal justice system, as has becomes evident in all these cases. The disproportionate impact of the ELCs in Cambodia on the Kui, of Sepon Gold and Copper Project on the Kri, the MARDI and Empresa plantations on the Iban, the Tampakan Copper-Gold Project on the Blaan, and the National Forestry Policy on the Lisu, Akha and Karen women discriminates against them as women and as indigenous peoples.

The governments of Cambodia, Laos, Malaysia, Philippines and Thailand have failed to fulfil their obligations under the CEDAW to end any form of discrimination against indigenous women. They have not effectively undertaken measures that protect the indigenous women from the discrimination they face due to development policies and natural resource exploitation. In Malaysia for instance, the non-recognition of NCR lands, the delayed processing of applications for NCR land recognition, forced evictions, etc. have disproportionate impacts on Iban women which constitutes discrimination. In its first ever periodic report to the CEDAW in 2004, the government of Malaysia acknowledge that “indigenous women and those who are in estates and plantations are marginalised in terms of access to health services and facilities.” These all deny the Iban women the right to reach their full potential as women and as indigenous peoples. The same is true of the Kui women in Cambodia, the Karen women in Thailand, the Kri women in Laos, the Blaan women in the Philippines.

As parties to the CBD, the eviction of indigenous women from their ancestral territories does not support the governments’ commitments to support traditional knowledge and practices in natural resource management and conservation. The States Parties also have not amended their development policies in order to bring them in line with the CBD, but have actually strengthened national policies that will bring in more investments and to create and expand more national parks in indigenous peoples territories. In granting concessions in indigenous territories which include biologically critical resources, all governments violated their commitment under the UN Convention on Biological Diversity (CBD) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The lack of recognition of land ownership and land use rights in the described cases conflict with States Parties obligations under the CBD, like that of Thailand whose state policies and laws on protected areas still have not been amended in order to bring them in line with the CBD. In granting plantation concessions over NCR lands of the Iban to MARDI and Empresa, Malaysia has reneged on its obligation to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.”

Article1 of the IESCR states, amongst others, that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. All the States Parties themselves violated the right of indigenous men and women, to freely determine their social and cultural development and to maintain their traditional ways of living. The right to adequate food is a basic human right. Except for Malaysia, the other four countries are State Parties to the ICESCR which comprehensively addresses the right to adequate food have committed to progressively realize the right of everyone, including the indigenous women, “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (art. 11.1). They have violated their obligation to fulfil this right by preventing access of indigenous women to their existing sources of subsistence – their traditional forest gardens, swidden, temuda, waterways, and cultivated farms and plantations. They have failed in their obligation to protect by giving concessions to Lan Feng, Rui Feng, MARDI, Empresa, SMI, MMG Limited, and appropriating forests for national parks thus deprivingindigenous women of their access to adequate food. Despite the protests of the Prame Kui, Bintulu Iban, and Bong Mal Blaan to cancel the concessions over their traditional sources of food, the State has failed in its obligation to fulfill by not taking action to ensure their right to their means of subsistence, including food security. In all countries, the indigenous women’s rights to practice their traditional occupation and livelihood have been violated. States Parties are obligated to guarantee the right of employment and livelihood, including the provision of continuing technical advice and support” (IESCR Art. 6). Indigenous peoples, however, do not have the right to their
traditional occupations and means of subsistence but are rather punished for practicing their traditional livelihood systems.

The governments’ claims of ownership of all forestland and the imposition of national parks violate the governments’ commitments to the UNDRIP. The fact that they have failed to consult the indigenous women and their communities and not provided any information in a way understood by them about the projects violates the indigenous peoples’ right to self-determination (Art. 1-5), their right to Free, Prior and Informed Consent (e.g., Art. 10, 11, 19, 28), as well as their right to land, territory and natural resources (e.g., Art. 25, 26, 8, and 10). The latter includes the right to practice cultural traditions and customs by maintaining religious and cultural sites. These initiatives disrespect indigenous knowledge, cultures and traditional practice that contribute to sustainable development and proper management of the environment (see Art.11). The governments makes use of forcible eviction (as prohibited in Article 10, UNDRIP) to undermine indigenous peoples of their right to land, territory and resources (see Art. 26). The UNDRIP further stipulates that indigenous peoples have the right to determine their own priorities as to development, health, economic and social programs. Despite these provisions, the Sarawak government continues to deny the indigenous people’s rights, and the principles set out in the UNDRIP have yet to be explicitly incorporated in the national legislation.

Eviction and the use of force in Prame (Cambodia), Doi Chang, Doi Lan, Kaeng Krachan (Thailand), Vilabouly (Laos), Bintulu (Malaysia), and Bong Mal (Philippines) are contrary to the UNDRIP, the CBD and the International Covenant on Economic, Social and Cultural Rights. The denial of citizenship to indigenous peoples, especially indigenous women, is a violation of their human rights, depriving them exercise of fundamental rights, access to basic social services, them especially vulnerable for exploitation.

As Parties to the CRC, all these countries violate the principle of the best interest of the indigenous boy and girl children by the forced evictions from their ancestral homelands just to enforce national development agenda, discrimination and neglect by governments. This is exacerbated by the lack of remedial measures to mitigate the adverse impacts of such actions on indigenous children.

2.2.7 INDIGENOUS WOMEN’S ACCESS TO JUSTICE: KEY OBSTACLES

In the case studies, the indigenous women are shown to suffer from multiple discrimination due to their gender and ethnicity, which is often further aggravated by their socio-economic marginalization. The majority of them face significant barriers to accessing justice both in formal official and indigenous justice systems. Even though these barriers are often country- or context-specific, some key factors can be identified that are severely limiting the indigenous women’s access to justice throughout Southeast Asia. The following analysis relied mainly on the case studies from Cambodia, Thailand, Laos, Philippines, Malaysia presented during the consultation and on the additional testimonies of other participants.

1. Weak enforcement of existing national laws and implementation of orders and decrees, as well as conflicting laws/policies, abuse of authority and powers, corruption, patronage

The lack of legal recognition of indigenous peoples and their collective rights as enshrined in the UNDRIP is the root of many violations inflicted against indigenous peoples in Southeast Asia. Some laws and policies in some countries mention about the rights of communities to their lands but enforcement is weak or none at all.

Weak enforcement of laws and implementation of orders and decrees have been reported in all the countries where participants came from due to any or all of the following: lack of knowledge of the law and other fiat laws by law enforcement agencies, corruption, absence of rule of law, militarization, patronage politics, poorly functioning law enforcement systems, among others. In Prame commune, the provincial and district officials did not know the prerequisites under the Sub-decree on ELCs. The Cambodian Land Law, Forestry Law and the Sub-decree on ELCs are very clear on the rights of indigenous peoples with respect to
their land and resources but these had not been enforced. In the case of the Karen of Kaeng Krachan, it is difficult to comprehend why there had been no redress on the arson that gutted their homes and properties by government authorities. In the Sepon mine case, the government has not acted on the repeated complaints by villagers regarding the polluted river of which must be addressed under the Mining Law. In the Rumah Bangga case, the conditions of the lease to Empresa were not followed but still the longhouse was considered the violator of Empresa’s rights.

**Excessive number of laws and conflicting laws/policies/decrees** has also been reported in Cambodia, Thailand, Philippines and Malaysia. Different government agencies do not coordinate with each other trying to exercise their power over others to the detriment of the human rights and welfare of indigenous women and their communities. In Thailand, despite Constitutional guarantees for the rights to maintain cultural traditions and to participate with the State and communities in the conservation of natural resources, parks seem to take precedence over the human rights of indigenous peoples. In the Philippines, the IPRA, the Forestry Reform Code and the Mining Act of 1995 are still not fully harmonised in terms of the rights of indigenous peoples over their land, territories and resources. In Sarawak, the federal government and its agencies refuse to accept legal precedents in state and federal court rulings recognizing native titles. They instead require indigenous communities to treat each native title claim as a fresh legal argument. In Cambodia, the titling and registration of communal land titles has been hampered with lack of or lackadaisical enforcement of relevant laws and decrees. Indigenous communities must meet 29 requirements before they are granted communal land titles. The Prime Minister’s Directive 01 further confused indigenous communities into thinking that to secure their lands, they must have individual titles as contained by the directive. In a very recent study on this, almost all respondents were of the view that the directive has actually facilitated their loss of ancestral lands through their individual titles because by having the latter, they cannot have communal titles.

**Abuse of authority and powers by government officials and authorities and corruption** are rampant throughout the sub-region resulting in unlawful searches, seizures, detention, imprisonment, forced evacuations, and even extra-judicial killings. Homes and properties were torched in Kaeng Krachan, Juvy Capion of Bong Mal and her son were extra-judicially killed, the Rumah Nyawin, with only 120 residents, was unilaterally demolished by 200 policemen and two bulldozers and chainsaws.

### 2. Severe limitations in existing remedies provided either by law or in practice

Most legal systems fail to provide remedies to indigenous women, by law or in practice, that are effective, preventive, timely, non-discriminatory, adequate, just and culturally-sensitive. The barriers that limit indigenous women’s access to existing remedies, like lack of education and illiteracy, poverty, language, lack of knowledge of their rights, among other factors, often hamper indigenous women’s use of available justice remedies. Since most of the indigenous women and communities are poor, lack of free legal assistance limits access to quality legal advice and service. The Lisu and Akha women did not have counsel when they were interrogated. For instance, Meechae and Urai face financial difficulties in complying with the requirement to report every three weeks to the courts. The Rumah Bangga Iban could not have fought their cases if they did not have allies among the NGOs who gave them free service. The same is true for the Kui.

The experience of the participating indigenous women has shown that apart from the fact that their FPIC has not been obtained before the entry of projects in their territories, there are no oversight mechanisms that will address emerging issues during the implementation and post-implementation of projects. For instance, so many human rights issues emerged after the grant of ELCs in Cambodia, the national parks in Thailand, the mines in Indonesia, Laos and Philippines, and the plantations in Malaysia. In terms of compensation and resettlement, often the indigenous women and their communities are not provided any participation in designing such programmes. In many cases, compensation and relocation programmes target per family without due consideration to the gender roles within the family and thus fail to seize the opportunity to provide more support for women during these trying times in their lives.
Inefficient justice systems, non-responsive complaint-making procedure, long delays of the legal process

Official justice systems are often further characterized by structural weaknesses and deficiencies. At the very outset, the complaint-making procedure is neither sensitive, nor responsive or conducive to receiving complaints from indigenous women. As shown in the case of Rumah Bangga, the Iban reported the destruction of their property with the Belaru and Marudi police stations but the latter refused to accept their complaint. Court cases are often greatly delayed, taking months or even years before trial. It took 13 years for Ndukmit anak Egot to get justice for the death of her husband in the Rumah Bangga case. Justice delayed is justice denied. For the Rumah Nyawin Iban, the court did not rule on the petition for injunction within a reasonable time that would have allowed the petitioners due process. Two months beyond the validity of the order, the eviction was enforced. In the experience of the Bong Mal Blaan and other indigenous peoples in the Philippines, the NCIP, as the facilitator of the FPIC process, has in almost all cases allowed corporations to manipulate the process, leading to the cooptation of some indigenous leaders, and the granting of contentious Certificates of Precondition that certifies that such process took place. Procrastinations and court delays discourage female victims to take action and seek justice in official legal institutions. For the Prame Kui, they have learned from previous court cases that the resolution of land cases linked to government officials and big corporations is very rarely in favour of victims, and cases are delayed endlessly. Thus, the Kui prefer to seek support from other communities in struggle, NGOs and the UN agencies in the country rather than relying on the formal justice system. Moreover, a court procedure is expensive and time-consuming.

Gender and ethnic biases in the legal system and laws, discrimination, discriminatory attitudes, internalization of racial prejudice, limited participation in decision-making in both formal and traditional systems

Indigenous women often face multiple forms of gender- and ethnicity-based discrimination within formal justice systems, judicial and administrative offices. Due to their inadequacies, existing laws and remedies fail to protect them, and gender-specific restrictions hamper them in finding their way through the system to redress their grievances and claim their rights.

As parties to the CEDAW and ICERD, the governments of Cambodia, Lao PDR, Malaysia, Philippines and Thailand are obliged to take measures to combat discrimination in all its forms. The many barriers that indigenous women face in seeking redress in the formal justice system show that indigenous women are not particularly targeted in efforts to promote gender equality and combat discrimination. These barriers include their economic status. From the cases studies and testimonies, indigenous women continue to belong to the poorest sectors of the society. Forced displacements and destruction of their means of subsistence due to state and corporate development projects exacerbate this situation and they are disproportionately found in low income and unreliable forms of employment, compared to their previous self-sustaining and autonomous status as practitioners of traditional livelihoods. The majority cannot afford the prohibitive costs of using the system, expensive legal procedures or a reliable legal representation. Often indigenous women refrain from making use of existing institutions as they are afraid that they have to pay additional fees and/or bribes. The threat of sexual harassment within these formal system is always hanging over their heads too. Since they are not used to public negotiations, they are afraid to negotiate with authorities. They shoulder the majority of domestic responsibilities which makes it doubly burdensome to meet the requirements of a legal battle. As a consequence of inequalities in educational opportunities, they frequently suffer from illiteracy and the limitations of monolingualism. All official systems and officials use the national language. Indigenous women living in rural areas face the added barrier of geographical distance, as legal institutions are often based in town centers and capitals.

Constitutional guarantees are all in place that promote equality of men and women, and non-discrimination with respect to race, national or ethnic origin, color, sex, among other attributes but there is a disproportionate impact of development projects on indigenous peoples because of the resources in their
Many government officials and authorities still hold the view that indigenous peoples are backward, ignorant, etc. In Thailand, the persistent attitude against indigenous peoples as national security threats, foreigners, forest destroyers and related to drug issues, among officials and the general majority Thai, creates a climate that does not augur well for a just and fair access to justice. An alternative report in 2008 recommended that the Thai government should train officials assigned to the indigenous areas to have cultural sensitivity and gender perspective. The lack of citizenship of indigenous women gives them an added vulnerability because their gender makes them prone to sexual violence. In Cambodia, a parliamentarian openly used the name of an indigenous people to insult a colleague, perpetuating discrimination against indigenous peoples in Cambodia as barbarian/savage.

The States, together with national women’s machineries in the different countries, have the responsibility to ensure that women in general, and indigenous women, in particular, do not face discrimination in all aspects of formal and traditional justice systems. They must take measures especially to eliminate discrimination among the state bureaucracy, including the justice system, which will enhance indigenous women’s access to justice. However, in all cases, the women’s machineries had not been accessible to indigenous women, nor their issues related to development projects included in official CEDAW reports. It is in the shadow reports that we find the reporting of indigenous women’s situation related to development projects. In Cambodia, a shadow report mentioned that the official report did not mention the magnitude of human rights violations against indigenous women which included the severe impact of land loss, exclusion from basic services like education, health services and clean water. In Malaysia, a shadow report raised the resettlement of indigenous communities due to dams and the appropriation of customary lands for plantations as major concerns. The report concluded that the loss of easily accessible resources increases the burden and security risk for indigenous women and when these happen, the traditional roles of forest product gathering is taken over by men.

The patriarchal ideologies within the dominant as well as the indigenous societies consolidate gender inequalities in both formal and customary justice systems. When indigenous peoples face problems due to state and corporate development (as in the communities under study), indigenous women suffer disproportionately.

If this situation does not change, then the next generations of women will continue to be discriminated and excluded from decision making processes and denied access to remedies for violations of their rights related to development projects.

5. Lack of adequate information about existing laws and remedies, limited knowledge of rights

Indigenous peoples often have little knowledge of the existing legal framework, the court system in general, as well as specific legal procedures. As a consequence, they often lack confidence to actively engage in a lawsuit. Compared to men, indigenous women’s knowledge and understanding of the existing laws, regulations, and policies is often even more limited as they have fewer opportunities of receiving education and have limited national language skills. Limited knowledge and language barriers, in turn, set constraints for indigenous women to fully voice out and to participate in formal legal processes, and to engage with government offices. Thus when indigenous peoples face problems due to state and corporate development (as in the communities under study), indigenous women suffer disproportionately.

Many indigenous women do not know their constitutional rights, much more their rights under international law, and national laws and policies that relate to their land, territories and resources. As mentioned above, accessibility to adequate and quality information is hindered by their gender and ethnicity. In the Thailand case, although forestry laws are always used against indigenous women, there had not been substantial effort from authorities to educate indigenous peoples on these laws and related policies, nor had there been a clear demarcation of parks with the participation of communities. Indigenous people only come to know that they are violating laws when they are arrested or evicted, as in the case of the Meechae and Urai, and the Rumah Nyawin Iban. Not enough time is given to process information or to seek legal advice. The psychological impacts of these experiences and the subsequent alienation from their lands and homes territories. Many government officials and authorities still hold the view that indigenous peoples are backward, ignorant, etc. In Thailand, the persistent attitude against indigenous peoples as national security threats, foreigners, forest destroyers and related to drug issues, among officials and the general majority Thai, creates a climate that does not augur well for a just and fair access to justice. An alternative report in 2008 recommended that the Thai government should train officials assigned to the indigenous areas to have cultural sensitivity and gender perspective. The lack of citizenship of indigenous women gives them an added vulnerability because their gender makes them prone to sexual violence. In Cambodia, a parliamentarian openly used the name of an indigenous people to insult a colleague, perpetuating discrimination against indigenous peoples in Cambodia as barbarian/savage.

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impact severely on the well-being of indigenous women. In Thailand, many indigenous women do not understand how their normal practice of traditional subsistence agriculture is a crime.

Even various government authorities are found to lack knowledge of the law and their enforcement. These include the treaties to which the States are party to and the other international instruments that they signed into. In Cambodia, local authorities did not even know the requirements for the establishments of ELCs. Instead of responding to requests for documents, authorities just responded that whether they like it or not, the Kui lands will be taken away.

Lack of information on remedies further denies the indigenous women access to justice. In the Sepon mine case, the Kri women and others affected by the pollution of the river do not have any other knowledge of where else to bring their complaints as the local authorities and company have not given any concrete response nor advice to them of where to seek redress. The Rumah Nyawin ended with cooperation of their leader and the loss of their longhouse and NCR lands for want of other options to redress their case. In all cases, it is indigenous peoples organizations and advocates that had provided information on other remedies like alerting UN bodies and mechanisms, reporting to national human rights institutions, and the like.

6. Non-recognition of traditional justice and dispute resolution systems, limited available support systems, gag laws, weak organizational capacities

The lack of capacity for the majority of formal justice systems to accommodate the indigenous justice and dispute resolution systems is missing out on resources that can facilitate the delivery of justice to development-induced violations against indigenous women. As already mentioned, indigenous justice systems in Asia are prevalently patriarchal but in the absence of an accessible alternative, they are the ones that are accessible and familiar, and indigenous women are left with little choice.

Lack of or limited availability and limitations of alternative law groups, human rights organizations, other civil society actors in the countries (such as Cambodia and Laos) restrict the provision or facilitation of remedies and of legal aid/counsel, as well as the lobby for the repeal of laws that infringe on indigenous peoples rights. Several governments have enacted, or are in the process of enacting laws that aim to regulate non-governmental organisations from exercising their watchdog functions in the respect, protection and fulfilment of the human rights of their constituencies, e.g., Cambodia, Malaysia, Indonesia. The overall aim is to gag criticism of government both as an institution and the officials holding positions. The legislation of laws that limit the freedoms of advocacy groups to operate independently also hampers support for access to justice for indigenous women and their communities. Related to this, the freedoms of speech, association, religion or belief, and to information are slowly being curtailed in many of the countries where the case studies were conducted.

In the midst of all these constraints, indigenous women are also faced with weak organizational capacities. There are only a limited number of women’s organisations in Southeast Asia which are taking on issues to redress violation of indigenous women’s rights, and advocating for changes for the promotion, protection and respect of these rights.

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5. Para 243. CEDAW/C/MYS/1-2
2.3 Case Studies and Testimonies

Introduction: In many instances, areas of conflict in Southeast Asia coincide with indigenous territories that are being exploited for their natural resources. Ten Southeast Asian governments have formed a bloc called the Association of Southeast Asian Nations (ASEAN) since 1967. In 2015, there will be economic integration of all the member countries of ASEAN to form a single-market entity. This implies that some taxes will be removed, goods will move easier along borders, but more importantly, investments will be easier. This concretely means that there will be a liberalised investment environment for mining, more resource exploitation (energy and minerals), more economic land concessions, more opportunities for transportation, services and others. Governments have already or are already putting in place invitations for investors with offers of tax holidays, preferential access to resources, etc. These are all labelled as good for national development. Those sacrificed for this kind of development are those whose resources have been or are to be exploited, and in most cases, these are the indigenous peoples. They will face more displacement, more poverty, conflicts and more human rights violations. Fortunately, more and more indigenous peoples are becoming more aware of their rights as stated in the UNDRIP. Against this background, the voice of indigenous peoples and indigenous women have to be heard, consulted, and be represented in the political decision-making, and ownership of such development. In the following experiences shared by indigenous women on their experiences with development projects and activities in their territories, they face problems when trying to access justice, but they also show that they have takes their spaces in their struggles.

This is the context in which these indigenous women who are struggling in their communities against state and corporate development projects are here or are represented here to give their testimonies and experiences on the impact of development projects in their lives and the situation of their access to justice for violations of their individual and collective rights arising from these.

2.3.1 A. Economic Land Concessions, Plantations

A.1. CASE STUDY: Economic Land Concessions and their impact on Kui Women in Prame Commune, Preah Vihear Province, Cambodia
Sok Thy (Kui, Cambodia)

1. Background

The government recognizes twenty-four indigenous peoples and they constitute 1.34% of the country’s population. The major main issue affecting indigenous peoples throughout the kingdom is the loss of land, territories and natural resources due to widespread developments, particularly economic land concessions, dams and mines. Land alienation, in turn, has led to the destruction of indigenous peoples’ traditional and cultural practices, to poverty, marginalization and community solidarity. Land loss to economic land concessions (ELC) has also adversely affected the livelihoods of Kui indigenous peoples in Preah Vihear province. Kui women are particularly vulnerable subjects to the impacts of ELC, and they are disproportionally impacted due to their gender roles in the access, use, ownership of and control over the natural resources which form the basis of their means of subsistence and identity.

1.1 Legal and policy framework

The RGC 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 terms is used in the National Policy on the Development of Indigenous Peoples (2009), the Strategic plan for the Development of Indigenous Peoples 2006-2008, the 2001
Land Law (Ch. 3 Sec. 2), and the 2002 Forestry Law (Art. 37). This is accepted as referring to indigenous peoples as it is understood in international law.

The Cambodian Constitution of 1993 regards indigenous peoples as equal citizens of Cambodia. The 2001 Land Law affirms the collective ownership of indigenous lands, and states that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community. This law sets the basis for the legal recognition of collective land rights of indigenous communities, and affirms the role of traditional authorities, mechanisms and customs in decision-making processes. It also recognizes the practice of shifting cultivation as part of the traditional land management system of indigenous communities. Further, it states that women and men have the right to co-own land titles.

The Interim Strategy of Land Policy Framework (2002) respects community titles granted under the 2001 Land Law and goes further in ensuring user-rights to forest products for indigenous and local communities. It explicitly refers to the protection of traditional user-rights of indigenous communities and their right to practice shifting cultivation. It reiterates the granting of indigenous communities collective ownership rights to their land.

The 2002 Forest law contains provision for the official recognition of community forestry. It offers communities an opportunity to obtain user and management rights to forests in renewable periods.

In 2005, the Government passed the Sub-decree on Economic Land Concessions (ELCs) which granted an economic land concession only on State private land where “environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects” (Art. 4 sec. 3).


The 2009 National Policy on the Development of Indigenous Peoples (NPDIP) sets out government policies related to indigenous peoples in the fields of culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy.

In June 2012, the Prime Minister issued the so-called Directive 01. This directive affects the earlier existing legal framework supporting the indigenous peoples’ collective land titling and registration processes. Directive 01 encourages indigenous peoples to acquire individual land titles, effectively privatizing the ownership of lands. Under this directive, indigenous communities in land conflicts with companies are exhorted to accept individual land registration and titling instead of collective land registration and communal land titling as provided earlier.

The Royal Government of Cambodia (RGC) has established several mechanisms for the protection of human rights in all branches of government. In the legislative branch, Commissions for the Protection of Human Rights and Receipt of Complaints have been established in both the National Assembly and the Senate. These Commissions are mandated to facilitate, receive and address all complaints made by citizens who believe their rights have been violated. In the executive branch, the Cambodian Human Rights Committee assists the government in the development of human rights policies and to coordinate investigation and resolution of human rights abuses. In the judicial branch, all judicial institutions are granted supposedly independent powers to protect the rights and freedoms of all citizens and to ensure their human rights are not violated. The Military Court deals with cases related to
the armed forces. There are also the higher-level courts – Court of Appeals and the Supreme Court with jurisdiction throughout the country.

Various laws, policies and treaties protect indigenous women in Cambodia. The Royal Government of Cambodia (RGC) is State Party to important international human rights treaties and conservation instruments that are directly related to indigenous women – such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), as well as the Convention on Biological Diversity (CDB). Cambodia also voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

1.2 Community profile

Kui indigenous communities have lived in Preah Vihear, Kompong Thom, Stung Treng and other parts of the northern provinces of Cambodia since time immemorial. They heavily depend on land and natural resources for survival thus their culture and belief systems are strongly linked with their natural environment. As animists, they place great importance on sacred forests in all its elements, sacred sites and burial grounds. Since generations ago, Kui have been discriminated by the majority Khmer. As a result, many Kui are afraid to openly show their ethnicity.

Prame commune, the site of this case study, is composed of three Kui villages namely, Srey Preang, Bothum and Prame proper. It has a total population of 2,680 from 568 families (estimate the number of females), predominantly a young population. Governance is shared between the state machinery and the customary institution. The state is represented by the commune chief and the commune council and the commune police force, and at the village level, there is a village chief.

In the villages, the Kui have their own political and social systems. The traditional chief called Kreng Srok presides over the male-dominated traditional council of elders.

Since 2005, the three indigenous villages have been supported by local NGOs in their efforts to initiate community land registration processes. So far, these three villages have received a letter of community identity from Minister of Rural Development, and the Commune Council has acknowledged the traditional authorities (committee).

The commune has a public elementary school serving Grades 1 – 6 with three teachers and one school director. Although most of the adults, including women, can speak Khmer, Kui is the language in daily life. There is no health facility in the community and the nearest hospital, a secondary level hospital, is about 11 kilometers away. Although there is no public transportation to the three villages, the roads are in very good condition as the Prame commune is traversed by the Asian Highway Network.

A woman elder called Yeak Chaeng or Yeak Chheon Chaeng plays a very crucial role in maintaining the solidarity of the community as the ritual leader akin to a priestess. She is responsible for performing and leading life-to-death ceremonies, propitiation rites, prayers, and such functions. She negotiates between the people and the spirit world. She embodies the spirit of the peoples thus literally seen as the representative of the spirit world and thus it is her role to propagate the belief in order to keep the unity and solidarity amongst the Kui sustained and heightened. She regularly visits sacred sites (either in the villages, farms or forests) to exercise her role. It is for this very prestigious role of a woman that Kui women are highly regarded in their communities that make them also good at communication, networking and negotiations.
The Kui depend heavily on the forest for their subsistence through rotational rice farms cultivation, animal husbandry, hunting, honey collection, and gathering different kinds of non-timber forest products. They earn cash income from selling resin gathered from the forest and from their own plantations. Kui women are mainly responsible for gathering food from the forests and non-timber forest product such as rattan, firewood, and resin. Resin is the main source of income for Kui women.

There are parts of the forests which are called spirit forests where spirits of ancestors reside and which need to be propitiated often to keep them helpful and not disturb the living through making people sick, for instance. Because of their affinity with the forest, Kui women regularly visit these sites for worship and spiritual renewal that is important for their mental/psychological wellbeing. However, despite their important role in family and community food security, in traditional Kui societies, women are still marginalized. For example, their participation in the community’s political and public life as well as in decision-making processes are not encouraged. As will be described in the following section, the loss of access to land, forests and natural resources has a specific impact on Kui indigenous women as they belong to most vulnerable groups among the indigenous peoples in Cambodia.

2. Impacts of the development project on indigenous women

2.1 Information about the project

One of the most crucial drivers of Cambodia’s national economy is the agricultural sector. In order to spur the development of the agro-industry, the RGC is granting large areas of land to local and international investors, under so-called economic land concessions (ELCs). These lands are then converted into monocrop plantations of rubber, pine tree, sugar cane, etc. Most concessions are located in the country’s northeast, which is inhabited mainly by indigenous peoples. In almost all cases, the granting process is without the free, prior and informed consent of or even sharing of information with the affected indigenous peoples.

Prame commune has a long history of ELCs and land conflicts. In 1998 when the first logging concession came to Prame, the villages, supported by local authorities, protested and submitted their complaints to the Prime Minister and after a sustained protest the logging concession was cancelled in 2002. In 2007, land conflicts heightened when mineral concessions were granted in the nearby Roveng district of Preah Vihear, and ELCs in the Kui territories in Tbeng Meanchey and Chheb districts.

Sometime in 2010, Prame commune villagers heard from some co-villagers who were members of the Cambodian Peoples Party (CPP), the commune and village chiefs that a company was coming to their villages. There were no details at all about what this was all about, and even the name of the company was not divulged. Because only a few were informed about this, this news only spread by word of mouth and created discussions among the villagers. Despite the refusal of the village and district authorities to share information, the villagers, however, were able to secure some documents showing that a company named Rui Feng has a contract with the Ministry of Agriculture for an economic land concession in Prame commune with an area of 8,841 hectares. They also were able to secure a document originating from the Ministry of Council informing the Ministry of Agriculture that a company named Lan Feng has applied for an adjacent ELC for an area of 9,015 hectares. These documents were accompanied with maps that clearly showed that the three Kui villages in the commune were within the mentioned concession areas. The ELCs were granted to these companies on July 6, 2011 for sugarcane, acacia and rubber plantations.
In early 2011, the deputy village chief and some villagers came to the villages with some company people to put markers on their lands. When people asked why was the commune giving out their lands, the deputy responded that no land is being given out. Despite showing the documents that they had, the deputy still denied that Kui lands in the commune were given away. The villagers then sent a complaint letter to the Provincial Governor and at the same time, sent a delegation to the District Governor to ask for a copy of the relevant ELC documents of the two companies. The people were demanding such documents because if indeed they have ELCs in their commune, by law, these documents must be in the District Governor’s Office. Both offices replied that they did not have a copy of such documents.

On 08 April to October 2012, the two companies started bulldozing the forests with the help of uniformed personnel. Since then, more clearings have been done in the area farthest from the villages which be cannot easily monitored. Sometimes, the clearings are done at night.

The cleared lands include ricefields, farmlands, and the spirit forest named “Rolumtung”. The company has further destroyed an undetermined area at the O’Preal, O’Pou Parm, O’Bes and Kachas forests. Demolished include the remnants of ancient Kui temples called Yaek Chung Kuoy (Grandmother Chung Kuoy), Yaek Pluok (Grandmother with grey hair) and other temple ruins which all are sacred sites, as well as the nearby site of an ancient Kui village as shown by shards, bones, etc., found in the site. Around 600 resin trees owned by approximately 74 families, all of which had been inherited from their ancestors, were also cut down. The affected families complained to the provincial office of the Ministry of Agriculture and were told that they can go back and reclaim their farms but there was no mechanism provided for them to do this.
The government has repeatedly claimed that the ELCs offer employment opportunities for the Kui with each village having a quota of 50 slots. Inducement to work with the company comes in the form of higher daily wages. The companies pay a daily wage of USD5/day while the going rate is about USD3.5/day. However, the Kui know these jobs are temporary, manual that they cannot subsist on compared to what they produce from the farms and gather from the forests. These temporary low-paying jobs and influence of the ruling party are used to divide the community. Very few locals did only short-term jobs like the partial construction of the perimeter fence.

On August 2, 2012, 62 Kui women joined by 83 of their villagemates confronted the Rui Feng for the destruction of their truokon (water grass) pond and the paddies of 20 families.

They demanded that the manager suspend the bulldozing and take back all the machines and materials out while no solution to their complaints has been agreed on. As a consequence, on August 23rd, the Deputy Governor of Preah Vihear told the villagers to meet him at the site to discuss a solution to the land dispute. Ninety-five villagers, one-third of them women, met with the authorities. The Deputy Governor asked the community to make a formal request to him for the grant of a community forest. The Forestry Administration Officer suggested that the villagers write to the district-level Forestry Administration for this. What the villagers did was to prepare a request for a collective land title to the Provincial Cabinet that they submitted on September 7, 2012. Until now, there had been no action on this request.

In the meantime, through Directive 01, the Prime Minister ordered the creation of so-called Youth Volunteers in mid-2012 organized under the Ministry of Land Management to be deployed in all provinces to undertake land demarcation and registration in preparation for individual land titling. The Directive banned NGOs and outsiders from participating even in awareness-raising and providing technical assistance to indigenous communities. Lacking transparency, expertise, accountability and carrying a questionable mandate, the Youth Volunteers acted with arrogance in their work. These volunteers warned the Prame villagers that their land would become the property of the company if they refused to take part in the individual land registration and titling process. This created division among the Kui in Prame. Approximately 30 families linked to the former commune chief and to the local authorities accepted the individual land titling process. The rest (more than 450 families) strongly demanded for collective land registration and communal land titles. The bigger group wants to maintain the Kui’s traditional culture, beliefs and customs, as well as traditional resource management systems that are dependent on collective ownership and management of the territory and its resources. In a turnabout in early 2013, the Prime Minister called for the cessation of the activities of the Youth Volunteers that is a tacit order to stop individual land titling. However, the Prame Kui and other indigenous peoples are not putting their guards down because there will be elections in mid-2013 so they consider this move an election propaganda. Also, for the Prame Kui, the government has already achieved what it wanted because the licenses of the two concessionaires had already been granted, the validity of which are unknown, while the people can wait for their collective land title forever.
2.2 Development-induced violations against Kui women’s human rights

In line with the economic thrust of the government, the Ministry of Agriculture has granted the ELCs over Prame Kui lands, forests, farms, grasslands, sacred sites and burial grounds clearly without proper and meaningful consultation, and without seeking and obtaining the consent of the Kui villagers as required by the Sub-decree on ELCs. From the very start, no information was shared and information was denied when requested.

The concessions disproportionately impact on the land rights and the right to the means of subsistence and practice of the traditional occupation of Kui women\(^{15}\) because of the destruction of their resource base - land, waters and forests. This has led to loss of food sources and livelihood and access thereto. Destruction of the forest and difficulty in accessing the forest restricts the use of natural resources, gathering of resin, wild foods, wildlife and traditional medicine. The desecration of the spirit forest, culturally-significant sites and burial grounds is a violation of their right to freedom of belief and their cultural rights. As a consequence, spiritual beliefs and practices are marginalized and under threat of erosion. The clearings have also caused a shortage of water supplies that are important resources for women for their home-keeping and health. Intra-community conflicts have also arose among villagers because of the perceived benefits arising from the concessions and the harassment they face when they claim their rights. For instance, two of their male youth leaders have been rumored to be slapped with sedition and threatened bodily harm. These IPHRDs have been providing the community with human rights education and information on the laws governing lands and forests, and legal procedural matters. That such Kui youth were bold enough to know their rights and the law more than the officials is a threat that officials feel against their power.

Kui men and women leaders expressed concerns and uncertainty when asked\(^ {16}\) about the developments in their areas. They are worried that “this kind of development aggression will rapidly destroy the Kui tradition, culture, beliefs, and economic systems, because in reality, the Government does not want to help indigenous Kui to find a way out of poverty, but rather intends to further push them into deeper poverty”. The villagers in Prame have lost their trust in government institutions, including the provincial government, district offices, and the police.

ELCs have posed a challenge on the implementation and enforcement of Cambodia’s Constitution and laws. The Constitution grants indigenous peoples the same rights as other Cambodian citizens, e.g., the right to own land and those they shall not be deprived of their land without just compensation beforehand (Art. 44). For the Kui villages, Article 25 guarantees the protection of their right to continue to practice their traditional farming. The fact that indigenous peoples are disproportionately impacted, by the granting of ELCs is already discriminatory. The laws, sub-decrees, policies and plans which affirm the right of indigenous peoples to collective land rights have not been enforced since the Land Law was first promulgated in 2001. This has allowed lower-level officials from the provincial, district, commune and village officials to act with impunity and ignorance by just following ruling political party interests, all indicating the absence of rule of law.
While parts of the Prame Kui territory have been parcelled out to ELCs without the FPIC obtained from the Kui, the collective land registration process is so complicated, costly and time consuming, and has been delayed in many cases that there is no relief to the situation that the Kui face. There is no political will to improve and accelerate the procedure with already more than a decade since the 2001 Land Law was passed. The first communal land title was only granted at the end of 2011. Two other titles as of end 2012 followed this. This extended delay in processing the legal documentation of indigenous territories is a denial of justice. The lack of a clear law enforcement mechanism of the Sub-decree on communal land registration issued in 2009 results in arbitrary land and forest alienation, as in the case of the Kui communities of Prame. On the other hand, provisions of the 2005 sub-decree on ELCs which requires the conduct of a feasibility study that demarcates clearly the perimeters of the concession, and the conduct of environmental and social impact assessment (ESIA) before the granting of ELCs have not been done in the Prame case. The sub-decree further requires that these documents must be shared with the affected communities. As discovered by the Prame Kui, the District Office does not have these or refuse to show them, thus violating their access to relevant information, and a violation of the law.

The ELC have negative impacts on both Kui men and women. However, Kui women are more severely affected by the loss of natural resources and their access to these because of their traditional role as main food providers gathering forest food products. Apart from direct destruction, the ELCs have fenced part of their concession denying access to the forests and farms by the road. Women now have to travel a longer route in order to reach the extant forests and farms beyond the concessions. The women’s loss of their spirit forests as important places for worship and rites further threaten their spiritual and mental well-being and health. As regular forest users, Kui women also are the active maintainers of the spirit forest.

The indigenous women of Prame disproportionally suffer from poverty because although they have a major role for ensuring family food security, all their efforts are directed towards meeting family needs. This limits their access to information, education and health services and opportunities for additional livelihood. Health care and education, irrespective of the quality, are not accessible to the Kui women. Compared to men, they have less knowledge of their rights, as well as of laws and policies linked to indigenous peoples. Poverty, in turn, can cause additional stress for families, leading to an increase in domestic violence. The companies have destroyed part of the Kui women’s traditional livelihoods, occupations and main sources of income, and the sacred sites and places of worship.

Most of the interviewed Kui women and their key leaders expressed deep hopelessness as an adequate solution to the dispute seems not to be in sight. Instead, Kui women have to live a life in constant fear due to threats and accusations from the company and the government. However, the spectre of loss of territory, hunger and poverty compels them persist in their struggle.

3. Kui Women’s Access to Justice

In the current struggle against Land Feng and Rui Feng, the villagers have not confronted the operators in the clearing areas because they did not want to confront bulldozers and machetes with only their voice. Undue pressure from the provincial governor, alleged bribery and cooption of some officials and villagers, threats, and other Destructive machines in Kui forests. Photo credit: CIYA
inimical acts are being used to systematically divide the community in order to break the opposition to the ELCs. Veiled threats against the villagers who refused individual land titling was made by some high officials who accused them of being anti-development and attempting to create an autonomous zone, a seditious crime. The Kui women and men say that government institutions are corrupt and thus, not willing to contribute to a fair solution thus not a venue for redress.

The villagers have taken action at different levels, including networking and mobilization among communities in similar struggles (e.g. financial and emotional solidarity), protests and demonstrations just to stop the companies’ activities, as well as the filing of complaints to authorities, such as the provincial and district authorities and officials. They have built a support group among local NGOs, indigenous organizations, as well as parliamentarians from the various political parties. They also briefed the Cambodia offices of the UN Office of High Commissioner on Human Rights Officer and the Office of the International Labour Organisation. Mainly, the Kui villagers are seeking legal assistance, advice and guidance with regard to their legal struggle. In Prame, NGOs and outsiders are not allowed to enter the communities as local authorities are trying to retain control over the area. Over the course of the struggle, Kui communities also have often arranged traditional ceremonies in order to ask the spirits for their support. Despite the support of various human rights organizations, the communities still lack legal representation, e.g., when their leaders are charged under the law.

Because of the strong assertion of the Prame Kui of their rights, even Kui who are not at all involved in the struggle are discriminated and harassed. For instance, there are three Kui doctors in the provincial hospital. When their colleagues came to know they from Prame, they were told that the Prame Kui are very bad and crazy because they do not want development and individual land registration.

Even if women’s involvement in decision-making processes is not culturally sanctioned in traditional Kui communities, the importance of their support and participation in the current land conflict has been increasingly been recognized by men. In this particular struggle, it is the Kui women who have been actively doing the mobilizations, organizing, networking and advocacy. They are regularly seen and heard in the protests to stop the companies from destroying their farms, sacred sites, spirit forests and resin trees, and in meetings with the provincial authorities and company officials. They have elected their own representatives, and described themselves as playing a vital role in mobilizing communities as well as in consolidating and strengthening the solidarity among Kui indigenous communities in this struggle. Moreover, Kui women also believe that they are able to reduce the use of force by state forces during protests. As in Khmer culture, women are regarded as “mothers”; violence is rarely used against them. Therefore, the Kui women often act as the frontliners in demonstrations.
Kui indigenous women have been involved in many stages of the struggle: in collective decision making processes, in demonstrations, and in filing of complaints to relevant government institutions. They have claimed the right to express their opinions. However, in some areas, women remained excluded. For example, only men were allowed to take part in the discussions and presentations with higher-level authorities, but they are subject to the same surveillance and security risks the men face. Women leaders have been followed and threatened by the local authorities in all their activities.

In the future, the Kui men and women are planning to further raise awareness about their issues on the regional and international level. They also intend to submit a complaint about their case to the Prime Minister and the King of Cambodia.

Sadly, the latest news is that one of the indigenous women human rights defenders has been killed on February 16, 2013. On February 11, 2013, a 56-year old woman leader from one of the Kui villages under siege was killed and the police have not yet progressed in the investigation of the case. Interestingly, the day before, the Kui in the commune stopped a commune police officer from cutting trees in their forests.

Indigenous peoples in general and indigenous women in particular, clearly face barriers when trying to access the Cambodian legal system. First, since no information is shared with them regarding the grant of ELCs in their territory, there is no way that they can invoke the requirement under the Sub-decree on ELCs of site identification with their participation. The Kui women have exercised their right to information by requesting for the feasibility studies and ESIAs of the ELCs through written and verbal communications to the concerned authorities. However, the authorities withheld information and even denied that such information exists. The communities identified the government’s lack of political will to assume their legal obligations as one root causes for the lack of justice remedies. The authorities’ lack of commitment to the Cambodian legal framework creates an unfavorable ground for the Kui indigenous men and women to make use of existing legal institutions at all.

Second, there is no mechanism known to the Prame Kui, which they can use to hold the government accountable for their actions. They know from the experience of others that the courts are corrupt and biased to the powerful. Although the Prame Kui have taken it upon themselves to know their rights, the government does not provide the process by which they can participate in a meaningful dialogue. The broad power of the Prime Minister and the seemingly unquestioning compliance of lower-level officials to national directives to give away concessions without consultation undermine the rights of the Kui women. The Sub-decree on ELCs is discriminatory as it is applied now as it sees the respect of indigenous peoples rights as subject to national interests that can be set aside to favor ELCs. Further, the effectiveness of the overall legal framework is undermined by gaps, overlaps in laws and their implementing institutions and with the Executive branch. For instance, the fact that there are no documents as required by law in the District Governor’s Office regarding the Lan Feng and Rui Feng concessions, and the violations of the laws by authorities, are clear signs of the absence of the rule of law.
Third, the indigenous peoples often have little knowledge of the court system in general, as well as on specific legal procedures. Most of them are even not aware of the existing legal framework. As a consequence, the villagers often lack confidence to actively engage in a lawsuit. However, they also know that the system of justice in Cambodia is corrupt, and in many cases, biased and not likely to decide in favor of indigenous peoples. The Kui villagers learned from former court cases that the resolution of land conflicts linked to government officials and large companies is very rarely in favor of victims, and cases are delayed endlessly. Thus, the Kui prefer to seek support from other communities in struggle, human rights NGOs, and UN agencies rather than relying on the formal justice system. Moreover, a court procedure is very time-consuming and costly for the villagers.

Fourth, within the justice system, indigenous peoples often face discriminatory attitudes of government officials. Many still hold the view that indigenous peoples are backward, ignorant, barbarian etc.

Fifth, compared to men, indigenous women’s knowledge and understanding on the existing laws, regulations, and policies is often even more limited as they have fewer opportunities of receiving education, also resulting in a lack of language skills. Limited knowledge and language barriers, in turn, set constraints for women to fully voice out and to participate in formal legal processes, and engaging with government offices.

Sixth, indigenous women belong to the most poverty-stricken segment of the indigenous population. Therefore, financial hardship is also a crucial obstacle for Kui women to participate in the advocacy of their rights. Often, they cannot afford legal assistance or even travel expenses and transportation costs to reach distant administrative offices. As they have to provide for their families, they cannot easily interrupt their daily work or spend money to support the community’s struggle for justice.

Kui indigenous women often face patriarchal ideologies within the dominant as well as their own indigenous societies, which consolidate gender inequalities in both formal and customary justice systems.

4. RECOMMENDATIONS

To the government:

1) Revoke the ELCs of Lan Feng and Rui Feng ELCs in Preah Vihear province, as these concessions have not complied with the requisites of Sub-decree on ELCs, and the 2001 Land Law.

2) Undertake measures to facilitate the communal titling of indigenous peoples lands as stipulated under the 2001 Land Law and to legitimize collective community rights for the utilization of natural resources. It must ensure that territories are protected in the interval before the completion of titling, in accordance with relevant international covenants, conventions and declarations.

3) Review and amend laws and policies affecting indigenous peoples’ livelihood, including 2002 Forestry Law in order to recognize indigenous peoples as traditional owners of the forests and grant them management rights.

4) Suspend the granting of ELCs in indigenous peoples territories immediately until these lands have been demarcated and granted legal recognition as communal lands.

5) Create a mechanism for the restitution of lands taken without the indigenous peoples’ free, prior and informed consent, including compensation.

6) Impose sanctions and prosecute officials and other offenders who violated the laws on the rights of indigenous peoples, including the arbitrary granting of ELCs.

7) Investigate threats, harassment, and other human rights violations against indigenous peoples who are asserting their rights to their lands, territories and resources and desist from criminalizing such exercise of rights and freedoms.
8) Undertake measures to promote knowledge of all the laws and international treaties Cambodia is party to, and all instruments it is signatory, like the UNDRIP, CEDAW, ICERD, IESCR and CBD. Implement the Concluding Comment of the 34th session of the CEDAW, which “urged the Cambodian government to ensure that rural women participate fully in decision-making processes ... and to disseminate information on the Land Law and the land registration process.”

9) Develop and implement programs in collaboration with indigenous women and their communities, targeting the improvement of the educational, health, social and political development of indigenous women through human rights based and culturally appropriate approaches.

To support groups:

10) Provide support to increase the knowledge of indigenous women and men on the rights of women, existing laws and policies that impact on them, remedies to access justice, as well as their capacity to engaged in equal-footing with indigenous men in community-development.

11) Provide legal assistance to indigenous people/women as well as communities facing human rights violations who have limited access to the legal system and lack of legal representation.

To communities and IPHRDs:

12) Maintain strong solidarity and unity in community-land titling efforts and communal land registration initiatives. Once the ICs have received legal entity status, consider to seek help from lawyers for future legal actions against the company. Meanwhile, collect and document further evidence of the company’s operations, threats and intimidations (e.g. voice recording, photos and videos).

COMMENTS:

Sok Thy of the CIYA presented the study above and below are the comments after the presentation.

KOMNAS Perempuan: Thanks Sok Thy for your fight as a human rights defender. The government does not pay attention to the relation between people and nature. As a human rights defender, I have to say that this fight is not easy to do by yourselves. 1) It is important to network with other parties, such as NGOs and scholars who can explain the relation between forest and culture. 2) Justice with the government and the court is not easy, but there is an effort going on. 3) It is also important to document and report your case to the national and international levels.

EMRIP: In ASEAN, the situation will worsen with ELCs like this. We will have to prepare ourselves. There are mechanisms in Cambodia that can be options for you. The UN Office of the High Commission on Human Rights is there. Access to justice is missing in Cambodia. I suggest that you look to the departments (e.g. about health), maybe environment or education, and try to bring them in.

Samin (Cambodia): Indigenous women in Cambodia have mobilized leaders to discuss with the company. If male IP leaders come, often people think they are trying to become politicians. But in discussing with the company, women are sometimes better.
References


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A.2 TESTIMONY: Development is grabbing land from local people
Daw Bauk Jar (Kachin, Burma)

Slide 1
Development is grabbing land from local people

Daw Bawk Jar
Member of Hugawng Farmers’ Committee
NDF party candidate for Hpakhant township

Slide 2
World Conservation Tiger Reserve in Hugawng Valley
- HG valley is in western Kachin state
- 21,890 sq km
- In 2001, Wildlife Conservation Society and the regime established Tiger Reserve (biggest in world)
- Population approx. 70,000
- Majority Kachin, others include Naga and Shan

Slide 3
Original livelihoods
- Rice paddy field
- Grabbing their land during one day

Slide 4
Yuzana company’s mono-plantation

Slide 5
Cassava plantation

Slide 6
Living conditions
Increasing drug users and sex workers

Transportation is getting worse

How does the Court work?

- Serious questioning to elder people who don’t know Burmese language (treat like crime-committers)
- This legal process takes a long time or is delayed; causes depression
- There is intimidation in Court
- Unfair ruling
- Until they sue the company at the National level.

Thank You for your attention!
**Bawk Jar:** I also want to cry. Long time ago, my village was attacked, and men were killed by the military. They buried all the dead bodies in just one big grave. Women were raped and sexually abused, putting a stick into their vagina and sitting them up and down. There was a lot of harassment. They brought them to other places to rape them. This group killed my grandfather. These cases are still happening in my area. My family experienced the situation and this makes me very sad and motivates me to become politically active. After I graduated from the university, I went back to my place to ensure my children’s education. I was working in community development projects, such as primary schools, in income generation. The Yuzana company came to my village in the western part of Kachin State. It confiscated 20,000 acres land for the tiger reservation, established 2001 by the Burmese regime and the US-based Wildlife Conservation Society affecting about 7000 people living in the village, mainly Kachin, Burmese, Shan and Naga people. The company has a very powerful military background. They are just grabbing people’s lands, confiscating entire villages. All of the legal or administrative departments are biased. Most of them disappear within one day. When the company comes in the village, the community is against them, but they lose - they ban their village. She also describes the plantation of sugar cane. The living conditions get worse. The trees are all cut, so it is difficult to find firewood. Shortages are happening; people are getting sick of malaria and diarrhea. Look at this picture of a situation after the land confiscation - people have to stay just beside their house, they have no job, no food, people are dying. The picture shows a women eating cassava because she has no food, and she died afterwards. Without income, people cannot repair their houses; they do not have enough for living. This other picture of a small hut is the primary school in the village. The land was confiscated, and villagers were expected to work for them. The villagers sued the company since 2007. Several times, they sued the company, so the company is not successful yet. The young people cannot attend school because parents cannot afford it. Many young people abuse drugs. There is trafficking and sex work among women. The roads used by the company are in very bad condition because of mud. We also appealed to the ILO, but there were a lot of intimidations. The situation is getting worse; some villagers don’t want to move to their relocation camps. The army announced that they would shoot those who do not want to move. Local authorities are grabbing property, money, and even donation money in the church. Two women and a man were arrested. What we did was to bring the case to the state court. The judge decided unfairly. Even during the process, there were many intimidations. Some elder people cannot speak Burmese very well. The court did not get any interpreter. During the court case, the judge was sleepy then he declared the following compensation: 1 acre for 1 tree. The community refused the compensation scheme and appealed to the national-level court. There is no mechanism to punish the judge. The legal process does not work. The people are planning to demonstrate. Last year, it was announced that every individual can demonstrate, but this is not true. The police station refused the permit to demonstrate. We threatened to demonstrate at the police station. We explained that we are against the company, not the government. The police stated that the reason why the demonstration was forbidden is because the roads will be too full and blocked. We still demonstrated and the owner of the company came to negotiate with us. The owner said that they did not confiscate the land, but the government gave it to them as all land and the government owns natural resources. When we met the owner, we told him that we will get back the land from the company and will continue with the legal process. The company promised to give back the land and support a school in the village.

**COMMENTS:**

**EMRIP:** Burma is part of ASEAN, and severe human rights violations are happening. In the region, a strong mechanism to monitor human rights violations has to be established. Burma has also ratified the CBD, so the tiger reservation area should have been protected. The evidence should be collected and maintained, as in the case of Cambodia, as atrocities can be brought to court now even years after. Those kinds of violations are without time limitation.

Mr. Achmad (Vice-Chair ACWC): when I am listening to the presentation, I feel that in reality there is no progress at all, as it seems, in the light of ASEAN.
A.3. CASE STUDY: Development Aggression and its Impact on Sarawak Indigenous Women

Hellan Empaing (Dayak, BRIMAS)

1. Background

Sarawak, located in the Northwest of Borneo, is home to 28 ethnic groups, each with its own distinct language, culture and lifestyle. The Sarawak legislation recognizes the Sarawak indigenous peoples’ customary land rights. Despite the existing legal framework, both private- and government-owned logging and oil palm companies have been continuously violating indigenous peoples land rights. Iban indigenous women in Sarawak particularly suffer from a range of problems related to the violation of their rights, both within their own and in the broader society.

1.1 Constitutional, legal and policy framework

Malaysia is a Federation with Sarawak as one of the thirteen states and three federal territories that comprise it. The powers of the state governments are limited by the Federal Constitution and under the terms of the Federation. Sabah and Sarawak retain certain constitutional prerogatives (e.g., right to maintain their own immigration controls, and raise their own revenue) and are entitled to seats in House of Representatives. There are so-called special interests and safeguards that are granted to the States of Sabah and Sarawak under the Constitution, such as:

- Separate courts called the High Court in Sabah and Sarawak that has jurisdiction over Sabah and Sarawak
- The Legislative Assemblies of Sabah and Sarawak have the power to make laws on additional matters including native law and custom.

Fundamental liberties are guaranteed by the Federal Constitution such as rights to life, personal liberty, equality before the law; freedom of movement, speech, assembly and association; freedom of religion; right in respect of education, right to property, right of redress, among others. It also prohibits gender discrimination.

Malaysia’s system of governance incorporates a two-tier system of government – federal and state – with both having legislative powers. The Head of State of Sarawak is the Governor who in turn appoints the Chief Minister as head of the State’s executive branch. The leader of the party that dominates the State Legislative Assembly normally fills the post of the Chief Minister. The State Government or ‘Executive’ is made up of the Chief Minister and his Cabinet of Ministers who are appointed by the Chief Minister. The Chief Minister may also appoint Assistant Ministers. With respect to its judicial system, Malaysia has a plural legal system as it accepts the concurrent operation of distinct bodies of law. In Sarawak, the Federal Constitution officially recognizes customary laws. Several constitutional provisions protect native customary practices. Traditional indigenous decision making mechanisms, and native authorities and courts continue to administer local community affairs.

The national human rights institution, the Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM), is mandated with the power to inquire into complaints relating to human rights violations, to promote awareness and provide human rights education, advise and assist the Government in formulating legislation and procedures. It can also recommend which treaties and international human rights instruments the Government can subscribe or accede to. However, it is restrictive in its work as the rights it covers are only those contained in the Federal Constitution. The Government has not accepted most of SUHAKAM’s recommendations and the annual reports submitted to Parliament were never debated upon. It also does not have any enforcement authority.
In its report to the 4th session UN Human Rights Council Working Group on the Universal Periodic Review (WGUPR), Malaysia stated “the most significant challenge which besets Malaysia is lifting indigenous groups from backwardness and assimilating them into mainstream society.... At the same time, the Government has given priority to help them preserve their traditional cultural heritage.” In the same report, it stated that Malaysia’s National Cultural Policy “provides for cultural development through absorption and synthesis to encourage national unity and reduce tendencies towards racial polarisation.... Every community is encouraged to practice, express and showcase their cultural and artistic heritage, thus enhancing cross-cultural understanding and appreciation of the cultural diversity.

Besides that, there are specific national laws, e.g., the Land Code 1958 (see Annex A), which protect and promote indigenous peoples’ rights, especially their Native Customary Rights (NCR), including the right to cultivate land, hunting and fishing rights, the right to use land for burial and ceremonial purposes, as well as rights of land inheritance and transfer. In terms of jurisprudence, several state and federal court rulings have essentially accorded native titles to the lands, territories and resource traditionally owned, occupied or acquired by indigenous peoples, including those in Sarawak.

At the international level, Malaysia acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) but with reservations and the Convention on the Rights of the Child (CRC). It is also party the Convention on Biological Diversity (CBD) where it committed to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.” It has also favoured the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that affirms the right of indigenous peoples to determine their own priorities as to development, health, economic, social and political concerns.

1.2 Community Profile of the Dayak/Iban

Sarawak has an estimated population of 2.2 million people where the indigenous people, the Dayak, form the majority of the population. The generic term “Dayak” covers various different subgroups, each with its own culture and language. One of these subgroups is the Iban. As elsewhere in the world, indigenous peoples in Sarawak are dependent on their land for livelihood. Eighty percent of Dayak are rural dwellers, self-subsistent agriculturist, hunters and gatherers. They practice rice shifting cultivation, grow sago palms, fruit trees and vegetables. Their traditional livelihood consists of farming and collecting forest products, while their land and forests also provide them with traditional medicines and wild animals for hunting. The Dayak hold customary rights over land and territories that they have inhabited since time immemorial. Most natives in Sarawak, including the Iban, inhabit traditional longhouses (Rumah Panjai in Iban) which are communal houses built on stilts that provide shelter for up to 100 families in separate living units. The Iban classify the land surrounding their longhouses under two general categories: the menoa which refers to the collective village territory with its own clear boundaries, and the temuda, which refers to land close to the longhouses, land cleared for farming and land left fallow to regenerate. Beyond that, the temuda extends to an area of communal land for the collection of forest products (fruit, medicinal plants, building materials), for hunting, fishing and to be used as burial grounds.

Iban women depend on forest resources where they collect all kinds of food, such as vegetables and herbs as well as rattan and handicraft resources. They have a detailed knowledge of local forest environments and forest products, as they are main food providers for their families, healers and transmitters of traditional knowledge. They play an important role in the conservation and management of natural resources. Among the Iban of Bintulu, there is a defined division of labour between women and men in farming. For example in rice farming, the Iban men do the ploughing and clearing of the land, which are considered heavy work. The women do the maintenance work that
find the different seed varieties, as well as which type can be stored longer. They are responsible for the type of crops to be grown for subsistence farming. They are also almost solely responsible for child-rearing and home management that entails cooking, cleaning, washing, fetching water, gathering firewood, as well as managing the household expenses. Thus, some decisions usually related to family welfare and health are left to women, such as the education of children, and health care the family members. These responsibilities deprive them of time and energy to participate in meetings or attend events where decisions are made and discussions are done that will ultimately affect the status and role of women in that society. Within the household, the men decide mostly on matters not related to cash crop production, for instance, what varieties of cash crops to be grown and other activities that bring in cash income to the family. Most men decide on the number of children and whether to use contraceptives. Moreover, men decide whether the women will continue working after marriage, while women usually resign from their jobs, once they have children.

In Iban communities, decision-making is an open process but dominated by men. Male elders tend to plan and decide for the important and major roles played by members of the society because of the experience that they have. The decision-making is often left to those who are considered knowledgeable and wise, and not just by age. When tribes decide to go to war, the elders ponder over it for days and because the men are the ones who know the terrain and landscape well, they are the ones who decide on strategies to attack the enemy.

The family’s survival depends on the decisions made by women. Yet, it is still not socially acceptable for women to make decisions on community matters. There is no distinct opportunity for Iban women to participate in decision-making with regard to the village activities such as rituals and ceremonies, festivals or the hearing of civil cases. Very few Iban women participate in the administrative duties of the community. The Iban women’s role in decision-making is diminished by customs that give more power to the men, which many community members justify as it stems from “traditional and cultural” practices. As a result, the women have little experience or skills on matters regarding the administrative duties of the community. Men make many of the decisions, and if there are women who are involved, they are stereotyped for certain roles. Men also make the decisions on community welfare such as land security, new development project and other community activities while women stay on sidelines or play a lesser role. During community meetings and gatherings women get the task of preparing food and looking after the children.

Additionally, most of Iban women do not know how to read and write, and do not know about their rights. They also lack the negotiation skills as they are not exposed to such opportunities. Thus, when the Rumah Nyawin was demolished, mostly women and children were there in that early morning, and they were not able to do anything except to ensure their family’s safety. Until now, they are unable to take any action because they do not know their rights and what actions to take.

2. Impacts of the Development Projects

2.1 Information about the projects

In Sarawak, a multitude of large-scale development projects - such as dams, logging and plantation concessions - are destroying the remaining forests and threatening the very existence of indigenous peoples’ who have called these lands their home since time immemorial. The promotion of development projects in indigenous peoples’ territories and the neglect of their NCR lands have had various adverse impacts on the Iban communities in Sarawak.

Two development initiatives and their impacts on the Iban communities will be presented, exemplifying the numerous violations of indigenous peoples’ rights taking place in the Sarawak.
1) The first one is an Iban community in Bintulu whose longhouse, Rumah Nyawin, was demolished, and then forcefully evicted from their land that was appropriated by the Malaysian Agricultural Research and Development Institute (MARDI).

2) The second case refers to the Iban community of Rumah Bangga in Sungai Babai that suffered from the impact of the operations of Empresa, an oil palm company.

2.1.1 MARDI and the Iban Rumah Nyawin, Bintulu

For more than 20 years until 2007, 12 Iban families had been using a 350-hectare land for their traditional livelihood around their Rumah Nyawin longhouse near the Bintulu-Bakun road junction in Bintulu, Sarawak. This NCR land belongs to the Penan community of Kampung Yoh that allowed the Iban families to utilise for an indefinite period through an oral permission from the Resident, Datuk Empani Laing. In 2002, without the Iban and Penan’s knowledge and free, prior and informed consent, most of the land was granted to the Malaysian Agricultural Research and Development Institute (MARDI). MARDI is a statutory body that has been mandated to conduct research in agriculture, food and agro-based industries in Malaysia. Part of the land has been assigned to a
Japanese company, Daiken Sarawak, for the development of acacia plantations. According to the villagers, they have followed the correct procedures under Iban customary laws when they built their longhouse. However, authorities have repeatedly attempted to forcibly evict them.

In 2002, MARDI personnel destroyed four storage houses (lankawi) and marked the longhouse doors for future demolition. In 2003, workers of Daiken Sarawak desecrated some graves of Rumah Nyawin and neighbouring communities by destroying them. Despite an order by the local native court, no compensation was paid at all for this crime. To get legal recognition of their NCR land, Rumah Nyawin drew a community map in 2004 with the help of community mappers and submitted this to the Bintulu Land and Survey Department (LSD) and MARDI. The application was rejected but they continued to assert their right to the NCR land according to the Land Code.

On October 4, 2006, the Rumah Nyawin received a 30-day eviction order from the Department (LSD) as allegedly illegal occupants of MARDI property. Two days after, the Rumah Nyawin filed an appeal for an injunction order until the case is heard. They also sought the side of MARDI that informed them on October 19th that it does not need or wish to encroach on their land and it has not called for their eviction. Nothing was heard from the courts until the end of 2006. In turn, the indigenous community appealed to the LSD, as well as local politicians and the chief of police, for the cancellation of the eviction order. The police chief, however, reaffirmed the need of eviction, while the Department did not react at all.

According to the Rumah Nyawin Iban, the courts in Sarawak are notorious for delays, especially in land matters, so when the court did not respond to their petition for an injunction order, they took this to mean that no action was expected for years. Also, in their negotiations with the Bintulu LSD, they were verbally informed that a decision would be made by their superiors in Kuching, the state capital and that a court decision would be sought on this petition. Without any response to their petition, they were confident that the rule of law would proceed as expected. They were shocked then that January 7, 2007 morning, allegedly at the behest of MARDI, when 200 uniformed enforcement personnel and officers from the LSD and 20 policemen forced the them out of their longhouse, and within two hours, demolished Rumah Nyawin with two bulldozers and chainsaws, rendering about 120 residents of the longhouse homeless. Until the time of the eviction, the court had not taken action on the petition for an injunction order they filed three months earlier.

In a twist of events, the Rumah Nyawin Iban lost their rights to the NCR land and their longhouse. Their tuai rumah (village headman) Nyawin Ganig 29 (Gawen), a state-appointed official, was co-opted. Negotiations on all matters were done with the headman as the so-called representative of the longhouse. The women were never consulted nor the longhouse as a collective in order to get their final say on matters at hand. The women particularly were left without knowing what was actually happening and what will happen to their lives. Nyawin unilaterally withdrew the court suit filed for the injunction order. Nor did he ask for their positions before he met with the Chief Minister of Sarawak Mahmud Taib. After his meeting with Taib, Nyawin came out of with a report that there was a 2.5-hectare plot to rebuild their longhouse and a 240-hectare farmland. He reported further that the New Rumah Nyawin is 24 kilometers from their original longhouse, has 16 doors and a tarred road leading to it. He then said, “What more can we ask?”

In the end, MARDI did not provide any payment and compensation for all the Rumah Nyawin Iban losses. They were relocated to a government site near the Bintulu-Miri highway but they do not have electricity and water supply and are dependent on rain water. The 2-hectare resettlement area they are currently occupying is only temporary as it belongs to the government, meaning they can be relocated anytime. The villagers are facing various problems due to Nyawin’s actions. They claim that because of his cooptation, other people now refuse to help the community members. The longhouse residents heavily depend on farming. Through MARDI’s operations, the community lost
not only their rights over their land, but also their temuda (farm), the basic source of their livelihood. As one woman describes it: “Our life is very poor and poor life makes us depressed”.

Doris Laga, one of the female residents of Rumah Nyawin dared to tell the story of the demolition in a radio broadcast. When the demolition incident occurred, she just returned from bathing in the nearby river. She saw hundreds of armed enforcement personnel and policemen entering the longhouse. At the time of the incident, as early as 7 am, only some women, children and elderly people were present in the longhouse. They desperately tried to stop the officers and asked them to wait for the village head, but the authorities did not care. Within two hours, the 20-year-old longhouse was completely demolished and reduced to rubble. The women and children were crying in despair when they saw all their property and belongings being demolished and transported away. Some, just made homeless, gathered to pray. After their home was demolished, Nyawin residents had to live in temporary huts, also during heavy rains. Later on, they set up a more permanent shelter at the former site of the demolished place. Until today, they continue to face harassments and threats from the authorities. For example, officers were threatening to splash gasoline on the indigenous peoples’ huts if they were not moving from the site. Doris added that women have never been allowed to take part in the negotiations between the village head, the male community members and the government officers. In these meetings, MARDI stated that the project’s purpose was to develop an agriculture center in Bintulu, and to help the community as villagers could be employed by MARDI. In the end, these efforts came to naught.

2.1.2 Empresa and the Iban of Rumah Bangga, Baram

The Land and Survey Department of Sarawak issued a provisional land lease to Empresa (M) Sdn Bhd, an oil palm plantation company in Sungai Sebukut, Bakong Baram, in the late 1990s as part of the company expansion plan. The land area covered by the lease included the NCR land of the Iban of Rumah Bangga, Sungai Sebukut, Lutong, Bakong, Baram, Miri, all in Sarawak. Conditions were included in the lease that required Empresa to conduct a survey over the leased area first to determine other people’s rights over the land that should be excluded.

The Rumah Bangga Iban first and only came to know of the provisional Empresa lease when bulldozers arrived and starting clearing their temuda in Ulu Sungai Babai on 15th of December 1997. The community immediately tried to seek help. They prepared reports detailing the damages being done to their lands and requesting for the cessation of the destructive activities, or that their NCR land be excluded from the lease. These reports were brought to two police stations, one in Beluru Police Station in Bakong and the other in Marudi, but neither of them would accept the report. They also wrote letters to the Land and Survey Department and other government departments requesting that the lease be withdrawn or revoked or that a survey be done so that their land could be excluded therefrom. There was no response from these government offices. In the mean time the company continued with its operations.

These Rumah Bangga are forest-dwelling peoples who substantially depend on the lands which surround their longhouse for growing their own food in small farms and garden areas as well as obtaining building and other materials from the forests that enable them to have an appropriate standard of living according to their cultural context. The Rumah Bangga Iban had been living in the area since generations back with many families sharing six traditional longhouses.
Desperate that they are going to be wiped out of their territory, the Rumah Bangga Iban then confiscated three bulldozers of Empresa and blocked the road to their longhouse. The company negotiated with them with the offer to pay them RM15,000 compensation per hectare if they accept the company’s operations. The villagers refused the offer. The company then went to the police and on December 18, 1997, one truckload of the Police Field Force (PFF) went to retrieve the bulldozers. The people refused to return the bulldozers because there was no commitment from the company to get off their land. The following day, 19th December, the villagers held a meeting at their longhouse in order to discuss how to claim compensation from the company, and to decide whether to file a police report in Miri (because the police in Beluru and Marudi refused to accept their complaints), and to appoint lawyers to file a case against the company.

At 1:00 p.m. on that same day, a group of approximately 30 armed PFF approached the Rumah Bangga. Thinking that the police came to negotiate with them, the headmen Bangga anak Andop instructed the residents to prepare a “miring” welcoming ceremony in accordance with Iban tradition outside the longhouse. However, after asking who the headman was, and Banggau identifying himself, the police then rushed forward to arrest him and the men and women who were assembled there. As shown in the pictures, clearly the Iban were unarmed, but only refusing to be arrested. Suddenly, the Police Field Force officer gave the order to the open fire on the unarmed villagers using pistols and M16 rifles.

Enyang anak Gendang, standing passively in the background, was shot in the forehead by Corporal Hussaini bin Sulong. He died five days later. Besides Enyang, the police shot two more villagers. Indit anak Uma, wounded by a shot, dragged himself to the longhouse and tried to defend the participants of the blockade. He was hit a second and third time by gunshots while lying wounded on the ground. Siba anak Sentu was shot in the belly after he tried to protect the chief from being arrested. Another villager, Untok anak Utom was severely wounded by baton hits and sticks. Numerous villagers were assaulted, kicked, punched and beaten up by the police. Several of them were arrested. One week later, headman Bangga was arrested on the charge of ‘gang robbery’ and carrying a weapon during demonstrations. He was detained at the Miri police station for 10 days and released after the police investigation.
After losing her husband Enyang anak Gendang in the incident, Ndukmit experienced severe hardship to make a living as a single mother. She had lost all means to support her 12-year-old son and 5-year old daughter. Her earnings from selling vegetables at the local market were hardly enough to make them survive. Finally, her children decided to drop out of school to help their mother make a living. After the loss of her husband, Ndukmit felt deeply depressed and hopeless, lacking direction in her life.

On 20 July 2010 the Court of Miri ruled in favour of Ndukmit anak Egot, widow of Enyang anak Gendang, thirteen years ago after the shooting in Bakong that killed her husband. The court case was filed with the help of indigenous peoples and their advocates.

2.2 Development-induced violence against the Dayak women

In Malaysia’s national policy framework, the Federal Constitution and the Land Code explicitly protect indigenous peoples’ rights to their NCR land. The issuance of licenses over NCR lands to MARDI and Empresa and the non-recognition of NCR land of the Rumah Nyawin and Rumah Bangga Iban is a violation of the Land Code and the Federal Constitution. Moreover, despite Malaysia’s national legislation, NCR lands often are not issued titles, or the process is too cumbersome for the Iban. The Sarawak government continues to consider these NCR lands as "idle land". This arises from the differences in understanding of what constitutes NCR land. For instance, logging licenses and provisional leases are often issued out covering also communal land and reserved virgin forests. According to the national legislation, a survey has to be done before the government leases land in order to determine if indigenous people have rights over the area. In case of the affected Iban, areas covered by leases include the NCR land. In none of the cases was there an appropriate prior survey was undertaken.

Iban women are not able to participate in decision-making because gender discrimination has not been eliminated not only in their culture but also in law and practice. In the case of Rumah Nyawin, the Bintulu LSD and MARDI did not ensure that the Iban women were part of the discussions and decisions. The Malaysian government has failed in its declaration to provide various ethnic groups the opportunity to participate at every level of decision making in the country. The destruction of the Ruman Nyawin longhouse and livelihood of the women has discriminated against the Iban in the government’s avowed commitment to “right to shelter aimed at providing adequate housing and improving the quality of life and well being of the entire population.” Its acts of granting leases to corporations over Iban and Penan NCR lands which deprives them of their means of subsistence is not in line with its “comprehensive policies and strategies for the development of indigenous groups which focuses on uplifting the status and quality of life of the indigenous community via socioeconomic programmes.”

As mainly responsible for ensuring family food security, the destruction of the Iban’s temuda disproportionately impacts on the women’s access to their means of subsistence. This further impacts on their access to other livelihoods, as they are not so equipped for other jobs. The destruction of their NCR land by MARDI and Empresa imposes severe difficulties for the Iban women who would not be able to continue their traditional occupations as before. These concretely mean lack of access to crucial food sources, sources of income, and many may no longer be able to produce their own crafts and handicrafts. Thus, not only their livelihoods are threatened, but also valuable indigenous knowledge gets lost.

Despite the guarantees in the constitution for the respect of the rights of indigenous peoples in Malaysia, the assimilationist policy pronouncements of the government and its actions demonstrated
in many instances are violations of the rights of indigenous peoples. Jaringan Orang Asal SeMalaysia (JOAS), the national alliance of indigenous peoples of Malaysia stated, “various laws, actions and programmes of the government directly oppose the principle of self-determination and violates the human rights of our people. These violations include the non-recognition of our customary lands, forced resettlement, non-recognition of cultural rights, policies of assimilation and integration, and even outright disregard for judicial decisions.”

Non-recognition of NCR lands is among the major issues facing indigenous peoples in Sarawak and the rest of Malaysia. Indigenous peoples are caught in between the state (local), and federal court arrangements, and also amongst the different government bodies dealing with indigenous peoples. In several state and federal court rulings, recognition of native titles have essentially been accorded to the lands, territories and resource traditionally owned, occupied or acquired by indigenous peoples, including those in Sarawak. However, despite these decisions of the local courts, the federal government and its agencies refuse to accept these legal precedents and instead require indigenous communities to treat each native title claim as a fresh legal argument. On the other hand, some state courts assert autonomy on how states treat the rights of indigenous peoples to their traditional lands. But in another case, the Federal Court asserted that “if a local, appropriate law is available, there is no necessity for it to be subjected to the articles of the Federal Constitution or to any international customary law or instrument.” This non-recognition gravely impairs the enjoyment of other rights that indigenous peoples claim, e.g., right to an adequate standard of living. The Federal Constitution states, “no person shall be deprived of his life or personal liberty save in accordance with law (Art. 5.1).” Since land is life for indigenous peoples, especially the natural resource-dependent peoples of Sarawak, the non-recognition or abolition of native customary rights is to be regarded as violating the right to life.

3. Dayak women’s access to justice

The Iban men and women in different communities have repeatedly called for their land rights to be respected and secured, at the least, demarcated especially over the last two decades when conflicts between natives and the plantation industry intensified. It is helpful to review the events that show how justice was denied to the Iban men and women in the above cases:

a. Rumah Nyawin

a.1 In 2002, when MARDI personnel destroyed four storage houses (lankawi) and Daiken Sarawak workers desecrated some graves of Rumah Nyawin and neighbouring communities in 2003, the local native court ruled that compensation be paid but these were ignored.

a.2 In 2004, as part of getting legal recognition of their NCR, Rumah Nyawin mapped their NCR and submitted this to the Bintulu Land and Survey Department (LSD) and MARDI for consideration but this was rejected.

a.3 On October 6, 2004, Rumah Nyawin filed an appeal for an injunction order with the High Court but this was never acted on.

a.4 On October 19, 2004, Rumah Nyawin sought the side of MARDI on the eviction case and was informed that it does not need or wish to encroach on their land and it has not called for their eviction.

a.5 Sometime in October 2007, Rumah Nyawin also met with the Bintulu LSD officials who verbally informed them that they will wait for the decision of their superiors from the state capital and that they will wait for the court decision.

a.6 In the meantime, the Rumah Nyawin sought the help of several NGOs, lawyers, and the Bintulu Member of Parliament and state assembly representative who helped them in their case and advocacy.

b. Rumah Bangga

b.1 Rumah Bangga reported the destruction of their property and their request of the cessation of these and/or delineation of the NCR land out of the provisional lease of Empresa, with the Beluru and Marudi police stations but the latter refused to accept them nor act on their complaint.

b.2 Because of the rejection of their complaint, the longhouse embargoed three bulldozers of the Empresa in order to stop further destruction to their NCR and crops, and at the same time force Empresa to directly negotiate with them because they had no other recourse as the police rejected their complaint. Their action was taken due to the fact that the destruction of their NCR land and the inaction of
b.3 On December 18, 1997, the company negotiated with Rumah Bangga but they rejected the offer of the company to compensate their NCR land covered by their provisional lease.

b.4 On December 19, 1997, a community meeting was convened by the longhouse chief to discuss further actions one of which is to bring the case to court. On the same day, police arrived at the longhouse and an Iban welcome ceremony was prepared for the arriving police force. The police were actually on a mission to arrest the longhouse chief and others. In the ensuing melee, one Iban was killed.

b.5 In 2000, a civil action suit was filed against the killer of Enyang anak Gendang which did not prosper. In 2003, the case had its first hearing and nothing was heard from it after. During the court hearings, the police claimed that the Iban were violent, forcing the police to use their firearms. They denied their involvement, even though there were witnesses and photographs proving that the shots came from one policeman.

b.6 On 20 July 2010, the Court of Miri ruled in favour of Ndukmit anak Egot, widow of Enyang anak Gendang, thirteen years ago after his death and eleven years after the case was filed. In the court decision, it was suggested that the Sarawak Land Custody and Development Authority and the Empresa company arrange a dialogue with the Iban indigenous community in order to discuss compensations for the Iban. Empresa and its subcontractors have ceased their operations since the incident.

In the end, MARDI went on and built their agriculture station on the land that used to be the site of Rumah Nyawin. The whole area has been fenced up now. As for the Ibans in Rumah Bangga, Empresa has not ventured into their NCR land since the shooting incident. However, now the Ibans of Rumah Bangga are fighting another oil palm plantation, Tung Huat Pelita Plantation.

Access to justice for the Iban women victims of development had been denied, curtailed and/or applied in a discriminatory way. In the case of Rumah Nyawin, the court did not rule on the petition for injunction filed by the longhouse within a reasonable period that would not have allowed the order to lapse and thus deny them right to due process. Two months beyond the validity of the eviction order, the court did not yet make a ruling. The Bintulu LSD did not further update them on the decision of their superiors in Kutching nor did they make good their verbal statement to wait for a court ruling. The disproportionate force composed of 200 policemen and 2 bulldozers and several chainsaws to evict the 120 unarmed men, women and children residents of Rumah Nyawin, and the arrest of the Rumah Bangga chief shows use of excessive force which led to more grievous human rights violations. The refusal of the police in Beluru and Marudi to accept the Rumah Bangga complaints is a denial of access to justice.

Although the law recognizes NCR claim by customary tenure, it places the burden on the indigenous peoples to prove their claims. The Iban have tried submitting claims but these were denied, not acted upon, or extremely delayed in processing. While every case of NCR claim must be argued from scratch, oil palm companies receive licenses or provisional leases over these NCR land with ease and without the FPIC of the affected indigenous peoples.

In its 2004 CEDAW periodic report, the Malaysian government acknowledged that the rural women of Sarawak and Sabah were marginalised in the provision of health services, which impacts on the indigenous women’s full enjoyment of their human rights. The same report mentions that 3 out of 5 rural women in Sarawak in 2000 were in unpaid family labor. Unpaid family labour in rural Sarawak would be indigenous women in subsistence production. They may be unpaid but they are producing food for themselves and their families.

One factor preventing indigenous women to access justice is rooted in patriarchal attitudes and structures within the Iban community, and the wider society. The Iban indigenous women’s role in decision-making is diminished by customs that give more power to the men, frequently justified as “tradition and culture”. As a result, the women have little experience or skills on administrative
matters of the community. Discrimination has gradually become a norm and is perpetuated through women’s lack of confidence, experience and knowledge. As in most traditional societies, a handicap for women is their lack of access to education: they have lower levels of literacy and fewer years of schooling than men. The rural indigenous Iban thus often do not know how to read and write, and few have attained higher education to be functionally literate in Bahasa. Nor are they fully aware of their rights. They lack or have limited access to information on existing legislations that protects their customary laws. Another reason for the women’s lack of participation in meetings, also related to traditional structures, can also be seen in the women’s overburden in household duties.

When indigenous peoples face problems due to development aggression (as in the communities under study), indigenous women suffer disproportionately. However, they are unable to take any action because they do not know of their rights and the relevant laws, and they are constrained by their limitations. If this situation does not change, then the next generations of women will continue to be discriminated and excluded from decision making processes and denied access to remedies for violations of their rights related to development projects.

4. RECOMMENDATIONS

To the Government of Malaysia:

1. Consistency in enforcing the provisions of the Federal Constitution and adopting the provisions of the UNDRIP in full will ensure the recognition and respect of the rights of indigenous peoples. In particular, NCR lands are gazetted and granted titles to ensure ownership and protection of the right of indigenous peoples to their lands, territories and resources before any land is concessioned out to business or taken over in the name of national development.

2. Free, prior and informed consent should be sought before any development will take place in indigenous territories, including displacement. Ensure non-discrimination in the access to justice of indigenous peoples, and specific measures in place to ensure the participation of indigenous women in all decision-making processes.

3. The legal system adopts measures that ensure substantive equality and non-discrimination in line with State party obligations under CEDAW. Laws that discriminate against women are abolished and mechanisms that ensure the effective protection of women against discrimination are in place. Measures are taken in conjunction with indigenous peoples, to ensure protection and non-discrimination to indigenous women and children.

3. An independent body that includes indigenous experts is set up to resolve long-standing land issues and problems faced by indigenous people in Malaysia as a consequence of their dispossession and loss of lands. Remedies are instituted for human rights abuses by businesses against indigenous peoples and state actors who have committed human rights violations.

4. Relevant legislation and/or policies enforced and/or developed and implemented that make logging, plantation, and other large-scale companies assume the responsibility to protect and duty to consult indigenous peoples before any undertaking any development in their territories.

5. Development programmes are developed with indigenous peoples in their territories to ensure a transparent process as well as the full and effective participation of the indigenous peoples in decision-making processes that affect their lives.

6. SUHAKAM strengthens and accelerates efforts to implement CEDAW on the ground. NGOs shall enable Iban women to discuss and systematically take action regarding their situations including gender sensitive matters.
To the Sarawak State Government:

7. The Land Code of 1958 is fully and effectively implemented in its spirit and content towards the recognition, protection and respect of Native Customary Rights. Development projects, which violate indigenous peoples rights, like appropriation of NCR lands by licences issued to oil palm companies, should be cancelled. Appropriate and effective mechanisms for redress of grievances set up to address complaints of communities against developments in their communities.

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A.4 TESTIMONY: Oil Palm Plantation in Kalimantan, Indonesia: I will go back and make a pact with the other villages to fight, to show indigenous peoples rights to land. It is important to do that pledge

Mardiana Deren (Dayak Ma’amyan, Kalimantan, Indonesia)

My land was deforested by an oil palm company, Surya Graha Manunggal (SGM), that claimed the river, lake and forests which are sources of livelihood for my people, the Dayak Ma’ayan in Sarapat Village, East Barito in Central Kalimantan, Borneo island. We were not displaced, but plantations surround us. SGM got an oil palm concession area of 26,000 hectares in 2007 and then another 75,000 hectares in 2009. They began clearing 5,000 hectares in 2010 and another 4,800 hectares in 2011. By 2012, they cleared about 111,000 of our land covering three sub-districts of East Barito.

We tried to fight against the plantation Part of our protest was to perform our traditional ceremony to invoke our ancestors’ spirits to help us. The traditional ceremony was performed in the middle of the plantation because we believe that in the land, forest and water, the spirits are living but invisible to the human eyes. Usually, we call the spirits to help us during work, and also during healing ceremonies. I officiated in the ceremony that involved the community dancing ritual, using wax that is considered a medium to call on ancestors’ spirits for protection and blessings. The company met even this sacred ceremony with resistance and violence. They wanted to control the performance of
the ritual but we insisted on proceeding and in the end, we were allowed to perform under tight security by the police and company security.

The forest is the source of our life. The company destroyed our forest. We were worried that we cannot pass this to our children. The ceremony called back the spirits to come back to the destroyed forest, and it seems the spirits were angry. One week after the ritual, two plantation workers almost died because a sandy area sucked them. In our interpretation, the spirits realized that the two women victims were just working for the company. The natural resources on which we depended on for livelihood were destroyed or disappeared due to the clearing operations, including the trees, rattan, medicinal herbs, other wild products and animals. Water sources had become polluted. Access to the forests was denied and our daily subsistence has been affected.

Since 2008, together with my community, we would go to the forest to fight against the arrogance of the company. In 2009-2010, we also tried to mediate, and tried to negotiate with the government at the sub-district administration, district, provincial to national levels, but we got no response. In 2010, with the help of our organisation Aliansi Masyarakat Adat Nusantara (AMAN), we filed a complaint with the National Human Rights Commission of Indonesia. We got the Commission’s ruling that SGM has only 330 hectares of concession out of the 685 hectares of Dayak Ma’ayan forest. Unfortunately, until now, the decision is yet to be enforced.

When the company started their operations, we were informed only about the benefits. Later, conflicts arose between the company employees and us because outsiders, even as far as Java, were employed by the company, and not the people from Sarapat as they have promised.

I am a nurse and I use my education and experience to help my people. In the hospital where I work, I am always being bullied and have experienced psychological and verbal abuse there when the hospital staff learned that I was leading my people against the company. At one time, I was unilaterally re-assigned to a far place in order to get me away from Sarapat. With the help of my organisation AMAN, I complained about this discriminatory and arbitrary move and was able to get my job back.

Many of my villagemates do not know and do not get socialization on law and government policies, so we were facing a great challenge. We fear the company that seems to be always above the law. For example, many of us were sent to jail again and again, even families together, causing a lot of worries. We only knew we were exercising our customary law. We tried to find a strategy on the application of law and policies by having customary meetings led by the customary leader and the community leader with the goal of finding a collective decision. Under Dayak Ma’ayan customary law, issues are resolved through deliberations facilitated by a lead ”judge” under the customary or traditional council. The purpose of the deliberations is to reach a decision that seeks to provide a deterrent on offenders rather than criminalizing them. The government does not recognize this judicial system though and thus indigenous peoples in Indonesia continue to be discriminated in many ways. In my hometown, as a last effort, I will go back and organise a network of the villages to fight for our rights to our land. It is important to do that. Earth is mother, forest is our breath, and water is our blood.
A.5 TESTIMONY: Acacia Plantation in Malaysia: SAFODA tree plantation scheme
Raini Mapura (Rungus, Sabah, Malaysia)

Introduction
The Rungus indigenous peoples live in the Bengkoka Peninsula in the northern part of Sabah, about 500 kilometers from Kota Kinabalu. There are about 1,500 of them living in eight villages in the peninsula. Their electricity and water supply is from the mountain, with gravel roads leading to all the villages. In the 1970s, the area was logged out so there are no more trees, only *lalang* grass. The logged areas are within the Rungus NCR land and also the ancestral domain. In the 1980s, the Sabah Forestry Development Authority (SAFODA) came to the area with the purpose of planting acacia trees for poverty eradication and developing the land. SAFODA conducted a consultation on this among male community leaders without the participation of women and made a verbal agreement with them before starting the project. The land development joint venture was implemented without a study on its future impacts on the area and people. The community was only given a contract to develop.

The Rungus are subsistence farmers who practice shifting cultivation of rice. Shifting cultivation is traditionally men’s domain with women helping in the planting and harvesting of padi (rice) and planting vegetables. Women are the home managers but now, they play the main role when comes to planting of padi (rice). Land is the main source of food like padi, and is used also for gardening rubber, planting fruit trees and also for oil palm.

Rungus women are not involved in decision-making especially in resource management such as land. They are not given the opportunity to be leaders like village head (Ketua Kampung) and village development and security chair (PJKKK). Daughters usually get less of family inherited property compared to the sons. In the past, female family members had very limited opportunities to study because their parents considered it useless as woman will only become housewives. Women are usually given the responsibility to make wedding preparations, such as food and costume preparation, conduct rituals, safeguard seeds, and manage family and childcare.

Impact of acacia plantation
To date, the economy of Rungus is declining even though SAFODA has harvested the acacia trees. The acacia plantation has not benefited the local communities except for the settlers who were given land lots that actually belong to the Rungus. These settlers were also given shares from the sale of trees. For those who are not settlers, meaning the Rungus traditional land owners, but trapped within the SAFODA gazette, they do not benefit from this type of development. Instead, the agricultural lands are becoming smaller. Forest products such as medicinal plants, handicrafts materials are disappearing. Clean water sources are also limited due to the monopoly of acacia in the area. Women are pressured with the economic situation as they find it difficult to send their children to higher learning because the cost is very high and parents do not have steady income. SAFODA has banned rotational agriculture. The economy is declining and the laws are inclined to support SAFODA. More youth and women migrate to urban areas because of lack of livelihood. Traditional practices are neglected because of the lack of practice and the social disintegration brought about by the SAFODA project.

Currently, the community is facing the issue of limited land for livelihood because of the gazetting of their NCR lands by SAFODA for the acacia plantation. The Rungus took steps to resolve the issue by undertaking community development work with PACOS Trust and government departments such as DID, EPD and Health Department to get advice, guidance and support.
RECOMMENDATIONS:
To the state government:
- De-gazette NCR lands from the SAFODA gazette
To the Rungus:
- Cooperation of village leaders and communities to address issues affecting women and youth

OPEN FORUM
KOMNAS Perempuan: What access is given to women to the development? What is the benefit for the women? At certain times, they need to preserve the knowledge and the woman is an agent for the transfer of traditional knowledge. Women are usually not considered important in politics. Development makes women become poor. They don’t want to live in the village and prefer to migrate. They become victims of trafficking. How do we then influence policy?

EMRIP: Government agencies are undertaking land development. Often, government departments do not like to criticize other departments because they are all part of the bureaucracy. Raini shared that, luckily, the environmental and health departments in Sabah were willing to speak up. Regarding poverty eradication, a lot of projects do not have any assessment and do not have public consultations. We need to be very careful with poverty eradication programmes. It is important to diversify livelihoods as it is the women who have found different ways to support their livelihood.

Aleta: In my island, the oil and gas extraction is 250 km away from my village but it affects other indigenous peoples there in Timor. The company is still in the process of getting an exploration permit. The question was how to fight against the company. What the affected peoples did was they registered their opposition in 2010. They held rituals and tried to save one village. But their resources and territories were still taken. The company was working together with the Australians on a strategy plan, and there is an agreement between the Indonesian government and Australians to work together for 25 years, after that, the government will take over the operations of the oil drilling. One conflict with the company sent 11 people to jail. The indigenous peoples do not want to leave their land, the District of Timor Tengah Selatan.

2.3.2 B. Extractive Industries- Mines, Oil, Gas

B.1 CASE STUDY: A woman’s voice in the mining industry in Lao PDR: the Impact of Mining on Kri Women in Savannakhet Province, Laos
Haruethai Buakhiao (Thailand)

1. Background
1.1 Legal and policy framework
The concept of “indigenous peoples” is not officially recognized in Laos but the Lao People’s Democratic Republic (PDR) uses the term ethnic minorities or groups to refer to those who can be considered indigenous peoples under international law. The Constitution of the Lao PDR stipulates that the State pursues a policy of promoting unity and equality among all ethnic groups, and that all ethnic groups have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation. Ethnic segregation, division of solidarity among ethnic groups, discrimination, prevention from participation, exclusion or selectivity based on ethnicity are prohibited or criminal offences. Further, the State is obliged to implement every measure to gradually develop and upgrade the socio-economic development levels of all ethnic groups.
Lao PDR has various legal and policy instruments that impact on ethnic minorities, their livelihoods, living conditions, agricultural practices, village organisations and administration, as well as provides socio-economic and infrastructural facilities. However, the most important policy in a series of decrees affecting indigenous peoples is Directive Order No. 92004, *Instruction Order on the Establishment of Village and Village Cluster for Merging Administration*. As part of efforts at reducing poverty most of which affect indigenous peoples, Directive No. 9 regulates the merging of villages by identifying priority zones or focal sites. This is the major policy document cited by provinces and districts to grant concessions in order to turn land into economic opportunities to accelerate national development, as well as to resettle villages (see Annex B).

The major institution for ethnic issues is the Lao National Front for Construction (LNFC) which is in charge of the planning and implementation of policies on ethnic minorities. The Ethnic Minorities Committee under the National Assembly has mainly legal obligations, such as drafting and evaluating legislation concerning ethnic minorities, lobbying for its implementation as well as that of socio-economic development plans.

The Lao Constitution and the *Law on Education (2000)* both ensure the right to education to all citizens without ethnic discrimination, with favourable conditions especially for people in remote areas, ethnic groups, women and disadvantaged children. The three mass organizations, the Lao People’s Revolutionary Youth’s Union, the Lao Women’s Union, and the Federation of Lao Trade Union, are responsible for mobilizing solidarity among all ethnic groups and implementing social campaigns to promote ethnic equality.

Many of the government strategies for socio-economic development are implemented in the form of various programmes such as the periodic five-year National Socio-Economic Development Plans (NSEDP). The most important aim of the NSEDP is to eradicate what it considers negative practices and barriers to development, such as slash-and-burn farming, and opium poppy growing. To that end, the Government has adopted and is implementing the National Growth and Poverty Eradication Strategy (NGPES) 2006-2010, focusing on alleviation of poverty in the 47 poorest districts in the country, and thus directly affecting the ethnic groups. The 2009 National Human Development Report states that if poverty is defined as lack of economic growth, 38.6 percent of the Lao population would be considered poor, and of this number, 93 percent are ethnic minorities.

Many of the campaigns supporting "national development" have caused, either directly or indirectly, migration of ethnic groups down to the lowlands. In this context, the government is pursuing a policy of relocation (Prime Minister’s Decree No.07/PM, 2004) and on the establishment of development villages. These cluster villages are established by providing permanent farmland, residence and infrastructure to the poor in rural areas who used to practice slash-and-burn farming and opium poppy growing. Policies on relocation from mountainous and remote areas aimed at reducing poverty and providing access to social and economic services has tremendously affected the ethnic people’s traditional livelihood as well as their social-cultural integrity, local traditions and customs. Communities often face problems adapting their livelihoods to the new environments.

The first Constitution, enacted in 1991, guarantees equal rights for men and women in political, economic, cultural, social and family life. In the 2003 constitutional amendment, it stipulates that society should focus on the implementation of women’s advancement and protection of rights and interests. The National Assembly has adopted about 90 laws based on the Constitution, many of which concern the promotion and protection of human rights, including development and protection of women. The promotion of equality between men and women, as provided for in the Constitution and other relevant laws, is seen in particular in the Law on the Development and Protection of
Women, the Penal Law, the Labour Law, the Law on Education and other legal instruments of the country.

The dedicated machinery for gender mainstreaming in the PDR is the National Commission for the Advancement of Women in Lao (NCAW Lao) established in early 2002. It is also mandated to monitor implementation of CEDAW, the Beijing Platform for Action, and other government commitments on equal rights between men and women. The Lao PDR has further developed a National Strategy for the Advancement of Women (2006-2010), and has started gender mainstreaming in its development programmes, plans and projects. It has supported mechanisms to promote and protect the rights of women, such as the Lao Women’s Union, the National Commission for the Advancement of Women, and the National Commission for Mothers and Children.53

Lao PDR has numerous legal instruments governing land use rights and mining operations. Laws relating to land and land-related matters include the Law on Land, 01/97/NA; the Ministerial Direction 564; several forestry legal and policy documents, including Decree 169/PM (1992) on Management & Use of Forests; Order on Customary Rights & the Use of Forest Resources (1995); Decree 01-96/PM (1996) on Forestry Law; Decree 59/PM on Sustainable Use of Production Forests, as well as Regulation 0204/MAF (2003), and the Forestry Law (2005) (see Annex B).54 Under Lao PDR laws, the national territory and the minerals therein are owned by the national community as represented by the State as stipulated in the Constitution (Art. 15), and reiterated in the Land Law (No. 01/97/NA 2002) and Mining Law (No. 04/97/NA 1997). The State exercises administrative and regulatory functions over these resources. Further, land cannot be bought and sold by individuals or organizations. The state, however, has the right to assign user rights to individuals, families, state and economic organisations. Generalized land classifications used in both forest and land legislation were elaborated by foresters, not ethnic minority groups, mainly in order to abate swidden agriculture. Therefore, they do not mirror ethnic groups’ knowledge of different land types, resource management systems, or of general environmental and soil differences. The legislation does not recognize “communal land” collectively or customarily managed by a village community. Instead, the state claims ownership to all land not registered to an individual or organisation. In Lao PDR, customary tenure rights are not officially recognised even they remain important to rural communities.55

The Land Law (see Annex B) specifically states that the State’s regulatory function is to ensure that the management, use and protection of land contribute to national socio-economic development, including environmental protection. It stipulates the protection of rights and interests of land users under Article 5 while Article 6 exhorts that “individuals and organizations have obligations to protect land, keep it in good condition.... Land use should have no bad effects to natural and social environment.”56 Article 4 of the Prime Minister's Decree 169/PM, 3rd November 1992 on the Management & Use of Forests states that the State recognises the right to use forests, forestland and forest produce in accordance with the custom of villagers.57 However, as the Lao Government considers shifting cultivation as a major cause of forest degradation, in the Forestry Law of 1996 and the Background Document on the National Poverty Eradication Programme (September 2003) they explicitly state the objective to eradicate it.

The 1997 Mining Law ensures environmental protection (Art. 5). Feasibility studies (Art. 30), especially on the socio-economic impacts of the mining operation, and environmental impact assessment (Art. 31) are required for mining exploitation. The latter must elaborate on solutions and mitigation methods and measures on a project’s environmental, ecological and social impacts and an assessment of potential losses of affected communities, and elaborated resettlement plans that ensure adequate compensation and livelihood. Art. 40 requires mining companies to guarantee that water quality in its area of operation is safe for human consumption and the environment. Further, mining operations that cover land, constructions, crops and others properties belonging to persons or organizations shall make appropriate compensation for their removal and damage.
The Lao PDR is a party to several core human rights conventions and instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Laos also signed in favour for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and acceded to the International Convention on Biological Diversity (CBD).

1.2 Community Profile

In Laos, there are four legally recognized ethno-linguistic groups (Hmong-Yumien, Sino-Tibetian, Mon-Khmer, Lao-Tai). The ethnic group of the Kri (alternative names: Krih, Kree; Kha Tong Luang, Yellow Leaves) have a complicated history of migration, and opinions of local and international anthropologists diverge considerably. It is widely agreed that Kri is a Vietic language and belongs to the Mon-Khmer language group, even though it has no written script. Nowadays, the Kri mainly inhabit the provinces of Bolikhamsai and Khammuan near the Laos-Vietnam border. Locals refer to them as ‘Yellow Leaves’, similar to the Mlabri ethnic group in Thailand and Laos, as they build their homes from banana leaves which they leave once these turn yellow. No document can be found that contains the accurate population of the Kri but in 1995, only 739 Kri people were counted in Laos. Kri speakers live in areas of multilingual diversity in which Vietic languages are considered as severely endangered. The diverse sub-groups of the Kri have a history as nomads, but today, most of the community members have settled down permanently. They live in small huts made from bamboo and grass-thatched roofs. The forests and rivers are basic elements in the life of the Kri as their source of subsistence and identity. Kri who have settled permanently breed buffaloes and chicken. They used to practice rotational agriculture to grow vegetables, rice, maize, and cassava. Kri women grew rice once a year in swiddens with the men. They also used the jungle as their natural garden to collect vegetables and fruits. Fishing with nets was done by men and women helped to collect the fishes. Within the Kri communities, women ensure the family’s daily subsistence through their swiddens and forest food collection. Even though Kri have frequent contact with others languages including Vietnamese and Laos, often particularly elder women remain monolingual. The few remaining nomad Kri are hunters and gatherers of natural forest products. The Kri are animists. They worship an array of spirits in their natural surroundings, such as the forest spirits, tree spirits, river spirits as well as ancestor and house spirits.

2. Impacts of the Sepon open pit mining

2.1 Information about the project

After emerging from diplomatic isolation in 1986, Lao PDR increasingly focused its national efforts on economic development. Wealthy in natural resources, it attracted investments from all over the world through the incentives offered by the Lao government. One of the biggest industrial projects in Laos is the Sepon Gold and Copper Mining Project (hereafter referred as Sepon Project) in Vilabouly District, Savannakhet Province, south-central Laos. This large-scale development project has tremendous impacts on different ethnic groups living in the area. As will be outlined in the following, Kri women in Vilabouly district are especially affected by the Sepon mining operations.

The Sepon Project is an open-pit mine extracting gold and copper in Sepon, Vilabouly District, Savannakhet Province, South-Central Laos. It was originally owned and operated by Oxiana Limited of Australia that became OZ Minerals in 2008. In 2009, China Minimetals Corporation bought the majority of assets from OZ Minerals and formed MMG. At the end of 2010, MMG was acquired by Minmetals Resources Limited (MRL) and later in 2012, MRL changed its name to MMG Limited. MMG owns the 90% of Lane Xang Minerals Limited (LXML) that owns and operates Sepon, while
the Lao Government owns 10% of the mine. The mining project in Sepon is a long-running business that commenced exploration in 1993 and production in 2003. The company, worth 1.3 billion U.S. dollars, is the second highest revenue-earner in the country, after the export of electricity. The mine is also the second biggest employer in the country. It continues to offer work to local villagers, but it also has attracted labourers from all over Laos and expatriate experts. The mining project is located in a mountainous area, covering 1,250 square kilometers of Vilabouly and centered in Sepon town, but covering almost the whole of Vilabouly. Although it is where the mining project and the district's government offices are located, the mountainous area was formerly considered as less developed and more difficult to access than the plains.

When the Oxiana got approval for its operations, it committed itself to develop the local society in Sepon. The company expressed its intentions to establish a broader development of the area by using the economic opportunities offered by the mining at the local level, to hire and train locals, to improve public utility systems in the area, as well as to start local businesses. In this context, its Sepone Development Project has helped set up various producers groups such as weaving and pig farming groups in nine (9) villages. It has played a major role in boosting local production and supporting the development of new businesses, and has established community development funds. Thus, during the last decade, average incomes, electricity, health and communication services in the direct surroundings of the Sepon Project have improved considerably. Nevertheless, socio-economic development trends in the mining affected communities still remain relatively poor. It is expected that as the mine continues to grow and require more land, it will not be able to create new job opportunities to offset the land loss of the affected communities. Even though the mine brought forth positive changes and opportunities for some, it also has created significant new problems - especially for those communities affected by changes of living conditions that were not able to enjoy benefits or to receive compensation for their land loss.

In 2003, Friends of the Earth International submitted their objections to the Sepon Project to the European Investment Bank when it was still under Oxiana citing the findings of the International Finance Corporation and the Australian Export Finance and Insurance Corporation that the Sepon 2 copper mine expansion project, part of the overall mining venture, falls under environmental category A, the most potentially damaging type of project.

All development projects in Laos, both public and private, are required to support gender equality in line with government policies. The mining company itself is trying to integrate this value into their operational procedure by assigning main roles in all minor projects to women. They constructed a regional development center for weaving and silkworm-raising for the female workers. The project
intends to strengthen the capacity of those women who have weaving skills to be able to teach other
women and girls. In this way, long-standing local wisdom and traditional knowledge is propagated.
Officers at the center provide new designs and promote patterns created by the weavers themselves.
Furthermore, a tailoring department in the center, initially under guidance of tailors from Vientiane,
is offering 3-month and 6-month weaving courses to the workers.

2.2 Development-induced violations against the Kri women

The Sepon Project affects different social strata and ethnicities throughout the whole country, both
positively and negatively. When the mine launched its operations, peoples’ lives in the area changed
dramatically. As the mine is located on authorized land, many people residing within the area had to
be resettled, either through the resettlement programme of the mining company or because they felt
forced to leave due to a change of living conditions.

Fourteen villages directly within the core mine zone had been relocated. Many relocations took place
between 1999 and 2007, and some villages even had to move twice. About seventy villages are
within the mine concession but these had not yet been asked to move. The communities impacted by
the Sepon Project include Makong, Tri (Try), Kri and Lao Loum, the dominant ethnic Lao. Although
many of the communities have not been asked to relocate, the pollution of the waters and the
destruction of the forests of which they are dependent on forced many of them to ‘voluntarily’ leave
their villages. Some of them resettled at the mine resettlement site.

This was not the first experience of forced relocation of the Kri from their remote mountain territory
of Vilabouly. At first, they were relocated within the frame of the government’s sedentarization
policy. Later, they had to relocate again due to a change of living conditions, e.g., water pollution and
forest degradation due to the mines. Those who left because of the lack of livelihood due the
pollution of the rivers and due to the pollution itself were not given compensation although they were
allowed to relocate to the resettlement site. The resettlements caused dissatisfaction among the locals
who lost their basic livelihood in exchange for often inadequate compensations. The government’s
economic and development plans and policies have especially troubled Kri women, also because of
their very small population. They are more heavily affected by the relocations than men due to their
dependence on and relationship with natural resources and duties towards their families. Kri women
especially rely on mountain rice production, forests and the rivers to provide for and maintaining the
family’s welfare through their swiddens and forest food collection. Before the relocation, the women
depended on rotational rice farming and gathering non-timber forest products like wild vegetables
and fruits for their subsistence and needs.

Nowadays, their access to land for sustaining livelihoods is very limited. The majority cannot farm as
their land was turned over to the mine and thus, they do not have land for farming, and the system of
farming is different in the lowlands where they are now relocated. The new living conditions lack
critical natural resources and the cultural landscape needed to maintain their identity and livelihood.
For one, the physical environment of the mountains and the lowlands is completely different. The
lowland is characterised by a scarcity and low quality or lack of resources (e.g. adequate water, forest
resources). As they are injected into a completely new environment, the Kri women have difficulties
to provide for their families, as they do not have the necessary skills to compete in the labor market.
For instance, they do not have the skill in cash crop production, particularly in monocrop plantation.
If they employed in this chemical and technology dependent cultivation, they do not know the safety
measures to protect their health. The environmental differences can cause health problems. Even the
diseases, like malaria, are new to the relocatees. Secondly, the design of the relocation area is not
culturally friendly for the performance of rituals, and thus, the Kri cultural integrity has been
undermine or lost. Traditional knowledge and customary land management practices are likely to get
lost. Third, the Kri and other peoples have been lumped together in one hamlet without much consideration for the cultural diversities and sensitivities of each peoples.

Many women now work in the weaving center or as daily workers. As a consequence, community cooperation mechanisms and collective activities have changed. While the mine seems to have more benefits for young single individuals, already married women experience fewer benefits and greater hardship to adjust to lifestyle changes. Older women have gained the least from the mine’s operations as they did not have any direct benefits from the mine.

The Case of Bua-Ban

Bua-Ban, about 40-year-old, is a Kri woman directly affected by the mining operations in a village in Vilabouly District. In the past, the village was located on the bank of river Koh (Nam Koh), a wide fertile land suitable for farming and agriculture. A number of Kri and Ma-kong tribals used to live there together peacefully. Bua-Ban happily talks about the old days, before her village was relocated due to the mining project. "My village where I used to live was in the forest. I never saw a car, neither a crowd. There were no roads but only trees and rivers. We heard only birds and rats. We grew rice only once a year. To fish in the river or the ponds, men used fishing meshes, and women helped to collect the fishes. We went into the jungle to find vegetables and fruits to eat."

When the Sepon Project arrived in the present area, it intensely affected several communities in Savannakhet, including all villages in Vilabouly. The mining operations caused village relocations and changes in land utilization. Communities either moved and resettled as a whole or merged together with other villages, or split up. Some villages had to leave their original location as they were directly in the areas to be mined-out, others were indirectly affected, and did not moved as yet. Some villagers return to continue farming in their original villages while their land are not yet scraped off although the community has moved already.

In 2005, Bua-buan’s village was relocated because it was on the Sepon Project mine concession. When the mining operations started, environmental pollution was experienced in the village’s surroundings. Bua-Ban remembers: "I came in 2005. When the gold mine arrived, the whole village shifted to here, and has merged with people from other villages. It is unlike our old home. The house we live in is shared with many families, situated right next to the main road. The location is not bad at all, some 100 kilometers from Savannakhet. Here is where I came to know what people, cars, and roads are."

Bua-Ban relates how their living conditions deteriorated upon their relocation. "My previous house was near Nam Koh. We all saw that the water that flowed from the mine was polluting the river. We decided to move closer to the road." When asked about the compensation she received for the move, Bua-Ban explains that her family did not receive anything although financial compensation is provided in the government’s policies. "None. Other villagers got 7 million Kip but we got none because the authorities did not order us to move but we moved on our own, due to the pollution. For this voluntary relocation, they gave us nothing." She further adds: "The mining company did not give any money. We dismantled the house and reconstructed it by ourselves. The company just helped in shifting the stuff from our previous location to where we are now."

Apart from the lack of compensation, finding food is another problem the relocatees face. “Gathering wild vegetables has changed into growing food domestically and buying them from the market”, Bua-Ban states and adds that domestic production is also her duty. "Living here in a totally new place, no money means no food. We cannot go and collect wild vegetables or catch wild fish like before. Indeed this is much different. We must have a job in order to have money to have food and to
be able to send our children to school" explains Bua-Ban. "Naturally growing vegetables do not exist here. I am afraid to eat these things around this relocation site. I am afraid of the dirtiness."

Today, Ban Vang-Yang encompasses about 60 houses of 60 families, with 350 inhabitants (190 women) altogether. Due to the merging of different communities and ethnics within one resettlement site, the villagers also have to find ways to deal with different cultures, religious belief systems and practices, gendered attitudes. "We Kri people believe in spirits and we have no temple. On the anniversary of a death, we gather and perform "La-Prue" (ancestor) rites. We still do the same, but also go to temple with the Phu Tai. If the Kri set up the La-Prue rite, the Phu Tai are invited as well, they are our neighbours."

Since Bua-Ban moved to the new resettlement, she joined the weaving group, assisted by the company. Most of the products, both textiles and ready-made clothes, are sold in Vientiane and other provinces, but some are exported to Australia. Today, she continues to face hardship in supporting her family. She has to survive the economic pressure that suddenly increased because she is now dependent on cash rather than being able to rely on subsistence activities. She has to pay for her children's education, daily household expenditures, including water, and the family's food. One of the main livelihood limitations is that the women get paid for the labour, but not for the products, and thus, group members are bound as daily labourers. Their work totally depends on the company. The women are not able to earn any income if raw materials (cotton yarn) are not provided by the company.

Bua-Ban epitomizes the situation of the Kri women relocatees that is particularly difficult due to their dependency on the company for their wages, as well as their lack of education and/or marketable skills. "I don't know how to earn money. I don't know how to work in this kind of society. I can weave and stitch, thanks to the aid from the company. I sell my textile. I may earn 30,000 Kip (3.5 dollars) a day, or perhaps not even a single kip." When asked about her daily expenses, she answers with a smile: "I buy vegetables, fish, and drinking water. These things can no longer be obtained naturally and freely. Now I have several children, and I have to get all of them educated. Education is costly." She further explains why the education of her children is of utmost importance: "One without knowledge, like me, faces difficulties everywhere. I cannot do other things but weave. The knowledgeable can lead to better lives. Uneducated teenagers in our village cannot get money either. They clean toilets and mow for the company. One day when they are not hired, they do nothing else due to lack of knowledge."

With regards to the responsibilities of a woman towards her family, she explains that her duty as a mother and wife will never change, no matter how the environment changes. "I must seek food for my husband and our children. Water is a need. Money is required for their education." Worries overwhelm Bua-Ban. "When we have cows or buffaloes, we sell them and have cash. We spend a lot on our children. I do not know how and where to get more money." Referring to her husband, she adds: "He is simply raising cows and buffaloes. My husband is not working for anyone. He has no knowledge, just like me. So he cannot work anywhere, even in the mine."

Bua-Ban and other villagers are struggling, trying to adapt themselves and survive amidst challenging living conditions. Some people have more difficulties to adapt to this new lifestyle than others: "Some people are in harder situations, those who say they can do nothing and they have nothing to eat. They cannot hunt wild fish or pick wild vegetables like before. Now they can only raise cows and buffaloes."

Many have been talking about their old lifestyles. Sometimes they ask me whether I miss my old life, I say 'yes, but I cannot change it.' Asked whether men or women find it harder to live in this new area, Bua-Ban unhesitantly answered, "Equal. Neither of them knows what to do."
There are numerous direct negative impacts of the mining operations on the environment -such as water pollution and forests degradation, causing death of countless animals and endangering biodiversity in the area. Before the arrival of the mine, Vilabouly was a wide and fertile rural district with a plenty of natural resources. Most villagers used to consume forest products, such as bamboo or wild fruits, and to collect herbal medicine. Everybody could freely access natural resources without any restriction. Then, money was not needed to have food and water on the table. When the mining project took over the land, forests, and thus, the villagers' main food sources were inevitably destroyed. With the arrival of the open-pit mine, the forests and fields have been scraped off the face of the earth.

As mentioned women heavily depend on the forest for food and other resources on which families were able to subsist on. Now that the forests are gone, women have lost access to critical food sources. If before they were able to sell extra natural products from the forests earn extra cash for the family, this revenue does not exist any longer. However, Bua-Ban describes that lack of this wild food is not as troublesome as the lack of water. "My family has to buy water and dig our own well. Water in the river could not be used. It was filthy and nobody dares use it." Water pollution is a big problem in Bua-buan's village and many other adjacent communities. River Koh, the villager's main supply artery, is now so heavily contaminated with wastewater from the mining factory that everyone fears using it.

"Birds drank it and they died. I saw dead birds." The village representatives informed responsible parties of the mine, but they were only told that they should not worry. "Many cows and buffaloes have died because of the polluted water. We told our representative to talk to the company. The mine said it was not due to the water. Those cows and buffaloes died naturally. But many died suddenly. Some entered the mining site and fell down dead."

The villagers suffer from water shortage. "For water, the company dug 7 wells, but that was not sufficient. In summer, all the water dried out. We still had to buy water. Normally 4 buckets are for 2 days, each bucket costs 4000 Kip. When the drought comes, we need to buy water. We need more money." Bua-Ban adds, "there is only one water filtration point installed by the company. But that's not enough, one point for multiple villages. I buy water myself. It is better and cleaner."

"Some families do not have enough money. They choose to drink the well water." Bua-Ban explains why she does not drink the well water. "I do not know if it is contaminated or not. But I am afraid it is. All villagers think the same. Those who can buy water never drink it. It is only for those who cannot buy."

Natural water sources for consumption and other uses had been destroyed by the mining operations. A study of environmental effects on the Kok River confirms that the main river is contaminated with chemicals from the mining industry on a very dangerous level, and that it cannot be used as it was before. Vilabouly's villagers traditionally used the river in numerous ways and its contamination is severely affecting the peoples' lives. Although no organisation has systematically studied environmental effects yet, a private international development organisation warned about the chemical contamination of River Kok. According to the report, the mine is not subject to any restrictions or requirements regarding the discharging of cyanide wastes and heavy metals (like mercury and cadmium which are used in gold and copper ore processing) into the river where biodiversity is considerably high. Bua-Ban explains that no one came to test the water's hygiene in the wells or the river: "I have seen nobody", and "our representative told the company to come and check. They have not."
With regard to its national legislation, the Lao Constitution provides for equal rights for all minority groups, and stipulates that there is no legal discrimination against them.

What is clear is that the affected communities who compose different ethnicities were not adequately informed in culturally appropriate ways, even before the start of the Sepon Project. Under the Lao PDR laws, the national territory and the minerals therein are owned by the national community as represented by the State as stipulated in the Constitution (Art. 15) and in the Land Law (No. 01/97/NA 2002) and Mining Law (No. 04/97/NA 1997). The State exercises administrative and regulatory functions over these resources. Thus, when it is mentioned that the mines is located on authorised land, that means that the government identified that as a mine site despite the presence of communities way back in time. Because of this legal framework and the centralised governance system in Lao PDR, the ethnic minority communities have no say in developments coming to their communities.

Under the legal national framework, the government can simply relocate people in the name of national development since these lands are called authorized lands, meaning they had been designated for some use by the government. It is not surprising then that the communities impacted by the Sepon mine, which included Makong, Tri (Try), Kri and Lao Loum, the dominant ethnic Lao, need not have been consulted, only informed and then relocated. The affected communities did not have a voice in the relocation nor company development plans either. They were just lumped together with others in an environment and space that was not designed to accommodate their spiritual, cultural and psychological requirements.

The Kri identify is rooted in their territory. The destruction of this impacts on their identity as indigenous peoples. That they can easily be relocated without their FPIC and access to remedies for violations of the rights due to mining operations is discriminatory. The Kri are a people with a very small population that they can be considered endangered. Further displacing them would lead to their extinction as a people. Apart from this fundamental issue, the relocated Kri women face difficulties to meet their food supply and ensure potable water in their homes. They are deprived of their basic right to preserve and promote their customs and cultures as stipulated in the Constitution (Art.8). Their relocation as well as the increasing forest degradation due to government development policies and commercial resource exploitation cause a scarcity of natural resources and severely limit traditional farming practices and agricultural activities, crucial parts of the Kri ethnic identity. The loss of land, traditional resources and livelihood has resulted in worsening their economic and social conditions.

By the enforced relocation of the Kri peoples that deprived them of their traditional means of subsistence, the Lao government has failed in its obligation to undertake measures to ensure that the mining company will not deprive the Kri peoples of their basic rights. This includes the access to adequate food in a quantity and quality corresponding to their cultural traditions that will ensure their physical and mental well being, and thus, a life of dignity. The failure to get the consent of the Kri peoples, including the women, for the entry of mining in their territory is a violation of their right to self-determination, which consequently led to the destruction of their communal lands including their sacred sites and sites of spiritual significance, traditional occupations, as well as to food insecurity, degraded and polluted environment, alienation from their cultural base, dysfunctional traditional relations, forced assimilation, and others.

Moreover, the national legislation theoretically ensures the protection of rights and interests of land users. Clearly, Kri men and women are protected under the 2002 Land Law as they are users of the land of good standing through her subsistence farming and sustainable forest product gathering. They are also assured by the Mining Law that they are entitled to a safe drinking water as mining companies have to guarantee that water quality in its area of operation is safe for human consumption
and the environment (Art. 40). The 1997 Mining Law ensures environmental protection and states that studies on the socio-economic impacts of the mining operation, and environmental impact assessment are required for mining exploitation. Despite these requirements, the results of the environmental, ecological and social impact assessment of the project were not made known.

From the experience of the Kri women, access to justice has been denied all the way since the beginning of the project. For one, their usufruct right to land, territory and resources under Lao law treats them as mere stakeholders or beneficiaries of development that need not be consulted and thus predisposes them to displacement and violations. They are not treated as rights holders with individual and collective rights. There had been lack of adequate information on the project in a language and form they understand that will enable them to make informed decisions and to engage government in a meaningful way.

3. Indigenous Women’s Access to Justice

The Kri men and women in Vilabouly tried to take action against the mining company. For example, they repeatedly informed the responsible company person about their concerns, and attempted to convince the company’s staff by presenting them facts of environmental pollution onsite. "As many fishes died in the river, we, the villagers, asked the company to come and see. They still said it was not a problem. We grilled the fish and asked them to eat. They didn't." Bua-Ban asks: "Why didn't they eat if there was no problem?" Bua-Ban’s family and many others villagers in Ban Vang-Yang face the same problems and challenges. Therefore, they selected a representative to negotiate with the company about financial compensations they feel entitled to. "The company said it was not yet the proper time. Our representative went to the company every year, and so far we've got nothing." Until now, the company ignored the villager’s complaints and the villagers also did not receive any help from the government nor outside on the redress of their grievances.

3.1 Weak enforcement of existing national laws and implementation of orders and decrees, as well as conflicting laws/policies, abuse of authority and powers, corruption, patronage

It becomes evident that even though there are numerous international and domestic laws that protect the rights of ethnic groups including indigenous peoples, existing laws, orders and decrees lack enforcement and implementation. For example, the equality guaranteed by the Constitution among all ethnic groups cannot be seen in targeting ethnic groups in remote mountainous for relocation without their consent. Further, the guaranteed right to protect, preserve and promote their cultures has been violated with the entry of the mining without the communities free, prior and informed consent which has led to the destruction of their communal lands, traditional occupations, and thus, cultural traditions and practices. Despite the existence of a number of laws, resolution and orders on ethnic minorities, their socio-economic development and resettlement, aiming at an improvement of their living conditions and on poverty reduction, many ethnic community continue to face severe hardship in sustaining their livelihoods, as in the case of the Kri community in Vilabouly.

Although there are domestic laws which regulate mining operations and protect the rights of affected individuals and communities, and there are regulatory bodies that monitor compliance of corporations to legal requirements for their operations, there is palpable lack of enforcement of these laws. Clearly the Kri community members are protected under this the 2002 Land Law as they are users of the land of good standing through their subsistence farming and sustainable forest product gathering, and they are also assured by the Mining Law that they are entitled to safe drinking water. However, despite existing laws, the pollution of the waterways and sources by the Sepon open-pit mines went unabated which forced the communities to relocate. The Lao government has failed to protect the health and well-being of the affected communities for its failure to monitor the open-pit mining operations for its known environmental impacts.
A number of villagers was not compensated as they decided to move “voluntarily” due to a change of living conditions, so they have no right of compensation even though according to the Mining Law, mining operations that cover land, constructions, crops and others properties belonging to persons or organizations are required to give appropriate compensation for their removal and damage.

3.2 Severe limitations in existing remedies provided either by law or in practice

There are no post-project monitoring and grievance mechanisms available for mine-affected communities. In case of the relocation of the Kri women, requirements of the law for resettlement plans that ensure proper settlement, adequate compensation and livelihood were not fulfilled. Further, the responses of the Sepon Gold and Copper Mining company when the environmental problems were presented to them shows that there had been no mitigation methods and measures put in place to address negative impacts as required by law. That the women and the villagers only engaged the company in dealing with these issues only shows that there is no clear mechanism that is known to the victims for the redress of issues. It becomes evident that the government does not have the capacity to provide access to justice to the Kri women as seen in the absence of a mechanism that will monitor compliance of companies of their contracts, nor for oversight after the grant of economic concessions.

3.3 Gender biases in the legal system and laws

Gender biases aggravate the difficulties faced by ethnic minorities: women experience greater discrimination due to their gender, ethnicity, economic status, and low levels of literacy. As poverty continues to disproportionately affect rural ethnic women, they often can neither afford the costs of using the system nor of an adequate legal representation. For example, the Kri women’s access to justice is hampered by the fact that they spend almost all their time to look for paying jobs in order to meet their families’ basic needs of food, health and education. This denies them the time to participate in decision-making even at the relocation site. Their dependence on the mining company for their cash income further hampers their critical engagement with the company because of the power relations involved. This is exacerbated by their lack of knowledge of their rights as women and as indigenous peoples, and even the laws that will enable them to access justice.

In Vilabouly district, before 2000, there were only a few schools, only at an elementary level, and only using Lao as instruction language. Until now, there persists a large gap between both sexes among different ethnic groups at any education level in the area. Through its national and international legal frameworks, Lao attempts to promote the advancement and equality of women. It has a dedicated machinery for gender mainstreaming in form of the NCAW Lao that is in charge of monitoring the implementation of the CEDAW. However, ethnic minority women and girls who represent more than 50 percent of the female population, still continue to belong the most vulnerable segment of the society.

3.4 Lack of adequate information about existing laws and limited knowledge of rights

Information about land rights and responsibilities under the Land Law is not consistent among ethnic minorities, and between men and women. Often, legal and policy information in rural areas depend on local authorities whose knowledge and skills about policies tend to be limited, also due to frequent policy changes and different interpretations of the legislation. Ethnic minority women in rural areas have a proportionately higher rate of illiteracy and unfamiliarity with Lao language than men. The huge amount of misinformation about land rights and responsibilities has often left rural ethnic women particularly open to exploitation and without power to protect themselves.
3.5 Discriminatory attitudes, limited participation in decision-making in both formal and traditional systems, internalization of racial prejudice, weak organizational capacities

Even though Laos laws provide equal rights for women, traditional attitudes keep ethnic minority women in subordinate positions, also preventing them from equally accessing education. The traditional patriarchal culture prevails in all ethnic groups in Laos, also among the Mon-Khmer linguistic group. For example, among these ethnic groups, inheritance rights favour men and there is a gender-imbalance in property ownership. Also Kri women have a lower social status, and thus, limited freedom of expression and participation in public and political life. Deep-rooted stereotyped perception of inferiority even among the women themselves, deprive them of opportunities to access justice mechanisms. For example, education and employment opportunities provided by the Sepon mine, were often not accessible to ethnic minority females as there were contradicting traditional customs.

4. RECOMMENDATIONS

1. To formally recognize indigenous peoples in Laos, and accordingly, respect the distinct rights granted to them by the UN Declaration on the Rights of Indigenous Peoples.

2. To provide data disaggregated by ethnic groups and by gender, providing a detailed description of the ethnic population’s socio-economic conditions. It has to identify gender-disaggregated monitoring indicators related to livelihoods and food security in relation to land access. Increased access to information of the situation of women and men is necessary to pursue the goal of the advancement of women, for gender sensitive policy making, program planning and implementation.

3. To implement the relevant laws on mining and inform the peoples. It has to fulfill its obligations to ensure the protection of the rights and interests of land users as well as environmental conservation.

4. To amend the laws on land by clarifying legal land definitions and associated tenure rights. It has to regulate, revise and improve land use planning, changes and land concessions through a clearer distinction between state land, individual land, and village land, and through the participation of communities at all stages. Village communal tenurial security and communal land management based on indigenous and localised knowledge have to be strengthened, gender equity in communal titling ensured.

5. To improve and facilitate communal and individual land titling processes as appropriate, especially in upland rural areas. It has to guarantee that a land title ensures protection against compulsory land acquisition with no compensation.

6. To strengthen links between national policies and people's understanding of those policies. As this is the task of provinces and district authorities, the State has to pay attention to train its officials, especially provincial, district and village officials on relevant laws, such as land use and mining laws.

7. To fulfill its international obligation as set forth by the various human right instruments it is party of, and the existing national policy on ethnic groups and ethnic women should be brought in line with international treaties and covenants. This includes the implementation and reinforcement of the CEDAW’s provision in its national legislation. It should further recognize the indigenous land rights of the ethnic groups as enshrined in Article 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

8. To observe national laws and legal regulations, such as Art.8 and Art. 29 of the Constitution, which endorse equal rights for ethnic minorities and women. The existing national policy
framework promoting the rights and advancement of women should be implemented accordingly, especially with regard to ethnic minority women.

9. To review and amend its national development policies and strategies on economic growth that are adversely affecting ethnic minority people, and that are obstacles to the advancement of women, especially in rural ethnic communities. All laws that have contributed to discrimination and human rights violations against ethnic women should be abolished.

10. To advance the education system in order to facilitate the access of ethnic minority women to education, as the literacy rate among them remains alarmingly high.

FOR NGOS and Academics

11. To conduct systematic studies the social and environmental impacts of large-scale development projects such as the Sepon Mining, such as water and soil quality, amongst others.

12. To support gender-specific capacity building and training programmes on women’s rights.

13. To promote the welfare and wellbeing of women and strengthen their roles and contributions to the development and empowerment of indigenous communities and the society in general

References
1. Interviewee: Ms. Bua-ban (alias), about 40 years old Kri woman in October 2012.
A Woman’s Voice in Mining Industry, Laos PDR

- The mining started in 1993 and serious production began in 2003.
- Covers an area of 1,250 square kilometers over Vilabouly and Sepone District.
- The mineral exploitation and production agreement area cover a total of 84 villages all in Vilabouly and Sepone districts.
- The GPDA: Greater Project Development area located on mountains and land which had a total of 9 villages in the past.

Vilabouly forest Before the mining company came

After

Camp of mining company
Vang-Yang village and changing

- “Ban vang yang where I used to live was in the forest. I never saw a car, neither a crowd. There were no roads but trees and rivers. We heard only birds and rats. We grew rice only once a year. To fish in the river or the ponds, men used fishing meshes and women were to pick up those fish. We went into the jungle to find vegetable and fruits for food,” Bua-ban said

Relocated

- “I shifted here along with the entire village in 2005. My previous house is near Koh River. We all saw that the river was polluted. The water flew from the mine. Then we moved here closer to the road.”

Kri

- “We Kri people believe in spirits and we have no temple. On the anniversary of a death, we gather and perform "La-Prue" rite. A man will drum to call those elders' spirits for a meal. We still do the same, but also go to temple with the Phu Tai. If the Kri perform up La-Prue rite, the Phu Tai are invited as well. They are our neighbours.”

Problems and solutions of the villagers

1. Compensation

- “None, other villages got 7 million Kip but ours got none. That’s because they didn’t order us to move but we moved on our own due to the pollution. So they gave us nothing.”
- “The company said it was not yet the proper time. Our representative went to the company every year, and so far we've got nothing.”

2. Lost natural resources

- “Natural vegetable doesn't exist here. I'm afraid to eat these things. I'm afraid of the dirtiness.”
- “Searching for wild vegetable has changed into growing domestically and buying from the market”
3. Water Pollution and supply

- “Birds drank it and they died. I saw dead birds.”
- “Many cows and buffaloes had died because of the polluted water. We told our representative to talk to the company. The mine said it was not due to the water. Those cows and buffaloes died naturally. Many died suddenly. Some entered the mining site and fell down to death.”
- “For water, the company dug 7 wells, but that was not sufficient in May. All the water dried out. We still had to buy water. I normally do 4 buckets are for 2 days. Each bucket costs 4000 Kip. When the drought comes, we need to buy water. We need more money.”

4. Earn money

- “I don’t know how to get money. I don’t know how to work. I can weave and stitch thanks to aid from the mining company. I sell my textile. I may earn 30000 Kip (3.5 dollars) a day, or perhaps not even a single kip.”
- “I buy vegetable, fish, and water for consumption. Now I have 8 children, and I have to get all of them educated. 2 daughters are at ethnic school. One is studying at a medical university. Another is in the national university. Education is costly.”

Weaving group

Khm sri’s feeling

- “Some people are in harder situations, those who say they can do nothing and they can feed nothing. Many have been talking about their old lifestyles. Sometimes they ask me whether I miss my old life, I say ‘yes, but I can’t change it.’
- “Many things are really hard for me. I started practicing Lao just after I was moved.”

Bua-ban’s feeling

- “Some people are in harder situations, those who say they can do nothing and they can feed nothing. Many have been talking about their old lifestyles. Sometimes they ask me whether I miss my old life, I say ‘yes, but I can’t change it.’
- “Many things are really hard for me. I started practicing Lao just after I was moved.”

Recommendations

- There should be some organization to study and assist in solving the water problem for the villagers, in the aspects of water purity, external water sources, and soil.
- Education for profession, supports for gaining income, and continual skill improvement should also be arranged.
- Should have the organization to provide a service to solve with compensate problem
- Each section should be under responsibility of an organization by Participatory Leaning Action.
EMRIP: Sometimes it angers us how the world is going haywire when at the same time governments are
talking about sustainable development in Rio+20, the green economy and meeting the needs of the present
generation and but leaving something for the future. We call on AIPP to put together these cases on extractive
industries for our advocacy. Are they processing their gold there? For open pit mines, clean water is next to
impossible. We can maybe call upon the IRC or Doctors without Borders to conduct an assessment on the
water. There are few bodies such as ICMM.

Haruethai: Yes, they use cyanide and mercury. They work with the FoE.

Ekachai: We also have a case like this here in Thailand. The government required a health fund from the
company.

Achmad: We have to find another way for people to raise their issues. We have to find a way to pressure the
Chinese government.

Mr. Achmad: In different countries, we deal with different ways to put pressure on government. We have to
find another way for people to raise their issues. The Lao government really depends on the Chinese
government. A way has to be found how to put pressure on the Chinese government.

B.2 CASE STUDY: Women of the Big River: Case Study on Blaan Women and Mining in Bong Mal,
South Cotabato, Mindanao, Philippines

Lori Beyer (Philippines)

1. Background

1.1 Indigenous Women in Philippine Policy Framework

Women, especially the poor generally lack access to justice and development programs in the
Philippines. Even national laws fail to mention the roles of women in the development of Philippine
society. Indigenous women fare worse as they have the least say when it comes to basic services,
education and national policy development.

The Philippine State took part in the creation of international mechanisms and treaties that provide
standards for women’s and indigenous peoples’ rights. In fact, the country was one of the first to sign
(15 July 1980) and ratify (5 August 1981) the Convention on the Elimination of all Forms of
Discrimination Against Women (CEDAW). The Philippines was the first ASEAN member nation to
do so. In compliance with the obligations of state parties, the Philippines submitted various reports to
this body.

The enactment of the Magna Carta of Women or Republic Act 9710 is a commitment under the
CEDAW. This legislation was enacted on August 14, 2009 and took effect on September 15, 2009.

There are some provisions for indigenous women in the Philippine Magna Carta on Women. These
provisions are specifically found in Chapter V (Rights and Empowerment of Marginalized Sectors),
Section 20 (Food Security and Productive Resources), Paragraph (b) Right to Resources for Food
production. Indigenous women are viewed as nurturers of resources and have big roles in the food
security of indigenous communities. Specifically, these are:

(3) Customary rights of women to the land, including access to and control of the fruits and
benefits, shall be recognized in circumstances where private ownership is not possible, such
as ancestral domain claims:
(4) Information and assistance in claiming rights to the land shall be made available to
women at all times;

(5) Equal rights to women to the enjoyment, use, and management of land, water, and other natural resources within their communities or ancestral domains.

The Philippines favoured the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on September 13, 2007. But before this, the country has already been implementing the Indigenous Peoples Rights Act of 1997. This law has general provisions in protecting the rights of indigenous peoples to their ancestral domain, self-governance, social justice and cultural integrity. There is also a provision on indigenous women in the IPRA and is found in Chapter V (Social Justice and Human Rights):

SEC. 26. Women. ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

IPRA also obliges the Philippine government to provide full access to education, maternal and childcare, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

The IPRA also has provisions on “Free, Prior and Informed Consent” which is defined as: the consensus of all the members of indigenous peoples to be determined in accordance with their respective customary laws and practices. This is required before a development intervention takes place in a community. The National Commission on Indigenous Peoples (NCIP) released administrative orders (2002, 2006, and 2012) to serve as guidelines for conduct of FPIC in indigenous communities. There are no specific provisions on women but Sec 26 of the IPRA must be applicable to FPIC processes.

The Mining Act of 1995 provides the regulatory framework for the conservation, management and development of mineral resources. The law allows mining companies the following: up to 100 percent foreign ownership, maximum of 50 years operations, up to 81,000 hectares concessions/lease, timber rights, water rights and easement rights, tax holidays and 100 percent repatriation of their capital and profit for a number of years.

Mechanisms for redress are available at the local government units (provincial, municipal and police stations) where gender desks are established.

1.2 Bong Mal – a Cradle for the Blaan

Bong Mal, which means “big river” in the local language of the Blaan, is a community that sits at the boundary of Kiblawan, Davao del Sur and Tampakan, South Cotabato. It has several “sitiio” or smaller zones, three (3) of which are staunch anti-mining communities – Sitiios Bosbang, Alyong 1 and Nakultana. These three areas are the focus of the study.

These mountainous areas are home to an estimated 18 Blaan families or clans, with around 170 individual members. Women comprise 40% of the population. They subsist mainly through planting crops such as corn, glutinous rice, root crops and vegetables. Corn is the main cash crop sold at town centers. They also hunt animals and gather other food and medicinal items in the forest. Some families with better economic standing are engaged in small business such as a “sari-sari store”.

The community has a relatively strong indigenous knowledge and socio-political systems, which are still being practiced. They still follow their “fulong” or traditional community leader, instead of the
barangay captain” instituted by the local government unit (LGU). They also practice “ksaafuh” or getting permission from the owner before entering his or her house. This also applies if one wants to enter another clan’s community. The practice of sharing food with neighbors, called “aksafu”, is also followed.

Rituals during planting season (m’loh), traditional prayers (damsu) and traditional healing practices are also performed. The practice of “pangayaw” or waging war is also very strong, especially with the encroachment of mining activities in the community. Like many indigenous communities in the country, the community of Bong Mal lack social services from the government.

The Blaan Women of Bong Mal

The Blaan women of Bong Mal play a major role in the community. They are the producers of food and nurturers of the family. They do the farm work in their fields and swidden farms or “uma”, along with the men.

Traditionally, they enjoy an equal status with men, in terms of participation in decision-making processes. In their culture of conducting “kastifun” or community consultation, all community members, including women and children, are present. Women may freely voice out their opinions during the kastifun. The “fulong” may not declare a final decision until there is a consensus of everyone in the community, including the women. Should there be a dissenting opinion, the fulong will talk to that person, until she or he finally accepts the resolution of the community.

Women, like men, may own properties, such as farmlands. They may also be chosen as “baefulong” or woman leader of the community. There have been a few “baefulong” instituted in their community. Women also have roles in the performance of rituals in the community.

However, the current condition of the community, where social services are lacking, poses a burden on the women, who take a primary role in the care of the family and production of food. They do not have electricity for use at home or in food production. Water has to be fetched from a spring, which is a distance up from their village. Roads are rough, and only the single motorcycle called “skylab” can be used in going to and from the community. Health services are also nil. School children, including girls, have to hike for at least four hours to get to the nearest school, which offers until the 3rd Grade only. Higher levels of education become close to impossible for the children, due to distance and lack of resources to support their schooling needs.

2. Mining Spells Displacement and Human Rights Violations
The community of Bong Mal is now facing displacement from their ancestral domain due to the operation of the mining firm, Sagittarius Mines, Inc. (SMI). The Anglo-Swiss firm, Xtrata, backed by SMI, is developing the large-scale Tampakan Copper-Gold Project.

When SMI acquired the Financial and Technical Assistance Agreement (FTAA) from Western Mining Corporation (WMC) in 2002, for mining in the areas of Tampakan, South Cotabato, Kiblawan, Davao del Sur and Columbio, Sultran Kudarat, they did not conduct any process to get the free, prior and informed consent (FPIC) of the Blaan community. What they did is to connive with fake tribal leaders appointed by the LGU. Material inducements were given, such as four-wheel drive vehicles. Some community members were also hired as members of the Resettlement Committee (RC), which is tasked by SMI to act as conduit between the affected communities and management of SMI to discuss resettlement plans and benefits. In one of the meetings conducted by the RC in the middle of 2012, packed lunch were distributed to community members. They were then asked to sign on a paper, without a heading. It was later that they found out that their signature signifies their consent to the mining project. NCIP personnel were reportedly present in this activity but was only silent and did not even discuss with the community what FPIC is, as mandated of them.

To further confuse and deceive the community into surrendering their lands, the process of “RUSH” was introduced. In this scheme, the community was made to believe by agents of SMI that their lands can be easily taken away from them since they do not have any proof of ownership. To remedy this, it was suggested that they should have their pictures taken in front of their fields. This picture would then become their proof of ownership of the land.

However, these pictures where subsequently used by SMI as proof of the community member’s
consent to turn over the land to SMI for mining. Those who refused to have their pictures taken were threatened that their homes will be demolished.

SMI also imposed a “cut-off date” (March 22, 2012) for the community to express their agreement to their relocation. If not, any structures built or improvements to the land done by the Blaan will not be compensated if they are destroyed once the open-pit mine operations start. The company also offered payment of Php 64,000.00 (approximately USD1,520) for every 10 hectares of land within a 20-year lease period. Since displacement from their land is like death to the community, they put up barricades to prevent the agents of the company from entering their ancestral land.

Because of this threat of displacement from their ancestral domain and violation of their rights, more Blaan rejected SMI’s mining activities. With this opposition come graver human rights violations against them. Military detachments of the 27th Infantry Battalion of the Armed Forces of the Philippines (AFP) were installed in each sitio. The government also created the Task Force Kitaco (Kiblawan, Tampakan, Columbio) as part of the Investment Defense Force, which protects the interests of Xtrata-SMI. One military detachment is installed 500 meters away from a school. Civilians, including pro-mining tribesmen, were also employed as part of the Citizen Armed Force Geographical Unit (CAFGU), a paramilitary unit.

There were documented instances of threat, harassment, intimidation and theft by agents of the military and paramilitary. Houses and crop storage facilities were demolished and farm lots with crops were destroyed. Tribal warriors who joined the “pangayaw”, the armed defense of their ancestral domain against the mining company, are now declared as “bandits” and “fugitives” by the state forces and are vulnerable to being executed without due process.

Since the operation of SMI in 2002, four Blaan have already been killed because of their strong anti-mining stance. They are Gorelmin Malid, a recognized leader by the community (killed in 2002); Juvy Capion, the 28-year old woman-leader and wife of Daguil Capion, a tribal warrior who declared “pangayaw”; and their two sons aged 13 and 8 years old (killed on October 18, 2012). To date, no investigation has been done to mete out justice for the victims.

2.1 Community Struggle against Mining

The Blaan of Bong Mal has a rich history of struggle against mining operations. In the mid- to late-90s, they triumphed over the WMC. With support from the church and other advocate groups, the community people were able to impede the operation of the mining company, until it transferred its mining permit to SMI in 2002. To date, the Blaan continue to struggle against the Tampakan Copper-Gold Project of SMI. They have staged various protest rallies in town centers to garner wider support from different groups and the general public for the defense of their right to their ancestral land and
self-determination. They also called for the expulsion of SMI and military agents from their community. Their campaign and lobbying, together with other groups, resulted in the signing into law on June 9, 2010 by the Provincial Government of South Cotabato its Local Environmental Code, which bans open-pit mining.

The women of Bong Mal have been very active in the campaign against the mining activities of SMI. They have presented their issues and situation to different public forums organized by the church and KALUHHAMIN, the federation of indigenous peoples’ organization in the region. With most of the males in the community on “pangayaw”, the women have been at the frontlines during protest rallies and barricades.

The women leaders of Bong Mal also tried to talk with Mayor Leonardo Escobillo, the municipal mayor of Tampakan, South Cotabato, to no avail. He just told them to direct their complaints to their barangay captain, who was appointed by the LGU. When they approached the barangay captain, he would not listen to them. First, because they are women, and secondly, because he is pro-mining.

With the recent case of the killing of a woman-leader, various groups in Mindanao and Manila have staged protests and condemnation rallies to call for justice. Indigenous women leaders from the Blaan and other tribes took part in these.

2.2 Women Bear the Brunt of “Development”

The militarization of their community because of the mining project worsens the suffering of the Blaan women of Bong Mal. Their already marginalized situation due to lack of social services has been aggravated by the presence of military agents in their community. Because of military operations, the women in the community who have been doing the farm work were prohibited by military agents from going to their swidden farms because of military operations. This has resulted in insufficient food for the family. Likewise, the incidences of destruction of farm lots have not only resulted in insufficient food, but also psychological stress to certain residents of the community. Even help and relief goods from outside, such as the church, were barred from entering the community. Their practice of “aksafu” or sharing of food has been limited because of this.

The military detachment was erected on a place higher than the village and near the spring where the community gets their drinking water. Because of the military’s encampment here, the water has been dirtied. The women now have to get water from a different source, which is farther. Also, it is a violation of the Blaan culture to install houses and other physical structures near the water source, which is considered sacred.

With the ongoing “pangayaw” of the tribal warriors, their wife and children have been left vulnerable to attacks of the military. There were incidences where the wife and children of the warriors, who were declared as bandits and fugitives by the state forces, were intimidated into divulging where their husbands and fathers are hiding. Because of these harassment and intimidation tactics, some women are now scared and have become less active in the campaign against mining.

Military forces summarily killed Juvy Capion and her children in the early morning of October 18, 2012. The military maintains that it is an encounter with Daguil Capion, Juvy’s husband, and his companions. However, witnesses claim that the bullets came only from the military. Juvy was two-months pregnant when she was killed. All their hits are to the head. To date, no government agency, except for the military forces that are the prime suspects in the killing, has made any probe on the case. These are clear violations of women’s economic, social, cultural and civil and political rights.
3. Violations of Blaan women’s rights and access to justice

Despite the many laws in the country, indigenous women’s rights in particular, and indigenous peoples’ rights to land and self-determination in general, are still undermined by the State’s hegemonic national policy on mining and other development aggression projects.

3.1 Non-recognition of Right to FPIC

The indigenous peoples’ inherent right to FPIC was disregarded when SMI came into the community. The company imposed its processes and plans to the community, without respect to their customary laws and indigenous institutions and practices. This is also a clear violation of the community’s right to practice their culture and traditional institutions and mechanisms. Even the FPIC guidelines of the State that provides safeguards for indigenous communities, however limited, were not followed. With this, indigenous women’s right to participation in decision-making processes in their communities is also ignored.

3.2 The Philippine Government as a Negligent Duty-Bearer

While the Philippine Government takes pride in and brandishes the IPRA as “landmark” legislation and the State’s tangible form of recognition of indigenous peoples’ rights, situations of indigenous communities belie these. The case of Bong Mal, as well as of other indigenous communities affected by mining and other development aggression projects, show that true recognition of their rights to land and self-determination is far from reality. The State’s policy of opening its lands to destructive, foreign-owned and large-scale mining takes precedence over the indigenous communities’ collective vision of development in their ancestral domains.

For generations, indigenous communities have been ignored. Thus, social services, like education, health care, physical infrastructures, energy and water systems, among others, that they should enjoy...
are not provided, whether by the national or local governments. The provision of these services has been delegated to private companies, such as mining, energy, dams and plantations that encroach into indigenous communities. The promise of these services has blinded some communities into giving their consent, only to be dismayed later with the non-fulfillment of these promises.

In line with its liberalized mining policy, the Philippine State has put in place mechanisms to protect big business interests. With it comes the suppression of the rights of indigenous communities affected by these companies. The incidences of human rights violations against indigenous peoples who oppose these development aggression projects are indicators of the government’s neglect and blatant disregard of indigenous peoples’ rights in favor of the private companies. Further, the State has not made accountable any of its forces for their violations of the rights of indigenous peoples. Hence, military has continued to violate rights with impunity.

Moreover, some local governments, who are supposed to be the primary government institution to defend the rights of its constituency, have proved to work for the interest of private companies, instead of the indigenous communities. Their conniving with private companies and fake tribal leaders and blindsiding indigenous leaders have emboldened the companies in forcing their plans upon communities. When they take the interest of the company, the welfare of indigenous communities is put aside.

The NCIP as the national agency tasked to uphold the welfare of indigenous peoples in the country also falls short of its duties. Despite its mandate, according to their own FPIC guidelines, their local personnel did not ensure that the rights of indigenous communities are respected and protected when the mining company imposed its project on the community. Further, they are mum on the human rights violations against indigenous peoples. They have not taken any steps to engage other relevant national government agencies to look into and act on these cases.

3.3 The Indigenous Communities as Struggling Claim-Holders

Despite the oppressive, marginalized and vulnerable situation of the indigenous community, the Blaan of Bong Mal has continued to struggle to free their ancestral lands from destructive mining. Even without a formal knowledge of legal mechanisms, it is clear to them that, as the tribe who has nurtured and developed the land for generations, they have a right and claim to it.

In the course of their struggle, they have formed links with other advocate groups that support their cause. The women leaders also showed strength in lobbying and engaging in dialogues with other relevant groups and the general public. They have also explored government mechanisms, such as petitioning the local government. But when this failed, they saw no other recourse but to resort to their traditional practice of “pangayaw”. Their objective is to wage war against their enemy, which is the mining company, until it leaves their ancestral domain. They believe that only then can they live in peace and development.

Even if the military forces and local government officials declare the tribal warriors to be “mere bandits” and “fugitives”, the community believes that, in a precarious time when they are flagrantly ignored in their own ancestral domain and their rights are violated with impunity, waging war is just.

3.4 Women’s Place is in the Struggle

Indigenous women, foremost, are part of their community. They play a major role in its development and the fight to protect it from big corporate interests. If the indigenous communities’ rights to life, land and self-determination are not recognized, we cannot hope that indigenous women’s rights will be recognized, too.
Until the indigenous peoples’ rights are truly recognized, indigenous women will always be part of the struggle.

4. RECOMMENDATIONS

To further aid the community in their struggle, support for capacity development strategies, especially for indigenous women leaders, on the following themes may be done:

▪ indigenous peoples’ rights as embodied in different national and international legal instruments
▪ campaign and lobby work
▪ organizational strengthening (including the use of traditional institutions and practices)

Community leaders are also called on to document and teach the younger generation the history of their communities’ struggles, along with the transfer of their customary laws, values and indigenous practices.

The government, as a duty-bearer, is called upon to genuinely uphold indigenous peoples’ rights to land and self-determination through the following:

 o carry out community decisions on projects entering communities, with or without titles (ie. pull out companies from communities that have no indigenous peoples’ consent)
 o ensure that FPIC processes are carried out in accordance with communities’ customary laws
 o scrap the Mining Act of 1995 and Enact the Peoples’ Mining Bill
 o revamp the NCIP commission, officials and personnel from the national to the local level to ensure that the agency is manned by people who are committed and capable to implement the mandate of the agency to protect IP rights
 o review past decisions of the NCIP that have violated IP rights and take measures to address past injustices
 o provide the social services needed by the communities, with special regard to the needs of indigenous women
 o pull out military forces, especially Investment Defense Forces, in indigenous territories and sanction its forces that are proven to commit violations of human rights
 o improve and strengthen mechanisms at the local government level for meaningful participation and addressing grievances and redress of indigenous peoples

The Commission on Human Rights (CHR) of the Philippines should investigate human rights violations against indigenous peoples and propose necessary actions to the Philippine government.

For the UN and other international bodies to put pressure on the Philippine government to investigate cases of violation of indigenous peoples’ rights and indemnify victims of such violations. They may also provide venues where indigenous communities’ issues be heard.

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**Case Study Presentation: Women of the big river**

*Lorie Beyer (Philippines)*

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WOMEN OF THE BIG RIVER:

Case Study on Women and Mining in Bong Mal, Mindanao, Philippines

Southeast Asia Consultation on Development, Access to Justice and the Human Rights of Indigenous Women
30 October – 2 November, 2012
Chiang Mai, Thailand

Bong Mal, which means “big river”, sits at the boundary of Tampakan, South Cotabato and Kiblawan, Davao del Sur.

Bong Mal is home to the Blaan.

The Blaan practice their traditional culture like:
- Following the “fulong” or “bae fulong”
- kkaafu
- akafu
- m’lof
- domsu
- kastifun

Blaan women play a major role in the community.
The Blaan declared a “pangayaw” against

Despite the many laws in the country, indigenous women’s rights in particular, and indigenous peoples’ rights to land and self-determination in general, are still undermined by the State’s hegemonic national policy on mining and other development aggression projects.

▪ Non-recognition of the right to FPIC
▪ The Philippine government as a negligent duty-bearer
▪ The indigenous communities as struggling claim-holders
▪ The indigenous women’s place is in the struggle

Our Recommendations...

▪ To further aid the community in their struggle, support for capacity development strategies, especially for indigenous women leaders, on the following themes may be done:
  ▪ indigenous peoples’ rights as embodied in different national and international legal instruments
  ▪ campaign and lobby work
  ▪ organizational strengthening (including the use of traditional institutions and practices)

▪ Community leaders are also called on to document and teach the younger generation the history of their communities’ struggles, along with the transfer of their customary laws, values and indigenous practices.

▪ The Philippine government, as a duty-bearer, should be called on to perform the following:
  ▪ genuinely uphold indigenous peoples’ rights to land and self-determination through the following:
    ▪ carry out community decisions on projects entering communities, with or without titles
      (i.e. pull out companies from communities that have no indigenous peoples’ consent)
    ▪ ensure that FPIC processes are carried out in accordance with communities’ customary laws
    ▪ Scrap the Mining Act of 1995 and Enact the Peoples’ Mining Bill
    ▪ Revamp the NCIP commission, officials and personnel from the national to the local level to ensure that the agency is manned by people who are committed and capable to implement the mandate of the agency to protect IP rights
    ▪ Review past decisions of the NCIP that have violated IP rights and take measures to address past injustices
**COMMENTS:**

EMRIP: I am surprised that bodies such as NICP etc. who are supposed to be protecting the interest of the people are not able to speak out when it comes to state interest. A good example of a forum to address issues of indigenous peoples relating to State obligations is the Waitangi Tribunal of the Maori in New Zealand. Passing down the knowledge is very important.
B.3 TESTIMONY: Mining in the Philippines: *Mankayan women and children in the struggle against destructive mining*

**Jaqueline Sakiwat Buli-e (Kankanaey, Philippines)**

**Mankayan women and children in the struggle against destructive mining**

Jacqueline Sakiwat Buli-e
Save Mankayan Movement/ Innabuyog

**Mankayan Municipality, Benguet Province Philippines**

- Land area – 16,336 hectares
- No. of political units: 13 barangays
- Population: 34,502

- Main source of livelihood: Agriculture
- Peoples: Kankanaeys but now mixed with migrants mostly of who are indigenous peoples from the nearby provinces

**Existing mines and approved mining applications in the municipality (gold and copper)**

A. Lepanto Consolidated Mining Company (LCMCo) and Gold Fields Ltd. (South Africa)
B. Itogon-Suyoc Mining Co. Inc. (ISMi)
C. Bezant (Crescent Mining Development) Co.

- Total mining area claimed by Lepanto Mining Consolidated Company - about 5,077.1795 hectares or ¼ of the municipality.

**Issues at present and impacts:**

- Drilling (exploration) activities conducted without “Free Prior Informed and Consent” of the people.
- LCMCo wants to convert their Mineral Production Sharing Agreement (MPSA) applications to a Financial Technical Assistance Agreement
- More drilling explorations are programmed in almost the whole of the municipality and the building of another tailings dam
- Impacts of all these operation on the lives of the people of Mankayan.

**Crucial area of conflict between Lepanto and the people - land and the rights of the people over their lands (including the resources) which is being disregarded in favor of the corporate mines brought about by the current mining policies of the government.**

**Impacts of mining operations in the municipality**

**Subsidence/sinking at the central business area in 2009 after the strong typhoons**

Subsidence in Colalo – 1990:
Elementary school area sink down, including many houses and buried a man alive. Until now, his body has not been found.

**Underground Mining**

Ventilation shafts have drawn seepage from surface streams, irrigation canals and pondfields.

Tunnels driven deep into the earth have disrupt groundwater paths. They have broken through some water tables and undermine others.

**The drilling of LCMCo in Madaymen, Tabio, Mankayan which led to the setting up of barricade among the affected communities on Jan 23, 2012**
New cracks and sinking that affected houses and nearby gardens just after typhoon “Helen” in August 2012. About 5 families immediately evacuated to the Daycare Center.

Water pollution and its impact on food production

At the fruiting stage, healthy rice plants are verdant, their panicles heavy with closely clustered grain. But rice plants grown on contaminated paddies look burned, their panicles loosely scattered and light, having empty hulls.

Peoples Responses:

- Miners’ struggle are also wives’ struggle (formation of Workers’ Wives Association)
- LEPANTO UNION STRIKE - 101 days (June 2 - Sept 10 2005) deadlock in the CBA due to denial of workers legitimate demands - increase in wages and more benefits Lepanto earned 2, 866,768,000 in 2004 and the demands of workers is equivalent to only 4.7% of the net profit.

Women are playing great role in many ways in the struggle against the mining corporate

a. Mobilizing and educating the people in the communities on their rights and the impact of mining
b. Helping in negotiations with the company officials and local government units
c. Making petitions and conducting dialogues with the LCMCo management and concerned government agencies
d. Continuing education and trainings
e. Technical work like making popular education materials for community awareness-raising
On March 10, 2012, during the Municipal Fiesta, around 1,500 participants coming from different barangays joined the protest march against LCMCo and its partner Goldfields.

Continuing education on the indigenous peoples situation and their human rights

We attend “foras” and do “Information Education in the Communities” as part of strengthening our ranks in opposing the continuing entry of large scale mining company in the locality.

Continuing education on the indigenous peoples situation and their human rights

We attend “foras” and do “Information Education in the Communities” as part of strengthening our ranks in opposing the continuing entry of large scale mining company in the locality.

By and large, while the people have to some extent succeeded in their protest actions against the giant corporate mines. However, much still remains to be done most specially by the people themselves. This would mean united, concentrated and sustained efforts. To remain passive in the face of the various issues would mean certain death for the people Mankayan as their lands, livelihood, resources, and environment would be at the mercy of the greedy corporate mines.

People’s calls:

No to large scale mining!

Stop Lepanto Mining Operation! Gold Fields Out of Mankayan, Now!

No to militarization in Mankayan!

Saan nga agbuteng! Ituloy ti laban!

Thank you
COMMENTS:

NHRCT: I appreciate the women’s struggling against mining. The problem starts with the lack of FPIC from the company. I deal with some cross-border cases (ELCs), so I am wondering about the Lepanto business in the place- is it Filipino or international?

Jacqueline: it is a Filipino investment.

NHRCT: Did you try to find the domestic mechanism to investigate the case? Do you have a plan?

Jacqueline: Not yet, but we will set up a plan. I only learned about the agencies now.

NHRCT: Can you find out if there are international investments? Can international agencies be consulted?

EMRIP: There are various guidelines and laws available (such as FPIC). This is important to press the authorities, the other one is Environment Impact Assessment (EIA) and Social Impact Assessment (SIA). The companies have to come up with that. It is difficult to show the comprehensive impact of the company’s activities. Can the agriculture or water department be included? Additionally, the police is supposed to keep peace, not to take sides, that can be kept in the report. Lastly, there are laws that regulate the behavior of the companies. There is an international guideline on business and human rights. Why do you consider themselves as owners of the land?

Jacqueline: It is the land of our forefather, our ancestral land.

KOMNAS Perempuan: How is the social impact on the women? How is violence against women of the area?

Jacqueline: There is violence against women, especially the younger ones.

Burma: Where is the ore going to? In Burma, there is a specific impact of mining companies on women. The use of mercury contaminates water, affecting women who use it. Are there any documented impacts in your case? In our country, there has to be EIA, SIA, do they have it and share it?

Jacqueline: yes, gold production has also impacts on women like skin rash, air pollution. The company never accepted the environmental assessment done by independent parties.

EMRIP: I suggest that as a community, you must ask if EIA, SIA has been done, and they have to consult the community. If they did not ask you before, it means that they did not do it properly or did not do it at all.
**B.4 TESTIMONY: Marble, Gas and Oil, Food: All Related to Nature**

*Aleta Baun (Molo, Indonesia)*

Aleta Baun has earned the monicker of being the ‘Indonesian Avatar’.87 Having observed the destructive effects of marble mining and oil extraction in their island of Timor, Aleta used her organizing skills to launch a sustained campaign to stop marble mining in their community when the miners attempted to desecrate their sacred mountain. After successfully driving out the mining companies in the midst of government apathy, she is now helping to rebuild the destroyed land – spiritually, culturally and environmentally.

Fatu Naususu is the indigenous Molo peoples’ most sacred mountain, known as the “mother of all rocks” in local legend. Located in Molo, Naususu subdistrict, Fatumnasi Sub-district Timor Tengah Selatan District, in Nusa Tenggara Timur (East Nusa Tenggara), it is the natives’ main source of nurturance, connecting them with their ancestors. Among the Molo, nature, in the form of stones, trees and water are important identity symbols. Marble stones are particularly important for the Molo’s base of life as they are considered the Earth’s bones. Any desecration of these stones means a desecration of life to the Molo. However, these stones are precious marbles in the eyes of capitalists. They protested for years to assert their right to their lands. Aleta at one time had to live in the forest for months in order to escape attempts on her life. She has a scar in her leg to show a machete wound inflicted by a paid thug. Protests became heightened in 2008 to 2010. Often, authorities used force and demonstrations ended violently. Nevertheless, the villagers were not to be intimidated. For example, 1000 tribe women occupied the largest marble quarry in the hills Naususu in symbolic protest by setting up their loom to weave for several months, so the miners did not have any room for their activities. Finally, Molo men and women, led by Aleta, managed to stop all mining marble in their homeland. The strong and intense community opposition heightened for three years (2008-2010) made five marble exploration companies leave in District Fatumnasi, Molo North and South Molo.
the ecology is vanished because people ...  
- Have greedy attitude  
- Not friendly to nature  
- Want to get everything easily  
- Only think about the money

Mining doesn’t bring benefit to the community  
Forest is vanished  
Erosion happens  
The water debit is decreasing  
THE ROCK IS VANISHED  
Conflict among IPs and Government is created  
Disappearance of customary land and ritual sites

Mining indulged IPs by not working hard  
Mining built conflict between IPs and Government  
Mining caused difficulties to the people and lost their livelihood

What have been done?  
- Conserving disaster places  
- Building study place together  
- Building tourism place together  
- Strengthening the customary rules and laws  
- Trying to get back to local food through food festival

Building strength together  
- Group Organizing in Mollo, Amanuban, Amanatun areas.  
- Uniting in Ruamah Lopo (the traditional house)  
- Building a network among the groups in one district

The Rocky Mountain of Nausus...  
- is a place for three of IPs to study together in TTS (Timur Tengga Selatan)
DISCUSSION TOGETHER TO BUILD STRENGTH AND ADAPT TO NATURE

SHOW THAT IPs ARE ABLE TO ADAPT TO CLIMATE CHANGE

IPs MAKE FRIEND WITH NATURE, ENSURE FOOD SOVEREIGNTY EVEN WITH CLIMATE CHANGE

BACK TO NATURE AND DO RITUAL CEREMONY TOGETHER TO PRESERVE THE POWER

LIFE CAN NOT BE SEPARATED FROM NATURE, CUSTOMS, GOVERNMENT AND RELIGION IN FACING THE CLIMATE CHANGE

ACTIVITIES THAT ARE BEING CONDUCTED BY THE INDIGENOUS PEOPLES OF THE MOLLO, AMANUBAN, AMANATUN TRIBES
EMRIP: Aleta’s case shows ways how indigenous peoples can forward their struggle. It is important not to strengthen only the customary system, or to struggle only for the community, but there must be a change in the laws and policies, to push pressure on governments. If there are hired Mafia, and such actors, you can use NGOs and other human rights defenders to protect you. At the international level, we have the Special Rapporteur on the Rights of Indigenous Peoples, the High Commissioners, and others. The filing of cases is also important.

KOMNAS Perempuan: Not many people dare to expose the truth. The presenter is a victim of the policy of the government that gives a concession for mining. There are three steps to fight the discrimination of indigenous peoples: 1) Exposure of the truth, 2) the fight for justice, facilitated by some institutions, and 3) rehabilitation.
B.5 TESTIMONY: Shwe Gas Pipeline in Burma

*Kham Aye Nang (Shan, Burma)*

**Slide 1**

Unjust land confiscation in Northern Shan State for Chinese oil and gas pipelines

Nang Kham Aye, MP for Namtu, Shan State
SEA Consultation on Development, Access to Justice and the Human Rights of Indigenous Women

**Slide 2**

Chinese pipeline project

- 793 km through Burma
- Construction began in 2010
- Due to finish in 2013
- Built by China National Petroleum Corporation (CNPC)

**Slide 3**

No consultation with affected villagers

- Township officials held meeting of villagers, said company would give compensation for lands along pipeline route (98 feet wide)
- Villagers were promised value of land, and 5 years crops

**Slide 4**

No transparency around measurement of land and valuing of crops

- Township officials measured lands with local headmen and sometimes with villagers
- Some villagers did not want to cooperate
- Some illiterate villagers did not understand the process
Slide 5

Delay in giving compensation

- In some areas Chinese company began digging before villagers received any compensation

Slide 6

Corruption by authorities

- Some villagers adjusted to give 20% "commission" to local officials immediately after receiving compensation from company
- Some villagers were then visited by officials at home and had to give more money

Slide 7

False land claims

- Township authorities made false claim to villagers' land on order to get compensation
- E.g. took three plots out of seventeen

Slide 8

Company contractors deceived villagers into accepting very low compensation

- When farmlands were used for river water diversion, contractors made villagers sign Chinese documents for very low compensation

Slide 9

Villagers complain about unequal compensation

- Villagers compared their compensation with each other and realised the rates are not the same
- They also discuss how they had to give extra money to officials
- They made complaints to Namtu MP

Slide 10

Investigating the land measurement

- MP visited the pipeline route with villagers
- Measured the confiscated lands
- Called the land survey officials to re-measure the land
- Demanded that they adjust the compensation
- But adjustment only made for two villages
Threatening to raise the issue in State Parliament

- Officials were told that if they did not adjust compensation, the issue would be raised in Parliament
- Officials said that they would adjust, but they did not

Written complaint to State Agricultural Minister

- MP threatened to raise the issue in Parliament if the Minister did not action
- Officials lied to Minister that they had adjusted the compensation

Issue raised in State Parliament

- Issue of unjust land compensation and corruption raised in Parliament
- Minister went to village to investigate
- Before Minister’s visit, authorities tried to force villagers to sign they had received adequate compensation, but the villagers refused
- Minister ordered land survey officials to make another measurement
- Result sent to Naypyidaw, and Chinese company adjusted the compensation

Road damage

Demanding benefit sharing

- In State Parliament, the MP demanded for 5% of the annual national revenue from the pipelines project to be spent on Shan State social services
- Also asked that the Chinese company take responsibility for any accidents and damage caused by pipelines
- Motion approved in State Parliament
Conclusion

- There has been no process of Free, Prior and Informed Consent for the construction of the oil and gas pipelines
- Villagers have no awareness of their rights
- The pipelines are causing many social and environmental problems
- The pipelines are not providing any benefit to local people

Recommendations

- Impacted communities need information about their basic rights so that they can protect these rights
- Companies investing in Shan State must disclose all project information, consult local communities, and conduct social and environmental impact assessments before proceeding with projects
- Companies must ensure that benefits are shared fairly with local communities

COMMENTS:

EMRIP: There is a need for safeguards, the need for independent assessment, and the need to look into international guideline on indigenous peoples rights.

Mr Achmad: China is not sensitive regarding human rights violations. They are also involved in Vietnam, Indonesia, etc. Human rights issues have to be advocated with the Chinese government.

Timor-Leste: We have a similar case in Timor Leste. The government has made agreements with the Australian government to build an oil pipeline.

EMRIP: Burma is opening its doors now for everyone, and if in the past the military was the problem, the new problem will be the development projects.
2.3.3 C. National Parks

C.1 CASE STUDY: National Parks, National Reserved Forest and Forest Park: The Struggle of Indigenous Women in National Parks in Thailand

Indigenous Women’s Network of Thailand

1. Background

Mainly in the uplands of Northern and Western Thailand, various groups of indigenous peoples are living, categorized as “Chao kao” (Thai), or “hill tribes”, such as the Karen, Lisu, Hmong, Lahu, Akha and Mien, amongst others. According to the Department of Social Development and Welfare (2002), their total population is 925,825 in the North and West, but there are still no numbers available for the South and North-West of Thailand.88 Over the course of time, the term ‘hilltribes’, used for various ethnic groups living in the uplands of Thailand, has become tightly connected to negative stereotypes such as opium cultivation and forest destruction (vgl. Buergin, 2000). Indigenous peoples and their advocates thus prefer the term “chon phao phuen mueang” as the translation of indigenous peoples. The Thai government does not recognize “indigenous peoples” in Thailand by claiming that the ethnic groups are as much Thai as other Thai citizens, enjoying the same fundamental rights and freedoms. However, discrimination and stereotypes still largely persist.89

During the last decades, large forested areas in these parts of the country have been declared as protected areas. The demarcation of such conservation areas - national parks, forest parks and wildlife sanctuaries - has had a tremendous impact on the indigenous peoples who had been living in the areas since generations back. First and foremost, the imposition of protected sites on indigenous territories is severely limiting the peoples’ access to traditionally used natural resources, and thus, threatening their livelihoods. Moreover, indigenous peoples continue to face serious threats and human rights violations during land use conflicts, such as arrests, forced eviction, or seizure of lands on charges of illegal encroachment on so-called state land. As main food providers for their families and keepers of traditional knowledge, indigenous women are disproportionately affected from the lack of land rights and tenure insecurity because of their gender role in providing and ensuring food for the family.

1.1 Legal and Policy Framework

In the Thai kingdom, numerous national laws, resolutions and policies are directly and indirectly related to indigenous peoples’ in general, and indigenous women in particular. The 2007 Constitution, as the supreme law of the nation, includes several provisions that are closely linked to indigenous peoples’ livelihood, such as Article 66.90 This Article provides for local communities to have the right to maintain their cultural traditions, as well as to protect and manage the environment and natural resources. According to Article 6791, people have the right to participate with the State and communities in the conservation of natural resources under certain conditions.

As a response to rapid industrialization processes and vast environmental destruction, the Thai government has enacted numerous laws and state policies on forest and land use as well as on natural resource management.92 Often, these regulations have negative implications for indigenous peoples, e.g., laws on forest use and management.

The Forest Act of 1941 declares that any land not acquired under the land law is considered forest, and therefore belongs to the State. This law strengthens state ownership while prohibiting the clearing, burning, occupation or possession of any forestland.93 Besides that, the National Reserved
Forest Act 1964 (NRF) focuses on forest conservation by declaring permanent forests as forest reserve land by royal decree. The act stipulates that “within National Reserved Forests, no person shall occupy, possess, exploit and inhabit the land, develop, clear, burn the forest, collect the forest products nor cause by any other means whatsoever any damage to the nature of the National Reserved Forest”. The enactment of the NRF had direct impacts on indigenous peoples as all land in the country without titled owner became National Reserve Forest, and thus, state property. The indigenous peoples never were told to get titles to their ancestral lands. The National Forest Policy of 1985 tries to frame forest policy within the context of overall national development by emphasizing the importance of a partnership between state and the private sector. The private sector, however, is widely understood as business, not indigenous peoples. Moreover, the policy points out indigenous peoples and their traditional practices as main causes for forest degradation. The stated objective of this law is to maintain a 40% forest cover.

During these last years, the Thai National Forest Policy increasingly focused on the creation and maintenance of conservation area systems, and enacted laws on protected sites accordingly. Protected sites are natural systems in which human settlement and forest use are prohibited, while resettlement of people living in the area is enforced. In this context, the state attempts to gain control over forest areas by the declaration of national parks. The National Park Act of 1961 (NPA) forms the legal basis for the creation of national parks in Thailand. NPA stipulates that such land “to be determined as national park must not be owned or legally possessed by any person other than public body.”

Today, Thailand’s park system includes National Parks and Forest Parks, the latter being conservation areas on state land which are not large enough to be declared as National Parks. Altogether, there are 149 National Parks in Thailand. During the last decades, state agencies like the military and the Royal Forest Department (RFD) had been trying to secure protected areas and to solve conflicts over use-rights by using force, pursuing a strategy of exclusion and enforced resettlement towards the indigenous peoples living the forest reserves.

Local farmers and more people-oriented civil society organizations and academics began to draft a Community Forest Bill during the 90s as an alternative to “dark green”, conservation strategies by giving more control over natural resources to local communities. In 2007, the National Legislative Assembly passed their own version of the bill entitled Community Forest Bill despite resistance from civil society organizations and indigenous peoples’ rights defenders. In fact, the rights of forest communities are annihilated in the Bill, while some contents are criticized to be similar to the conventional forest laws that curtail peoples’ rights to natural resources. Meanwhile, the government tries to implement its principles and policies of reforestation through cooperation between the Ministry of Natural Resources and Environment and the Army. In 2008, they signed an agreement on forest conservation, targeting at fighting land encroachment and forest degradation.

Thailand also has passed laws on wildlife and fishery management. According to these laws, large areas in the north of Thailand are also classified as wildlife conservation areas. The Wildlife Preservation and Protection Act of 1992 is based on the Wildlife Preservation and Protection Act of 1969 which created wildlife sanctuaries as well as non-hunting sites and provided a list of protected wild animals. The 1992 Act forbids hunting, breeding, possessing, or collecting protected or preserved wildlife (Sec. 16-21). As people are neither permitted to live nor to perform any activities in these areas (see: Art. 33 and 38), communities depending on forest resources and maintain sacred in such forests were often turned into law breakers and many have been relocated out of the protected sites under this law.

Besides forest laws and laws on wildlife management, natural resource management, land use, access, control and ownership is further regulated by various land laws, such as the Land Code of 1954 and the Land Development Act of 1983. Amongst others, these two provide regulations for the issuance of land-use claim certificate. The Land Code further declares 50% of the country as
forestland managed by the RFD (UNDP, 2007). There is no land law that grants formal tenure rights to indigenous peoples. Hence, indigenous people living in protected areas are always violating the law.

Apart from laws on natural resource management, other parts of the Thai legislation are relevant for indigenous communities’ livelihoods. There have been several Cabinet resolutions that explicitly relate to local communities and their cultural traditions. One of this is the Cabinet resolution approved in 2010 that stipulates policies on the “Restoration of the Traditional Practices and Livelihoods of Karen people.” The Cabinet agreed on a project to recover Karen livelihood as proposed by the Ministry of Culture.

Thailand’s legal framework in relation to gender is included in the Thai Constitution that emphasizes equal rights between women and men. During the last decade, women’s rights have been strengthened by various legislative amendments. Currently, Thailand has drafted the Promotion of Opportunity and Equality Act that is now awaiting submission for review by the Parliament.

Thailand’s institutional machinery for gender equality includes the Office of Women’s Affairs and Family Development under the Ministry of Social Development and Human Security. The Office serves as secretariat of the National Committee on the Policy and Strategy for the Advancement of Women. The latter coordinates the state’s reporting obligations to the CEDAW Committee, and drafts and implements national action plans for women. At present, the National Plan for the Advancement of Women (2012-2016) is in process. The Chief Gender Equality Officer and Gender Focal Point, a key gender mainstreaming mechanism to promote gender equality, is now in charge of over 130 government ministry and departments.

At the international level, Thailand has ratified various international treaties and conventions directly pertaining to indigenous peoples’ legal standing. This includes international environmental conservation instruments such as the Convention on Biological Diversity (CBD). Accordingly, indigenous peoples are entitled to participate in joint management of natural resources and to practice customary sustainable use in protected areas. Thailand also is party to the International Convention on the Elimination of all forms of Racial (ICERD), the Internal Convention of Economic, Social and Cultural Rights (ICESCR), and the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), among others. These treaties provide a comprehensive legal framework on human right that obliges States Parties to protect human rights and fundamental freedoms of individuals. Thailand voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This instrument protects the collective and individual rights of indigenous peoples, such as their right to self-determination, their right to the lands, territories and resources which they have traditionally owned, as well as to practice their cultures and customs, and not to be evicted without their free, prior and informed consent.

Particularly against the background of its obligations and commitment to these international treaties and instruments, the Thai government has the obligation to recognize and protect indigenous women as women and as indigenous peoples. The reality, however, looks different. In the following case study, various negative impacts of Thailand’s National Parks Policy on indigenous women in three communities will be presented—two Akha and Lisu communities in Northern Thailand, and one Karen community in Central Thailand.

1.2 Community profiles: Doi Chang, Doi Lan, Kaeng Krachan

In Mae Suai district, Chiang Rai Province, Northern Thailand, indigenous peoples have suffered from the lack of formal tenure rights and control over land for decades since the formation of the Thai
nation-state. During the past 30 years, various development initiatives (such as poppy replacement projects) supported by the Thai government were launched in the area without the indigenous peoples’ informed consent. Indigenous peoples were not allowed to determine and develop their own priorities and strategies for the development or use of their territories and resources. Moreover, the declaration of conservation areas (Lam Nam Kok National Park as well as a National Reserve Forest and Forest parks) in Wawee District has severely impacted the life of indigenous people in the province. In the communities of Doi Chang and Doi Lan, indigenous Lisu and Akha are affected by insecurity of tenure and lack of access to traditionally used natural resources.

Doi Chang
Doi Chang is located in Wawee sub-district, Mae Suai district, Chiang Rai province in Northern Thailand. Composed of 3 ethnic groups (Akha and Lisu in the majority, Chinese in the minority), Doi Chang has a total population of 3372 residents, 1694 men and 1678 women. The village was established in 1915 by a group of Lisu traditional leaders. The location was selected due to its high altitude (1100 meter above sea level) and cool climate, allowing plant cultivation throughout the year. Doi Chang’s high altitude was especially suitable for growing poppy that was largely cultivated before its official prohibition. In 1982, a group of Akha (6 families) moved from Phyaphrai, Mae Chan district, Chiang Rai, and the Lisu shared land and natural resources with the newcomers. Traditional leaders governed the village until 1971 after which the official administrative bureaucracy replaced traditional governance marginalizing the role of the Lisu traditional leaders. Nowadays, the village headman is Akha. In the past, the Lisu and Akha peoples in Wawee mostly practiced traditional rotational farming and upland rice cultivation. Especially the Lisu used to select their agricultural farming sites with great care by classifying cultivable and protected forest areas. Both groups also grew a variety of vegetables (such as bean, pepper, sesame) for household consumption and to support livestock breeding (domestic animals, for example, water buffaloes and pigs). Lisu women equally participate in the utilization and management of natural resources (such as swiddening, burning, sowing and harvesting). Traditionally, they have elaborated skills and extensive knowledge on medical plants, seeds, and food sources that are passed down from generation to generation. However, women are not allowed to choose cultivation or habitation sites and have limited rights to participate in decision-making. As both Lisu and Akha are patriarchal society, only names of the male family leaders are used to refer to land and property of a family. Traditionally and legally, in Lisu and Akha communities, women are not considered as owners of coffee and fruit plantations or of any type of land, as women marry into the men’s family.

Doi Lan
Doi Lan is also located also in Wawee Sub-district, about seven kilometres away from Doi Chang. The village is composed of 179 households, or 692 people (355 men, 337 women). Four ethnic groups are live together in the community - Lisu, Akha, Chinese and Thai. Doi Lan was officially established as a community 62 years ago. The majority of present residents moved from the Doi Chang and Mae Mon areas in order to have better access to farming land. As in Doi Chang, Doi Lan is also was part of the Highland Wawee Cooperation and thus, numerous development activities have been brought to the community under the patronage of the Thai Government, Thai-German Highland Development Project (TGTC) and various international donors. Also Doi Lan was declared as Forest Park within the NRF, surrounded by Lam Nam Kok National Park. Due to the NRF, the villagers do not have any kind of tenure security or rights to co-determinate or participate in decision-making processes regarding land development.

Today, people in Doi Lan cultivate their own farms for corn, coffee, rice and a variety of fruits. Most families (445 households, both Lisu and Akha) are now dependent on coffee production with an average annual income of THB 31,672 in 2010. Similar to Doi Chang, some Doi Lan villagers do not have Thai citizenship and are poorer compared to other residents. However, also in Doi Lan the government has denied any kind of land ‘ownership’ to the Lisu and Akha.
Kaeng Krachan
The Karen (Pгаз K’nyau) form the largest indigenous group in the Thailand. They reside in hills, plains, valleys and lowlands mainly in the provinces of Mae Hong Son, Tak, and the western part of Chiang Mai. By tradition, most of the Karen are paddy farmers. They believe that they neither create nor own natural resources, and therefore these must be conserved. Like the Lisu, they choose their cultivation sites carefully. The Karen’s traditional rotational and intercropping farming combines short cultivation periods with extensive fallow times of 7 to 10 years. Particularly in northern Thailand, however, state forest regulations have led to a dramatic reduction of their traditional rotational cultivation practices, and the majority of the farmers have turned to cash crop cultivation. Many academic studies have supported the Karen people’s claim that their traditional farming methods are environmentally-friendly, promoting the regeneration of forest biodiversity.

In Amphoe Kaeng Krachan, Phetchaburi Province, Central Thailand, indigenous peoples are affected by the declaration of protected sites. Ethnic Karen people have been living in the area for more than 100 years.

2. Impacts of the national forest policy in Doi Chang, Doi Lan and Kaeng Krachan

2.1 Information about the implementation of the National Forest Policy in Doi Chang, Doi Lan and Kaeng Krachan

During the last decades, the government introduced poppy replacement projects that aimed at reducing the large poppy production in Wawee sub-district and at providing alternative income for villagers in the area, e.g., animal husbandry, agriculture, coffee and cash crops production. First, this project ("Highland Wawee Cooperation") was managed by the Public Welfare Department under the Ministry of Interior, and later, from 1981 to 1998, by the TGTC. It was executed jointly with the Thai Office of Narcotics Control Board and a multitude of international donors. In this context, numerous development activities were brought into the area. TGTC was eventually replaced by the Highland Agriculture Station (HAS) under the Agriculture Academic Department, Ministry of Agriculture and Cooperatives. As the village is located in a NRF, the Thai government considers the area as state property. Therefore, villagers do not have land rights or control over their territory, and they cannot freely determine their economic, social and cultural development. Rather, government initiatives replaced indigenous peoples’ traditional farming methods (such as shifting cultivation) by cash crop production. At the same time, the government has not recognized the ‘ownership’ of the Lisu and Akha’s cultivated lands. The Akha and Lisu owners do not have any documentary evidence for land use rights either. Nowadays, cash crop production in Doi Chang is widespread. The community produces peaches, cherries, macadamia nuts and tomatoes. However, ninety-eight percent (98%) of the community’s agricultural produce is coffee. As a consequence, coffee plantations cover most of the community land. Many Lisu and Akha women work as cheap laborers in the coffee plantations, such as in seeding, planting, fertilizing, harvesting, and drying of coffee beans. Today, more and more lands are being converted to coffee plantation by outsiders, such as coffee companies and individuals. These bigger players occupy large areas of land, often with cooperation with some of the richer villagers. The coffee produced in the community also has been trusted by an international fair trade agency under the World Trade Organisation (WTO). The coffee brand “Wawee” is famous all over the county.

The communities of Baan Doi Chang and Baan Doi Lan were declared as NRF in 1972. Later in 2001, the Royal Forest Department started to explore and survey the land on the left bank of the Nam Kok River adjacent to both communities and declared it as the Lam Nam Kok National park in 2006. During the last decade, the zone around the community was announced as Forest Parks (or Mini-National Park) within the NRF. However, the boundaries of the conservation areas have neither been clearly demarcated nor properly been communicated to the affected communities. Meanwhile,
in Doi Chang some of the residents still do not possess Thai citizenship and therefore, lack access to basic social services. They also cannot travel freely outside their district.

Besides being declared as NRF in 1972, Doi Chang and Doi Lan are surrounded by the Lam Nam Kok National Park. Beginning with an initial survey in January of 1999, the Forest Department ordered the authorities to take control of the area and to prepare it for the demarcation of a national park. In 2006, Lam Nam Kok National Park was declared. The Park covers an area of 732.98 square kilometers in four districts of Chiang Rai province. Between 2001 and 2006, surveys for expansion purposes were undertaken in many areas of the NRF. Altogether, 6 forest parks (or mini-national parks) were declared in the Wawee sub-district. These cover both Doi Chang and Doi Lan communities. Forest parks, in turn, can be expanded to become a national park in a stepwise process. Currently, the National Board of National Park Directors is exploring and preparing the establishment of a national park on the right side of Nam Kok River, in the area of the today’s Forest Parks. In this context, in 2008 and 2012, further surveys were undertaken, a process that requires the approval of the Cabinet. However, preparation processes were not made public in order to avoid protest of the affected communities.

Most of the area’s inhabitants have not been properly consulted about the demarcation process and the actual boundaries of the conservation areas, nor substantive information shared about all these plans. Forestry officials informed the villagers about the demarcation process and the regulations within the protected areas. Most of the meeting were only held in Thai language though. The former headman of Doi Chang, Banpot Keerikamsuk, describes the information meetings as follows:

“There was the meeting in Doi Chang School, many people in the community attended, including women. The meeting was conducted in Thai without interpretation, the map of NRF boundary was not shown”. One member of the Doi Chang village committee, Wipat, adds: “The map was shown explaining the GPS, I am sure no one can understand, even me, I don’t know exactly the boundary of the mentioned NPF”. The current Akha village headman also remembers the lack of information regarding the demarcation processes during the previous years. ”I have been in Doi Chang for 15 years, I have attended neither the community meeting or official meetings of the forestry officers”. “I don’t know when did they declare. What I know is all the lands in the mountain are protected areas, and people cannot even enter or do any activity there”. With regard to the expansion efforts and the declaration of forest parks by the Royal Forest Department, Wipat also states, “so far there has not been any consultation”.

Kaeng Krachan National Park is the biggest National Park in Thailand, covering 2,914.70 square kilometers in the border with Burma. Most of the park’s area is covered by thick rain forests on several mountain ranges, with the highest peak at 1,200 meters above sea level. The park has a rich diversity of flora and fauna, watersheds and waterfalls. Its main rivers are the Phetchaburi and Pranburi rivers. After its declaration in 1981, the park was further extended. The park also covers various Karen villages, such as Baan Baang Kloy Bon, Baan Pu Ra Kham (in Tambon Hoy Mae Priang, Amphoe Kaeng Krachan) in Phetchaburi Province. In Amphoe Kaeng Krachan, indigenous peoples are affected by the declaration of protected sites. Ethnic Karen people have been living in the area for more than 100 years.

In the year 1981, the government declared an area in the province close to the Burma border as Kaeng Krachan National Park. This area is very rich in natural resource and biodiversity as it contains many important watersheds. From 1992 onwards, the community of upper Bang Kloy was repeatedly forced to leave their homes and to move to the lowlands - Lower Pong Luk –Baang Kloy
2.2 Development-induced violations against Lisu, Akha and Karen women’s human rights

In Wawee-sub district, the lack of tenure rights deprives indigenous peoples of participating in decision-making and self-determination regarding the use of their land. The introduction of various development and poppy replacement projects into the area has led to an abandonment of traditional agricultural practices, such as shifting cultivation. Traditional farming methods, however, play a crucial role in the maintenance of the social-cultural integrity of indigenous peoples, family food security and are closely connect to local traditions and customs. The large coffee plantations have enhanced their dependence on global coffee prices and on the mainstream market. Market fluctuation in prices is beyond their control and negative affect their livelihoods. Besides that, the intensive cultivation of cash crops has brought a heavy dependence of the farmers on certified seeds, fertilizers and pesticides, threatening their health and eco-systems.

The demarcation of protected areas in its many forms - national preserve forest, national park and forest parks - has had many negative impacts for the people on site. In reality, different forest categories often overlap within the actual areas, causing conflicts over the responsibilities between different government agencies. Ambiguities in demarcation combined with the prohibition of land use have severely impacted indigenous peoples’ livelihood in the district. As the case study was
being conducted, there were many land dispute cases in the two communities due to perceived encroachment of the Protected Areas. Several villagers face criminal charges and have been arrested as they went through their daily livelihood routines but which forest officers declared as illegal. These are often followed by expensive and time-consuming lawsuits. In the meantime, the villagers are forbidden to enter their own cultivated land and thus deprived of their means of subsistence.

The lack of land rights and the restricted access to forest resources particularly affects indigenous women. As responsible for ensuring daily food supply for the family, many Akha and Lisu women depend on the forest for wild and cultivated foods for their daily use and seasonally, as source of cash for forest products in season. This independent source of livelihood allows women to balance their budgets while removing the need to sell their labor or to look for cash to buy food. As main food producers for their families, they often have an intimate knowledge of the local forest environment and of natural resource management that they pass on to younger generations. The introduction of cash crops and the denial of access to forest resources, however, lead to a loss of this traditional knowledge and undermine the women’s independence as self-reliant food producers. The forests, as shared resources, gives indigenous some access to economic resources that they otherwise cannot have as individuals. In Ban Doi Chang and Ban Doi Lan, some Akha and Lisu women have experienced severe hardships due to the demarcation of protected areas, and aggravated by their lack of citizenship.

**DOI CHANG**

Meechea Chermue is an Akha women born in Maetue, Chiang Rai, near the Thai- Burmese border, 38 years old. She has 3 children, 15, 10 and 5 years old. As she and her husband do not hold Thai citizenship, also none of her children has a birth certificate. As a consequence, their access to the education and health system is restricted. Meechea has been living in Doi Chang for about 15 years. Her family bought 2 small pieces of land from some Akha and Lisu families, without receiving any deed of ownership. She started her own small coffee plantation on this land, but most of the time, she works for little money in coffee plantations of wealthier people. The arrest of Meechae happened on an April afternoon in 2012 while she was working on her coffee plantation behind her house. She was taken into custody on charges of encroaching on a National Reserve Forest and contributing to the degradation of the forestland. At the same time, the forest guard also arrested her neighbor. After 3-4 hours investigation in the forestry station at Houisaan, Mae Suai, Chiang Rai, Meechae and her neighbor were brought to the police station and then kept in detention overnight. The next morning, they each paid 50,000-baht bail. Meechea’s family had to borrow money from one plantation owner she works for with the promise to pay the money back with 5% interest. Presently, Meechae’s case is still under investigation. Meechae and her neighbour have to go to the prosecutor’s office in Chiang Rai every 3 weeks. Each time, she has to pay the officers, the transportation costs and has no income at that day. Her husband earns 170 ThB. Legally, also no one is allowed to enter the plantation while the case is pending. Also Meechae’s family was told not to use their land, but the mature coffee beans have to be harvested on time. If she is found to do any wrong, her penalty will be severe. Her situation is especially difficult as she neither has a Thai ID-Card nor money to pay for a legal case. The case is a heavy burden for the family. It threatens the future of Meechae’s family as the land might be taken away from them in the lawsuit. Meechae suffers from the lawsuit and the ban of her own land. “We have to work every day, we cannot stop as there are a lot of expenditures to pay. However, we have to be very patient. We cannot even visit the doctor when our body aches because we have to either spend money for the doctor visit or no income for that day.” The headman of Doi Chang, Charn Chai Pisaalert describes the role of protected areas in the case of Meechae: “Close to the community is the protected area. People do not follow the rules of the Park Authorities and laws, they plant coffee, and that is why they are arrested.”
Urai Saenmi is a Lisu born in Doi Lan. She is a 50-year old widow with 2 sons. Her family has 3 pieces of land: ricefields, a corn and a coffee plantation, the latter located next to her house. She inherited the land from her father who grew many different kinds of plants there, such as tea, lychee, mango, and jackfruit. Under this thick vegetation, several coffee trees are growing. During the dry season, Urai has to cut and clear a firebreak behind her house, as fires often break out in the area. On 27 April 2012, she received a letter from the police that she did not understand. She went to the police station and she and her son were frightened when the police informed them about a legal case being filed against them by the forestry officer. Urai is accused of clearing land within a National Reserve Forest, of forest encroachment and destruction. Urai has to appear in the court every 3 weeks, a time-consuming and costly procedure for the widow. As a single-mother, the lawsuit and the costs put a lot of strain on the family. The arrests in Doi Chang and Doi Lan on charges of encroachment in protected areas have been agreed on and welcomed by the local government, forestry officer, forest guardians and several people in the community. What remains invisible for the majority is the poverty of the families who depend on the forest resources and the women who bear a disproportionate burden for the denial of the right to a means of subsistence.

For more than 10 years now, the Thai government and National Parks, Wildlife and Plants Conservation Department have been trying to forcibly evict Karen indigenous peoples from Kaeng Krachan National Park (KKNP) located along the Thai-Burma border in Petchburi Province. They had been accused as forest destroyers, opium producers, drug traffickers, aliens from Burma, rebels from Burma, etc. There was no consultation at all in the creation of the National Park in 1981 with the Karen who had been living there as their ancestral land. But even before the KKNP, the Karen were displaced by the construction of the Kaeng Krachan dam in 1966 which inundated the Karen’s traditional territory forcing some of them to resettle somewhere. Meanwhile, anti-insurgency operations in the same area had been on-going from 1965 to 1971 further pushing the Karen deeper into the jungles and watershed areas within that mountain range. Evictions of the Karen forest owners within KKNP started in 1986 to force scattered ethnic Karen peasants to resettle in the Pong Luek-Bang Kloy community with the promise of land to till. In 1996, the KKNP officials informed the community that they were destroying the National Park with their slash-and-burn farming methods, also causing droughts. Before 1996, there had never been any meeting between officials and villagers concerning the demarcation of the National Park.

Another major eviction in 1996 forced more to leave their forest homes under the government’s relocation program with promise of some income-generating projects. However, all government projects in this relocation site were suspended between 1998 and 2009. However, the land they received was very poor, full of rocks and gravel, and not all were given as promised. They could not take on jobs in town as many then did not have citizenship papers and would be arrested. This forced some of them to take migrant worker status despite their being indigenous because the process of getting this personal legal status is easier than getting citizenship. Hunger drove many to trickle back to their old homes in the forests.

The forced evictions reached its worst in the last 5 years. KKNP officials admitted that from 2009 to 2011, the national park had operated a "pushing strategy". In line with this, in the years 2010 and 2011, Karen houses, barns, and rice storages were repeatedly destroyed and burned by the Park wardens and Thai military forces. In the process, aside from losses due to the arson, various assets - such as money, jewellery, or farming equipment- were also stolen. Officials cut down fruit plantations, confiscated domestic animals and arrested villagers and charged them with forest encroachment. Some of the arrested families were sent to Nong Yhaplaong Petchburi, 60 kilometers away from their original homes. A number of Kaeng Krachan Karen (allegedly around 70 people) escaped into the forest where they are hiding in fear of officers, without having sufficient food or adequate shelter. Others had no choice but to seek refuge with their relatives at Bang Kloy Lang
village, where many Karen-Thai have been relocated to during the last decade. Most of them do not have work. Many of the relocated Karen have debts as they were forced to borrow money to buy rice.

Between April to June 2011, the series of forced evictions, dispossession and destructions culminated in the arson which gutted a total of 90 houses and rice storage sheds. It was argued that the Forestry Law that prohibits people to occupy land within a national park justified the evictions.

Additionally, KKNP chief Chaiwat Limlikit-aksorn is accused of being involved in the murder of Tatkamol Ob-om, an advocate for Karen forest people. The advocate was killed after having threatened to publicize the human rights violations taking place within the National Park.

Karen women disproportionately suffer from the assault of the Park authorities. Traditionally, they are keepers of traditional knowledge and play an important role in providing food for their families. Therefore, access to natural resources and forest is of utmost importance for them, for example as a source of food and traditional medicine. Today, the Kaeng Krachan Karen women do not have access to natural resources making it impossible for them to provide traditional food for their families. As farming is extremely restricted, they suffer from food insecurity and increasing poverty. They are living in constant fear and uncertainty due their violent expulsion and the use of force by wardens and the military forces. Many of their belongings were destroyed, often assets inherited from the grandparents.

Researchers have identified swidden agriculture as environmentally sound, able to preserve biodiversity, and to secure livelihoods – i.e. as a sustainable resource management practice that even does offer opportunities for mitigation approaches regarding climate change. Nevertheless, this form of agriculture is still considered as one the main sources of forest degradation in Thailand. Like other indigenous peoples, the Karen are often convenient scapegoats for forest destruction, even if they have lived in their forest homelands for hundreds of years. At the same time, other factors, such as agricultural plantations or logging concessions in the course of rapid economic growth are easily being encouraged, largely contributing to the continuing deforestation of landscapes, and to environmental destruction.

The actions taken by the National Parks, Wildlife and Plants Conservation Department, Park Authorities, wardens, and the Thai military in the Lum Nam Kok National Park, as well as the KKNP authorities, build a sharp contrast to the provisions of Thailand’s national legal framework and its commitment to international human rights and environmental conservation instruments. Human rights violations continue even though the Thailand Constitution and its legal framework provides some degree of protection indigenous people’s traditional livelihood and cultivation systems.

First of all, there is a hierarchy among the Thai legislation, with the Constitution representing the supreme law of the country from which other laws and policies are derived. The Constitution 2007 clearly stipulates the right of communities over their lands, forests and resources in Chapter 3, Article 66 and 67. Nevertheless, numerous forestry laws, policies and resolutions that have come into force before the Constitution 2007 that are on contrary to the Constitutional provisions but which continue to be enforced today. Clearly the National Park Act of 1961 and the National Reserved Forest Act, 1964 violate this Constitutional provision that should be enjoyed by the indigenous peoples in Doi Chang, Doi Lan and Kaeng Krachan. This has led to conflicts between indigenous peoples and government authorities trying to enforce this law. It has been one of the most frequently used laws for arresting forest-dwelling and dependent peoples.

The Thai Land Law that considers all forestlands, and thus the territories of indigenous peoples, as owned by the state, immediately denies the prior rights of indigenous peoples’ who owned the lands even before the creation of the Thai nation-state. The government maintains the sole and full power
and control over managing natural resources denying indigenous peoples right to use land, their right to occupy it, as well as their right to manage the natural resources therein. Rather, according to this law indigenous people are the lawbreakers. As in the case of the three communities under study, their access to land and forest is being severely restricted as they often lack of formal tenure documents.

The arrests, intimidation, assaults and forced evictions by authorities of the Kaeng Krachan Karen is in direct contravention to the Thai Cabinet resolution 2010 on the restoration of Karen livelihood and traditional practices. The Cabinet Resolution 2010 explicitly grants Karen people the right to remain on their land and to practice their traditional farming system.

After 1997, a policy was set up that requires public consultation, prior consent, a survey to determine habitation sites as well as an impact assessment on environment and culture before the creation of national parks. Thailand has put forward a proposal to declare an expanded KKNP as a heritage site. This policy has not been used to once and for all determine the Karen habitation sites. Today, indigenous peoples still barely have a voice in the local council level whose approval is needed for the declaration of a protected area. Additionally, information on regulations and laws governing protected areas is often not shared adequately with indigenous communities. Also in the described communities, there was no proper consultation, introduction, or orientation about the meaning of a National park and all pertinent laws that affect their lives. As a consequence, forest dwellers and people relying on forest resources often turn as offenders even without being aware of it.

In sum, in case of the three communities, actions directly supported by the Thai government have proven to breach the country’s Constitution. Moreover, the state has failed to keep its obligations to various international treaties it has ratified. The victims are the indigenous peoples, and in particular, indigenous women in the three communities who have experienced hardship from the government’s failure to protect them. Indigenous women in the three communities are living a life in fear of further arrests, assaults or other human rights violations. They are afraid to face further legal charges, to lose their last piece of land, or to remain excluded from any access to farming land and natural resources. Their insecure status and the lack of food are threatening the livelihood and the very survival of their families. Some lost all their land and all their belongings, depriving them of their means of existence. Also, some of the women had to spend large sums of money during the life of lawsuits. As a consequence, some have high debts as they were forced to borrow money from others. The lack of citizenship and other fundamental rights additionally aggravate their difficulties.

3. Indigenous Women’s Access to Justice

In the case of Doi Chang and Doi Lan, no organized actions have taken place in response to the arrests. Also in terms of legal assistance, the women lack support. Only one member of the Doi Chang village community has assisted the arrested Doi Chang families in the legal proceedings and accompanied them to the police station and the prosecutor’s office. However, some women in Doi Chang and Doi Lan realized that without the articulation of women in these issues, there will never be justice. With the support of the Indigenous Women Network of Thailand based in northern Thailand, these cases are being presented in this consultation.

For Kaeng Krachan, this case generated national and international interest not because the Karen houses were burned and evicted, but because the three military helicopters crashed one after the other within the KKNP when it went to retrieve military personnel involved in the burnings and evictions. In Chiang Mai, a multi-sectoral group led by academe conducted a consultation to generate support for the survivors and to strategise on how to address the issue. A letter to the Prime Minister was sent with international sign-on support to address the issue. The 80th session of the CERD, under its early warning and urgent action procedure, communicated with the Thai government requesting for information on the situation of the evictees and what measures were taken to improve their situation.
In 2011, a group of Kaeng Krachan Karen brought a petition to the NHRC and to the Lawyers Council of Thailand to stop the forced evictions from the National Park. Furthermore, the Karen are collecting proofs that they have been living in the area before the 1954 Land Use Law and the 1961 National Park Law under which KKNP was created. In their efforts to petition the National Human Rights Commission of Thailand, they were supported by their advocate Tatkamol, who was killed in September of the same year. The park Chief Mr. Chaiwat was later arrested under the suspicion of being behind the killing, then released on bail, and still retained his position as park chief. In 2011 he filed a lèse majesté complaint against NHRC Commissioner Niran Phithakwatchara and NHRC subcommittee members for interfering with royal projects, referring to some projects within the KKNP.

3.1 Weak enforcement of existing national laws and implementation of orders and decrees, as well as conflicting laws/policies, abuse of authority and powers, corruption, patronage

Although the 2007 Constitution stipulates the right of communities, including indigenous peoples, over their lands, forests and resources, there are no translation of these into enforceable laws, nor are laws not compatible with it amended in line with the Constitutional guarantees. The Royal Forest Department insists on fully implementing draconian forestry laws to evict the people without considering the constitutional provisions and other fiats, like the 2010 Cabinet Resolution on Karen culture. The absence of any mechanism by which indigenous women and their communities can seek redress for issues related to the National Park Policy and relevant laws increases the vulnerability of indigenous women to abuse of authority, gender-related violence, economic disenfranchisement, and other consequences that impair their full enjoyment of their human rights.

On the burning of the Karen houses of Kaeng Krachan, a human rights lawyer commented that the "forest officials also have no legal authority to torch people's houses and those allegations fan prejudice against indigenous peoples".

3.2 Gender and ethnic biases in the legal system and laws

Thai Constitution upholds equal rights between women and men. Moreover, Thailand has a committed national women’s machinery, including the Commission on Women’s Affairs and Family Development under the Ministry of Social Development and Human Security that is responsible for promoting gender equality and women’s empowerment. Nevertheless, indigenous women in Thailand continue to belong to the most disadvantaged segment of the society.

The Committee on the Elimination of Discrimination Against Women has expressed its concerns about the situation of rural and hill tribe women regarding their lack of access to adequate education, nutrition, sanitation, health-care services and income-generating activities. Lisu, Akha and Karen women of Thailand continue to have fewer opportunities to access education and be exposed to other communities, resulting in a lack of the ability to speak Thai. Language difficulties and the inability to communicate in Thai, in turn, build an obstacle for many when seeking access to the formal justice system, and limits indigenous women’s confidence to participate in decision-making processes. As a consequence, many women have difficulties attaining the Thai citizenship. Restrictive and tedious bureaucratic mechanisms further complicate the process of obtaining an ID-Card. The lack of citizenship is one major obstacle to obtain their full rights as a citizen. Indigenous women without legal documents have limited possibility of seeking justice, and cannot even refer to provisions of the existing legal framework regarding their land use rights. As they are disproportionally poorer than other segments of the society, indigenous women in Thailand often lack of means to afford legal assistance. For the Lisu women of Doi Chang and Doi Lan, costs for the law suit are high, e.g., for transportation due to geographical distance, payment of bail. Journeys to the court also cause a loss
of production time and income for the women. Loss of income places a heavy burden particularly on indigenous women as main providers for their families.

3.3 Lack of adequate information about existing laws and limited knowledge of rights.

As the indigenous women in Thailand have fewer opportunities to access education, their access to justice is exacerbated by their lack of knowledge of their rights as women and as indigenous peoples, and even the laws that will enable them to access justice. They particularly lack access to information and knowledge about their rights and the existing legislation making them helpless to negotiate and have the power to protect themselves.

3.4 Discriminatory attitudes, limited participation in decision-making in both formal and traditional systems, internalization of racial prejudice, weak organizational capacities

In Thailand, indigenous women have to face patriarchal ideologies within the wider Thai, as well, as indigenous societies. Some indigenous societies, like the Lisu and Akha communities, are patriarchal where women are married into men's families, and all material assets and members of the household are considered the 'property' of men. Various cultural norms, values and practices are oppressive to indigenous women. Mostly, indigenous women are being brought up with limited space for autonomy and self-determination. The majority of them are also marginalized or excluded from participating in the public sphere and decision-making activities. Within the official justice system, they often face discriminatory actions and attitudes widespread among government officials within the justice system. Their discrimination as uncivilized forest destroyers continues to influence government’s laws, policies and actions. Prevalent stereotypes are even being instrumentalised within the land use conflicts in protected areas.

One other issue in Thailand that indigenous peoples face is racial prejudice. Government officials, for instance the KKNP chief and others in the environment, agriculture and national security sector have the habit of branding indigenous peoples as “slash-and-burn migrants from Myanmar who grew marijuana and supported ethnic Karen rebels across the border”. This kind of attitude of officials had been belied by the results of the investigations done by the National Human Rights Commission of Thailand. The Kaeng Krachan Karen centenarian patriarch was given a silver coin by district authorities in 1962 to show he is a native of Thailand. A member of the royal family confirmed the Karen patriarch as an old friend of his royal grandfather, and he remarked: "How could you do this to the Karen who have long protected the forests for us". He criticised the national park chief for using the royally initiated project to justify the park’s relocation programme. Unfortunately, even a section of the environmental movement see the natural resource management system of indigenous peoples in Thailand as destructive and support their eviction from their forest homelands.

4. RECOMMENDATIONS

To indigenous women:

1. Undertake community awareness-raising on the rights of indigenous women as women and as indigenous peoples with the CEDAW and the UNDRIP as basic resources.

2. Link with other indigenous women networks to mobilize women, communities and allies to prevent the victimization of indigenous women and build solidarity.

3. Contribute in re-defining and modifying values, norms and cultural practices in own societies and the bigger society that discriminate against women. Along this line, positive values and practices relating indigenous women should be affirmed and strengthened for their empowerment and advancement.
To the Thai government:

1. Provide the necessary legal instrument for the operationalisation of Articles 66 and 67 of the 2007 Constitution and ensure that these Constitutional provisions are made the framework of all laws, policies, programs and plans relating to indigenous peoples.
2. Provide clear instructions to various departments on the implementation of Cabinet Resolution 2010.
3. Undertake a thorough review of the National Park Policy with the participation of indigenous women and their communities, towards making arrangements with them that will ensure the sustainability of both the parts and indigenous peoples lives.
4. Investigate all human rights violations by park authorities and charges against indigenous peoples in pursuit of their traditional occupations with the end in view of stopping the criminalization of the practice of traditional occupations of indigenous peoples, and rendering justice to victims.
5. Comply with the CEDAW and the CERD recommendation for disaggregation of data according to sex and ethnicity among others, in order to provide a clear picture of the progress made and persistent challenges in the implementation of the Conventions.
6. The Government must facilitate and accelerate the process for obtaining citizenship, especially indigenous women, and establish mechanism to overcome discrimination in the issuance of Thai citizenship in line with the Constitution and internationals human rights instruments. It has to address any corrupt practices by responsible officials.

References

General situation of Indigenous Women
in term of access to justice

Ornanong Saenyaku
Indigenous Women Network of Thailand

In the past, we were able to determine our ways of life, we have our own house, own farm, We practiced our own health care, and made a living based on our natural resources.

We, women, collected food, wild plant, and made cloth, all based on our knowledge of our natural resources.

Women’s daily role was to ensure the family food and nutrition security.

However, there are forestry laws and policies that violated our rights, some of which are as follows:

1. The National Park Act of 1961

Objective: preserve and maintain parks ‘for the benefit of public education and pleasure,’

- land “to be determined as national park must not be owned or legally possessed by any person other than public body.”

Within the national park, no person shall

1. Hold or possess land, or clear or burn the forest;
2. Collect, take out, or do by any means whatsoever things endangering or deteriorating woody plant, gum, wood-oil, turpentine, mineral or other natural resources;

Any person entering the national park must comply with the order of the competent official given in compliance with the rule prescribed by the Director-General and approved by the Minister.

1. 2007 Constitution

It stipulates that the local communities have rights

1. to maintain their cultural traditions, to protect and to manage the environment and natural resources.
2. to participate in state and community activities in the promotion and conservation of natural resources.
3. to have impact assessment when projects are to be implemented in our communities.

However, up to now, the Department of National Parks have established 126 national parks, including 21 marine National Parks.

In Chiangrai province alone, there are 5 National Parks and 27 Forest Parks.

2. National Park Act

- whenever the government sees fit to set aside an area of land.
- And has an interesting natural state in order to maintain it in its original condition,
- the National Park Act uses the concept of “forest protection through national parks,”
3. National Forest Preserve Act 1964

- Defines “forest” as land, including mountains, rivers, wetlands, canals, marshes, waterways, streams, lakes, islands, and coastlines, that has no legal owner.
- The concept of conservation national forest is just to preserve and protect the forest, for the purpose of sustainable economic development, and to take advantage of the woods economically, development of plants.
- Forest officials have the right to allow people into the jungle to study only.
- Article 14 of the National Reserved Forest Act

   No encroachment, occupation, use, habitation, construction, forest clearing, forest burning, logging, gathering of forest products, or any other action that deteriorates the forest conditions within the boundaries of a national forest preserve, except logging and the gathering of forest products.

Because of these laws, and because people do not understand them, people get arrested. Some indigenous women have been arrested while they were doing their daily livelihood activities. For example,

1. Mechae Chermoue, an Akha woman who has no citizenship, arrested when she was planting coffee in her family land which she did not know was declared as part of the National Reserved Forest in Doichang, Chiangrai.
2. Urai Saenmi, a Lisu widow, was issued a warrant of arrest by the Forestry Official on the grounds of forest destruction because she cleared a firebreak line in her plantation adjacent to a national reserved forest. Her plantation is located just beside her house.

Most of the obstacles indigenous women face relate to their rights in relation to:

1. Knowing existing law and policies
2. Exclusion from all levels of participation
3. The literacy of women
4. Traditional livelihood should be legalised as

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All cases are in the courts.

In the investigation process, the traditional livelihood of the women is totally disregarded as a valid reason for their arrests. In the meantime, they cannot continue their livelihood while their cases are pending. At the same time, they have to allot time for reporting to court as required and pay necessary fees, etc.

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1. Knowing existing law and policies
2. Exclusion from all levels of participation
3. The literacy of women
4. Traditional livelihood should be legalised as
Paw Mue Na is a 57-year old Karen women who is one of the victims whose house was burned in 2011 by the Kaeng Krachan National Park officers and forced to relocate to Lower Bang Kloy in an area allocated by the park authorities. She is now living with her family at the forced-unsecure settlement, Lower Bang Kloy village.

The traditional ways of living of the Karen people has always been environmentally friendly since time immemorial. We have lived our lives, cultures, and wisdoms in mutual care for each other and the environment. We take care of the forests and nature/forest has taken care of our lives. We can live in dense greenery of the forest. We have never transgressed nature’s ways and nature has never betrayed us. The Karen in Lower Pong Luk Baan Kloy earlier lived at upper Baang Kloy near the Thai- Burma border. This place, upper Baang Kloy, in Kaeng Krachan is our homeland, which we took over from our ancestors. We had all the farms and gardens there; also my grandparents were living with us on that land. This is my food bank, a place of a long family history and wealth of natural resources. At that time, we did not have knowledge of government issues. My grandparents passed their knowledge to our parents, and until now we still have that occupation and make our livelihood from the knowledge of our grandparents. Fifteen years ago, in 1992, we did not know what a national park is. It was the first time we were told by the government to leave our homeland. They told that we were living illegally in the forest and destroying it by our farming. During that time, I was nine months pregnant. I could not walk too long, so on the way, I decided to turn back, but on the way back, I gave birth to my child. The second incident happened around 1997. Our neighbours’ houses were burned. They were moving, carrying all their stuff, carrying each other, while authorities were burning their houses. One old woman died, and one pregnant woman had a miscarriage because she had to run away. That year, my family and I moved away from upper Bang Kloy, but still continued our traditional farms, doing upland cultivation, year after year until 2011, the year that my house was burned. That was the worst. I am now not brave to go back there again. As a mother and wife, how I can manage my family living in the place where is no cultivating land, no food security, no freedom to live and no job. Labor for women is paid so less. I am worried about my children especially women without education what should we do? Women going out from the village to work bring more worries to their parents, but they have no choice as there is no land for cultivation. If I could choose I would return to my homeland where I belong. I am worried about the future of my children, my daughters. It is a very difficult situation for us.

We have never understood till now how have we broken or breaking the law. In fact, the government law violated us and have broken our lives. We had to leave our homes. The authorities forced us to betray our Mother Nature and forest. Now we live in difficulty for the violations done against nature.

My clothes were all burnt. The clothes I wear now are not mine. We do not even have money to buy new clothes, and I miss my Karen clothes. I envy you that you are wearing our clothes [referring to some of the participants who were wearing Karen clothes]. I still have my relatives at upper Baang Kloy. They live as forest people there. They do not have food. They are afraid of the forest authorities who say they have no right to live there, even if they have been living there for so long. There is no place for them to plant rice. Every night I have nightmares about my relatives in the forest - they have nothing to eat, they are in constant fear that forest authorities will burn their houses again. I used to live there free in the past. I would love to go back. Do any of you can help my relatives back there? Me, can I live again in Baang Kloy, safe and with food?
COMMENTS:

Ornanong: Indigenous women were arrested and put to jail when they tried to make a living through management of their own land, e.g., clearing of a firebreak near a national forest preserve. Forest officers declare the actions as illegal. It is difficult for indigenous women if they don’t have papers or money. The obstacles for indigenous women are: existing laws and policies, their exclusion.

EMRIP: Thailand has already ratified the CBD and is member of the IUCN that provide some protection to indigenous peoples. The Cabinet resolution on the revitalization of Karen culture contains a clause on non-eviction. These are international obligations a state must enforce. However, Thailand has demonstrated that they miss to and do not to look at indigenous peoples and women as forest caretakers in the national parks. The above-mentioned laws and fiats (such as the Cabinet resolution) are important. Obligations under international law have to be upheld, including the UNDRIP. We should hold States accountable to their obligations to their international commitments. The NHRCT should be pushed more to advance the agenda for indigenous peoples. How can we move forward if indigenous peoples are still very invisible in Thailand’s policies?

NHRCT: The Thai government tries to protect the rights of the people in general, and to amend laws. There has been a strong movement for indigenous peoples rights, including that of indigenous women during the last years. But it will take some time on these things. The pressure comes from the society first. They ask people who know the law. Thailand became party to many treaties but apart from legal document, we also must make sure of the implementation. The last concluding comment from the CERD contains several recommendations. We try to have the organic law to support the constitution. The case of Kaeng Krachan is now filed in the administrative court.

C.3 TESTIMONY: Kaeng Krachan National Park: I want to go back to my homeland, where there my fields are, with foods and fruits to eat
Eh Khu Moo (Karen, Thailand)

We now live in an insecure place now. We have no food, no chance to make a living. I want to go back to my homeland, where there my fields are, with foods and fruits to eat. We had big difficulties when we were moved down from upper Baang Kloy, and no one can know about the great extent of our suffering. On the way, we had nothing to eat. When we arrived in lower Baang Kloy, the government people promised to give us a place to grow food, but until now, we received nothing at all. I live in constant fears and I worry a lot. I really want to go back to upper Baang Kloy. I am very old now. When I hear the sound of a helicopter, I am still afraid as it reminds me of the past when the forest authorities came to burn our villages and we to had to run away and hide with our families. It was such a nightmare that until now, every time I hear the sound of a helicopter, I am sacred.
2.3.4 D. Dams

D.1 TESTIMONY: Tuyen Quang Hydropower project in Vietnam: I am now campaigning for resettlement rights
Mai Thuy Duyet (Tai, Vietnam)

I come from a small home town. I had parcels of land where I built my house and another that I used for production. In 2002, the construction of the Tuyen Quang Hydropower project submerged my home and my farm. All my villagemates were relocated to other areas. This was a drastic change in our lives and we needed time to prepare ourselves. Local authorities encouraged people to move soon with the announcement that each household with get 4 million Dong if they moved as scheduled. The government had a compensation package, like replacing our lands. My residential lot was 200m² and my farm, 400 m². The government only gave me only 100 m² to build a house, but no land for production. When I followed up the announcement about compensation, the local authorities said that the area where my family will be transferred was in the centre of the district so they did not have enough land to replace the original area of my land. We also asked for a fee to move our house to another area, and for food. My family was given seven million Dong for the period of six months upon relocation in 2003 to move our house, to buy food and pay other relocation costs. It is very hard without a land for production, and when we have to move our house to another place. For the relocation area, we know that the government transferred budget to the province to build infrastructures like a hospital, school, road and water systems to be accomplished within 5 years starting in 2002. Until now, ten years after the promises, the infrastructures of the resettlement are is not complete. They built an elementary and high school building, communal house, and a hospital but the potable water system, the roads, and others that are in the resettlement program are not yet fully implemented. The local government is very slow in allocating funds to create job opportunities. I have no land so I cannot be a farmer. I had to start creating handicraft. My husband and son are cooks. After the initial household support of six months, we were left on our own. I am now campaigning for resettlement rights, and I have learned from this consultation some exercises and also did networking and I can take these back to other indigenous women and indigenous peoples networks in my place, to women who are less lucky than myself.
D.2 PRESENTATION: Son La Dam’s Resettlement & Reproductive Health Care

Thu Oanh Luong (Tai, Vietnam)

Slide 1

SON LA DAM’S RESETTLEMENT & REPRODUCTIVE HEALTH CARE

Luong Thu Oanh- CSDM

Slide 2

DAMS IN VIỆT NAM

- Over 50 year in Vietnam, there are 2100 irrigation, hydropower, large and small.
- This is the sacrifice, an act of ethnic minorities for the construction of the country.
- Characteristics of irrigation projects, hydropower construction is deployed mainly in mountainous areas where ethnic minorities live in the community with long-standing practices and cultures.
- The development of hydropower projects has been affecting the ethnic communities in the project areas, causing damage to the ecosystem, destroying vegetation, altering the flow environment.
- Effect changes in the lives of people in irrigation and hydropower: deforestation, loss of biodiversity, erosion, hydrological changes, loss of water downstream, causing seismic change customs and way of life, land and livelihood situation of the nation which is still a very large impact on the right to health care of people especially reproductive health care.

Slide 3

Son La dam’s resettlement

- Government to build two hydropower projects in Son La with the main purpose:
  - Provide electricity to the national electricity system;
  - Flood control;
  - Water supply for wet dry northern plains;
  - Contribute to the socio-economic development of the North West.
- But also make huge changes to the life of people in Son La province.

Slide 4

The impact of the construction of hydropower projects

- Lack of access to health services: health stations in remote places, road transportation, lack of health care staff, lack of equipment and drugs, cause large differences between regions of the morbidity and mortality of mothers and children.
- The quality of maternal health care before, during and after childbirth, newborn care is limited, to no medical staff that are quite common.
- Restrict access to medicinal plants: Deforestation, no healers for immigrants, generally each only a few people know of traditional medicine.
- The folk medicinal use of reproductive health care such as: infertility, safe pregnancy, postpartum, breast abscess, anti-hemorrhage, cord care, mother and baby bath, milk pills ....

Slide 5

The impact of the construction of hydropower projects

- Changed belief: when a child was born, a shaman performed a ritual for peace, blessing and healthy growth which was useful for the community, but now they do get to not celebrate it now.
- Loss of many folk festivals

Slide 6

Migration and Resettlement

- Vietnam Government has affirmed that migration and resettlement work to ensure that the lives of the people will be better than before.
- But the reality did not turn out that way.
Resettlement

To serve the people’s health care, education for children and the community of resettlement, building clinics, schools and culture is also under construction.

However, in some resettlement, infrastructure is not synchronized and secure, people do not have roads, life many households extremely difficult.

Fallow School and health station

Farmers training

The involvement of local authorities in the providing skills training for livelihood is not effective as people still mostly spontaneous conversion training.

Reproductive health care

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Viet Nam</th>
<th>Northwest</th>
<th>SonLa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth Rate</td>
<td>2.00</td>
<td>2.39</td>
<td>2.58</td>
</tr>
<tr>
<td>Maternal Death</td>
<td>70/100000</td>
<td>169/100000</td>
<td>120/100000</td>
</tr>
<tr>
<td>Death rate of children under 1 year old</td>
<td>16%</td>
<td>21%</td>
<td>25%</td>
</tr>
<tr>
<td>Perinatal mortality rate</td>
<td>18%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate of infants &lt;2500 grams</td>
<td>6%</td>
<td>8.2%</td>
<td>10%</td>
</tr>
<tr>
<td>Malnutrition rate TE &lt;5 years</td>
<td>20%</td>
<td>33.6%</td>
<td>35.4%</td>
</tr>
</tbody>
</table>

Son La province performance indicators 2011

The rate of pregnant women to be managed: 85%
The rate of women to accessing antenatal care at least three times in the third period of pregnancy: 56%
The rate of vaccination of pregnant women: 75%
The proportion of women delivering at health facilities: 58%
Proportion of women to supported by trained medical staff: 85%.
Cause

- Lack of knowledge about reproductive health care have caused increased mortality
- No occupation, poverty, low income, especially ethnic women have a higher risk of death compared women from ethnic Kinh.
- Home delivery or transport distance and time for women to the emergency room, especially the lack of health care is the greatest threat to life for women in Son La during childbirth.

Recommendations

Dams:
- The need to consider carefully, limiting widespread hydropower development, minimize negative impacts to the environment and ecology of the river, riverside community, culture, people's livelihood present and future generations.
- While maintaining and restoring watershed, mitigation measures should be undertaken for communities affected by the dam.

Reproductive health care:
- To reduce the gap between the region and national rates and achieve the MDGs, the maternal mortality ratio must be reduced to 58.3 /100,000 live births by 2015.
- The health sector needs to consolidate its network by offering technical distribution services, focus on disadvantaged areas, ensuring the provision of service packs to the population, taking essential reproductive health care at all levels, especially at the grassroots level.

On the other hand, improving the quality of reproductive health care services through the improvement of regulations, technical processes, infrastructure upgrades, additional equipment, human resources, as well as collective training, refresher for staff who provide health care services.

Recommendations

Continue to promote the health education in order to raise awareness of men and women of health issues, to help change behavior on pregnancy care, antenatal care on a regular basis and to give birth in facilities qualified medical practitioner prescribed.

THANKS FOR YOUR ATTENTION!
COMMENTS:

EMRIP: Small dams have strong impacts as well. Vietnam is moving fast economically, but the conditions of those affected by these developments are poor. It is very important to bring these up and to expose it.

KOMNAS Perempuan: The problem nowadays is that the cultures get lost due to intellectual property rights. In a meeting of AMAN in Tobelo in April, the indigenous peoples of Indonesia met and talked how to preserve their traditional knowledge and the cultures. To give protection to the individual, if someone tries to make a patent, the indigenous peoples will be deprived. At the international level, there are no communal property rights. I want to encourage the conservation of communal property rights, e.g., the pattern of the clothes; it is not only a pattern, but also a symbol. The ritual symbol is very important and related to the culture. The question is how to put intellectual property rights into legislation? I want to encourage the preservation of the cultural intellectual property rights for the IP.

EMRIP: Some countries have already started to develop laws to protect the culture, knowledge, practice, arts and crafts, etc., but we have not looked into communal property rights. However, the intellectual property regime has been more dominant in regulating the use of patentable goods, knowledge, etc. As in some movements Vicky mentioned earlier, customary sustainability is better that having laws.
2.3.5 E. Transitional Justice

E.1 PRESENTATION: Transitional Justice in Timor Leste

Gizela Carvalho (Timor Leste)

Slide 1

Timor Leste

Access to Justice

Presented by Gizela de Carvalho

Chiangmai, Thailand, 31 October 2012

Slide 2

Timor - Leste

Slide 3

- August 1999: Majority of Timorese voted for independence from Indonesia;
- May 20, 2002: Became independent democratic nation;
- UNMIT due to withdraw Dec 2012
- Population is over 1 million
- Agriculture contributes 30 percent of the non-petroleum GDP of Timor Leste
- 90 percent of the population is dependent on agriculture, forestry and fisheries (e.g. Rice plant, Corn, cassava, peanut, etc)
- 86 percent of population live in rural areas
- Majority population is catholic
- High maternal and infant mortality
- on average women 6 to 7 births each

Slide 4

Substance of the law

- Own consulted process to develop Domestic violence law (Approved by parliament just last 2 years)- need socialization
- Gender equality law draft
- Law on access to court – 2011
- No law on trafficking
- no Sexual reproductive health policy
- Language barrier: Portuguese
- Few women lawyers
- Traditional justice systems prevail
- No separate children court or family court

Slide 5

Justice effected by Tradition and culture

- Tara Bandoo – Local regulation is signed by leader (Adat) and witness by Local church and president
- training program done by women’s group
- Formal legal system difficult to access by women in remote area

Slide 6
Hau mate maibe ini moris, keta halaha timor sia independencia. Hau mate mbi feto hotohoto a tu hatan demokrasi no liberada.

I'm death but you are a life, don't forget Timor Independence. I'm death because of all women to get democracy and liberty.

Reparation for victims in conflict

- Most perpetrators escaped justice e.g. Mateus Bere “Militias leader”
- some go to prison but short time
- 2000 women provide testimony – Truth and reconciliation commission
- Lack of assistance
- No compensation
- Surviving not surviving
- still vulnerable; health problem from sexual violence
- exclude women raped by Indonesia; have children

Thank you for your attention
COMMENTS:

KOMNAS Perempuan: In various conflict areas such as Aceh, Timor, Papua, in some military areas, the human rights violations against women are not being acknowledged. The Human Rights Commission met to discuss how to help victims. In some meetings the KOMNAS Perempuan reached out to Timor Leste. Transitional justice will take a long time to take to the court. There is violence in the military operation area, and we push for the protection of women and children (examples Papua, Timor). Important steps: 1. **Exposure the truth.** In Timor, there is evidence that violence happened. Truth reconciliation is one of acknowledging that violence happened, including the violence on property. 2. **Ensure access to justice.** This is hard to get in the human rights court, so the result from the human rights commission, such as the rapes that happened in 1998, is an effort to bring the cases to the courts. In Papua and Aceh we did some documentation. They are saying that the violence that made victims of civilians, including women, came from the military and/or police, and we encourage the local government to be involved. Finally, there is a regulation on the special authority on women and children issues. The effort for recovery is what we are doing. KOMNAS Perempuan published a book on this and the result is now being reported to the president for him to do something, especially on what happened to the women in Timor Leste. We got a lot of threats. The report was sent to various meetings, so what is happening to women can be recognized, especially in Timor Leste. Something should be done to bring justice to the women, such as reconciliation and truth commissions. We try to make the new law that is related to this that will address justice to victims. What happened in Timor Leste is also happening in some conflict areas.

Mr. Ahmad: Regarding the issue of the truth and recon commission, we have to be aware of the political will of the actors in Timor Leste and Aceh. In Aceh, they came from armed groups and now became state actors. We have to find another way to raise awareness. We cannot just rely on formal processes of our country because they have their own interest. There has to be found another way to mobilize civil society.

EMRIP: In term of truth commission and reconciliation, Gizela mentioned that 2000 women were coming to the testimonies, so it was very important. EMRIP was asked to look at the truth and reconciliation commission as a whole. Around end of March 2013, EMRIP will be holding an international conference on the truth and reconciliation commission.

Gizela: We are also asking civil society organizations for participation.
2.3.7 F. Infrastructure Development

F.1 PRESENTATION: Highways and Transport Corridors in Vietnam

Ha Thi Dung (Muong, Vietnam)

Introduction: Ha Thi DUNG is a Muong from Tam Thanh, Phu Tho province which is traversed by many highways like the Trans-Asia Highway, the Greater Mekong Sub-region Kunming-Hai Phong Transport Corridor - Noi Bai-Lao Cai Highway Project, and others. Her property has been affected by these infrastructure developments which deprived her of her land.

She cries and shares that her life is getting harder and harder, she does not have anything and worries about her future and the future of her children. Her husband became an employee. First, she agreed with the government to have a national highway construction. But now, she is seeking for a solution to her problem.

In April 2012, local authorities told her to move temporarily to another place because a provincial road project will pass through her house. She was also told that she can return to her house when the project is finished in 2013. The local authorities let her decide and chose where she wants to relocate and she was promised compensation. She decided to move near her uncle’s house which is quite far from her house because when the project starts, it may be dangerous for her family to be in their house. She has not dismantled her house yet as she was given so short a time and she does not have time to prepare. There has been no follow-up to the information on compensation. With the project about to start, she does not know what next to do. What worries her so much is in moving house she has nothing, she has to find new job, she will have to adjust in new place, etc. She and her family have to set up a small house to live in short time. Six months has passed and her family has not received anything yet. She does not know what to do, how to live.

EMRIP express her understanding for the young presenter. In the depicted situation, the highway had only disadvantages for her, deprived her, and forced her away from her area. These things have to be challenge with respect to construction projects coming to our area.
ANNEXES

ANNEX A: Land Code of Sarawak

Section 5 of the Code states:
“(i) until a document of title has been issued in respect thereof, such land shall continue to be State land and any native lawfully in occupation thereof shall be deemed to hold by licence from the Government and shall not be required to pay any rent in respect thereof unless and until a document of title is issued to him.” It must be noted here that, although a native is deemed holding on licence, his status is not as a bare licensee but his right is equivalent to having a title. He has legal rights that cannot be taken away summarily without express provision of the law and that compensation must first be paid in the event his NCR is taken away or extinguished. The express provision of the Code pertaining to this matter is section 5(3) which states that “Any native customary rights may be extinguished by direction issued by the Minister”. The said extinguishment shall be published in the Government gazette and one newspaper circulating in Sarawak; and exhibited at the notice board of the District Office for the area where the land, over which such rights are to be extinguished, is situated. Within 60 days of such publication, any native having claim of NCR may filed his claim which will be determined by the Superintendent for the purpose of compensation. Any native unsatisfied with the decision of the Superintendent may request for the matter to be referred to an arbitrator under section 212 of the Code.

The second proviso to section 5 of the Code further added that “the question whether any such right (NCR) has been acquired or has been lost or extinguished shall, save in so far as this Code makes contrary provision, be determined by the law in force immediately prior to the 1st day of January 1958.” Although the methods of creating NCR are stated expressly under section 5 (2) of the Code as referred to earlier, those methods are not the method stated in the law in force immediately prior to the 1st day of January 1958. Reading closely section 5(1) of the Code, those six methods appear to refer to the creation of NCR after 1st day of January 1958. The law applicable before 1st January 1958 is section 66 of the Land Settlement Ordinance 1933, where NCR is recognized with respect to:

(a) land planted with fruit trees, when the number of fruit trees amounts to twenty and upwards to each acre;
(b) land that is in continuous occupation or has been cultivated or built on within three years;
(c) burial grounds or shrines;
(d) usual rights of way for men and animals from rivers, roads or houses to any or all of the above.

The important phrases in the above section are “land that is planted with fruit trees”, “land that is in continuous occupation” or “has been cultivated” or “built on” or “burial grounds” because these are the evidences that one must prove in NCR claim.

ANNEX B: Lao PDR Legal Framework

Laws on LAND and PROPERTY


Article16: protects and promotes all forms of property rights, including private domestic.

Article17 (new): protects property rights of possession, use, usufruct and disposition and the inheritance rights of organisations and individuals, including land which the State will ensure can be used, inherited and transferred in accordance with laws.
2. Law on Land, 01/97/NA, amended 21st October 2003, No. 61/PO

Article 3 specifies that the state is the owner of land, and is responsible for allocating land to "individuals, families and economic organisations for use, lease or concession.

Article 5 confirms the State's responsibility to protect the legal interests of land use rights holders.

Article 7 states anyone wishing to use land must have authorisation of the State, while Article 9 points out the State is charged with centralised management of land, with categories of land the management responsibility of different State agencies.

Article 10 outlines responsibilities of National Land Management Agency. Article 11 classifies types of regions and types of land.

Article 12 states local administrations are responsible for determining local land categories, and for zoning and demarcating the boundaries of each category, while Article 18 charges district or municipal administration with allocating agricultural landuse rights.

Article 14 states any change in land categories has to be approved by "concerned management authorities"

- Ministry of Agriculture & Forestry is responsible for managing the following types of land: agricultural, grazing, industrial plantations, orchards, gardens, forests, "water area land".
- Ministry of Industry & Handicrafts is responsible for managing industrial land.
- Ministry of Transport & Communications is responsible for managing land for roads, bridges, water channels, land for transportation & communication, and warehouses.
- Ministry of Culture is responsible for cultural heritage land.
- Ministries of National Defence and Security are responsible for land in sensitive locations, including national borders.
- NLMA is responsible for construction land, including residential, urban land, buildings, offices, factories, etc. and for public facilities.

Article 17 specifies the amount of land to be allocated to each family according to the number of labour force in the family, namely 1 ha. per labour force for naa and livestock land, 3 has. per labour force for industrial plantation and crops, 3 has. per labour force for orchards, and 15 has. per labour force for land to raise livestock. A family can have as many hectares as there is labour in the family. If a family or individual wants to cultivate more land than can be allocated under the law, it can be done via a lease or concession.

The amended Land Law also describes the process of registering land. It specifies (Article 49) that a Land Title is now the only legal document "considered as main evidence for permanent land use rights."

It also clarifies that groups or individuals can acquire land legally in 3 ways: allocation by the State, transfer (defined as "sale, transfer or exchange"), and by inheritance (Articles 52, 57 & 58).

Article 60 outlines the obligations of legal land users, and Articles 62 and 63 details the circumstances under which legal land users can lose their rights.

3. Ministerial Direction 564, addressing Directions on Land Titling Regulations 997 (Systematic Adjudication) and 998 (Sporadic Adjudication)

4. Prime Minister's Decree 169/PM, 3rd November 1992, Management & Use of Forests

Article 4 provides that "the State recognises the right to use forests, forest land and forest products in accordance with the custom of villagers."


6. Prime Minister's Decree 01-96/PM (1996), Forestry Law

7. Prime Minister's Decree on Sustainable Use of Production Forests, No. 59/PM (2002)

Confirms the right of villagers to be involved in management, use and share in revenues from production forest products. However, lack of a clear legal framework concerning village participation in forest management has led to frequent policy changes and disputes between concerned parties.
8. Regulation 0204/MAF (2003), Ministry of Agriculture & Forestry, setting out field implementation instructions to implement Decree 59.


Constitution, National Policies and Legislation: Laws on Ethnic Minorities


All sections of the Constitution stress the multi-ethnicity of the state.

Article 8: "All ethnic groups have the right to protect, preserve and promote the fine customs/traditions and culture of their own tribe and of the nation. All acts creating division and discrimination among ethnic groups are prohibited.

The State implements every measure to gradually develop and upgrade the socio-economic levels of all ethnic groups."

Article 23 promotes preservation of national culture and its ethnic people, while accepting other "progressive" cultures.

Article 35 states the equality of all people before the law regardless of their ethnicity, beliefs or gender.


This policy is the cornerstone of current ethnic minority policy.

The Resolution sets out the Government’s commitment in tackling the minority-related problems, setting forth the following essential tasks: 1. Strengthening the political foundations; 2. Encouraging production and opening channels of distribution in order to shift from a subsistence economy into a productive economy; promoting and developing the potential of mountainous areas; improving the quality of life; 3. Expanding education, culture, health, social welfare; 4. Improving Strengthen the national defense and peacekeeping; and 5. Strengthening the Party’s leadership in ethnic minority affairs. For tasks 2 and 3 especially, a detailed action plan has been developed with a strong focus on issues of basic human needs, such as occupation, education, culture, health and social welfare, including, for example, the continuation of programmes to halt shifting cultivation, and the allocation of land for cultivation and raising livestock.

3. Resolution of the Political Bureau Concerning the Affairs of Various Minorities, especially the Hmong Minority (1981)


Defines a "village" as constituting "over 20 households or a population of over 100 co-existing persons."

5. Law on Local Administration, No. 60/PO,(2003)

This details criteria for establishing different administrative units and who has responsibility for doing this, as well as duties and responsibilities of those administering different units from Province to Village

6. 8th Party Congress and Directive Order No.9 of the Politburo, 8th June 2004, Instruction Order on the Establishment of Village and Village Cluster for Merging Administration (Kum-baan Pattana)

This Directive is the most recent and most important policy affecting ethnic minority villages at present. It concerns merging of villages with the aims (among others) of improving socio-economic development and accelerating poverty reduction. It calls for focal sites to be "special zones", but does not specify how poverty reduction is to be achieved by this step.

Directive 09 is the latest in a series of decrees and directives attempting to address poverty reduction, including Decree 010 on decentralisation which was felt to have limitations and was the product of the Rural Development Committee (RDC, now abolished). The RDC also organised focal sites (khedchutsoom) which have been superseded by Directive 09, but which still persist in some provinces such as Savannakhet and Luang Prabang. In the survey provinces of Attapeu and Oudomxay, districts tend to take the label of khedchutsoom and kumbaan patthana as it is used by MAF to describe technical services consolidation, and have applied it to kumbaan patthana as proposed under Directive 09.

Directive 09 is now the principal policy document cited by provinces and districts to develop concessions with the aim of turning land into funding opportunities in order to speed up national development. However, 09 is a
Party Directive, not a Government Decree, which has led to some district and village authorities questioning who is responsible for implementing National Policy. The Party is parallel and superior to Government, but Government manages the budget for poverty reduction. Directive 09 defines a village in mountainous areas as more than 200 people, in lowland areas as more than 500 people, and in urban areas as more than 1,000 people. In order to achieve these numbers, 2-3 villages with adjacent boundaries are to be merged into one. In turn, village clusters (kum-ban) are to be formed by merging 5-7 neighbouring villages into one administrative unit. This is interpreted as up to 21 villages being clustered into one kum-ban and its administration merged (kum-ban patthana). One objective is for "ethnic people in the village cluster to live together with love and solidarity under the Party's guidance."

Developing kum-ban patthana is an administrative step in addition to forming focal sites. One district must have at least 2-3 focal sites.
ENDNOTES

1 The indigenous population mainly lives in the fifteen provinces of Mondulkiri, Ratanakiri, Preah Vihear, Kompong Thom, Kratie, Stung Treng, Porsat, Battambang, Banteaymeanchey, Oddar Meanchey, Kompong Som, Koh Kong, Kompong Speu, Kompong Cham, Siem Reap.

2 Art. 31 of the Constitution states that: “the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and conventions related to human rights, women’s and children’s rights. According to Article 35 “Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation”. www.ngoforum.org.kh/docs/publications/IMRP_FPIC_Report_English.pdf


4 The 2001 Land Law classifies land into 4 main categories: state public property, state private property, private property and collective property. It has been criticized for leaving too much room for interpretation in terms of indigenous communities land titling, in particular with regard to the classification of land. Lack of distinction between state public and private land, for example, poses a challenge to the registration of land ownership. See also: http://www.landgovernance.org/system/files/Cambodia_landacquisition_impacts_indigenouspeople.pdf

5 www.ngoforum.org.kh/docs/publications/IMRP_INDIGENOUSPEOPLESINCAMBODIAfinal(3).pdf


8 For example, during the Pol Pot regime, Kui were not even allowed to speak their own language.

9 Different spellings of these villages can be found for the village names, such as Sre Preang, Bos Thom and Prame.

10 Data shared by key respondent.

11 See also: http://www.landgovernance.org/system/files/Cambodia_landacquisition_impacts_indigenouspeople.pdf

12 The first concessionaire company in Prame was Chinda Fly Wood (in Khmer ចិនដា ក្តីស្រូប).

13 Paul Vrieze and Van Roeun, pg. 23), http://www.camnet.com.kh/cambodia.daily/ (Note: Infrequently Updated.)

14 This included the Forestry Administration Officer, an officer from the Agriculture Department, a member of District Council, the Police Commander of Tbeng Meang Chey District, the manager of Rui Feng Mr. Lay, a staff from the Provincial Court, commune authorities of Prame, 2 journalists (Raksmeay Kampuchear, a Khmer language daily newspaper), a member of the Provincial Council -Mr Sok Narean, other policemen of Tbeng Mean Chey district.

15 The Indigenous Peoples Human Rights Defenders of Cambodia documented these impacts of ELCs on the Kui Prame commune.

16 Semi-structured interviews and Focus Group Discussion (FGD) have been used in the documentation of this case. At the same time, a constant follow up has also been undertaken by the Cambodia IPHRD Network under the EIDHR-funded project on strengthening the IPHRD Network. The interviews and FGD with the Kui women were held at a provincial town outside of the commune to prevent harassment from authorities as the IPHRDs were not not allowed to enter Prame.

17 At the time of writing, 43 communities had been recognized by the Ministry of Rural Development, 20 had received legal community registration from the Ministry of Interior, and three have registered communal
land. As the process can take years and has to pass various administrative stages, the indigenous communities’ attempt to gain legal recognition has often been stalled, see also: www.ngoforum.org.kh/docs/publications/IMRP_FPIC_Report_English.pdf. Update: On March 11, 2013, two more indigenous communities were granted such communal titles bringing the total to five.


19 Update: The Yuzana promise is only for the farmers who went to court. There are still a lot of farmers who lost their land but could not go to court. For those who were given lands, the quality of lands is really bad, only a few can be used for farming. Some farmers got very rocky lands that they cannot use at all. Many farmers are unhappy about this compensation (from KDNG).

20 During the early days of British colonial occupation, the administration recognised native customs and peoples’ usufruct rights to land and resources (the system of usufruct rights allows the individuals to use the land, but it is the community as a group that exercises the legal rights). The seeds of the current land disputes were, however, already being sown as the colonial authority tended to ignore rights over fallow farming land and hunting territories, with the aim of weakening customary land rights claims. The Forest Ordinance of 1953, for example, classified large areas of forests as Permanent Forests, which extinguished native rights in certain areas and strictly controlled native activities in general. Native rights were totally prohibited in ‘Forest Reserves’. The aim of this legislation was to curtail shifting cultivation and to reserve the forest lands for timber extraction.

21 For example, Federal Constitution, Article 150(6A), and Part XIA.

22 COMANGO, page 1; FIDH-SURAM, page 5; BCM, page 4; AI, page 1.


25 Malaysia’s accession to CEDAW is subject to the understanding that its provisions do not conflict Islamic Sharia law and the Constitution.

26 Article 8j of the Convention.

27 The two areas combined form the pemakai menoa (in Iban). Menoa is usually marked by natural boundaries such as rivers, streams, watersheds, mountain ridges or other landmarks.

28 For example, one of the biggest issues is the Sarawak’s pan to build 12 hydroelectric dams to meet its future industrialization needs.

29 Nyawin Ganing was also featured on April 2010 for campaigning for Malcolm Mussim Lamoh, a BN candidate at Batang Ai. Also in this context, Nyawin was taking side with the government when addressing indigenous people who had been relocated in order to make way for the Batang Ai Hydro-electric Dam.

30 As per interview of researcher with an Iban woman from Rumah Nyawin, September 10, 2012, Bintulu, Sarawak.

31 Ibid.


33 There were about 22 attendants in the meeting. 16 from them were the different department government officers including to lawyers from Kuching, Penghulu and 6 male representative from Rumah Nyawin itself (Mr Nyawin, Mr Usat, Mr Kilat ak Sampok, Mr Jageh ak Unting, Mr Segeh ak Bigging).

34 All pictures are courtesy of BRIMAS.
Empresa “SHALL NOT be entitled to a lease of an area equal to the area (of the provisional lease) but only to such an area as the Survey shows to be available” i.e. a survey must be done first by the lessee over the leased area to determine whether other people have rights over the same area of land, if so, such an area will be excluded from the lease.” [Link to webpage]

The Government’s definition and/or understanding of NCR claim is only restricted to cultivated area or farmed area (“temuda”) which must have been cultivated or farmed before 1st January 1958. On the other hand, the natives believe that their NCR claim goes beyond their “temuda”. It includes their communal lands (“pulau”) and reserved virgin forests.

Para. 51, A/HRC/WG.6/4/MYS/1/Rev.1
Para. 58, A/HRC/WG.6/4/MYS/1/Rev.1
Para. 97, A/HRC/WG.6/4/MYS/1/Rev.1

[Link to OHCHR report]

This can be difficult because many NCR land in Sarawak are not issued with titles. One of the main reasons given by the Government for not being able to issue titles is a lack of fund to survey these lands.

Article 66 and Article 176 of the Penal Law, see, for example: Committee on the Elimination of Racial Discrimination (2011) 16th to 18th periodic reports to State parties under article 9 of the Convention, Lao People’s Democratic Republic, [Link to OHCHR report]

I.e. villages that have already previously resettled under Decree 102 and Law 60, Mann & Luangkhot (2008). Study on Women’s Land and Property Rights under Customary or Traditional Tenure Systems in Five Ethnic Groups in Lao PDR. Land Policy Study No. 13 under LTPII, [Link to report]

“Article 22 of the Constitution states that “The State and society attend to developing high quality national education, to create opportunities and [favorable] conditions in education for all people throughout the country, especially people in remote areas, ethnic groups, women and disadvantaged children” Law on Education (2000) further stipulates that: “ All Lao citizens, irrespective of ethnicity, race, sex, and social status, have the right to education”, see also: [Link to OHCHR report]

The National Programme for Shifting Cultivation Stabilisation carries the responsibility for ending shifting cultivation, but the provincial and district party committees are in charge for implementing Directive 09.

[Link to report]

Decree No. 07/PM was issued by the Prime Minister in 19 April 2004 to operationalize Decree No. 04/PM issued earlier on 12 April 2002 which gave instructions on the relocation and sedentary livelihood for nomadic people living in remote mountain areas. It aims to prevent racial and ethnic discrimination in the implementation of the resettlement as well as to improve living conditions while putting an end to slash-and-burn cultivation.

Catching up slowly: ethnic and gender inequalities in Lao PDR
Article 29 stipulates that: “The State, society and families attend to implementing development policies and supporting the progress of women and to protecting the legitimate rights and benefits of women and children.”

For example, the Third Lao Women Union Conference held in 1993 focused on improving strategies to strengthen the female segment of the society by assigning important roles to them and integrating them into the development process. This was to reduce heavy labouring for women and to support seeking extra income for the family to enhance the life quality in rural area through these mechanisms: 1) Upraise education and experience of rural women and ethnic women, 2) Support training women to increase their work opportunity, 3) Improve women’s access to assistant capital sources, 4) Defend women’s legal rights and benefits, and 5) Publicise governmental policies to perform equality, avoid sexism, and encourage mothers to form professional groups for women under consultancy of Mae-Ying-Lao Female Union. The Lao women’s Union further set up a Gender Resource Information and Development Centre in 1997 and in 2004 set up the Counseling Centre for Women and Children, providing counseling to victims of human trafficking, domestic violence and sexual exploitation.


In this context the Land Law identifies 3 ways in which groups or individuals can acquire land legally: allocation by the state, transfer (defined as "sale, transfer or exchange"), and inheritance (Articles 52, 57 and 58).


The approximately 5 million residents of the Lao People’s Democratic Republic (PDR) include the majority Lao-Tai (67 percent of the population) as well as three major non-Lao-Tai ethno-linguistic groups: the Mon-Khmer (21 percent), the Hmong-Lu Mien (8 percent), and the Chine-Tibetan (3 percent). Relative to the Lao-Tai majority, the non-Lao-Tai ethno-linguistic minority groups are disadvantaged in many respects, see also: siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1289834880964/Lao_PDR_brief2_Nov2010.pdf. The Lao Front for National construction (LFNC) proposed a system of 49 groups as the official classification system, see also: www.asianlii.org/asia/other/ADBLPRes/2006/4.pdf.


For example, Vilabouly encompasses 55 villages in the lowlands, and 46 villages in the mountainous region.
These are: Nong Kadaeng, Vang-Yang, Nalou Mai, Vieng, Padong, Non Sa-At, Non Somboun, Pon Sa-At, and Muang-Luang.


The company provided a weaving hall, 7 manual weaving looms, one building for silkworm farming and residences for the workers.

In the 1995 national census of Laos, it is listed that the Kri had a population of only 739. Source: http://joshuaproject.net/people-profile.php?peo3=11241&rog3=LA.

At the end of 2009, more than a quarter of all women of working age living in the communities close to the mines were mine wage-workers. Around one fifth of the Vilabouly mine’s employees are female.

The data in this report were collected by interviewee: Mrs. Bua-Ban on 17 October 2012

Examples for villages that were combined with other villages: New Na-Lu village moved from Old Na-Lu village in 2007, and merged with other villages or resettlements nearby. Viang village amalgamated with Non Somboun village, and Pon Sa-At village with Nong Kadaeng village in 2007.

Examples are Padong, Non Sa-At, Non Somboun, and Muang-Iuang

Villagers were said to receive compensation from the government in 2 formats: 1) Land rental paid for the duration until the project is completed. The rent is variable, depending on land space and negotiation between the owner and tenants. 2) Total land purchase: The villagers are no longer have owners of the land, and the land will be in possession of the government. For the move, the mining project announced to assist in shifting woods, providing 20 zinc plates, and 5 kilogrammes of nails.

Also 36 permanent miners (11 women), and 9 temporary miners (4 women) are living in the village.

In 2010, the project transferred the business to a local family to continue. The workers were still hired, but the training at the silkworm-raising building was not discontinued.

Two of her daughters are studying at the ethnic school. One is studying at a medical university. Another is in the national university. The ethnic school that was introduced by the policy of free education offers educational opportunities until university level for all ethnic members.

Damdouane Khouangvichit, 2010: Socio-Economic Transformation and Gender Relations in Laos PDR, umu.diva-portal.org/smash/get/diva2:318827/FULLTEXT01


Coalition on Racial Discrimination Watch, 2012.

Artcle 66: “Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”

Article 67: “The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.”

Various ministries and departments in Thailand share the responsibility of National Resource Management. This includes, for example, the Ministry of Agriculture and Cooperatives (MOAC), and the Ministry on Natural Resources and Environment (MONRE). The latter is subdivided into the Department of National Park, Wildlife
and Plant Conservation, the Royal Forest Department, the Department of Water Resources, the Department of Mineral Resources, and Department of Coastal and Marine Resources (UNDP, 2007). The National Park, Wildlife and Plant Conservation Department has the function of supervising and managing the forest conservation system in whole Thailand (IMPECT, 2009).

93 UNDP, 2007
95 Sec. 14 cited in UNDP, 2007, S. 263. Management and control processes of National Reserved Forests are led by the National Park Department.
96 http://www.thongthailand.com/articles/301776
97 UNDP, 2007
98 This mirrors certain conservation ideologies (man and forest can’t co-exist) and value priorities (environmental conservation over social justice) (vgl. Buergin, 2000). Protected sites include areas set aside for nature conservation, watershed protection, research and recreation including forest parks and national parks, cf. National Park Management in Thailand, http://web3.dnp.go.th/wildlifenew/downloads
99 It states that whenever the government identifies an area of land to be maintained in its original condition, it has the power to proclaim a royal decree and set the boundaries of this protection site (Article 6). According to Section (1) "land" means surface of land in general and includes mountain, creek, swamp, canal, marsh, basin, waterway, lake, island and seashore (cf. http://www.asianlii.org/th/legis/consol_act/npa1961141/). The National Park Act follows conservation ideologies of the United States where national parks are established for the educational and recreational benefit of the (non-native) Americans (IMPECT, 2009)
100 cf. National Park Act 1961, Chapter 1, Section 6. Moreover, Section 16 stipulates, among others, that within the national park, no person shall: (1) hold or possess land, nor clear or burn the forest; (2) collect, take out, or do by any means whatsoever things endangering or deteriorating woody plant, gum, yang wood oil, turpentine, mineral or other natural resources; (3) take out animals or do by any means whatsoever things endangering the animals; (4) do by any means whatsoever things endangering soil, rock, gravel or sand; (5) change a water-way or cause the water in a river, creek, swamp or marsh to overflow or dry up; (6) close or obstruct a watercourse or way (http://www.asianlii.org/th/legis/consol_act/npa1961141/).
102 Most of them are terrestrial parks, fewer marine parks. 59 parks are in Northern Thailand, 25 in Central, Eastern and Western parts of the country, 23 in the Northeast, and 42 in the South. In these regions, there are 47, 13, 23 and 7 forest parks, respectively, altogether 90 forest parks (http://www.thaiforestbooking.com/nationalparkfeng.htm). The Thai government is aiming to further expand the area of protected sites.
103 Buergin, 2000
104 Article 33 adds that land that has been established as Wild Animal Sanctuary does not have any person who is not a government or political department with occupation rights under the Land Code. When the Cabinet sees fit to establish any piece of land as a wildlife sanctuary, this can be done through a Royal Decree with a map showing the boundaries of the sanctuary attached to the Royal Decree. This area will be called a Wildlife Sanctuary (IMPECT, 2009). Above that, no person can enter, claim, or occupy land, or plant or construct, cut, fell, clear, burn or destroy trees within such wildlife sanctuaries [Art. 38]. (UNDP, 2007, S. 267).
105 Cabinet Resolution 30 June 1998, Cabinet Resolution of 29 April, 2008
106 For example, in 2007, the Civil Code was amended to warrant both men and women equal rights to file for divorce. Amongst others, also the Penal Code was amended to make marital rape liable to prosecution. See also: http://www.unwomen-esesasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf
108 Art. 10c, Convention on Biological Diversity (CBD).
109 Due to its large number of residents, there are 31 Public Health volunteer (PHV), 19 men and 12 women in Doi Chang.
110 In this year, the first election was held for the position of headman. A Lisu man (Banpot Kireekhamsuk, 1971-1998) was elected, but he is not a traditional leader anymore.
Also the elected community representatives of the local government council are both Akha men, while the headman’s deputy is Lisu. In the village committee, there is only one female member, a Chinese woman. There are 11 men, but no women amongst the Public Health Volunteers (PHV).

UNDP, 2007. The majority of Lisu in Thailand are ancestor-worshippers and follow a religion involving animistic beliefs and practices, a smaller number are Christians (Tribal Research Institute, 1995). They are divided into patrilineal clans that are crucial in terms of kinship relations and marriage regulations. Also most of the Akha in Thailand are traditional believers and practice traditional ancestor-worshipping, fewer are Christians. Familial relationships, marriages and rights of succession are regulated through patrilineal clans, and after a marriage, the Akha women live in the family of their husbands (The Tribal Research Institute, 1995).

Karen are indigenous to the Thailand-Burma border, i.e., to southeastern Burma and western Thailand. The English term “Karen” thereby refers to a heterogeneous lot of ethnic groups, comprised of at least 20 sub-groups. In Thailand, the majority of ethnic Karen can be divided into two main sub-groups: Karen Sgaw and Pwo. In Thai language, they are referred to as “Kariang”, while the Karen call themselves “Pgaz K’Nyauz”, with the term “nyauz” meaning “person” or “human being”.

In Thailand, there are approximately 400,000 of them (Delang, Claudio O. (Ed.) (2003). Living at the Edge of Thai Society: The Karen in the Highlands of Northern Thailand. London: Routledge).

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http://www.bangkokpost.com/print/280541/.


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Many indigenous people in the community wonder why development projects and companies are allowed to possess large experiment plots, pieces of land, and coffee plantations in Doi Chang while they do not have any land rights.

HAS’s main objective was to diversify the villager’s cash crop production. Thus, its major activities were to distribute a variety of to the community and to conduct trainings on cash crop production. The majority of the training participants were men, except for some widows.

There is one officially organised community Enterprise of coffee cultivation, supported by the Thai government. Moreover, there is one cooperative of Doi Chang people and lowlanders called “Doi Chang Coffee”. Coffee produced under the name “Doi Chaang” is the most popular coffee brand in Thailand.

For example, in this context sloping agricultural land technology was introduced to the villages, such as certain plant species from Australia (to stabilize steep slopes with erosion control structures).

In cooperation with a multitude of donors a significant reduction of opium poppy cultivation was achieved (http://www.thai-german-cooperation.info/newsletter/GIZ_TH_18_newsletter_EN.pdf). TGTC supported the Thai Government in the establishment of a public welfare center, a public health center and in the promotion of alternative income sources for the villagers.

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Many indigenous people in the community wonder why development projects and companies are allowed to possess large experiment plots, pieces of land, and coffee plantations in Doi Chang while they do not have any land rights.

They paid 30,000 ThB (1,000 US$) to some Akha people for the land they built their house on. Besides that, they bought a piece of land for 50,000 ThB some years ago. In the past, the Thai government and HAS considered this land as their property. However, the former Lisu owners of this land also considered themselves as the owners. Therefore, Meechae bought the land from Lisu villagers.

However, her neighbor did not dare to make public what happened to her. She expressed that without her husband, she will not give any information and added: “I am not confident as I am still very fearful of the arrest case, I don’t want to say any word about the case”. Within the traditional Lisu community organization, it is considered inappropriate if women express their opinion in public.

Legally, the police can postpone submitting the court files of the case 5 times before bringing it to the prosecutor.

If the land under conflict is larger than 5 Rai, it is usually not considered as land for subsistence farming anymore, but rather counts as economically used agricultural land. As Meechae’s land is large at 6 Rai, it is expected that that the judge will not easily acquit the case.

Charn Chai Pisailert; headman of Doi Chang.

They also learned that in Doi Lan, there are altogether 7 cases of illegal encroachment that are currently in the process of police reporting to the prosecutor.

National Park Act of Thailand (BE 2540) that states that “in a National Park, no one is allowed to take hold or own any land, build anything or slash and burn the forest area.” Further, the law states that in case of a violation, officials are authorized to order the perpetrators to destroy or remove such buildings or adjust the area back to its original state. The enforcement of these laws forces indigenous peoples to repeatedly move out of their homelands and arable areas, despite longstanding prior settlement and use.


Coalition on Racial Discrimination Watch (2012).

http://www.bangkokpost.com/print/280541/.

Ibid.


Coalition on Racial Discrimination Watch (2012).

http://www.bangkokpost.com/print/280541/.


UNDP, 2007. Article 6 of the 2007 Constitution: “The Constitution is the supreme law of the state. The provisions of any law, rule or regulations, which are contradictory to or inconsistent with this Constitution, shall not be enforced”.

Coalition on Racial Discrimination Watch (2012).

UNDP, 2007; In 2007, there were 6711 cases of arrests on charge of land encroachment, mainly of indigenous peoples, from January to April 2008, there were 2625 cases, and in 2009, 1833 cases have been reported. (http://www.coj.go.th/oppb/info.php?info=sub_menu&cid=12 see AIPP TEXT)

Before 1997, laws and policies in Thailand did not provide for any participation of people living in protected areas within the demarcation process, but the power to establish protected sited lay only with the government. For the declaration process, satellite pictures were used without detailed any survey of the areas in order to determine Instead of identifying settlements and agricultural land use by indigenous peoples. National Human Rights Commission, “Report on the Situation of Human Rights Violations in Land and Forest Management, 2002-2005, c.f. IMPECT, 2009

The declaration of protected areas must be done with public consultation and consent from the Tambol (sub-district) council or Tambol Administrative Organization (TAO) (IMPECT, 2009).
For example, Article 12 of The National Forest Reserve Act states that any claim to ownership rights within NRF must be submitted within 90 days after the Forest Reserve’s declaration. In reality, indigenous peoples are not able to make use of legal provisions as they lack access to information about existing regulations. They are not informed about the declaration of reserved forest by the Authorities (also due to language barriers or geographical remoteness), thus, often indigenous peoples do not know about changes of legal status of their territories.

http://www.bangkokpost.com/print/280541/
http://www.bangkokpost.com/blogs/index.php/2012/05/11/forest-dweller-s-fight-for-justice?blog=64
http://www.unwomen-eseasia.org/docs/factsheets/06%20THAILAND%20factsheet.pdf
http://www.bangkokpost.com/print/259158/
http://www.bangkokpost.com/print/254877/

Mann & Luangkhot (2008). Study on Women’s Land and Property Rights under Customary or Traditional Tenure Systems in Five Ethnic Groups in Lao PDR. LandPolicyStudyNo.13underLLTPII,


PART 3: WORKSHOP RESULTS: Our actions make the difference

3.1 Violence against indigenous women
   3.1.1 Key Issues and Concerns
   3.1.2 Grievance Mechanisms, Remedies and Strategies to Address VAIW
      3.1.2.1 Summary of available mechanisms
      3.1.2.2 Country-specific mechanisms

3.2 Country strategies to address development-induced violence against indigenous women

3.3 Indigenous Peoples and sustainable development
   3.3.1 Core Themes and domains identified by Indigenous Peoples
   3.3.2 Sustainable development goals and indicators by country

In the following section, the results of three workshop sessions are presented. Participants worked in small groups to identify overall and country-specific issues and grievance mechanisms related to violence against indigenous women. Moreover, they elaborated on country strategies to address development-induced violence against indigenous women. Finally, they identified core domains in terms of indigenous peoples’ sustainable development goals and proposed indicators for each country.

3.1 Violence against indigenous women

3.1.1 Key issues and concerns

There are serious and widespread problems affecting indigenous women in Southeast Asia. The situation is expected to worsen when ASEAN completes its economic integration in the 2015 due to trade liberalization. The key issues are:

1. Violence against indigenous women, including violation of their civil and political rights, brought about by the presence of state and/or corporate projects
2. Trafficking of indigenous women and children for labour and sexual exploitation
3. Migration due to limited livelihood opportunities, usually due to the encroachment of extractive industries and national projects in indigenous peoples’ territories thus destroying/denying their resource base; indigenous women who become migrant worker face violations of their rights as migrant workers
4. Lack of response, sensitivity and accessibility of customary and state mechanisms in relation to indigenous women’s access to justice, limited knowledge among indigenous women of their rights as women and as indigenous peoples
5. Exclusion from decision-making in both customary institutions and local governance
6. Integration of the indigenous communities into the market economy without adequate and appropriate safety nets to protect indigenous peoples’ rights
In order to address the above issues, action points have been identified which provide broad strokes of the work that will be undertaken by the participants.

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<tr>
<th>ISSUES on VAW and ACCESS TO JUSTICE</th>
<th>RECOMMENDATIONS</th>
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<tr>
<td><strong>Concerned country</strong></td>
<td><strong>Indonesia, Mekong countries</strong></td>
</tr>
<tr>
<td>1. Sexual violence, sexual harassment, exploitation, prostitution, rapes in mining and plantation areas by mine and plantation workers</td>
<td>Plantations and mining usually bring the problems of modernity into the communities. Frequently, women become prostitutes, especially if there are no more sources of livelihood due to dispossession of their resource base. A solution is to define how development should occur in the territories – including the protection of children and women from the negative impacts of these developments. If these kinds of development modalities are harmful to communities, they should not be supported. In this sense it is crucial to raise awareness on the threats and challenges of these kinds of development projects as well as to strengthen capacity to negotiate on the kind of development that should take place on the community-level. This has to be addressed especially from a women’s perspective: women have to be educated and empowered to protect themselves from exploitation by traffickers and other violators. Their self-esteem and pride in their identity and cultures have to be developed and reinforced. If the justice system is not working at all (neither customary not civil), women will have to create their own justice system.</td>
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<tr>
<td><strong>Concerned country</strong></td>
<td><strong>Indonesia (as a sending country), Malaysia (as a receiving country)</strong></td>
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<tr>
<td>2. Trafficking of women and girls for labor and sexual exploitation – Indonesia to Malaysia</td>
<td>There is much work done to address trafficking of women and girls, but it may not have reached the indigenous women and their communities. This means that gaps in this regard have to be identified and worked on. In cases of violence, documentation and reporting skills have to be developed. There has to be a sustained support system for the victims to ensure that women who report these cases will be protected. There should also be good access to legal assistance/paralegal support in order to ensure that justice is achieved for the victims and survivors.</td>
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For example, there are many cases of violence against women in Indonesia (especially sexual violence and harassment) in mining areas and oil palm plantations. In most of the cases, the survivors do not have access to justice.

In Burma, many rape cases of women between 13 and 50 years have been reported in the huge development project World Conservation Tiger Reserve in Hugawng Valley in Kachin state. Victims submitted the cases to the authorities and sued in courts, but until now justice has not been served.

In Indonesia, trafficking of indigenous girls to Malaysia is widespread. In the eastern part of Indonesia, many indigenous girls are sold for 6 Million rupiah (600 dollars), and trafficked to work in Malaysia. Often, they are transferred without any personal possession and without the parents or family’s knowledge or consent. An agency takes care of their ID and other travel documents. There are communities without girls in senior high school due to of this widespread phenomenon. Mostly affected are under-aged girls who are trafficked to Malaysia.
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<tr>
<th>Concerned country</th>
<th>Indonesia, Malaysia</th>
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<tr>
<td><strong>3. Lack of protection of the rights of migrant workers and remedies when their rights are violated, undocumented impact on families left behind and on the status of children born in host country</strong></td>
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Migration is a big issue for IPs, also for women to become victims of trafficking (e.g. prostitution, very much related to an extractive development model looking to extract cheap labour). Some migrant workers do not have a work permit, an ID-card or a birth certificate. They leave a family at home and then marry again in another place, leaving behind families at home. Children born in the host country face a lot of problems in terms of the issuance of birth certificates.

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<tr>
<th>Concerned country</th>
<th>Malaysia, Northeast India, Philippines</th>
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<tr>
<td><strong>4. Lack of responsiveness and accessibility of customary institutions and legal remedies for survivors/victims of sexual violence</strong></td>
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In most cases, both civil and traditional institutions are used. There is no study on how indigenous women feel the appropriateness of these customary institutions in seeking redress with respect of sexual violence. There is a lack of a conscious discussion (e.g. in Malaysia) on which institution is appropriate.

In the Naga context of Northeast India, women organizations will punish the perpetrator: they cut the culprit’s hair and hand him over to the police. The customary system has a problem if the perpetrator does not also accept the traditional law (e.g. if he is from the dominant society).

On the other hand, sometimes the customary institutions are very strong and provide penalty. When customary laws are functional, they can impose punishments like banishment.

Often, the modern civil courts take a long time before judgments are made. The judicial system also can be distorted and expensive.

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<th>Concerned country</th>
<th>Thailand</th>
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<td><strong>5. Exclusion from decision-making in both customary institutions and local governance</strong></td>
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In many countries, women remain excluded from the local government. More generally, indigenous women lack of knowledge of their rights as women and as indigenous peoples.

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<th>Concerned country</th>
<th>Thailand</th>
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<td><strong>6. Integration of indigenous communities in the market economy</strong></td>
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In Thailand, many young indigenous peoples leave their villages to the city that raises concerns in communities, especially women and children.

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<th>Thailand</th>
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<tr>
<td>Shares about an AIPP’s former project on child trafficking, in NE India this practice has become very popular, Everyone wants to have money, so parents encourage their children to go out of the city.</td>
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</table>
Also in NE-India, parents encourage their children to move to the city in order to earn a higher income. Traffickers promise good jobs and free education, and children end up as labourers.

In Papua, consumerism, the imposition of modern technologies and the exposure of children to them is a major push factor for prostitution.

The lack of pride on traditional occupations and traditional knowledge aggravates the situation causing people to think that Western education is the only good one. Surveys should be undertaken regarding who is going to the city for what purpose, alongside with awareness-raising campaigns within communities. Also the lack of teachers poses a problem. The churches are a good channel, also schools, and women’s organizations.

The work by indigenous women networks (such as IWNT) helps to look at the situation of children within the communities. Indigenous peoples’ organisations (AIPP, IMPECT) have to discuss with the communities which actions can be taken and supported. Plans have to be set up regarding the problems to be discussed, e.g., how to educate the children within their community.

3.1.2 Grievance mechanisms, remedies and strategies to address VAIW

3.1.2.1 Summary of available grievance mechanisms

- In communities which still have functioning customary institutions, these are the front line service providers; sometimes IP network and civil society organizations are also involved in the resolution of cases, especially in providing support, legal and others
- If the customary institution cannot resolve the case, it is referred to state mechanisms like different government agencies, the police, the courts, etc.
- It is possible also to use both the customary institutions and the formal justice system simultaneously
- UN bodies are also used through the submission of reports and communications
- Each group mentioned the media - social media and print media- as powerful tools, seeing it as one of the effective strategies to expose issues and bring these to the attention of the authorities and the public

Challenges of the state systems:
- Courts: time-consuming, decides sometimes in favour of the perpetrators, corruption is rampant, resource-intensive

3.1.2.2 Country-specific mechanisms

During the workshop session, participants identified the following redress mechanisms they use in their own country

**Thailand**

**Traditional systems**

Lisu: the traditional council, “mumupha”, led by the headman, is responsible for resolving conflicts
Karen: the “Hei Kho”, a male traditional leader, connects people in the community to external parties, and he is consulted if there is a conflict. Besides him, the “Pami Papyä”, the elders collectively decide on a solution.
For Karen in Kaeng Krachang, there will be discussions in the family and community first in order to address a problem collectively. Nowadays, all the dispute cases among the people themselves must be resolved within the community (even violence against women).

In more complex cases, for instance those involving wider territorial areas or graver cases like the arson, the network of indigenous peoples in Northern Thailand and that of government agencies, academics and advocates are enjoined to help.

**State system**
If the conflict is not resolved, it is brought to the civil court

<table>
<thead>
<tr>
<th>Cambodia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kui (Kuoy) communities: Prame, Preah Vihear: Negotiations with local authorities and the private company</td>
</tr>
<tr>
<td>Submission of complaints/report to other institutions, like NGOs and the UNOHCHR, ILO offices in Cambodia</td>
</tr>
<tr>
<td>The media is considered as very important for awareness raising and to put pressure on governments.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vietnam</th>
</tr>
</thead>
<tbody>
<tr>
<td>All problems are referred to the lowest level of government before it can be brought to higher levels. The communities can write letters to the authorities, but the experience so far is that problems (like domestic violence, resettlement issues) take time to be addressed, and most of the time, solutions are inappropriate.</td>
</tr>
</tbody>
</table>

**Indonesia, Malaysia, Philippines and Timor Leste**

**Traditional systems**
Customary laws, e.g. for domestic violence, are diverse. If traditional mechanisms are still strong, communities will follow it.
- In some cases, customary institutions are reported to be very slow (e.g. Malaysia).
- If they are weak, IPs engage the state mechanisms.

**State system**
- **Philippines:**
  - Commission on Human Rights of the Philippines
  - Barangay and police gender desks and children’s desk, Inter-Agency Council against Trafficking
  - Various legislations (e.g., Magna Carta for Women, Anti-trafficking in Persons Act)

- **Malaysia:**
  - National Human Rights Commission of Malaysia (SUHAKAM)

- **Indonesia:**
  - Desk for women at the village level / police station, support of the indigenous community if the victim decides to file a case with the mainstream courts
  - National Human Rights Commission (KOMNAS HAM)
  - National Commission on Violence Against Women (KOMNAS Perempuan)

- **Timor Leste:**
- Vulnerable Persons Unit (VPU) (composed of police, CSO and mass organizations)
- Ready Referral Networking (for support and services), rural women’s representative, policies (Tarabando Law, Domestic Violence Law)

### Barriers in the use of state mechanism:
It takes times and resources and corruption is rampant.

### Media
Media is considered as helpful, as well as shadow reports and other international (UN) mechanism. Conduct of indignation and protest rallies to gather popular support have proven to be effective.

- Human rights organizations also report to the police, and NGOs provide legal assistance
- Civil society organizations (women’s organizations and NGOs, pro-bono and indigenous lawyers)

### Myanmar/Burma

#### Traditional systems
If a problem happens, it is first addressed at the local level through religious or cultural leaders. Also if violence occurs, even against women, indigenous peoples first approach the local leader.

#### State system
If the local level is not effective, the community will address higher administration levels, sometimes also to the police, then, in the end, to the court.

For example in Kachin state, IP will address the state level first, after that the national level. In case of the land confiscation case - the community went to the local court, later to the administration level, up to the state level, but the state court decided in a biased way. The communities appealed the local court’s decision at the national level, which acted positively on their pleadings.

#### Issues:
Often court processes are time-consuming and delayed; corruption is rampant which hampers the delivery of justice.

VAIW is widespread such as rape cases. Communities send their cases to the State Parliament because there is no trust in the lower level courts. For example, in case of rape, the State MP has to solve the problem, as other entities cannot act.

### Media is very powerful to help communities.
Sexual violence, especially rape, against indigenous women are happening, or even increasing, especially in conflict areas even though there are changes in higher governmental levels, like the legislation of laws against crimes against women like rape, and the establishment of mechanisms like gender desks in police stations. These cases seldom get the attention of media.
3.2 Strategizing on actions to address development-induced violence against indigenous women

GUIDE QUESTION: What are the specific bodies/mechanisms/institutions/offices/officials/authorities and others at the local (village, district, municipality, province, etc), national, regional, and international levels that you will continue to engage with, or intend to engage with, in order to seek redress of your issues?

GROUPINGS:

1. Thailand - National parks
2. Burma and Vietnam - Displacement and resettlement
3. Indonesia and Philippines - Mining
4. Cambodia and Malaysia - Economic land concession
5. Timor Leste - Transitional Justice

1. THAILAND: Strategies in relation to national parks

<table>
<thead>
<tr>
<th>Level/advocacy target</th>
<th>Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Villages/Communities</strong>&lt;br&gt; Kaeng Krachang, villages in northern Thailand affected by national parks</td>
<td>▪ Capacity building: trainings and awareness-raising (human rights and information: constitution, CBD, UNDRIP, HR treaties, etc.), access to justice&lt;br&gt;▪ Organizing: empowerment/self-realization&lt;br&gt;▪ Demarcation/National parks&lt;br&gt;▪ IW/IP knowledge transmission (school curriculum)</td>
</tr>
<tr>
<td><strong>2. Local authorities</strong>&lt;br&gt; (local government, forestry department office) Tambon Administration Organisations District Authorities District/Provincial Forestry Units</td>
<td>▪ Lobby and network for the recognition of community’s capacities, potentials and rights&lt;br&gt;▪ Campaign for the fulfilment of obligations of local authorities&lt;br&gt;▪ Collaboration/cooperation/ways forward: joint management, mapping/land demarcation, establish rules and regulations for natural resource management with recognition of indigenous knowledge, inclusion of different sectors, men and women in committees&lt;br&gt;▪ Advocacy on community land titles/deeds</td>
</tr>
<tr>
<td><strong>3. National level and authorities</strong>&lt;br&gt; Committees/mechanisms Judicial process/judges National forestry authorities Thai Women’s Caucus on ASEAN</td>
<td><strong>Lobby and campaign for:</strong>&lt;br&gt;▪ Establishment of:&lt;br&gt;  - tribunal composed of experts (experienced-based) to resolve issues related to the National Parks Policy with participation of indigenous peoples&lt;br&gt;  - specific mechanisms on access to justice for indigenous women affected by the National Parks Policy with mandates on both promotion and protection of IPs rights (e.g., within NCHRT, existing mechanisms, tribal council)&lt;br&gt;▪ Endorsement/enactment of laws for protection of rights of indigenous peoples living in national parks&lt;br&gt;▪ Amendment/abolition of laws that are not consistent with the UNDRIP and other international instruments on forest-dwellers&lt;br&gt;▪ Reaffirmation of the recognition of IPs in Thailand as recognized in the Constitution and other relevant fiats</td>
</tr>
</tbody>
</table>
### Undertake:
- Media advocacy
- Submission of reports to relevant national bodies

#### 4. Regional Engagement

**ACWC/AICHR**

- ASEAN Women Caucus
- FIMI (International Indigenous Women’s Forum)

- Engagement with regional networks, e.g. ASEAN Women Caucus, IP networks, AIPP, APWLD
- Thematic projects/advocacy: on IW and elimination of violence and discrimination/access to natural resources (food security/folk wisdom)/civil society politics (participation/decision making/access to information)

**5. International Engagement**

- EMRIP, Special Rapporteurs (i.e., relevant mechanisms related to indigenous peoples’ food security)

- Submission of reports to UN mechanisms, e.g., alternative reports to the CEDAW

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### 2. VIETNAM, BURMA (Shan and Kachin State): Resettlement/displacement

<table>
<thead>
<tr>
<th>Issue</th>
<th>Advocacy target</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation claim against road construction</td>
<td>Tam Thanh district government</td>
<td>Follow-up and lobby local/district authorities for compensation</td>
</tr>
<tr>
<td></td>
<td>Vietnam Women’s Union national</td>
<td>CSDM: ask national level VWU to look into the situation of this project and see the resettlement plan and how the government is responding to it</td>
</tr>
<tr>
<td>Resettlement: Na Hang Hydroelectric dam construction</td>
<td>Na Hang district local government</td>
<td>Displaced community will meet, discuss and assign a delegation to ask local authorities how the resettlement plan has been implemented since the funds were devolved to them dam; copy the letter of request to all relevant levels of government including the ministry responsible for the dam construction; ask for monitoring mechanism on the resettlement program with the participation of the resettlers; the VWU will support this request; link up with other mass organizations</td>
</tr>
<tr>
<td></td>
<td>Tuyen Quang Provincial government</td>
<td></td>
</tr>
<tr>
<td></td>
<td>National government</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Relevant government agencies</td>
<td></td>
</tr>
<tr>
<td>Resettlement of Myitsone dam and the tiger reserve</td>
<td>Myanmar Women’s Affairs Union (MWAU)</td>
<td>Write appeal letter to MWAU, cc ACWC and AICHR</td>
</tr>
<tr>
<td></td>
<td>ASEAN Summit SR on Burma, cc the SR IPR and SR VAW</td>
<td>Lobby the ASEAN Summit and other related fora with friendly governments, submitting the situation of development-induced violence against indigenous women inside Burma</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Networking with other exile groups (women, development, environments, youth, etc.)</td>
</tr>
</tbody>
</table>
### 3. PHILIPPINES, INDONESIA - Mining

Indonesia: Will adopt twin strategy for advocacy politically and spiritually by forming spiritual ritual movement

<table>
<thead>
<tr>
<th>Advocacy Target</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Village Level:</strong></td>
<td></td>
</tr>
<tr>
<td>Customary leaders</td>
<td>Continue to conduct rituals in keeping with the commitment of the community until the forest is recovered; approach customary leaders to be more active</td>
</tr>
<tr>
<td>Community, religious, women leaders</td>
<td>Get mandate from customary leaders to act on the case</td>
</tr>
<tr>
<td>Local authorities, and community</td>
<td>Circulation of the minutes and decisions taken in meetings with authorities and/or company</td>
</tr>
<tr>
<td>Youth</td>
<td>Organise and build their capacity to act as watch group to monitor developments in the plantation</td>
</tr>
</tbody>
</table>
| Community groups                     | - Build awareness through discussions to understand the issues and share information  
                                         - This will be followed by customary swearing/pledge to decline mining |
| **Sub-district Level:**               |                                                                          |
| Village leaders/ representatives     | Awareness-raising through community discussion of the issues              |
| Women group                          | Coordinate and build alliance with the women officials                    |
| Head of Sub-district                 | Submit the letter of demands; if demands are not met, will               |
| Agency (energy, land, mining and forestry) | Execute through customary ritual such as blocking the office symbolically or seal the tools and implements used by the company symbolically by tying a thread (as they have a strong belief not to defy the rituals as custom). |
| Police                               | Peaceful cultural approach                                                |
| Customary Board/leaders              | Lobby the district officials and traditional leaders                      |
| **District Level:**                  |                                                                          |
| Governor                             | Lobby to give pressure at the provincial level                           |
| Media                                | Conduct briefings, submit articles, invite ocular visits, ask for interviews |
| University, NGOs                     | Networking and support                                                    |
| **Provincial Level:**                |                                                                          |
| NGO and educational institutions     | Networking, discussion and support                                        |
| Media                                | - Discussion for support of issue and to expose the case                  
                                         - Conduct briefings, submit articles, invite ocular visits, ask for interviews |
| **National Level:**                  |                                                                          |
| House of Representative              | Lobby                                                                     |
| HRC                                  | Submit letter of complaint                                                |
| NGO                                  | For support in lobby                                                      |
| Media                                | - Press conference and other media work                                  
                                         - Conduct briefings, submit articles, invite ocular visits, ask for interviews |
## 4. PHILIPPINES: multi-level multi-sectoral engagement

<table>
<thead>
<tr>
<th>Advocacy Target</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Village</strong></td>
<td></td>
</tr>
<tr>
<td>Customary:</td>
<td>▪ awareness-raising on the following:</td>
</tr>
<tr>
<td>“Council of leaders” and inter-community federations (based on customary institutions)</td>
<td>▪ available safeguards and mechanisms at different government levels</td>
</tr>
<tr>
<td></td>
<td>▪ developments in the mining industry &amp; policies in the country</td>
</tr>
<tr>
<td></td>
<td>▪ new tactics used by the mining companies</td>
</tr>
<tr>
<td></td>
<td>▪ strengthening of community and inter-community customary institutions to advance campaigns on mining</td>
</tr>
<tr>
<td></td>
<td>▪ capacity-building for communities</td>
</tr>
<tr>
<td></td>
<td>▪ paralegal training</td>
</tr>
<tr>
<td></td>
<td>▪ campaign and lobby work</td>
</tr>
<tr>
<td>State: Barangay captain and council</td>
<td>▪ alliance work (towards resolutions and programs related to campaign against mining)</td>
</tr>
<tr>
<td>CSOs:</td>
<td>▪ support service for indigenous women</td>
</tr>
<tr>
<td>women’s organizations (indigenous women’s organizations, if available), youth and other sectors</td>
<td>▪ capability-building of women on campaigns and research</td>
</tr>
<tr>
<td><strong>Municipal</strong></td>
<td></td>
</tr>
<tr>
<td>✓ Mandatory IP representative</td>
<td>▪ alliance work for support to campaign against mining</td>
</tr>
<tr>
<td>✓ Officials at the legislative and executive branches</td>
<td>▪ provision of services as mandated of them</td>
</tr>
<tr>
<td>✓ Municipal planning and development offices</td>
<td>▪ Support / assistance to VAW victims</td>
</tr>
<tr>
<td>✓ Government line agencies at the municipal level (NCIP, DSWD, DENR, DOLE)</td>
<td></td>
</tr>
<tr>
<td>✓ Municipal Social Welfare and Development office</td>
<td></td>
</tr>
<tr>
<td><strong>Provincial and Regional</strong></td>
<td></td>
</tr>
<tr>
<td>✓ Officials at the legislative and executive branches</td>
<td>▪ alliance-building</td>
</tr>
<tr>
<td>✓ Government line agencies at the provincial and regional level (NCIP, DENR, CHR, DSWD, DOLE, DOH)</td>
<td>▪ awareness-raising on IP rights</td>
</tr>
<tr>
<td><strong>National</strong></td>
<td></td>
</tr>
<tr>
<td>Government agencies (Executive Branch)</td>
<td>▪ submission of cases</td>
</tr>
<tr>
<td>✓ National Commission on Indigenous Peoples</td>
<td>▪ engage in policy reform discussions</td>
</tr>
<tr>
<td>✓ Presidential Human Rights Committee</td>
<td>▪ alliance work</td>
</tr>
<tr>
<td>✓ Philippine Commission on Women</td>
<td>▪ hearings / inquiries (also in aid of legislation)</td>
</tr>
<tr>
<td>✓ Department of Environment and Natural Resources</td>
<td></td>
</tr>
<tr>
<td>✓ Department of Social Welfare and Development</td>
<td></td>
</tr>
<tr>
<td>✓ Commission on Human Rights</td>
<td></td>
</tr>
</tbody>
</table>
### Committees at the Legislative Branch (Congress and Senate)
- National Cultural Communities
- Human rights
- Women
- Natural Resources

### Civil Society Organizations (with work on the following)
- anti-mining campaign and research
- paralegal
- women
- Media (tri-media and new media, such as social networking sites)

### ASEAN and UN country teams
- mapping of available support mechanisms
- alliance work
- support services / assistance to women
- expose cases
- gather popular support

### 5. CAMBODIA AND MALAYSIA: economic land concession, plantations

<table>
<thead>
<tr>
<th>Advocacy target</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Village:</strong></td>
<td><strong>Strategy</strong></td>
</tr>
<tr>
<td>Cambodia</td>
<td>Malaysia</td>
</tr>
<tr>
<td>Chas Tom Pom-Kui</td>
<td>Village Chiefs - mostly in charge of the Adat</td>
</tr>
<tr>
<td>✓ (traditional village head)</td>
<td>JKK – Peoples Organization (Village Dev’t and Security Committee) in charge of the development of village</td>
</tr>
<tr>
<td>✓ Mei Pom-Kui/Chief of Village (Gov’t appointed body)</td>
<td></td>
</tr>
</tbody>
</table>

| **District:** | **Strategy** |
| Cambodia | Malaysia |
| ✓ Forestry office, ✓ Land and survey administration | District Officer, Native court |
| ✓ | District Forest Officer (DFO) |
| ✓ | Police department, Politicians (MP and SLM) |
| ✓ | Identify neutral or friendly district gov’t departments for support such as Agriculture, Health, Environment |
| ✓ | Lobby and provide information to district officers - forest, environment, land and survey etc. |
| ✓ | Pressure political parties (slightly different strategy during elections) |

<p>| <strong>Provincial/State:</strong> | <strong>Strategy</strong> |
| Cambodia | Malaysia |
| ✓ Ministry of Forest | Director of Forest |
| ✓ Ministry of Land Management, Urban Planning and Construction | Director of Environment |
| ✓ | Ministry of Accountability |
| ✓ | Legal and policy advocacy for the implementation and revision of the laws and policies |
| ✓ | Report and expose corruption cases (to the concerned departments and media) |</p>
<table>
<thead>
<tr>
<th>Ministry of Environment</th>
<th>Ministry of Rural Development</th>
<th>Ministry of Economy and Finance</th>
<th>Anti-Corruption Unit under the Council of Ministers</th>
<th>Ministry/Department of Women’s Affairs in each province</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Land and Survey</td>
<td>Ministry of RD</td>
<td>SEDIA – Sabah Economic Development and Investment Authority</td>
<td>Economic Planning Unit</td>
<td>Forestry department is privatized (Sarawak)</td>
</tr>
<tr>
<td>Native Court (Sabah and Sarawak-Orang Asli in the process)</td>
<td>Local organizations – BRIMAS, PACOS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Lobby for local people as heads of departments</td>
<td>- Lobby for strengthening of formal and informal courts to make them functional and effective</td>
<td>- Conduct researches and comparative studies to show the strength/good model of indigenous peoples managing their community lands that contribute to sustainable development – use it for advocacy work</td>
<td>- Link up with NHRIs, NGOs (AIPP) etc. for the research</td>
<td>- Conduct researches and comparative studies to show the strength/good model of indigenous peoples managing their community lands that contribute to sustainable development – use it for advocacy work</td>
</tr>
<tr>
<td>- Lobby for strengthening of formal and informal courts to make them functional and effective</td>
<td>- Visit government departments/ministry regularly (monthly) to provide information, lobby, etc.</td>
<td>- Projects on Advocacy Skills</td>
<td>- Spend more time on project</td>
<td>- Continuous follow up</td>
</tr>
<tr>
<td>- Conduct researches and comparative studies to show the strength/good model of indigenous peoples managing their community lands that contribute to sustainable development – use it for advocacy work</td>
<td>- Conduct researches and comparative studies to show the strength/good model of indigenous peoples managing their community lands that contribute to sustainable development – use it for advocacy work</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>National: Cambodia</th>
<th>National: Malaysia</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Assembly</td>
<td>Attorney General</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Ministry of Natural Resource and Environment</td>
</tr>
<tr>
<td>National Assembly</td>
<td>OHCHR, UN office, ILO,</td>
</tr>
<tr>
<td>National Assembly</td>
<td>IP organisations – CIYA, OPKC, IRAM, HA</td>
</tr>
<tr>
<td>National Assembly</td>
<td>NGOs – ADHOC, ICSO and NGO Forum</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Civil societies – JOAS</td>
</tr>
<tr>
<td>National Assembly</td>
<td>National-level advocacy trainings – understanding of gender, indigenous peoples rights</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Advocacy for the implementation of the law and policy on indigenous peoples (Cambodia)</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Tribunal on land cases – to look at land conflicts – provide recommendations (Malaysia)</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Push for formulation of policy/law on FPIC at the national level</td>
</tr>
<tr>
<td>National Assembly</td>
<td>Strengthen the IPs support network and engage in collective action</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regional</th>
<th>Regional</th>
</tr>
</thead>
<tbody>
<tr>
<td>AICHR, ACWC, ACMW, ASEAN Forestry Network</td>
<td>AICHR, ACWC, ACMW, ASEAN Forestry Network</td>
</tr>
<tr>
<td>SEANF (South East Asia NHRIs Forum)</td>
<td>SEANF (South East Asia NHRIs Forum)</td>
</tr>
<tr>
<td>APF (Asia Pacific Forum on NHRIs)</td>
<td>APF (Asia Pacific Forum on NHRIs)</td>
</tr>
<tr>
<td>UN agencies at regional level – UN</td>
<td>UN agencies at regional level – UN</td>
</tr>
<tr>
<td>Policy advocacy on FPIC</td>
<td>Policy advocacy on FPIC</td>
</tr>
<tr>
<td>Advocacy and skills training</td>
<td>Advocacy and skills training</td>
</tr>
<tr>
<td>Networking and engagement with regional organization/institutions</td>
<td>Networking and engagement with regional organization/institutions</td>
</tr>
<tr>
<td>Multi-country case studies and research on sustainable land management</td>
<td>Multi-country case studies and research on sustainable land management</td>
</tr>
<tr>
<td>International</td>
<td>Women, UNFPA, ILO, OHCHR Ø IP Support organizations - AIPP, AIWN, APWLD o Strengthen networking with IPs support organizations o Submission of cases to AICHR and others o Networking and engagement with international processes and bodies o Providing inputs to studies and researches o Submission of cases</td>
</tr>
</tbody>
</table>

### 6. TIMOR- LESTE: Transitional Justice

<table>
<thead>
<tr>
<th>Advocacy Target</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Push the draft Law on Reparation for victims</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Village:</strong> Village Council include representative women in Suco/village council</td>
<td>▪ Disseminate information about draft law Reparation ▪ Lobby community leaders on social reintegration ▪ Counselling for survivors ▪ Capacity building for village council to be able to handle violations of women’s rights ▪ Networking with other villages and actors</td>
</tr>
<tr>
<td><strong>District:</strong> District officers, Yayasan HAK focal point, Police - VPU, Rede Feto members; e.g. Fokupers, PRADET</td>
<td>▪ Reparation to victims: e.g. Capacity building, income generation ▪ Counselling for survivors ▪ Networking</td>
</tr>
<tr>
<td><strong>National:</strong> Women in parliament, Secretary of state for Promotion and Equality, PDHJ, Yayasan HAK, Rede feto members</td>
<td>▪ Documentation of cases ▪ Lobby women’s in Parliaments ▪ Recognition of national identity ▪ Networking</td>
</tr>
<tr>
<td><strong>Regional:</strong> KOMNAS PEREMPUAN, ASEAN Peoples Forum</td>
<td>▪ Formal and informal: Lobby, consultation, meeting</td>
</tr>
<tr>
<td><strong>International:</strong> CEDAW, UPR- Review Committee, ICTJ, (International centre for Justice system), Resolution 1325 Women and peace</td>
<td>▪ Disseminate CAVR report, ICTJ report</td>
</tr>
</tbody>
</table>

1. **Socialization of Domestic Violence Law and ensure the implementation of the law**

| Village: Chief of Village, Village council, Traditional leader | Integrated the law in the Tara Bandoo regulation |
| District: Administrator, Community base organization District officers, Police -VPU, Fokupers, Rede Feto members; e.g. FKSH, Fokupers, PRADET | Campaign disseminate information ▪ Capacity buildings ▪ Counselling ▪ Referring cases: Shelter, legal aid |
Gender Responsive Budgeting (GRB) Working Group, Rede Referral- Referral working group, National police- VPU, Pradet

**Integrated assistance to the victims:**
- Counselling
- Capacity buildings; Trainings, workshop

**Regional:**
ASEAN Peoples Forum, AIPP
- Submission cases

**International:**
CEDAW, UPR
- CEDAW shadow report
- National women’s congress report

### 3.3 Indigenous Peoples and sustainable development

**3.3.1 Core themes and domains identified by Indigenous Peoples**

Core themes or domains identified by indigenous peoples that can be considered in developing indicators for SDGs for indigenous peoples:

1. Security of rights to territories, lands and natural resources
2. Integrity of indigenous cultural heritage
3. Gender dimension
4. Respect for identity and non-discrimination
5. Fate control
6. Culturally appropriate education
7. Health
8. Full, informed and effective participation
9. Access to infrastructure and basic social services
10. Extent of external threats (Joan adds: security and peace in our area, as indicators)
11. Material well-being
12. Demographic patterns of IPs

*The participation of the indigenous communities is of utmost importance: efforts should mainly focus on strengthening local communities in order to implement activities and measures at the local level.*

**APWLD is working on four key areas in developing indicators for sustainable development:**

1. Control and access to resources land
2. Decent work and economic rights
3. Peace and security
4. Political participation
### 3.3.2 Sustainable development goals and indicators by country

The work groups further elaborated sustainable development goals and proposed development indicators, guided by the following questions:

1. What are goals, what do we call SD from an IP perspective to achieve SDG (also IW perspective)?
2. What are the indicators for IPs in general, and for IP women in particular?

<table>
<thead>
<tr>
<th>Goals</th>
<th>Indicators</th>
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<tbody>
<tr>
<td><strong>Philippines, Timor Leste, Malaysia, Indonesia</strong></td>
<td></td>
</tr>
<tr>
<td>➢ Woman to participate in decision making</td>
<td>✓ Recognition of women as leaders</td>
</tr>
<tr>
<td>➢ Roles of women in transmission of knowledge, languages and practices are recognized</td>
<td>✓ Space for women to participate in the decision mechanism</td>
</tr>
<tr>
<td>➢ To have secure land tenure</td>
<td>✓ Young generations have knowledge and practice IK (indigenous knowledge)</td>
</tr>
<tr>
<td>➢ Development that it in line with Indigenous Peoples, needs and customary laws</td>
<td>✓ To have self-sufficiency and peace in community</td>
</tr>
<tr>
<td></td>
<td>1) absence of conflict</td>
</tr>
<tr>
<td></td>
<td>2) NRM (Natural resource management) by the community, esp. women is recognized</td>
</tr>
</tbody>
</table>

**Thailand (Lisu):**

**Specific goals**

- harmony with our livelihood/lifestyle
- self-reliance/ support from our wisdoms
- respond to needs of people/ all ages, gender, generations
- life security: land, natural resources
- recognition of identity/ancestral domain land
- our cultural heritages/ wisdoms shall be put in school curriculums/mainstreaming

**General**

- ownership of natural resources
- recognition of human rights, IP rights
- delivery of wisdoms and practices of IPs

**Only women**

- accessibility, control for women
- decision-making position, participation
- articulation/literacy
- no discrimination, no violation

**Myanmar (Burma)**

- Women getting awareness/empowerment
  - political
- Promote women’s participation in every land (local, nat’, reg’, int’l)
  - community project
- Loan (giving for income generation)
- Protect from exploitation by showing IP image/culture/custom/handmade in the economic sectors

- Increasing number of women in decision making
- Self-confidence
- Reporting/ data collecting (how many women exchange or other)
- Women’s involvement in VAW/domestic awareness programs
COMMENTS from the resource person

Victoria Tauli-Corpuz, Convenor, Asian Indigenous Women’s Network, Executive Director, Tebtebba stated that the group’s results captured the essence of the key themes of the discussion on SDG. They were further synthesized as follows:

1. Understanding of the link between the LTR as well as IW in relation to the need for sustainable development.
2. Implying that it is important for IW to have their own economic independence
3. Access to basic social services
4. Knowledge of the laws that enable you to claim for equal rights

Indicators:

- Younger IW to understand the traditional knowledge (TK) and languages- transmitting of TK to younger generation – this is an important indicator because if IPs lose their languages, they will lose their cultures and values that identify as IPs.
- Importance of the participation in protecting the environment

Suggestion:

It will be good to monitor/assess the indicators in promoting SD (see also: 2.2 Sustainable Development Goals and Indicators by Country).

Further, it is crucial to strengthen capacity to resist the way that the state tried to undermine and violate community rights and push for the implementation of SDGs favorable to the IP communities. IPs should be able to speak for themselves. One of the indicators is how IPs are able to be represented in the discussion of the SD in the national, regional and international levels. IW need to be key players in the process.
This report aims to capture the contributions of the indigenous women participants to the consultation and thus effort was made to retain their feelings in their testimonies. The case studies were written with a general outline but the case writers were given freedom to present their analysis in their own way. Most of the case studies were conducted through individual and group interviews, focus group discussions, participant observation and also through key informant interviews. To retain the important information the resource persons shared, their presentations are retained as they were presented. The open fora or comments/discussion sessions were important parts of the consultation and so they are also included in this report. The AIPP Secretariat is pleased to present this report to all the participants to the consultation. The Asia Indigenous Peoples Pact salutes the indigenous women who put in their time, resources and energy in participating in the consultation. Finally, the overall writers take responsibility for any error in the report.
APPENDIX

DIRECTORY OF PARTICIPANTS

<table>
<thead>
<tr>
<th>No.</th>
<th>First Name</th>
<th>Country</th>
<th>Address</th>
<th>Contact Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ms. Sok Thy</td>
<td>Cambodia</td>
<td>P.O.Box 1436, #34, Street 222, Sangkat Boeung Raing, Khan Daun Penh, Phnom Penh, Cambodia Tel: +855235550440 Fax: +85523216482</td>
<td>Cambodia Indigenous Youth Association (CIYA)</td>
</tr>
<tr>
<td>2</td>
<td>Ms. Aleta Baun</td>
<td>Indonesia</td>
<td>JI Tebel U Tara II C, No22 Kalarta Selatan 2820 Tel: +62218297954</td>
<td>AMAN</td>
</tr>
<tr>
<td>3</td>
<td>Ms. Mardiana Deren</td>
<td>Indonesia</td>
<td>JI Tebel U Tara II C, No22 Kalarta Selatan 2820 Tel: +62218297954, Home address: Jtn Manggps. No 5 Kelumahan Nonohonis RT 03 Raod Kab TTS/NIT Tel: +6205253088555</td>
<td>AMAN</td>
</tr>
<tr>
<td>4</td>
<td>Ms. Niloh Anak Ason</td>
<td>Malaysia</td>
<td>Lot 3176 2nd Flr 7th Mile, Jalan Penrissen, 93250 Kucing Sarawak Home address: JLN.A Yahirt X No. 14 Tamiah6 Layah6 Prop. Kalteng KEB Bariti Timur, Tel: +6281257854959</td>
<td>Sarawak Dayak Iban Association (SADIA)</td>
</tr>
<tr>
<td>5</td>
<td>Ms. Raini Mapura</td>
<td>Malaysia</td>
<td>Kg Liu Pitas Sabah Email: <a href="mailto:rainiotong@yahoo.com">rainiotong@yahoo.com</a></td>
<td>Partners of Community Organisations in Sabah</td>
</tr>
<tr>
<td>6</td>
<td>Ms. Jannie Lasimbang</td>
<td>Malaysia</td>
<td><a href="mailto:jannielasimbang@gmail.com">jannielasimbang@gmail.com</a></td>
<td>EMRIP/SEANF</td>
</tr>
<tr>
<td>7</td>
<td>Ms. Nang Kham Aye</td>
<td>Burma</td>
<td><a href="mailto:Yingmansan@gamil.coom">Yingmansan@gamil.coom</a></td>
<td>SWAN</td>
</tr>
<tr>
<td>8</td>
<td>Ms. Bawk Jar</td>
<td>Burma</td>
<td>Hpakant Town ship Aw Ng Pa village Kachin state (Myon Mar), Email: <a href="mailto:baukiya@gmail.com">baukiya@gmail.com</a></td>
<td>NDF</td>
</tr>
<tr>
<td>9</td>
<td>Ms. Charm Tong</td>
<td>Burma</td>
<td>P.O. Box 120, Phrasing P.O., Chiang Mai 50205 Thailand Tel: +66 87 658 9551 Email: <a href="mailto:kenneri@shanwomen.org">kenneri@shanwomen.org</a>, <a href="mailto:charmtong@gmail.com">charmtong@gmail.com</a></td>
<td>Sharn Women Action’s Network (SWAN)</td>
</tr>
<tr>
<td>10</td>
<td>Ms. Seng Mai</td>
<td>Burma</td>
<td>Tel: +66 082 391 3325 <a href="mailto:lahtawsengmai@gmail.com">lahtawsengmai@gmail.com</a>, <a href="mailto:kdngchn@gmail.com">kdngchn@gmail.com</a></td>
<td>Kachin Development Networking Group</td>
</tr>
<tr>
<td>11</td>
<td>Ms. Nang Ying Charm</td>
<td>Burma</td>
<td>P.O. Box 120, Phrasing P.O., Chiang Mai 50205 Thailand, Tel:+66 81 992 1121 <a href="mailto:education@shanwomen.org">education@shanwomen.org</a> or <a href="mailto:charmhom@gmail.com">charmhom@gmail.com</a></td>
<td>Shan Women Action’s Network (SWAN)</td>
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<tr>
<td>12</td>
<td>Ms. Lorelei Beyer</td>
<td>Philippines</td>
<td>NCCP. Compound, 879 EDSA, West Triangle, Quezon City, Philippines</td>
<td><a href="mailto:lorie.beyer@philtip.net">lorie.beyer@philtip.net</a></td>
</tr>
<tr>
<td>13</td>
<td>Ms. Jacqueline Buli-e</td>
<td>Philippines</td>
<td>Madaymen, Tabio, Mankayan, Benguet, Philippines</td>
<td><a href="mailto:jacqueline@yahoo.com">jacqueline@yahoo.com</a></td>
</tr>
<tr>
<td>14</td>
<td>Ms. Victoria Tauli Corpuz</td>
<td>Philippines</td>
<td>1 Roman Ayson Rd, Baguio City 2600, Philippines</td>
<td>Tel:+63744447703 Fax:+63744439459, <a href="mailto:vicky@tebtebba.org">vicky@tebtebba.org</a></td>
</tr>
<tr>
<td>15</td>
<td>Ms. Norairri Thongmuengthong</td>
<td>Thailand</td>
<td>252 Moo 2 Tambon Sansai Noi, Amphur Sansai, Chiang Mai 50210, Thailand</td>
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<tr>
<td>16</td>
<td>Ms. Soi Mime</td>
<td>Thailand</td>
<td>Kaeng Krachan community</td>
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<td>17</td>
<td>Ms. Paw Mue Na</td>
<td>Thailand</td>
<td>Kaeng Krachan community</td>
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<td>18</td>
<td>Ms. Eh Khu Moo</td>
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<td>Kaeng Krachan community</td>
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<td>19</td>
<td>Mr. Phalaji Rakjonjaran</td>
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<td>Kaeng Krachan community</td>
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</tr>
<tr>
<td>20</td>
<td>Ms. Ornanong Seanyakul</td>
<td>Thailand</td>
<td><a href="mailto:chome_doichang@gmail.com">chome_doichang@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Ms. Darunee Singaphongphrai</td>
<td>Thailand</td>
<td><a href="mailto:theresa.masu@gmail.com">theresa.masu@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Haruethai Buakhiao</td>
<td>Thailand</td>
<td><a href="mailto:h2mick@gmail.com">h2mick@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Ms. Oanh Thu Luong</td>
<td>Vietnam</td>
<td>230 Chua Boc Dong Da, Hanoi</td>
<td><a href="mailto:luongthuoanh@yahoo.com">luongthuoanh@yahoo.com</a></td>
</tr>
<tr>
<td>24</td>
<td>Ms. Mai Thuy Duyet</td>
<td>Vietnam</td>
<td>Na Hang District, Tuyen Quang Province</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Ms. Ha Thi Dung</td>
<td>Vietnam</td>
<td>Tam Thanh village, Tan Son Commune, Phu Tho Province</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Mr. Ekachai Pinkaew</td>
<td>Thailand</td>
<td>Contact Number: +668 6555 5263 , Email: <a href="mailto:epinkaew@gmail.com">epinkaew@gmail.com</a>;</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Mr. Gizela de Carvalho</td>
<td>Timor Leste</td>
<td>Rua Delta Bairopite Dili, Tel:+67077444410, <a href="mailto:flsh_timor@yahoo.com.au">flsh_timor@yahoo.com.au</a></td>
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</tr>
<tr>
<td>28</td>
<td>Mr. Imad Taufan Damanik</td>
<td>Indonesia</td>
<td>Vice Chair of the ACWC</td>
<td></td>
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<tr>
<td>29</td>
<td>Ms. Roberta Clarke</td>
<td>Tobago &amp; Trinidad</td>
<td>Regional Director Regional Office for Asia and the Pacific and Representative in Thailand 5/F UN Building, Rajdammer Nok Avenue, Bangkok 10200, Thailand</td>
<td><a href="mailto:joanna.baker@unwomen.org">joanna.baker@unwomen.org</a></td>
</tr>
<tr>
<td>30</td>
<td>Ms. Jo Baker</td>
<td>U.K.</td>
<td><a href="mailto:joanna.baker@unwomen.org">joanna.baker@unwomen.org</a></td>
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<td>31</td>
<td>Ms. Wardarina</td>
<td>Indonesia</td>
<td><a href="mailto:rina@apwld.org">rina@apwld.org</a></td>
<td>APWLD</td>
</tr>
<tr>
<td>32</td>
<td>Ms. Kate Lappin</td>
<td>Australia</td>
<td><a href="mailto:kate@apwld.org">kate@apwld.org</a></td>
<td>APWLD</td>
</tr>
<tr>
<td>33</td>
<td>Kuntri Tridewiyanti</td>
<td>Indonesia</td>
<td>il Latu hor hari 4B Jakarta Indonesia, email: <a href="mailto:dewitri@yahoo.com">dewitri@yahoo.com</a></td>
<td>KOMNAS Perempuan (National Commission on Violence Against Women)</td>
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<td></td>
<td><strong>AIPP Secretariat team</strong></td>
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<tr>
<td>34</td>
<td>Ms. Bernice See</td>
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<td>35</td>
<td>Ms. Joan Carling</td>
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<td>36</td>
<td>Ms. Charlotte Trenk</td>
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<tr>
<td>37</td>
<td>Ms. Shimreichon Luithui Erni</td>
<td></td>
<td>AIPP 108 Moo.5 T. Sanphanet A. Sansai, Chiang Mai 50210 Tel:+66 53 380168</td>
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<tr>
<td>38</td>
<td>Ms. Robeliza Halip</td>
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<td>39</td>
<td>Mr. Lakpa Sherpa</td>
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<td>Mr. Richard Gadit</td>
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<td>Ms. Thingreiph Lungharwo</td>
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<td>Ms. Jarunee</td>
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<td>43</td>
<td>Ms. Kamonphan Saelee</td>
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<td>44</td>
<td>Ms. Atina Gangmei</td>
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<td>45</td>
<td>Mr. Alan Nash</td>
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<td><strong>Interpreters</strong></td>
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<tr>
<td>46</td>
<td>Ms. Devi Indrawati</td>
<td>Indonesia</td>
<td><a href="mailto:devi_indr@yahoo.com">devi_indr@yahoo.com</a></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Mr. Samin Ngach</td>
<td>Cambodia</td>
<td><a href="mailto:ngsamin@gmail.com">ngsamin@gmail.com</a></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Ms. Thu Trang Nguyen</td>
<td>Vietnam</td>
<td><a href="mailto:trang@srd.org.vn">trang@srd.org.vn</a></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Ms. Anchalee Phonkieng</td>
<td>Thailand</td>
<td><a href="mailto:noiphonkkieng@yahoo.com">noiphonkkieng@yahoo.com</a></td>
<td></td>
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</table>
# Program

## 29 October 2012 (Monday)

### Day 1, 30 October 2011 (Tuesday)

**Facilitator for the day: Robie Halip**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>08:30-10:00</td>
<td><strong>Opening Session</strong>&lt;br&gt;Opening ritual:&lt;br&gt;☑ Noraeri Thoungmuengthong, Coordinator, Indigenous Women’s Network of Thailand&lt;br&gt;<strong>Welcome and opening message:</strong> Joan Carling, Secretary-general, AIPP&lt;br&gt;<strong>Message:</strong> Jannie Lasimbang, Member, Expert Mechanism on the Rights of Indigenous Peoples&lt;br&gt;<strong>Introduction of the purpose of the consultation and review of the proposed agenda</strong>&lt;br&gt;☑ Bernice See, Coordinator, HRCPA Programme&lt;br&gt;<strong>Introductions – by country</strong>&lt;br&gt;Burma, Cambodia, India, Indonesia, Laos PDR, Malaysia, Philippines, Thailand, Timor Leste, Vietnam, others&lt;br&gt;<strong>Facilitator:</strong> Atina Gangmei</td>
</tr>
<tr>
<td>10:00–10:15</td>
<td>Mid-morning BREAK</td>
</tr>
<tr>
<td>10:15-11:15</td>
<td><strong>Session 1: Panel</strong>&lt;br&gt;Panelist 1: Sharing of the results of the Project on Violence, Customary Law and Indigenous Women’s Rights in Asia&lt;br&gt;Shimreichon Luithui&lt;br&gt;Panelist 2: Presentation on the situation of Violence Against Indigenous Girls, Adolescents and Young Women in Asia&lt;br&gt;☑ Victoria Tauli-Corpuz</td>
</tr>
<tr>
<td>11:15 12:00</td>
<td><strong>Open forum</strong>&lt;br&gt;<strong>Facilitator:</strong> Joan Carling</td>
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<tr>
<td>12:00-13:30</td>
<td>LUNCH</td>
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<tr>
<td>13:30-14:30</td>
<td><strong>Session 2: Working groups on actions to address VAW</strong>&lt;br&gt;☑ Available grievance mechanisms and remedies at the local/national level and what are strategies that can be used to access these&lt;br&gt;<strong>GROUPING:</strong>&lt;br&gt;☑ Thailand&lt;br&gt;☑ Laos, Cambodia, Vietnam</td>
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<tr>
<td>Time</td>
<td>Session</td>
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<tr>
<td>14:30-15:10</td>
<td>Session 3</td>
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<tr>
<td>15:10-15:25:</td>
<td>Mid-afternoon BREAK</td>
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<tr>
<td>15:25-15:55</td>
<td>Session 4</td>
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<tr>
<td>15:55-16:10</td>
<td>OPEN FORUM</td>
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<tr>
<td>16:10-17:10</td>
<td>Session 5</td>
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<td>17:10–17:50</td>
<td>Session 6</td>
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<td>18:30</td>
<td>RECESSION DINNER</td>
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**Day 2, 31 October 2012 (Wednesday)**

**Facilitator for the day: Shimreichon Luithui**

<table>
<thead>
<tr>
<th>Time</th>
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<th>Details</th>
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<tr>
<td>08:30-08:45:</td>
<td>Summary of Day 1</td>
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</tr>
<tr>
<td>08:45–09:15</td>
<td>Session 7</td>
<td>Input- EMRIP thematic study on access to justice and SEANF programmes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jannie Lasimbang</td>
</tr>
<tr>
<td>09:15-09:25</td>
<td>Session 8</td>
<td>Overview of indigenous women’s rights in SEA and their access to justice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bernice See</td>
</tr>
</tbody>
</table>
### Session 9: Story-telling presentations

a. Paw Mue Na, a Karen, is a mother of 10 children from Kaeng Krachan district, Thailand whose house was one of those who was burned in the arson committed by the Kaeng Krachan National Park Administration with the help of the military.

b. Eh Khu Moo is a Karen elder from Kaeng Krachan who has experienced the various evictions from her homeland in Kaeng Krachan.

c. Mai Thuy DUYET, a Tai from Na Hang district in Tuyen Quang province in the northeastern part of the country which hosts the Tuyên Quang Hydropower Plant, also known as *Dai Thi*, of which the construction in 2002 submerged her home.

d. Mardiana DEREN, is a Dayak Ma’amyan from Kalimantan, Indonesia. a nurse by training and a traditional dancing instructor by vocation. She also teaches rattan handicrafts. Her community was deforested by an oil palm company which claimed the river, lake and swamp areas on which are the sources of livelihood for the her people.

**Open forum and responses from panel of experts:** SUHAKAM Commissioner/EMRIP Expert JANNIE LASIMBANG, NHRC of Thailand representative EKACHAI PINKAEW, ACWC Vice-Chair and Indonesian Representative for Child Rights AHMAD TAUFAN DAMANIK, KOMNAS Perempuan Commissioner KUNTHI TRIDEWIYANTI

### 10:10 – 10:30: Mid-morning BREAK

### Session 10: Hearing presentation—HRDs

- Aleta BAUN, or Mama Aleta, is a Molo human rights defender from Nusa Tenggara Timur or East Nusa Tenggara who initiated the fight against two marble mining companies which came to mine the marble mountain Bukit Naususu, the area’s most sacred mountain. She mobilized her community in an innovative approach that reflected the common activity in their life—weaving.

- Jacqueline SAKIWAT BULI-E of Mankayan, Cordillera from the Innabuyog (Regional Alliance of Indigenous Women’s Organisations in the Cordillera), a member of the Asian Indigenous Women’s Network (AIWN), will share her community’s struggle against the continuing operations and expansion of the oldest gold/copper mines in the Philippines.

- Sok THY is a Kui human rights defender from Bus Thom village, Prame commune, Tbeng Meanchey district of Preah Vihear Province. Her community is facing destruction of their forests including sacred forests, forested areas with unique temples, forest gardens, farmlands and residential areas because of economic land concessions.

**Open forum and responses from panel of experts:** SUHAKAM Commissioner/EMRIP Expert JANNIE LASIMBANG, NHRC of Thailand representative EKACHAI PINKAEW, ACWC Vice-Chair and Indonesian Representative for Child Rights AHMAD TAUFAN DAMANIK, KOMNAS Perempuan Commissioner KUNTHI TRIDEWIYANTI
<table>
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<tr>
<th>Time</th>
<th>Session 11: Hearing presentation</th>
<th>Session 12: Presentation (12 minutes)</th>
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</table>
| 13:30–15:00  | □ Ha Thi DUNG is a Muong from Tam Thanh, Phu Tho province which is traversed by many highways like the Trans-Asia Highway, the Greater Mekong Sub-region Kunming-Hai Phong Transport Corridor - Noi Bai-Lao Cai Highway Project, and others. Her property has been affected by these infrastructure developments that deprived her of her land.  
            □ Jya BAUK, A Kachin human rights defender from Kachin State who is working on land rights and development issues and has filed cases against the military government at both the State and Union levels.  
            □ Kham Aye NANG, a Shan from Shan State, and State Member of Parliament who is working on the issue of the Shwe Gas Pipeline that passes through her state, among other issues.  
            □ Niloh ANAK ASON, a Dayak Iban from the Sarawak Dayak Iban Association as its Community Film Maker and Litigation Officer, will share the experiences of the Penan in Sarawak who face violence in the hands of both corporate and state forces.  
            Open forum and responses from hearing officers: SUHAKAM Commissioner/EMRIP Expert JANNIE LASIMBANG, NHRC of Thailand representative EKACHAI PINKAEW, ACWC Vice-Chair and Indonesian Representative for Child Rights AHMAD TAUFAN DAMANIK, KOMNAS Perempuan Commissioner KUNTHI TRIDEWIYANTI | □ Lorie BEYER of the Philippine Task Force for Indigenous Peoples Rights (TFIP), a network of NGOs working with indigenous peoples will share the study on the experience of B’laan people in the island of Mindanao who are struggling against the planned mining operations in their territory in Tampakan in what is claimed to be ore deposit that represents the largest undeveloped copper-gold deposit in the South East Asia - Western Pacific Region.  
            □ Haruethai Buakhiao, an independent researcher working on women’s issues in the Mekong sub-region will present the case of a Kri woman who is affected by an open-pit corporate mining in Vilabouly District of Savannakhet Province.  
            □ Gizela CARVALHO, the Director of the Feto iha Kbiit Servisu Hamutuk (FKSH) which means “Empowering Women”, an NGO based in Dili, will present the case of women in Timor Leste in their access to justice in the post-independence era.  
            □ Ornanong “Chome” SAENYAKUL, a Lisu from Doi Chang, Chiang Rai Province and Coordinator of the Lisu Women’s Network, will present a general overview of the situation of indigenous women in Thailand with respect to national laws and policies of the government.  
            □ Thu Oanh LUONG, a Tai medical doctor connected with the HIV/AIDS Care and Treatment, Department Vietnam Administration of HIV/AIDS Control |

12:00 - 13:30: LUNCH

15:00 – 15:15: Mid-afternoon BREAK
and the Center for Sustainable Development in Mountain Areas or CSDM, will talk about the reproductive health of ethnic minorities impacted particularly by the Son La hydropower plant construction which is dubbed as the largest and most complex dam project ever built in Vietnam.

**Open forum and responses from panel of experts:** SUHAKAM Commissioner/EMRIP Expert JANNIE LASIMBANG, NHRC of Thailand representative EKACHAI PINKAEW, ACWC Vice-Chair and Indonesian Representative for Child Rights AHMAD TAUFAN DAMANIK, KOMNAS Perempuan Commissioner KUNTHI TRIDEWYANTI

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<tr>
<td>17:30–18:30</td>
<td><strong>Session 13: Overview of ACWC:</strong> ACWC Vice-Chair and Indonesian Representative for Child Rights AHMAD TAUFAN DAMANIK</td>
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**FREE NIGHT**

**Day 3, 1 November 2012 (Thursday)**

<table>
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<th>Time</th>
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<tr>
<td>08:45 – 09:00</td>
<td>Summary of Day 2</td>
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| 09:00–12:00| **Session 14: Working groups 1: Strategising on actions to address development induced violence against indigenous women**  
Objective: the participants will now deepen their discussion on the issue VAIW due to development or corporate projects and come up with recommendations for each country on how to address these  
Report should be written and submitted to the Secretariat before the lunch break. These will be collated and serve as input to Session 18 |
| After lunch till 5pm | **AFTERNOON FIELD TRIP**  
Exposure visit to Pong Noi, a village in the foothills of Chiang Mai where a group of Lisu have established their community  
(At least 3 hours in the community) |
|          | **SOLIDARITY NIGHT**                                                             |

**Day 4, 2 November 2012 (Friday)**

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<th>Time</th>
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<tr>
<td>08:30-09:30</td>
<td><strong>Session 17: Reflections on the field visit</strong></td>
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<tr>
<td>09:30-10:00</td>
<td><strong>Session 18: Synthesis of the case studies and testimonies</strong></td>
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<tr>
<td>10:00-10:15</td>
<td><strong>Mid-morning BREAK</strong></td>
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<td>10:15-12:00</td>
<td><strong>Session 16: Break-out groups: Deliberations on action points for addressing human rights of indigenous women, development and their access to justice</strong></td>
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Brief Profile of Phong Noi, Sutep District, Chiang Mai City

Pong Noi village is a small village located in the foothills of Doi Sutep at Sutep sub-district, Chiang Mai City, Chiang Mai province, about 15 Km away (approximately 30 minutes by taxi) from Chiang Mai City proper. Pong Noi is mainly inhabited by Lisu and Akha. There are 42 households (37 household are Lisu and 5 household is Lisu). First settled by the Lisu, they recreated their village life their establishing their sacred forest and spirit house thus, even though the village is just at the edge of the city, the villagers still practice the traditional life ways like the traditional ceremonies and festivals.

The villagers of Phong Noi are people who are affected by the government laws and policies on national parks and protected areas, like the National Forest Conservation Area Act, National Park Act and National Wildlife Sanctuary Act. Because the laws do not allow the villagers to practice their traditional occupation (rotational farming), some of them were arrested when they went to the forest to tend their forest gardens, or to practice their rotational farming. It is for this reason that led some of them to migrate to the city, as they had no food
security in the village and personal security. Other reasons for migrating to the city is the lack of school facilities in many villages that forced them to send their children to the town centers or to Chiang Mai City.

Most of the Pong Noi villagers, especially the women, make handicrafts that they sell at Jatujak market in Bangkok and the Chiang Mai Night Bazaar. Some of them sell food in the city at nighttime.

**Reflections from the field visit to Pong Noi**

Jannie: what struck me the most was the community’s struggle to keep their culture and traditional religion even though they are now settled in the city. Nowadays, many indigenous peoples are forced to give up their religion, and for them, in this situation that they are already in town, we have to appreciate that they created their own sacred place. It is good that authorities allowed them to build this within the park.

Sok Thy: I found it very nice that the community, even though are affected by developments, can still keep their culture and tradition. I appreciate that the Lisu and Akha there have a very good solidarity.

Mama Aleta: the people stay and work united together even though they are from different tribes. They give and take even if they are far from their original villages. They respect women and celebrate the women’s day twice a year. I would like to learn more about these celebrations.

Niloh: I appreciate their desire to have access to education for their children that required them to move away from their villages.

Vietnam: it was interesting to visit the village, the people were very friendly, and they shared their activities with the participants. I want to share these matters I saw and learned with my community when I go back. It was great a time to the meet the Lisu and to see their spirit house.

Noraeri: I feel good with the Lisu and Akha sisters because they invited us like a family that is our IP tradition. They showed us their way of life, their corn and paddy fields, etc. This makes me happy. What makes me sad is that lowlanders have put up a sign saying that the pigs smell very bad. They do not understand that IPs need the pigs for their livelihood.

Vietnam: I enjoyed the experience but am sad that the quality of living is a bit low. The smell of the pigs was terrible. The community is able to pray in the forest spirit house.

Bawk Jar: I felt as if I was arriving at my own village. The people were very friendly. In Kachin, there are also Lisu villages, but there are people who are still worried and in sorrow.

Ornanong: The Lisu and Akha are on the left side of the village, the rich people are on the right side. The Lisu and Akha have no security of tenure over the land, but they want to continue to stay there so they rent the residential lots, farm and also the sacred site from the Royal Forest Department. This do not possess legal ownership on these lands so they are not secure.
Jannie: In relation to the pigs, because now the Lisu and Akha live in town that does not provide much space, they have to make some adaptation on how to minimize the smell. This can be done with the help of some NGOs. That does not mean to change the lifestyle, but they can make some small adjustments because of the changed context.

Bernice: We have been informed of the reasons why these people are there, e.g., access to education, health facilities, and livelihood. In moving to the urban center, they showed us how they recreate the Lisu community and the lifestyle. But it is a small and insecure place, and they might be removed again. But inspite of that, they reinforce the solidarity among themselves by practicing their cultures. They are decently working for their livelihood, e.g. through handicraft production. Discrimination is visible: one side of the village is very well developed and owned by non-indigenous, on the other side where the Lisu and Akha live, the quality of the houses is low. The recreation of the spirit houses in the forest is important to reunite the indigenous peoples there.

Jo: Some of the products that the community, mostly women, produce, e.g., the bracelets with offensive phrases, reminds on the negative impacts of development.
I. Introduction

1. The proposed Southeast Asia Consultation on Development, Access to Justice and the Human Rights of Indigenous Women is a joint initiative of the AIPP and the UN Women to provide a forum where indigenous women and advocates can share information on the impacts of development projects on the human rights of women and identify steps forward on how to address these. AIPP has an indigenous women’s network composed of members and partners who are actively collaborating on projects and activities of the different programs of AIPP. It also has an Indigenous Women Programme Committee composed of key indigenous women leaders advising on programme implementation.

2. The 4-day consultation will be hosted by AIPP from October 30 – November 2, 2012 in Chiang Mai, Thailand. It is expected to bring together thirty-five women representatives of communities actively struggling against development projects, advocate researchers who have done studies on the impact of development projects on indigenous women, indigenous women leaders engaged in the issue of violence against women and their access to justice.

II. Background

3. Southeast Asia is home to the most diverse population of indigenous peoples in the world. Since a systematically disaggregated data on ethnicity and gender of indigenous peoples in the region is not available, AIPP has estimated a low 94 million to a high of 200 million based on information estimated from various sources. 50% of this estimate is perhaps indigenous women.

4. They live in remote communities in the mountains, plains, river basins, forests and coastal areas. While there is enormous diversity among indigenous peoples, common to all are a strong cultural attachment to the land and the dependence of their traditional livelihoods on the land, forests or sea, and the natural resources found therein.

5. The location of indigenous people’s homelands and the resources are a prime interest to both the state and corporations, and this has resulted to the continuing struggles of the indigenous peoples in asserting their basic human rights, fundamental freedoms and their collective rights.

6. Most of human rights violations faced by indigenous peoples are connected to their right to their land, territory and resources. Human rights violations in these cases can include: politically motivated killings; extra judicial killings; militarization of the ancestral territories of IPs; forced displacement; harassment, threats and intimidation; vilification as insurgents or supporters of insurgents; forced recruitment to paramilitary groups, among others; reduced food self sufficiency, weakening indigenous systems of resource management and conservation; loss of property and erosion of culture. However, despite the widespread opposition by indigenous communities, Southeast Asian governments are going ahead with large-scale exploitative developments in their remote frontiers.

10. It is clear that indigenous peoples are systematically deprived of their right to freely determine and pursue their economic, social and cultural development. Despite their refusal to give their free prior and informed consent (FPIC), as required by many development projects, these development

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1 http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER_print_Foma;.pdf
activities are carried out continuously irrespective calling for immediate and urgent support to advocate for their rights.

WOMEN, DEVELOPMENT-INDUCED VIOLENCE and ACCESS TO JUSTICE in the context of PLURAL LEGAL SYSTEMS

7. While indigenous peoples are no doubt the poorest of the poor, the least educated and poorest of health that posses very limited access to basic services including access to justice, the situation is worse for women given the inherent disadvantages and discrimination that women face. Women in indigenous societies are often at the very bottom of the economic and social ladder in terms of income, education, and health, paid work, political participation, and access to resources, among other things. Customary practices that are predominant in indigenous societies are highly discriminatory against women. Most indigenous communities are male-dominated in their decision-making structures and patriarchal in their values.

8. In terms of traditional livelihoods, indigenous women are often the ones who maintain the forest and home gardens, and gather the herbs and craft materials from the forests. Lack of access to these traditional resources or their destruction and scarcity, puts more pressure on the indigenous women to look for supplementary sources of food, turn to the market for medicines and craft materials, and ultimately losing their knowledge and skills in natural resource management. Being denied their fundamental right to their land through often government sponsored appropriations in the form of concessions or other economic developments leaves indigenous people especially women with no livelihood source and very little opportunities for employment as they lack little skills and access to jobs making indigenous women vulnerable to exploitations such as hard labour, being lured into prostitution and became vulnerable to trafficking and exploitation. In addition, without the land and natural resource based livelihood makes women very dependent on the men. This in turn makes them highly vulnerable to domestic violence.

9. Likewise, while data on killings and extra-judicial killings show many indigenous men being victimized reflecting of the male-dominated indigenous customary leadership structures and the state structures, it must be remembered that this puts considerable strain on the wives who often have to take on the sole responsibility of meeting the family needs in addition to quite often having to take over the struggle for their rights. Many women have famously stood up for their and their communities rights such as Mama Aleta Baun who lead the community resistance against a marble mining company in Molo, West Timor, cannot go back home to her village due to threats on her and her family’s life.

10. In summary, many of the issues faced by indigenous women are related to the right of self-determination, both as women and as members of communities asserting to decide their own destiny. For instance, when ethnic minority and indigenous women talk about issues related to environment, land, natural resources, culture, health and education, these are all related to their right to decide on their political, economic, social and cultural development. Incursions by state and corporate projects into indigenous territories brought have about gender-based violence like forced sterilization, forced marriages, rape, and others. It also brought about the degradation of the status of women from position of prestige due to their role in subsistence production, healing and spiritual life, to one that is sexual and economic. Some policies intended to meet the welfare needs of indigenous communities actually violate indigenous peoples’ rights.
11. Finally, many indigenous peoples are not legally recognized as indigenous peoples with inherent collective rights. In many countries, indigenous peoples are excluded in law-making processes. Indigenous peoples are generally marginalized in the formal justice systems. Remedies and mechanisms to address judiciable issues are not accessible to them. In some countries, their existence and their rights are not recognized. In this sense, both indigenous men and women are marginalized. The formal justice system, remedies, and processes that may address issues related to access to justice, use the national language which many indigenous peoples, which most indigenous women are not literate in. There are very limited institutions of formal legal services and institutions where indigenous peoples may have their cases fairly adjudicated. Indigenous justice systems are in the majority, male dominated and have no space for women’s voices or participation. The formal justice system and the traditional justice systems often do not have an interface nor does the formal justice system recognize customary legal systems. The formal justice system is sometimes dysfunctional and/or weak making it more inaccessible to indigenous peoples.

12. Given these difficulties in accessing formal justice systems, indigenous women usually rely on the customary informal justice systems even when these same systems may be biased against women. Without the necessary safeguards, women remain extremely vulnerable and in many areas in the region face little prospect of receiving just for any wrong done to them. The major cause of this is the limited political representation and participation by women in general and indigenous women in particular in South East Asian region. The UNDP commissioned study that assessed the extent to which governance institutions in the Asia Pacific provide space to overcome the systematic exclusion of disadvantaged groups seeking to participate in decisions affecting them, the finding on Who explained that: “women and indigenous peoples suffer most from exclusion and discrimination in governance processes across the region.”

III. Challenges

13. Addressing the development-induced violence against indigenous women in Southeast Asia is constrained by the following gaps:

a. Data on indigenous women’s organizations in Southeast Asia, particularly on their capacities and needs to engage in advocacy for their human rights

b. Knowledge of indigenous women’s assessment of the gaps, needs, relevance, challenges and proposals on existing access to justice institutions, programs, etc. at the local and national levels, both in formal and customary. Lessons learned from their experiences in accessing justice, their accessibility, appropriateness, effectiveness of legal and customary remedies and measures available for indigenous women for their specific country situations

c. Information on specific impacts of development-induced violence against indigenous women, and their access to remedies to redress these impacts.

14. With the slew of development projects being undertaken in Southeast Asia, especially with the full economic integration of ASEAN as a single community in 2015, there is a need to:

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a. Mapping of indigenous women’s organizations in Southeast Asia to assess their to engage in advocacy

b. Indigenous women’s assessment of the gaps, needs, relevance, challenges and proposals on existing access to justice institutions, programs, etc. at the local and national levels, both in formal and customary. Lessons learned from their experiences in accessing justice, their accessibility, appropriateness, effectiveness of legal and customary remedies and measures available for indigenous women for their specific country situations

c. Identification of specific impacts of development-induced violence against indigenous women, actions and responses needed to address and redress these issues.

IV. Objectives

15. The regional consultation provides a forum where:

a. Indigenous women will present concrete cases either from their own communities or where they work to provide a preliminary sense of the issues

b. Updates on the global Study on Violence Against Indigenous Girls, Adolescents and Young Women: Joint Project of the UNICEF, UNFPA, SRSGVAC, ILO, WHO will be presented. This will be an opportunity to identify areas of collaboration

c. Planning and strategy session on meeting the gaps will be conducted.


16. The main agenda of the meeting is to collate all the reports from the participants and undertake planning for future work on addressing issues on development-induced violence against indigenous women.

V. Expected Results

a. At least 6 country case studies on access to justice issues and development aggression

b. A publication containing the cases studies and the proceedings of the consultation.

c. A submission to the Expert Mechanism on the rights of indigenous peoples on their thematic study on access to justice of indigenous peoples.

d. Identification of priorities and an agreement on a common framework for action.

e. Action plan that contains recommendations on coordinated steps forward to address the issue of access to justice for development-induced violence against indigenous women and strengthen the indigenous women’s organizations and networks.

17. Given this expected outcome, it is important that the participants will submit reports beforehand in order to provide AIPP with the time to initially collate information that can be easily revised during the consultation. AIPP will provide the needed outline for this report.

18. Case study writers shall be commissioned to prepare country cases for presentation in Cambodia, Laos PDR, Malaysia, Philippines and Thailand.
VI. Participants

19. It is expected that 30-35 indigenous women participants from nine (9) countries will attend the consultations to be selected based on specific issues faced and the struggle of the community from Cambodia, Indonesia, Laos, Malaysia, Burma/Myanmar, Philippines, Thailand and Vietnam.

20. Priority participants will be chosen from indigenous women’s organizations that are engaged in access to justice, development and the human rights of indigenous women. We need some nominations for participants to the consultation. The following criteria can guide you in nominating participants: the woman participant must

- be indigenous
- is working on human rights and/access to justice issues of indigenous women (may be a survivor)
- is able to present a short report on access to justice issues of indigenous women in the country (can be focused on one specific case) with respect to development or corporate projects
- possess travel documents to travel to Thailand (if a good candidate does not have travel documents, please provide information)
- speaks English if possible (indicate if translation is needed)

21. Effort shall be made to invite friendly members of national women machineries and ACWC to sensitize them. They will be asked to present their plans for indigenous women to enhance their access to justice, promote and protect their human rights.

22. All participants are expected to arrive in Chiang Mai on 29th October 2012 and leave on 3rd November 2012.

VII. Flow of the Program

1. Overview of indigenous women’s situation in SEA focusing on their human rights and access to justice
2. Input on updates of the research on violence against indigenous women and children
3. Sharing of the results of the Project on Violence, Customary Law and Indigenous Womens’ Rights in Asia
4. Country sharing – starting with commissioned studies with testimony from the communities, followed by others
5. Input on advocacy and the thematic study of the EMRIP on indigenous peoples and access to justice
6. Planning

23. A field visit shall be organized to a village where women are very active in natural resource management as part of showing good practice on the capacity of indigenous women to manage the community resources as part of their assertion of self-determination and sustainable development.
This publication is part of the Indigenous Peoples Human Rights Defenders Network (IPHRD Net) efforts to address violations of the rights of indigenous women by informing and recommending actions to actors and stakeholders. The IPHRD Net is supported by the European Instrument for Democracy and Human Rights (EIDHR). This network conducts lobby and advocacy for the promotion and protection of indigenous peoples' rights and welfare in Asia and provides legal, material and other forms of support to indigenous human rights defenders at risk. For more information, go to www.iphrdefenders.net.

This consultation is the first ever held on indigenous women's access to justice related to violations of their human rights arising from development and corporate projects. To seek remedies for these development-induced violations, indigenous women often face severe barriers because they are women and indigenous. As women, they face patriarchal practices and attitudes in their communities and in the wider society. As indigenous peoples, often, they are not legally recognized as indigenous peoples with inherent collective rights. Remedies and mechanisms to address judiciable issues are not accessible to them due to physical, economic, social, cultural and political barriers. Sustained support is needed to build the capacity of indigenous women to overcome these challenges and enable them to seek redress both in the formal and customary justice systems. This report aims to raise the awareness of everyone to help address these persistent barriers to indigenous women's full enjoyment of all their human rights.