

# **The Tenorial Situation of Indigenous and Local Communities in SEA Regional Experiences, Practices, Policies and Issues**

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Presented at the workshop on Equitable Distribution of Costs and Benefits (EDCB)  
for the Learning & Action Network  
of the WWF  
Yogyakarta, Indonesia  
August 22-25, 2006

## **I. OVERVIEW**

The SEA region is a region of mega-diversity. It has half of the Earth's plants and animals in its tropical moist forests and coral reefs. Indonesia, Malaysia and the Philippines are 3 of 12 mega-diverse countries. South East Asia has 34% of the world's coral reefs. The tens of thousands of islands in the archipelago nations are the center of global coral reef diversity. However, it is a threatened region, Indonesia and the Philippines possess 77% of the region's coral reefs. Yet 80% of all coral reefs classified as "Threatened" in SEA are found in these nations.

The region is rich in cultures. SEA has a mega-diversity of peoples and cultures having more than 520 million people, SEA population density is 113 persons per sq. km, more than twice the global average of 42 persons per sq. km.<sup>1</sup>

Indigenous Peoples are the main inhabitants of the last remaining biodiverse and well conserved ecosystems in the SEA. Many of these areas lie within the territory of Indigenous peoples. Contrary to what some quarters believe, these areas are not open-access areas. These areas have had existing traditional tenorial arrangements and resource management regimes that have long been in effect and have proven to be the stabilizing factors and contributed to the conservation of large areas of floral and faunal endemism.

## **II. STATE OF INDIGENOUS/LOCAL COMMUNITIES ACCESS TO RESOURCES**

Across Asia Indigenous and Local communities share a common situation where traditional resource use and land tenure arrangements are not recognized, often undermined and labelled as "unscientific" and primitive, and at times directly challenged and opposed by competing interests such as commercial enterprises including mining and logging interests and pressure groups.

The access of local communities and Indigenous groups over land, seas and natural resources have gradually decreased and become limited while control over the same have been partially or completely transferred to non-traditional resource managers led by the state and at times private individuals and entities including NGOs.

In most cases, local and Indigenous communities have been completely disempowered where the dominant societies have been successful in imposing other resource-use and tenorial

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<sup>1</sup> ADB Report 2001: Indigenous Peoples in SEA

arrangements through legal decrees or at times by physical force and occupation of traditional territories.

As can be expected, the propensity of conflict has increased more so because of the tremendous population growth that the region has seen in the last couple of decades. The continuing demand for land and access to natural resources in order to support the economies of the countries in the region has had a dramatic impact on the region's environment. Competition for arable land is most intense in the region. In the Philippines for instance, it is estimated that there are already 25 Million people (29% of the population of 84 M.) in the uplands where most of the remaining forests and environmentally critical areas are located. What is alarming is that the increase in upland population (est. at 10%/annum) is mainly due to migration. In nearby, Vietnam, close to 22 Million people lived on or close to a forestland in 1986, of which only one Million were employed thus forcing the rest to find alternative sources of income from the nearby resources.

#### **IV. POLICIES**

Much of the blame for the tenurial insecurity of local communities can be pinned on state policies which invariably attempt to fully control all utilization and access to the natural resources. The Revised forestry Code of the Philippines or PD 705 had the dubious distinction of criminalizing any occupation and habitation in all forestlands of the Philippines. Similarly in Vietnam, forest resources are under the full control of the state where all processing, distribution and utilization of the forest and its resources was the exclusive domain of the Government. Sadly, the policy environment prevails in most South East Asia.

However, state controlled forest and natural resource management has miserably failed in most countries in the region. The forest cover in the Philippines has declined at an uncontrollable rate in the past decade while in Vietnam the country's forest cover was cut at a rate of 300,000 hectares, or three percent, per year. In Cambodia, the unabated influx of migrants into traditional territories and the concomitant rapid exploitation of natural resources have reached a degree where the survival of indigenous communities as distinct groups in the country is in question.

##### **Policy Reforms**

In recent years, governments in the region have made major policy reforms in order to address the serious problem of the lack of tenurial security among IPs and local communities. The Philippines has led the way in this arena as it had pioneered the use of long-term stewardship agreements as a tenurial instrument to recognize the resource management rights of IPs within forestlands in the early 1980s'. The Government of Vietnam for its part adopted the Tropical Forestry Action Plan, the Forest Resources Protection Act and the First National Forest policy signalled a radical break with state forestry in 1991. Since 1993 the new land law and accompanying implementing laws have provided for the transfer of forest lands to households under long-term land use rights similar to the stewardship agreements used in the Philippines<sup>2</sup>. In Cambodia, in 2001 a new Land Law was passed in Cambodia, which allowed for recognition of communal title for indigenous communities. This followed the wishes expressed by indigenous leaders during consultations carried out in 1999, where communal title was more in keeping with traditional methods of using land and would better protect indigenous lands and culture

But perhaps the most radical policy reform with regards to Tenurial Security of Indigenous Peoples in the region was the enactment of the Indigenous People Rights Act (IPRA) by the Philippine Government in 1997. The IPRA goes beyond the contract-based resource management agreements between the state and the community as it recognizes the "ownership" of the Indigenous Community over their traditional territories which include land, bodies of water and all other natural resources

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<sup>2</sup> Sikor, Thomas: Forest Policy Reform in Vietnam  
Poffenberger, Mark: Stewards of Vietnams Upland Forests, Asia Forest Network, Berkeley, 1998

therein. Furthermore, the IPRA provides tenurial security to the community with issuance of an ownership Title (Certificate of Ancestral Domain/Land Title) to the concerned Indigenous clan or community.

## V. TENURE AND INDIGENOUS COMMUNITIES

Securing tenure over the land seas and other natural resources lies at the heart of the Indigenous Communities demands at the local level all the way to their advocacy in the Global arena. Their lack of control, access over natural resources and non recognition and respect of their rights over their territories affect on their daily lives and impact on their survival as a distinct community. Furthermore, in the past 10 years, the demand for tenure over land and resources has been the central feature of at least 143 declarations of Indigenous Peoples worldwide.

Numerous studies have shown that indigenous people operate a well-developed land allocation and land management system that relies on communal decision making through traditional structures. Communal forms of land tenure allow for the rotation of upland agriculture fields, and for the equitable distribution of land among community members. However, the ability of a community to sustain traditional resource management structures depends on their capacity to exercise control over the resources. Thus the recognition of their rights over their lands and other natural resources is directly linked with their continued application of sustainable resource utilization and management systems.<sup>3</sup>

### 1. Tenure and Conservation: The Tagbanwa and Ikalahan Experience

The region is rife with experiences of conservation initiatives that failed due to the non-recognition of tenure as a prerequisite to foster collective community action and support. At the same time there have been good examples of Communities making full use and optimising the benefits of the recognition of their land rights to initiate conservation.

#### Case 1. Tagbanwa of Coron Island, Northern Palawan

##### *Missed Opportunities:*

The Calamian Tagbanwa inhabit the beautiful limestone Coron Island, one of the Calamianes islands of North Palawan, surrounded by water once rich in marine resources, the main source of their livelihood. In the 1980s, declining fisheries in the adjoining Visayas islands and southern Luzon coasts triggered the movement of fishers westward into Calamianes waters, which resulted in over-fishing, illegal fishing, and an increased human population. To cope with the sudden population growth, the deficit-ridden municipal government of Coron attempted to increase revenues through taxes on the trade of natural resources. It strictly regulated indigenous lands and local resources traditionally traded by the indigenous communities and declared them properties of the municipal government.

By the mid-1980s the waters surrounding the island were being degraded at an alarming rate by dynamite, cyanide, and other illegal and destructive fishing methods. The situation was so serious that the Tagbanwa began facing food shortages. In response to this ecological assault, in 1985 the Tagbanwa organized the Tagbanwa Foundation of Coron Island, which applied to the Department of Environmental and Natural Resources (DENR) for a Community Forest Stewardship Agreement. The Stewardship Agreement would provide a 25-year legal tenure to the Tagbanwa people and allow them to manage their natural resources through a community forest management plan. In 1990 the

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<sup>3</sup> Ironside, Jeremy: Securing Tenure Rights for Cambodia's Indigenous Communities

community was awarded the Agreement covering the whole of Coron Island and a small neighbouring Island, Delian. Since the Agreement was part of a national social forestry program implemented by DENR.

Not satisfied with what amounted to no more than a 25-year lease on their ancestral home, the Tagbanwa Foundation then went on to use a new law – known as Administrative Order Number 2 of 1993 – to pursue a permanent title to their land. Administrative Order Number 2, which proved to be the precursor of the Indigenous People’s Right Act, cleared the way for the Tagbanwa to gain control over both land and marine resources through a rights-based approach to community resource management. With the help of the Philippine Association for Intercultural Development (PAFID) a national NGO, the Tagbanwa obtained their Certificate of Ancestral Domain Claim (CADC) in 1998 – the first such certificate in the country that included both land and marine waters.

The Tagbanwa had secured their land rights not a moment too soon. In 1998, Coron Island was selected as one of eight sites in the Philippines to be incorporated into the National Integrated Protected Areas System. While it has long been the goal of the Department of Environment and Natural Resources to gazette the whole of Coron Island as a protected area, the Tagbanwa have resisted. They fear losing control over the island despite promises of majority participation in the protected area’s management board. And they have good reason to be skeptical: When Coron Island was selected for inclusion in the NIPAS, it was done so without consultation with the local community and without seeking its prior consent. Furthermore, the proponents of the proposed conservation program expressed ambiguity and were non-committal when pressed by the Tagbanwa for their position and institutional support for the Ancestral Domain Claim.<sup>4</sup>

In spite of the inherent lack of local support for the conservation project, activities were launched and substantial resources were poured into the island. The results were not encouraging, participation was limited to community members who were directly employed with the project. Factions among the closely-knit families began to emerge. There were instances when community members participated mainly due to the coercive nature of the Government and felt that they had no choice but accept the conservation project.

Clearly there was no incentive to actively participate in an undertaking that failed to address the most basic need of the Tagbanwa, which was to secure legal recognition of their rights over the lands and seas in Coron. In a general assembly of the Tagbanwa of Coron, they officially demanded that the Island be stricken off as a conservation area and removed from the target sites of the DENR.

After 3 years, the widely advertised and substantially funded project ended with a whimper. The Island was not declared as an “official” park nor was it integrated into the National parks System. Project assets were quietly turned over to the local government. To this day, very few Tagbanwa remember the project and its objective to conserve the resources of the island.

And in 2001, the Tagbanwa successfully obtained a Certificate of Ancestral Domain Title (CADT). It was the first successful claim and Title that included parts of the ocean in the ancestral domain. The Tagbanwa take pride in the fact that the initiative to secure tenure over the land and seas came from them and their active participation in the whole process illustrated their intense desire to gain recognition of their rights over their ancestral domain. As the Tagbanwa Foundation’s chairman, Rodolfo Aguilar, explains, “We are a living example of how IPRA can be used successfully by indigenous peoples.”

With the issuance of the Certificate of Ancestral Domain Certificate (CADC) in 1998 and the consequent warding of a Certificate of Ancestral Domain Title (CADT), the Tagbanwa have since been able to achieve major gains. They were able to convince the Government to recognize the local traditional leadership as an “interim Protected Area Management Board”. They have drafted and

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<sup>4</sup> Ferrari, De Vera: Participatory or Rights-Based Approach? Which is best for Indigenous Peoples in the Philippines, 2003

finalized and are now currently implementing their Ancestral Domain management Plan which provides guidelines for the utilization and management of the land and seas. Curiously, a recurring theme of the Ancestral Domain management Plan was the conservation of the natural resources within the island.

Today, most of Coron's forests are still intact, and the ADMP of the Tagbanwa has been recognized by the Local Government, and more importantly the local tourism industry operators are now required to secure annual permits from the Tagbanwa community before they could bring tourists to the island.

Enforcement of the traditional rules of resource utilization in the ocean has not been as successful as that in the terrestrial areas. While there has been a noticeable decrease in illegal fishing within the reefs covered by the Tagbwana title, the limited capacity of the community to physically enforce their rules and policies have enabled some unscrupulous individuals to take advantage of the situation.

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

## Case 2. The Ikalahan of Sta. Fe Nueva Vizcaya

### *From adversaries to partners:*

In 1974, the Ikalahan community in Northern Philippines were granted exclusive rights to use and manage at least 15,000 hectares of forestlands through a Communal Forest stewardship agreement. The contract would last for 25 years and was renewable for another 25 years. The awarding of the CFSA capped years of struggle by the Ikalahan people to gain land tenure security over their traditional lands.

The initiative to secure legal recognition and land tenure security was incited by a Government policy that declared state ownership over all forestlands. As such it had the sole prerogative to allocate, distribute and determine the development activities that could be conducted in these areas. The Philippine government initially had plans to "develop" the Ikalahan domain; however the people opposed the plan and instead negotiated with the Government and offered their services to "protect" the forests.

Predictably, the Government resisted the offer of the people citing their lack of "legal personality" to negotiate with the Government. Furthermore, their capacity to manage the forestland was questioned and their lack of managerial and technical expertise was pointed out.

With persistence and continuous follow-up, the Ikalahan people were able to slowly convince the Government of the wisdom of recognizing their authority and capacity to manage the forests within their ancestral domains. The Ikalahan successfully pushed the argument that it would be to the best interest of the Philippine Government to recognize them as the forest stewards as they will now own the responsibility of protecting a very critical watershed at no cost to the Government. The problem of a legal personality was easily addressed by organizing a local Peoples Organization which adopted the traditional leadership as its officers and had the same registered with the Securities and Exchange Commission (SEC).

With the help of support groups and other Non-Government Organizations, community elders and the local Government the Kalahan Educational Foundation established forest management rules and

policies that addressed both conservation and livelihood issues and concerns. The overriding aim was to provide enough opportunities for the community members to sustainably engage in livelihood activities but at the same time conserve the remaining resources. The domain was delineated into several zones where the livelihood areas were designated to spare the primary forests from further degradation.

The KEF board composed of elders established community rules on resource use. All rules and policies were presented before the community in various assemblies in order to gain the required consensus. All rules were enforced in coordination with the local Government so as not to create conflicts and establish support. Traditional conflict resolution structures such as the Tong-tongan were adopted to resolve conflicts in resource use. Other traditional systems of mediation were continuously tapped to settle problems within the community.

The Ikalahan today through the KEF have developed a simple but sustainable agro-forestry system where sustainable livelihood can still be undertaken within the secondary forests. The old-growth forests continue to exist and large sections of the domain are currently being reforested.

Clearly the Ikalahan of Nueva Vizcaya confirms the principle that the recognition of the rights of local communities and Indigenous Peoples over their traditional territories is central in fostering collective action for resource conservation.<sup>5</sup>

The CFSA of the Ikalahan people which in 1974 was simply known as MOA No. 01 (memorandum of Agreement No. 1) has since evolved into many forms through countless programs and projects aimed at securing the support and providing tenure for local communities in the conservation the environment. The Certificate of Ancestral Domain Title (CADT) is one of the land tenure instruments that traces its roots to the initiative of the Ikalahan people in securing MOA No. 01.

## **VI. LESSONS AND OPPORTUNITIES**

Land tenure is key piece of conservation management. Management of the territory cannot proceed without securing tenure. It must also be acknowledged that traditional resource management has big contribution to conservation. However, Indigenous Peoples/local Communities can only practice traditional management in a territory. If access and control of the territory is not secured, they cannot exercise traditional resource management.

Opportunities for partnership or sense of ownership or stake are limited if they do not themselves have tenure, control or access to the resource. Communities who do not have tenure will most often tend to view the conservation interventions as just another conservation project. Participation in such an initiative will be limited to employment opportunities provided by the project and the coercive nature of the Government partner. Community initiated participation and commitment can never be gained if tenure is not properly addressed.

If tenure is not adequately addressed, external conservation interventions may unintentionally facilitate external arrangements that will have dire consequences for them such as ecotourism. In the case of Coron the island was marketed so much for investment, a development that led land speculators to begin grabbing lands for resort development, to a situation which the community found overwhelming and eventually generated competing claims from outsiders.

However, it must be noted that even if the effect was unintentional, the community will be dealing with the consequences of the intervention long after the project has terminated. What is the impact of facing these consequences without tenure, without legal rights, legal protection?

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<sup>5</sup> Magno, Francisco, *Crafting Conservation: Forestry Social Capital, and Tenurial Security in Northern Philippines*, University of Hawaii, 1997

Local initiative to negotiate and engage other stakeholders will be severely limited if tenure is not adequately addressed. Successful outcomes in negotiations happen if the IPs have collective land tenure and control the speed and process of the negotiations process and deal with the outside world along with hybrid institutions with legal personality which nevertheless remains underpinned with customary law. (Colchester)

The contribution of support groups such as NGOs has to be recognized. Current arrangements, requirements and processes that will allow communities to secure tenure are not within the experience of most Indigenous communities. Most communities still lack the capacity to engage the Government bureaucracy and the organizational demands once they are required to legally negotiate with the state or other entities and stakeholders. However, their role must be strictly within what is identified by the community as their specific task.

Conservation projects will be supported and embraced by Indigenous peoples/Local communities if they see a direct link with their ability exercise control and gain access to their resources. Major activities in conservation projects such as resource inventories, planning can be easily packaged to accommodate and address the need for tenure security of the local people. For instance, resource inventories could be used to identify the local names of the resources and the places where they are located. The documentation could then be used as evidences and proofs to strengthen the traditional rights and/or claims of the local people. Planning activities can be done along with the traditional leaders where their role as facilitators for consensus building is utilized. Action Planning should also include a clear target and schedule that shall address the tenurial security issue. At all times conservation initiatives should not shy away and skirt the tenurial security issue if the support of the community is required.

#### **IV. CHALLENGES AND RECOMMENDATIONS**

Securing tenure follows a very complicated and arduous process. The very idea of securing tenure for a marginalized sector of the society challenges existing paradigms, mindsets, shakes the status quo and makes people and institutions in power uncomfortable. However, there have been experiences that can provide insights on the challenges that communities and support groups face as they go about securing legal tenure over their resources.

The issue equity among stakeholders has always provided a great challenge to local communities and proponents of tenurial rights. Demand for tenurial security is often situated in environmentally critical areas which do not only have an impact to local communities but to a greater number of stakeholders. For instance, the Ikalahan domain is the last remaining intact watershed for the downstream communities of central Philippines. Securing tenure is a rights-based initiative which recognizes the Ikalahan community's inherent traditional rights over the watershed. However, the concerns of the downstream communities have to be equally addressed.

Sometimes local government feel threatened when tenure is secured by local communities. Traditional structures are seen as rivals for local power, these will have implications for local power relations (economic, social and political). It may even exacerbate conflict with local government but there are ways to mitigate this. Thus the need to continue to explore appropriate collaborative management models has to be undertaken.

Concerns have been raised on the coverage and extents of traditional territories. There are no hard and fast rules on how large a claim can be. Every community will have their own basis to define what is traditionally owned, managed or controlled. Problems will arise since most areas within the region already have multiple stakeholders. Governments can regulate and draft guidelines that shall define what can be claimed or locally managed.

In the Philippines, concerns on the capacity of communities to physically enforce their authority on wide tracts of traditional territories have been raised. With claims ranging from a low of

1 hectare to a high of 120,000 hectares, the ability of communities to enforce their local rules and effectively manage the domain has to be taken into consideration. While it is expected that the Government has the responsibility to take police action and enforce a legally recognized tenurial instrument. The reality is that it has neither the resources nor willingness to impose itself and enforce the law. More often than not, Governments take an adversarial position and pin the blame on the community for having filed such a huge claim and now they shall have to be responsible for the damages that have been done to the environment due to their inability to enforce their rules.

The initiative to secure tenure or tenure itself invariably forces one to fall within the framework of governments. Land and resources will be commodified once it becomes the subject of an agreement or title. Sometimes this cannot be reconciled or accommodated by traditional structures which are not flexible enough to co-exist. Some Governments demand absolute authority in almost all facets of resource management while some may allow for limited power sharing. Some communities on the other hand do not trust Government institutions and feel uncomfortable dealing with them. The challenge is how to enable local communities to engage the Government and/or dominant sector of society. Resistance will always be strong but eventually these will change.

The Ikalahan case for one shows how they were able to slowly chip away at the bureaucratic walls thrown at them. In Cambodia, the Tampuen people now face the same dilemma as they have been required to establish a legal entity to enable them to negotiate with the Government for a Communal Title. Conflicts are expected as the Government asserts itself and its authority to regulate. For the Tampuen on the other hand securing tenure over their land is an expression of self determination and a renewal of their inherent right to own, utilize and manage their land resources. Thus, the contractual obligations in a management agreement maybe seen by the people as unnecessary impositions by an external party.