

Indigenous Peoples' Initiatives for Land Rights Recognition in Asia



Asia Indigenous Peoples Pact (AIPP)

INDIGENOUS PEOPLES' INITIATIVES FOR LAND RIGHTS RECOGNITION IN ASIA

© Asia Indigenous Peoples Pact (AIPP) Foundation, 2016

All rights reserved

The contents of this publication may be reproduced and distributed for non-commercial purposes provided that consent of AIPP is acquired and the authors are acknowledged as the source.

Editors: Jill Carino and Luchie Maranan

Writers: Jade Tessier, Prabindra Shakya, Joan Carling and Patricia Wattimena

Contributors:

Cambodia: Vichet Mong, Highlanders Association (HA)

Indonesia: Annas Radin Syarif, Aliansi Masyarakat Adat Nusantara (AMAN)

Malaysia: Mark Bujang, Borneo Resources Institute (BRIMAS)

Philippines: David E. De Vera, Philippine Association For Intercultural Development (PAFID)

India and Thailand: Jade Tessier and Prabindra Shakya, AIPP

Photos:

Nura Batara

Tpat Maneerat

Phan Sokhet

Chansophea Sompoy

Puah Sze Ning

Maybelle Wayas/TFIP

Jiten Yumnam

Inter Mountain Peoples Education and Culture in Thailand (IMPECT)

Title page photo: An indigenous elder herding buffaloes in Toraja, South Sulawesi, Indonesia, by Nura Batara

Publisher:

Asia Indigenous Peoples Pact (AIPP) Foundation

108 Moo 5, Soi 6, Tambon Sanphranate, Amphur Sansai

Chiang Mai 50210 THAILAND

Tel: +66 (0)53 380 168, Fax: +66 (0)53 380 752

Web: www.aippnet.org

ISBN: 978-616-7898-25-4

Layout and Printing: AIPP Printing Press Co. Ltd.

The publication has been made possible with the generous support of the *Tamalpais Trust*.

DISCLAIMER: The contents of this publication are the sole responsibility of the AIPP and the authors and cannot under any circumstance be regarded as reflecting the position of the Tamalpais Trust or its related organs.

Indigenous Peoples' Initiatives for Land Rights Recognition in Asia



Asia Indigenous Peoples Pact (AIPP)





Puah Sze Ning

An indigenous elder of Temiar walking on his community's traditional land which has just been cleared for agriculture, Lojing, Kelantan, Malaysia

ACKNOWLEDGEMENTS

The Asia Indigenous Peoples Pact (AIPP) would like to thank Tamalpais Trust for its generous and continuous support to the work of AIPP including the publication of this important document.

We would also like to extend our appreciation and acknowledgement to AIPP members and partners who contributed to this publication, namely:

- Vichet Mong, Highlanders Association (HA), Cambodia
- Annas Radin Syarif, Aliansi Masyarakat Adat Nusantara (AMAN), Indonesia
- Mark Bujang, Borneo Resources Institute (BRIMAS), Malaysia
- David E. De Vera, Philippine Association for Intercultural Development (PAFID), Philippines

This publication would not have the spirit that it has without the tireless work of the overall AIPP secretariat team, in particular the invaluable contributions provided by Jade Tessier, Volunteer, and Prabindra Shakya, Coordinator of the Human Rights Campaign and Policy Advocacy Programme, together with Patricia Wattimena, AIPP Advocacy Coordinator. We would also like to sincerely thank Jill Carino and Luchie Maranan for their full support in editing the publication.

Last but not least, AIPP dedicates this publication to the indigenous peoples in Asia including indigenous women, youth and indigenous persons with disabilities, who continue to assert and defend their collective rights to their lands, territories and resources. We hope that this publication could contribute to increase the awareness and to empower indigenous communities, organizations and networks in Asia and across the world.

Joan Carling
Secretary General
Asia Indigenous Peoples Pact

TABLE OF CONTENTS

INTRODUCTION	1
Legal Recognition of Indigenous Peoples' Land Rights in Asia: An Overview	4
Achievements and Lessons Learnt	10
Challenges	14
Conclusion	15
Recommendations	16
CAMBODIA	21
Indigenous Peoples in Cambodia: A Background	18
National Policy and Legal Framework on Traditional Lands	18
Registration of Collective Land Titles	20
Registration of Economic Land Concessions	21
Lessons Learnt and Good Practices in Land Rights Recognition	21
Community Mapping Activity	23
Advocacy on Land Rights Recognition	25
Challenges	27
Conclusion	28
Recommendations	29
INDIA	31
Indigenous Peoples in India: A Background	32
Definition of Indigenous Peoples	32
National Policy and Legal Framework on Traditional Lands	33
Land Alienation and Acquisition	36
Community Mapping in India	37
Conclusion	41
Recommendations	41

INDONESIA	43	
Indigenous Peoples in Indonesia: A Background	44	
National Policy and Legal Framework on Traditional Lands	44	
Indigenous Peoples’ Initiatives for Land Rights Recognition	47	
Conclusion	57	
Recommendations	58	
MALAYSIA	59	
Introduction	60	
Indigenous Peoples in Malaysia	61	
Native Customary Land Rights Recognition in Sarawak	63	CAMBODIA
Using Community Mapping as Evidence for Claiming NCR in Court	65	
Achievements, Challenges and Lessons Learnt	67	
Conclusion	68	INDIA
Recommendations	68	
PHILIPPINES	71	INDONESIA
Indigenous Peoples in the Philippines: A Background	72	
Definition of Indigenous Peoples	73	
National Policy and Legal Framework on Traditional Lands	73	MALAYSIA
Community Mapping in the Philippines	81	
Challenges to Community Mapping	86	
Conclusion	87	PHILIPPINES
Recommendations	87	
THAILAND	89	THAILAND
Indigenous Peoples in Thailand: A Background	90	
Definition of Indigenous Peoples	90	
National Policy and Legal Framework on Traditional Lands	90	
Community Mapping in Thailand	92	
Challenges	97	
Conclusion	97	
Recommendations	97	
#LANDRIGHTSNOW CAMPAIGN – POLICY ASKS 2016 – 2020	99	



Puah Sze Ning

Indigenous women and man harvesting rice in Alutok village, Sabah, Malaysia



INTRODUCTION

With optimism and high hopes, indigenous peoples in Asia and around the world welcomed the adoption by the United Nations General Assembly of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. The declaration was won after a long negotiation and lobbying process by indigenous representatives within the UN system that lasted for more than two decades. The hard work paid off with the passage of the Declaration, setting the minimum international standards for the recognition of indigenous peoples' rights, and leading the way for States and UN agencies to come up with their own laws and policies recognizing indigenous peoples.

Besides the UNDRIP, indigenous peoples have gained other significant achievements at the international level including the creation of UN mechanisms whereby indigenous peoples can actively participate to assert for the recognition of their rights, such as the UN Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). At the same time, UN agencies, intergovernmental and multilateral bodies, financial institutions and international conventions have developed policies and guidelines to address indigenous peoples' rights within their respective mandates.

Yet another major milestone in the international indigenous peoples' movement was the Outcome Document of the World Conference on Indigenous Peoples (WCIP)¹ that reaffirmed support for the UNDRIP and declared the commitment of the UN system and its member states to take, "appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples." Further, States committed to obtain consent "prior to the approval of any project affecting their lands or territories and other resources" and to establish at the national level, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources."²

Indigenous peoples have also participated in the UN processes on the 2030 Agenda for Sustainable Development, also known as the Sustainable Development Goals (SDGs). States have adopted 17 Goals and 169 targets to be measured through indicators. Two of the targets include the rights of indigenous peoples and women to land. The main call of the SDGs is "leaving no one behind." From indigenous peoples' perspective, securing collective land rights is a critical foundation for the eradication of poverty, food security, forest and biodiversity protection in relation to the sustainable goals, as well as ensuring the self-determined development of indigenous peoples in line with their overall wellbeing.

¹ A High-Level Plenary Meeting of the UN General Assembly held in New York on September 22-23, 2014

² United Nations General Assembly. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. 15 September 2014

As land rights struggles are happening across many countries, key organizations supporting these struggles have taken the initiative called Global Call to Action: Land Rights Now campaign in 2015. There are now more than 500 organizations that have linked up to this campaign.

Some countries in Asia have developed constitutional provisions, national laws and policies that serve to recognize and promote indigenous peoples' customary rights to their land and resources. Similarly, these national laws have largely been won through the collective and sustained struggles of indigenous peoples for State recognition of their rights.

All these policy developments at the international and national levels are undeniably significant achievements. However, they need to be fully and properly implemented on the ground for them to matter and to become a reality for indigenous peoples. Also undeniable is the fact that, in spite of the UNDRIP, States are able to circumvent their international obligations by continuing to deny legal recognition of indigenous peoples and their rights. Many governments and corporations continue to violate indigenous peoples' rights through development aggression in indigenous territories, lack of free prior and informed consent (FPIC), non-recognition of land rights and grabbing of indigenous peoples' lands and resources for commercial ventures.

Amidst these, indigenous peoples in Asia are also steadily gaining strength and increasingly taking the initiative to assert their rights over their lands, territories and resources. Indigenous peoples have been able to use policy gains at the international and national levels as leverage to assert their rights at the local level. Many indigenous peoples have pro-actively pushed for the recognition of their land rights, using various strategies, mechanisms and approaches, notwithstanding the negligence or intransigence of the government, among other remarkable challenges.

One such initiative that has been gaining support among indigenous peoples is participatory community mapping, which has been used effectively in the Philippines, Indonesia, Cambodia, Malaysia, Thailand and India as a means to delineate indigenous territories and to assert traditional knowledge and customary governance over land and resources. Community maps made by indigenous peoples have proven useful as evidence in negotiating with companies who have encroached on indigenous territories.

Another approach that has produced valuable precedents is litigation in the courts for the respect of land rights of indigenous peoples in different countries. For instance, indigenous peoples in Sarawak, Malaysia, have been successful in setting legal precedents through the filing of cases in local courts asserting native customary rights, and using community maps as evidence.

Particularly for Indonesia, indigenous peoples have combined strategies of community mapping, litigation, policy advocacy and lobby in asserting their

rights, backed up by a formidable national network of indigenous communities and their supporting NGOs.

Important lessons can be derived from these initiatives that can serve as models for other indigenous peoples to follow. Achievements made and lessons learned from successful campaigns of indigenous groups or communities can be greatly useful for other indigenous peoples in Asia and around the world. These initiatives can be motivational and instructive for further actions to assert land and other rights of indigenous peoples.

In this light, Asia Indigenous Peoples Pact (AIPP) conducted a study and analysis of some initiatives of indigenous peoples using community mapping and other strategies in the defense and promotion of their collective land rights. The case studies were undertaken at national and local levels in six countries of Asia, namely Cambodia, India, Indonesia, Malaysia, Philippines and Thailand. AIPP member organizations and other groups with direct experience and expertise in community mapping did the case studies. They were compiled by AIPP at the regional level in order to derive a better understanding of some of the approaches used by indigenous peoples to exercise and defend their land rights. The experiences shared here highlight the valuable lessons learnt from these good practices as a contribution to the concerted and collective effort for the full recognition and respect of indigenous peoples' rights.

Legal Recognition of Indigenous Peoples' Land Rights in Asia: An Overview

The formal legal recognition and status granted by Asian states to indigenous peoples varies from country to country, ranging from constitutional recognition, recognition by special laws, recognition through court decisions, recognition through ratification or adoption of international instruments, or non-recognition at all of indigenous peoples. Some governments in Asia have passed special laws and policies promoting the recognition of indigenous peoples' rights to their lands and resources.

In the Philippines, the 1987 Constitution Section 22, Article II states: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." Section 5, Article XII: "The State, subject to provisions of this Constitution and national development policies and programs shall protect the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being."³ Further, the Indigenous Peoples Rights Act (IPRA), which was passed in 1997, recognizes indigenous peoples' collective and individual rights over their ancestral domains and lands, indigenous socio-political systems and culture. The IPRA provides tenurial security to an indigenous community through the issuance of a Certificate of Ancestral Domain/Land Title (CADT/CALT).

³ Philippine Constitution 1987

However, conflicting laws and policies of government agencies also exist, which hinder the recognition of indigenous peoples' land rights and the implementation of provisions of the IPRA. Foremost among these is the Regalian Doctrine, by which ownership of all lands and resources remains in the hands of the State, as provided in Section 2 of the Philippines Constitution, which states: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State."⁴ In addition, ancestral domain claims often overlap with protected areas, government reservations, mining and logging concessions, which are governed by other existing and conflicting laws favoring commercial interests over indigenous peoples' rights.

The 1993 Cambodian Constitution contains no specific reference to indigenous peoples, nor does it contain any article or provision explicitly relating to indigenous peoples' rights. However, some constitutional provisions relevant for indigenous peoples guarantee collective ownership of immovable property and recognize the right to fair and prior compensation to both individual and collective owners. The 2001 Land Law also guarantees the recognition and protection of indigenous communities ("original ethnic minority"), traditional natural resource management systems and traditional customary land. The Land Law contains provisions for collective land titling whereby indigenous communities are entitled to register their communal land and receive a collective land title. However, the mechanism for registration of Collective Land Titles (CLT) requires communities to undergo a long and tedious process of registration as a legal entity before CLTs may be granted to them. Meanwhile, indigenous peoples in Cambodia are facing serious problems arising from the grant of economic and social land concessions to corporate projects without the Free Prior and Informed Consent (FPIC) of the affected indigenous communities.

The 2000 Constitution of the Republic of Indonesia recognizes and assures the protection of the rights of indigenous peoples in at least two articles. Such recognition is reflected in a number of national laws. Law 39/1999 on Human Rights protects the cultural identities of indigenous peoples, including their rights over communal land. Laws on agrarian reform, natural resource management and on coastal and small islands likewise stipulate the protection and recognition of the rights and existence of indigenous communities, including their local wisdom on environmental protection and management. However, these laws are not implemented and indigenous peoples face displacement and criminalization for entering their ancestral territories, which are considered as state lands.

Recent developments in Indonesia indicate that progress is being made in gaining greater recognition for indigenous peoples. In 2012, the Constitutional Court of Indonesia ruled that customary forests are not state forests, thereby recognizing the rights of indigenous peoples over their customary forests. Furthermore, in

⁴ Ibid

May 2014, Indonesia's Human Rights Commission (Komnas HAM) launched its first national inquiry into alleged human rights violations linked to land conflicts in contested forests involving indigenous peoples. The administration of President Joko Widodo has also expressed commitment to prioritize the enactment of a Bill for Recognition and Protection of Indigenous Peoples' Rights (RUU PPHMHA). Still, the Indonesian government has yet to create a mechanism or system for the legalization and registration of indigenous peoples' lands.

The Federal Constitution of Malaysia uses the term 'native' to refer to the heterogeneous indigenous peoples of Sarawak and Sabah (Article 161A) and provides them special protection. The Constitutional recognition however, does not translate to measures ensuring its implementation. The Sarawak Land Code of 1958 severely limits the recognition of native customary rights to land. On the other hand, a recent ruling by the Court of Appeals in Sarawak has upheld that territorial domains and communal forest reserves are part of Native Customary Rights (NCR) land, setting a precedent for more than 200 NCR land cases pending in the high court.

In India, Constitutional provisions exist recognizing the customary laws in Northeast India, such as Article 371A for Nagaland and Article 371G for Mizoram. In addition, Article 244 of the Constitution provides that the Fifth Schedule shall govern administration and control of Scheduled Areas and Scheduled Tribes in any state other than Assam, Meghalaya, Tripura and Mizoram. The Fifth Schedule provides for the establishment of Tribal Advisory Councils and the declaration of Scheduled Areas. Tribal areas in Assam, Meghalaya, Tripura and Mizoram (all in Northeast India) are governed by the Sixth Schedule. The Sixth Schedule provides for the creation of Autonomous District and Regional Councils (ADCs) and accords certain legislative, executive and judicial powers to these autonomous bodies. However, autonomy or self-governance is not fully realized because of weak implementation.⁵

In terms of national legislation in India, the Forest Rights Act (FRA) of 2006 provides forest rights to Adivasi/tribal peoples by recognizing the rights of forest-dwelling and forest-dependent communities to land and other resources as a means to support their livelihoods. FRA stipulates that Gram Sabhas or village councils are responsible for granting or withholding consent for all the projects.⁶ Consequent to the enactment of the FRA, diversion of any forestland for non-forestry purpose such as for dams, mines, infrastructure projects, etc. requires the recognition of forest rights of the community as a pre-condition.

In Nepal, at least 39% of the total population is recognized as indigenous peoples, and the government has ratified ILO Convention 169 on Indigenous and Tribal Peoples. The Forest Act (1993), Forest Regulations (1995) and the Forestry Sector Policy (2000) are the major legal and policy foundations of forestry

⁵ Asia Indigenous Peoples Pact (AIPP). Briefing Paper: Recognition of Indigenous Peoples' Customary Land Rights in Asia. March 2015

⁶ Ibid

management in Nepal. Forest Act- 1993 provides legal measures to protect the forests and involve the local people in the conservation and development of forest resources. The Act defines forests as national and private forests. The national forest is further classified as community, leasehold, religious, government managed, and protected forest. The government has empowered District Forest Officers (DFO) to hand over any part of the national forest to the users' group to develop, conserve, use and manage and to sell and distribute forest products independently by fixing the prices under the work plan of the Act- 1993 (Section 25.1). However, handing over of the forest to the community does not change the land ownership of the forest land. This provision shows that the state remains the principal authority to control over the forests.

Vietnam's Constitution (Article 5) refers to indigenous peoples as "ethnic minorities" who "have the right to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures." There is a lack of mechanisms that create opportunities for ethnic minorities to participate in decision-making such as enhancing the security of land tenure and ensuring sustainable land use and food security. Ethnic minorities, though rewarded or paid for the conservation and development of forests (under the government's program of Payment of Environmental Services) are not assured of land or forest ownership. In 2008, Japan's legislative body, the *Diet*, voted to recognize the Ainu as "an indigenous people with a distinct language, religion and culture."⁷

Other countries in Asia including Laos PDR, Thailand, Bangladesh and Myanmar, have not conferred formal legal recognition to indigenous peoples in the manner of their choice. They are referred to as "traditional communities," "ethnic groups," "tribes, minor races, ethnics sects and communities." The absence of formal legal recognition often results in indigenous peoples being denied many basic rights and services including collective rights guaranteed by national and international human rights law.⁸

However, legal recognition does not always guarantee the full range and enjoyment of individual and collective rights. Generally, in Asia, laws on indigenous peoples are limited, conditional or not properly or fully implemented. They also sometimes do not extend to all indigenous peoples within the country and are often disregarded when state or private business interests prevail. For instance, in India, only 461 ethnic groups of the estimated 635 groups are acknowledged as Scheduled Tribes or Adivasi, while in Taiwan, China, only 14 indigenous peoples are officially recognized, and at least nine Ping Pu ("plains or lowland") indigenous peoples are still claiming for recognition as indigenous peoples.⁹

⁷ Ibid

⁸ Asia Indigenous Peoples Pact (AIPP). Overview of the State of Indigenous Peoples in Asia. May 2014

⁹ AIPP. Briefing Paper: Recognition of Indigenous Peoples' Customary Land Rights in Asia. March 2015

In the face of these varying legal contexts, indigenous peoples in Asia continue to experience land dispossession and destruction of their traditional territories from large-scale development projects and resource extraction by state and private sector actors. This is seen in the accelerated encroachment of economic land concessions, extractive industries, infrastructure, national parks and other development projects into indigenous peoples' land, a trend that has been called "development aggression" by indigenous peoples.

For this reason, some indigenous peoples have taken matters into their own hands and led the way through innovative approaches and initiatives in asserting land and resource rights. The case studies from the different countries in Asia provide examples of a range of initiatives and strategies that could provide valuable examples and lessons for other groups and communities to learn from.

#LANDRIGHTSNOW CAMPAIGN AND INDIGENOUS PEOPLES IN ASIA

Although indigenous peoples and local communities, since the time of their ancestors, have protected more than 50% of the world's land, only 10% is being currently recognized as legally owned or controlled by them.¹⁰ The lack of proper recognition and protection of land rights is putting up to 2.5 billion people including 370 million indigenous peoples worldwide –most of whom are scattered around in Asia– particularly vulnerable to extreme poverty and hunger, as most of the indigenous peoples are heavily relying on their land and natural resources for their livelihoods and survival.¹¹ Moreover, the meaning of the lands to indigenous peoples goes far beyond the monetary aspect. For them the land is also their identity and the root of their strong relationship with their ancestors. As such, the lack of proper recognition and protection of the land rights of indigenous peoples is increasing the danger of the ethnocide.

However, the idea that indigenous peoples have no land rights is still prevalent among relevant stakeholders and decision makers, backed by the lack of proper national laws recognizing and protecting rights of indigenous peoples, resulting in consistent violation of their rights. Exploding demands in the agriculture and extractive industries are driving indigenous communities out of their lands. It is also undeniable that the non-recognition of indigenous peoples' land rights is one major source of the increasing conflicts and political and economic instability affecting indigenous communities in many countries.

In order to make land rights a reality for indigenous peoples, cooperation and solidarity must be strengthened both among indigenous communities, organizations and networks as well as with wider Civil Society Organizations (CSOs) and relevant

¹⁰ Rights and Resource Initiative: Who owns the World Land? A global baseline of formally recognized indigenous and community land rights, September 2015, http://www.rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf

¹¹ Oxfam International, International Land Coalition and Rights and Resource Initiative: Common Ground. Securing land rights and safeguarding the earth, March 2016, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-common-ground-land-rights-020316-en_0.pdf

stakeholders. Greater collaboration with the wider society and various actors will also strengthen indigenous peoples' movement in Asia towards tangible changes. It is against this backdrop that the *Global Call to Action on Indigenous and Community Land Rights* (hereafter *the Campaign*) was initiated in 2015. The campaign was officially launched worldwide on 2 March 2016 with the main goal of securing indigenous and community land rights across the globe and the five-year target to double the global area of land legally recognized as owned or controlled by indigenous peoples and local communities by 2020. It is an unprecedented campaign for securing indigenous and community land rights, which is currently supported by more than 500 organizations and communities worldwide, of which two thirds are in 14 Asian countries where AIPP members and partners are based.

The Campaign is a global platform and multi-stakeholder initiative involving not only indigenous peoples, but also a broad spectrum of stakeholders such as the governments, private sector actors, national and international institutions, and civil society. It brings together not only indigenous peoples' organizations and networks but also a number of various CSOs and alliances e.g. those working for youth, children, women, persons with disabilities as well as student organizations, among others. This wide range of support indicates the importance of land rights of indigenous peoples and local communities not only for themselves but also for the broader society and various interest groups. At the same time, the Campaign is targeting both the holders of land rights as well as the duty bearers who should protect these rights. In doing so, the Campaign has articulated concrete requests and demands (so called "*Policy Asks*")¹² to each of the following stakeholders: the general public, governments, parliamentarians, national, regional and international human rights institutions, corporations and national and international financial institutions, UN Human Rights Council, high-level UN political platforms, and indigenous peoples and local communities as well as civil society at different levels.

AIPP has actively participated in the initiation of the Campaign and is currently a member of its steering group together with other indigenous organisations, networks and land rights champions such as the indigenous peoples national alliance in Indonesia AMAN (Aliansi Masyarakat Adat Nusantara), CADPI (Centro para la Autonomia y Desarrollo de los Pueblos Indigenas), the Centre for Indigenous Peoples Autonomy and Development in Nicaragua, Kenya's Forest Indigenous Peoples Network, Forest Peoples Programme and the International Land Coalition, to name a few.

Since the initiation of the Campaign in 2015, a number of activities have been undertaken by AIPP members and partners at national and regional levels. In March 2016, country level launches were organized in Cambodia, Thailand, Myanmar and Malaysia. The Asia regional launch, which brought together indigenous organizations and networks from 12 countries, was held in Myanmar. Together with its members and partners, AIPP continues to be committed to take further actions such as carrying out relevant case studies on land rights issues including those affected by large dams and

¹² #LandRightsNow, *The Global Call to Action on Indigenous & Community Land Rights: Policy Asks 2016 – 2020*, https://landrightsnow.contentfiles.net/media/assets/file/Policy_Ask_English.pdf

mining as well as trade and investment impacts. All these concrete activities related to the Campaign are integrated and developed in the broader framework of AIPP's overall strategic plan for 2017-2020 to be adopted by the AIPP General Assembly on September, 2016 among others.¹³

The Campaign is closely linked to the initiatives of indigenous peoples for their land rights highlighted in this paper, while some concrete cases of activities directly related to the Campaign in different countries are presented in the sections below describing situations of those respective countries.

Achievements and Lessons Learnt

From the case studies, it is clear that significant gains have been achieved at varying levels in the assertion of indigenous peoples' rights. Through a combination of different strategies, indigenous peoples have been able to build on their inherent strength and push for the recognition of their land rights in varying degrees. These achievements also teach important lessons in the advocacy for indigenous peoples' rights.

1. Ensuring community participation in mapping of ancestral territories

Community participation is a key ingredient in the mapping of ancestral territories. The main actors are the concerned indigenous communities themselves, including youth, women, elders and indigenous persons with disabilities, who contribute their time, effort and local indigenous knowledge in the mapping process. Although mapping facilitators provide technical support, the information used in map-making is derived mainly from the indigenous peoples' traditional knowledge that has been passed on to them through generations. Through the active participation of the community, mapping has been successful in harnessing and transforming indigenous knowledge or "mental maps" into a concrete map of their ancestral territories. In the Philippines, NGOs and IPOs have practiced participatory three-dimensional mapping (P3DM) since the mid '90s as an improved alternative mapping method that allows greater community participation in spatial planning.

2. Documentation of ancestral territories, resources and indigenous knowledge

Community mapping has had significant results in terms of demarcating ancestral territories, identifying key natural resources, documenting indigenous knowledge, sustaining natural resource management practices and implementing zoning systems. The people have been able to generate their own spatial information and present their ancestral lands and domains from their own perspective.

¹³ <http://aippnet.org/join-us-we-demand-land-rights-now/>

The availability of spatial data of their ancestral territories has also enabled indigenous communities and support groups to innovate on existing tools in resource assessment and inventories. For example, the Ikalahan people of Nueva Vizcaya have been able to conduct a full floral inventory of their reserved forest, which has been used to compute for the biomass and the carbon sequestration capacity of their forest reserve.

3. Increased capabilities of indigenous peoples to secure land rights

Indigenous peoples have developed their capabilities through participation in meetings, exposure visits, skills sharing workshops, training sessions and other activities. Topics covered include rights of indigenous peoples, international and national legal frameworks, Free, Prior and Informed Consent, environmental impact assessment guidelines, facilitation and communication skills, dialogue and negotiation, gathering information and documentation. Indigenous peoples involved have also learned about reporting cases of violation of individual and collective rights to human rights institutions and UN bodies. Increased awareness of their rights under national and international laws has strengthened the efforts of indigenous communities to secure their land rights.

The adoption of new Global Positioning System (GPS) technology has allowed NGOs and indigenous communities to greatly accelerate the delineation of ancestral territories. With GPS, the practice of mapping has become simpler and easier to understand. Likewise, the use of Geographical Information System (GIS) has now become accessible to local communities through skills training which their practitioners are already putting to use. The process of producing community maps has enabled skilled community members to use technology such as GPS, compasses, GIS hardware and software in coming out with credible and accurate maps representing the entirety of their ancestral territories.

4. Greater legitimacy and credibility of NGOs and IPOs in community mapping and development planning

Entering into partnerships with government in the conduct of community mapping has firmed up the legitimacy and credibility of NGOs and indigenous peoples' organizations (IPOs) particularly in the Philippines. Memorandum of Agreement (MOA) with government agencies provide legality for NGOs and IPOs to safely continue and undertake their mapping activities. At the same time, this allows NGOs to ensure the participation of the community while overcoming restrictions of the law. These partnership agreements with government are thus mutually advantageous to both parties.

Another arena where NGOs and IPOs have gained legitimacy in the eyes of the government is in the preparation of local land-use plans. In the Philippines, P3DM has proven to be a very simple yet effective methodology for ordinary communities to use in resource management planning, boundary conflict resolution, protected area planning and natural resource management. Official

recognition of P3DM has raised its stature as a mapping methodology. Many local government units have since engaged the assistance of NGOs and IPOs in the construction of P3DMs, which have been used as planning tools in the formulation of resource management plans.

5. Use of community maps as admissible evidence in the litigation of court cases

The use of community maps in support of litigation in courts has proven effective in Sarawak, Malaysia. Community maps are irrefutable, having been done collectively by those who know the history and situation on the ground. They are able to withstand rigorous examination and are thus acceptable and admissible as evidence in the courts. The 2001 landmark case in Sarawak, wherein the Kuching High Court declared that the Dayak Iban community of Rumah Nor had acquired Native Customary Rights (NCR) over their territories, demonstrated for the first time the acceptance of a community map as evidence in court. Despite arguments by opponents that the people who did the field survey and drew the map were not qualified and licensed surveyors maps, the court accepted the maps as evidence that contributed to the recognition of their ancestral territories. Now, nearly all NCR land claims filed in courts all over Sarawak use community maps as supporting evidence.

6. Registration of customary land for legal recognition

In the case of Indonesia, the production of community maps has enabled indigenous peoples to register their customary land and in the absence of any government mechanism to legally recognize these, AMAN, together with its network and supporting NGOs, established the Ancestral Domain Registration Agency (BRWA). BRWA is an autonomous body of AMAN, with the function of consolidating maps of customary lands through registration processes, including verification, validation and publication stages. The submission of these community maps and registered land claims to the government has been a major step forward in gaining legitimacy and legal recognition of indigenous peoples and their ancestral territories in the country.

7. Stronger advocacy for indigenous peoples' land rights recognition

Advocacy for the legal recognition of indigenous peoples and respect for their rights to the lands, territories and resources has been strengthened. Advocacy has taken the form of pressuring government to implement existing laws and policies, lobbying for the legislation of special laws and policies, submission of complaints on the non-compliance by government and companies with international commitments and standards, and negotiating with government and companies to stop encroachment and plunder of indigenous territories through plantations, economic land concessions, mining or logging concessions. These efforts have resulted in significant victories that have effected changes in the lives of indigenous peoples.

For instance, in Cambodia, after complaints submitted to the local authorities had failed, a complaint was submitted to the IFC's Compliance Advisory Ombudsman (CAO), to stop HAGL's rubber plantation activities. As a result of this advocacy, HAGL representatives officially committed not to carry out any further clearance of land or development of its concessions and to return the remaining undeveloped land and forests to the people. HAGL also offered compensation, committed to comply with environmental regulations and to restore affected water sources, as well as to institute a grievance mechanism in relation to their agribusiness operations in Cambodia.

8. Promotion of sustainable development and indigenous natural resource management practices

The process of community mapping has also led to the adoption of sustainable agriculture and natural resource management practices. For instance, in Cambodia, some communities have used their maps to protect their non-timber forest products and resources, sustaining their traditional practices, including traditional conservation practices. In India, a training program on sustainable community development and resource management was also conducted to strengthen local governance and revive traditional practices.

9. Indigenous peoples' empowerment

Community mapping has also served as a means to empower indigenous communities in asserting their rights. It has enabled communities to file claims and secure titles to their land. It has capacitated them to assert their development priorities through the use of community maps in development planning. The confidence gained from knowing the parameters and resources of their ancestral domains has boosted their determination to assert their rights to lands and resources. It has also led to the formation of committees and organizations and fostered community solidarity.

In India, local institutions have been strengthened, in the process, empowering them to become independent in managing their resources. Likewise, significant contributions were made in addressing gender issues and bringing structural changes at the local level. Women, elders and youth have become part of decision-making bodies. Women self-help groups were reinforced through income generating activities and biodiversity conservation efforts. Women have also established their network for cooperation and solidarity at the state level. In addition, the role and potential of the youth in sustainable natural resource management and development were recognized. Adivasi Youth Forums were created to enhance the agency of the youth. This provided an opportunity for the youth to acquire knowledge on the extent of their lands, territories and resources and to continue to use these tools in the assertion of their rights to lands and resources.

Challenges

On the other hand, challenges remain and continue to hinder the progress of community mapping and registration of ancestral territories towards full recognition of indigenous peoples' land rights. These challenges include the following:

1. Some communities still feel that there is a lack of skills and resources to do community mapping. Funding support from donor agencies to implement such activities is also difficult to obtain.
2. The use of GIS technology limits the participation of the communities in producing their own maps. Only a few who have the skills and knowledge in information technology can participate in GIS trainings. There is also lack of resources to obtain GIS software and hardware.
3. Criminalization of community mapping undermines the maps' technical efficiency. Laws such as the Sarawak Land Surveyors Ordinance 2001 in Malaysia and the Magna Carta of Geodetic Engineers in the Philippines seek to restrict the practice of mapping to licensed professionals thereby maintaining a monopoly in the field of survey and mapping. Mapping activities using GPS in India require police permission, which is not easy to obtain. These laws could very well be used as justification to paralyze community-mapping initiatives.
4. A major challenge to the legitimacy and institutionalization of community mapping lies in powerful vested interests threatened by empowered communities. Corporations engaged in large-scale natural resource exploitation are threatened by the questions raised by communities through their maps. Local politicians who zealously guard their political territories continue to demand that traditional boundaries conform to the political boundaries of their respective jurisdictions.
5. In spite of constructive engagement by NGOs and IPOs, there is still a perceived lack of cooperation on the part of government in land rights recognition. In addition, frequent transfer or turn over of officials and personnel in government agencies sometimes results in the loss or misplacement of documents. This has caused some delay in the processing of land title applications.
6. The increasing demand for community mapping puts a tremendous strain on the resources of a few NGOs and community-based organizations already heavily burdened with their current workload. There are not enough skilled and knowledgeable personnel within the NGO network to meet these demands. Some groups are able to help only occasionally as little or no resources are allocated to fully operationalize mapping activities.

7. Accessing information or data from government is daunting, as some information are restricted or confidential. Community mappers require alternative sources of information, such as the Internet, or reliance on their own network to generate the information needed, e.g., on projects that impact on indigenous peoples, such as mining tenements, large-scale plantations and other commercial enterprises.
8. Challenges that hamper smooth community mapping processes in Cambodia include barriers in inter-generational transfer of knowledge, lack of coordination between indigenous communities and supporting NGOs and language difficulties that constrain data collection.
9. The conduct of proper processes for obtaining FPIC of the affected communities is still a real challenge for companies and government ministries and agencies.
10. The guidelines and process of obtaining Collective Land Title (CLT) or Certificate of Ancestral Domain/Land Title (CADT/CALT) are long and tedious. Guidelines have not been translated into local languages, making it difficult for indigenous peoples living in remote areas to comply. It is likewise problematic for indigenous peoples to know how to address the presence of a company on their lands when the remedies are not accessible in their own language.

Conclusion

A number of countries in Asia possess legal and policy frameworks for the respect, protection and fulfillment of the rights of its indigenous peoples to lands, territories and resources. However, in practice, governments have failed to enforce and comply with their human rights obligations.

In order to avoid land grabbing by companies, indigenous communities in the Philippines have tried to register their lands by applying for CLTs/CADTs/CALTs and other land tenurial instruments. However, because of the tedious process of CLT registration experienced by indigenous communities and despite laws defining guidelines for such registration, it is very rare for them to be granted titles. Thus, there is a need to use community mapping for the assertion of the communities' rights to land.

Community maps have proven to be a powerful tool in empowering the indigenous communities in Indonesia to demand from the government due recognition and respect for their native customary rights to land. Delineation of the customary land boundaries has been made easier with the advancement of mapping technology.

Community mapping has also been a powerful tool for change as it has enabled communities in Malaysia to file claims and secure titles. Empowered people are

able to advocate their demands and assert their development priorities through the use of community maps.

In Indonesia, the government has yet to create a mechanism or system for the legalization and registration of indigenous peoples' lands. Thus, indigenous peoples' organizations and supporting NGOs have taken the initiative to conduct participatory community mapping to enable communities to identify and measure their areas, and to register these. Community mapping allows communities to use the maps as evidence and basis in claiming for their land rights.

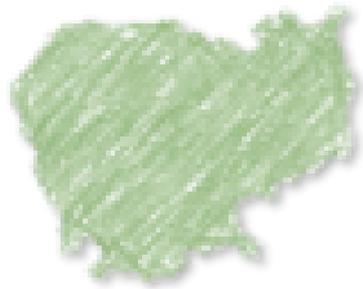
Cooperation within the community has also been enhanced through the formation of networks. Inclusive and rights-based approach to community mapping is empowering indigenous communities and their larger networks in gaining deeper understanding of their collective rights. The community mapping activities have also proven to strengthen solidarity within communities. It is an opportunity for the younger generations to gain knowledge of the extent of their lands, territories and resources and to continue the assertion of their rights through the use of these tools.

Recommendations

Specific recommendations for the government, development partners and countries are forwarded in the respective case studies. At the regional level, the following recommendations have surfaced to address some common needs:

1. More training and capacity building should be conducted among indigenous communities in the different countries in the field of community mapping and Spatial Data Management including GIS.
2. Advances in Information and Communications Technologies should be harnessed and maximized to empower communities and enable them to generate more spatial data that they can use to strengthen their control and governance over their ancestral lands and territories.
3. Support for organisations involved in community mapping is vital for the continuation of community mapping in Asia as a whole. Forming a network of community mappers in the region could facilitate the exchange of information and expertise to further enhance this initiative.

CAMBODIA



Indigenous Peoples in Cambodia: A Background

Cambodia is a multi-ethnic society with a majority of ethnic Khmer. Besides Cham, Chinese¹⁴ and Vietnamese, the remaining population is composed of indigenous peoples using different names. If communities in the northeastern highlands use their ethnonyms as an identity reference to distinguish each other (Jarai, Tampuan, Kreung, Kachak, Brao, Bunong), some also called themselves Khmer Loeu, a name that was given by Prince Norodom Sihanouk in the sixties to denote their geographical upper location.¹⁵ In common conversation, they however say frequently “Khmer yeung” (we, the Khmer). Besides those living in the highlands, peoples belonging to the large group Pear-Samrae in the Cardamom mountains (Baradat 1941) use also their ethnonyms, like the Chong in Koh Kong, but more rarely than in the northeast. As per official data, indigenous peoples in Cambodia comprise 1.3 % of the total national population or around 170,000 people from 24 different ethnic groups in 15 provinces of the country.¹⁶

National Policy and Legal Framework on Traditional Lands

The 1993 Cambodian Constitution contains no specific reference to indigenous peoples, nor does it contain any article or provision explicitly relating to indigenous peoples’ rights. The Constitution only refers to the rights of “Khmer citizens.”

Some constitutional provisions, however, are relevant for indigenous peoples. For example, collective ownership of immovable property is guaranteed in Article 44, which also recognizes the right to fair and prior compensation to both individual and collective owners. Beyond the Constitution, there are many elements of domestic Cambodian law that protect the rights of all Cambodians, not just indigenous peoples, to be involved in the decision making processes that govern what happens to the land they live on.

While aimed at providing a general framework for land ownership in the country, the Land Law also guarantees the recognition and protection of indigenous communities (“original ethnic minority”), traditional natural resource management systems and traditional customary land, making it the only law with specific provisions recognizing indigenous peoples’ land rights. Articles 23 to 28 of the Land Law relate to the identity and rights of indigenous communities, with provisions for collective land titling. These provisions affirm the collective ownership of indigenous lands, forests and other cultural and livelihood resources.¹⁷ It further recognizes the role of traditional authorities, mechanisms

¹⁴ The Chinese have a very long history in the country, from the pre-Angkor times onwards. Main occupation has been trade and establishing business, including in the most remote part of the provinces where indigenous peoples are living.

¹⁵ In contrast with the Khmer Kandal (Khmer from the central valley) and the Khmer Khrom (from the southern Mekong tributary).

¹⁶ Source: Ministry of Rural Development (MRD) and Department of Ethnic Minority Development.

¹⁷ HRAC, AIPP (2006). *Indigenous Peoples Human Rights Report in Asia: Cambodia, Thailand and Nepal*, p.30-31.

and customs in indigenous peoples' decision-making processes.¹⁸ However, these provisions also highlight the fact that most indigenous communities in Cambodia do not have title over their ancestral lands, effectively rendering them as "squatters" in their own lands. Article 26 grants collective ownership of land to indigenous peoples, while enjoying the same rights as individual owners. The law protects the land of indigenous communities from the undue interference by government authorities by ensuring indigenous peoples' right to control, manage and utilize their land. Article 248 of the Land Law prohibits persons from settling on traditionally occupied land of indigenous peoples, referring to indigenous territories, which have not yet been granted any title. Such act is considered a penal offence under the Land Law, which can draw a fine of 10 to 25 million Riel (approximately 2,460 to 6,150 USD, at present rates), aside from administrative sanctions.

The 2009 Sub-decree on Procedures for Registration on Indigenous Lands provides land tenure rights to indigenous communities, and provides the mechanism for the registration of collective land titles (CLT) to complement the 2001 Land Law. As a pre-condition to the grant of CLT, communities must register as a legal entity, which proves their customary occupancy to that collective land.

The 2002 Law on Forestry ('Forestry Law') was enacted to govern the management of Cambodia's forests. It provides for the official recognition of community forestry and offers communities an opportunity to obtain user and management rights to forests in renewable periods. Indigenous communities, who maintain community forests and rely heavily on forests for their livelihood and maintenance of cultural practices and for local economic development, have cited this law to have their community forests recognized.

The 2008 Law on Natural Protection Zone provides for protection and recognition of indigenous peoples' rights to land and natural resources inside and around protected areas, including their safe access to traditionally used lands, and respect for their customs, beliefs and religions (Chapter 6). It refers to indigenous communities' sustainable land use that has to be respected. Any title given to land inside and around protected zones shall also be authorized by the Ministry of Environment and be in conformity with the Land Law of 2001.

The 2009 National Policy on Development of Indigenous Peoples (NPDIP) provides the main policy framework related to indigenous land rights in Cambodia and sets out policy directions in the fields of culture, education, health, and agriculture, among others.

Despite such legal recognition and protection, indigenous people in Cambodia are still facing serious problems related to land mainly arising from the grant of economic and social land concessions without the FPIC of the affected indigenous communities. Economic land concessions (ELCs) with 99-year

¹⁸ See, for example, AIPP (2013): p. 68 and Men Prachvuthy, *Impacts of Economic Land Concessions on the Livelihoods of Indigenous Communities in Northeast Provinces of Cambodia*, March 2011.

contracts (recent concessions have been reduced to 50 years) are granted to foreign companies mostly on indigenous peoples' territories. These ELCs are plantations, mines and other extractive industries. Land grabbing by powerful individuals is also alienating substantial territories of indigenous peoples. Social Land Concessions (SLCs) are taken out of indigenous territories and given to so-called landless Khmer, veterans and other sectors. Illegal logging related to ELCs and logging concessions is so rampant that Cambodia has lost 70%¹⁹ of its tree cover only between 2010 and 2013. These losses are impacting severely on indigenous peoples' culture because of the forest-dependent nature of their lifeways and livelihoods. On the other hand, while indigenous peoples and their communities are not strongly organized to confront these problems, developments are dividing and causing internal conflicts among them.

Registration of Collective Land Titles

The Land Law was passed in 2001 recognizing the right of indigenous peoples to collective or communal land title (CLT), but it was only at the end of 2011²⁰ that the first CLT was issued. By January 2013, two²¹ more communities were issued land titles. The 2001 Land Law did not provide a road map for the issuance of CLTs and it was only in 2009 that the government issued the *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* where Chapter 4 Article 8 states that registration of collective property is the responsibility of two ministries with specific roles as follows:

- The Ministry of Interior notifies the approval of the community's registration as a legal entity. The notification of the Ministry of Interior is a compulsory document required before taking any further step.
- With the notification, the chairman of the community committee or traditional authority of each indigenous community applies for registration of community land as collective title at the Municipal/District Office of Land Management, Urban Planning, Construction and Cadastre of the Ministry of Land Management, which issues the legal property title for the community to be legally recognized as an owner of the land.

The registration involves different stages with several steps and institutional actors at each stage, making it so tedious that up to now only 15 indigenous communities in three provinces (Ratanakiri, Mondulokiri and Kampong Thom) have gotten their approved CLT from the Ministry of Land Management and from the Ministry of Urban Planning and Construction (MLMUPC). Therefore, the role of NGOs is crucial in providing technical assistance in drafting the by-laws, facilitating and communicating with relevant stakeholders or relevant department of government. Material and funding support for provincial officers

¹⁹ <http://www.eco-business.com/news/industrial-concessions-causing-massive-deforestation-in-cambodia/>

²⁰ <http://www.phnompenhpost.com/national/indigenous-communities-receive-land-titles>

²¹ P7. Land titling in Cambodia.

working with the community is also crucial, as the government does not provide budget for this work of their officers. These provincial officers are responsible for preparing required documents and submitting these by-laws to the Commune Council, District and Provincial Governors for signature and recognition as indigenous community legal entity.

Registration of Economic Land Concessions

The granting and monitoring of economic land concessions is the responsibility of two ministries and the local government concerned:

- The Ministry of Agriculture, Forestry and Fisheries (MAFF) is the authority responsible for granting ELCs and ensuring that the law related to ELCs is followed. Until 2008, local authorities could also grant concessions for areas smaller than 1,000 hectares, but this was removed after the ELC law was amended.

Details of all ELCs should be listed in the ELC Logbook (Sub-Decree No. 146 on ELCs 2005, Article 36), which should be updated and maintained by the MAFF. Although the ELC Logbook is a public document, only an English summary is available on the Internet, rendering it inaccessible to most Cambodians, much less to villagers living in remote areas.²²

- The Ministry of Environment (MoE) is responsible for assessing the environmental impact of new development projects, including ELCs, and ensuring that environmental laws and regulations are followed. Local and provincial governments and departments handle day-to-day concerns with the ELC owners and any problems that may come up. If necessary, they may forward questions or problems to higher authorities.

CAMBODIA

Lessons Learnt and Good Practices in Land Rights Recognition

In March 2004, an Inter-Ministerial Task Force for the Study of the Registration of Indigenous Land Rights (the "National Task Force" or NTF) was formed to implement the decision of the Council of Land Policy to prepare the draft of a sub-decree on the registration of communal ownership, or land title, for indigenous communities. Targeting the indigenous peoples-dominated provinces of Mondulakiri and Ratanakiri, the NTF identified three pilot communities, two districts in Ratanakiri and one in Mondulakiri. The process of developing this sub-decree required the by-laws of the communities to support their registration as a legal entity under the Ministry of Interior (MoI). After an extended period of three years, the three communities had developed their by-laws by end 2006 and the MoI signed by early 2007. This pilot phase was supported by the International Labour Organisation (ILO), which reported that:

But what should be very clear here, is that in accordance with the Land Law, and as stated in Chapter 2 of this case study, the rights of indigenous

²² This website can be found at: <http://maff.gov.kh/elc/>.

Table: Process for Collective Land Titling in Cambodia

Stage 1: Self-identification and registration for recognition at the Ministry for Rural Development			
1 Indigenous community representative applies for Participatory Land Use Planning (PLUP) registration and claim for community immovable property at the Commune Council	2 Commune Council includes the PLUP in its annual commune plans and forwards the application to the District Cadastral Administration (DCA)	3 DCA checks the application for PLUP registration and records it in its system	4 DCA develops a PLUP committee to set up internal rules and regulations and negotiate boundaries with neighbouring communities
Community learns about the relevant laws and requirements for registration; consulting with government authorities and experts in the preparation.	Community self-identifies by declaring the indigenous community and ethnic group they belong to	Each indigenous family representative applies for membership in the community which will be appraised by the MRD	Community drafts its by-laws/statutes, including a compilation of the traditional authorities and practices, and set up a working group to review the document
5 Indigenous community applies for recognition as a legal entity to process collective land titling at the Commune Council (CC) and provincial governor's office	Stage 2: Registration of legal entity by-laws with the Ministry of Interior (MOI)		
	6 Provincial governor's office establishes a provincial working group (PWG) for land titling	7 PWG works with and supports DCA in demarcation, measurement and adjudication	8 DCA requests technical support from the National Department of Geography and Cadastre to conduct Global Positioning System (GPS) survey and document possible land disputes in the community area
Community requests permission from the provincial governor to hold community plenary meeting to review, finalise and approve the community by-laws/statutes. Local government (commune, district and provincial) officials, representatives of MoI, MRD and support organisations participate.	Community applies for registration with the Commune Council (CC), the district administration and the provincial governor with the approved by-laws as a supporting document		
9 Investigation of all available evidence concerning rights of community land to be registered	10 DCA prepares adjudication documents consisting of record of land and survey form, map of community land, confirmation letter of status of indigenous community to be registered and approval of community by-laws (public display for 30 days)	11 During public display, any conflicting parties claiming the community land being registered are allowed to file a complaint to DCA	12 After expiration of public display, DCA prepares the sporadic index map and forwards all documents to the provincial cadastral administration (PCA)
Stage 3: Issuance and registration of the collective land title by the Ministry of Land Management Urban Planning and Construction (MLMUPC)			Community waits for certification notice after expiration of the 30-day public posting.
13 PCA verifies completeness of documents and sends these to the Central Cadastral Administration for registration			Community resolves all land disputes

*communities to their lands are protected by laws, regardless of whether they have yet registered as legal entities or not, and any delays in this process do not imply in any way that these rights do not already exist. Furthermore, a number of land use maps developed by indigenous communities have already been officially recognized in areas such as Ratanakiri, by official acknowledgement or Deika. This also should serve as an interim protection pending the actual registration of community title.*²³

Highlander Association (HA) was the only indigenous organization that was involved in the pilot project. HA was established in 2001 and has wide experience working with indigenous communities in Ratanakiri Province. It has been working with 240 communities in 49 communes in Ratanakiri composed of Tompoun, Kreung, Proav, Jaray, Kajak, Kavaet, Bunong and Lon indigenous peoples. It also has strong connections with other relevant networks throughout Cambodia and internationally.

CAMBODIA

Indigenous communities have created several mechanisms to protect the rights to their lands, and to work for the recognition of these land rights under the law. Some of the strategies adopted are inter-village networking, exposure visits to other communities with good practices, holding joint events like trainings, meetings, workshops and conferences. Despite these efforts, communities were still losing lands and could not defend them. Thus, some indigenous communities in Ratanakiri Province decided to come up with initial community maps to be used as evidence against land concessions granted by the government and encroachment by other parties.

This case study is on the seventeen (17) indigenous communities impacted by the economic land concessionaire, Vietnamese Corporation Hoang Anh Gai Lai (HAGL) in Andong Meas and Ochum districts in Ratanakiri Province. HAGL which invested in Cambodia in 2008 has 47,000 hectare- concessions, way beyond the 10,000-hectare limit set by law. The 17 communities have come up with initial community maps as part of their assertion of their rights against the HAGL's rubber concession. One of the affected villagers from Kres village in Poi Commune, Ochum District expressed the value of these maps when she said:

“It is much easier for our community members to remember and notice the different resources in our territory and thus we can clearly identify the specific impacts, such as loss of our spirit and bamboo forests, productive land, farming and paddy field, wildlife, streams, and livelihoods.”

Community Mapping Activity

The community mapping process is part of the campaign against land grabbing by the HAGL concessions, where complaints were filed with the Compliance

²³ P.6 Indigenous Community by Law Development, International Labor Organisation: Support to Indigenous People Project in Cambodia.

Advisory Ombudsman (CAO). HAGL is part of VEIL, which is funded by the International Finance Corporation (IFC) of the World Bank.

The first objective of the community mapping was to identify and measure the areas affected by the HAGL concessions. This is primordial as the maps are being used as evidence documents when negotiating with the company and the government. Another objective is for the affected villagers to have a specific knowledge about the resources within their land and territories and thus to be able to measure what is lost due to the HAGL operations and other developments. Another aim is for the next generation to have knowledge of the extent of their lands, territories and resources, the status of these in relation to developments, and to be able to use this knowledge to continue the assertion of their rights to these lands and resources.

Community mapping planning

The action plan in preparation for the community mapping activities included surveys of communities; needs assessment; research and documentation of land issues, the HAGL and its concessions; as well as meetings with all the affected indigenous communities.

These activities were started in 2013 with the overall objective of raising the communities' awareness on their rights and the possible access to justice, and training them on advocacy. It also involved the creation of the Indigenous Peoples Working Group (IPWG) to unite the communities, which would act as a coordinating body communicating with the local authorities and civil society.

Strengthening networking and capacity building activities

In 2014, HA, Cambodia Indigenous Youth Association (CIYA), Indigenous Rights Active Members (IRAM), Equitable Cambodia (EC) and Inclusive Development Cambodia (IDC) organized capacity-building, mobilization and networking trainings among the affected community members and with the village representatives to analyze the situation. Village representatives were trained during meetings, exposure visits, sharing workshops and skills training sessions. They received trainings on the rights of indigenous peoples related to the national legal framework as well as regarding the FPIC principle, and on environmental impact assessment guidelines. They were also trained on facilitation and communication, dialogue and negotiation, gathering information and documentation. Regular meetings were organized with communities to monitor their understanding of their fundamental rights and of the regulations, laws and other policies that affect their lives and traditional customary practice.

Community mapping process

Thanks to the initial trainings, communities have understood the need for community maps as evidence to be used against land grabbing by the companies. Since 2015, every community has been into the process of producing maps which

locate their resources such as streams, ponds, rivers, mountains, spirit forests, farmlands, shifting cultivation and grazing lands. The next step is to validate these maps with Global Positioning System (GPS). Communities were trained to analyze sources to be contained in the maps, and why a map could be a necessary source for the local community. On the immediate use of the sketch maps, some communities used their maps to protect their non-timber forest products (NTFPs) and other necessary sources for sustaining their traditional practices, including those on conservation.

Advocacy on Land Rights Recognition

Community mapping, as part of the advocacies carried out for land rights recognition against HAGL rubber concessions, was significant in providing vital support to other advocacy actions. Since early 2013, HA has supported seventeen indigenous communities covered by the HAGL concessions to submit complaints to the local authorities such as the Commune Councils, District Governors, Provincial Governors and Provincial Court against HAGL's rubber plantation activities but to no avail.

Findings from a research conducted by HA showed that HAGL received funds from the IFC/World Bank group for agro-investment in Cambodia. The seventeen affected indigenous communities then lodged a complaint with the IFC's Compliance Advisory Ombudsman (CAO) mechanism for conflict resolution. The CAO team facilitated the negotiation process between the affected indigenous community and the company by engaging NGOs, local authorities and the relevant Ministries in the process.

A major breakthrough was reached in the mediation between the Corporation and fourteen indigenous communities in their meeting in September 2015 in Siem Reap. Thereby, the HAGL representatives officially confirmed the company's commitment not to carry out any further clearance or development of its concessions and return the remaining undeveloped land and forests, which the company estimates to be greater than 10,000 hectares. The commitments were made in two letters. In the first letter, HAGL agreed not to clear and develop lands belonging to three villages, which were previously at risk of losing their land to the expansion of the company's rubber plantations. Similar commitments were made in the second letter to avoid causing additional adverse impacts to eleven villages already affected.

HAGL also agreed to conduct joint visits to identify boundaries of its plantations and offered compensation for customary lands/resources of the communities or to return the land, if ascertained by the joint visits. Further, it agreed to comply with environmental regulations and restore affected water sources in the villages as well as adopt an operational grievance mechanism in relation to their agribusiness operations in Cambodia. Finally, in recognition of the impacts

caused by the company's operations, HAGL officials apologized to representatives of the fourteen villages and offered one cow (400 kg in weight) and 500 USD to each of the villages as an offering for their spirits.

In order to provide more support and visibility of the indigenous initiative on land rights recognition, indigenous delegates resorted to various platforms to flag the issue, such as the United Nations Permanent Forum on Indigenous Issues (UNPFII), where they introduced their case in a side-event as well as submitting it to the UN Special Rapporteur on the Rights of Indigenous Peoples (UNDRIP). HA also submitted a statement concerning dams, land issues and logging due to the granting of ELCs in other provinces.



Chansophea Sompoy

Jarai indigenous women in Oyadav, Ratanakiri Province harvesting in their farm

#LANDRIGHTSNOW Campaign in Cambodia

Cambodia's support for the Campaign is led by the Cambodia Indigenous Peoples' Alliance (CIPA), which brings together indigenous organizations and supports CSOs and networks. In supporting the Campaign, CIPA focuses mainly on capacity building and network strengthening activities of indigenous peoples' human rights defenders, most of whom are youth, especially with regard to the documentation and monitoring of the

situation of indigenous peoples' land rights, advocacy for policy change, and proper implementation of laws and policies recognizing collective rights of indigenous peoples in the country.

Apart from CIPA, there are currently eleven organizations and networks that are participating in the Campaign including CIYA (Cambodia Indigenous Youth Association), CIPO (Cambodia Indigenous Peoples' Organization), GADC (Gender and Development for Cambodia), STAR Kampuchea and the NGO Forum Cambodia, among others. On 15 March, following the global launch of the Campaign, a press conference was organized by CIPA that gathered 30 indigenous community representatives to share concrete cases and issues affecting their land rights. Particular message was conveyed to the Royal Government of Cambodia demanding the recognition of indigenous peoples' land rights for them to fight climate change, citing efforts at poverty reduction and achieving the Sustainable Development Goals.

Since then, a series of activities has been undertaken by CIPA to support the Campaign. Among others, the "*Policy Asks*"²⁴ of the Campaign has been translated into Khmer and a video clip is produced by the indigenous youth group following the launch of the Campaign on the demand of the indigenous peoples in Cambodia for their land rights. The most recent one is the community exchange and mutual learning programme, organized in July in cooperation with the Mother Nature Cambodia. The exchange had the main purpose of facilitating experience exchange in promoting the land rights of indigenous peoples and strengthening the solidarity among indigenous youths, in particular young human rights defenders from indigenous communities.

During the Indigenous Peoples Day 2016, on 9 August, a national level celebration was organized by indigenous organizations in collaboration with supporting civil society organizations as well as the Ministry of Rural Development of Cambodia. The national celebration was participated by more than 1000 people, while about 3000 people were part of the local level celebration, which was organized in 36 different villages.

Challenges

Significant challenges faced during the community mapping process include barriers in inter-generational transfer of knowledge due to language and philosophy, which created significant difficulties in data collection. Further, lack of coordination between indigenous communities and support NGOs was another challenge. The formation of the Indigenous Peoples Working Group (IPWG) helped in addressing this. Traditional village celebrations and events

²⁴ Ref. footnote 12

created opportunities for collective mobilization, collaboration and coordination in order to tackle the problems of mobilization and coordination.

Besides, there is still a gap on the side of both the company and the government ministries and agencies to conduct proper processes for obtaining FPIC of the affected communities. Up to now, they have been equating any consultation process with a community's consent, even if the latter did not agree with the project. In cases of land grabbing by a company, affected communities still do not have access to standard compensation policy or guideline in terms of redress.

Language remains a challenge for communities to claim their rights, as the contracts the companies use are generally drafted in Khmer language, which is not read by villagers in remote areas. Therefore, their consent is not actually valid if they could not access the information in their own language. The language barrier is also a challenge in networking outside of the community, even among other language groups.

The process to obtain a CLT has not been translated into the communities' own languages. The tedious processes required are difficult to access for indigenous peoples living in remote areas. With remedies inaccessible in their own language, indigenous peoples still have to know how to address the presence of a company on their lands.

Despite a legislation protecting indigenous peoples, and communities having accessed trainings that allow them to claim their rights, the implementation remains a major challenge when it comes to securing indigenous peoples' land rights.

Conclusion

Cambodia has the legal and policy frameworks for the respect, protection and fulfillment of the rights of its indigenous peoples, particularly their rights to lands, territories and resources. However, in practice, the Government of Cambodia has failed to enforce and comply with its human rights obligations.

In order to avoid land grabbing by companies, indigenous communities try to register their lands and get CLTs. However, and because of the tedious process of CLT registration, it is rare for them to be granted the titles. In the absence of a title, community mapping is employed to assert communities' rights to their lands.

As in the case of HAGL's land grabbing in indigenous territories, the first objective of community mapping is to identify and measure the areas affected by a concession. With trainings and support, indigenous communities can use such tools for their advocacies and collective land registration purposes, using the maps as evidence documents when negotiating with the company and the government. Furthermore, the advocacy activities allowed the affected

villagers to develop specific knowledge about the resources within their land and territories and thus were able to measure the loss due to HAGL operations and other developments. The community mapping activities have also strengthened the communities' solidarity, as it is an opportunity for the next generations to have knowledge of the extent of their lands, territories and resources and to continue the assertion of their rights to these lands and resources using these tools.

Recommendations

To the Royal Government of Cambodia:

- Suspend the granting of any ELC contracts in indigenous territories unless the FPIC of affected indigenous peoples as defined in international law is obtained. Where indigenous peoples give their consent to developments in their territories, compensation, relocation and other compensatory arrangements must be made according to international standards and best practices.
- Accelerate the process of granting indigenous communal land titles by reviewing existing procedures and policy to identify and resolve bottlenecks, and by providing sufficient resources, both human and financial, for implementation.
- Resolve with dispatch all issues arising from ELCs encroaching on indigenous territories according to rules and regulations already set in the law.
- Issue national legislation explicitly banning forced evictions, and stating clearly the steps for companies to take in order to obtain FPIC from indigenous communities.
- Increase the awareness of local authorities and companies on FPIC principles through workshops, seminars, trainings and other forms of capacity building and awareness raising.
- Adopt procedures to ensure effective and meaningful participation and consultation with indigenous peoples as a way towards sustainable and inclusive development. As an urgent matter, official segregated data of both indigenous peoples and communities should be made available.

To the Indigenous Peoples in Cambodia:

- Take further steps to identify traditional land boundaries using community mapping, and other administrative procedures in order to benefit from legislation, policies, and other instruments related to the protection of indigenous peoples' human and collective rights.

- Strengthen their capacity to comply with the requirements for collective land titling as a step towards the protection of their land rights.

To development partners of indigenous peoples:

- Support legal assistance and capacity building of the affected communities, focusing on preventive approaches to protect the land of indigenous communities in Cambodia, and aimed at the implementation of self-determined development programs, projects and plans conceptualized by indigenous peoples.



Phan Sokhet

Indigenous children and youth of Krueng in Ratanakiri Province gather for rice ceremony

INDIA



Indigenous Peoples in India: A Background

India is home to the largest population of indigenous peoples of any country in the world. As per the 2011 census, the population of Scheduled Tribes (STs) or Adivasi, the terms by which indigenous peoples are known, is 104.28 million.²⁵ They constitute 8.6 percent of the country's total population with 705 groups listed as STs in 30 states and Union Territories across India. More than half of the indigenous peoples inhabit the central or the mid-Indian region and they form the overwhelming majority of the population in some of the Northeastern states. The proportion of indigenous peoples compared to the total population in states is the highest in Lakshadweep (94.8%) and Mizoram (94.4%) and followed by Nagaland (86.5%) and Meghalaya (86.1%).²⁶ However, only 10.03% of indigenous peoples live in urban areas²⁷, whereas they constitute 10.4 % of the total rural population in India.²⁸

Indigenous peoples in India range from some of the last uncontacted indigenous communities in the world, like the Sentinelese of the Andamans, to some of the largest, such as the Gonds and Santhals of Central India. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. Across circumstances and areas, like other indigenous communities around the world, India's indigenous peoples do share characteristics – social, political and economic marginalization, as well as expropriation of their traditional lands and territories.

Definition of Indigenous Peoples

In India, 'Scheduled Tribes' is used to refer to indigenous peoples instead of the UNDRIP terminology, so the national legal and policy frameworks laid down for STs as those relating to indigenous peoples will be considered. It is however to be noted that the Scheduled Areas and Scheduled Tribes Commission (1960), also known as the Dhebar Committee refer to the tribes as 'indigenous' in their reports.²⁹

The STs are distinguished from the caste groups or other minority groups and are accorded special status in the Indian Constitution. As mentioned in article 366 (25)³⁰ of the Indian Constitution, they have, de facto, been treated as 'indigenous peoples' in India for every legal, constitutional and administrative purpose.³¹

²⁵ Indigenous Peoples & National Human Rights Institutions in Asia: Good Practices and Challenges, AIPP, 2014, p. 36

²⁶ <http://tribal.nic.in/Content/StatewiseTribalPopulationpercentageinIndiaScheduleTribes.aspx>

²⁷ <http://tribal.nic.in/WriteReadData/userfiles/file/Statistics/StatisticalProfileofSTs2013.pdf>

²⁸ INDIA AND THE RIGHTS OF INDIGENOUS PEOPLES Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples, AIPP, 2010, p. 20.

²⁹ Op. Cit, Bijoy, C.R. and Tiplut Nongbri (January 2013), p.1.

³⁰ Article 366 (25) defines Scheduled Tribes as 'such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution'.

³¹ For more details see Bijoy, C.R. and Tiplut Nongbri, Republic of India, Country Technical Notes on Indigenous Peoples' Issues, IFAD and AIPP, January 2013, <http://www.ifad.org/english/indigenous/pub/documents/tnotes/india.pdf>.

They are the tribes or tribal communities that have been declared as such under article 342 of the Constitution of India by the President through a public notification.³²

Indigenous peoples' characteristics have been reported in the 1931 Census and in the Report of the first Backward Classes Commission (Kalelkar Commission) 1955, the Advisory Committee on Revision of the Scheduled Castes and Scheduled Tribes lists (Lokur Committee) 1965 and the Joint Committee of Parliament on Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967 and the Chanda Committee 1969.³³ The characteristics developed and widely accepted and used in academic discourses, policy making, administrative purposes are: primitive traits, geographical isolation, distinct culture, shy of contact with community at large and economically backward.

The government of India and some Indian "intellectuals" deny the applicability of the term "indigenous peoples" and maintain that all peoples in India are indigenous despite being one of the countries that voted in favor of the adoption of the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP) in 2007. However, in the 2012 Universal Periodic Review (UPR) National Report, the government of India recognized the need to empower the Scheduled Tribes to tackle discrimination that is perpetrated against them.³⁴

INDIA

National Policy and Legal Framework on Traditional Lands

The Constitution

Article 244 of the Constitution, provides that the Fifth Schedule shall govern administration and control of Scheduled Areas and STs in any state other than Assam, Meghalaya, Tripura and Mizoram, and that tribal areas in Assam, Meghalaya, Tripura and Mizoram (all in northeast India) shall be governed by the Sixth Schedule. The Fifth Schedule provides for the establishment of Tribal Advisory Councils and the declaration of Scheduled Areas. The Sixth Schedule provides for the creation of Autonomous District and Regional Councils (ADCs) and accords certain legislative, executive and judicial powers to these autonomous bodies. There are no Scheduled Areas in Arunachal Pradesh, Manipur, Nagaland, and Sikkim. Regarding land rights, the ADCs have legislative powers on matters relating to allotment, occupation, or the setting apart of land, other than reserved forests, for the purpose of agricultural or grazing or for residential or other non-agricultural purposes or for any other purpose likely to

³² See <http://indiankanoon.org/doc/768139/>.

³³ The Government of India and its agencies use these criteria with modalities for determining their claims for inclusion in, exclusion from and other modifications in orders specifying the list of Scheduled Castes and Scheduled Tribes. The National Commission for Scheduled Castes and Scheduled Tribes also in their guidelines for examining the proposals of inclusion in/exclusion from the list of Scheduled Tribes used the same criteria. Also refer C.R. Bijoy et al (eds) *India and the Rights of Indigenous Peoples*, AIPP, 2010, Chiang Mai, p. 13-14.

³⁴ Franciscans International, Universal Periodic Review (UPR), 13th Session (May-June 2012), Joint Stakeholders' Submission on: Human Rights in India, paragraphs 35, accessed 13th February 2015 at: http://franciscansinternational.org/fileadmin/docs/UPR_Reports_2011/FI_India_UPR_Report_2012.pdf

promote the interests of the inhabitants of any village or town (Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied for public purpose); for the management of any forest that is not a Reserved Forest; for the use of any canal or water course for purpose of agriculture and for the regulation of the practice of *jhum* or any other form of shifting cultivation.

The Northeastern states have special constitutional provisions in Articles 371-A for Nagaland, 371-B for Assam, 371-C for Manipur, 371-F for Sikkim, 371-G for Mizoram, and 371-H for Arunachal Pradesh. The features provided therein differ from how the rest of the country is treated in law. These are intended to provide additional security to the people. Among them, Nagaland and Mizoram under Articles 371-A and 371-G provide that central laws relating to certain subjects – in particular, lands and resources related to land, as well as customary practices of communities in these states – will not apply unless specifically extended to them by the concerned State Assembly.

The Panchayats (Extension to Scheduled Areas) Act, 1996 contains several key provisions which give statutory recognition to some of the key rights elucidated in the international conventions, as well as the Constitution of India, with regard to rights of indigenous peoples to their traditional homelands and resources, and to decision-making processes regarding developmental activities. However, the enforcement of this statute, dependent as it is on amendments to state level Panchayati raj legislations by State Legislatures, has been considerably hampered in its implementation, both in letter and spirit.

[The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013](#)

The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation & Resettlement Act 2013 (RFCTLARR Act) was enforced replacing the pre-Independence 'Land Acquisition Act 1894' enacted by the British India Government. The new act attempts to be more people-friendly and introduces a paradigm shift of acquiring land for developmental purpose/public purpose through consent.³⁵ It also requires a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and a higher compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the peoples affected by the acquisition. However, the law contains many exemptions.³⁶

Corporations and companies have criticized the Act as a threat to economic development and as it negatively affects industrialization and urbanization.³⁷ In

³⁵ See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2475800

³⁶ See <http://www.prsindia.org/billtrack/the-land-acquisition-rehabilitation-and-resettlement-bill-2011-1978/>.

³⁷ See <http://economictimes.indiatimes.com/opinion/swaminathan-s-a-aiyar/land-acquisition-bill-is-a-luddite-throwback-to-19th-century/articleshow/22040184.cms>.

the first judgment applying the provisions of the RFCTLARR Act 2013, the Supreme Court struck down the acquisition of land for a canal in Chennai for the reason that the physical possession of land has not yet been taken over by the government despite more than five years of being awarded the same.³⁸

Despite the Act being seemingly pro-people, some view it as problematic and it is anticipated that land acquisition will be made easier and will increase with the number of development and infrastructure projects, which are in the pipeline. Thus, forcible land acquisitions or the conflicts related to these are not likely to end. Civil Society Organizations claim that the government has sidelined RFCTLARR Act, 2013, which clearly states, "Unless 70% of the total local population gives their consent, the government cannot acquire even an inch of the indigenous land."³⁹ Bowing to corporate interests, the RFCTLARR (Amendment) Ordinance 2014 was proposed by the government in December 2014, primarily doing away with the mandatory Social Impact Assessment and consent of the majority who own the land, the critically important components in the law. However, the Amendment to replace this Ordinance could not get through the parliament due to intense opposition within and outside the Parliament.

INDIA

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Forest Rights Act (FRA) seeks to recognize the rights to land and other resources of forest-dwelling and forest-dependent communities denied to them by forest laws thus far. The use of land includes livelihood activities such as the collection of minor forest produce, the use of water, of grazing grounds, and of habitat for shifting cultivation. Marginal communities living in or near forests have long been made more vulnerable by the State's lack of acknowledgement of their right to their forest-dependent livelihoods. Under the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972, local peoples' right to forestland and resources had to be affirmed by a forest settlement officer. Those not recorded in the "settlement process" were susceptible to eviction any time.

Under the Forest Rights Act, rights to forests include ownership rights, use-rights (for minor forest produce, grazing areas, pastoralist routes), relief and development rights (entitlement for rehabilitation in case of illegal eviction or forced displacement, and to basic amenities) and forest governance rights (the right to protect forests and wildlife). The process by which these rights are recognized is outlined in Section 6 of the FRA. It is the *Gram Sabha* or, as per Section 2 (g), any traditional village institution, "with full and unrestricted participation of women" that passes a resolution determining which

³⁸ See <http://indianexpress.com/article/india/india-others/new-land-act-cautious-mizoram-looks-to-nagaland-decides-to-consult-constitutional-expert-before-implementing/>.

³⁹ See http://www.business-standard.com/article/opinion/land-acquisition-quashed-under-new-law-114091400695_1.html.

community's rights to which resources and to what extent are to be recognized by the government.

The FRA has become operational with the notification of its Rules in 2008. Consequent to the enactment of the FRA, diversion of any forest land for non-forestry purpose such as for dams, mines, infrastructure projects etc. requires the recognition of forest rights of the community as a pre-condition. In addition, the informed consent of the village assembly is also required. In the context of government plans to construct hundreds of dams, large-scale mining and infrastructure projects in the region, these provisions attain immense significance for indigenous peoples. There is an increasing trend to use FRA in the courts to defend indigenous peoples' rights.

On 6 September 2012, the Ministry of Tribal Affairs (MoTA) issued a notification amending the Forest Rights Rules, 2008 to strengthen the implementation of the FRA. Yet, the FRA is still not fully implemented even after enactment of the Forest Rights (Amendment) Rules 2012.

State laws

Besides national laws, various states in India have state laws that affect rights of indigenous peoples over their lands, territories and resources. One example is the "Odisha Land Grabbing (Prohibition) Act, 2015" recently passed by the Odisha government. The Act criminalizes occupation of land without legal document (*patta*), punishable by seven years imprisonment. Tribals in the State have occupied and survived off their lands for generations without legal registration. Only some have legal documents over their lands. This law was adopted despite dissent, including a boycott, expressed by the opposition party.

Land Alienation and Acquisition

Loss of land remains the single biggest cause of deprivation of the livelihoods, lives and homelands of STs across India. The mechanisms for such expropriation of land vary, but included are the forest laws and major development projects that result in displacement of people. The power of the Indian State to forcibly acquire private property (and to divert common property to any use it sees appropriate) has been used with particular ferocity against Adivasi communities, who have suffered disproportionate displacement and loss of livelihoods as a result of repeated seizure of their resources in this manner. Indian law provides very few institutional or statutory protections for common resources and homeland.

Aggressive development policies and projects already pose a threat to the traditional customary laws. The concerned parties – the tribal elites who are at the forefront of negotiating these land deals and contracts, and the multinational companies and representatives of the Indian State - do not holistically address the value of lands and territories. There is no focus on the environmental,

cultural, spiritual, traditional or customary dimensions of land. The government and the parties involved are not informed of the fact that many indigenous landholding systems are not connected with the mainstream system as in the case of other parts of India. The distinct land ownership systems, which range from community land holdings, family plots to individual titles, are often in line with indigenous practices and customary laws.

Among various development projects in India, the National Hydroelectric Power Corporation (NHPC) Project is one of the dam projects violating the rights of indigenous peoples. In 2013, a group of 26 organizations from Northeast India under the banner of the Northeast Dialogue Forum jointly wrote to leaders of India, China and Bangladesh, and based their recommendations on customary and international laws as guaranteed by the Universal Declaration of Human Rights and the UNDRIP. They expressed concern over the issue of water and the adverse impacts of mining and mega dams in the region.⁴⁰

In terms of mining, the identification of chromite deposits in Ukhrul and Chandel districts in Manipur has led the government to grant mining clearances, disregarding constitutional provisions. Peoples in these districts are restive as they face powerful extractive industries entering their areas.

Dams, mining as well as oil exploration and drilling licenses given by government to many companies in or around indigenous peoples' territories do not respect communities' right to FPIC.

INDIA

Community Mapping in India

Indigenous communities in the states of Odisha, Chattisgarh and Jharkhand of India conducted community mapping and advocacies for land rights recognition under a project entitled "Securing forest rights and enhancing resource management of indigenous peoples in Asia" implemented in 2014.

Thirty villages – ten each in the three states – generated resource and social maps under the project. The villages comprised 1,083 households with a total population of 7,412. The first objective of the project was to identify and measure the community area for the maps to be used as evidence documents either when applying for land titling under the FRA or when negotiating with a company or the government in case of land grabbing. Another objective was for the affected villagers to have a specific knowledge about the resources within their land and territories. A third objective is for the next generation to gain knowledge of the extent of their lands, territories and resources, the status of these in relation to developments, and to be able to use this knowledge to continue the assertion of their rights to these lands and resources.

⁴⁰ Dimapur declaration on water and indigenous communities rights <http://www.pressenza.com/2013/05/52904/>, 21st May 2013.

In all three states, the process was as follows: trainers formed a mapping team in each village and trained them with a specific mapping technique requiring the use of GPS. After this, the mapping team trained the whole community to enable them to take the lead in field mapping activities, and are now independent in doing these. As a follow up, the trainers conducted inter-community level mapping trainings in their respective state. Surveys related to the mapping activities have been completed in 15 villages. Communities continue mapping activities for the remaining villages.

Advocacy on land rights recognition

Under the same project, the indigenous communities were given awareness raising trainings on the Forest Rights Act (FRA) and Rules of 2008 and its 2012 amendment as well as on the Panchayat Extension to Schedule Area (PESA) Act. These trainings which aimed to strengthen local governance had a total of 571 participants (295 women and 276 men). The trainings also dealt with national, regional and international advocacy to develop the capacity of indigenous leaders to advocate for their individual and collective rights to land tenure and resource management. The participants learned about reporting cases of violation of individual and collective rights relating to land tenure and resource management to human rights institutions and UN bodies. In the process, local institutions have been strengthened through the formation of various committees such as Forest Rights Committees (FRC), which are responsible to develop projects on managing the forests and local resources for their livelihoods in an equitable and sustainable manner.

The trainings allowed indigenous communities to increase their capacity and awareness in asserting and securing their land rights. As per a survey, before the trainings, 213 households, out of 1083 households in the project area, had individual land titles but no community land title had been issued. After the trainings, thirty (30) community land title applications were submitted to the government land authorities in the states of Chattisgarh, Jharkhand and Odisha.

It is to be recalled that until the 2012 amendment to the FRA Rules was passed, a total of 3,168,478 claims were received across the country under the FRA. Of these, 1,472,672 claims (54%) were rejected.⁴¹ In many of the refused cases, the claimants were denied proper hearing of their cases both at the Sub-Divisional Level Committee and District Level Committee. In an overwhelming number of cases, the rejections were not even communicated to the claimants, thereby denying them the right to appeal.⁴² Until June 2016, a total of 4,182,643 claims were received across the country. Of these, more than 60% or 2,502,723 claims were rejected by the Indian government.

⁴¹ Ministry of Tribal Affairs, Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31st January, 2012]

⁴² MANTHAN, Report of National Committee on Forest Rights Act, December 2010, Page 14

Sustainable Community Development Trainings

Indigenous communities were also trained on various sustainable community development issues and processes under the project. To raise their awareness, the communities were taken to an organic farm site at Nuangaon in Odisha for exposure and observation on the side-effects of chemical use in farming. The participants witnessed cultivation by Nuangaon villagers using bio-fertilizers and manures on vegetables such as tomato, brinjal and cabbage and through interaction learnt new farming techniques such as increasing yield with bio-fertilizers without losing traditional seeds. They shared seeds for experimentation and observation in their respective fields and are awaiting the results.

A training program on Sustainable Community Development and Resource Management was also conducted at Jagriti Kulunga, Odisha to strengthen local governance and revive traditional practices. Training on bio-fertilizers to reduce the rampant use of chemical fertilizers followed. In Jharkhand, a training program on vermi-compost was conducted as part of developing income generating activities and as a result, the communities became more conscious of the side effects of chemical fertilizers. It is expected that the use of alternative means will enable the community to discontinue the use of chemical fertilizers, pesticides and weedicides.

INDIA

Women and Youth

Significant contributions were made through the project in addressing gender issues and bringing structural changes at the local level. Women, elders and youth have become part of decision-making bodies. Women self-help groups were strengthened through income generating activities and biodiversity conservation efforts. They established their network for cooperation and solidarity at the state level and organizational strengthening activities were organised to improve their financial system. These actions allowed women in their daily struggle to provide food for their families as well as to gain the respect of men in their communities. Economic empowerment of 6,944 women and strengthening of livelihoods of 2,474 households were undertaken. In addition to addressing gender issues, the roles and potentials of the youth were also recognized as an important change agent in sustainable natural resource management and development. Adivasi Youth Forums were created to enhance the agency of youth.

Challenges

Mapping activities require the use of GPS which requires police permission which is not easy to obtain in India. Likewise, the Forest Department has not been cooperating in spite of the constructive engagement of the partners, resulting in the rejection of land title applications without any explanation of their action in violation of the FRA. The other challenge in relation to engagement with the

Forest Department is the frequent transfer of the official-in-charge, sometimes resulting in the loss of documents, and requiring establishing rapport with new officials. This has caused delay in the processing of applications. The implementation of project activities coincided with the harvest season, adding pressure to the project partners and communities to implement the activities without further delay.



Jiten Yumnam

Indigenous women in a protest rally against Oil Exploration at Chakpikarong, Manipur

#LANDRIGHTSNOW Campaign in India

There are more than 50 organizations in India that are supporting the Campaign including NPMHR (Naga Peoples Movement for Human Rights), Naga Women's Union, PWECSR (Programme on Women's Economic, Social and Cultural Rights), SDDPA (Society for Development of Drought Prone Area) and Foundation for Ecological Security to name a few. Indigenous organizations and networks from all over India are strongly committed to support the Campaign through various activities for the recognition of community land rights in the country including community mapping, capacity building and advocacy for the proper implementation of the Forest Rights Act of 2006.

Conclusion

Despite the 2012 amendment to the FRA Rules which was passed in order to strengthen the implementation of the FRA, 2006, the government has not yet issued any new land title within the project area. However, the process of community mapping in the three states of Odisha, Chhattisgarh and Jharkhand has contributed to the protection of the rights of indigenous peoples, particularly their forest rights, and to the protection and enhancement of biodiversity and sustainable resource-management. Increased awareness of their rights under national and international laws has increased efforts of Adivasi communities in the three states to secure their land rights. Cooperation among them has also been enhanced through the formation of networks. Inclusive and rights-based approach to community mapping is empowering Adivasi communities and their larger network in gaining deeper understanding of their collective rights.

The community mapping activities have also proven to strengthen solidarity within the communities and provided an opportunity for the younger generations to gain knowledge of the extent of their lands, territories and resources and to continue the assertion of their rights through the use of these tools.

Recommendations

To the Government of India:

1. Stop all extractive projects being implemented in India without the FPIC of the affected indigenous communities.
2. Before the inception of any project, seek and respect the FPIC of all affected communities for all extractive industries, dam construction, infrastructure building and other developments with potential adverse impacts on indigenous peoples. All information related to developments in indigenous lands must be

provided and made accessible to affected communities in a timeframe that sufficiently guarantees enough time for the communities to study the information, consult among themselves and seek additional information, in order to process these among themselves without coercion and incentive.

3. Fully implement the Forest Rights Act 2006 in its true spirit and ensure community claim on community land, forest and natural resources.

4. Mining, forest and land policies should be amended comprehensively at the state and national government levels to make them consistent with the letter and spirit of STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and the Panchayats (Extension to Scheduled Areas) Act 1996. In particular, decisions on diversion of forestlands, allocation of mining leases, handover of other government lands, and acquisition of private property must be made in consultation with and with the prior informed consent of the *gram sabhas*.

5. Take into full consideration the submissions of indigenous peoples for community land titles and respond to them in a timely manner, with justification of the decisions.

INDONESIA



Indigenous Peoples in Indonesia: A Background

Masyarakat adat refers to the peoples with ancestral origin in certain geographic region with particular systems of values, ideology, economy, politics, culture, society and territories.⁴³ It is the most common and acceptable term to refer to indigenous peoples in Indonesia as defined by indigenous peoples themselves, although the Constitution uses the *kesatuan masyarakat hukum adat*, a terminology developed during the colonial times. 'Customary law societies' is the literal translation of *masyarakat hukum adat*, which means communities who live by customary law.

There is no available comprehensive data on the population of indigenous peoples in Indonesia but the Aliansi Masyarakat Adat Nusantara (AMAN), or Indigenous Peoples' Alliance of the Archipelago, estimates it to be more than 70 million people, or about 30% of the total Indonesian population of 260 million in 2016 based on the United Nations estimation.⁴⁴

National Policy and Legal Framework on Traditional Lands

The 2000 Constitution of the Republic of Indonesia recognizes and assures the protection of the rights of indigenous peoples in at least two articles as contained in the Second Amendment. Article 18B of the amended Constitution states that "The state shall recognize and respect units of customary law societies with their traditional rights as long as they still exist and are in accordance with community development and the principle of the Unitary State of the Republic of Indonesia, as regulated by laws" (paragraph 2). While Article 28I states that "The cultural identity and traditional community rights shall be respected in line with progress and human civilization" (paragraph 3).

The recognition of indigenous peoples' lands and territories is a central issue in Indonesia's laws and policies. National legislation reflects the international recognition of the rights of indigenous peoples as part of basic human rights. Law 39/1999 on Human Rights states that the cultural identities of indigenous peoples, including their rights over communal land, are protected in so far as these are in accordance with societal development.

The People's Consultative Assembly Decree No.9/2001 on Agrarian Reform and Natural Resource Management (TAP MPR No. IX / 2001) requires that the rights of indigenous communities shall be recognized and protected [Art. 4(j)] in the implementation of agrarian reform and natural resource management. Act No. 27/2007 on Coastal and Small Islands recognizes the rights of indigenous peoples to manage coastal and small islands and recognizes indigenous knowledge as an important aspect in the protection of the coastal areas and small islands. Law No. 32/2009 on Environmental Protection and Management mandates the national

⁴³ Moniaga, 2007: 281-2.

⁴⁴ <http://www.worldometers.info/world-population/indonesia-population/> last accessed on 23 September 2016

and provincial governments to "stipulate policies on procedures for recognizing the existence of traditional communities, local wisdom, and rights of traditional communities with respects to environmental protection and management" and to "implement policies on procedures for recognizing the existence of traditional communities, local wisdom, and rights of traditional communities with respects to environmental protection and management in the regency/municipal level" (Art. 63).

However, without proper implementation of the laws and therefore without any effective recognition of indigenous peoples' rights to lands and territories, massive land appropriation has resulted in millions of indigenous peoples losing their territories. Those attempting to stand and protect their customary lands were often sentenced for illegally occupying state land. In 2003, ruling 24/2003 of Indonesia's Constitutional Court recognized that the *kesatuan masyarakat hukum adat* are eligible petitioners and, thus, have legal standing in sessions of the Court. In line with this stipulation, the Constitutional Court accepted the petition of two indigenous communities together with AMAN as the supporting organization to review provisions in the Forestry Law 41/1999. One of the provisions was an article that claimed customary forest (*hutan adat*) as part of state forests. This article legalized land grabbing of indigenous territories located within state forests, which covers approximately 65% of Indonesia. On May 16, 2013, Indonesia's Constitutional Court issued its decision No. 35/PUU-IX/2012 (MK 35)⁴⁵ recognizing indigenous peoples as legal subjects and peoples with rights over lands, territories and natural resources, including customary forests. The decision also recognizes that this prior neglect in law was equivalent to applying a discriminative law. Thus, MK 35 affirmed State's recognition of indigenous peoples' rights over their lands and territories.

Unfortunately, many laws need to be altered to comply with the ruling. For now, in legal affairs at large, indigenous peoples continue to identify themselves mostly as individuals. For land titling, for example, they must accept individual titles. Regulation Number 5/1999 of the Ministry of Agrarian Affairs recognizes the communal land rights of indigenous peoples (known as *hak ulayat*). However, these rights cannot be expressed through collective land titles, and can only be registered as such in the land registration map. In addition to this, officials continue to refuse to apply the said Ministerial Regulation in forest areas, due to their misapprehension that only forestry regulations can be implemented in forest areas. This makes Ministerial Regulation number 5/1999 less effective in supporting the recognition of communal land rights, since most indigenous territories are located within the designated state forest area.

⁴⁵ Constitutional Court Decision No. 35/PUU-IX/2015 known as the MK 35 is a judicial review of Law No. 41/1999 on Forestry, at the request of AMAN and its two community members, namely Kasepuhan Cisitu and Kekhalifahan Kuntu. The decision amends Article 1 (6) in the Forestry Law, which states, "indigenous forest is State forest located in the indigenous law area" to "Customary forest is a forest located in indigenous peoples area.", http://www.gcftaskforce.org/documents/training/IND_Constitutional_Court_Decision_Summary.pdf.

In May 2014, Komisi Nasional Hak Asasi Manusia (Komnas HAM), the Human Rights Commission of Indonesia, launched its first national inquiry into alleged human rights violations linked to land conflicts involving indigenous peoples. Komnas HAM has collected around 140 formal complaints from seven regional hearings (held in Sumatra, Java, Bali-Nusa, Sulawesi, Kalimantan, Maluku and Papua) in addition to a national hearing. Each hearing involves witnesses, experts, local leaders and advocates from civil society organizations,⁴⁶ and aims to issue recommendations to President Joko Widodo.⁴⁷

The public hearings started in August 2014 in Palu, island of Sulawesi.⁴⁸ The hearing for the Papua region was held on November 26-28, 2014. The hearing investigated five cases, including on oil palm plantations and complaints against logging companies. The hearing noted several findings where indigenous peoples' rights have been ignored, including the State's unilateral classification and establishment of forest status without taking into account the existence of indigenous peoples, resulting to a weakened link between Papuan indigenous peoples and their forests. It was also found that the local government did not exert control over developments in indigenous community lands and allowed disputes over land and natural resource management to break out. There were 14 points that the hearing recommended for the Papua region.⁴⁹ Although Komnas HAM has yet to come out with the full report of their investigation, the National Inquiry was closed in the beginning of 2015. According to AMAN, the results of the hearings made it clear that police brutality has become a serial feature, that numerous companies are operating without permits and that the government has not catalogued the myriad indigenous peoples living in the forest. Two major abuses were highlighted in the hearings: land grabbing by huge timber companies without legal authorization to do so and have a major interest in clearing the forest to plant oil palm; and the 'divide and conquer' strategy used by companies and officials to deny communities' rights to their territory.⁵⁰

A Declaration instituting a National Programme for the Recognition and Protection of Customary Communities through REDD+ (Reduction of Emissions from Deforestation and Forest and Peat-land Degradation) was issued jointly on September 1, 2014 by the Coordinating Ministry of People's Welfare, Ministry of Internal Affairs, Ministry of Law and Human Rights, Ministry of Forestry, Ministry of the Environment, National Land Agency (BPN), the National Geospatial Information Agency, National Commission on Human Rights, and the national

⁴⁶ Thomson Reuters Foundation, Indonesia probes violations of indigenous rights in contested forests, 29 May 2014, <http://www.trust.org/item/20140529110927-5sw62>.

⁴⁷ Business and Human Rights Resource Centre, <http://business-humanrights.org/en/indonesia-human-rightscommission>.

⁴⁸ Indonesia to hear indigenous peoples' grievances on land disputes, August 22, 2014, <http://news.mongabay.com/2014/0822-lbell-indonesia-land-disputes.html>

⁴⁹ Komnas HAM's National Inquiry into Indigenous Rights arrives in Papua, November 30, 2014, <https://awasmiffee.Potager.org/?p=1101>.

⁵⁰ <http://www.aman.or.id/en/2015/01/12/indonesian-hearings-reveal-forest-ravages/>.

REDD+ Agency.⁵¹ This program tied nine Ministries and State Agencies to develop a work plan to recognize and protect indigenous peoples' rights when undertaking REDD+ activities. In effect, through REDD+, indigenous peoples' rights would be mainstreamed into lawmaking, provision of legal assistance for the development of District Regulation, legal reform, and revitalizing and strengthening customary institutions (Safitri and Andriani, 2014). The optimism surrounding this initiative waned when the new administration of President Joko "Jokowi" Widodo dismantled the National REDD+ Agency in January 2015.

During the 2012 Universal Periodic Review it was also recommended that Indonesia "(p)rovide more resources for implementing the national policies and programmes in favor of social vulnerable groups like women, children, poor people, ethnic minorities and migrants."⁵²

While Indonesia's Constitution recognizes indigenous peoples, it still lacks an administrative law acknowledging the existence of indigenous peoples and their collective rights.⁵³ There is a pending bill, the RUU Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat (PPHMA) or "Recognition and Protection of the Rights of Indigenous Peoples Bill," that was filed at the House of Representatives in April 2013 which has not yet been discussed in the Parliament until now. Once enacted, the Act could provide recognition, protection and services to indigenous peoples as citizens of Indonesia.⁵⁴

Indigenous peoples' initiatives for land rights recognition

"Map your ancestral territory, before it is mapped by others...!" This was the appeal of AMAN to indigenous peoples in Indonesia. The Ministry of Forestry of Indonesia claims 187 million hectares as state forests out of 191 million hectares of total forest area in Indonesia. Until now, there is no official data about the existence of indigenous peoples and customary lands in Indonesia.

Given the absence of a national mechanism to identify and map out territory belonging to indigenous communities, AMAN, the Network for Participatory Mapping (JKPP) and several other NGOs set up the Customary Land Registration Agency (BRWA) in 2011 to allow indigenous communities to register their ancestral territories. The idea behind the BRWA was to provide a map of customary land that would show where customary forests are located in the event that the Constitutional Court ruled that customary forests belong to indigenous peoples.⁵⁵

⁵¹ Alternative report on Indonesia, 52nd session, CESCR, April/May 2014, submitted by Aliansi Masyarakat Adat Nusantara, YMC, HUMA, Paradisea, and the Rainforest Foundation Norway [http://files/news/2014/09/Declaration%20A/HRC/21/7 108.58](http://files/news/2014/09/Declaration%20A/HRC/21/7%20108.58), July 2012.

⁵² http://www.iwgia.org/news/search-news?news_id=691

⁵⁴ <http://ekuatorial.com/en/forests/indonesian-aman-dorong-pengesahan-ruu-masyarakat-adat#!/story=post-7494&loc=-6.163824999999996,106.7940258,7>

⁵⁵ <http://www.thejakartapost.com/news/2013/06/24/ngo-maps-out-indigenous-community-territories.html#sthash.Sdw8mYaD.dpuf>

In November 2012, AMAN, together with JKPP officially handed over 265 maps of customary land, registered in the BRWA and covering 2,402,222 hectares, to Indonesia's Geospatial Information Agency (BIG) and the Presidential Delivery Unit for Supervision and Control of Development (UKP4). The presentation of the maps to the government marked an important step on the road towards official recognition of these ancestral territories.⁵⁶

AMAN aims to complete the mapping of 40 million hectares of customary land by 2020. That target is as per the decision of the Fourth Congress of AMAN (KMAN IV) in March 2012. Until August 2015, AMAN and JKPP have completed the mapping of 604 customary lands with a total area of 6,801,245 hectares. The maps were produced through **Participatory Mapping of Customary Land (PPWA)**, involving the indigenous peoples themselves.

As there is no official data regarding the customary land of indigenous peoples, community mapping is essential in order to identify and measure the areas affected by companies' concessions. This is primordial as maps are used as evidence documents during negotiations with companies and the government. The maps are "tools" for indigenous peoples to claim the rights to their lands because there has been uncertainty regarding overlapping boundaries of their lands, leading to conflict situations with the government and with companies.

Indigenous peoples have "mental maps" or traditional knowledge of the extent of the boundaries of their customary lands. They inherited such knowledge from their ancestors through tales, poems, rituals and other oral traditions and this is used now to maintain and manage their territories sustainably, such as protecting the forests, oceans, rivers, fishing grounds, hunting areas, livestock, farming in rice fields, etc.

Participatory Mapping of Customary Land (PPWA)

PPWA is a process of documenting and transforming a community's mental map into a concrete map to be used for advocacy. Although mapping facilitators provide technical support based on the mental map and train the indigenous peoples to master the method used, the main actors are the concerned indigenous peoples, including indigenous youth, women and elders applying their local indigenous knowledge.

The community mapping process starts with the identification of the mapping data, the drafting of a Memorandum of Understanding (MOU) for mapping, including a Letter of Request for the PPWA service in order to get the help of mapping facilitators. After this, the **mapping process** involves activity planning, technical trainings and planning, followed by data collection on the field, which is verified and clarified by the communities. The last step involves **legalizing and registering the map** with the BRWA.

⁵⁶ <http://www.downtoearth-indonesia.org/story/turning-point-indonesia-s-indigenous-peoples>

The finalized maps consist of general localization information as well as specific information on indigenous territories and land usage. They also include social data, profiles of indigenous peoples with information about their indigenous population, history, tenure system and land use patterns, governance system (institutional customs and decision making mechanisms), customary laws (rules and sanctions), and biodiversity (ecosystems and natural resources).

Tools and materials used in PPWA are Global Positioning System (GPS), compass, photo camera, voice recorder, meter, the basic Indonesia Topography Map (RBI), table sheet for social and spatial data, stationeries, pencil, ruler, eraser, block graph paper, tracing paper, calculators, flipchart paper, markers, scissors, etc.

After the maps have been finalized, spatial planning for the customary land is also undertaken using the participatory method, with indigenous peoples as the main actors throughout the process. The picture below shows the process of spatial planning in customary land.

Capacity building of indigenous peoples in mapping their territories

Indigenous peoples in Indonesia now possess the capacities and skills necessary to undertake PPWA by themselves, including knowledge about participatory mapping, operating GPS and compass, drawing manual maps and drawing digital maps with ArcGIS software.

To accelerate the PPWA process, AMAN has created various Units on Acceleration of Participatory Mapping called UKP3, providing indigenous peoples with the necessary services for mapping and registration of their customary lands. Now, there are UKP3s in 19 provincial chapters and in 43 local chapters⁵⁷ consisting of 278 persons including 80 mapping facilitators.

Based on past experiences, a UKP3 is capable of serving five to seven projects of participatory mapping of customary lands covering an approximate area of 50,000 to 60,000 hectares (the average area of a customary land being 10,000 hectares). During the Strategic Planning Meeting of AMAN held in 2014 in Sorong, Papua it was decided that each local chapter had to map customary land of at least two indigenous communities by 2017. At present, AMAN has 110 local chapters, which means that mapping of 220 customary areas (around 2.2 million hectares) will be undertaken by 2017.

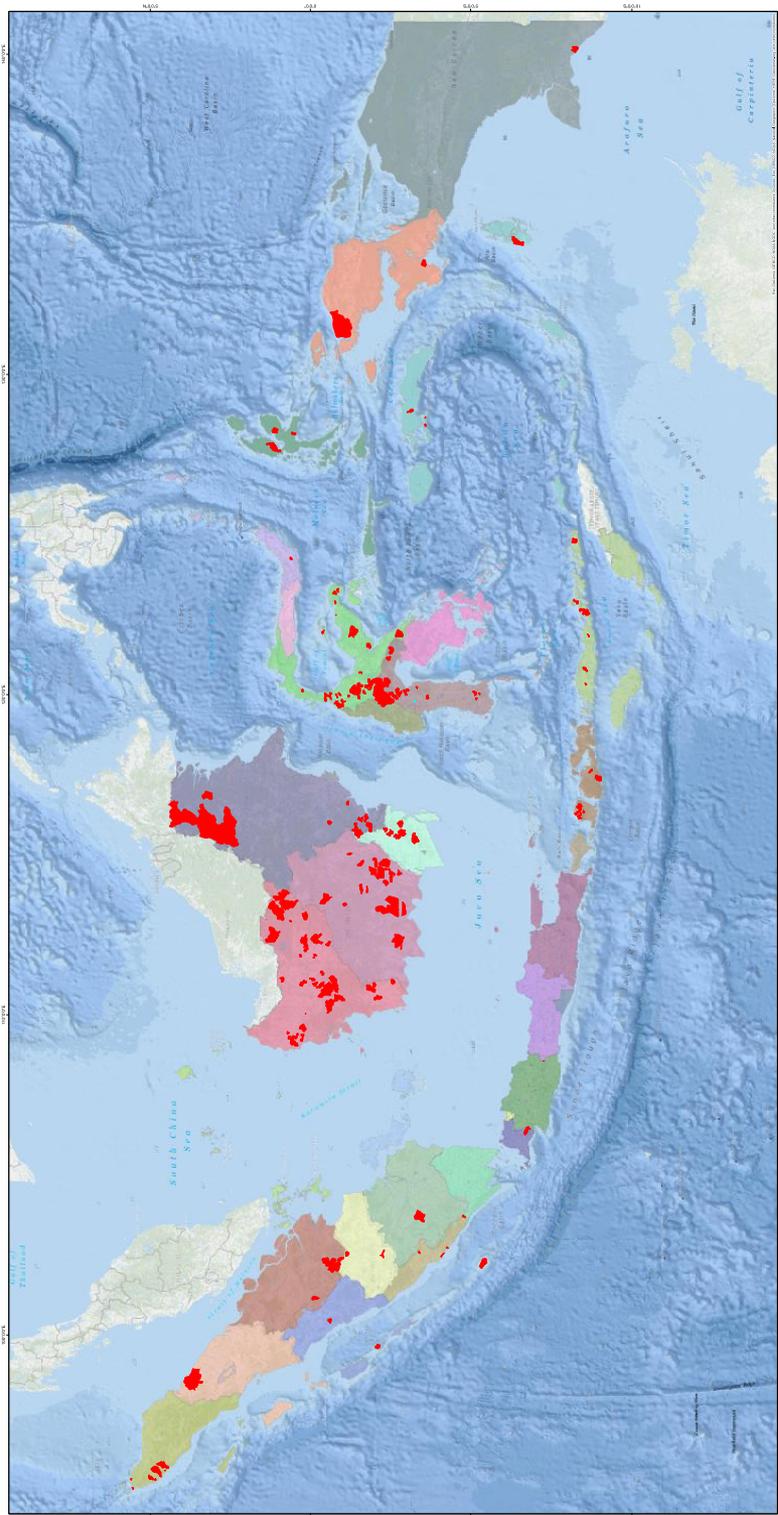
However, UKP3s still need to be established in the remaining 67 local chapters.

Registration Process of Customary Land in Indonesia

Until now, the Indonesian government has not created any system for indigenous land areas to be legalized and registered. Data of the existence of indigenous peoples' lands are spread in various institutions facilitating the participatory mapping process.

⁵⁷ PW is Pengurus Wilayah or AMAN Chapter in provincial levels, and PD is Pengurus Daerah or AMAN Chapter in local/district level. In 2015, AMAN has 21 PWs and 110 PDs.

Map of Customary Lands in Indonesia



PETA SEBARAN WILAYAH MASYARAKAT ADAT INDONESIA

SKALA 1:4.000.000
 1 Centimeter = 40 Kilometers

Sumber Peta
 1. Peta Partisipatif Masyarakat Adat Undang 2015 (NCO)
 2. Peta Administrasi 2010 BPSP
 3. Template http://OceanWorld.Ocean_Reference

Keterangan

- SULAWESI MASYARAKAT ADAT
- BANGSAHELEUTING
- BANTEN
- BENGKULU
- DAERAH TRIMAWA YODHWARTA
- DIJAWARTA
- GORONTALO
- JAMBI
- JAWA BARAT
- JAWA TENGAH
- JAWA TIMUR
- KALIMANTAN BARAT
- KALIMANTAN SELATAN
- KALIMANTAN TENGAH
- KALIMANTAN TIMUR
- KEPULAUAN RIAU
- LAMPUNG
- MAKLUKU UTARA
- NANGROE ACEH DARUSSALAM
- NEISA TENGGARA BARAT
- NEISA TENGGARA TIMUR
- RIAU
- SUMATERA BARAT
- SUMATERA SELATAN
- SUMATERA UTARA
- SUMBAWA BARAT
- SUMBAWA UTARA
- SULAWESI BARAT
- SULAWESI SELATAN
- SULAWESI TENGAH
- SULAWESI TENGGARA
- SULAWESI UTARA
- SUMBAWA BARAT
- SUMBAWA SELATAN
- SUMATERA BARAT
- SUMATERA SELATAN
- SUMATERA UTARA

Keterangan Tabel

No	Nama Wilayah	Luas Wilayah Adat
1	RIAU	1.000.000
2	SUMATERA BARAT	1.000.000
3	SUMATERA SELATAN	1.000.000
4	SUMATERA UTARA	1.000.000
5	SULAWESI BARAT	1.000.000
6	SULAWESI SELATAN	1.000.000
7	SULAWESI TENGAH	1.000.000
8	SULAWESI TENGGARA	1.000.000
9	SULAWESI UTARA	1.000.000
10	SUMBAWA BARAT	1.000.000
11	SUMBAWA SELATAN	1.000.000
12	SUMBAWA UTARA	1.000.000
13	SUMBAWA BARAT	1.000.000
14	SUMBAWA SELATAN	1.000.000
15	SUMBAWA UTARA	1.000.000
16	SUMBAWA BARAT	1.000.000
17	SUMBAWA SELATAN	1.000.000
18	SUMBAWA UTARA	1.000.000
19	SUMBAWA BARAT	1.000.000
20	SUMBAWA SELATAN	1.000.000
21	SUMBAWA UTARA	1.000.000
22	SUMBAWA BARAT	1.000.000
23	SUMBAWA SELATAN	1.000.000
24	SUMBAWA UTARA	1.000.000
25	SUMBAWA BARAT	1.000.000
26	SUMBAWA SELATAN	1.000.000
27	SUMBAWA UTARA	1.000.000
28	SUMBAWA BARAT	1.000.000
29	SUMBAWA SELATAN	1.000.000
30	SUMBAWA UTARA	1.000.000
31	SUMBAWA BARAT	1.000.000
32	SUMBAWA SELATAN	1.000.000
33	SUMBAWA UTARA	1.000.000
34	SUMBAWA BARAT	1.000.000
35	SUMBAWA SELATAN	1.000.000
36	SUMBAWA UTARA	1.000.000
37	SUMBAWA BARAT	1.000.000
38	SUMBAWA SELATAN	1.000.000
39	SUMBAWA UTARA	1.000.000
40	SUMBAWA BARAT	1.000.000
41	SUMBAWA SELATAN	1.000.000
42	SUMBAWA UTARA	1.000.000
43	SUMBAWA BARAT	1.000.000
44	SUMBAWA SELATAN	1.000.000
45	SUMBAWA UTARA	1.000.000
46	SUMBAWA BARAT	1.000.000
47	SUMBAWA SELATAN	1.000.000
48	SUMBAWA UTARA	1.000.000
49	SUMBAWA BARAT	1.000.000
50	SUMBAWA SELATAN	1.000.000
51	SUMBAWA UTARA	1.000.000
52	SUMBAWA BARAT	1.000.000
53	SUMBAWA SELATAN	1.000.000
54	SUMBAWA UTARA	1.000.000
55	SUMBAWA BARAT	1.000.000
56	SUMBAWA SELATAN	1.000.000
57	SUMBAWA UTARA	1.000.000
58	SUMBAWA BARAT	1.000.000
59	SUMBAWA SELATAN	1.000.000
60	SUMBAWA UTARA	1.000.000
61	SUMBAWA BARAT	1.000.000
62	SUMBAWA SELATAN	1.000.000
63	SUMBAWA UTARA	1.000.000
64	SUMBAWA BARAT	1.000.000
65	SUMBAWA SELATAN	1.000.000
66	SUMBAWA UTARA	1.000.000
67	SUMBAWA BARAT	1.000.000
68	SUMBAWA SELATAN	1.000.000
69	SUMBAWA UTARA	1.000.000
70	SUMBAWA BARAT	1.000.000
71	SUMBAWA SELATAN	1.000.000
72	SUMBAWA UTARA	1.000.000
73	SUMBAWA BARAT	1.000.000
74	SUMBAWA SELATAN	1.000.000
75	SUMBAWA UTARA	1.000.000
76	SUMBAWA BARAT	1.000.000
77	SUMBAWA SELATAN	1.000.000
78	SUMBAWA UTARA	1.000.000
79	SUMBAWA BARAT	1.000.000
80	SUMBAWA SELATAN	1.000.000
81	SUMBAWA UTARA	1.000.000
82	SUMBAWA BARAT	1.000.000
83	SUMBAWA SELATAN	1.000.000
84	SUMBAWA UTARA	1.000.000
85	SUMBAWA BARAT	1.000.000
86	SUMBAWA SELATAN	1.000.000
87	SUMBAWA UTARA	1.000.000
88	SUMBAWA BARAT	1.000.000
89	SUMBAWA SELATAN	1.000.000
90	SUMBAWA UTARA	1.000.000
91	SUMBAWA BARAT	1.000.000
92	SUMBAWA SELATAN	1.000.000
93	SUMBAWA UTARA	1.000.000
94	SUMBAWA BARAT	1.000.000
95	SUMBAWA SELATAN	1.000.000
96	SUMBAWA UTARA	1.000.000
97	SUMBAWA BARAT	1.000.000
98	SUMBAWA SELATAN	1.000.000
99	SUMBAWA UTARA	1.000.000
100	SUMBAWA BARAT	1.000.000
101	SUMBAWA SELATAN	1.000.000
102	SUMBAWA UTARA	1.000.000
103	SUMBAWA BARAT	1.000.000
104	SUMBAWA SELATAN	1.000.000
105	SUMBAWA UTARA	1.000.000
106	SUMBAWA BARAT	1.000.000
107	SUMBAWA SELATAN	1.000.000
108	SUMBAWA UTARA	1.000.000
109	SUMBAWA BARAT	1.000.000
110	SUMBAWA SELATAN	1.000.000
111	SUMBAWA UTARA	1.000.000
112	SUMBAWA BARAT	1.000.000
113	SUMBAWA SELATAN	1.000.000
114	SUMBAWA UTARA	1.000.000
115	SUMBAWA BARAT	1.000.000
116	SUMBAWA SELATAN	1.000.000
117	SUMBAWA UTARA	1.000.000
118	SUMBAWA BARAT	1.000.000
119	SUMBAWA SELATAN	1.000.000
120	SUMBAWA UTARA	1.000.000
121	SUMBAWA BARAT	1.000.000
122	SUMBAWA SELATAN	1.000.000
123	SUMBAWA UTARA	1.000.000
124	SUMBAWA BARAT	1.000.000
125	SUMBAWA SELATAN	1.000.000
126	SUMBAWA UTARA	1.000.000
127	SUMBAWA BARAT	1.000.000
128	SUMBAWA SELATAN	1.000.000
129	SUMBAWA UTARA	1.000.000
130	SUMBAWA BARAT	1.000.000
131	SUMBAWA SELATAN	1.000.000
132	SUMBAWA UTARA	1.000.000
133	SUMBAWA BARAT	1.000.000
134	SUMBAWA SELATAN	1.000.000
135	SUMBAWA UTARA	1.000.000
136	SUMBAWA BARAT	1.000.000
137	SUMBAWA SELATAN	1.000.000
138	SUMBAWA UTARA	1.000.000
139	SUMBAWA BARAT	1.000.000
140	SUMBAWA SELATAN	1.000.000
141	SUMBAWA UTARA	1.000.000
142	SUMBAWA BARAT	1.000.000
143	SUMBAWA SELATAN	1.000.000
144	SUMBAWA UTARA	1.000.000
145	SUMBAWA BARAT	1.000.000
146	SUMBAWA SELATAN	1.000.000
147	SUMBAWA UTARA	1.000.000
148	SUMBAWA BARAT	1.000.000
149	SUMBAWA SELATAN	1.000.000
150	SUMBAWA UTARA	1.000.000
151	SUMBAWA BARAT	1.000.000
152	SUMBAWA SELATAN	1.000.000
153	SUMBAWA UTARA	1.000.000
154	SUMBAWA BARAT	1.000.000
155	SUMBAWA SELATAN	1.000.000
156	SUMBAWA UTARA	1.000.000
157	SUMBAWA BARAT	1.000.000
158	SUMBAWA SELATAN	1.000.000
159	SUMBAWA UTARA	1.000.000
160	SUMBAWA BARAT	1.000.000
161	SUMBAWA SELATAN	1.000.000
162	SUMBAWA UTARA	1.000.000
163	SUMBAWA BARAT	1.000.000
164	SUMBAWA SELATAN	1.000.000
165	SUMBAWA UTARA	1.000.000
166	SUMBAWA BARAT	1.000.000
167	SUMBAWA SELATAN	1.000.000
168	SUMBAWA UTARA	1.000.000
169	SUMBAWA BARAT	1.000.000
170	SUMBAWA SELATAN	1.000.000
171	SUMBAWA UTARA	1.000.000
172	SUMBAWA BARAT	1.000.000
173	SUMBAWA SELATAN	1.000.000
174	SUMBAWA UTARA	1.000.000
175	SUMBAWA BARAT	1.000.000
176	SUMBAWA SELATAN	1.000.000
177	SUMBAWA UTARA	1.000.000
178	SUMBAWA BARAT	1.000.000
179	SUMBAWA SELATAN	1.000.000
180	SUMBAWA UTARA	1.000.000
181	SUMBAWA BARAT	1.000.000
182	SUMBAWA SELATAN	1.000.000
183	SUMBAWA UTARA	1.000.000
184	SUMBAWA BARAT	1.000.000
185	SUMBAWA SELATAN	1.000.000
186	SUMBAWA UTARA	1.000.000
187	SUMBAWA BARAT	1.000.000
188	SUMBAWA SELATAN	1.000.000
189	SUMBAWA UTARA	1.000.000
190	SUMBAWA BARAT	1.000.000
191	SUMBAWA SELATAN	1.000.000
192	SUMBAWA UTARA	1.000.000
193	SUMBAWA BARAT	1.000.000
194	SUMBAWA SELATAN	1.000.000
195	SUMBAWA UTARA	1.000.000
196	SUMBAWA BARAT	1.000.000
197	SUMBAWA SELATAN	1.000.000
198	SUMBAWA UTARA	1.000.000
199	SUMBAWA BARAT	1.000.000
200	SUMBAWA SELATAN	1.000.000
201	SUMBAWA UTARA	1.000.000
202	SUMBAWA BARAT	1.000.000
203	SUMBAWA SELATAN	1.000.000
204	SUMBAWA UTARA	1.000.000
205	SUMBAWA BARAT	1.000.000
206	SUMBAWA SELATAN	1.000.000
207	SUMBAWA UTARA	1.000.000
208	SUMBAWA BARAT	1.000.000
209	SUMBAWA SELATAN	1.000.000
210	SUMBAWA UTARA	1.000.000
211	SUMBAWA BARAT	1.000.000
212	SUMBAWA SELATAN	1.000.000
213	SUMBAWA UTARA	1.000.000
214	SUMBAWA BARAT	1.000.000
215	SUMBAWA SELATAN	1.000.000
216	SUMBAWA UTARA	1.000.000
217	SUMBAWA BARAT	1.000.000
218	SUMBAWA SELATAN	1.000.000
219	SUMBAWA UTARA	1.000.000
220	SUMBAWA BARAT	1.000.000
221	SUMBAWA SELATAN	1.000.000
222	SUMBAWA UTARA	1.000.000
223	SUMBAWA BARAT	1.000.000
224	SUMBAWA SELATAN	1.000.000
225	SUMBAWA UTARA	1.000.000
226	SUMBAWA BARAT	1.000.000
227	SUMBAWA SELATAN	1.000.000
228	SUMBAWA UTARA	1.000.000
229	SUMBAWA BARAT	1.000.000
230	SUMBAWA SELATAN	1.000.000
231	SUMBAWA UTARA	1.000.000
232	SUMBAWA BARAT	1.000.000
233	SUMBAWA SELATAN	1.000.000
234	SUMBAWA UTARA	1.000.000
235	SUMBAWA BARAT	1.000.000
236	SUMBAWA SELATAN	1.000.000
237	SUMBAWA UTARA	1.000.000
238	SUMBAWA BARAT	1.000.000
239	SUMBAWA SELATAN	1.000.000
240	SUMBAWA UTARA	1.000.000
241	SUMBAWA BARAT	1.000.000
242	SUMBAWA SELATAN	1.000.000
243	SUMBAWA UTARA	1.000.000
244	SUMBAWA BARAT	1.000.000
245	SUMBAWA SELATAN	1.000.000
246	SUMBAWA UTARA	1.000.000
247	SUMBAWA BARAT	1.000.000
248	SUMBAWA SELATAN	1.000.000
249	SUMBAWA UTARA	1.000.000
250	SUMBAWA BARAT	1.000.000
251	SUMBAWA SELATAN	1.000.000
252	SUMBAWA UTARA	1.000.000
253	SUMBAWA BARAT	1.000.000
254	SUMBAWA SELATAN	1.000.000
255	SUMBAWA UTARA	1.000.000
256	SUMBAWA BARAT	1.000.000
257	SUMBAWA SELATAN	1.000.000
258	SUMBAWA UTARA	1.000.000
259	SUMBAWA BARAT	1.000.000
260	SUMBAWA SELATAN	1.000.000
261	SUMBAWA UTARA	1.000.000
262	SUMBAWA BARAT	1.000.000
263	SUMBAWA SELATAN	1.000.000
264	SUMBAWA UTARA	1.000.000
265	SUMBAWA BARAT	1.000.000
266	SUMBAWA SELATAN	1.000.000
267	SUMBAWA UTARA	1.000.000
268	SUMBAWA BARAT	1.000.000
269	SUMBAWA SELATAN	1.000.000
270	SUMBAWA UTARA	1.000.000
271	SUMBAWA BARAT	1.000.000
272	SUMBAWA SELATAN	1.000.000
273	SUMBAWA UTARA	1.000.000
274	SUMBAWA BARAT	1.000.000
275	SUMBAWA SELATAN	1.000.000
276	SUMBAWA UTARA	1.000.000
277	SUMBAWA BARAT	1.000.000
278	SUMBAWA SELATAN	1.000.000
279	SUMBAWA UTARA	1.000.000
280	SUMBAWA BARAT	1.000.000
281	SUMBAWA SELATAN	1.000.000
282	SUMBAWA UTARA	1.000.000
283	SUMBAWA BARAT	1.000.000
284	SUMBAWA SELATAN	1.000.000
285	SUMBAWA UTARA	1.000.000
286	SUMBAWA BARAT	1.000.000
287	SUMBAWA SELATAN	1.000.000
288	SUMBAWA UTARA	1.000.000
289	SUMBAWA BARAT	1.000.000
290	SUMBAWA SELATAN	1.000.000
291	SUMBAWA UTARA	1.000.000
292	SUMBAWA BARAT	1.000.000
293	SUMBAWA SELATAN	1.000.000
294	SUMBAWA UTARA	1.000.000
295	SUMBAWA BARAT	1.000.000
296	SUMBAWA SELATAN	1.000.000
297	SUMBAWA UTARA	1.000.000
298	SUMBAWA BARAT	1.000.000
299	SUMBAWA SELATAN	1.000.000
300	SUMBAWA UTARA	1.000.000
301	SUMBAWA BARAT	1.000.000
302	SUMBAWA SELATAN	1.000.000
303	SUMBAWA UTARA	1.000.000
304	SUMBAWA BARAT	1.000.000
305	SUMBAWA SELATAN	1.000.000
306	SUMBAWA UTARA	1.000.000
307	SUMBAWA BARAT	1.000.000
308	SUMBAWA SELATAN	1.000.000
309	SUMBAWA UTARA	1.000.000
310	SUMBAWA BARAT	1.000.000
311	SUMBAWA SELATAN	1.000.000
312	SUMBAWA UTARA	1.000.000
313	SUMBAWA BARAT	1.000.000
314	SUMBAWA SELATAN	1.000.000
315	SUMBAWA UTARA	1.000.0

AMAN, JKPP, Consortium for Supporting Community-Based Forestry System (KpSHK) and Sawit Watch established the Customary Land Registration Agency (BRWA),⁵⁸ based on the decree of Secretary General of AMAN No. 01/SK-BRWA/PB-AMAN/III/2011. BRWA is an autonomous body of AMAN, with the function of consolidating maps of indigenous territories through registration processes, including verification, validation and publication of customary land maps in Indonesia.

There are two ways to register customary lands. **The first is offline**, which is the direct process, whereby registration of the customary land can be done at BRWA central offices or agency offices appointed by BRWA such as AMAN, JKPP or Forest Watch Indonesia (FWI). **The second way is online**, whereby an applicant can file a registration form in the BRWA website (www.brwa.or.id) by creating a user account. Indigenous peoples can also appoint a representative or another trusted party to register their customary lands online with BRWA.

After the Constitutional Court's MK 35 decision, the Indonesian Government issued policies for registration of indigenous territories, such as the Ministry of Internal Affairs Decree (Permendagri) No. 52/2014 on Guidelines for Recognition and Protection of Indigenous Peoples, and the Ministry of Agrarian and Spatial Planning/Land Agency Decree (Permen ATR/BPN) No. 9/2015 on Procedures for the Determination of Communal Rights of Indigenous Peoples and Communities in Forest Areas. The policies assume that there are necessary policies in place at local levels (District Regulation or Regent's Decree). However, challenges remain in formulating local policies, including the lack of capacity, required budget and political will of local governments and leaders.

Asserting Land Rights through Community Mapping: The Experience of Kasepuhan Cisitu, Lebak District, Banten Province

Kasepuhan Cisitu is a community rich in gold reserves, attracting a lot of small-scale miners to illegally mine in the area. The unregulated small-scale mines have resulted in adverse impacts on the environment including pollution and social problems which the people in the community feel do not conform to their traditional values. They thus sought the assistance of the government to control the situation.

The government then established the state-owned mining company, Antam, which allowed the people of Kasepuhan Cisitu to operate under a benefit-sharing scheme. However, the Antam Company did not abide by its commitment, particularly with regard to benefit sharing with the community. Thus, after 12 years of operation, the community decided to take over the management of the mines. In response, the company argued that the land does not belong to the indigenous peoples of Kasepuhan Cisitu and that it

⁵⁸ Please see the website of BRWA www.brwa.or.id

belongs to the State because it is declared as state forest territory (*Kawasan Hutan Negara*).

This issue compelled the community to organize themselves and they approached AMAN in 2010 to help them in reclaiming their land. The reclaiming process did not go smoothly and resulted in conflicts between the community and the company, with the latter being assisted by the police force. In the course of the conflict, nine (9) community members were arrested and charged with arson and destruction of company property.

AMAN assisted the community during the litigation of the nine arrested persons, who were later found guilty by the court and sentenced to six (6) months in prison. Meanwhile, AMAN started a process of community mapping in order to provide evidence for the land claim of the indigenous peoples in Kasepuhan Csitu. Their knowledge of their traditional territory and boundaries were largely verbal and needed to be documented. The community members did the mapping using GPS and compass to map out their boundaries. They researched and documented their history and studied the rules and regulations of the government in recognizing indigenous peoples.

After the mapping and documentation of the profile and history of the community, the indigenous peoples of Kasepuhan Csitu lobbied with the head of the district government to issue a *surat kaputusan* (decision letter) recognizing their presence and their territory in the said kasepuhan. The decision letter was eventually issued in 2010 and the territorial maps they made were annexed to the decision letter. This greatly supported and strengthened the indigenous peoples' claim to their land.

The community then did an overlay of their community map with the map of the national park. Comparing the two maps, they found an overlap between the identified protected zone of the community and the national park. The community thus entered into a Memorandum of Understanding with national park authorities for the co-management of the protected zone, which they consider a sacred area.

The mining project, on the other hand, overlapped with the national park and the community's cultivation area, thus the community asserted that mining should not be conducted within the national park area. Written evidence and the letter from the district head backed the community's assertion. Thus, in 2011, the mining company ceased their operation and the community is now operating the mines using traditional methods of mining.

As the mining area is also identified as part of the national park, authorities wanted to reclaim the area, fearing that the community would expand their mining and cultivation activities into the adjacent protected zone. The claim is backed by Law 41 (Forestry Law), which states that customary forests are state forests located in indigenous territories.

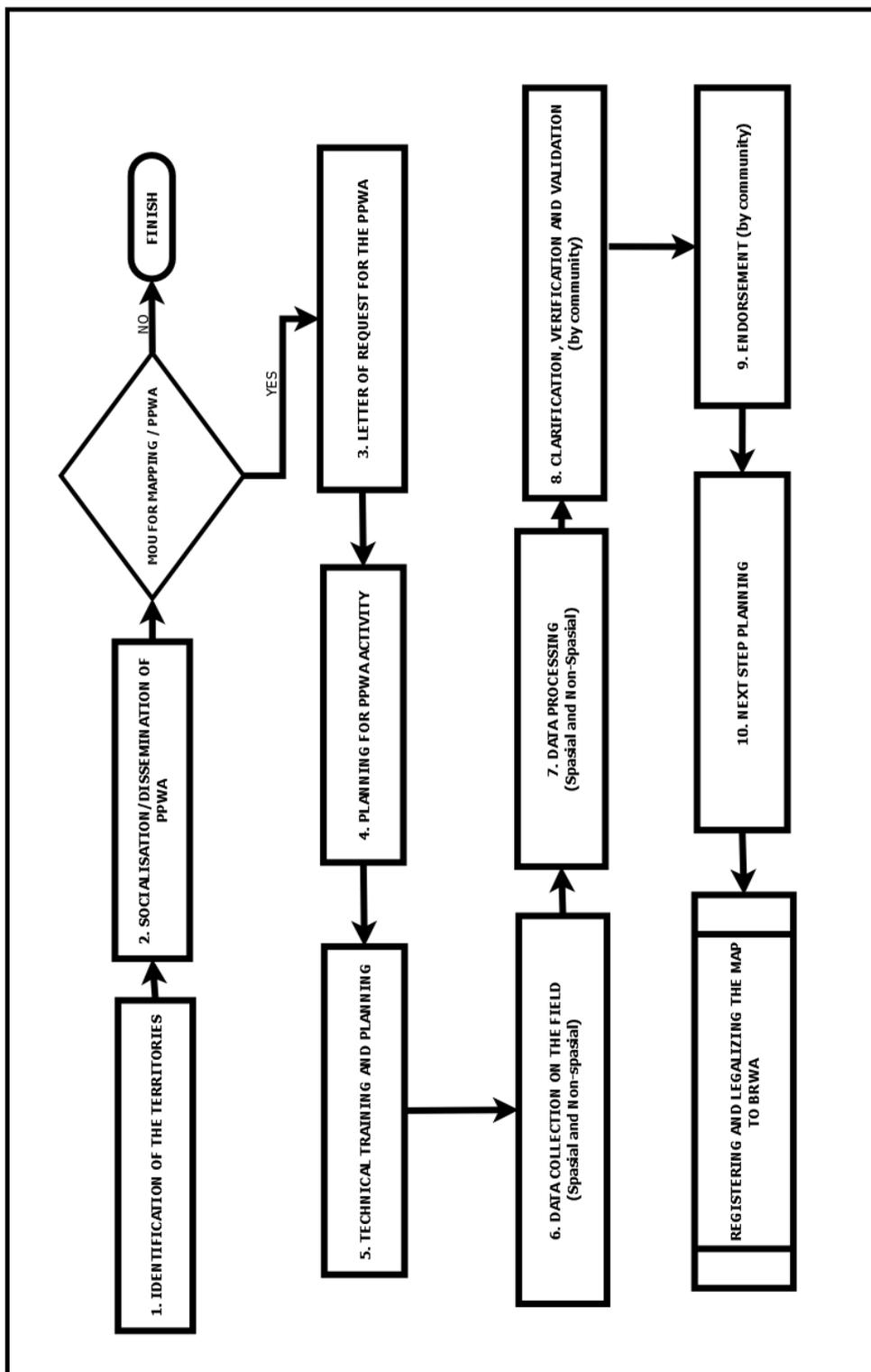
This prompted AMAN, the people of Kasepuhan Cicitu, and the Kuntu indigenous peoples in Sumatra to request for a judicial review of Law 41. The review resulted in the landmark decision in 2012 by Indonesia's Constitutional Court, Ruling (MK 35), which acknowledges that customary forests are not state forests. For this decision to be implemented on the ground, there has to be an issuance of a regulation at the local or district level acknowledging such. AMAN is now working with its members to lobby with their local and district governments to issue such a regulation supporting MK 35.



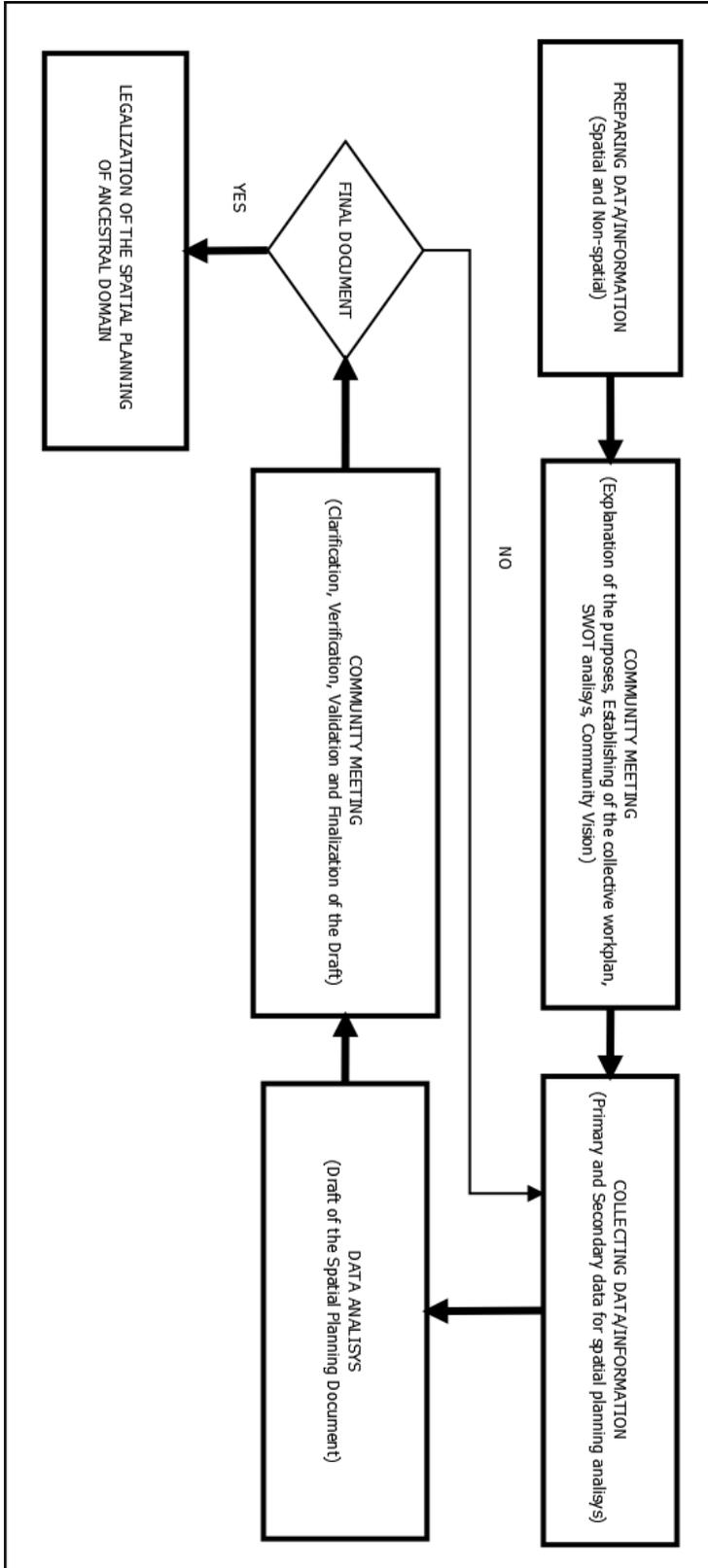
Nura Batara

Baduy Dalam people, also known as Urang Kanekes in Lebak-Rangkasbitung District, Banten Province

Steps of Participatory Mapping of Customary Land



Process of the spatial planning in customary land



Advocacy for Indigenous Peoples' Land Rights Recognition

In order to encourage the recognition of indigenous peoples' land rights in Indonesia, AMAN, together with JKPP and BRWA, gradually submitted the maps of customary land to the Indonesian Government. On 14 November 2012, the first 265 maps covering a total area of 2.4 million hectares were submitted to the Presidential Working Unit for Supervision and Management of Development (UKP4) and Geospatial Information Agency (BIG).⁵⁹ The second submission of 324 maps covering a total area of 2.6 million hectare was given to the Ministry of Environment⁶⁰ on 15 July 2013. The third batch of 517 maps covering a total area of 4.8 million hectares was submitted to the REDD+ Agency (BP REDD) and to the Ministry of Environment and Forestry (MEF). The last submission of 304 maps covering a total area of 6.8 million hectares was forwarded to the MEF. AMAN requested for the maps to be included in the inventory of the Indonesian government as references for the recognition of indigenous peoples' rights and resolution of conflicts.

In early 2015, in response to AMAN's lobbying, the MEF issued Regulation No. 24/Menhut-II/2015 to form a Team for Complaints on Environment and Forestry Cases (TP2LHK).⁶¹ The team, composed of representatives from the government, civil society and indigenous peoples was to handle cases of violation of indigenous rights based on urgent complaints and reports received directly from indigenous peoples.

On 25 June 2015, AMAN met with President Joko Widodo who responded positively to suggestions from AMAN to prioritize the immediate adoption of the Bill for Recognition and Protection of Indigenous Peoples' Rights (RUU PPHMHA). The president also acknowledged the importance of setting up a Task Force of Indigenous Peoples (*Satgas Masyarakat Adat*), and agreed in principle to the release of indigenous citizens who were criminalized or unfairly prosecuted by the law. He also pledged to accelerate economic development based on indigenous models. The meeting was considered a major step towards reconciliation between the State and indigenous peoples in Indonesia.⁶²

On 15 August 2015, President Widodo reaffirmed his commitment to indigenous peoples in his first State speech during the Annual Conference of Peoples Representative Council (MPR) 2015, which was held in Jakarta on the occasion of Indonesia's 70th Independence Day. In the speech, President Widodo stated, "*Government is also committed to protect indigenous peoples in facing agrarian*

⁵⁹ UKP4 or Unit Kerja Presiden bidang Pengawasan dan Pengendalian Pembangunan is Presidential Working Unit for Supervision and Management of Development. BIG or Badan Informasi Geospasial is Geospatial Information Agency.

⁶⁰ Under the Government of President Susilo Bambang Yudhoyono, Ministry of Environment had not been merged with Ministry of Forestry. In the government era of president Joko Widodo, the two Ministries were merged into one and became the Ministry of Environment and Forestry (MEF).

⁶¹ TP2LHK or Tim Pengaduan Kasus-kasus Lingkungan Hidup dan Kehutanan is team formed by MEF to resolve/handle complaints from indigenous peoples and other community on environment and forestry cases.

⁶² See <http://news.mongabay.com/2015/06/indonesian-president-pledges-to-accelerate-long-delayed-indigenous-rights-law/>, accessed on 22 September 2015.

conflicts, reducing carbon emissions by stopping forest fires, managing sustainable forests...and creating a reconciliation committee to look into grave breaches of human rights.”⁶³

#LANDRIGHTSNOW Campaign in Indonesia

The Campaign in Indonesia is led by AMAN (Aliansi Masyarakat Adat Nusantara also known as the Indigenous Peoples Alliance of the Archipelago), which is a national alliance of indigenous peoples, bringing together more than 2000 indigenous communities in the country. AMAN is also a member of the global steering group of the Campaign. Currently, nearly 20 organizations have joined the Campaign and indigenous peoples are collectively committed to carry on their efforts, towards the recognition and protection of their land rights.

The celebration of the Indigenous Peoples Day 2016 in Jakarta was organized by AMAN in collaboration with the Ministry of Education and Culture of Indonesia. About 500 representatives of indigenous communities were brought together for this occasion. AMAN had two main recommendations for the Indonesian government: to establish the Working Group on Indigenous Peoples (Satgas Masyarakat Adat) and the enactment of IPs Rights Act Bill (RUU Pengakuan dan Perlindungan Hak-Hak Masyarakat Adat).

INDONESIA

Conclusion

While Constitutional recognition of indigenous peoples in Indonesia is strong on paper, it has yet to translate to impact and recognition on the ground. The basic question as to who constitute indigenous peoples remains to be answered, as both national and local governments continue to argue over the complexity of verifying the existence of indigenous peoples.

Nevertheless, the government has demonstrated progress in its effort to recognize and protect the rights of indigenous peoples. This is evident in initiatives such as the first national inquiry by Komnas HAM into alleged human rights violations linked to land conflicts. Another is the drafting of the RUU Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Bill or Bill on the Recognition and Protection of the Rights of Indigenous Peoples. This bill which was filed at the House of Representatives in April 2013 has yet to be discussed in the Parliament. This is an indication of the slow process of legal recognition of indigenous peoples' rights by the state. If the bill is legislated, Indonesia could become the second ASEAN country (after the Philippines) to pass a specific law recognizing indigenous peoples' rights.

⁶³ <http://kabar24.bisnis.com/read/20150814/15/462481/pidato-presiden-jokowi-di-sidang-bersama-dpddpr> Accessed on 22 September 2015

In the absence of real recognition, many indigenous peoples continue to be criminalized when using land without formal documentation of their rights, or when entering their customary forests that are claimed as part of State forests. There is a need for immediate and comprehensive reform and, at the minimum, capacity building among state security forces on equitable law enforcement with regard to indigenous peoples. Parallel to this, a process to decriminalize previous and current victims of violations of indigenous peoples' rights must also be initiated.

Regarding the recognition of customary lands, the Indonesian government has yet to create a mechanism or system for the legalization and registration of indigenous peoples' lands. To address this lack, indigenous peoples' organizations and NGOs have taken the initiative to conduct participatory community mapping to enable communities to identify and measure their areas. Community mapping allows communities to use the maps as evidence and basis in claiming for their land rights. The community mapping activities have also strengthened community solidarity, empowering them to become independent in managing their resources. Furthermore, they have provided an opportunity for the young generation to acquire knowledge on the extent of their lands, territories and resources and to continue to use these tools in the assertion of their rights to lands and resources.

Recommendations

To the Government of Indonesia:

- Increase capacities of indigenous peoples in order for them to accelerate mapping of their customary lands;
- Establish a system for registration and legalization of customary lands.

As President Jokowi and Vice President Jusuf Kalla committed on their pro-indigenous peoples' rights agenda during their campaign:

- Review and adopt all laws and regulations related to the recognition, respect, protection, fulfillment and advancement of indigenous peoples rights, particularly those related to land and natural resources as mandated by the Decision of the Peoples' Consultative Assembly (*TAP MPR*) number IX/2001 and Constitutional Court Ruling 35/2012;
- Continue the legislative process for the passage of the Indigenous Peoples' Bill;
- Ensure that legislation such as the Land Bill will be in accordance with Constitutional Court Ruling 35/2012;
- Initiate legislation on the resolution of agrarian conflicts;
- Establish an independent committee on indigenous peoples;
- Commit to facilitate regional governments to properly implement Law 6/2014 particularly on the establishment of customary villages.

MALAYSIA



Introduction

In Asia and around the world, indigenous peoples are increasingly asserting that their rights to lands, territories and resources be recognised and respected by their respective governments. In Malaysia, particularly in the state of Sarawak, indigenous peoples have been struggling for years and have taken their own initiatives to stop encroachment by the government and private companies on their customary lands. One of these initiatives is community mapping and using of maps as evidence in legal cases for the legal protection of their land rights. This case study will focus on the community mapping activities of an indigenous Dayak Iban community from Rumah Nor's longhouse located along the Sekabai River in Bintulu Division of Sarawak, Malaysia.

In 1998, the longhouse community of Rumah Nor along the Sekabai River discovered that a pulp and paper company, Borneo Pulp and Paper Plantation Sdn. Bhd. was encroaching upon their Native Customary Land (NCL). The company intended to have an acacia plantation estate to feed its pulp and paper mill industry. Led by their headman, Nor Anak Nyawai, the community claimed that the said company had trespassed and damaged part of their NCL. Nor, together with his community, resisted further encroachment of the company by setting up a blockade. Nor and his community claimed that they had acquired the Native Customary Rights (NCR) to the area, as they had settled there after migrating from Kanowit in the 1930s, well before the cut-off date stated in Sarawak's land legislation, i.e. the Sarawak Land Code.

The company, on the other hand, claimed that the land they were operating on belongs to the State and the government, which, through the Sarawak Land and Surveys Department, had issued the company two titles over two parcels of the land. The State Government was also adamant that the said land was State land to justify their actions in issuing the titles to the said company.

As the dispute continued, Nor and his community decided to take legal action against the company and the Superintendent of Land and Surveys, Bintulu (the authority that issued the land titles). They filed their case in 1999 and the trial was heard in 2000. In May 2001, the Kuching High Court delivered its landmark judgment declaring that indeed the Dayak Iban community of Rumah Nor had acquired NCR over their territories especially over *temuda* (cultivated lands), *pulau galau* (communal forest) and *pemakai menoa* (ancestral territory). This landmark case also demonstrated, for the first time, the acceptance of a community map as evidence in court, which was made possible through the assistance of a local NGO, Borneo Resources Institute, Malaysia (BRIMAS).

The State Government and the private sector were in shock when this landmark decision was delivered. As a knee jerk reaction to the case, the State Government passed a new legislation – the Sarawak Land Surveyors Ordinance 2001. This law criminalised community mapping to stop communities from producing their own

maps to assert their NCR. In July 2006, the State Government appealed the decision of the Kuching High Court at the Court of Appeals and managed to get it overturned. The Court of Appeals held that the community of Rumah Nor lacked credible evidence to prove NCR over the disputed areas. Oddly enough, the areas outside the disputed area were declared as their Native Customary Lands. The Courts are still disputing the concept of what constitutes NCR, i.e., *temuda*, *pulau galau* and *pemakai menoa*.

Indigenous Peoples in Malaysia

Of the 28.3 million national population of Malaysia,⁶⁴ 17.5 million are classified as *Bumiputera* or “princes/sons of the soil.” *Bumiputera* is a political classification, which was created and used as a basis for affirmative action and policies in their favor. Apart from *Bumiputera*, there are various terminologies used to describe the natives of Malaysia. *Orang Asli*, which literally means “original peoples” or “first peoples,” is used to describe the indigenous peoples of the Peninsula. “*Anak Negeri*” which means “child of the State” or “native” is used officially to refer to the indigenous peoples of Sabah. *Dayak* and *Orang Ulu* are collectively used to refer to the natives or indigenous peoples of Sarawak.

Collectively, indigenous peoples of Malaysia refer to themselves as *Orang Asal*, a term that is increasingly used, including by the Human Rights Commission of Malaysia. *Orang Asal* comprises the *Orang Asli* from Peninsular Malaysia and the natives of Sabah and Sarawak. Malay, although recognized as *Bumiputera* or native to Malaysia, are not considered as “indigenous peoples” because they constitute the majority and are politically, economically and socially, the dominant group.

Orang Asal make up about 13.8% of the national population.⁶⁵ Majority of them, an estimated 60%, reside in the rural areas with some settled in very remote areas. Many of these rural indigenous peoples in Malaysia still rely heavily on their lands and territories for daily livelihood and survival. Having a close relationship with their lands and territories, they survive on hunting and gathering, fishing and selling forest products, among other things.

In 2010, the *Jabatan Kemajuan Orang Asli* (JAKOA), or the *Orang Asli Development Department*,⁶⁶ estimated the *Orang Asli* population to be 178,197 people or 36,658 households.⁶⁷ This figure is slightly less than 0.5 percent of the country’s total multi-ethnic and multi-cultural population. For official purposes, the demographic profile published in *Sistem e-Damak 2010* by the Department of

⁶⁴ http://statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf

⁶⁵ Certain Indigenous individuals who converted to Islam may consider themselves as Malay, especially in Sabah, so the indigenous Malays are included in the calculation of the total percentage.

⁶⁶ JAKOA is a department under the Ministry of Rural and Regional Development (formerly known as Department of *Orang Asli Affairs*) that was set up to manage the affairs of the *Orang Asli*.

⁶⁷ *Sistem E-Damak JAKOA, 2010*

Orang Asli Development classifies the Orang Asli as Negrito, Senoi and Proto-Malays.⁶⁸ The Orang Asli are often considered “second class *bumiputeras*” because although they claim over one million hectares of traditional land, most of them are not recognized as legal owners of their lands by the Malaysian Government. The Orang Asli’s social, economic and political rights are recognized in the Federal Constitution, but their legal status is not constitutionally defined nor mentioned in the same Constitution.

As of the 2010 census, indigenous groups comprise approximately 60 percent of the 2.6 million total population of Sabah. A big controversy exists as to who are the natives of Sabah, particularly due to the sudden increase in population over the last 10 years and discrepancies in official data. There are 39 ethnic groups, speaking more than 50 languages and 80 dialects, with the Dusunic, Murutic and Paitanic groups being the largest among them.⁶⁹



Puah Sze Ning

Indigenous women and children sitting on a large tree stump, evidence of an old rainforest tree, felled to give way to oil palm plantations in Kuala Koh, Kelantan.

⁶⁸ SUHAKAM Report on the National Inquiry into the Land Rights of Orang Asli/Orang Asal, p. 16.

⁶⁹ SUHAKAM Report on the National Inquiry into the Land Rights of Orang Asli/Orang Asal, p. 12.

⁷⁰ Unlike the Malays who were accorded this special position and privileges upon Malaysia’s independence in 1957, the Federal Constitution is less clear with respect to rights of the Orang Asli (original peoples) of Peninsular Malaysia, as the constitutional guarantee is not for special privileges but rather ‘protection’ empowered by the then Department of Orang Asli Affairs (JHEOA), now known as Department of Orang Asli Development (JAKOA), to look after their welfare, under Article 8(5).

Of the 2.3 million population of Sarawak, 28 indigenous groups make up 71.2 percent of the population. Sea Dayak and Land Dayak are names used during the colonial period to refer to the Iban and Bidayuh peoples. The Iban make up the largest indigenous group in Sarawak, comprising about 29% of the population. The Bidayuh represent the third largest group, following the Malays, and are subdivided into five different ethno-linguistic components. The Orang Ulu – a collective name given to the indigenous peoples generally found in the interiors of Sarawak- comprise approximately 5% of the total population in Sarawak.

Native Customary Land Rights Recognition in Sarawak

Malaysia has a two-tier structure of government - Federal and State. This division of jurisdiction is written in the Federal Constitution. Land matters, and therefore indigenous peoples' rights to lands, territories and resources, come under the States' jurisdiction.

In the Federal Constitution, Article 153 (1) states that it is the responsibility of the Yang di-Pertuan Agong (Supreme Head of Malaysia) to safeguard the special positions of the Malays and Natives of Sabah and Sarawak. These safeguards were put in place to justify the historical grounds that the Malays and natives of Sabah and Sarawak have been economically disadvantaged.⁷⁰ Article 161A of the Federal Constitution provides additional protection to the special positions of the natives of Sabah and Sarawak by giving them preferential treatment in the alienation of land by the State.

At the Sarawak state level, the responsibility of safeguarding the special positions of the natives of Sarawak and the legitimate interest of other communities lies with the Yang di-Pertua Negeri (Head of State) as stated in the Article 39 of the Sarawak State Constitution.⁷¹

The Sarawak Land Code 1958 (Cap 81) is the main land legislation in Sarawak. NCR land is defined under Section 2(a) of the Code as "land in which native customary rights, whether communal or otherwise, have lawfully being created prior to 1 January 1958, and still subsist as such." Section 5(2) of the Code spells out the ways where an indigenous individual or community can acquire NCR through "(a) the felling of virgin jungle and occupation of the land, (b) planting of land with fruit trees, (c) occupation of cultivated land, (d) use of land for a burial ground or shrine, (e) use of land for rights of way, and (f) other lawful method" (this method was deleted in 2000). However, there are also provisions within the Code that extinguish NCR for public purposes, with compensation being paid to the landowners.

At first glance, or for those unfamiliar with the Sarawak land legislation, it all seems good on paper for the indigenous peoples in Sarawak, as the law "protects" them. However, the bone of contention for the indigenous peoples of

⁷¹ Provisions are identical to Article 153 of Federal Constitution.

Sarawak is the interpretation of the Sarawak Land Code by the State Government. The State Government only recognises *temuda* (cultivated lands) as NCL and rejects *pulau galau* (communal forest) and *pemakai menoa* (ancestral territory). The State Government's argument is that *pulau galau* and *pemakai menoa* do not exist in the customs and practices of the Ibans as they are not codified in the statutes. If they do not exist, then they do not have the force of law. This is the case of Nor as well as more than 200 NCR disputes pending in the court at all levels in Sarawak.

A *pemakai menoa* according to the decision of the High Court in Nor Anak Nyawai's case is an Iban term that refers to a 'territorial domain of a longhouse community where rights to land resource were created by pioneering ancestors...It is within this territory that each longhouse community has access to land for farming, called *temuda*, to rivers for fishing and to jungles, called the *galau* or *pulau galau*, for gathering of forest produce. It has a boundary separating it from that of another longhouse. The boundary is reckoned by the reference to mountains, ridges, rivers or other permanent features on the earth'.⁷²

#LANDRIGHTSNOW Campaign in Malaysia

Indigenous communities, organisations and networks including researcher groups in Malaysia are actively participating in the Campaign. Currently, there are seven Malaysian organisations and networks directly supporting the Campaign, namely, JOAS (Jaringan Orang Asal Se-Malaysia), PACOS Trust, SUARAM (Suara Rakyat Malaysia), HAKAM (National Human Rights Society), Sarawak Dayak Iban Association, KAIT Indigenous Research Group and North South Initiative.

On the occasion of the global launch of the Campaign, JOAS released a press statement and announced their plans to map out *Orang Asal* territories and consolidate the results into a national database to support the Campaign. This strong commitment and statement by JOAS was expressed based on the view that land rights for Orang Asal are not only an issue of livelihoods, but more critically, their traditional land as the source of their identity and culture. It is also a reflection on the alarming trend in Malaysia where communal areas including watersheds, hunting grounds, burial areas and forest within indigenous peoples' territories are being contested in courts as otherwise.

In this context, JOAS and the government of Selangor State collaborated in the celebration of the International Day of the World's Indigenous Peoples 2016 under the theme "Back to Roots, Land Rights Now!" which was participated by about 5000 people from different parts of the country and abroad. A six-day program (4-9 August 2016) was conducted in conjunction with the Campaign.

⁷² Nor Anak Nyawai & ors v Borneo Pulp Plantation Sdn Bhd & ors (Ian Chin J), [2001] 6 MLJ, p241 - 299

JOAS is currently increasing the momentum by engaging with various stakeholders and NGOs for collective action to recognize land rights of indigenous peoples in Malaysia and stressing on the importance to promote the ancestry of indigenous peoples and to protect their heritage.

At the same time, the Campaign is directly assisting the peoples of Seletar of Danga Bay in Johor Baru in their case, with the concrete aim to strengthen solidarity, put the case into global spotlight for international support. Seletar peoples of Danga Bay are currently suing the state and federal governments as well as eleven companies and individuals who were given titles of lands by the governments that rightfully belong to the Seletar peoples under the NCT as recognized by law.

Using Community Mapping as Evidence for Claiming NCR in Court

Community mapping initiatives by NGOs and community-based organisations in Malaysia started in the early 90s. It was initially used as a tool to negotiate with other neighbouring villages and State agencies, but this had limited success. Instead, mapping proved to be a more effective tool for providing supportive evidence for NCR claims in courts.

In Sarawak, community-mapping initiatives started after several community activists discussed the need to record and demarcate the NCL of the Dayaks. A few NGOs came to train local NGOs and community-based organisations in the State. From 1997 onwards, BRIMAS has been in the forefront of community-based mapping activities in Sarawak, requested by many communities to map customary lands and to conduct training sessions on mapping. The community of Rumah Nor is one of the first few communities that BRIMAS helped to do mapping.

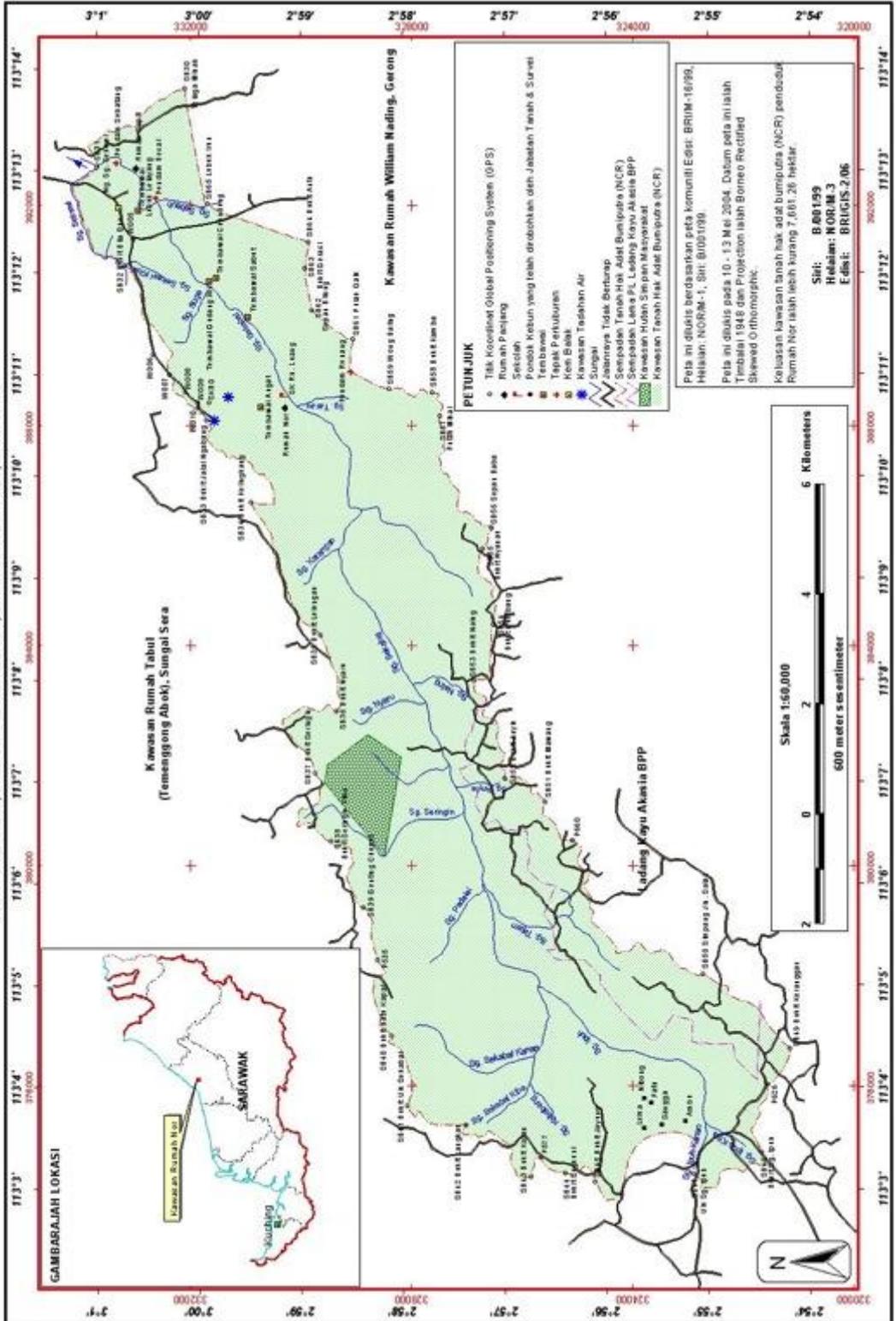
Rumah Nor community needed a map to support their NCR claims in court. In 1999, BRIMAS held a meeting with the community to gather background information such as existing maps and identified communal boundaries as agreed by the community. The community also clarified the objectives of mapping their customary land boundaries and issues were discussed on how to organise the field survey and what information should be mapped.

A few youths from the village were trained to use the Global Positioning System (GPS) devices, compass and tape measurer to conduct the field surveys. A sketch map was also drawn together with the community to identify their communal land boundary and important landmarks that they wanted mapped. The youths trained by BRIMAS conducted the field survey to gather the GPS waypoints.

Normally, a survey team consists of a person operating the GPS device and members of the community who are knowledgeable of their customary land. In some cases, (to a lesser extent), compass and tape measure are used in field

Rumah Nor community map

PETA MENUNJUKKAN SEMPADAN KAWASAN TANAH HAK ADAT BUMIPUTRA (NCR) PENDUDUK RUMAH NOR DAN RUMAH SAPIT, SUNGAI SEKABAI, DAERAH KECIL SEBAUH, BAHAGIAN BINTULLU, SARAWAK



surveys. Once the field survey is completed, the field data is inputted into BRIMAS' Geographic Information System (GIS) database. Layers of data from the field survey are overlaid over base maps, usually topographic maps, and the community prints out the draft map for critical review. Amendments, if there are any, are made on the map and the final copy is printed once the community validates that the information on the map is correct.

For the Rumah Nor community, the map was hand drawn then as BRIMAS had yet to use GIS for its community mapping activities. The map was drawn to scale on a graph paper, and all the information put on it. Once this was done, the map was traced out from the graph paper and photocopied to produce the draft map for the community to review. The final map was printed out and given back to the community for them to use as supporting evidence in their court case. The number of households in the longhouse at the time of the trial was 75. The total land area in the map is 7,661.26 hectares, of which the area under dispute was 672.08 hectares. The map on next page is a copy of the Rumah Nor community map.

When the map was tendered as evidence in the court case, the opponents of Rumah Nor community tried to block the community map from being admitted by the court as evidence during the trial. They argued that the people who did the field survey and drew the map were not qualified and licensed surveyors. Efforts to find fault in the map were unsuccessful and in the end, the court accepted the map as evidence.

When the Kuching High Court delivered its judgment in 2001, the Dayaks in Sarawak realised that they can claim their NCR through the use of community mapping. As a result, demands for community mapping in Sarawak rose. In reaction, the State Government enacted the Sarawak Land Surveyors Ordinance 2001 but until today the State Government has not been able to use this piece of legislation to criminalise community-mapping activities as it only applies to registered and licensed surveyors.

MALAYSIA

Achievements, Challenges and Lessons Learnt

Community mapping efforts in Sarawak have indeed empowered the indigenous Dayak communities, NGOs and community-based organisations involved in it. Community mapping has helped mobilise the communities to assert and defend their NCR to land. The equipment used to conduct field surveys and to produce the map is easily accessible and fairly easy for the communities to understand and use. With the community maps, the Dayaks could see and accurately identify the location and territory of their customary land to other parties, thus increasing their bargaining power.

The greatest achievement of community mapping initiatives in Sarawak is the acceptance of community maps as evidence in court for indigenous Dayaks' NCR

land claims. Rumah Nor's case is the landmark case that made this possible. Now, nearly all NCR land claims that are filed in courts all over Sarawak use community maps as supporting evidence.

The increasing demand for community mapping all over Sarawak puts a tremendous strain on the resources of a few NGOs and community-based organisations already heavily burdened with their current workload. There are not enough skilled and knowledgeable personnel within the NGO network to meet these demands.

There are varying levels of capacity among community mappers where some groups still need more training to be able to meet the standards required for maps to be used in court. Furthermore, funding from donor agencies to implement such training activities is difficult to obtain.

The use of GIS further limits the participation of the communities in producing their maps because only a select few who have the skills and knowledge in information technology can participate in the GIS trainings. There is also the issue of getting funds to obtain the GIS software and hardware.

Accessing information or data from the government is challenging. Some information are restricted, such as the 1:50,000-scaled topographic maps and aerial photographs. Others are confidential such as development plans of a government agency. However, there is now a lot of information available in the Internet to counter the limitations of information, which can be accessed, for instance, by using Google Earth.

Conclusion

Community maps have proven to be a powerful tool in empowering the indigenous Dayak communities in Sarawak to demand due recognition and respect for their NCR to land by the government. Delineation of the Dayaks' customary land boundaries has been made easier with the advancement of mapping technology. However, the Dayaks continue to have land conflicts with the government and private sectors as the concept of *pemakai menoa* and *pulau galau* is not accepted as customary land. The State Government, to this date, continues to appeal such cases, which they have lost in the courts.

Recommendations

The State Government should accept the decisions of the courts and make efforts to amend the Sarawak Land Code to include *pemakai menoa* and *pulau galau* as NCL and not just restrict it to cultivated areas or *temuda*.

The State Government should survey the NCL of the Dayaks, including *pemakai menoa*, *pulau galau* and *temuda*, and issue individual and communal land titles. If the government is short of staff, they could coordinate with NGOs and train

community-based organisations to conduct the field survey and carry out this work successfully. The community needs more capacity building and training to obtain the knowledge and skills for making their own community maps. Organisations assisting communities in producing their community maps also need field survey equipment, hardware and software for GIS applications and trainings.

Rumah Nor community has shown that it is possible to use community maps for advocacy. Support from organisations involved in community mapping is vital for the continuation of community mapping in Sarawak and Malaysia as a whole. To further enhance this initiative, a network of community mappers in the region could be formed that would facilitate the exchange of information and expertise.

Semai People of Kampung Senta, Malaysia Win Land Rights Case Using Indicative Map and Expert Report

On 30 September 2015, the Ipoh High Court in Perak, Malaysia affirmed that under common law, the Orang Asli Semai people of Kampung Senta in Bidor, Perak enjoy native title rights to their *tanah adat* (customary lands). The Court accepted the testimonies of the Orang Asli plaintiffs following other important precedent-setting land rights cases in Selangor and Sarawak (Sagong Tasi, Nor ak Nyawai and Madelli Salleh). The testimonies were supported by an 'indicative map' produced by the Semai, an expert report and oral evidence that the Semai are the traditional owners of the land since early times. The court also noted that there was no credible challenge to these testimonies from the defense side.

Background of the case

In 2010, the Semai people of Kampung Senta in Perak, Malaysia found that representatives of a company, later known to be Bionest Corporation Sdn Bhd (Bionest), had encroached on their lands including the area close to their residential houses. Bionest challenged their rights to the land, prompting the Semai people to lodge police complaints and other reports to stop the encroachment.

In 2014, Bionest filed a suit against the Orang Asli Semai people, alleging that part of the Semai's customary lands had been alienated to them. Bionest claimed they were the rightful owner of 113.7 hectares of the land in dispute, they had the title deeds to show for it, accused the Orang Asli of trespassing, and got the Court to issue an eviction order against the Semai. The dispute was whether the land, ungazetted, belongs to the State government or to the Semai people through ancestral possession. The Semai people have been living in the disputed land since time immemorial, or for at least 130 years.

In response, Kong Chee Wai and Bah Kana a/l Bah Ngah, in their personal capacity and representing 142 other villagers, filed their own counter-suit. They declared that the said lands were Orang Asli customary lands and that these

belong to the Semai Peoples of Kampung Senta by way of native title under common law. They sought to set aside the eviction order and asked that the lands that had been alienated to Bionest be returned to them. The Semai community of Kampung Senta issued an Originating Summons against the three defendants -- the Director of Lands & Mines, the Government of Perak (PTG) and Bionest Corporation Sdn Bhd.

Decision of the Court

The Ipoh High Court decided and declared, among others, that the said lands were in fact Semai customary lands. The area concerned is 2,209 hectares (5,460 acres) based on the 'indicative map' produced by the Semai.

The Court also found that the government had failed in its fiduciary duty to gazette the lands as an Orang Asli reserve. Thus, the Court instructed the State Government to measure and gazette the lands as an Orang Asli reserve, including the part of Semai customary lands that had already been alienated to Bionest to be excised from the alienation and gazetted as Orang Asli Reserve.

However, about 50 acres of land now worked by Chinese farmers to grow guava and papaya were to be excluded from the *tanah adat*. Allowing the Chinese farmers to work the land without any contractual arrangement meant that the Orang Asli plaintiffs had abandoned their claim and rights to that portion of their customary lands.

Support for the case

The testimonies of the Orang Asli plaintiffs in the case were supported by an 'indicative map' of their customary lands produced by the Semai people themselves. Further, Dr. Colin Nicholas, an Orang Asli specialist and expert witness for the plaintiffs, submitted a report on the "History, Presence and Situation of the Semai-Orang Asli in the Kampung Kuala Senta Customary Territory, Perak." He had also given similar reports in several other cases involving Orang Asli customary land claims. A set of photos was submitted to the Court as a Supplementary Appendix to the Expert Report. This was to help the Court visualise the situation and geography on the ground, as a visit to the site was not likely.

Lawyers from the Committee for Orang Asli Rights (COAR) of the Malaysian Bar Council provided pro bono legal service to the Semai people. It was the first time that the Semai community had taken their case to court and won. Other subgroups that have likewise done so and won at the High Court stage include the Temuan, Orang Seletar and the Semelai. Other similar cases still pending involve the Temiar, Semaq Beri, Jakun and another two cases involving other Orang Seletar and Semai communities.

Reference: <http://iva.aippnet.org/malaysia-the-semmai-of-kampung-senta-win-their-land-rights-case/>

PHILIPPINES



Indigenous Peoples in the Philippines: A Background

The Philippines is an archipelago made up of more than 7,100 islands with a total land area of approximately 300,000 sq. km. or 30 million hectares. Its extraordinarily high biodiversity has made it one of the 17 mega diverse countries in the world. However, it is also considered as one of the 25 biodiversity hotspot disaster areas due to the multitude of factors that threaten the integrity of the environment and natural resources in the country.⁷³

A vast majority of the estimated 12-15 million indigenous peoples in the Philippines reside in the uplands with the remaining bio-diverse ecosystems, which they claim as part of their ancestral domains. Out of the 128 initially identified key biodiversity areas in the country, 96 areas – or 75% of the total number – are within the traditional territories of indigenous peoples. Most indigenous communities, however, do not have legal recognition by the State of their traditional lands, thus limiting their ability to freely conduct their livelihood activities and traditional resource management.

This diversity is also reflected in the country's population of 100,981,437 as of August 2015 Census of Population.⁷⁴ The majority of the people in the country are basically of Malay stock comprising various ethnic groups. There are an estimated 171 different languages in the Philippines, of which 168 are living languages and three are extinct.⁷⁵ The same numbers also represent the different cultural entities that speak these languages.

Successive colonization divided the Filipino population into those who were subjugated by the colonizers and who, in the process, became part of the mainstream Filipino population, and those who avoided or resisted colonization and were marginalized. In this way, the 'indigenous peoples' who maintained their indigenous cultures were distinguished from the rest of the Filipino population as cultural minorities.

The National Commission on Indigenous Peoples (NCIP) estimates the population of indigenous peoples in the Philippines to be between 12 and 15 million distributed into approximately 110 different ethno-linguistic groups or 'cultural communities'.⁷⁶

There are varying figures with regards to the population of indigenous peoples in the country. The data varies depending on the author and available sources of research. The Episcopal Commission on Tribal Filipinos (ECTF) in 1995 identified at least 40 ethno-linguistic groups with a population of about 6.5 to 7.5 million (10-11% of the country's population in 1995). The National Council of Churches in the Philippines (NCCP), on the other hand, estimates the existence of at least

⁷³ Navjot S. Sodhi , Lian Pin Koh^{1,2}, Barry W. Brook and Peter K.L. Ng

⁷⁴<https://psa.gov.ph/content/highlights-philippine-population-2015-census-population>

⁷⁵ SIL, 2012

⁷⁶ Pedragosa, *Natural Justice in Bangalore and Kalpavriksh in Pune and Delhi*. Date: September 2012

60 ethno-linguistic groups. The government through the NCIP identifies 95 distinct tribes, including Islamic or Muslim groups in 14 regions of the country with an estimated population of between 12-15 million or 17-22% of the total population in 1995. The detailed breakdown and disaggregation of demographic data from the government is not available for this year (2015).⁷⁷

Definition of Indigenous Peoples

The Indigenous Peoples' Rights Act (IPRA) of 1997 defines indigenous peoples in the Philippines as:⁷⁸

Indigenous Cultural Communities/Indigenous Peoples – refer to a group of people or homogeneous societies identified by self-ascription and ascription by others, who have continually lived as organized community on community-bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside the ancestral domains. (Chapter II, Section 3h)

This definition is the result of local as well as national consultations that were undertaken in the process leading towards the drafting and enactment of the IPRA.

PHILIPPINES

National Policy and Legal Framework on Traditional Lands

Like most post-colonial democracies, land administration in the Philippines follows the prevailing Doctrine of Discovery (DD), i.e., that Magellan 'discovered' the islands and claimed these under King Philip of Spain in 1521. This is referred to as the Regalian Doctrine, which conferred ownership rights to the King of Spain, not only of lands but also of all sub-surface natural wealth. Thus, private land title emanates from the Spanish crown. This land ownership regime was adopted by the American colonial government and subsequently, all the constitutions of the Philippine Republic. The Regalian Doctrine is at the core of the conflict between indigenous peoples and the Philippines Government as it

⁷⁷ Molintas, *Arizona Journal of International & Comparative Law* Vol 21, No. 1 2004

⁷⁸ IPRA, Chapter 3, Sec. 3, letter h.

totally ignored prior native rights, and gives the state full ownership and control over the utilization and management of lands. Land titling in the country is based upon the 19th century procedure of Torrens Titling System, which was introduced in Western Australia in 1852. This titling system is fully enforced by the government through its Constitution and various Republic Acts and administrative policies on land administration.⁷⁹ The Government only allows citizens to apply for ownership titles in areas that have been classified by the state as “alienable and disposable.” All traditional land management and ownership arrangements have been fully extinguished by the imposition of state laws.

Years of advocacy and lobbying for recognition of traditional ownership and control over lands finally bore fruit, first in 1987 with the ratification of the Philippine Constitution containing provisions recognizing indigenous peoples, and in 1997, with the passage of Republic Act 8374 or the Indigenous Peoples Rights Act (IPRA). With the IPRA, the Philippines holds the distinction of being the first country in Asia to enact a law recognizing the traditional rights of indigenous peoples over ancestral lands and domains.

The Indigenous Peoples’ Rights Act (IPRA)

In recent years, the Philippine Government has made major policy reforms in order to address the serious problem of lack of tenurial security among indigenous peoples and local communities. This can be attributed mainly to the continuous and sustained lobbying efforts and advocacy of indigenous peoples’ organizations and their support groups. As such, the Philippines has led the way in the Southeast Asia region as it pioneered the use of long-term stewardship agreements as a tenurial instrument to recognize the resource management rights of indigenous peoples within forestlands in the early 1980s.

In 1997, the landmark legislation IPRA was enacted to recognize, protect and promote the rights of indigenous peoples. It is well documented and evident that indigenous communities in the archipelago have been managing their resources since time immemorial through their traditional knowledge, systems and practices developed centuries ago, even before the creation of the Philippine State. The IPRA provided a venue and legal backbone for the recognition of the traditional rights of indigenous peoples over their ancestral domains.

The IPRA is seen as the most radical policy reform with regards to tenurial security of indigenous peoples in the region. The IPRA goes beyond the contract-based resource management agreements between the state and the community as it recognizes the “ownership” of indigenous communities over their traditional territories, which include land, bodies of water and all other natural resources therein. Furthermore, the IPRA provides tenurial security to the community with the issuance of a Certificate of Ancestral Domain/Land Title (CADT/CALT) to the concerned indigenous clan or community.

⁷⁹ Philippine Constitution, Public Categories of Land, Public Land Act of 1936, PD 705.

With the passage of IPRA in 1997, the law recognized the rights of indigenous peoples over their ancestral domains and most importantly, provided for a process of titling of lands through the issuance of CADTs. The law gives jurisdiction of all ancestral domain claims to the National Commission on Indigenous Peoples (NCIP) including those previously awarded by the Department of Environment and Natural Resources (DENR) and all future claims that shall be filed.

The law provides the basis for filing new claims, which includes submission of a valid perimeter map, evidence and proofs, and accomplishment of an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). All existing ancestral domain claims previously recognized through the issuance of Certificates of Ancestral Domain Claim (CADCs) are required to pass through a process of affirmation for titling.

In a nutshell, the IPRA lays the basis for the recognition of the traditional rights of indigenous peoples over their ancestral domains through the issuance of CADTs. It recognizes the rights of indigenous peoples to define their development priorities through their own ADSDPP exercise management and utilize the natural resources within their traditional territories.

Issues and problems in land administration

IPRA includes "Self-delineation" as the guiding principle in the identification of ancestral domain claims. However, due to the lack of resources and skills in the NCIP, the government has not been able to provide the necessary services to the indigenous peoples to fully realize this mandate and issue the necessary titles. Succeeding government administrations through the NCIP have repeatedly committed to fully implement the IPRA and promised to expedite the issuance of ancestral domain titles. However, these have remained empty promises as annual budgetary allocations for the NCIP and its ancestral domain management activities remain at a paltry average of .07% of the national budget.⁸⁰ More ominously, the situation has not improved as the trend in budgetary allocation for government services for ancestral domain claims and delineation, including community resources management, continues to decrease at an alarming rate.⁸¹

In its first three years of existence, the NCIP was not able to issue a single CADT, rather it certified community consent for dozens of mining applications – an act which it had no legal power to effect under the IPRA. Initial findings of the Office of the President's Performance Audit of the NCIP reveal that the agency is ill equipped, the staff are poorly trained and lack field experience or appropriate cultural sensitivity to handle land conflicts and issues of access to resources affecting indigenous communities.

⁸⁰ see IFAD poverty report 2001 De Vera and Zingapan

⁸¹ In FY 2014, the budget of NCIP was further reduced by P142 Million

With an average annual budget of P500 million (USD 10.8 million approximately) for its national operations and a staffing pattern beleaguered by a lack of capacity and skills, the NCIP faces severe constraints in serving the aspirations of the indigenous peoples. Thus, it is actively seeking the help of the private sector and particular members of civil society who have had extensive experience in the field of ancestral domain claims and community mapping.

Eighteen years since the enactment of the IPRA, there is still so much work that needs to be done. To date, very limited development activities in support of Ancestral Domain Management Plans have been implemented in indigenous peoples' areas. Problems in the implementation of the IPRA continue to fester and severely limit the chance of indigenous communities to truly benefit from the mandate of IPRA.

The government's inability to fully implement the IPRA in order to address the problems and concerns of the indigenous communities is rooted in conflicting policies, capacity gaps and a questionable commitment to empower indigenous communities. The urgency of the problem is underscored by the government's overt encouragement of the entry of large-scale commercial investments into indigenous territories to install extractive industries, which include open-pit mining, palm oil plantations and industrial forest farms.

Furthermore, the whole Ancestral Land and Domain titling system is still deeply rooted in the old elitist system of land administration. The process for filing a claim is very complex and entails a staggering cost to complete. Most indigenous communities have only been able to file claims with the assistance of NGOs and donors. A rough estimate of the financial requirements for the conduct of survey of ancestral domain boundaries reaches an average of at least USD 10,000.00 for every 2,000 hectares of land. This cost does not include other expenses to be incurred in the whole claims process. Considering that most ancestral domain claims go beyond 2,000 hectares, the staggering amount needed by most communities will be beyond their capacity to mobilize internally.

Participation of NGOs and communities in the actual conduct of the survey has been severely restricted by NCIP-promulgated Administrative Orders⁸² which basically follow outdated laws and policies such as the Magna Carta of Geodetic Engineers long been used by professional industry lobbyists to maintain a monopoly in the field of survey and mapping. This law restricts the practice of mapping to licensed professionals and criminalizes the conduct of community mapping. The results further marginalize the participation of civil society and local communities in land administration.⁸³

As of 2015, ranged against all odds, the following titles have been awarded by the NCIP: 158 CADTs, 258 CALTs with a total coverage of 4,323,782.722 hectares or 14% of the total land area of the Philippines. There are still 557 pending

⁸² NCIP Omnibus Rules on Survey and Delineation. 2005

⁸³ Philippine Geodetic Engineering Act of 1998.

applications or in process with a total area of 2,670,101.20 hectares. If the remaining ancestral domain title applications are secured, it is projected that a total of 6,993,883.9227 hectares or 23% of the total land area of the Philippines will be reclaimed by the country's indigenous peoples.

Issues related to the enjoyment of land rights under the IPRA

A key issue that has arisen from the implementation of the IPRA is the existence of prior claims within ancestral domains, especially mining claims and concessions. It should be noted that the IPRA was finally legislated after a long lobby campaign by indigenous peoples and advocates. One contentious issue in the process was that R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995, was legislated ahead of the IPRA, which was passed in 1997. IPRA Sec. 56 honors existing property rights regimes, to wit, "Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected." This is one of the root causes of the violent situation of indigenous peoples, especially in Mindanao island, where mining companies have been granted any of the following instruments: Mineral Sharing and Production Agreement, Financial and Technical Assistance Agreement, or Joint Venture Agreements. It is claimed that "about 60 percent of mining operations in the Philippines take place in ancestral domains, and often without the consent of the affected communities..."⁸⁴ The map below shows the extent to which mining claims, exploration permits and operations overlap with or are located in ancestral domains.

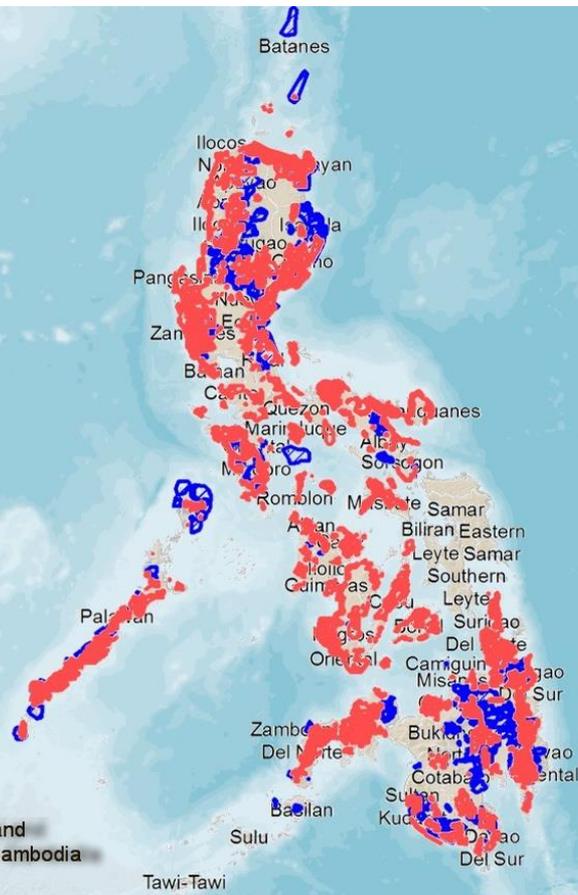
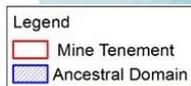


A Tumandok elder in his farm in Visayas, which is to be bulldozed when the Jalaur Mega Dam Project is pursued

PHILIPPINES

⁸⁴ Rep. Teodoro Baguilat, Jr. as quoted in http://www.seas.at/aseas/5_2/ASEAS_5_2_A9.pdf, p.335. Accessed 25 Sep. 2015.

Ancestral Domains



Edwin Nerva, Philippine Monitoring 2013, Land Watch Asia, 16 Sept. 2013, Phnom Penh, Cambodia
 Source: PAFID

Measures undertaken to enable recognition and participation

Faced with threats of penal sanctions and loss of community participation in mapping, the response from the NGOs and IPOs took various forms and were done in different stages. At the onset, the NCIP was required to promulgate the implementing rules and regulations of survey and mapping of traditional lands. The process, which called for consultations and participation from stakeholders, was used by NGOs and IPOs to engage the new government office in order to share their capacities and resources that can be shared with the government. An important feature of these engagements was the ability of NGOs and IPOs to interact with the NCIP and its personnel in order to gain their confidence and gauge the possibilities of future collaboration.

The limited resources of the Philippine Government restricted its capacity to implement the IPRA. The strong clamor of indigenous peoples for the full implementation of the law, which had been delayed for nearly four years, provided a window for participation. During the phase when the NCIP was tasked to implement the IPRA and it was still in the process of developing its capacity

and establishing its systems, the NGOs and IPOs already possessed advanced skills and tested methodologies, which were already field-tested. Thus, the government had no option but to partner with civil society and the community mapping practitioners among the NGOs and IPOs were the only viable option for the NCIP at that crucial period.

To remedy the situation, the NCIP entered into several Memoranda of Agreement to accomplish delineation of several claims of ancestral domains, which had been pending for some time. These MOAs provided the legality for the NGOs/IPOs to safely continue and undertake their mapping activities. The standard MOA between the government and its NGO/IPO partner stipulated that the surveying and mapping activity was to be “officially” led by the NCIP but at the same time ensured the full participation of the NGO and IPO in the actual conduct, review and validation of the survey results.

These partnership agreements with government have proven to be mutually advantageous to both parties as the NCIP gets to accomplish its targets and gets the credit, while the NGOs and IPOs ensure community participation and the use of tested methodologies while being legally recognized.

Another arena where NGOs and IPOs were able to gain legitimacy for an established community mapping methodology was in the preparation of local land-use plans. Participatory 3D-mapping (P3DM) has been practiced in the Philippines since the mid '90s by NGOs and IPOs as an improved alternative mapping method that allows greater community participation in spatial planning. P3DM has proven to be a very simple yet effective methodology for communities to use in resource management planning, boundary conflict resolution and a range of other applications.

In recognition of its effectiveness, the Department of Environment and Natural Resources (DENR) officially recommended P3DM as a viable strategy in protected area planning and natural resource management.⁸⁵ This official recognition of P3DM, along with continuous refinement and advocacy of the methodology by NGOs and IPOs has gained for it greater acceptability and stature as a mapping methodology. As an illustration, the Office of the President of the Philippines through its Office of the Presidential Adviser on the Peace Process (OPAPP) entered into a partnership with the Philippine Association For Intercultural Development (PAFID) to work with several indigenous communities in northern Philippines to construct 3D models of their communities. These models were later used as tools to resolve boundary conflicts which had involved protracted and often violent tribal wars. Many local government units have since engaged the assistance of NGOs and IPOs in the construction of P3DMs, which are used as planning tools in the formulation of resource management plans.

⁸⁵ DENR Memorandum Circular 2001-01

Local government units (LGUs) in the Philippines play a very crucial role in defining the country's land use policies. Each LGU is mandated to promulgate their municipal land-use plan. The conduct of such a plan is regulated by a national government agency that provides clear rules of planning, including the proper legal format for a land-use map. Unfortunately, many LGUs do not have the wherewithal to conduct a land-use planning exercise, much less make their own land-use maps. More often than not, they fall prey to unscrupulous pseudo-consultants who merely cut and paste old maps and present these as an accurate representation of the municipality's coverage.

This situation presented another opportunity for NGOs and IPOs to partner with the government in order to secure recognition and continue with their work. LGUs have recognized the use of P3DM to be cost effective and technically efficient, while also providing them a chance to rally the people over a common cause. In the past three years, five LGUs have officially partnered with the PAFID for the conduct of P3DM of their municipalities.

Aside from the low cost, a key factor that has convinced the LGUs to adopt P3DM is adherence to the "map format" as stipulated by the national government. PAFID, for instance, has adapted the color scheme as provided by the guidelines of the National Regulatory Board. The P3DM being a flexible tool and medium easily accommodated all the legal requirements as requested by the local governments.

#LANDRIGHTSNOW Campaign in the Philippines

With the massive issue of land grabbing and other cases of the violation of indigenous peoples' land rights in the country, the Campaign has become one of the crucial and important avenues for civil society, indigenous organizations and networks in the Philippines to bring people together and to jointly fight for their land rights. Up to September 2016, there are more than 40 organizations and networks from the Philippines joining the Campaign.

Several organizations from the Philippines such as TEBTEBBA (Indigenous Peoples' Centre for Policy Research and Education), LILAK (Purple Action for Indigenous Women's Rights), KATRIBU (Kalipunan ng mga Katutubong Mamamayang ng Pilipinas, a national alliance of regional and provincial indigenous peoples' organisations representing indigenous communities in the Philippines) and CPA (Cordillera Peoples Alliance) participated in the Asia regional launch of the Campaign in Yangon, where they expressed strong commitment to support and bring forward the Campaign at different levels.

On the occasion of World's Indigenous Peoples' Day 2016, KATRIBU together with its networks conducted a one-month action from 1 to 31 August. Various activities were in place such as: a conference where Lumad Day was announced; nationally coordinated action in several cities to celebrate the World's

Indigenous Peoples' Day on August 9; photo exhibition with the theme "Punla: Indigenous Children of the Land" and solidarity night for Lumad evacuees among others. Most recent activities to support the Campaign were undertaken by CPA in the form of a workshop of elders followed by a multi-stakeholder dialogue with the focus on regional autonomy and federalism issues and how federalism would affect indigenous peoples' land rights.

Community Mapping In the Philippines

History and background

Community mapping in the Philippines has had a long and productive history in the promotion of social justice, development and equity. Early practitioners came from the ranks of community organizers who introduced sketch mapping of villages and its resources in the conduct of initial "social investigation" of their partner communities. The standard practice of conducting sketch-mapping exercises in villages laid the foundation for eventual use of mapping as a tool for participatory resource appraisal and for securing land rights and access to resources.

A groundbreaking development that has had a profound impact on community mapping in the Philippines is the introduction of Global Positioning System (GPS) to civilian use. In the mid '90s, indigenous peoples' advocate groups ventured into the use of GPS to facilitate the identification and delineation of boundary corners of traditional territories. This was mainly in response to the opportunity created by the issuance of DENR Department Administrative Order No. 02 (DAO# 02) in 1992, which provided the initial legal process for the recognition of ancestral domains/lands. This facilitated the participation of civil society in the actual delineation of traditional territories. In the initial stages of the implementation of the DAO# 02, both government and NGOs were taken aback by the staggering extent of traditional lands that needed to be mapped. There was an urgent need to adopt new technologies and methodologies as existing surveying technologies would no longer suffice. Furthermore, resistance against DAO# 02 was strong, thus there was the need for more precise technology that could accomplish much more in less time.

The adoption of the new GPS technology allowed NGOs and indigenous communities to greatly accelerate the delineation of traditional lands/territories. Furthermore, with the GPS, the practice of mapping became simpler and easier to understand, a big departure from its former status as an elite discipline reserved only for "licensed" engineers and practitioners.

What has been done: mapping initiatives

The practice of using community mapping in the Philippines to defend indigenous peoples' land rights traces its roots to early initiatives undertaken by support groups and communities responding to land tenure issues faced by communities in the southern Philippines. Mapping of indigenous territories was initially undertaken during the early '80s to early '90s using the most basic of mapping tools such as compass/tape and a forester's transit. These were done to help secure the ancestral lands of the Ikalahan people in Imugan, Nueva Vizcaya, the Manobo people of Lagubang in Sultan Kudarat, the Hanunuo Mangyan of Umabang, Oriental Mindoro, and the Gubatnun of Malutok in Occidental Mindoro. These initiatives were mostly done to take advantage of the opportunities for land tenure recognition provided by the Social Forestry Program that allowed the delineation of ancestral domains in order to secure a Community Forest Stewardship Agreement (CFSA). In this first wave of mapping for indigenous peoples' land tenure, at least 35 Community Forest Stewardship Agreements were secured while a Communal Title for the Manobo people in Sultan Kudarat was also acquired.

In the early '90s, the issuance of DAO #02 provided a platform for indigenous communities to secure government recognition of ancestral domains. With this option available, indigenous communities and their NGO partners worked with the DENR in mapping and delineating the boundaries of ancestral domains. However, the available tools and technologies could not adequately and properly respond to the sheer amount of land to be delineated. In 1994, the Biodiversity Support Program (BSP-Asia) provided initial funds to support the mapping of ancestral domain claims in the Buhid and Iraya domains in the island of Mindoro. Resources from the grant enabled PAFID to purchase two hand-held GPS units and a community base station. Moreover, the first GPS Instrumentation training was conducted in the Philippines where NGOs as well as government agencies were introduced to the new mapping technology.

New groups engaged in the mapping of indigenous lands emerged as a result of the window provided by the DAO# 02 and the increased capacity to map domains afforded by the GPS technology. Other NGOs including the Mangyan Mission of Mindoro, Green Forum-Western Panay, AnthroWatch, and indigenous peoples' regional coalitions Kapulungan Para sa Lupaing Ninuno (KPLN) and NATRIPAL undertook their own initiatives to map and delineate ancestral lands and domains.

With new groups engaging in community mapping and a cooperative government agency recognizing the capacity of NGOs and communities, results from the initial partnership with the DENR were dramatic. In less than five years, nearly 700,000 hectares of traditional lands had been mapped and surveyed and most of these were later issued CADCs. In the process, a sizable number of

community volunteers were trained in basic map making, reading and in many instances GPS instrumentation.

Signs of empowerment were evident in communities that were producing their territorial maps in partnership with NGOs and IPOs. Communities now had the basic skills to read and make a map and thus were no longer dependent on outsiders or unscrupulous personalities. Furthermore, with the knowledge they had, community members were able to substantially participate and strictly monitor the conduct of mapping of their land.

The Partnership Agreements of the PAFID with the NCIP have since yielded at least ten titles including the first Ancestral Waters Claim and nearly 250,000 hectares of traditional land mapped and surveyed.⁸⁶

Beyond boundaries: using P3DMs

New and emerging threats to indigenous communities mainly coming from development aggression have forced a recalibration of tactics. New mapping approaches and methodologies emerged, which provided more information detailing local knowledge and the community's relationship to their land and resources. Maps of indigenous communities now needed to show their governance of the area and the impact of commercial activities on their lands.

Learning from the experience of groups in Thailand, P3DM became useful in empowering indigenous communities to delineate not only the boundaries of their domain but also to define their own management zones, generate their own spatial information and present their ancestral lands and domains from their own unique perspective.

Since its introduction in the late 90s, more than 175 P3DMs have been constructed by indigenous communities and their partners in the Philippines. PAFID has been the most active NGO in providing mapping services to indigenous communities and as of 2015, it had assisted at least 145 indigenous communities in building P3DMs. These maps, covering an area of at least 1,770,518.62 hectares⁸⁷ have been used by indigenous communities for various purposes ranging from boundary conflict resolution, to identification of ancestral domains in preparation for a CADT claim. Some communities use the maps to define management zones to enable them to enforce local land use policies, while most communities have built models in order to generate spatial data that can be used as inputs for the formulation of an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP).⁸⁸

Recognizing the effectiveness of the methodology, the NCIP promulgated an Administrative Order on the conduct of Ancestral Domain Management Planning, which recommended P3DM as a viable tool that communities could use to

⁸⁶ De Vera, David, Unpublished paper

⁸⁷ PAFID inventory. National database, 2015

⁸⁸ For distribution by location and type of use, Refer to Annexed PAFID Database, 2015

facilitate data generation for community planning. Data generated from the P3DMs constructed by communities have been instrumental in providing the people with accurate and up-to-date information. Moreover, the information generated by the people has enabled them to negotiate with much more confidence and conviction. Most communities now use data from the P3DM to negotiate with their local Governments for possible collaborative management of environmentally critical areas within their territories.

One of the successful outputs of the use of P3DMs in the Philippines includes the lobbying against the Sagittarius Mining, Inc. (SMI) Operations in the B'laan Ancestral Domain in South Cotabato. The P3DM was used to generate critical spatial data that was successfully used to counter the arguments of the SMI "experts" in a public consultation conducted by the Provincial Government to review the Environmental Impact Assessment (EIA) of the mining operations.⁸⁹

Mapping resources: the challenge of climate change

With indigenous communities gaining enhanced skills in spatial data generation, the need to further investigate the state of the resources in their ancestral domains has become popular for many indigenous communities. The availability of spatial data of their ancestral domains through their P3DMs has enabled support groups and indigenous communities to develop new methods as well as innovate on existing tools in resource assessment and inventories. Merging traditional knowledge and scientific methods and indices, the Ikalahan people of Nueva Vizcaya have been able to conduct a full floral inventory of their Reserve Forest. With the assistance of the academe,⁹⁰ the inventory data were used to compute for the biomass and the carbon sequestration capacity of their forest reserve.

In the past four years, seven other indigenous communities have followed the lead of the Ikalahan community, namely the Aeta communities of Maporac and San Felipe in Central Luzon, the Maeng of Tubo in Northern Luzon, and the Buhid of Mindoro in Southern Luzon. Additionally, the Manobo of Pangantucan, the Higaunon of Misamis Oriental as well as the Mamanwa of Mt. Hilong-hilong in Mindanao have since conducted their own resource inventories with the assistance of KASAPI, PAFID, AnthroWatch and environmental NGO EcoWeb. Aside from conducting resource inventories to determine biomass, inventories were undertaken to determine the richness of the floral biodiversity using methodologies that drew heavily from the local knowledge of the indigenous communities.

Scaling up and managing spatial data

Spatial data gathered through various methodologies employed by indigenous communities and their partners have been able to generate a wealth of

⁸⁹ <https://www.youtube.com/watch?v=q7Lfrpn6VsU>

⁹⁰ University of the Philippines-Los Banos (RUPES Project)

information used by communities and advocates to lobby and negotiate for the recognition of their rights. While the P3DMs have been successful in providing a platform for indigenous communities to generate and develop their own spatial data, the need to link these to a formal Geographic Information System (GIS) has become more critical. The growing amount of spatial data needs to be managed and additional analytical tools need to be used in order to respond to the growing threats to indigenous communities.

In generating maps and GIS for the spatial data of indigenous communities, NGOs have mainly used ArcGIS and other ESRI products. With the growth of open source platforms, NGOs like PAFID have since switched to Quantum GIS and other free and open access mapping software. However, only half of the spatial data in P3DMs have been digitized and put in a GIS. Efforts are currently underway, with support from Misereor, Tebtebba and International Land Coalition (ILC), to digitize this information in order to get a full accounting of the state of indigenous peoples' lands in the Philippines.

Mapping methods and local capacity

Practitioners of community mapping in the Philippines have utilized a wide array of methodologies and technologies in responding to the needs of communities. Results of an inventory of mapping resources and technologies among NGOs and IPOs in the Philippines conducted prior to the first Community Mapping Conference in the Philippines in 2002, showed that these ranged from basic sketch maps defining village boundaries, to P3DMs which are used to generate information for Ancestral Domain Management Planning, to high-end and cutting edge technologies such as GIS and GPS.⁹¹

Lately, the use of satellite imagery has become popular among NGO workers and community activists. This can be attributed to the easy access to and availability of spatial data. The most popular medium of remote sensing is Google Earth program that many groups and communities widely utilize to support their particular advocacies.

Local skills in the use of GPS have also been developed among community members. Since 1996, PAFID and AnthroWatch have been conducting GPS instrumentation trainings for indigenous communities all over the Philippines. To date, at least 300 trainees have received training in basic GPS operation. However, advances in technology require constant updating of skills as equipment easily becomes obsolete in a very short span of time. Nevertheless, this is seen as an opportunity since GPS technology has become simpler, cheaper and more accessible to ordinary people in the country.

Local communities now have acquired GIS skills which were once limited to NGOs. In the past three years, skills training in communities have developed GIS practitioners such as three Subanen trainees in Zamboanga del Norte, a Manobo

⁹¹ Regional Community Mapping Conference for South East Asia, PROCEEDINGS, 2004

mapper in Bukidnon, and a Mangyan Hanunuo mapper who was a scholar in the ESRI campus in California.

Challenges to Community Mapping

There is widespread recognition of community mapping practitioners and the technical efficiency of their products both by the government and the private sector. However, the fact remains that community participation in land administration is still contingent on the decision and approval of the powers-that-be. Institutionalization of the role of community mapping has yet to be fully realized.

The Geodetic Engineering Law remains in full force and acts as a veritable “Sword of Damocles” hanging above the heads of community mappers. Unless repealed, the law can be used at any time to paralyze community mapping initiatives and reverse all the gains that have been realized. Republic Act 8560 continues to pose a threat to the practice of community mapping once the political winds change. Many communities see mapping as a right (and rightfully so) and do not see the need for partnership agreements in order to practice it and derive its benefits. In the absence of legal partnership agreements with the government, community mapping practitioners run the risk of being legally challenged and convicted. In the ever-changing political landscape of the Philippines, policies change whenever the state feels challenged by civil society. Tolerance for community mapping is contingent upon a highly political landscape.

Recent developments in mapping methodologies and technologies have made mapping simpler and more easily accessible to ordinary people. Gone are the days when a community had to wait for weeks for the arrival of an engineer to pinpoint the proper location of a boundary corner. It can be said that in the Philippines, the advances in mapping have slowly trickled down to the local communities. They are now beginning to once more take control and own the mapping process. Due to the efforts of community mapping practitioners, some communities now produce their own maps and understand and interpret maps the same way as a licensed engineer would be able to do.

However, the main challenge to the legitimacy and institutionalization of community mapping lies in powerful vested interests, who feel threatened by empowered communities. Professional engineers scared of losing an exclusive domain continue to discredit the technical efficiency of community maps. Corporations engaged in large-scale natural resource exploitation are troubled by the questions raised by communities through their maps. Local politicians who zealously guard their political territories continue to demand that traditional boundaries conform to the political boundaries of their respective jurisdictions. This behavior is not totally surprising as it has been shown before that the status quo will react once critical spatial information becomes available and

understandable to ordinary people. An empowered community will always be challenged.

There are still very few practitioners and organizations that have the capacity to effect change and support the advocacies of indigenous communities. Most of the time, groups express interest in mapping only on an ad-hoc basis. However, little or no resources are allocated to fully operationalize mapping activities in the organization. Once the issue has passed or loses popularity, the interest to do mapping also wanes or disappears.

Spatial data is still very limited in the Philippines. When data is available, access is restricted to the government. Hence, community mappers rely on their own network or “generate” their own data in order to obtain information on projects that impact on indigenous peoples, such as mining tenements, large-scale plantations and other commercial enterprises affecting indigenous lands.

Conclusion

Community mapping has been a very powerful tool for change in the Philippines. It has enabled communities to file claims and secure titles. Empowered people are able to advocate their demands and assert their development priorities through the use of community maps. Community mapping has enabled communities to gain access and even generate critical spatial information. However, these gains have seriously challenged the status quo. State restrictions on the practice of mapping as established by law illustrate such a reaction.

To enable participation and overcome the restrictions of law, partnership agreements with government have been explored and utilized by civil society. Recognition from the Philippine Government can only be secured if the NGO/IPOs can exhibit a clear track record and a high proficiency and skill level. Furthermore, NGOs/IPOs must be able to accept the reality that in these agreements, the government shall be “in control” and take the lead.

However, it must be made clear that such innovations as partnership agreements remain to be stop-gap measures which can be rescinded and are still contingent on the overall political landscape. The main objective should be to secure a government policy that shall harness the collective traditional spatial knowledge and skills of communities, in order to ensure the applicability and relevance of spatial data and the policies and plans that shall emanate from such.

Recommendations

Continued and sustained capacity building for indigenous communities is necessary in the field of community mapping and Spatial Data Management including GIS. In order to respond to the new challenges brought about by globalization and climate change, skills must further be enhanced and developed.

Information will become more complex and varied as such methods for data generation and management must also be able to keep up with the changes.

Advances in Information and Communications Technologies should be harnessed and maximized. New tools such as Open-Source GIS software and cheap Android phones can be used to empower communities and enable them to generate more spatial data that they can use to strengthen their control and governance over their traditional territories.

Participation in national, regional and global land portals may be pursued as this can provide a virtual venue and platform for indigenous communities to communicate their unique perspective and inform the public of the extent of their traditional territories. However, such participation should be contingent on and ensure the control of the indigenous communities of all spatial data that shall be enrolled in such platforms.



Mangyan Indigenous child in Mindoro

Maybelle Wayas/TFIP

THAILAND



Indigenous Peoples in Thailand: A Background

Indigenous peoples of Thailand are concentrated in three geographic areas of the country: in the south near the Malaysian border where fishing and hunting-gathering groups are found; in the Korat plateau along the borders of Laos and Cambodia; and in the northwestern highlands where the largest population of indigenous peoples, more often known as “hill tribes,” live.⁹²

The Thai government officially recognizes only nine so-called “hill tribes”: Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu peoples.⁹³ There is no comprehensive official census data on the population of indigenous peoples, however the Department of Welfare and Social Development estimates that there are 3,429 hill tribe villages with a total population of 923,257 people. Indigenous peoples of the south and northeast are not included in this data.

In Thailand, there is no legal recognition of the indigenous peoples’ rights to delimitation, demarcation, and titling of their lands in accordance with their customary law, values and customs. Citizenship is also a huge issue since many of the over half a million stateless population in Thailand are indigenous peoples,⁹⁴ which means that they cannot own land, and therefore face forced evictions and relocation, even if they are living on land that they have cultivated for decades or even longer.

Definition of Indigenous Peoples

Indigenous peoples in Thailand have long faced severe discrimination by general Thai society. The term “*chao khao*,” which is what hill tribe people are commonly called, also translates to mean ‘wild,’ or ‘uncivilized.’⁹⁵ Indigenous rights groups have tried to get the general public to use a Thai translation of the term ‘indigenous peoples’ -- “*chon phao phuen mueang*.” However, this term has been rejected by the Thai government, which claims that they are “not considered to be minorities or indigenous peoples but as Thais who are able to enjoy fundamental rights and are protected by the laws of the Kingdom as any other Thai citizens.”⁹⁶

National Policy and Legal Framework on Traditional Lands

There is no provision in the former 2007 Constitution that gives legal recognition to indigenous peoples. However, articles 66 and 67 affirmed that indigenous peoples in Thailand have the right to “conserve or restore their customs, local

⁹² UPR joint submission for Thailand from NIPT and AIPP, October 2015.

⁹³ Ten groups are sometimes mentioned, i.e. the Palaung are also included in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.

⁹⁴ UNHCR report 2014, <http://www.unhcr.org/pages/49e489646.html>.

⁹⁵ Network of Indigenous Peoples in Thailand, “Indigenous Peoples of Thailand.” *FOCUS* 62 (December 2010). Accessed September 15, 2015. <http://www.hurights.or.jp/archives/focus/section2/2010/12/Indigenous-peoples-of-thailand.html>.

⁹⁶ *The concept of indigenous peoples in Asia*, Christian Erni, IWGIA and AIPP, 2008, p. 444.

traditional knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and environment including the biological diversity in a balanced sustainable manner.” Indigenous peoples, nevertheless, say that these provisions were never implemented.

Following the military coup in May 2014, the military-appointed ruling National Council for Peace and Order (NCPO) enacted the current Interim Constitution, which provides for drafting a new constitution. Indigenous peoples, through the Council of Indigenous Peoples in Thailand, submitted recommendations to be included in the new constitution. The NCPO-commissioned National Reform Council, in September 2015, rejected the draft of the new constitution altogether and the process of writing a new constitution must now start from scratch.

Meanwhile, several existing laws and resolutions in the country have adversely affected the lives of indigenous peoples, including the Forest Act of 1941, National Forest Reserve Act of 1964, Wildlife Sanctuary Act of 1964, National Park Act of 1961, Cabinet Resolution dated June 30, 1998, Community Forest Act of 2007 and Cabinet Resolution dated April 29, 2008. These laws and resolutions have had severe impacts on indigenous peoples' rights to residence and farming.

Today, 28.78% of Thailand's total land area is categorized as protected areas. As a result, thousands of indigenous peoples previously living in the forests or relying on the forests for their livelihood have been arrested and imprisoned and their lands seized. Cases have been filed against them for so-called encroachment on government lands.⁹⁷ Since the late 1950s, policies regarding the hill tribes have been implemented, and until the 1980s, such policies were mainly related to concerns on opium cultivation and communist insurgency. In the 1980s, the policies that became national issues were deforestation and regulation of resources in the highlands.

The enactment of the National Security Act of 2007 has caused an increase in human rights violations against indigenous peoples. Throughout 2008, while claiming to help combat the “drug epidemic” in the country, this law was used to control and suppress indigenous peoples and other forest dependent communities from (supposedly) “encroaching” on the forests. The law was also used to prevent cross-border labour migration and to address the “problem of terrorism” in the three southern provinces of Narathiwat, Yala and Pattani. This law is also frequently employed by government officials to address the problem of so-called “terrorism” in the border areas of Chiang Rai, Chiang Mai, Mae Hong Son, Tak, Kanchaburi and Ratburi Provinces.⁹⁸

In May 2011, the Government passed the Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds. The regulation allows communities to apply for a Community Land Use Permit, which is the only community forest tenure instrument for Thailand. The essence of this regulation is to legally allow communities (both highland and lowland people) to collectively manage and use state-owned land for their livelihood. This implies that the state still retains its claim to ownership of these lands. The present law requires a community to periodically renew their land title deeds with the respective government agencies that formally own the land. To the communities, it is like renting their own land.

As of 2010, the Royal Forest Department had formally recognized and registered around 7,000 community forests, all outside of protected areas, and is actively seeking to register more.⁹⁹ However, because of the current forestry law, this resolution cannot be applied in protected areas.¹⁰⁰

Shortly after military seizure of power, the ruling NCPO set about instituting a series of reforms. These include NCPO Order No. 64/2557 and Order No. 66/2557 ('Return Forest Policy') issued in June 2014, and two months later, a reforestation 'Master Plan' or a forest plan to suppress illegal logging and deforestation. These policies outline plans to stop deforestation, change the management of the forest, and protect the forests from harmful forces with the goal of increasing forest cover throughout the country.¹⁰¹ Since many of Thailand's indigenous peoples live in protected forests, these policies have resulted in judicial action against them and violation of their rights, as well as the rights of other poor communities living in the forests.¹⁰² For example, in October 2014, Mae Sariang Criminal Court convicted 39 Pakayaw Karen villagers on charges of illegal logging and forest encroachment and sentenced them to imprisonment and fines.

Community Mapping In Thailand

Community mapping is essential in order to identify and measure the areas affected by land concessions. This is important as the maps can be used by indigenous communities as evidence documents in case of negotiations with the government and companies and as tools to claim for the rights to their lands.

Mapping methods and initiatives

Inter-Mountain Peoples for Education and Culture in Thailand (IMPECT), Sustainable Development Foundation (SDF) and Rakthai Foundation have been conducting community mapping activities in the north of Thailand.

Between 2009 and 2011, IMPECT conducted community mapping in eight villages in Tambon Pa Pae, Am Phur Mae Taeng in Chiang Mai Province. Between 2012

⁹⁹ RECOFTC 2011.

¹⁰⁰ Comments by M. Rattanakrajangsrri, Indigenous Peoples Foundation for Education and Environment.

¹⁰¹ Rattanakrajangsrri, p. 280, 283.

¹⁰² <http://www.prachatai.com/english/node/4854>

and 2015, community mapping was done in seven villages (Mae Um Phai and Mae Tho Tai) in Tambon Mae Tho, Amphur Mae La Noi, all in Mae Hong Son province. Since 1995 until now, IMPECT has been undertaking community mapping in around 70 communities.

The process starts when the community mapping team goes to the community and creates a forum of volunteer villagers, then train them on the use of Global Positioning System (GPS). The aim is for the villagers to be able to conduct community mapping by themselves eventually and to train other villagers. One villager has to hold the GPS while another is noting down the number and information given. Before going to the field, the community mapping team and the villagers agree on the area of the land to be mapped. Villagers reported that it is easier for them to map paddy fields and rotational farms rather than fallow lands. In case of fallow lands going beyond the boundaries of the village, they have to ask permission from the leader of the other community, and if the latter does not approve, they do not carry on with the mapping. The IMPECT community-mapping team and villagers have so far mapped residential areas as well as burial grounds and sacred forests.¹⁰³

In Mae Tha village, which is well known for its sustainable agriculture, the village area mapped by the community has been endorsed as official boundaries to be included in the sub-district (*tambon*) local administration documents; but this is one of the isolated cases. In case of recognition of the community map by the sub-district, the sub-district authority sends representatives from time to time to join the mapping team and to check on the community mapping process. They also provide financial support or mapping tools.

In 2014, the Indigenous Women's Network of Thailand (IWNT) carried out a community mapping of San Pa Hieng village together with the villagers, involving 78 people, 27 of them women. Every detail and information indicated in the map were checked with and confirmed by the community. After the mapping process was complete, a meeting was held with the San Pa Hieng villagers and the sub-district administration office. In 2015, the local sub-district administration office endorsed the community map. Other cultural activities were also conducted such as teaching of mother tongue, traditional music, local storytelling revival, etc.¹⁰⁴

Land Rights Advocacy

Formation of the Council of Indigenous Peoples in Thailand

In 2007, the Network of Indigenous Peoples in Thailand launched the idea of constituting the Council of Indigenous Peoples in Thailand (CIPT), which aims to strengthen advocacy by indigenous peoples for their collective rights. In November 2014, during its First National Assembly, the CIPT adopted its constitution to serve as a joint agreement for action to benefit the Council and

¹⁰³ Information given by the IMPECT office in Chiang Mai in October 2015

¹⁰⁴ See www.qsbg.org/training/randd.asp.

its associated networks. The Council agreed to coordinate the efforts of all partners in addressing economic, social, political and cultural issues, education, local knowledge, environment, spiritual space and human rights issues and problems.¹⁰⁵ Each indigenous group selects five members to the Council, which meets once a year to discuss indigenous affairs. The Second Assembly of CIPT was convened in August 2015, during which there were 190 members representing 38 Indigenous groups. Two indigenous councils were adopted at local levels and 15 executive committee members were selected from the Assembly.

The Council aims to engage with the State in its policies concerning indigenous peoples, by proposing initiatives such as the recommendations they submitted to the NCPO for inclusion in the new constitution. It will follow this up by monitoring actions to promote and protect indigenous peoples' rights. Further, its responsibilities include the promotion of cultural revival, education and political development. The Council has continued lobbying with the NCPO for inclusion of indigenous peoples' rights in the future constitution.

Community mapping advocacy

Northern Farmer Network (NFN) and the Assembly of The Poor and Land Reform in Thailand have used community maps to push for indigenous peoples' rights to lands and resources by promoting Community Forest Law and Communal Land Title.

In order to develop capacities in community mapping and advocacy, the IWNT produced a number of publications in Thai language, including "Community Mapping Processes and Environmental Biodiversity Management in the Highlands" and "Highland Mapping and Biodiversity Management Guide to Record." The organization also translated the "Training Manual on Free, Prior and Informed Consent (FPIC) in REDD+ for Indigenous Peoples." This manual aims to equip indigenous peoples with knowledge and understanding of FPIC and to build the capacities of the indigenous peoples, networks and organizations to advocate and work for the effective implementation of FPIC. These resources are targeted for communities already involved in or those embarking on community forest development.

Further, indigenous communities have already begun using community maps for local advocacy. In one incident, as informed by IMPECT, when forest park rangers arrested some indigenous farmers who were accused of encroaching on the forest, the farmers showed them the community maps and the park rangers accepted the maps as proof that the land was part of their village.

Community mapping is a way to enhance land rights advocacy, which is why indigenous movements in Thailand encourage different stakeholders to be

¹⁰⁵ http://www.aippnet.org/index.php?option=com_content&view=article&id=1554:thailand-commemorates-international-day-of-the-world-s-indigenous-peoples&catid=130&Itemid=100056

involved in the process. In case of mapping for royal projects, communities invite authorities to participate in the mapping process and ask all agencies involved to sign the map when produced. However, villagers always decide the extent of the zone to be mapped before they invite authorities to join the process.

Community maps have been used at local levels and have often been accepted as references for land delimitation by the sub-district authorities. However, indigenous peoples in Thailand have not yet used such maps as legal evidence in the Courts.

#LANDRIGHTSNOW Campaign in Thailand

Currently there are ten organizations in Thailand who are supporting the Campaign including AIPP, APWLD (the Asia Pacific Forum on Women, Law and Development) and the IWNT (Indigenous Women's Network of Thailand) and NIPT (Network of Indigenous Peoples in Thailand) among others. A two-day national workshop was convened on 30 and 31 March 2016 to launch the Campaign at the national level, where more than 100 representatives of indigenous peoples in Thailand participated and discussed their land rights issues. A press conference was organized at the end of the launching workshop and NIPT made a declaration to demand the recognition of the collective rights of indigenous peoples to their lands, territories and resources.

The commitment of indigenous peoples to support the campaign is also grounded on the fact that the rich, who constitute only 10% of the population in Thailand hold a total of 600,000 rai of land [240,000 acres], averaging 100 rai/person, while the approximately two million poor farmer families, including indigenous peoples, have insufficient or no land for their livelihoods and survival. In addition, approximately one million indigenous farming families [who have lived in the highlands for long periods] and fisher folk communities in the southern part of Thailand [dependent on seaside and ocean resources] were suddenly given notice that they were occupying state conservation areas.

The Campaign is also directly supporting the Chao Ley peoples in their struggle for the recognition of their indigenous territory. The total population of Chao Ley in Thailand is estimated at 13,000 consisting of 44 communities spread over five provinces – Phang Nga, Phuket, Krabi, Satun and Ranong- adjacent to the Andaman coastal area. The Chao Ley peoples located in Rawai beach are facing serious threat of forced eviction following the ownership claim of Baron World Trade. Co. Ltd. over the indigenous territory of Chao Ley peoples where they have been living for generations. In this context, the first global mobilization day of the #landrightsnow Campaign from 2 to 9 August 2016 brought the Rawai

case to global spotlight and called for global action and support for the affected peoples.¹⁰⁶

The celebration of the World's Indigenous Peoples Day in Thailand was organized by the Indigenous Peoples Network of Thailand with an objective, among others, to support the Campaign. More than 300 participated in the celebration event on 9 August 2016.



IMPECT

Participants of the national launch of the #LandRightsNow campaign in Thailand

¹⁰⁶ For more information, please refer to: <http://www.landrightsnow.org/en/news/2016/08/03/people-sea-demand-their-community-land-rights-phuket-thailand/>

Challenges

Community mapping requires significant resources, including mapping teams with appropriate knowledge and skills, as well as technical equipment and other materials. The IMPECT indigenous mapping team expressed concern over the fact that only a few of them can give trainings on community mapping. The mapping process is being carried out gradually, one community at a time, the main reason why to date, 20 years after they began community mapping, only 70 communities out of more than 300 indigenous communities in Thailand have been mapped.

Another concern of the indigenous peoples is the fact that, except at the level of local administration, community maps will not be acknowledged as official documents at provincial levels or in the Courts. Indigenous communities have therefore expressed the need and are advocating for the legal regulation and recognition of community maps to be of greater use for the indigenous peoples' assertion of their land rights.

Conclusion

Community mapping has contributed to the protection of the rights of indigenous peoples as well as in the protection and enhancement of biodiversity and sustainable resource management. The inclusive and rights-based approach of the process is empowering communities and their larger network in asserting their collective rights, though it has only produced impacts at the local levels so far. Moreover, community mapping allows indigenous peoples to identify and measure their lands to be used as evidence in claiming for their land rights, thereby enabling them to be independent in managing their resources. The community mapping activities have also served to strengthen community solidarity, as it is an opportunity for the younger generations to use these tools to gain knowledge of the extent of their lands, territories and resources and to continue the assertion of their rights as indigenous peoples.

Recommendations

To the Thai Government:

- Recognize and guarantee the right of indigenous peoples to own, use, control and develop the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired.
- Provide indigenous peoples with a system of registration and legalization of ancestral domains.
- Give due recognition to the legal title of indigenous peoples to their lands.

- Stop forced evictions of indigenous peoples from their ancestral lands and territories.
- Ensure that indigenous peoples forcibly evicted from their lands and territories have access to effective remedies and right to redress, to restitution or to a just, fair and equitable compensation, which should take priority in the form of lands, territories and resources equal in quality, size and legal status, for the confiscation, occupation or damage of the lands, territories and resources they traditionally owned or occupied or used.
- Nullify Order 64/2014 as this regulation creates discrimination specifically against indigenous peoples who have been living in protected forests for centuries.
- Deliver citizenship to the stateless indigenous peoples so that they can exercise their right to own the land, on which they have been living and cultivating for years.



Tpat Maneerat

Karen indigenous children playing in a ricefield in Hin Lek Fai Village, Chomthong District, Chiangmai.

#LANDRIGHTSNOW

The Global Call to Action on Indigenous & Community Land Rights

Policy Asks 2016 – 2020

Why do we need a global call to action?

To eradicate poverty and hunger

Up to 2.5 billion people, including 370 million Indigenous people, depend on lands and natural resources that are held, used or managed collectively. Their rights to those resources are under threat, with only an estimated 1/5 of these lands formally recognized as owned by them, with the rest being controlled by more powerful actors. This leaves 1/3 of the world's population vulnerable. More broadly, societies that have insecure land rights have fewer opportunities to enjoy prosperity and achieve sustainable development.

To protect the environment and fight climate change

The forests, rangelands, mountains, wetlands, and lakes governed as collective resources by Indigenous Peoples and local communities are biodiversity hotspots that regulate water flows, sequester carbon and maintain the ecological balance of our planet. Because we all benefit, we should all protect and strengthen those peoples and customary institutions that have preserved these ecosystems for centuries.

To build a world of justice where human rights are protected for all

Collective land rights are an essential condition for Indigenous Peoples and local communities to enjoy human rights, and uphold cultural diversity. The reality is that even just speaking out to defend land and environmental rights puts people in danger of being forced from their homes, threatened and even killed. We envision a world where all women and men, peoples and communities have the right to shape their own destiny without fear or intimidation.

The Steering Group of the Global Call to Action have identified these policy asks to advance Indigenous and Community Land Rights, also with the understanding that endorsing organizations and individuals will take up those commitments that align with their own work.

All:

- Champion this Global Call to Action and recognize that securing Indigenous Peoples and community land rights is vital to eradicate hunger and poverty; protect the environment and fight climate change; and build a world of justice where human rights are protected for all.

All Governments:

- Secure the collective land rights of Indigenous Peoples and local communities.
- Recognize data and maps produced through community-based monitoring systems.
- Implement the UN Declaration on the Rights of Indigenous Peoples and ratify and implement the ILO Convention No. 169.
- Implement the UN Declaration on Human Rights Defenders and guarantee that everybody can speak out without fear or intimidation.
- Implement the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
- Declare zero tolerance on land grabbing,* including by respecting human rights and the Free, Prior, and Informed Consent of Indigenous Peoples and local communities, inclusive of traditional leaders, men, women and youth.
- Hold accountable private investors and corporations operating or sourcing goods and services nationally and/or abroad to their human rights obligations.
- Include the protection of Indigenous Peoples and Community Land Rights - especially for forest-dependent people, small-scale food producers, fisher-folk, and mobile pastoralists – as a pillar of national sustainable development strategies, including those related to climate change, agriculture, environmental conservation, energy, tourism, economic growth and trade.
- Ensure Indigenous Peoples and local communities rights to maintain traditional occupations and ways of life, and the fair distribution of benefits derived from the use of their lands, natural resources and ecosystem services.
- (For donor countries) Provide adequate and targeted international development assistance to support the protection of the land rights of Indigenous Peoples and local communities everywhere, and to cause no harm to them through other policies.

All Parliaments:

- Speak out on behalf of their citizens to secure the collective land rights of Indigenous Peoples and local communities.
- Harmonize all legislation affecting the land rights of Indigenous Peoples and local communities, so as to ensure their security of tenure, and their right to determine for themselves how those lands will be managed.
- Advance national legislation and allocate adequate budgets to securing Indigenous Peoples and community land rights.

All National, Regional and International Human Rights Institutions:

- Monitor and promote the legal recognition of Indigenous Peoples and community land rights and freedom of speech for land rights defenders, in line with national and international human rights law.

All corporations, and national and international financial institutions, including banks, pension and private equity funds;

- Recognize and protect Indigenous Peoples' and community land rights through their operations, including those of financial intermediaries.
- Comply with a principle of zero tolerance on land grabbing, including by respecting human rights and the Free, Prior, and Informed Consent (FPIC) of Indigenous Peoples and local communities, inclusive of traditional leaders, men, women and youth.
- Undertake gender-responsive due diligence on human rights, including by implementing the UN Guiding Principles on Business and Human Rights.
- Implement and require compliance with the Voluntary Guidelines on the Responsible Governance of Tenure across their national and international value chains.
- Develop and implement policies (and establish grievance mechanisms) necessary to avoid, reduce, mitigate and remedy any direct and indirect impact on the lands and natural resources of Indigenous Peoples and local communities.
- Ensure clear commitments, transparency and accountability in any operation and investment that may affect the lands or livelihoods of Indigenous Peoples and local communities.

The UN Human Rights Council:

- Approves a resolution on the specific threats faced by land and environmental defenders.
- Promotes periodic monitoring of land rights among Member States.

The UN High Level Political Forum:

- Adopts at least one indicator that measures progress on Indigenous and community land rights, in the context of the 2030 Agenda.
- Carries out a global thematic review on land rights across all the Sustainable Development Goals, including through an assessment of the area of land legally recognized as owned or controlled by Indigenous Peoples and local communities.
- Makes clear commitments to advance collective land rights of Indigenous Peoples and local communities in the context of the Sustainable Development Goals.

All Indigenous Peoples and local communities commit to:

- Strengthen their institutions, capacities and movements to secure and defend their land rights.
- Assert and exercise the right to free, prior and informed consent, inclusive of traditional leaders, men, women and youth, on matters relating to lands, territories and resources.
- Realize women’s equal participation in the defense and enjoyment of rights to lands, territories and resources.
- Mobilize and build alliances to address threats to Indigenous Peoples and local communities’ lands, territories and resources.

AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 ethnic-based organizations, five indigenous women's organizations and five indigenous youth organizations.

Through our Indigenous Women (IW) programme, AIPP aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision

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

Our Mission

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

AIPP Programmes

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

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

AIPP is also a member of International Land Coalition (ILC), Global Environment Facility (GEF) NGO Network, International Network for Economic, Social and Cultural Rights (ESCR-Net) and an affiliated network of the Rights and Resources Initiative (RRI).

Asia Indigenous Peoples Pact (AIPP) 2016

