



Situation on Lands, Territories and Resources of Indigenous Peoples in Asia

Bangladesh, China, Japan, Laos, Myanmar, Nepal, Sri Lanka, Taiwan, Timor Leste and Vietnam



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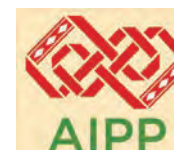
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ASIA INDIGENOUS PEOPLES PACT (AIPP)

An organization of Indigenous Peoples movement in Asia

About AIPP

The Asia Indigenous Peoples Pact (AIPP) is a regional organization established in 1992 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 capacitybuilding, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

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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 strengthen 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.

Our Programmes

Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

- Communication Programme
- Environment
- Human Rights Campaign and Policy Advocacy
- Indigenous Women
- Organizational Strengthening and Movement Building
- Regional Capacity Building

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).



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ACRONYMS

Lao PDR	Lao People's Democratic Republic
ADB	Asian Development Bank
AIPP	Asia Indigenous Peoples Pact
ALRD	Association for Land Reform and Development
ARBAN	Association for Realization of Basic Needs
ASEAN	Association of Southeast Asian Nations
BCEF	Bunun Cultural and Educational Foundation
BEZA	Bangladesh Economic Zones Authority
BIWN	Bangladesh Indigenous Women's Network
CBO	Community Based Organization
CCMIN	Climate Change Monitoring and Information Network
CDA	Community Development Association
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHTRC	Chittagong Hill Tracts Regional Council
CI-GEF	Conservation International-Global Environment Facility
CIP	Council of Indigenous Peoples
CNRT	National Congress for Timorese Reconstruction (Portuguese: Congresso Nacional de Reconstrução de Timor)
CRC	Convention on the Rights of the Child
CSDM	Centre for Sustainable Development in Mountainous Areas
CSO	Civil Society Organization
DIHR	Danish Institute for Human Rights
EAO	Ethnic Armed Organizations
EBST	East Bengal State Acquisition and Tenancy
EITI	Extractive Industries Transparency Initiative
FALINTIL	National Armed Forces for the Liberation of East Timor (Portuguese: Forças Armadas De Libertação Nacional De Timor Leste)
FD	Forest Department
FPIC	Free Prior Informed Consent
FRETILIN	The Revolutionary Front for an Independent East Timor (Portuguese: Frente Revolucionária de Timor-Leste Independente)
GAPE	Global Association for People and the Environment
GDI	Gender Development Index
GNI	Gross National Income
GO	Government Organization
HDC	Hill District Council
HDI	Human Development Index
HIES	Household Income and Expenditure Survey
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced People

IHRB	Institute for Human Rights and Business
ILC	International Land Coalition
ILO	International Labor Organization
INGO	International Non-Government Organization
INOWLAG	Indigenous Women Legal Awareness Group
IPs	Indigenous People
ITP	Indigenous and Tribal Peoples
IWGIA	International Work Group for International Affairs
JICA	Japan International Cooperation Agency
KHRG	Karen Human Rights Group
KNU	Karen National Union
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
LPRP	Lao People's Revolutionary Party
LTR	Lands, Territories and Resources
MCRB	Myanmar Centre for Responsible Business
MEITI-MSG	Myanmar Extractive Industries Transparency Initiative – Multi Stakeholders Group
NCA	National Ceasefire Agreement
NCRC	National Coffee Research Centre
NES	National Engagement Strategy
NGO	Non-Government Organization
NIDWAN	National Indigenous Disabled Women Association Nepal
NIWF	National Indigenous Women's Federation
NLD	National League of Democracy
NPA	Non-Profit Association
NPC	National Political Commission (Portuguese: Comissão Política Nacional)
NSEDP	National Socio-Economic Development Plan
OXFAM	Oxford Committee for Famine Relief
PCP	Pahari Chattro Porishod
SDG	Sustainable Development Goals
SSA	Shan State Army
SSPP	Shan State Progress Party
UN	United Nations
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Council
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNPFII	United Nations Permanent Forum on Indigenous Issues
UN-REDD	United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation
UNTAET	United Nations Transitional Administration in East Timor
UPDF	United People's Democratic Forum
UPR	Universal Periodic Review
VFV	Vacant, Fallow and Virgin Land
WCIP	World Conference of Indigenous Peoples

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This publication is inspired by the day-to-day struggles of indigenous peoples to assert and reclaim their rights over their lands, territories and resources. For AIPP, this is a commitment to support these fight for recognition of rights by providing relevant, valid and reliable data from the ground to inform and break assumptions, stereotypes and inaccurate information about indigenous peoples.

In this study, ten countries are covered and their experiences are additional insights and lessons to understand better the context and condition of indigenous peoples and bring about a better perspective that will address their issues and concerns.

The completion of this study is a result of a collaborative works with our indigenous peoples who have contributed to the writing of the paper from the countries included in this study, member/partner organizations, supportive advocates, experts and partners from the International Land Coalition who also provided support for this endeavour.

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Finally, I am thankful to my colleagues in the Secretariat who have dedicated their time and expertise that greatly guided and facilitated the completion of this study.

Gam A. Shimray
Secretary-General
AIPP

ABSTRACT

Indigenous Peoples' rights have gained recognition at international and national levels but, their rights are far from secured. Challenges for ownership and management of their land, territories and resources remain evident, and this results in a continuous struggle for them to practice and maintain their cultures, customary governance, land use systems and their identities.

This study attempts to reflect the current state of Indigenous Peoples' claim of their rights over their lands, territories and resources and how it is being addressed at the national level. Country experiences shows varying level of recognition and challenges for Indigenous Peoples. The varying challenges demand a shift in perspective and actions especially by the governments and other stakeholders to bring about relevant change in the situation of Indigenous Peoples.

*While challenges are noted, the results of the study open promising initiatives to take place and future collaborations among Indigenous Peoples, government and other stakeholders. Further, data generation and analysis are highly recommended to bridge the gap of information and improve understanding of the context and situation of Indigenous Peoples. **The stories of Indigenous Peoples captured in this study must result in serving their needs and execution of their self-determined development.***

1 Introduction

The non-recognition of Indigenous Peoples' existence and rights remains a major challenge in realizing their collective land and territorial rights in Asia as recognized by international human rights instruments and standards. The rights are further undermined by contradictory laws and policies criminalizing indigenous communities, causing conflicts and confusion which hinders the realization of the rights of indigenous peoples as enshrined in the UNDRIP. Moreover, realization of ILO Convention 169 on Indigenous and Tribal Peoples remains challenging, as it has been ratified only by Nepal in the region since its adoption in 1989.

More than 411 million people who belong to indigenous groups in Asia have developed their particular customary land use and tenure systems through time, which have existed since time immemorial and still continue to be practiced until today. These customary land use systems are largely community-based and managed according to the livelihood needs and practices of these communities.

In spite of some existing laws and policies recognizing customary land rights, Indigenous Peoples in Asia continue to face land dispossession and destruction of their traditional territories from development initiatives that focus merely on economic growth and show a lack of balance and consideration of social and environmental sustainability aspects. The situation is worsened by the increasing corporate capture supported by various Free Trade Agreements including the Regional Comprehensive Economic Partnership (RCEP), a new face of the Trans Pacific Partnership (TPP). In this worsening situation, indigenous women are particularly vulnerable. They are disproportionately affected by the loss of land and territories as they lose their important role and customary knowledge on natural resource management especially if they cannot continue to practice their knowledge.

To review the land rights situation in Asia, this baseline study on the situation of Indigenous Peoples in Asia with focus on their rights to land, territories and resources, was initiated as a collective effort by the ILC Commitment 5¹ members, under the leadership of Asia Indigenous Peoples Pact (AIPP), covering 10 countries² in Asia. This report will complement the studies earlier carried out by AIPP in seven countries in Asia and provide a wider picture of land rights situation of indigenous peoples in the region. The outcome of this research aims to further strengthen the collective strategy for land rights advocacy of Indigenous Peoples in Asia.

The research's initial findings were presented and discussed at the Strategic Workshop on Indigenous Peoples' Engagement with land rights campaign and advocacy, held in Bangkok, Thailand, on March 21 and 22, 2019. The outcome of the discussion further enriched the study.

1.1. Methodology

Ten countries were chosen, with consideration to their geographic and political features, as well as their occurrence on previous research: countries, which were not often reviewed before, were selected.

¹ Commitment 5 of the International Land Coalition: Secure territorial rights for indigenous peoples

² Philippines, Taiwan, Malaysia, Indonesia, Nepal, India, Bangladesh, Cambodia, Thailand and China

The countries were individually studied through desk research to determine the profile and status of their indigenous identity or status, their access to land, territories and resources and the challenges they encounter in keeping their rights on ownership and acquisition of territories or ancestral domains. These will be the basis of recommendations for advocacy works with the government, international bodies, and Indigenous Peoples and human rights defenders.

Questionnaires were also floated to various AIPP partners and members in each country, to validate information from desk research and fill in data gaps.

The first part of this document looked at the basic framework of understanding rights of indigenous peoples founded on their right to self-determination and how these rights were asserted and recognized at the various processes both at the international and national levels. Country level situation that follows is informed by how indigenous peoples are coping or addressing issues impacting their right to land territories and resources. Specific experiences and positive actions are highlighted, followed by the conclusions and recommendations.

1.2. Limitations

Diversity of countries' profiles, their histories, their attitudes towards Indigenous Peoples and their political trends are some of the factors that limit the study to provide a generalization of a regional perspective. However, some trends, common experiences and critical country issues are highlighted to inform advocacies for Asia region.

Furthermore, it is highly recommended that primary data be gathered to enrich the study with a provision for a longer time to do so.

2 Indigenous Peoples in Asia and their Relationship to their Land, Territories and Resources

The Asia region has shown an impressive progress in its economic growth over the last two decades with a fast-growing population and various development projects going on. The real Gross Domestic Product predicted by the International Monetary Fund (International Monetary Fund April 2018) for 2019 for Asia is of 5.6%, with India and Bhutan showing the highest estimated growth respectively at 7.8%, and 7.6% respectively, and other developing countries lying not far behind such as Bangladesh, Lao P.D.R and Myanmar with 7% each. China, the most populated nation in the world, has an estimated growth of 6.6%.

Looking at poverty indices allows us to see the disparities. In Bangladesh, for instance, 21.54% of the population is considered vulnerable, in Nepal the figure stands at 24.33%, and in Timor-Leste at 25.95%.

The situation for the Indigenous Peoples is dire. Economic growth is often accompanied by infrastructure and development projects, and their customary territories are seized for the name of national development interests. The adoption of Free Trade Agreements (FTA) such as Regional

Comprehensive Economic Partnerships (RCEP) also aggravates indigenous marginalization as they are often left out from the process of negotiations. In this worsening situation, indigenous women are particularly vulnerable as they are disproportionately affected by the loss of lands and territories as they lose their important role and Indigenous Knowledge on natural resource management especially if they cannot continue to practice their knowledge. This is leading to economic disempowerment that exposes indigenous women to harassment and increasing violence against them..

Within these regional and national trends and added economic and political pressures, rights of Indigenous Peoples are at risk more than ever. Therefore, it is important to highlight the current status of their rights, particularly to their ancestral land, territories and resources in the national legal framework.

Box 1.1: Relationship between Indigenous Peoples and their Land

Indigenous Peoples from all over the world have this common feature: they have a distinct relationship with their land, territories and resources, which is deeply connected to their livelihoods, knowledge and beliefs and comprise economic, social and cultural aspects of their community life. "Indigenous Peoples' relationships to their ancestral lands are the source of their cultural, spiritual and social identity, the foundation upon which their traditional knowledge systems have developed and the cornerstone of their physical and economic well-being." (Economic and Social Council 2018, 5).¹ The report of the seventeenth session of the Permanent Forum on Indigenous Issues also highlighted the intimate connection between the environment and Indigenous Peoples' life style.

In Nepal, for example, indigenous leader, Stella Tamang explains "they have clear symbols in their language that connect them to places on their land. [...] We have groups that only can achieve their spiritual place on the planet by going to a certain location" (Cultural Survival 2007). Like many other Indigenous spiritual beliefs, the relation with the environment is highly important. Rivers, forest, trees, mountains or coastal water are considered sacred natural sites. Among Indigenous Peoples, it is common that spirits, deities or energy is living in plants, stones, rivers, lakes and other natural areas. Natural resources are also used as medicine or for rituals.

Because of the sacred aspects of land, some sites are well preserved by the communities and currently host a rich biodiversity of fauna and flora. Furthermore, Indigenous Knowledge has a significant role to play for sustainable development and climate change. The Paris Agreement adopted in 2015 requires that States should also take into consideration Indigenous, traditional and local knowledge systems, for climate change adaptation actions (article 7, al. 5).

Therefore, looking at Indigenous Peoples' rights on lands, territories and resources is essential to be able to preserve indigenous collective lifestyle, customs and culture, including systems of beliefs, Indigenous Knowledge and agricultural techniques among others.

2.1 Reclaiming Rights in International Mechanisms and Processes

Indigenous Peoples' struggle for recognition of their identity, way of life and rights has not been easy. The first international involvement dates to 1923, when Haudenosaunee Chief Deskaheh, an Indian from the United States, sought audience at the League of Nations in Geneva. He aimed to lobby for the rights of his people. He was however not given the opportunity and went home unsuccessful of his plea in 1925 (United Nations, Department of Economic and Social Affairs n.d.).

Decades later, in 1981, the study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Martinez Cobo, titled "The Problem of Discrimination Against Indigenous Peoples" marks an important step forward. He pointed out that a common definition is difficult to be established because "[t]he resulting social, racial and cultural blending makes it difficult to arrive at a precise definition of who may today be considered to be the "indigenous" or "aboriginal" inhabitants in a given country" (Study 2014). Despite these difficulties, a working definition of indigenous peoples was though created for the first time, and the current UN work is greatly inspired by it.

It was not until 1982 that a first international group was formed to address the clamor of Indigenous Peoples. The Working Group on Indigenous Populations was established following Economic and Social Council resolution 1982/34. Although this Working Group doesn't exist anymore, its mandates were to review developments concerning the promotion and protection of human rights and fundamental freedoms of indigenous peoples and to give attention to the evolution of international standards concerning indigenous rights (United Nations Office of the High Commissioner for Human Rights).

This was followed by the Indigenous and Tribal Peoples Convention in 1989 (No. 169) of the International Labour Organization, which replaced the Indigenous and Tribal Populations Convention, 1957 (No. 107) that had an inherent assimilationist orientation – typical of its time. The aim of the Convention was to empower the indigenous peoples to "exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live" (International Labour Organization n.d.)

Since then, awareness on indigenous peoples' situation has increased. From 1995 to 2014, two International Decades of the World's Indigenous Peoples were declared by the UN General Assembly, with the aim of strengthening the collaboration between countries, in addressing challenges faced by Indigenous Peoples (United Nations n.d.).

The most important international instrument on the rights of the Indigenous Peoples is the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). This was adopted by the UN General Assembly in September 2007 paving the way for the recognition of the rights of I Peoples at the global level. It established a comprehensive framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world and elaborated on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

Due to the great diversity of Indigenous Peoples, it has not been possible to establish a common definition. The UN instead calls for recognition, rather than a definition, based on certain criteria including historical continuity, strong link to territories and surrounding natural resources, distinct social, economic or political systems, distinct language, culture and beliefs, forming non-dominant groups of society, among others, as well as self-identification as Indigenous Peoples at the individual level and acceptance by the community as a member. (United Nations Permanent Forum on Indigenous Issues.

More recently, in 2014, a high-level meeting of the General Assembly known as the World Conference on Indigenous Peoples took place in New York. Its aims were to share perspectives and best practices on the realization of the rights of indigenous peoples worldwide. The action-oriented outcome document of the high-level meeting reaffirmed the support of the UNDRIP, asked for the review of some of the existing mechanisms (such as the EMRIP), called on Member States to take appropriate measures at the country level, such as legal, policy and administrative measure, among other affirmations.

2.1.1. Sustainable Development Goals and Indigenous Peoples – Relationship between Poverty and Sustainable Development³

To answer the urgency of global sustainable development, to tackle the economic, social and environmental challenges and to continue the changes started by the Millennium Development Goals (MDGs), the Sustainable Development Goals (SDGs) were adopted in 2015. SDGs are "a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity". Through the adoption of the SDGs, the international community adopted a multifaceted approach to development, with 17 goals and 196 targets. All UN Member States are expected to fully participate in achieving these objectives.

The SDGs are designed to leave "no one behind" and many SDGs bear, directly or indirectly, the rights and well-being of Indigenous People, even if they are not mentioned in these specific terms. Indigenous Peoples also participated in the elaboration of the SDGs and two specific targets refer directly to them - on equal access to education (target 4.5) and on increasing agriculture productivity and incomes (target 2.3). Target 2.3 specifically aims to "By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, [...] including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets [...]". Target 10.2 focuses on the empowerment and promotion of social, economic and political inclusion of all, it uses the terms "ethnicity", "race" and "origin", but makes no mention of Indigenous Peoples per se.

For Indigenous Peoples, ensuring land rights is an essential element to eradicate poverty, pursue food security and protect the environment. SDG target 1.4 relates to that, which aims to ensure that all men and women have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance and natural resources among others. Target 14.b aims to "provide access of small-scale artisanal fishers to marine resources and markets" and 15.2 to "promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally". These indirectly relate to indigenous rights to lands, territories and resources, by supporting small-scale fishers and sustainable management of natural resources. Targets 17.16 to 17.18 emphasize on the enhancement of multi-stakeholder partnerships, and on the need of good and quality disaggregated data, including income, gender, age, race, ethnicity, migratory status, disability and geographical location. Indigenous Peoples have a role to play for both targets, in participating in the multi-stakeholder partnerships, and in insisting for the creation of better statistical data.

³ Resumed from Errico, Stefania, The right of indigenous peoples in Asia: Human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction, International Labour Office, Geneva: ILO, 2017, Asia Indigenous Peoples Pact (AIPP), Indigenous Peoples' Initiatives for Land Rights Recognition in Asia, Chang Mai, Thailand, 2016.

3 Country Profiles

3.1. Approbation of International Mechanisms

With the adoption of the UNDRIP by the UN General Assembly, there is a moral obligation on UN Member States, particularly on those that voted in its favor, for the implementation of the Declaration, and its inclusion by integrating it to their legal framework. Except Bangladesh that abstained in the voting for adoption of the UNDRIP, the eight other countries under this study voted in favor of adoption of the UNDRIP. Nepal has also ratified the ILO Convention No. 169 in 2007, as part of its peace process ending ten years of armed conflict in the country.

Despite international commitments, legal frameworks at the national level do not always reflect the recognition of Indigenous Peoples and their rights to their lands, territories and resources. Even where specific laws exist, they are either not adequate in the recognition of the Indigenous Peoples' rights or are not implemented effectively. Often, national legal framework is inconsistent and other laws have priority over the ones on Indigenous Peoples' rights. In most cases, Indigenous Peoples do not enjoy their full rights over their land, territories and resources.

3.2. Identifying Indigenous Peoples in the Country

History, politics, economic and social aspects shape the current situations of Indigenous Peoples in various countries. The terms used to designate Indigenous Peoples vary from country to country and place to place within countries, which also provide an idea on how governments consider Indigenous Peoples and their rights. For instance, in Bangladesh, the official term to address Indigenous Peoples is Upajati, which literally means sub-nation. However, indigenous peoples reject the term and prefer Adivasi, meaning Indigenous Peoples. In that regard, it is obvious that the government does not recognize the primacy of Indigenous Peoples' rights over their land. In China, for example, the term 'ethnic minorities' is used to designate Indigenous Peoples, but all ethnic minorities are not necessarily Indigenous Peoples. The notion of Indigenous Peoples in China is quite more challenging as the understanding is not necessarily grounded on the existing description as identified in the UN. Ethnic minorities in China do not necessarily self-identify themselves as such, and sometimes do not even know that others view them as Indigenous Peoples (Hathaway 2016, 2).

Official censuses are the most accurate tool in the country level to identify the demographic trends and to know the population composition of the country. The number of indigenous groups presented in table 1 is derived from the data found in the ten countries under the study. However, censuses are also controversial and are often a reflection of the political stances regarding Indigenous Peoples. At times, there is no possibility for the population to freely indicate their identity as they are often already "pre-identified" or "pre-selected" to belong to specific group without proper verification by the government, and if not, Indigenous Peoples are completely ignored as in the case of Nepal. Another case is that of Myanmar, which provides an example of how data on Indigenous Peoples is

not properly accounted. In the last 2014 census in the country, a person's ethnicity was asked in the questionnaire, but no results were shown on ethnic grounds. The government gathered all data under geographical clusters, with no distinction of ethnic groups.

Table 2.1: Countries demographic and geographical distribution of Indigenous Peoples⁴

Country	Number of total population (in million)	% of IP on total population	Number of officially recognized IP groups	Official name	Geographical distribution
Bangladesh	168	1.8	27	(in local language and English) Upajati, Jumma Indigenous ethnic minorities	Plain districts, Chittagong Hill Tracts
China	1,418.61	8.5	55 (+ Han)	Shaozu minzu Ethnic minorities	South, West and the remoter northern regions
Japan	126.94	>0.2	1	Ainu	Hokkaidos
Lao PDR	6.7	34	49	Brou, Ethnic groups	Spread all over the country especially in Savannakhet
Myanmar	51.42	32	135	National races	Spread over the country, except in the lowland and delta valley
Nepal	26.49	35.80	59	Adivasi Janajati, Indigenous nationalities	Spread all over the country
Sri Lanka	20.9	0.01	0	Wanniyala-Ayetto, Vadda	Uva province
Taiwan	23	2.3	16	Aboriginal or Indigenous Peoples	Eastern and Southern parts of the country
Timor-Leste	1.18	90	9	Masyarakat adat	Spread all over the mountainous regions
Vietnam	97.04	14.3	54	Ethnic minorities	Mostly in highlands, some in lowlands and on coastal areas

⁴The table is based on the latest available data on Indigenous Peoples derived from country cases. It is mostly based on official/government data, and may not necessarily reflect indigenous perspectives, as discussed further in the text.

In cases where governments officially recognize Indigenous Peoples, the official list is often disputed by the Indigenous groups. For instance, in Japan, Ainu is the only Indigenous group recognized by the law. It provides them with certain social and economic benefits and some advantages regarding application on permits and promotion of their culture. On the other hand, while the Ryukyu peoples have been fighting for decades for recognition and rights, the government continues to deny the recognition of their rights.

In China, ethnic minorities claim that the 55 officially recognized ethnic minorities do not reflect the reality and that more minority groups exist. In the last census, there were around 730,000 undistinguished ethnic people (*called wei shibie minzu* in Chinese) (Maurer Fazio and Hasmath 2015, 4). The ethnic minorities are listed on the principal criteria of language, but this does not take into consideration the self-determination principle as well as the reality of ethnic diversity.

The contestation in defining and identifying Indigenous groups in the country, such as through national census, is a common feature in the ten countries under study. The official statistics are, too often, reducing the number of Indigenous population by grouping them under one majority tribe, for example in Laos, where 49 ethnic groups are officially recognized, but more than 200 sub-divided groups are claimed by Indigenous Peoples themselves. Similarly, in Myanmar, a list of 135 ethnic groups has been established for years, but Indigenous Peoples do not agree with this controversial list. How governments define the number of Indigenous groups in its territory is a highly contentious political issue and it has important consequences on the economic and social policies, including relation to land and resources.

3.3 Levels of Recognition of Indigenous Peoples

Different levels of recognition of Indigenous Peoples can be found in Asia. Naming Indigenous Peoples with a distinctive designation is a first step towards guaranteeing of further rights. Recognizing that they are equal to other national groups and that they should not be discriminated in any way is another level. Further greater level is to admit and promote their distinct cultures, traditions, knowledge and livelihoods, among others. And the most advanced level, but often the most difficult to reach, is the full recognition of their rights to self-government and their land, territories and resources, including access, usage and/or ownership thereof.

Their right to self-determination has remained the most contentious one. Indigenous Peoples' self-determination includes the right to decide about their community life, the type of economic, social and political systems. The self-determination rights guaranteed in the UNDRIP are barely implemented by the states.

In terms of participation in decision-making, the right to Free, Prior and Informed Consent (FPIC), which is enshrined in the UNDRIP, is an important right and process for Indigenous Peoples. FPIC is a right and a way to conduct consultation with Indigenous Peoples in the formulation and development of any type of projects, ranging from those requiring their relocation to implementation or the usage of their lands, territories and resources.

The different levels of recognition of Indigenous Peoples are still a predicament in most countries in Asia. One country can be at different stages at the same time. For example, Bangladesh does not officially recognize Indigenous Peoples in its legal framework, but still puts in place special policies for Indigenous Peoples living in the Chittagong Hill Tracts and other areas.

3.4 Recognition of Indigenous Peoples and their Rights to Identity, Non-discrimination, Equality and Cultures

The recognition of Indigenous Peoples' rights differs widely from one country to another under this study. Recognition ranges from constitutional and legal recognition in Taiwan, Japan and Nepal to no recognition at all in Sri Lanka. Other countries mention "ethnic groups", "national race" or "ethnic nationalities" without specific indication about Indigenous Peoples and their special needs or rights (Vietnam, Laos, Myanmar and China).

Some of the countries are undergoing political and/or economic transitions or have a recent history of internal armed conflict, like in Myanmar, Nepal and Sri Lanka, and their government is fragile and unstable. For instance, in Nepal, after the civil war ended in 2006, the newly elected Parliament promised to write the first democratic Constitution in four years. It took nearly a decade to adopt a contested Constitution after six governments and two constituent assemblies were elected (Acharya 2016). For Indigenous Peoples in such situations, the recognition of their identity and rights is thus fraught with political issues.

In Japan, on 15 February 2019, long awaited bill in favor of the Ainu's recognition as indigenous peoples has been adopted. The bill states that a new subsidy system will be put in place to pass on and revitalize the Ainu culture. It will also provide simplification concerning application procedures for obtaining forestry products for rituals, and for traditional fishing. However, the Ryukyu people, mostly living in Ryukyu Islands (Okinawa), are not recognized as Indigenous Peoples as yet despite their long-standing struggles and recognition of their ethnic, historical, cultural and traditional origins by the UNESCO.

In Taiwan, the Constitution uses the term "aboriginal" to identify Indigenous Peoples and specifically refer to them in several articles. For instance, article 10 specifies "*The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures.*" Political participation is guaranteed and "*assistance and encouragement for aboriginal education, culture, transportation, water conservation, health and medical care, economic activity, land and social welfare*" is also provided. The Indigenous Peoples Basic Law, enacted in February 2005, is the first law in Taiwan promoting the rights of the Indigenous Peoples. Article 1 of the law explains its "*purposes of protecting the fundamental rights of Indigenous Peoples, promoting their subsistence and development and building inter-ethnic relations based on co-existence and prosperity.*"

Laos and Vietnam both recognize their country as a multi-ethnic state with equality among all ethnic groups. Indigenous peoples are included in the larger collective as “ethnic groups”. All individuals share the same level of recognition, but it does not provide Indigenous Peoples with a specific identity, meaning that their needs and rights are still not given special attention. The Constitution of Vietnam goes a step further in promoting cultural identities with a Decree No. 05/2011/ND-CP on Ethnic Minorities Work. This Decree defines and shapes the scope of work regarding the ethnic minorities in the country. The Committee for Ethnic Minorities Affairs and other state agencies is responsible in implementing these policies.

The case of Timor-Leste is unique among other countries because its population is largely composed of Indigenous Peoples from around ten different tribes, which represent 90% of the population. However, no specific attention is given to their situation, rights and needs. The country became independent recently in 2002 and is still in the process of developing its legal framework. The Indigenous Peoples were uprooted from their ancestral domain because of 400 years of colonization by the Portuguese and decades of Indonesian occupation. Important displacements have also occurred from 1975 to 1980 during the invasion of the Indonesian military forces.

The situation of Indigenous Peoples is full of contradictions in Bangladesh. The country constitutes many different ethnic groups but there is no official recognition of Indigenous Peoples. Some laws refer to “races” or “ethnic minorities”, *Upajati* in Bengali, but Indigenous Peoples call themselves *Adivasi* meaning Indigenous Peoples. Articles 23 and 23 a of the Constitution stipulate that “*The State shall adopt measures to conserve the cultural traditions and heritage of the people [...]*” and that it “*shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.*”⁶ These articles only emphasized the culture and traditional aspects, but nothing is mentioned about the Indigenous Peoples’ rights on lands, territories and resources. After many years of conflicts in the Chittagong Hill Tracts (CHT) between Indigenous Peoples and Bengali settlers, the CHT Peace Accord of 1997 resulted in a special recognition of Indigenous Peoples of the CHT, and their demands were partly taken into account in different laws. But the Indigenous Peoples living in other parts of the country have no legal recognition.

The case of Nepal is a typical illustration of a huge gap between legal framework and implementation of the right of the Indigenous. It is the only country in Asia that has ratified the ILO Convention No. 169, and Indigenous Peoples are referred to several times in its Constitution. Along with minorities and other oppressed groups, the Indigenous Peoples are mentioned in articles 18 and 42 of the Constitution regarding the right to equality and social justice. Article 51 (j) (8) stipulates that State shall pursue policies regarding social justice and inclusion, including “*to make the Indigenous nationalities participate in decisions concerning that community, [...], in order to ensure the right of these nationalities to live with dignity, along with their identity and protect and promote traditional knowledge, skill, culture, social tradition and experience of the indigenous nationalities and local communities*”. Indigenous participation and traditional culture are thereby promoted but the implementation of the constitutional protection is nearly non-existent.

Box 2. The Case of Vadda in Sri Lanka⁵

An alarming situation of Indigenous Peoples is to be found in Sri Lanka. The Wanniyala-Aetto, commonly known as Vadda or Veddah in English, are currently in danger of extinction. They are the only Indigenous People identified on the island and are internationally recognized to be the first inhabitants of the country. They are nomadic people with animism beliefs originally. Now, most of the traditional belief systems have been assimilated with Hinduism or Buddhism, depending on the location of the Vadda. Most of the remaining Vadda communities are living in remote eastern parts of the country.

Despite being a multi-ethnic country, the law in Sri Lanka does not mention Indigenous Peoples. Furthermore, their number is currently unknown because the last three national censuses did not account for specific “Vadda” category. They were classified within “other”.

Indigenous Vadda leaders complain about governmental land seizures and discrimination towards their traditional way of living. The Mahaweli Development Scheme adopted in 1983 had a huge impact on the remaining Vadda - most of them were relocated into government colonies and the Vadda had to abandon their traditional forest habitat and livelihood. The resettled Vadda are currently economically and socially backward and have poor access to education and justice system.

Vadda people are poorly regarded by Sri Lanka’s dominant ethnic groups and are seen as evil and unwanted. Furthermore, a poor mobilization and little self-determination awareness within the community of Vadda brings another limitation for national recognition

3.5 Recognition of Indigenous Peoples and their Rights to their Land, Territories and Resources, and Free, Prior and Informed Consent

Land issue is largely associated with how the State views its authority over its territory and such perspective often conflicts with customary ownership of land and resources of Indigenous Peoples. There is a serious misunderstanding that the State loses part of its sovereignty by granting rights to specific groups of people within its territory. As an international renowned anthropologist, M. Hathaway has emphasized “*In many cases, nation-states refuse to recognize an indigenous status as it seems to imply that their sovereignty is superseded – or at least questioned*” (Hathaway 2016, 2).

⁵ Resume from Convention on the Cultural Survival, Rights of the Child Shadow Report Submission: Indigenous’ Children Rights violation in Sri Lanka, December 2017, Cambridge, USA, available here: <https://www.culturalsurvival.org/sites/default/files/CRC%20Sri%20Lanka%20FINAL.pdf> and Uthayakumar, Prasha “The Rights of Indigenous Peoples in Sri Lanka”, ESCR E-Newsletter, Issue 16, September 2015

Further, as many indigenous groups live in regions rich in natural resources such as minerals, gold, coals, water or forest, governments are even less willing to give away authority of those lands and resources as they consider it as potentially losing economic pockets.

A common reality in Asia is that the ownership of ancestral land or Indigenous collective ownership is minimal in most countries. In Taiwan, where reservation areas are enacted, the land remains property of the State. The Indigenous Peoples Basic Law regulates the rights of the indigenous peoples and lands, territories and resources. Article 2 (5) says: “*Indigenous land refers to the traditional territories and reservation land of indigenous peoples.*” “*The government recognizes indigenous peoples’ rights to land and natural resources*” (Article 20). The Presidential Palace amended the Indigenous Peoples Basic Law on June 2017 and added the notion of obtaining consent of the aboriginal and sharing benefits of the project, enacted in article 21 (1) that says “*When governments or private parties engage in land development, resource utilization, ecology conservation and academic research in indigenous land, tribe and their adjoin-land which owned by governments, they shall consult and obtain consent by indigenous peoples or tribes, even their participation, and share benefits with indigenous peoples.*”

In Laos and Vietnam, the land belongs to the entire people of the country – to be understood as the State – but citizens are allowed to use the land through land use permits. The State oversees land management and of allocation of land use permits to individuals, organizations and economic sectors. Such policies in general again do not necessarily entail collective ownership and management.

In Vietnam, in 1993, people were able to apply for such a land use permit/right, but no collective use rights existed. It is only since 2013, with the revision of the Land Law, that ethnic minorities – including Indigenous Peoples – were able to apply for a collective land certificate. Article 133 of this law gives the priority in land allocation to ethnic minorities. However, the Law on Forest Protection classified most of the important land of ethnic minorities under forestland, meaning that they are not able to practice their traditional cultivation system or cannot use these lands for tending animals anymore. In the past, among indigenous communities, ownership of land and forest was regulated by a system of highly effective customary laws and rules. The shift in land classifications, which often is a result of government policies, have an important negative impact on the traditional usages. In the country, the State is the administrator of the land, so it has the power to take back possession of land under specific conditions. The individual land use rights certificates are not enough to counter the supreme power of the State.

Countries in this study also share a common situation whereby existing legal framework on indigenous rights to lands, territories and resources is not well implemented, or the framework is often incoherent. The case of Bangladesh where they have specific policies for Indigenous Peoples in Chittagong Hill Tracts (CHT) is an illustration of problematic implementation of special law like the country’s Peace Accord of 1997, which ended two decades of conflict between Indigenous Peoples and the authorities. Agreements found in the Peace Accord have not been implemented and therefore issues of land grabbing are still numerous. In addition, the Vested and Non-resident Property Act of 1974 allows land-grabbers to have a legal basis for dispossession, as it permits the government to confiscate private property of people declared “enemy of the State”. The law was enacted during the East Bengal period, where Hindu people were considered enemy of the State. This law is still being enforced now and not only Hindus, but also Indigenous Peoples are the victim of the controversial law. The Forest Act of 1972 is another policy that contradicts with the CHT Peace Accord. Reserve forests were created in the 1990s in the CHT region covering an area of 218,000 acres, but have only been enforced in the past years. This decision is uprooting more than 200,000 individuals, including Indigenous Peoples, from their cultivable land, villages and forest areas.

In Myanmar, the National Land Use Policy enacted in 2016 is the first land policy of the country. Part VIII of the policy is dedicated to “*Land Use Rights of the Ethnic Nationalities*”. Article 64 provides the rights of a formal recognition of customary land use, by ethnic nationalities. Article 65 states “*Duties shall be assigned for the preparation and revision of land use maps and records through public consultation processes by the ward or village tract land use committees [...]*”, Article 67 encourages the participation of ethnic leaders, elders and women in the decision-making process related to land tenure rights. Article 33 (f) mentions Free, Prior, Informed Consent (FPIC) as a means of addressing land monopolization and speculation. However, the newly amended Vacant, Fallow and Virgin Lands Management Law that was enacted in September 2018 seemingly contradicts with the recognition of customary land use. Its purposes are to clarify land claims, improve land use and address land use abuses. Individuals living on such lands – vacant, fallow or virgin – had up to March 2019 to apply for a permit. This law is however a kind of a “trap” for ethnic minorities, as they have the choice either to register and freely give away their rights over their customary land to the central authorities and let them control and manage their land, or to become criminals as by the law, if individual lives or uses VLV land, they risk up to two years of prison, USD 330 fine and being categorized as trespasser.

Government decisions have a huge impact in China and, even with the creation of the autonomous regions, central authorities have supreme power. Land in the cities is owned by the State and land in rural and suburban areas are owned by the collectives (art. 10 of Constitution), but the same article of the Constitution stipulates that the State has the right, for the public interest, to expropriate or requisite land for its use. Meaning that whatever is decided by the autonomous region, central government decision will always be more important. Moreover, the government uses economic development as reasons to impose development reforms, including forced displacement of ethnic minorities in larger cities. By 2020, the government aims to relocate up to 10 million rural citizens, including a large population of indigenous peoples, into towns, as per the 13th Five Year Plan. The nine parts where the plan is aimed to be implemented (Tibet, Inner Mongolia, Xinjiang Uyghur and Guangxi Zhuang autonomous regions, Yunnan, Gansu, Heilongjiang, Jilin, and Liaoning provinces) has the majority of Indigenous population.

In Timor-Leste, land ownership is a huge issue. After the country became independent from Indonesia, challenges of landlessness, forced displacement and legitimacy of land claims especially for collective ownership are increasing. While the government has shown some initiatives to recognize rights of indigenous peoples on their land, territories and resources, this is often limited to respecting protected areas that were identified as place for cultural and spiritual practices. The government also claims to include indigenous community leaders in the determination of land rights, but this remains to be a promise that needs to be fulfilled effectively.

4 Issues on the Ground and Struggles of Indigenous Peoples

Looking at issues on the ground and struggles of Indigenous Peoples in Asia presents an alarming picture whereby their situation is far from being stable and they are not in full possession of their rights. Besides the poor legal framework and non-recognition of Indigenous Peoples by the states, problems include lack of or non-implementation of existing legal protections, conflicting structures and laws, shrinking democratic space, criminalization, discrimination against them, land grabbing and severe negative impacts of development aggression are some of the common challenges facing indigenous peoples in Asia.

At the same time, there is a serious issue of lack of relevant data on indigenous peoples - most of the time, there is no disaggregated data and indigenous peoples are often lost in statistics with the rest of the population. Such absence or lack of enough data at the country level results to national policies and programs not addressing specific needs at the ground levels.

4.1 Lack of Democratic Space and Criminalization of Indigenous Peoples

Mobilization and awareness of Indigenous Peoples are high where freedom of expression is a respected right. In Japan and Taiwan, for example, many rallies and public events regularly take place to express their concern about their rights led by Indigenous leaders. But in other countries, like China, Myanmar or Laos, citizens, including Indigenous Peoples, are not allowed to express their opinion that might be different from the official government due to risks of being strongly reprimanded, imprisoned or tortured. In Vietnam, for example, there are no independent newspapers, the only news spread in the country is State-controlled - meaning that views of minorities and divergent opinions are not taken into consideration. Freedom of expression is a fundamental human right that needs to be respected to make Indigenous Peoples aware of their rights and of their rights with the larger public.

In Myanmar, on 8 June 2017, around 25 young people belonging to the Kachin National Development Foundation distributed pamphlets regarding human rights violations committed by the National Army in the region of Hpakant Township. The abuses included rapes and killing of Kachin women, destructions of villages and religious sites. On 13 June, Major Kyi Min Htun of the National Army filed a criminal defamation complaint against Dashi Naw Lawin, the General Secretary of the Kachin National Development Foundation, which could lead up to 2 years of prison for M. Dashi if proven guilty. The current Burmese law relating to the right to peaceful assembly and peaceful procession is actually a “double-edged sword” because it did end prior censorship of the press but it still does not allow real expression of speech. The government has a large room for maneuver in the definition of what is objective and admitted.

4.2 Discrimination and Attacks towards Indigenous Peoples

Very often, Indigenous Peoples are considered backward groups of a lower social rung. This has a practical, but also psychological impact on them. In Vietnam, the deep-rooted stereotypes of ethnic minorities of being “backward” or “uncivilized” strongly influences government policies at national and local levels. Moreover, some field studies show that an “inferiority complex” is often found among ethnic minority groups in Vietnam, especially in the northern mountainous region, where one group is often dominant (like the Thai or the Hmong).

Discrimination and attacks on Indigenous Peoples are also common in Bangladesh. Because they are seen as a threat to the majority Bengali people. Attacks and violence by the Bengalis towards Indigenous Peoples are unfortunately too common. On 2 June 2017, one of the most terrible incidents reported in the recent years took place in the Chittagong Hill Tracts District. A large-scale arson attack occurred in Rangamati’s Longadu Sadar by a mob of Bengali settlers in the presence and allegedly in collaboration of government forces. The attackers set fire to around 250 houses and shops belonging to Indigenous villagers after looting and vandalizing. One of the victims is a 75-year-old Chakma woman who was not able to flee on time and burnt to death in her home during the attacks. None of the indigenous families were able to save their property (IPHRD network 2017).

Box 3: The Case of Ethnic Armed Conflicts in Myanmar

Indigenous Peoples of Myanmar are severely impacted by armed conflicts that have been raging for decades. Ethnic Armed Organizations (EAO) in regions where Indigenous Peoples live, such as Karen, Shan or Chin States, are fighting against the Tatmadaw, the national army. The EAO’s main demand is to establish a federal State system, where Regions and States have a decision-making power and can administer themselves.

The armed conflicts significantly impact Indigenous Peoples because not only a part of the indigenous population is directly active in these EAOs, but mostly because the entire communities are suffering from displacement, loss of livelihoods, confiscation of land by the army, anxiety and insecurity, among other issues. The conditions of displaced people in Myanmar are alarming. In the camps, access to health and education is poor, if any. There is a lack of food security and they live in an uncertain environment, where they do not know when and if they will be able to return to their village.

In March 2015, a nationwide ceasefire agreement was signed through the government-led entity, the Myanmar Peace Center. This is the first multilateral ceasefire process in the country as earlier processes were only bilateral or by States/Regions. Only eight EAOs, out of 15 involved in the process, signed the final document. This ceasefire agreement is a relief for many ethnic minorities because a certain number of displaced people were able to go back to their homes. However, according to the Chin Human Rights Organization, the ceasefire is not effectively implemented, and civilians are still under threat. There is evidence that Tatmadaw continues operations and re-militarization in ceasefire areas (Chin Human Rights Organization 2018). Besides, many parts of the country are not included in the ceasefire agreement and still suffer from armed conflicts between EAOs and the national army.

4.3 Economic Growth and Land Dispossession

Economic growth at national levels requires development of infrastructure and industries as well as foreign investments. Such development and investments generally involve land acquisition by local or foreign companies. However, as land rights of Indigenous Peoples are mostly not secured and results in the confiscation of their land and ancestral domain or even illegal transactions, generally without any information or consent of the concerned Indigenous Peoples.

For instance, in Nepal, the road expansion project in the Kathmandu Valley has destroyed properties and lands of the Newar Indigenous Peoples, including houses, community structures, cultural heritage and sacred sites, which is still ongoing. If the project is fully implemented, approximately 150,000 persons will be displaced and affected directly. Neither consultation nor consent of indigenous Newars was taken for the development of the project. In 2017, Nepal's Supreme Court issued a verdict in favor of affected Indigenous Newar communities, in a case supported by the local organization Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), calling on the government to consult and obtain consent of the affected communities while giving justifiable compensations for their land and properties.

In Laos, the government sees hydropower generation as a way to boost the country's economy. It has implemented several dam projects, including the Nam Theun 2 located in Vientiane Province that was completed in 2010 with the support of the World Bank and the Asian Development Bank. Around 6,200 Indigenous Persons, including from Phuan, Tain Dam, Tai Deng, Khanu and Hmong ethnic groups from 17 villages in the Nakai Plateau were resettled. Reports indicate human rights abuses occurred during the process of evictions. More than 110,000 persons downstream were directly impacted, who depended on the Xe Bang Fai and the Nam Theun rivers for their livelihoods. Destruction of fisheries, flooding of farms or deterioration of water qualities are among the problems they encountered. Furthermore, the relocation of the affected Indigenous communities was not undertaken as promised and the resettled persons still do not have adequate livelihoods and their food security is at risk (International Rivers n.d.).

Box 4: Romanticizing Indigenous Peoples' Lives and Cultures for Tourism

Local tourism industries see Indigenous Peoples' culture as a means of tourist attraction. This is noticed in several countries, including China. For example, in Yunnan, emerald Lugu lake, verdant high peak mountains, fresh air, ethnic people in their traditional attires in Luoshui village are sold as tourist attractions. The region is home of Mosuo, which remains one of the last matriarchal tribes in China. A travel guide describes the Mosuo matriarch lineage as "There is no marriage. Men stay in women's houses as mates called 'Axia' and the intimate relationship lasts as long as they like. [...] Women operate production and management, and hold the principal position in the society, forming a modern day 'woman's kingdom', which adds mystique to this place"⁶ This description is more idealistic than realistic. Moreover, the references to the intimate life of this tribe as tourist attractions are disturbing. The people visiting the lake are for 90% Chinese Han, and most of them come in an organized tour.

In their one-day stay, they usually do a boat tour on the lake, a horse ride in the near-by mountains, and at night, they have a dance and song performance.

This is a typical example of how indigenous cultures are being used for marketing tourism packages. The discourse is on attraction and mystery creates and fixes the idea that ethnic tribes are living in a peaceful and romantic state, away from the tumults of the modern life. This marketization of Indigenous Peoples and their cultures only shows a fixed image of Indigenous culture while cultures and traditions are fluid alongside realities of history. Furthermore, this type of tourism does not profit Indigenous peoples, and they are mostly not consulted on the development they wish for their culture. These touristic and romanticizing trends are to be taken seriously, as they destroy the essence of Indigenous tradition and culture.

5 Positive Actions and Developments

5.1 Government Programs for Socio-economic Development

When looking for governments actions to improve the situation of Indigenous Peoples in general, one usually finds examples of implementation of national projects focused on socio-economic development, such as education or health. For instance, in Bangladesh, the National Education Policy stipulates the rights of the Indigenous children to have education in their mother tongue. In January 2017, the government developed textbooks for Indigenous children in five languages at the pre-primary level. About 50,000 textbooks were printed and distributed among approximately 25,000 students.

The Lao government has also started investing in education for Indigenous Peoples. In cooperation with international organizations and NGOs, it has been promoting non-formal education with basic skills training programs, such as curriculum development, training of leaders in rural areas, extension of literacy and income enhancement. For example, the Global Association of People and the Environment (GAPE) is a small non-profit organization that works in collaboration with Sustainable Lao Education Initiatives (SLEI) on their Sai Nyai Eco-School Program⁷. The purpose is to improve the livelihoods of smallholder semi-subsistence farmers and NTFP gatherers in harmony with nature and enhance recognition of customary tenure over the land and natural resources they depend on for their livelihoods.

⁶Travel China Guide website, "Lugu Lake", Lijiang Attraction, https://www.travelchinaguide.com/attraction/yunnan/lijiang/lugu_lake.htm

⁷https://www.gapeinternational.org/?page_id=409

5.2 Official Steps for Rights to Land, Territories and Resources

Very few steps have been taken by governments for improving the rights to land, territories and resources of Indigenous Peoples. Taiwan is the only country where a proper legal framework for indigenous reserves exists although it does not entirely satisfy Indigenous Peoples. In 2018, the Council of Indigenous Peoples published the guidelines on the delimitation of traditional Indigenous territories. After 12 consultation meetings, comprising around 800 Indigenous Peoples, officials and experts, the guidelines ensured the restitution of 800,000 hectares of customary lands to indigenous communities (IWGIA 2018).

In Japan, in 2019, after many years of struggles of the Ainu people, they have finally been recognized in the law as an indigenous group. The law focuses on the promotion of their cultural identity, prohibits discrimination, and also plans the construction of a national Ainu museum and park by 2020. Ainu people will also be able to practice their traditional fishing again with facilitation of procedures to obtain forestry products for rituals. However, the law still does not provide them with ownership or usage rights to their ancestral land nor does it explicitly include their right to self-determination, which they have been claiming since the beginning of their struggles.⁸

Under the present Timor-Leste government, cultural and spiritual activities of Indigenous Peoples as well as their sacred places, including communal water sources, are recognized and respected. Even if it is a small step forward, the government is claiming that they include elders of indigenous communities in the development of projects in indigenous communities.

5.3 Indigenous Peoples' Mobilizations

Continuous mobilizations of Indigenous Peoples to defend and assert their rights are taking place at various levels. In Taiwan, in January 2017, Indigenous Peoples took to the streets to protest against the “Guidelines for Demarcating Indigenous Traditional Territory” in Taipei in front of the Presidential building. These guidelines provide for the return of ancestral lands to Indigenous Peoples, which is yet to be realized.

In Japan, for more than two decades, Ryukyu people – which is not officially recognized as Ryukyu or Indigenous People – from Okinawa have organized rallies and protests to express their disagreements with the US army presence on their lands. Okinawa was under the control of the USA after World War II until 1972. Recently, the relocation of Futenma US Air Station was at the core of many protests. The Japanese government, jointly with the USA, planned to build a bigger US military base complex in Henoko near a fishermen village of 2,000 inhabitants. The environment is rich in biodiversity and the bay hosts many coral reefs and a rare species of Dugong. In February 2019, a referendum took place in the island asking the inhabitants if they were in favor of the relocation and the construction of the new US military base, in which 70% of the voters opposed it. Despite this clear result, Japanese Prime Minister declared that construction will continue and the plan will not be changed.

⁸ Kyodo news agency, “‘Empty words’: Rights groups say Japan’s bill recognizing Ainu as indigenous people falls short”, National, The Japan Times, March 2, 2019.

5.4 Reporting Human Rights Violations and Awareness Raising

In many countries, community-based organizations are actively involved in the defense and promotion of Indigenous Peoples’ rights through awareness raising, legal support, dialogues with authorities and other related activities.

In Nepal, for instance, the Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is undertaking training and awareness raising activities for promoting Indigenous Peoples’ rights within the country. The organization also helps indigenous communities to bring cases of violations of indigenous rights cases to the national court. They have documented dozens of cases of abuses of rights to lands, territories and resources, including issues with militarization in indigenous lands such as in the Dhorpatan Hunting Reserve, hydropower projects and electricity transmission lines such as Marsyangdi Corridor, as well as impacts of waste management areas, among others.

In Myanmar, several Indigenous organizations are reporting on human rights violations in a systematic manner. For example, the Shan Human Rights Foundation (SHRF) and the Karen Human Rights Group (KHRG) are both well-known organizations that report and document human rights abuses and undertake awareness raising about situation of Indigenous communities. In Shan State, the focus for the SHRF is more specially on the remote conflict-affected areas, and KHRG is active in eastern Myanmar, where most Karen peoples live.

Kapaeeng Foundation (KF) in Bangladesh is another human rights organization working for the promotion and the protection of Indigenous Peoples’ rights. By conducting workshops and conferences and undertaking campaigns, KF raises awareness about Indigenous situation in Bangladesh nationally and internationally through its international networks. It also has an effective reporting system of human rights’ violation of Indigenous Peoples by mobilizing volunteer Indigenous human rights defenders in the ground and provides accurate and valid data on human rights violations.

6 Conclusion and Recommendations

6.1 Conclusion

The current situation of Indigenous Peoples in Asia is full of contrasts and challenges, wherein Indigenous Peoples’ rights to their lands, territories and resources are far from being ensured. The legal framework to recognize the rights of Indigenous Peoples by the states needs to be strengthened at least. For most countries (except Nepal), ratification of the ILO Convention No. 169 is still wanting. Subsequently, compliance of the international instruments such as the ILO C169 and the UNDRIP are needed actions through appropriate legal and administrative measures.

At the national levels, Indigenous Peoples are clearly lacking official recognition. In most cases, they are designated by other terms, like “ethnic groups/minorities”, “ethnic nationalities” or “national races” and this often dilutes the identity of Indigenous Peoples grounded on self-determination. The

use of these terms takes away the primacy of customary governance, thereby, steers the authorities away to aptly tackle the challenges of land rights of Indigenous Peoples. It is important that governments adopt a pluralism approach in addressing the issue on land rights whereby it opens spaces for dialogues and enhances human dignity and equality.

In some countries, Indigenous Peoples are recognized for their cultural, economic or social well-being. Yet, when it comes to “development”, Indigenous Peoples are seen to be ‘underdeveloped’ or ‘poor’ and projects are usually formulated from a top to bottom approach, and do not include Indigenous Peoples’ participation or simply ignore their needs. Such an approach by the government further poses threat for Indigenous Peoples to be assimilated in the dominant society.

Respect for FPIC is still a huge issue for Indigenous Peoples and the lack of political will and legal and policy framework of the government is often the reason why FPIC is not effectively observed and implemented in countries. The right to FPIC is rarely respected when infrastructure development, mining extraction, dam construction or military deployment are undertaken in the lands and territories of indigenous peoples.

Land rights remains serious challenge for Indigenous Peoples, even in countries where there is some level of recognition of the rights of Indigenous Peoples. At best, Indigenous Peoples can have access to usage of their lands – mostly through individual titles, which undermines collective ownership and land use. However, in worst case, there is no recognition and protection of rights of Indigenous Peoples to access, use and own their lands, territories and resources.

Categorization of land and land titling introduced by the government usually complicates the issue of ownership and management. As indicated by the study, government resort to classifying lands under forestlands or under national parks with special provisions. This often goes in contradiction with customary practices and livelihoods, such as access to ritual sites, hunting, fishing or shifting cultivation. Private ownership not based on customary practices through land titling aggravates the situation as it often brings internal conflicts among Indigenous Peoples or complicate Indigenous land tenure systems, placing Indigenous individuals in more vulnerable position to lose their collective ownership and other rights.

Last but not the least, the importance of relevant and up-to-date data and information about Indigenous Peoples and related issues reflecting their situation should not be ignored. Necessary disaggregated data for Indigenous Peoples must be institutionalized as basis in implementing socio-economic policies and programs related to Indigenous Peoples, including their lands and resources. Data generation and analysis must however involve Indigenous Peoples themselves and bring about genuine and lasting collaboration that will help design and monitor community plans and programs that goes beyond superficial developments.

6.2 Recommendations

Based on these conclusions, following set of recommendations can be drawn:

6.2.1 Governments

- Governments must take the initiative for ratification of and compliance with international instruments, such as the ILO 169 and the UNDRIP, including through harmonization of the national legal framework accordingly.

- Governments must recognize the deep-rooted relationship between Indigenous Peoples and their ancestral lands and establish specific and coherent legal framework concerning their access and usage, ownership and control of their lands, territories and resource, with the active participation and consent of Indigenous Peoples.
- Governments must take the initiative to clearly identify Indigenous Peoples in their respective countries in Asia, including establishing relevant disaggregated data at the national level.
- Governments must recognize the land rights of Indigenous Peoples and initiate land reform based on customary land tenure and legal pluralism that will reconcile customary laws, national laws and international human rights standards.
- Governments must promote active participation of Indigenous Peoples in any economic, social or cultural development plans. The principle of free, prior and informed consent (FPIC) must be included in the laws and must be implemented accordingly. Government should not grant or lease lands and resources of Indigenous Peoples without the FPIC from the concerned communities.
- Governments should appropriately undertake land titling, in conjunction with the Indigenous Peoples, while respecting their customary livelihood practices and through a rights-based approach.

6.2.2 International Bodies, Private Companies and Other Stakeholders

- International bodies and mechanisms, along with civil society organizations (CSOs), should systematically monitor, report and address violations of Indigenous Peoples’ rights.
- CSOs and other concerned bodies should actively raise awareness on Indigenous Peoples’ rights and situation with the wider population in Asia.
- International and national companies, investors, and other relevant parties must ensure that Indigenous communities are informed and have given their consent before any development project is undertaken in their areas.

6.2.3 Other Stakeholders

- All stakeholders (governments, NGOs, international organizations, and any other relevant actors) working on Indigenous Peoples’ issues should make efforts to carry out in-depth research on Indigenous Peoples issues and concerns related to their rights and relationship to their land, territories and resources for adequate understanding and cooperation.
- All stakeholders (governments, NGOs, international organizations, and any other relevant actors) should recognize the customary livelihood and cultivation systems, such as shifting cultivation and promote their food systems and customary sustainable use of resources.
- All concerned government agencies, UN agencies, regional bodies and NGOs should ensure participation of Indigenous women, youth and Indigenous persons with disabilities in all decision-making processes of projects that may affect them and the life of the community.

1 Bangladesh



Bangladesh map (Source: Google map)

1.1. Country Profile

The Human Development Indices and Indicators: 2018 Statistical Update ranks Bangladesh 136th with Medium Human Development Index (HDI) value of .608, Gender Development Index (GDI) value 0.542, life expectancy at birth 72.8 years, expected years of schooling 11.4 years, Gross National Index (GNI) per capita \$ 3,677, multidimensional poverty index value 0.194, literacy rate of adult (ages 15 and older) 72.8% and employment to population (ages 15 and older) ratio as 54.0 (UNDP, 2018).

Further, the 2016-17 Household Income and Expenditure Survey (HIES) results showed that almost one in four Bangladeshis (24.3 percent of the population) lives in poverty, and 12.9 percent of the population lives in extreme poverty. While a significant reduction was seen from 2010 to 2016, the following years showed a slower improvement, especially in urban areas where poverty only declined from 21.3 to 18.9 percent compared to the 35.2 to 26.4 percent in rural areas (The World Bank, 2017). Some of the extreme poor are found among the indigenous communities where they experience discriminative acts and extortion from land grabbers. These communities are also vulnerable to illnesses brought about by inadequate nutrition and improper hygiene (Roy R. D., 2000).

Government interventions were provided to address the concerns above such as the ratification of the following: International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1998, Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1984, International Covenant on Civil and Political Rights (ICCPR) in 2000 UNDP: 2018; Tripura 2014). It also ratified the International Labor Organization (ILO) Convention on Indigenous and Tribal Population No. 107 as among the major areas of interventions listed to provide support to the rights of the Indigenous Peoples (Chakma G. K., 2014). “The Government considered implementing the UN Declaration on the Rights of Indigenous Peoples 2007 and ratify the ILO Convention as well as we approach the end of the Second Five Year Plan (SFYP), however, such statements seem little more than empty promises (Tripura 2014).

1.1.1. Number of Indigenous Peoples, Percentage Compared to the Total Population

Bangladesh is divided into eight regions: The Chittagong Hill Tracts, Sylhet Division, Rajshahi Division, Mymensingh Division, Khulna Rangpur Division, a Division, Barisal Division, Chittagong and Dhaka Division.

Based on the 2011 census, the indigenous population totals to approximately 1,586,141 individuals over the total country population of 162,000,000. The IPs then make up to only 1.8% of the country population. However, Indigenous Peoples in Bangladesh claim that their population is approximately 5 million. (IWGIA, n.d.) (Chakma B., 2018) (Kapaeng Foundation, 2019).

The same census results also showed that there are 27 ethnic population groups in the country. The first is Chakma, consisting of 444,748 people while the Marma, the second largest ethnic group, compares with 202,974 persons.

The list of Indigenous Peoples depends on the use of the terms, including “Upajati” or sub-nation, Tribal, Adivasi, Jumma, Pahari or Hill men/ Hill people, Ethnic minority and Indigenous Hillman. The Bangladesh Government however rejects the term Adivasi (indigenous or aboriginal) while the Indigenous Peoples use the term Adivasi in Bengali and reject the terms “Upajati” and Tribe (Roy R. D., Country Technical Notes on Indigenous Peoples’ Issues: PEOPLE’S REPUBLIC OF BANGLADESH, 2012).

There are 11 Indigenous Peoples in the Chittagong Hill Tracts as recognized in the laws of Bangladesh (Census of 1991) (See Table 1.1) and 21 Indigenous Peoples of the plains as recognized in the laws of Bangladesh (some of whom are also mentioned in the official Census of 1991) (See Table 1.2) (Roy 2009).

Table 1.1. List of Indigenous Peoples of the Chittagong Hill Tracts as recognized in the laws of Bangladesh (Census of 1991)

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
1	Bawm	Bawm Zo	Bonjogi	HDC Acts, 1989, CHTRC Act, 1998	13,471	Considered part of Mizo (KukiChin) group in India. Live in Bandarban District mostly.
2	Chak	Sak, Tsak		HDC Acts, 1989, CHTRC Act, 1998	2,127	Only in Bandarban district.
3	Chakma	Sangma, Thek		HDC Acts, 1989, CHTRC Act, 1998	252,858	The most numerous Indigenous Peoples in Bangladesh. They also live in the states of Arunachal, Assam, Mizoram and Tripura in India and in Myanmar or former Burma (especially Rakhaing State).
4	Khumi			Bandarban HDC Act, 1989, CHTRC Act, 1998	1,241	The least numerous Indigenous Peoples in Bangladesh after the Lushai.
5	Khyang			Rangamati & Bandarban HDC Acts, 1989, CHTRC Act, 1998	2,343	Live in Bandarban & Rangamati.
6	Lushai			Rangamati & Bandarban HDC Acts, 1989, CHTRC Act, 1998	662	The least numerous Indigenous Peoples in Bangladesh, but in Mizoram, Lushai-speakers make up the majority of the Mizo.
7	Marma		Magh	CHT Reg, 1900, HDC Acts, 1989, CHTRC Act, 1998	157,301	CHT Reg. 1900 and EBST Act, 1950 use the word "Magh". Marma and Rakhaing (also in Burma) have similar languages and customs. Marma are the second most numerous Indigenous Peoples in CHT after the Chakma.
8	Mro	Mru	Murung	Bandarban HDC Acts, 1989, CHTRC Act, 1998	22,304	Not to be confused with "Mrung", the name used by the Marma to Refers to the Usui, who regard themselves as a subgroup of the Tripura.

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
9			Pankho, Pangkhu	Rangamati & Bandarban HDC Acts, 1989, CHTRC Act, 1998	3,227	
10	Tanchangya		Tongsongya	HDC Acts, 1989, CHTRC Act, 1998	21,639	
11	Tripura	Tipra, Tripuri		HDC Acts, 1989, CHTRC Act, 1998	81,014	Larger group in Tripura State, India, generally referred to as "Tripuri".

Source: Adapted from Roy, Raja Devasish (2009). The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review, Project to Promote ILO Policy on Indigenous and Tribal Peoples and ILO Office, Dhaka, Bangladesh, July, 2009, p. 74

Table 1.2. List of indigenous peoples of the plains as recognized in the laws of Bangladesh (some of whom are also mentioned in the official Census of 1991)

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
1	Banai			EBST Act		
2	Bhuiya			EBST Act		
3	Bhumiji			EBST Act		
4	Dalu			EBST Act		Khaleque (in Gain, 1998: 12) regards them as a subgroup of the Mandi (Garo).
5	Garo	Mandi		EBST Act	64,280	Larger group lives in Meghalaya, India.
6	Gond			EBST Act		
7	Hadi			EBST Act		
8	Hajang	Hajong		EBST Act	11,540	
9	Ho			EBST Act		Khaleque (in Gain, 1998: 12) regards them as a subgroup of the Munda
10	Kharia			EBST Act		
11	Kharwar			EBST Act		
12	Koch	Kuch, Cooch		EBST Act	16,567	
13	Kora			EBST Act		
14	Magh	Rakahaing		EBST Act		
15	Mache			EBST Act		
16	Mal Paharia			EBST Act		
17	Munda			EBST Act	2,132	Larger group lives in Jharkhand, West Bengal, Bihar in India.
18	Oraon	Urao	Urang	EBST Act	8,216	
19	Santhal	Santal	Shaontal	EBST Act	202,162	The most numerous indigenous peoples in the plains and the second-most numerous in Bangladesh after the Chakma. Larger group in India.

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
20	Sauria Paharia			EBST Act		
21	Turi			EBST Act		

Source: Roy, Raja Devasish (2009) The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review, Project to Promote ILO Policy on Indigenous and Tribal Peoples and ILO Office, Dhaka, Bangladesh, July, 2009, p. 74.

There are 27 Indigenous Peoples of the Chittagong Hill Tracts and the plains claiming to be Indigenous Peoples but who remain unrecognized by law are mentioned in the official census of 1991 (See Table 1.3; Roy 2009).

Table 1.3: List of peoples of the Chittagong Hill Tracts and the plains claiming to be indigenous peoples but who remain unrecognized by law (some of whom are also mentioned in the official census of 1991)

N°	Name of people	Alternative acceptable Names	Misnomers	Source	Population (1991 census)	Comment
1	Assam			BD Adivasi Forum, 2005		Descendants of British-period government personnel migrants from Assam.
2	Bagdi			BD Adivasi Forum, 2005		
3	Bediay	Bede, Bedey		BD Adivasi Forum, 2005		Nomadic riverine people.
4	Bhumil	Bhuimali?		BD Adivasi Forum, 2005		
5	Brong			Timm, 1991		
6	Buna			1991 Census	7,421	
7	Gurkha			BD Adivasi Forum, 2005		Descendants of British-period government personnel migrants from Nepal.
8	Horizon	Harijan		1991 Census	1,132	
9	Karmakar			BD Adivasi Forum, 2005		
10	Khando			BD Adivasi Forum, 2005		
11	Khasi		Khasia	1991 Census	12,280	Larger group lives in Meghalaya, India. Austric.
12	Khatriya Barman			BD Adivasi Forum, 2005		Most have lost their original language. Revival of indigenous traditions happening.
13	Kole			BD Adivasi Forum, 2005		
14	Mahali	Mahili		BD Adivasi Forum		Khaleque (in Gain, 1998: 12) regards them as a subgroup of the Santal.
15	Mahato	Mahatu	Mahat	1991 Census	3,534	

N°	Name of people	Alternative acceptable Names	Misnomers	Source	Population (1991 census)	Comment
16	Malo			BD Adivasi Forum		
17	Muriyar			BD Adivasi Forum, 2005		
18	Musohor			BD Adivasi Forum, 2005		
19	Pahan			BD Adivasi Forum, 2005		
20	Paharia		Pahary	1991 Census	1,853	
21	Patro			BD Adivasi Forum, 2005		
22	Rai			BD Adivasi Forum, 2005		
23	Rajbongshi			1991 Census	7,555	
24	Rajuar			BD Adivasi Forum, 2005		
25	Rakhaing	Rakhaine	Magh	BD Adivasi Forum, 2005	16,932	Larger group live in Rakhaing State, Burma. However, these people are recognized as „Magh“ in the Act XXVIII, 1950.
26	Shing			BD Adivasi Forum, 2005		
27	Urua			1991 Census	5,561	

Source: Roy, Raja Devasish (2009) The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review, Project to Promote ILO Policy on Indigenous and Tribal Peoples, and ILO Office, Dhaka, Bangladesh, July, 2

Table 1.4: Consolidated list of all ethno-linguistic groups claiming to be Indigenous Peoples or known to be Indigenous Peoples

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
1	Banai			EBST Act, 1950		
2	Bhumil	Bhuimali?		BD Adivasi Forum, 2005		
3	Bom	Bawm; Bawm Zo	Bonjogi	CHTRC Act, 1998	13,471	Considered part of Mizo (Kuki-Chin) group in India. Live in Bandarban district mostly.
4	Brong			Timm, 1991		
5	Buna			1991 Census	7,421	

N°	Name of people	Alternative acceptable names	Misnomers	Source	Population (1991 census)	Comment
6	Gurkha			BD Adivasi Forum, 2005		Descendants of British-period government personnel; migrants from Nepal.
7	Horizon	Harijan		1991 Census	1,132	
8	Karmakar			BD Adivasi Forum, 2005		
9	Khando			BD Adivasi Forum, 2005		
10	Khasi		Khasia	1991 Census	12,280	Larger group lives in Meghalaya, India, Austric.
11	Khatriya Barman			BD Adivasi Forum, 2005		Most have lost their original language. Revival of indigenous traditions is happening.
12	Kole			BD Adivasi Forum, 2005		
13	Mahali	Mahili		BD Adivasi Forum		Khaleque (in Gain, 1998: 12) regards them as a subgroup of the Santal.
14	Mahato	Mahatu	Mahat	1991 Census	3,534	
15	Malo			BD Adivasi Forum		
16	Mal Paharia			EBST Act 1950		
17	Monipuri	Meithei		1991 Census	24, 882	Larger group in Manipur, India.
18	Muriyar			BD Adivasi Forum, 2005		
19	Musohor			BD Adivasi Forum, 2005		
20	Pahan			BD Adivasi Forum, 2005		
21	Paharia		Pahary	1991 Census	1,853	
22	Patro			BD Adivasi Forum, 2005		
23	Rai			BD Adivasi Forum, 2005		
24	Rajbongshi			1991 Census	7,555	
25	Rajuar			BD Adivasi Forum, 2005		
26	Rakhaing	Rakhaine	Magh	BD Adivasi Forum, 2005	16,932	Larger group lives in Rakhaing State, Burma.
27	Shing			BD Adivasi Forum, 2005		
28	Urua			1991 Census	5,561	

Source: Reproduced from Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review*, Project to Promote ILO Policy on Indigenous and Tribal Peoples and ILO Office, Dhaka, Bangladesh, July, 2009.

There was a difficulty of identifying indigenous peoples in the country attributing it to the lack of ethnically disaggregated data in the 2001 census with incomplete, misleading and inaccurate data. It also excludes 70,000 Indigenous Peoples who were then sheltered in refugee camps across the international border in Tripura State in India. In addition, the leaders of the Mro and Tanchangya peoples in the Chittagong Hill Tracts (CHT) have complained about under enumeration of their population data. The census shows a total of 1,205,978 Indigenous People in Bangladesh, which is a sum of 704,834 in the plains and 501,144 in the CHT. This is in contrast to some writings which cite a reference to 1,772,788 tribal people. This under enumeration is considered by some as a deliberate act to underplay the importance of the indigenous population (Roy, 2012).

The majority of the Indigenous Peoples live in the plain land districts and the rest in the Chittagong Hill Tracts (UNDP, 2018). However, the Government does not recognize Indigenous Peoples as “indigenous” but the 15th Amendment of the constitution adopted in 2011 mentions about people with distinct ethnic identities who are not the mainstream Bengali but it is confined to cultural aspects only, as land rights and economic and political rights of indigenous peoples are completely ignored. Chakma views that even after 19 years the major issues of the Peace Accord such as making the CHT Land Commission functional, devolution of power and function to the CHT institutions, preservation of tribal area characteristics of CHT region, demilitarization, rehabilitation of Internally Displaced People, etc., remain unsettled (Chakma B., 2018).

As opposed to the 2011 census that there are 27 groups, it is generally assumed that there are at least 54 groups of the Indigenous and Tribal Peoples (ITPs) in the country (Kapaeng Foundation, 2019). However, the National Committee recommended 50 indigenous communities (Bawm, Barman, Bagdi, Banai, Baraik, Bedia, Bhil, Bhumij, Bhuimali, Chak, Chakma, Dalu, Garo, Gorait, Gurkha, Ganju, Hodi, Ho, Hajong, Koch, Kole, Khasi, Khyang, Khumi, Kurmi Mahato, Koda, Kora, Kharia, Kharwar, Lohar, Lusai, Monipuri, Marma, Malpahari/Pahari, Munda, Mro, Malo/Ghasimalo, Mahali, Mushor, Oraon, Patro, Pangkha, Rajowar, Rakhaine, Santal, Sabar, Tangchangya, Tripura, Teli and Turi)⁹ to be enlisted on the Gazette of “Small Ethnic Groups Cultural Institutes Act of 2010” (Kapaeng Foundation, 2019).

The Permanent Forum on Indigenous Issues of the United Nations published several reports which discussed indigenous issues in Bangladesh in 2011 (UNPFII, 2011).

In response, the Bangladesh Government declared that it would not use the term “indigenous” in the country, claiming that there are no indigenous peoples (The Daily Star, 2011). The Small Ethnic Groups Cultural Institution Act 2010 also mentions the phrase “*khudro nrigoshthhi*” (small ethnic groups) to refer to indigenous peoples. However, the term Adivasi was used in the definitions section to refer to “*khudro nrigoshthhi*”. Finally, the government also refers to the indigenous peoples of Bangladesh as “tribes”, “minor races” and “ethnic sects and communities” in the 15th amendment of the Constitution in 2011. On the other hand, it declares that the people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis in Article 6.2 of the amended Constitution

⁹ Ministry of Culture established a ‘National Committee’ for the enlistment of indigenous peoples in Bangladesh and decided to publish the 50 indigenous peoples in the Gazette soon

(Fifteenth Amendment) Act of 2011. This infers that the government can impose upon ethnic minorities the use of a Bengali identity rather than accept their right to an ethnic identity as well as their rights to self-determination. The ethnic minorities prefer collectively to use the term “indigenous” in English and “Adivasi” in Bengali” (Chakma & Maitrot, 2016).



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Since disaggregated official data on the demographic distribution of different indigenous groups is unclear and unavailable, a remaining significant data-gap will need to be closed in order to ensure that Indigenous Peoples are not left behind. In addition, “an exact number of the population of indigenous communities remains a matter of conjecture in the absence of clear disaggregated data. Bangladesh Adivasi Forum, an apex organization of the Indigenous Peoples in the country, estimates a total population of between 3-4 million which is generally taken as reference” (Kapaeng Foundation, 2019).

In brief, as long as there is no strong political commitment to not tamper the census data and to carry out blanket ethnic and linguistic surveys and raise awareness of Indigenous Peoples about their collective identity, it would be difficult to ascertain exact number of Indigenous Peoples and their population data, including their census data.

1.1.2. Geographical Distribution

Minorities can be found at the southeastern, northwestern, north-central and northeastern regions of the country and the Chittagong Hill Tracts that lies in the southeastern region of Bangladesh. CHT shares international boundaries with the Indian states of Tripura to the north and Mizoram to the east, and Chin and Rakhain states of Myanmar (Burma) to the south-east and south. The Hill Tracts are home to the country’s largest concentration of Indigenous Peoples namely the Bawm, Sak, Chakma, Khumi, Khyang, Marma, Mru, Lushai, Uchay (also called Mrung, Brong, Hill Tri pura), Pankho, Tanchangya and Tripura (Tipura) (Roy R. D., 2000).

The Indigenous Peoples are scattered across the country with the largest concentrations located in the Chittagong Hill Tracts (CHT); north-west (Rajshahi-Dinajpur), central north (Mymensingh-Tangail), north-east (Greater Sylhet), south-west and south-east (Chittagong, Cox’s Bazar, Potuakhali and Barishal). It is also noted that there are no administrative divisions available for Indigenous Peoples concerning which provinces, districts, regions, areas, administrative divisions in which Indigenous Peoples are found (Kapaeng Foundation, 2019). However, the Chittagong Hill Tracts, 5,093 sq. miles or 10% of Bangladesh, is a unique territory being the only mountain area in the country and home to 11 ethnic communities with distinct cultures and languages (Gain 2011:2). Also, a small number of Santal, Gorkha, Ahmia and Nepali communities also live in CHT (Kapaeng Foundation, 2019).

1.1.3. Area of Lands Controlled by Indigenous Peoples, of Lands Legally Owned by the Indigenous Peoples and of Lands Claimed by the State or Private Actors; Percentage Compared to the Total Country area

There is scarcity of data from desk study relating to area of lands controlled and legally owned by Indigenous Peoples, of lands claimed by the State or private actors, and land percentage compared to the total country area, nevertheless, some available data gives information about these issues.

The total surface area and the total land area of CHT is 13, 189 sq. km. and 3,685 sq. km. respectively. The surface area of Rangamati is 6,089 sq. km., of Bandarban is 4,502 sq. km. and of Khagrachari is 2,590 sq. km. and the land area of these districts are 1171 sq. km., 1336 sq. km. and 1178 sq. km. respectively (Roy R. D., 2000). The percentage of the different forest categories of the total Chittagong Hill Tracts area of 3.260 million acres are 24% of Reserve Forests, 1% of Protected Forests and 75% of Unclassed State Forests (Roy R. D., 2000).

1.1.4. Legal Status of Indigenous Peoples

Bangladesh ratified the ILO Convention no. 107 which went in force on June 22, 1972 (Kapaeng Foundation, 2019). Bangladesh has not made any automatic denouncement of the ILO Convention No. 107 and ratified ILO Convention No. 169. The country did not vote for adoption of UNDRIP on September 14, 2007. In addition, there is no recognition of legal personality for Indigenous Peoples in the country (AIPP).

Based on the Small Ethnic Groups Cultural Institutes Act of 2010 there are 27 ethnic communities in Bangladesh, which among the recognized communities, Marma and Mong in the CHT refer to the same community and so do Tripura and Ushai. Malpahari and Pahari which are recognized by the groups themselves as two separate communities are recognized as only one in the law. The Kapaeeng Foundation (2019), on the other hand, has noted that there are 24 legally recognized ethnic communities. However, the National Committee recommended 50 indigenous communities to be enlisted on the Gazette of Small Ethnic Groups Cultural Institutes Act of 2010. It follows that 26 communities are still waiting for the recognition.

The Constitution of Bangladesh does not recognize the ethnic linguistic and cultural minorities as 'Indigenous People'. However, through the 15th Amendment to the National Constitution in 2011, the government recognizes "tribes, minor races, ethnic sects and communities" (Article 23A), obliquely referring to the Indigenous Peoples, while categorizing all the people of Bangladesh, irrespective of their ethnic, linguistic and cultural backgrounds, collectively as "*Bangalee*" (Article 6.2), the dominant ethno linguistic group in Bangladesh.

Moreover, in Article-6, Clause-2, which read as follows, 'The people of Bangladesh shall be known as Bengali' as a nation and 'the citizens of Bangladesh shall be known as Bangladeshis' this technically, denied the existence of Indigenous People of this country (Kapaeeng Foundation, 2019).

1.2. Laws and Policies on Indigenous Peoples Land Rights

The findings of the socio-economic baseline survey done in the Chittagong Hill Tracts revealed three types of land ownership in the CHT. These are the (i) individual registered ownership, (ii) traditional ownership (recorded and/or not recorded with headman) under usufruct rights, and (iii) usufruct rights to ownership of common property (different from that in plain land). Moreover, the conservative estimation considering only registered ownership category reveals that only one-third population of the CHT enjoy land ownership with a significant variation between the indigenous (30%) and the *Bengalee* household (42%) (Barkat et al. n.d.).

The findings also revealed that 22% of indigenous households have lost their lands whereas 41 % of the Chakmas are mostly affected by land dispossession, followed by 22 % of the Tanchangya (ibid).

1.2.1. National Laws and Policies Recognizing Indigenous Peoples LTR Rights

There are some laws and policies recognizing Indigenous People's land, territories and resources rights in Bangladesh where the CHT has been identified as a tribal area and their cultural rights and traditional governance systems are recognized.

Since the government of Bangladesh does not formally recognize the rights of Indigenous Peoples, particularly those in the plains of the country, to the common lands as a collective right. It regards these lands as state-owned. They are also known as Khas lands i.e. state lands, while the Forest Department categorizes these lands as un-classed State Forests (USFs) (Chakma G.K., 2014).



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"The traditional land management system is not codified. The non-recognition of their traditional land management system in Bangladesh leads to land dispossession of Indigenous Peoples. Alienation of land has been often accompanied with migration of population i.e. migration of Non-local Non-indigenous Peoples to the lands and territories of Indigenous Peoples in Bangladesh" (Chakma G. K., 2014).

The alienation of the Indigenous Peoples from their ancestral lands and territories that continues until now is attributed to the British colonial rule in the then British-India control but land based human rights violations surged up with advent of the Islamic Republic of Pakistan that emerged as a separate state on the basis of the 'two nations theory' adopted in 1947 (Chakma G. K., 2014).

"Some specific developments such as the Chittagong Hill Tracts (CHT) Accord of 1997 or the introduction of a new clause (Article 23A) in the constitution of the country, have created new spaces of engagement relating to the promotion and protection of the rights of 'tribal' people, a term by which the indigenous peoples of Bangladesh have been known more commonly in official circles" (Tripura, 2014).

In 1994, the CHT is the only area where there are number of laws formulated or updated. These are the CHT Regulation 1900, CHT Board Ordinance 1976, Hill District Council Acts 1989 (three separate acts for the hill districts of Bandarban, Khagrachari and Rangamati), the CHT Regional Council Act 1998 and the CHT Land Dispute Resolution Commission Act 2001. These laws took into account the demands of the Indigenous Peoples, although only partially and that most of these are poorly implemented (ibid).

Compared to the CHT, the situation of the Indigenous Peoples living elsewhere in Bangladesh is far worse due to lack of special legal provisions. However, there are partial exceptions to this rule which includes provisions under some laws and rules like the East Bengal State Acquisition and Tenancy Act of 1950 and the Small Ethnic Groups Cultural Institutes Act, 2010 (Tripura, 2014).

On the other hand, there are land laws regarding the management of land for indigenous groups on the plains who, ironically, are not considered residents or land owners (Roy R. D., 2009).

The Forest Act of 1972 contains regulations on the administration of forest produce (Roy R. D., 2009). Another law that affects the land rights of Indigenous Peoples is a delegated law, namely, the Social Forestry Rules of 2004, passed in accordance with the aforesaid Forest Act of 1972 [sections 28A (4) and 28A (5)]. It may also be noted that in the plains, influential and unscrupulous land-grabbers has long taken advantage of a law called the Vested and Non-resident Property (Administration) Act, 1974 (Act XLVI of 1974), generally known as the Vested Property Act, at the expense of different minority groups, including indigenous peoples in the northwestern Rajshahi division, and against Mandi (Garo) people in north-central Bangladesh, among others. In 2011 the Parliament passed a landmark bill named the Vested Property (Return) Act 2011 that would enable the return of land property seized from the country's Hindu minority and indigenous peoples over the last four decades. Finally, it may be noted that the Drugs and Alcoholic Substances Control Act, 1990 (Act XX of 1990) exempts "tribals" – both in the plains and in the CHT – from criminal prosecution for consuming traditionally brewed or distilled alcoholic beverages. Although seemingly a mundane matter, this may be seen as an important recognition of the cultural rights of the Indigenous Peoples, whose religious and cultural practices and social customs often included, and still include, the use of traditionally brewed liquor (Tripura, 2014).

A major law regulating the land administration in the plains is regulated by the East Bengal State Acquisition and Tenancy Act of 1950 that forbids the transfer of lands owned by 'aboriginals' to 'non-aboriginal' persons without the express consent of the government's district revenue officer (Chakma 2014: 63). Its application is none but wherever it has been applied, it has been applied unequally leading to illegal encroachment by land grabbers belonging to dominant Bengali community and the government for various aggressive development programs (Chakma G. K., 2014).

In 1997 the CHT Accord was signed between the Government of Bangladesh and the PCJSS in order to have an end to the ethnic conflict in the region. With this in aim, provisions, among others, were maintained for restitution of lands and protection of land rights of Indigenous Peoples in the CHT. Consequently, the subsequent laws, such as, three Hill District Council Acts, CHT Regional Council Act and Rules of Business of Ministry of CHT Affairs were amended or made in 1998. According to the CHT Accord of 1997 and three Hill District Council Acts of 1989, no land within the boundaries of the three hill districts shall be given in settlement without prior approval of the Hill District Councils and such land cannot be transferred to a person who is not a domicile of the said district without such approval. As per concerned acts, land and natural resources matters were made subjects of three Hill District Councils. The CHT Regional Council was entitled to supervise and coordinate it and Ministry of CHT Affairs was entrusted to deal with it. But it has so far been interpreted otherwise by the deputy commissioners of the hill districts" (Chakma G. K., 2014).

Concerning national policies in different sectors relating to Indigenous Peoples, there are many overarching guidelines in the country based on policies in different sectors yet none of these are actually in response to their needs. "In cases where the concerns of the Indigenous Peoples do receive explicit attention, the matter is either dealt with superficially, or in a way that involves lack

of conceptual clarity, regardless of the terminology involved." Moreover, the focus of the Sixth Five Year Plan (SFYP), 2011-15 is not on the rights to land, territories and resources but on social, political and economic rights of "ethnic people" or "ethnic community" (Tripura, 2014).



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Moreover, many environmental protection policies were implemented in Bangladesh without considering the rights to territories of the Indigenous Peoples in the area. The first Forest Policy was framed in 1979 and was provided with more support in 1990 where an area of 89,034 hectares of land in the Mouza forest areas was declared as a forest reserve. This was later called the USF in the CHT. Because the area is now occupied by the Forest Department, there is a very high possibility that the Indigenous Peoples including other residences in the area totaling to 200,000 might be relocated since there have been cases such as in the Barndarban District where there were "forcible occupation of lands" by the Forest Department (Chakma G. K., 2014).

A Wildlife (Protection and Safety) Act 2012 was also adopted by the parliament on July 8, 2012 without having consultations with and opinions of CHT Regional Council (in regards to CHT) and Indigenous Peoples from both the plains and the CHT (ibid).

Chakma has noted several factors for dispossession of Indigenous Peoples' lands. The first is the massive, unjust and politically motivated population transfer of Bengali settlers in the already land-pressed CHT considered as the main culprit for widespread dispossession of indigenous lands, communal violence including rape, killing, arson etc. leading to huge disruptions to indigenous livelihood and occupations, including shifting cultivation, herding and grazing, forest-gathering, etc. resulting to about half a million Bengali Muslims transferred to the CHT from the plains without free, prior and informed consent of CHT peoples during 1979-84 where they were settled down on the lands of indigenous hill peoples (Chakma 2014).



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Secondly, the Bangladesh army and the Border Guard Bangladesh (BGB) are evicting indigenous Jumma peoples from their ancestral lands and prohibiting them to build Buddhist temples and to carry out Jum (shifting) cultivation, both are parts of their everyday life (Chakma 2014).

The third is the extraction of mines, specially extraction of coal at Phulbari under Dinajpur district since 1997, as its result, about 4,70,000 people, including 50,000 Indigenous Peoples belonging to Santal, Munda, Mahali, Oraon, Pahan, Bhuimali, Karmokar, Turi, Hari, Rai and Rabidas ethnic groups, of 67 villages in Phulbari, Nababganj, Birampur and Parbatipur upazilas (sub-district) becoming its victims (Chakma 2014).

The fourth is the land grabbers who have not even kept the lands belonging to religious institutions out of their list. A 200-year old Buddhist temple named South Hnila Bara Buddhist Temple belonging to Indigenous Rakhine community was destroyed and looted several times by Bengali land grabbers at Hnila union under Teknaf upazila (sub-district) in Cox's Bazaar district with an aim to occupy 11 acres of land belonging to the Buddhist temple, and at present the land of this temple is under occupation of land grabbers (Chakma 2014). Hence, restitution of alienated lands to the Indigenous Peoples is a long-standing demand of Indigenous Peoples and civic rights groups of the country (Chakma 2014).

As cases of land disputes in the CHT rises, the CHT Land Dispute Resolution Commission Act was enacted in 2001 to resolve the disputes but it was not implemented meaningfully. In October 2016, the government amended the legislation as the reconstituted land commission received a total of 22,866 complaints (Chakma 2018) but the commission could not do much as they faced challenges, such as the absence of rules to supplement the provisions of the Act and lack of manpower as well as office equipment.

East Bengal State Acquisition and Tenancy Act 1950 is the only legislation that provides for certain safeguards for the land rights of Indigenous Peoples of the plains, especially in terms of transfer of land titles to non-aboriginals (Section 97). But, the safeguards enshrined in this land law are often flouted as a result of lack of consciousness and sensibility among the responsible government officials. As a consequence, despite having this safeguard, Indigenous Peoples of the plains continue to lose their lands. This, at times, is coupled with arbitrary invocation of the Vested Property Act. This Act led to the loss of thousands of acres of lands belonging to religious minorities including Indigenous Peoples. Adoption of the Vested Property Return (Amendment) Act 2013 seeks to undo the arbitrary application of the law that resulted in loss of lands of many families belonging to minority origin by restitution of lands provided under a government list – ‘Ka’ Schedule. However, not much progress in regard to restoration of lands has been observed so far (Chakma 2018). Adoption of the Acquisition and Requisition of Immovable Property Act in 2017 intensified the risk of losing lands by indigenous peoples of the plains (Chakma 2018).

The following information provided in the Indigenous World 2018 gives the latest information about the land issues:

With the intent to resolve numerous cases of land disputes in the CHT, the CHT Land Dispute Resolution Commission Act was enacted in 2001. However, the issue of resolution of land disputes remained illusory until October 2016 when the Government finally amended the legislation. Since then the reconstituted land commission held three meetings and received a total of 22,866 complaints. Nevertheless, the commission has not been able to resolve any disputes even at the end of 2017 as it is facing a number challenges including lack of manpower, office equipment and the absence of Rules to supplement the provisions of the Act. Additionally, although under the tutelage of the CHT Accord, the subject “Land and Land Management” is supposed to be transferred to the three Hill District Councils (HDCs), only 17 out of 33 stipulated subjects have been transferred to the HDC s till 2014. Until now there is no headway in transfer of other important subjects including “Land and Land Management”.

Moreover, in September 2017, the risk of losing land among the Indigenous Peoples of the plains increased with the adoption of the Acquisition of Immovable Property Act. This legislation increased the amount of monetary compensation to the adversely affected people as a result of acquisition and requisition of lands by the state. However, there are no safeguards for Indigenous Peoples (Chakma 2018).

The Kapaeeng Foundation identified laws entitling Indigenous Peoples with LTR rights. These are as follows:

The government of Bangladesh introduced a number of national laws and policies that relate to the life and development of the indigenous and tribal peoples in the country. In 2010, the government adopted a law (Khudra Nrigosthi Sangskritik Prothisthan Ain) dedicated to preserve and promote the culture of the ethnic communities (ITPs) in Bangladesh. The government also signed the Chittagong Hill Tracts Peace Accord in 1997, which provides the framework for the development of the indigenous and tribal peoples of the Chittagong Hill Tracts (CHT) region.

The agreement resulted in the passage of a number of laws, including the CHT Regional Council Act of 1998, the Hill District Council (Amendments) Acts of 1998, the CHT Land Disputes Resolution Commission Act of 2001 and the CHT Regulation (Amendment) Act of 2003. It also resulted in the establishment of three new bodies: a regional council for the CHT, a separate ministry to deal with affairs of the CHT region and a Commission on Land to resolve land-related disputes.

In the Plains, the East Bengal State Acquisition and Tenancy Act, 1950, the Vested Property Act of 1974, and the Forest Act of 1972 are still in force and related to ITPs of the region.

The land rights situation on the ground in the year 2017 is described by Chakma thus:

In the CHT, large-scale arson attacks on June 2, 2017 in Rangamati's Longadu Sadar by a mob of Bengali settlers in the presence and alleged collaboration of government forces was one of the most horrendous incidents that happened in the recent years. As a result of these attacks, 250 houses and shops belonging to indigenous Jumma villagers were reduced to ashes after they were looted and vandalized. A 75-year-old Chakma woman burnt to death in her home during the attacks. The promise of Government representatives of compensation and rehabilitation has not been realized as yet. They are still passing their nights and days in fear, anxiety and insecurity.

In the same year, a disastrous landslide took place in the CHT and neighboring two districts, claiming over 150 lives, the majority of which were solely from indigenous inhabited area of Rangamati. Although several hundred surviving families were provided with food, shelter and relief support for about three months following the disaster, support was abruptly stopped, and the victims were ejected from their temporary shelters with the complete absence of any form of rehabilitation. Moreover, a recent report shows that over the recent years Mro and Tripura people have been some of the worst hit victims of widespread land grabbing in the CHT. They have lost several thousand acres of lands by grabbing of private institutions – reported by Lama Rubber Industry, Quantum Foundation and Laden Group.

In the plains, 1,200 Santal families of Sahebganj-Bagda Farm area of Gobindaganj in Gaibandha, faced brutal mob attacks on 6 November 2016, leaving their homes gutted, three Santal men shot dead and dozens injured, are passing their days in uncertainty and insecurity. There has not been any initiative to bring the alleged perpetrators to justice. Moreover, the government is yet to return the lands of original titleholders whose lands were acquired in 1965 by the then Pakistan government to grow sugarcane for a sugar mill as per an agreement signed between the peasants and the government.

Recently, Indigenous Peoples of Madhupur experienced a rise in the number of trumped-up charges brought against them by the Forest Department (FD). Indigenous Peoples believe that the number has risen due to their protest against a declaration of 9,145 acres of land in Madhupur as “reserved forest” by the FD in 2016. This declaration has exposed over 15,000 Indigenous and Bengali people to the risk of forced relocation. Despite an uproar at different levels against the declaration, the FD has yet to annul the declaration.

In the north-eastern part of the country, the long-standing conflict between indigenous Khasi people and tea estate authorities continued throughout 2017. After facing attacks, imprisonments and harassment of different forms in order to evict them from their ancestral lands, the Khasi people of Nahar Punji in Moulvibazar district received an arbitrary eviction notice in February 2016 from Moulvibazar district administration. After many protests, Khasi people managed to win a stay order (No. A Ka – 68/2016) from the Divisional Commissioner of Sylhet division until a resolution of the land dispute could be heard in court. Further aggravating the situation, the Land Ministry leased out land to one Mahi Tea Estate covering 611.03 acres of lands of four Khasi villages including that of Nahar in 2017. In nearby Habiganj district, Bangladesh Economic Zones Authority (BEZA) decided to set-up a Special Economic Zone of around 512 acres of land in Chandpur area of Chunarughat upazila, threatening life and livelihood of nearly 16,000 tea garden workers belonging to different ethnic communities, who have been dependent on the land for generations. Indigenous Peoples and people from all walks of life protested against this move by BEZA. Nevertheless, without paying any heed to their demands, the aforementioned authority is continuing with its plan (Chakma 2018).

1.2.2. Limitations and Contradictions of these Laws and Policies

Concerning the limitations and gaps of these laws and policies, the Kapaeeng Foundation writes,

The government of Bangladesh has limitations to incorporate the present laws for the benefit of Indigenous Peoples in Bangladesh. However, it has been issuing a number of formal pledges (ref: The ILO Convention No. 107, which Bangladesh ratified in 1972, provides safeguards for Indigenous People's individual and collective rights, among others. The CHT Accord of 1997 also addresses land management and land rights of CHT people in accordance with the laws, customs and practices of the CHT. Further, the present ruling party, the Awami League, committed in its election manifestos of 2008, 2014 and 2018 that special measures will be taken to secure their original ownership on land, water bodies, and their age-old rights on forest areas. In addition, a land commission will be formed for the plain land indigenous peoples. In reality, the government of Bangladesh is reluctant to implement these laws.

In terms of policies, these are usually formulated by the government to guide its activities in a specific sector to achieve set development objectives. The objectives are meant to be beneficial to people and formulated with the participation and consent of people from all walks of life. But in reality many of the policies in Bangladesh are actually invited by external actors (e.g. bilateral donors and multilateral agencies) and vested interest groups within the country (Kapaeeng Foundation, 2017).

The contradictions of these laws, according to the Kapaeeng Foundation are as follows:

The CHT is governed by different laws as well as the Indigenous Peoples' unique administrative system. The key among the institutions is Ministry of the CHT Affairs set-up after the CHT Peace Accord was signed. The CHT other existing laws like; The Regulation of 1900 (popularly known as the CHT Manual), Hill District Council and CHT Regional Council- remain powerless due to the ineffective role of Ministry

of CHT Affairs. The Ministry of CHT Affairs yet to transfer the power to the local administrations is contradictory to the signing of CHT Accord (1997).

In numerous cases, land-grabbing is accompanied by acts of violence including arson and murder on the part of Non-indigenous People. Vested corners of ethnic Bengalis have arbitrarily invoked the Vested Property Act to seize indigenous people's lands in the plains, along with those of religious minorities. Although the East Bengal State Acquisition and Tenancy Act of 1950 (which only applies to the plains) provides certain safeguards against the transfer of aboriginal land titles to non-aboriginals, these provisions certain safeguard against the transfer of aboriginal land titles to non-aboriginals, these provisions have often been flouted (Kapaeng Foundation, 2019).

CHT accord is geographically limited so distinct ethnic identity is limited to the cultural field (Chittagong Hill Tracts Accord (1997). The following information indicates the land allocated to the indigenous families under the provisions of the resettlement programme:

The total amount of land submerged was 54,000 acres for all purpose agricultural lands (also called plough lands due to their suitability for intensive cultivation). Yet the amount of land allocated under the resettlement scheme was 20,000 acres of inferior quality lands, i.e. flat lands, which were unsuitable for all purpose agriculture;

Thus, the net loss to the indigenous farmers was 34,000 acres of land, in addition to the loss in the soil quality which also signified a reduction in the total crop yield;

10,000 families who had lost their agricultural lands were allocated 20,000 acres of hillside lands unsuitable for plough cultivation leading to irregular annual cultivation;

8,000 Jumiya families did not have any lands allocated to them as the Government did not recognize their customary rights to their Jum lands;

The average land holding of each family prior to displacement was estimated to be 6 acres. Yet, after completion of the project, each family was provided with approximately 2 acres. Thus, the net loss per family was approximately 4 acres (Roy 2000:100).

With respect to the 8,000 or so displaced families who owned and cultivated Jum lands,' Roy (2002) stated that the Government refused to recognize their rights to the Jum lands they were cultivating and categorized them as "landless", with no rights to either land allocation or financial compensation for the loss of their lands (Roy 2000: 101-2). Taking into account the population to land ratio at the time, the following mathematical equation indicates the amount of land available per family:

1. Population of Chittagong Hill Tracts (1974 census)	508,199	persons
Number of families (if one takes an average of 5 persons per family)	101,639	families
3. Land suitable for horticulture (Class B and 1/2 of C/C-D)	370,000	acres
Total allocation per family	3.64	acres

1.2.3. Implementation, Success and Problems of These Laws and Policies

The prevalence of land disputes and dispossessions made a way for the amendment of the Chittagong Hill Tracts Land Dispute Resolution Commission Act of 2001 in August 2016 which was expected to pave the way for the proper resolution of land disputes and the return of dispossessed lands belonging to native populace (IWGIA).

Some examples of successes met by communities when they tried to implement the rights provided by these laws, as noted by the Kapaeng Foundation, are as follows:

Article 23A of the Constitutions states that the State shall take a step to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities. Article 27, 28 and 29 of Bangladesh constitution further provide safeguard and affirmative action provisions for the indigenous peoples of Bangladesh (referred to as backward sections of citizens). However, the indigenous peoples realized the action of the government of Bangladesh as a benchmark to uplifting their rights as stipulated in the constitution.

The National Education Policy stipulates the rights of the indigenous children of education of their mother tongue. In January 2017, the government developed textbooks for indigenous children in five languages at the pre-primary level. About 50,000 textbooks were printed and distributed among approximately 25,000 students.

The Prime Minister's office (PMO) provides limited funding to the divisional, district and sub-district bureaucrats to undertake development programs in the plains, implementing its small-scale indigenous people's development projects through district and Upazila administrations.

The 7th Five Year Plan of the government of Bangladesh pledges, in relation to its Indigenous Peoples the following: Legal protection ensured by implementing the UN Declaration on the Rights of Indigenous Peoples 2007 and ratify the ILO's Convention No. 169; formulation of land policy to deal with land disputes involving ethnic communities; and ensuring the participation of local governments in the management and natural resources (Kapaeng Foundation, 2019).

Some examples of problems met by communities when they tried to implement the rights provided by these laws as noted by the Kapaeng Foundation are as follows:

The Constitution of Bangladesh does not recognize these ethnic, linguistic and cultural minorities as 'Indigenous People'. Though the 15th Amendment to the National Constitution in 2011, the government recognizes "tribes, minor races, ethnic sects and communities" (Article 23A), obliquely referring to the Indigenous Peoples, while categorizing all the people of Bangladesh, irrespective of their ethnic linguistic and cultural background, collectively as "Bangalee" Article (6.2), the dominant ethnolinguistic group in Bangladesh.

Although 50,000 text-books were printed and distributed among approximately 25,000 indigenous students many children have not received mother-tongue text books as yet. Moreover, new teachers with expertise on alphabets of five indigenous languages have not been appointed, and existing teachers have not been provided with any training.

According to the research of OXFAM (Hassan & Ali, 2009), only 5% people of plain land are aware of the Prime Minister's Office (PMO) funding for the benefit of plain land Indigenous Peoples. Besides, the Indigenous Peoples do not have any role with regard to planning, budget formulation, disbursement, implementation or consultation, at national and local levels about the fund. The government did not respond to the demand for formation of an advisory committee comprising of indigenous representative at all relevant levels.

Although the government of Bangladesh pledges several actions in its 7th Five Year Plan but in reality, neither ratified the ILO Convention No. 169, nor undertaken any material steps for implementation of the UNDRIP as yet (Kapaeng Foundation).

Implementations of the laws and policies have been very negative in terms of land dispossession and its money value (Table 1.5). The total physical amount of land dispossession of ten indigenous peoples is 1,372,000 (decimal) (Table 1.5).

Table 1.5. Amount of land dispossession in plain lands

The Physical Amount of Disposed Land and Their Money Value by Adivasi/ Indigenous Peoples groups			
Adivasi Groups	Amount of land dispossession		
	Physical amount (decimal)	Money Value (at current market price)	
		Tk.	US (1\$ = Tk.70)
Dalu	18,800	55,742,000	796,314
Garo	1,364,000	3,838,296,000	54,832,800
Hajong	273,000	832,650,000	11,895,000
Khasi	140,000	446,600,000	6,380,000
Mahato	204,000	890,868,000	12,726,686
Oraon	3,045,000	9,040,605,000	129,151,500
Patro	217,000	894,234,900	12,774,784
Pahan	1,942,500	8,030,295,000	114,718,500
Rkhain	1,372,000	3,457,440,000	49,392,000
Santal	11,640,000	35,199,360,000	502,848,000
Total	20,216,400	62,686,090,900	895,515,584

Table 1.6 reveals that land related incidents and casualties include threat of eviction, houses burnt, land grabbed, families attacked, and filing of false cases are increasing (Table 1.6). Number of houses looted and ransacked has gone down; threat of eviction has gone down but the number is still quite high and the number of persons killed is rare (Table 1.6).

Table 1.6. Land-related incidents and casualties in 2014 and 2013

Form of atrocity	2014			2013		
	CHT	Plains	Total	CHT	Plains	Total
No. of houses burnt to ashes	58	-	58	36	-	36
No. of houses looted and ransacked	5	9	14	263	15	278
No. of families attacked	64	89	153	-	66	66
No. of persons assaulted & injured	84	42	126	34	7	41
No. of persons killed	-	1	1	-	-	-
No. of evicted families	100	2	102	26	-	26

Form of atrocity	2014			2013		
	CHT	Plains	Total	CHT	Plains	Total
No. of families threatened to eviction	586	309	886	1038	24	1062
Amount of land grabbed (in acres)	3,911	-	3,911	3792	103 bighas	3792 acres and 103 bighas
Amount of land under grabbing/ acquisition (in acres)	84,647	8	84,655			
No of persons against whom false case filed	106	44	150			
Arrest	-	10	10	2	8	10

Source: Table 3 Land-related incidents and casualties in 2014 and 2013 in Barkat n.d.

1.3. Challenges

1.3.1. National Laws and Policies Violating the Land Rights of Indigenous Peoples or criminalizing the Exercise of These Rights

The biggest challenge for Indigenous Peoples' rights have come to be seen as a zero-sum game becoming an unfortunate trend where the potential gains of the Indigenous Peoples' poses a threat to the majority of the Bengalis who constitute 98% of the country's population. A change in this misperception can help come up or advance any politically robust indigenous policy agenda in Bangladesh (Tripura 2014).

1.3.2. Draft Laws and Policies Threatening Indigenous Peoples' Land Rights

The non-recognition of the Bangladesh Constitution of the ethnic, linguistic and cultural minorities as Indigenous People is a threat to Indigenous Peoples' legal recognition. The 15th amendment to the National Constitution in 2011 recognizing tribes, minor races, ethnic sects and communities (Article 23A), at same time categorizing all the people of Bangladesh, irrespective of their ethnic linguistic a cultural background, collectively as "Bengali" (Article 6.2) does not guarantee the recognition of indigenous peoples. A total of 27 indigenous groups from the entire country have been identified in the Small Ethnic Groups Institution Act 2001 which excludes nearly half of the different Indigenous Peoples particularly in the plains depriving them of their rights and opportunities, including education and employment (Kapaeng Foundation, 2019).

Current laws or policies threaten Indigenous Peoples' LTR rights. This can be observed in the different laws governing the CHT like the Regulation of 1900 popularly known as the CHT manual, Hill District Council and CHT Regional Council. These remain powerless due to the ineffective role of the key institution of the Ministry of CHT Affairs. The Ministry of CHT Affairs yet to transfer the power to the local administrations is contradictory to the signing of CHT Accord (1997).

Nevertheless, the government of Bangladesh transferred five functions to the three Hill Districts Councils in CHT Land Dispute Resolution Commission in 2014. The Tourism (Local) was incomplete and otherwise contrary to the CHT Accord 1997.

There are 33 departments of which 17 functions' have already been transferred while 16 are yet to be transferred together with the crucial functions of law and order of the district, land and land management, police (local), forest and environment etc., are yet to be transferred to the Hill District Council.

In numerous cases, land-grabbing is accompanied by acts of violence including arson and murder on the part of Non-indigenous People. Vested corners of ethnic Bengalis have arbitrarily invoked the Vested Property Act to seize Indigenous Peoples' lands in the plains, along with those of religious minorities.

Although the East Bengal State Acquisition and Tenancy Act of 1950 (which only applies to the plains) provides certain safeguards against the transfer of aboriginal land titles to non-aboriginals, these provisions certain safeguard against the transfer of aboriginal land titles to non-aboriginals, these provisions have often been flouted (Kapaeng Foundation, 2019).

Another threat to the rights and recognition of Indigenous Peoples in Bangladesh is the Forest Department (FD) considered as major indigenous land grabber for many decades. Forest-dependent Indigenous Peoples are usually or have been in conflict with the FD and have been subjected to harassment and violence by forest officials including victims of fabricated cases against them.

The Forest Department follows the 1994 National Forest Policy and implements most projects in Indigenous People's lands in the forest. The Indigenous People rights are not usually recognized during the course of the implementation of projects rather they are marked as harmful to the forest or considered as encroachers. In one instance, a large number of Indigenous People lived around few forest zones but since the ownership of land under the disposal of the Forest Department is not determined, they grab the forest land at will.

The 1992 National Environment Policy also does not recognize the Indigenous People's relationship with the environment and the forest. Although the government and the policy makers are aware that Indigenous Peoples are heavily dependent on environment for their livelihood, the policy did not mention the relationship between culture and the environment.

An area of 9,145 acres of land of Madhupurgarh tract inhabited by Garo and other Indigenous Peoples was declared as a reserved forest by the Forest Department published in a gazette on October 15, 2016 (Bangladesh Forest Department, Ministry of Forestry and Environment, 2016). The move will be adversely affecting more than 15,000 Indigenous Peoples and ethnic Bengali farmers or either will be evicted. The Forest Department is yet to revoke its notification despite repeated protests. Once a community area or other land is declared forest reserve, all forms of land use by local communities becomes a crime punishable by law. Moreover, constitutional guidelines on providing notice hearings to the affected people were utterly disregarded, as were opportunities to exclude the provisionally marked areas, since these are inhabited, and whereupon Indigenous Peoples have legal ownership and other rights (Kapaeng Foundation, 2019).

The National Agriculture Policy 1999 and Draft Agriculture Policy 2010 whose emphasis is on economic gain, increasing production, mechanization, technology use and commercialization has no specific attention given to Indigenous Peoples. Little attention has been given to preserving and promoting traditional conservation of biodiversity and cultural aspects of agriculture.

These policies denied shifting cultivation of CHT locally known as Jum which is still widely practiced. At the discretion of the government of Bangladesh line department officials, Jum related data may end up in agricultural statistics under the category of Aus (dry rice), but there are no explicit guidelines on this. Instead, Jum is presented as a primitive and destructive mode of cultivation in government circles and in the media.

Industrial companies have also taken lands of indigenous settlers like in Lama sub-district under Bandarban district, about 1,600 acres of lands of Mro and Tripura indigenous villagers were taken allegedly by the Lama Rubber Industry; 2,000 acres of lands in Daluchari mouza were taken over by the Quantum Foundation; and approximately 5000 acres of recorded and traditionally used lands Marma, Mro and Tripura villagers were taken by the Laden Group (Kapaeng Foundation, 2019).

Human Rights Report 2017 on Indigenous Peoples in Bangladesh disclosed that Indigenous Peoples face the following violation and threats: arrest and detention, killing, torture, attack and intimidation, communal attack, destruction and looting of houses and properties, houses set on fire, house searches, and many others.

1.4. Good Practices

The National Engagement Strategy (NES) was established in Bangladesh in 2012 purposely to work on issues of land governance, in particular access to land and natural resources for poor and marginalized communities. Its members are the Kapaeng Foundation, an Indigenous Peoples organization; ALRD, ARBAN and CDA. The organization focuses on fact-finding, reporting and awareness rising on land grabbing and continuous monitoring of such cases in Bangladesh. It also carries out research, dialogue and advocacy on vested property issues and prepares alternative reporting. They provide legal support to the victims of land grabbing resulting in increased commitment and participation of indigenous peoples and other minorities.

1.4.1. Initiatives of the Indigenous Peoples to Assert Their Land Rights and Their Success

The CHT Peace Accord of 1997 ended the armed resistance in the 1970s that brought about the formation of the PCJSS/JSS which is the largest political party of the hill people followed by United People's Democratic Forum (UPDF), a new CHT party opposed to the Accord. These parties are aligned to the Hill Women's Federation and Pahari Chattro Porishod (Hill Students Council or PCP). In addition, almost all Indigenous Peoples in the CHT have their own autonomous organizations (Roy 2007).

Indigenous Peoples in the CHT have adopted their own modes of protest and resistance against their marginalization and state violations of their rights that took place at various levels and acquire different forms ranging from forming indigenous organizations to resistance politics. For example, in the plains,

various Adivasi organizations pursue advocacy, mobilization and networking activities, these organizations include the Jatiyo Adivasi Parishad of the north-west, the Tribal Welfare Association in the central north, the Greater Sylhet Adivasi Forum and Khasi Welfare Society in the north-east, the Rakhaing Buddhist Welfare Association and the Rakhaing Development Foundation in the coastal south. Organizations active at the national level include the Bangladesh Adivasi Forum and the now dormant National Adivasi Coordination Committee (Roy, Hossain, & Guhathakurta, 2017).

The Kapaeeng Foundation aims to work for promotion and protection of the Indigenous Peoples human rights; to conduct advocacy and lobby and campaign programme for the local, national, regional and international level; to establish a strong network and partnership and with national, regional and international organizations and individuals working on promotion and protection of human rights; and to raise the capacity of the indigenous peoples in promoting the same.

Regular publication of the Kapaeeng Foundation of Human Rights Report on Indigenous Peoples is the benchmark to understanding the situations of Indigenous Peoples in Bangladesh in terms of civil and political rights, rights to land and natural resources, rights of indigenous women and girls, youth and children rights, status of the implementation of the CHT Accord and the situation of climate change and environment (Kapaeeng Foundation, 2018). The key objective behind preparing this Human Rights Report annually is to help generate a coherent understanding about the aspirations of Indigenous Peoples in Bangladesh among the rank and file of every of its citizens will pave the way for removing their misunderstanding towards their indigenous brethren who are like the mainstream people, bound to this soil for centuries.

Another good practice is the assistance given by the Kapaeeng Foundation, as a secretariat, to the Coalition of Indigenous Peoples Organization on UPR in preparing the joint submission on the Human Rights Situation of Indigenous Peoples in Bangladesh to the United Nations Human Rights Committee (Roy, Hossain, & Guhathakurta, 2017).

The advocacy for indigenous women's rights was strengthened with the formation of the Bangladesh Indigenous Women's Network (BIWN) through the initiative of the Kapaeeng Foundation which caters to indigenous women rights in from the national to the international level, established in 2012 to strengthen communication, coordination and solidarity among various indigenous women's organizations, activists and individuals. The Kapaeeng Foundation serves also as a secretariat to the network. Currently, there are 15 indigenous women organizations around the country under the BIWN network.

The organizations' key objectives are: to bring indigenous women activists to a common platform in fighting against violence and discrimination; to develop network among indigenous women organizations and national mainstream organizations; to raise strong voice against discrimination and violence; and to realize their rights through social, economic, political and cultural movements.

The Indigenous Peoples Human Rights Defenders (IPHRD) network is one of the pillars that Kapaeeng Foundation works with as secretariat. The vision of this network is to assist building a peaceful, equitable and discrimination free Bangladesh so that all human rights of Indigenous People without discrimination on any ground are fully realized in accordance with national and international human rights standards and norms. The first IPHRD conference was held in September 13, 2018 where the strategic action plan offer 2018 to 2023 was adopted. In line with Agenda 2030(SDGs), the network is committed to ensure that indigenous peoples are not deprived of development.

Furthermore, Kapaeeng Foundation is also a secretariat to the Indigenous Youth Network whose key objective is to empower the youth by strengthening their capacity and building networks as well as increasing meaningful participation among the youth in development process. The Foundation initiated a three-day youth conference as a way of empowering the youth where 52 youth representatives from different communities and human rights groups attended (Kapaeeng Foundation, 2019).

More broadly, the other initiatives taken by Indigenous Peoples at the national level to assert their LTR rights are to lobby, express advocacy, and to campaign for the protection and promotion of the human rights of Indigenous Peoples of the country. Moreover, the Kapaeeng Foundation conducts researches and policy advocacy initiatives, reviews existing laws and policies regarding indigenous peoples' rights; publish its research findings, documents and reports to mobilize public opinion and stimulate discussion on the need for reform and recognition of fundamental and traditional rights; and carry out legal advocacy for positive changes through litigation or lobbying with policy makers, government line ministries, CSOs, academicians, media, GO-NGOs, and others (Kapaeeng Foundation 2018).



● Christian Erni

1.4.2. Contribution of Indigenous Women

The following messages from an indigenous women human rights defender from Bangladesh gives some idea about to what extent indigenous women of Bangladesh take the issue of LTR seriously and contribute in not only raising this issue but also engaging in struggle for its success. AIPP has published the message as follows:



My name is Purba Chakma. I am from Khagrachari district of the Chittagong Hill Tracts (Bangladesh). I think the main issue of the Chittagong Hill Tracts (CHT) is the land issue. Indigenous Peoples of the Chittagong Hill Tracts are constantly facing this. Due to implementation of the Kaptai Hydroelectric Power Project on the Karnaphuli River in 1960, thousands of Hill Peoples were displaced from their ancestral lands. Moreover, during the General Zia and General Ershad's regime, plain lands Bengalis were brought to the CHT with false promises under a state-initiated program. As a result, the settler Bengalis grabbed the lands of Indigenous Peoples and deprivation began in the CHT. Due to the extremism of the Settler Bengalis, Jummas continue to suffer from various forms of communal attacks and women are falling victims of rape and murder. So, in this regard, I consciously try to cooperate with those who work on Indigenous Rights and Women's Rights. Besides, I am always with the indigenous Jumma peoples for the sake of establishment of their rights. "I hope those who work on Indigenous Land Rights issues internationally, will also highlight the land issues of Indigenous Peoples in our CHT at the global level", (Messages from Indigenous Women Human Rights Defender from Bangladesh #LandRightsNow #16Daysofaction, 2017).

The Bangladesh Indigenous Women's Network (BIWN) is a member of the International Land Coalition (ILC) and indigenous women are actively fighting for their LTR rights (Kapaeng Foundation, 2017).

Review of both published and online literature and unavailability of any filled in questionnaire, no information was available on contribution of indigenous young and disabled people are challenges of these initiatives. However, the Kapaeng foundation has stated that the women, youth and disabled people always took part the activities of Kapaeng Foundations as well as the networks; Indigenous Peoples Human Rights Defenders' Network, Bangladesh Indigenous Women's Network and Indigenous Youth Network (Kapaeng Foundation, 2019).

The part taken by women, young and disabled people in the national initiatives, as stated by the Kapaeng Foundation are that the women, youth as well as disabled people involved with the lobby, advocacy and campaign with the adopted activities of Kapaeng Foundation through their networks. Besides the network

organizations; Indigenous Peoples Human Rights Defenders' Network, Bangladesh Indigenous Women's Network and Indigenous Youth Network also performing their activities merging with Kapaeng Foundations to establish the rights of Indigenous Peoples in Bangladesh (Kapaeng Foundation, 2017).

1.5. Cases

1.5.1. Legal Cases Concerning the Land Rights of an Indigenous Peoples' Groups in the Country

Case: Indigenous Peoples and others of Bagda farm of Gobindagonj under Gaibandha districts Vs. Rangpur (Mohimagonj) Sugar Mills Ltd. Local administrations, Law enforcing agencies of Gaibandha Districts, Local MP (Member of Parliament), Local UP (Union Parishad) Chairman and ruling party backed political leaders and goons.

On 6 November 2016, a massive incident of violence against Santal and Bengali farmers took place at Sahebganj-Bagda Farm Sugar Mill area centering claim over 1,842.30 acres of land by indigenous and Bengali farmers. After two-years of the eviction they were yet to be rehabilitated and compensated. This incident was carried out by police, Rapid Action Battalion (RAB) and local goons hired by Rangpur Sugar Mills authority and local influential political elements reportedly made violent attacks on Santal and Bengali farmers and burnt their houses to ashes with the aim to evict them from their ancestral lands.

Since 1965, the lands of Santal and Bengali villagers were taken under occupation of Rangpur Sugar Mills by the then Pakistan Government through a lease agreement. According to the agreement, the lands have to be returned to the land original owner, if the sugarcane project is close down and any crops other than sugarcane are cultivated. In 2004, the sugarcane project was closed down and started to lease to influential individuals for cultivating the rice, tobacco, wheat and etc. In this situation, the IPs and local Bengali villagers have complained to the government several times to get back their land.

The Sugar Mill authority, however, completely denied the IPs and local Bengali's claim. As a part of their movement, Santal indigenous and Bengali farmers took control over the land in 2016 and built houses, schools and places for worship. But the Mill authority and local administration with the help of local Member of Parliament tried to evict them immediately.

The clashes on November 6, 2016 broke out when local goons hired by Rangpur Sugar Mills authority and local influential political elements, along with members of police and RAB, went to the Bagda Farm area to "reclaim" the land allegedly "occupied" by the Santal and Bengali farmers. In the attack, three indigenous Santal men, namely Shyamal Hembrom (35), Mangal Mardi (50), and Romesh Soren (40) were shot dead and 17 Santal men and 8 law enforcers were severely injured. After the incident, the Mill authority filed 4 false cases against 31 unnamed 400/500 IPs and Bengali villagers.¹⁰

Video footage proves that the police is directly involved in the violence. At present, the victims are leading a deplorable life without adequate food, clothing and shelter. Aggrieved farmers are still continuing their struggle through peaceful and non-violent means, but governmental action is totally absent. Till date no proper investigation, no prosecution of perpetrators has taken place.

¹⁰ KF, <http://www.kapaeng.org/sahebganj-bagda-farm-update-ips-and-bengali-farmers-erect-makeshifts-on-their-lands-acquired-for-sugar-mill-despite-govt-indifference-to-their-demand-to-back-their-lands/>

2 China



China map (Source: Google map)

2.1. Chinese Indigenous Peoples and Land Profile

The country is the largest in Asia in terms of land and the most populated of the world with around 1 billion inhabitants (China Population, 2019). The land has various climates, with mountain ranges covering a large part of the country – Tian Shan, Kunlun and the Himalaya – and three rivers counting as ones of the longest of the world – Yellow River (Huang He), 5,464 km long; the Yangtze River (Chang Jiang), 6,300 km, and the Pearl River (Zhu Jiang), 2,197 km. The Gobi Desert is located north-northeast of the country, border with Mongolia and covers around 1,295,000 km² (more than 1/10th of total Chinese land area) (Suzuki, et al., 2019).

Officially, 55 ethnic minorities (called shaozu minzu in Chinese) are recognized, additionally to the Han comprising 91.5% of the population. China included Taiwan in its 2010 census, with only one recognized ethnic group there, called Gaoshan. But the Taiwanese government recognized more ethnic groups.

This list is however unsatisfactory for many people, as there is a claim that there are more nationalities and around 640,000 individuals fall under the “undistinguished ethnic group” (called wei shibie minzu in Chinese). The ethnic minorities are defined by the government, on the principal criteria of language, which is in itself criticized, as being too narrow. Although, ethnic nationalities account for less than 10% of the population, they are living on around 60% of China’s total territory.

Table 1.2: List of 56 ethnic nationalities officially recognized by China (Tabulation of the 2010 Population Census of the People’s Republic of China, 2010)

Chinese Name	Standard Roman alphabet spelling/ standard letter code	2010 population	Main distribution area
漢族	Han/HA	1,220,844,520	National
壯族	Zhuang/ZH	16,926,381	Guangxi, Yunnan, Guangdong, Guizhou
回族	Hui/HU	10,586,087	Ningxia, Gansu, Hainan, Hebei, Qinghai, Shandong, Yunnan, Xinjiang, Anhui, Liaoning, Heilongjiang, Jilin, Shaanxi, Shanxi, Beijing, Tianjin
滿族	Man/MA	10,387,958	Liaoning, Jilin, Heilongjiang, Hebei, Beijing, Inner Mongolia
維吾爾族	Uyghur/UG	10,069,346	Xinjiang
苗族	Miao/MH	9,426,007	Guizhou, Hunan, Yunnan, Guangxi, Sichuan, Hainan, Hubei
彝族	Yi/YI	8,714,393	Sichuan, Yunnan, Guizhou, Guangxi
土家族	Tujia/TJ	8,353,912	Hunan, Hubei
藏族	Tibetan/ZA	6,282,187	Tibet, Qinghai, Sichuan, Gansu, Yunnan
蒙古族	Mongol/MG	5,981,840	Inner Mongolia, Xinjiang, Liaoning, Jilin, Heilongjiang, Gansu, Hebei, Hainan, Qinghai
侗族	Dong/DO	2,879,974	Guizhou, Hunan, Guangxi
布依族	Buyei/BY	2,870,034	Guizhou
瑤族	Yao/YA	2,796,003	Guangxi, Hunan, Yunnan, Guangdong
白族	Bai/BA	1,933,510	Yunnan, Guizhou
朝鮮族	Chosen/CS	1,830,929	Jilin, Liaoning, Heilongjiang
哈尼族	Hani/HN	1,660,932	Yunnan
黎族	Li/LI	1,463,064	Hainan
哈薩克族	Kazak/KZ	1,462,588	Xinjiang, Gansu, Qinghai
傣族	Dai/DA	1,261,311	Yunnan
畲族	She/SH	708,651	Fujian, Zhejiang, Jiangxi, Guangdong
傈僳族	Lisu/LS	702,839	Yunnan, Sichuan
東鄉族	Dongxiang/DX	621,500	Gansu, Xinjiang
仡佬族	Gelao/GL	550,746	Guizhou, Guangxi
拉祜族	Lahu/LH	485,966	Yunnan
佤族	Va/VA	429,709	Yunnan
水族	Sui/SU	411,847	Guizhou, Guangxi

Chinese Name	Standard Roman alphabet spelling/ standard letter code	2010 population	Main distribution area
納西族	Naxi/NX	326,295	Yunnan, Sichuan
羌族	Qiang/QI	309,576	Sichuan
土族	Tu/TU	289,565	Qinghai, Gansu
仡佬族	Mulao/ML	216,257	Guangxi
錫伯族	Xibe/XB	190,481	Xinjiang, Liaoning, Jilin
柯爾克孜族	Kirgiz/KG	186,708	Xinjiang, Heilongjiang
景頗族	Jingpo/JP	147,828	Yunnan
達斡爾族	Daur/DU	131,992	Inner Mongolia, Heilongjiang, Xinjiang
撒拉族	Salar/SL	130,607	Qinghai, Gansu
布朗族	Blang/BL	119,639	Yunnan
毛南族	Maonan/MN	101,192	Guangxi
塔吉克族	Tajik/TA	51,069	Xinjiang
普米族	Pumi/PM	42,861	Yunnan
阿昌族	Achang/AC	39,555	Yunnan
怒族	Nu/NU	37,523	Yunnan
鄂溫克族	Ewenki/EW	30,875	Inner Mongolia, Heilongjiang
京族	Gin/GI	28,199	Guangxi
基諾族	Jino/JN	23,143	Yunnan
德昂族	Deang/DE	20,556	Yunnan
保安族	Bonan/BO	20,074	Gansu
俄羅斯族	Russ/RS	15,393	Xinjiang
裕固族	Yugur/YG	14,378	Gansu
烏茲別克族	Uzbek/UZ	10,569	Xinjiang
門巴族	Monba/MB	10,561	Tibet
鄂倫春族	Oroqen/OR	8,659	Inner Mongolia, Heilongjiang
獨龍族	Derung/DR	6,930	Yunnan
赫哲族	Hezhen/HZ	5,354	Heilongjiang
高山族	Gaoshan/GS	4,009	Fujian
珞巴族	Lhoba/LB	3,682	Tibet
塔塔爾族	Tatar/TT	3,556	Xinjiang

2.2. Historical and Political aspects

Taking a historical perspective, the Han immigration in provinces predominantly inhabited by ethnic majority is not new, it started long before the establishment of the People's Republic of China.

During Mao's era, the new system of state farms is seen, in some specialists' point of view, as "Han Chinese outposts in non-Han territory" (Unger, 1997). In the 1950's onwards, demobilized soldiers and peasants from north provinces were recruited as staff to work on the farms, in the southwest provinces, for example. At that time, conformity to the State was very important, meaning that minorities particularities, customs and culture was denied, and that Han habits, life style, language and agriculture methods had to be adopted everywhere in the country.

Since the 1980s and the death of Mao Zedong in 1978, China has a socialist market economy, based on public ownership, state-owned enterprises and liberal market (Socialist Market Economic System, 2004). Article 6 of the Constitution stipulates that "the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people" (The Constitution law of People's Republic of China). In the total share of the economic development, private sector is very low compared to the public ownership share. This period marks a shift not only in Chinese economy, but also in its politics (Minority Rights Group International, 2017). The strict accordance to Han culture was a bit released and ethnic diversity was once again admitted (Walsh & Swane, 2004).

2.3. Legal Status of Indigenous Peoples and Aspects on Land

Indigenous Peoples in People's Republic of China are not officially recognized. They can only be found under the terminology of "nationality" or "ethnic minority". As the socialist ideology is of a collective society, everyone is considered equal before the law. But Indigenous Peoples' right of self-determination is excluded from this vision.

Chinese Constitution defines China as a unified country with a diverse ethnic composition. As article 4 says: "All nationalities in People's Republic of China are equal, [...]. Discrimination against and oppression of any nationality are prohibited". The same article gives the freedom to use and develop their own spoken and written language and preserve or reform their own ways and customs. The constitutive legal framework of the country theoretically gives freedom to its citizen, as article 35 declares: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration", and article 36: "Citizens of the People's Republic of China enjoy freedom of religious belief" (The Constitution law of People's Republic of China).

The Constitution shapes the basis of the regional autonomous entities. Article 10 specifies the ownership of the land: "1. Land in the cities is owned by the state, 2. Land in rural and suburban areas is owned by the collectives and 3. The State has the right, for the public interest, to expropriate or requisite for its use" (ibid).

2.3.1. History of Ethnic Regional Autonomous Regions

On May 1, 1947, before the creation of the People's Republic of China, the Chinese Communist regime first established the Inner Mongolia Autonomous Region (which is also known as a provincial-level minority autonomous region) in the Mongolian region. After the establishment of the People's Republic of China, the ethnic regional autonomy started to be fully implemented, where concentrated communities of ethnic minorities live. In 1984, China enacted the Law of the People's Republic of China on Regional Ethnic Autonomy in accordance with its constitutional provisions, including economic and cultural rights and obligations.

After completing the legal operation of the Shaohao ethnic autonomous area, China established the Xinjiang Uygur Autonomous Region, in October 1955, the Guangxi Zhuang National Autonomous Region in March 1958, the Xixia Xia Ethnic Autonomous Region in October 1958, and the Tibet Autonomous Region in September 1965. As of 2003, according to China's official statistics, China has established 155 ethnic

autonomous areas, including five ethnic autonomous regions, 30 autonomous prefectures, and 120 autonomous counties. In addition, there are 1173 ethnic townships and one ethnic Soviet Union, Grassroots ethnic self-governing organizations such as Sumu ethnic group and a large number of ethnic villages (Zhong, 2013).

2.3.2. Current Issues on Autonomous Regions

Among the 55 ethnic minorities, 44 ethnic groups live in an autonomous area, where 71% of the total ethnic minority's populations live (Zhong, 2013).

On a superficial reading of the Law on Regional National Autonomy, it can be interpreted that the ethnic nationalities living in the Autonomous regions have the freedom to fully administer themselves. The law says that regional autonomy is practiced where minority nationalities live in concentrated communities (excluding per se the rights for minorities who are not living in concentrated communities to administer or govern themselves). The minority nationalities have the right to administer their internal affairs (Standing Committee of the National People's Congress, 2001), in accordance with the principles of equality, unity and common prosperity for all nationalities. The unification of the country is more important than the nationalities' particularities. This point is often used as a reason for the central government to send administrators to rule the autonomous regions and not to give the constitutionally enacted freedom to its citizens. The regional autonomy system is essentially limited to subordinate local governments and does not recognize the horizontal integration between plural minority areas.

2.3.3. Economic Development

Central Chinese government is preoccupied to build and develop a country that is able to grow and face worldwide economy. In that perspective, ethnic nationalities are only considered as a mean to achieve these national economic purposes, regardless of social and environmental aspects (Jacquelin-Andersen, 2018). The 13th Five Year Plan 2016-2020, for example, calls for the less developed regions where minorities live to achieve a prosperous nation, in synchronization with the other parts of the country, by 2020 (Koleski, 2017). In the nine regions and provinces where the plan is mainly aimed to be implemented (Tibet, Inner Mongolia, Xinjiang Uyghur and Guangxi Zhuang autonomous regions, Yunnan, Gansu, Heilongjiang, Jilin, and Liaoning provinces), the predominant population is ethnic nationalities (Jacquelin-Andersen, 2018). This economic development plan can be seen as an "excuse" to interfere in the management of the autonomous region, and to continue their assimilationist approach "under cover".

Regarding land use, the Property Law of the People's Republic of China is another important law to look at. It describes three types of property: state, collective and private, and three types of rights: ownership, use and security. The aspect on ownership is more to be understood as a right to use the land, but Chinese land cannot be "privatized", as the central government owns all land.

Furthermore, as already mentioned in the Constitution, this law gives the right to the authorities to expropriate land, houses and other immovable units owned by

the collectives, or individuals, for public interests and in compliance with the procedures provided by law (article 42).

Chinese government is very clear about land use and economic development. Ethnic minorities are, at most included in the "Great China Family", at worst, forcedly assimilated to the central government, dominated by Han ethnic group. It gives neither space nor hope for ethnic minorities to fight for their rights of self-determination, customary land use or cultural traditions (Jacquelin-Andersen, 2018).



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2.4. Challenges and Ground Issues

In China, there is a huge gap between the legal framework and the everyday reality for the people. The government exercises a very strong control over its citizens, including ethnic minorities, and imposes measures, under the excuse of economic development.

2.4.1. Discrimination of Ethnic Groups

The Economic and Social Council of the UN highlighted, in its observations in 2014, that the ethnic minorities are persistently discriminated "the Committee is concerned about the persistent and widespread discrimination against ethnic minorities, particularly in the western provinces and regions, especially in the fields of employment, social security, housing, health and education, in spite of efforts taken by the State party" (UN Committee on Economic, Social and Cultural Rights (CESCR), 2014).

Freedom of religious belief is a basic human right that is also important for ethnic minorities, who have different religion and beliefs. In June 2017, the State Council passed the revised Regulation on Religious Affairs. The changes in the law is more restrictive than the previous one, it has the goal to control every aspect of the religious practices. It is specially aimed against Muslims, in fear of religious extremism. It is in itself very discriminatory. But, these rules will also affect other ethnic nationality that practices other religions. (Minority Rights Group International, 2017).



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2.4.2. No Freedom of Expression

Freedom of expression is severally reprimanded. Journalists and human rights activists are often arrested and imprisoned on the basis of vague accusation and without clear information. Families are left behind, with no explanations (Amnesty International). In this climate of control and fear, people are not able to express their ideas freely and they always take a big risk in carrying out rallies.

Amnesty International highlights that China government started in July 2015 a very serious crackdown and arrested around 250 human rights defender lawyers, under the charge of “subverting state power”, “inciting subversion of state power” or “picking quarrels and provoking trouble” (ibid). Most of them have been sentenced.

2.4.3. The Rehabilitation of Ethnic Diversity and its Shift into a Tourist Attraction

During Mao’s era, the country’s image was of a unified, ambitious socialist country, where ethnic diversity had not flourished. During the 1980’s, alongside the economic and political shift, the representation of the country also changed. A modern, multicultural nation is became the new trend. Ethnic diversity was rehabilitated and recognized as an added value for China’s development, and it is now an important aspect of tourism. Marketing of ethnic minorities is very common, for example in Yunnan, scenic views, and local ethnic diversity make a very romantic and adventurous image (Walsh & Swane, 2004).

For instance, at Lugu Lake, in Yunnan province, Mosuo ethnic group is known for its matriarchal lineage, and its beautiful lake. In 2004, the population around the lake was around 500, and the region received approximately 80,000 tourists. Tourists going to Lugu Lake usually comprise of 90% of Chinese who come as part of groups, on a one-day and one-night tour at the lake, organized by none-Mosuo tour guides and travel agencies. This kind of tourism and marketing of ethnic minorities is clearly not respecting ethnic minorities’ rights of self-determination. Cultural differences, which was seen as a mark of inferiority for years and was considered primitive during Mao’s era, has now turned into fixed images for local tourists, without discussion or consent from the ethnic groups themselves.

The exploitation of ethnic features for tourist purposes was even condemned by the Special Rapporteur on extreme poverty and human rights, Philip Alstrom. During his visit in Yunnan province in August 2016, he persistently asked to visit rural areas where poverty was most severe, to meet local organizations, people living in poverty and scholars. But the visit to the province was entirely organized by the government and photographic opportunities were provided in a model tourist village. He even refers this Yunnan tour as an “abysmal tour” (UN Committee on Economic, Social and Cultural Rights (CESCR), 2014).

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2.4.4. Tibet Issue

Tibetan ethnic group comprises sub-groups, like the Ü-Tsang, Drokpa and Khambas. They share similar linguistic and cultural features. Most Tibetans follow Tibetan Buddhism, but some observe indigenous traditions such as Bön, and some other, the Kache people, follow Islam (Minority Rights Group International, 2017).

The contemporary conflicts and struggles of Tibetans date back to 1949, when the Chinese People's Liberation Army entered Tibet. In May 1951, the Dalai Lama – the former political representative of the region – was forced to sign the “17-Article Agreement”, putting Tibet under China jurisdiction. After a failed attempt to fight Chinese by Tibetans, the Dalai Lama fled to India (BBC News, 2011) (Minority Rights Group International, 2017).

During the Cultural Revolution (1966-1976), numerous temples, monasteries and religious artefacts were destroyed; nuns and monks were imprisoned, tortured and killed. Starting in the 1990's, important economic and infrastructure development projects took place, in parallel with huge Han Chinese migration. A train connecting Xining, in Qinghai Province, to Lhasa, Tibetan Autonomous Region was inaugurated in July 2006. This is one of the highest railway lines in the world and the first train connecting Tibet with the rest of China. In a development perspective, this train opens up Tibet with the rest of the country. But at the same time, it opens the door for Han migration in the region and local tourism, without the consent of local people.

As the Special Rapporteur on extreme poverty and human rights stated in his report, China is a country where civil society participation does not exist. Civil society organizations are seen more like “service providers implementing its policies and programmes” (UN Human Rights Council, 2017). In that perspective and knowing that Tibetans are highly discriminated, it is hard to conceive that they are consulted regarding the region development. China authorities implement top-down policies, without any participation of the Tibetans.

Tibetans are still facing high discrimination in education, social and political aspects. The Chinese central government exercises strict movement policies over the population and imposes rigorous measures against religious freedom. For instance, images of the Dalai Lama are not permitted in Tibet. But furthermore, Tibetan culture is slowly disappearing, because of the migration colonization approach, where mass Chinese Han migration is observed in the Province. It gives an excuse to adapt every service to Han Chinese, for instance, the school system is run by Han Chinese for Han Chinese. Local Tibetans have no right to teach or learn their local languages in school (Central Tibetan Administration).

2.4.5. Xinjian Issue

The Xinjiang Uygur Autonomous Region is the largest provincial-level unit in China, covering 1/6 of China's territory. Perfectly located for channeling energy from Kazakhstan, its soils contain oil and gas resources and it is the site of China's nuclear weapons and missile testing. Therefore, the region has a great economic and strategic importance for the central government.

After Mao's death and the economic and political changes that followed, religious activities were allowed again, under strict surveillance and rules. However, Uyghur people, located in Xinjiang province, are repressed based on their religion and their ethnicity and assimilation practices occur. For decades now, especially after the 9/11 terrorist act in New York (Carmichael, 2019), Uighurs, local Kazakhs, Kyrgyz and other minorities are forced to abandon Islam, learn Chinese, and abandon their traditional customs. When living in the cities, employment is especially difficult to find for Muslim ethnic groups.

Since 2014, the Chinese government set up “re-education camps” to hold a large number of Muslims suspected of having ideological “problems”. In these camps, Uighurs were forced to abandon their religious beliefs- they were tortured, forced to learn the Mandarin language, eat pork among other things. From one to three millions Uighurs and other Muslim minorities had been detained by the Chinese government. The situation is under-reported as Chinese government prevents any independent journalist to enter Xinjiang provinces (ibid).

2.5. Conclusion

There exists a complex vision of Indigenous Peoples in China; with double discourse from the government and historical experiences of injustices. The central government has no specific rights for Indigenous Peoples as reflected in its laws and policies.

Indigenous Peoples are comprised in the term, “ethnic nationalities”, which supposes that all nationalities are equal before the law. Such a discourse, “all are equal”, by the government is however dangerous because it puts Indigenous Peoples in a more disadvantaged position if not aggravate discrimination against ethnic minorities. Ethnic minorities are discriminated, especially in the fields of employment, social security, housing, health and education.

Ethnic nationalities are included in the national economic development plans. However, infrastructure plans are not aimed to alleviate



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local poverty, but to help develop China as a whole. Additionally, this economic development led Han migration in the lands of Indigenous Peoples and autonomous regions. Such acts of the government brought dissatisfaction and frustration to Indigenous Peoples because they were never consulted regarding the development of their region.

Land is the ownership of the state and it has the right to expropriate and relocate population for country's interests. No right to customary land for ethnic groups exists.

Autonomous regions exist, where concentrated ethnic nationalities live. However, the concept of autonomous is only "on paper", because central government still makes ways to administer the region like sending their own people to govern the region. In essence, self-governance is not happening, as government orders the Indigenous Peoples or the region to follow government's decisions or be led by the government's administrators.

Ethnic minorities, when "recognized" are used for tourist purposes: for instance, model ethnic villages are built and showed as "the real ethnic traditions". This tends to a "fixation" of ethnic culture and tradition. Original ethnic villages or spots are highly commercialized. This trend also introduces deep changes in ethnic villages without Indigenous Peoples' consent and discussions. Often, Indigenous Peoples do not benefit from this kind of tourism if not they are being exploited.

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3 Japan



Japan map (Source: Google map)

3.1. Country's Indigenous Population and Land Profile

Japan is an archipelago of more than 6,800 islands, located in the eastern part of Asia and the northwestern Pacific Ocean. Honshu, Hokkaido, Kyushu and Shitoku – the four largest islands of the country – host 97% of the population, which rose to 126, 94 million people in 2019 (Japan Population (LIVE), 2019).

In the last 2017 census, the specification of ethnicity was not asked. Therefore, it is impossible to exactly know how many Indigenous Peoples live in Japan. Two main indigenous groups have however been actively fighting for their recognition, the Ainu – which are the only group officially recognized by the government as Indigenous Peoples – and the Ryukyans (Okinawans) peoples – which are not officially recognized.

The Ainu is mainly distributed in Hokkaido Island. Until the 18th century, they were present in Kamchatka and until the mid-20th century, there are also Ainu's who live in the southern part of Sakhalin, the Kuril Islands, and the northern part of the state (Ray, n.d.).

Hokkaido government conducted a survey on the living conditions of the Ainu and it numbered 16,786 people. But this number cannot be considered as showing the real trend of the population as it is only Ainu living on the island who are proud to assert their identity and culture as indigenous peoples.

The Ryukyu people are mostly living on the Ryuku islands, southwest of the main island Kyushu towards Taiwan, which is now the Okinawa Prefecture. They can also be found in other part of Japan, and also in Taiwan. Originally, they had several languages, with specific cultural traits. There are currently about 1.6 million people living in Okinawa Prefecture, but as mentioned above, specific statistical data are not available as item such as “ethnicity” does not appear in national census.

3.2. Historical and Political Aspects

The difficulty of recognition of Indigenous Peoples in Japan partly comes from the cultural idea that Japan has one and unique identity, as Richard Siddle says “It is this exclusionary concept of identity that underlies the experience of prejudice and discrimination suffered by members of minority groups” (Siddle, 2011). This is without considering the colonization history of the country.

Since the 14th century, Japanese were interested in Hokkaido resources, and they even succeed to exercise power on the southern parts of the island since then. It is especially since 1869, with a full-scale colonization of the Island and with assimilationist policies, that Ainu traditional society was disintegrated. Customary hunting and fishing territories were forcedly conceded to the new comers, and agricultural lands were established instead; meaning, total eradication of rights on land. The original life ways of the Ainu people and their profession or livelihood faced total change. Because of these Japanese strict policies, the Ainu people were close to extinction. But in the mid-1970s, an activist Ainu movement developed and since this moment, Ainu's claim for their rights was persistent. They were even able to bring their cause to the United Nations in 1987. At that time, there were demands for a New Ainu Law, to replace the Former Native Protection Act of 1899 (Siddle, 2011).

Okinawa prefecture, including the Ryukyu Islands, was established in 1879, and was ruled as a colony by the Japanese Government. Prior to that, the former Kingdom of Ryukyu was paying tribute to the Emperor of China, but saw Japanese presences increasing since the 16th century. For the annexation of these islands, Japanese emigration was thus more important and assimilationist policies applied (Minority Rights Group International, 2018).

During World War II, Okinawa was the place of one of the bloodiest land battles that greatly affected civilians. The Anglo-American coalition launched the Okinawa battle, also known as the “Iron Storm”, which made the Ryukyu Island the first defense line. A large number of Okinawa civilians were temporarily recruited as soldiers to fight. After the war until 1972, Okinawa remained

controlled by US military. Currently, the US still owns many military bases. Ryukyans are not recognized by the government, despite the fact that UNESCO has classified their languages as being in danger of extinguishment (Dubinsky & Davies, 2013).

Also, it is noteworthy to mention the case of the Burakumin people. During the Edo time (1603-1867), the society followed a precise cast structure. The Burakumin people were considered as being outsiders from the four main castes. They lived in segregated settlements and were avoided by the rest of society. Since that period, a very strong discriminatory attitude persists towards them. In the present Japanese society, Burakumin people are still not yet accepted by mainstream society. Because of the lack of statistics and their assimilation into Japanese society, it is difficult to know the exact number of Burakumin people. However, they are estimated to be around three to six million (MRGI, 2018). However, they are considered neither Indigenous Peoples nor an ethnic minority.

3.3. Legal Status of Indigenous Peoples

For a long time, Japan has carried an attitude of denial towards the diversity of ethnic groups and cultures in the country. The Japanese Constitution (Prime Minister of Japan and His Cabinet, 1946) does not distinguish ethnicities, races or Indigenous Peoples.

After World War II, the focus was to prevent discrimination and promote equal treatment of every Japanese citizen. Therefore, no distinction of ethnic groups exists in the law system. All “nationals” are equal before the law. These good intentions actually come in opposition with current issues regarding Indigenous Peoples' recognition: this lack of indigenous distinction prevents the creation of laws supporting Indigenous Peoples; legal recognition of Indigenous Peoples is missing.

Some measures had however been taken to alleviate Ainu's economic situation. The Japanese government improved the budget of the Ministry of Health, Labor and Welfare in 1961 in favor of Ainu people, and has established the Utari (Ainu people) Welfare Countermeasures in 1974. The focus of the above policies was mainly on the improvement of Ainu's social and economic status, but it does not handle other issues such as culture and land.

The enactment of the Ainu Cultural Promotion Act in 1997 marks an important step forward, replacing the Hokkaido Former Aborigines Protection Act of 1899. Article 1 stipulates “This law aims to realize the society in which the ethnic pride of the Ainu people is respected and to contribute to the development of diverse cultures in our country, by the implementation of the measures for the promotion of Ainu culture [...], the spread of knowledge related to Ainu traditions, and the education of the nation, referring to the situation of Ainu traditions and culture from which the Ainu people find their ethnic pride” (Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Law No. 52, May 14, 1997 Amendment: Law No. 160, Dec. 22, 1999)). It is the first law recognizing Japan as a multicultural country.

Only later, in 2008, following the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the government officially recognized Ainu as Japanese Indigenous Peoples. And it is on February 15, 2019, that a long-awaited bill in favor of the Ainu's recognition as indigenous peoples has been voted. The bill states that a new subsidy system will be in place to pass on and revitalize the Ainu culture, which will be issued by the central government. It will also provide for the simplification of the application procedures for obtaining forestry products for rituals from national forest land and fishing for salmon in rivers in the traditional way.

3.4. Implementation Challenges and Ground Issues

The newly adopted bill on the recognition of the Ainu as Indigenous Peoples is not satisfying for many Ainu movement leaders and organizations. Like, Yuji Shimizu, the Ainu Kotan no kai chairman said, the bill does not include explicit rights to self-determination, to land nor an apology. As predicted (Jacquelin-Andersen, 2018), the bill mainly focuses on education and cultural aspects such as promotion of parks and museum. But this is not satisfying for M. Shimizu: “Positioning Ainu culture at the center for proposals to promote tourism is nothing other than a scheme to sacrifice or exploit living Ainu as a resource for tourism” (The Japan Times, 2019)

3.4.1. Indigenous Initiatives

Since more than two decades, Ryukyu people from Okinawa organized rallies and protests to express their disagreements with US presence. Indeed, after World War II until 1972, Okinawa was under the power of the United States. But US military bases are at present still in use and cause many incidents, affecting local communities. Aircraft emergency landing/crashes on private land, stray bullets from a live-fire training range, helicopter losing parts, among other things are to be mentioned. Even more serious events, such as several sexual abuses by US military, were perpetrated on local women. These are the motivations for the continuous Okinawans protests and calls for the right to decide on their land. US military bases encompass around 20% of the island and represents 76% of the total US presence of Japan (Jacquelin-Andersen, 2018) (Minority Rights Group International, 2018).

Recently, the relocation of Futenma US Air Station was at the core of many protests. The Japanese government, jointly with the USA, planned to build a bigger US military base complex in Henoko, near a fishermen village of 2,000 inhabitants. The environment is rich of biodiversity and the bay hosts many coral reefs and a rare species of Dugong. In February 2019, a referendum took place in the island asking the inhabitants if they were in favor of the relocation and the construction of the US new military base, 70% of the voters opposed it. Despite this clear result, Prime Minister declared that construction will continue and the plan will not be changed (McCurry, 2019).



● The people in Okinawa asked to close all the military bases. (Source: NBC News.)

3.5. Conclusion

Until recently, Japanese government imposed a unique vision of the Japanese culture, ethnic diversity within the territory that was not recognized. Two main indigenous groups, the Ainu and the Ryukyuans, are fighting for their recognition for several decades. Since the colonization of their islands, at the end of the 19th century, they have suffered from similar strict assimilationist policies, such as confiscation of land, relocation or imposition of Japanese as the main language.

Both populations have drastically decreased. Nowadays, some local languages are even on the way to extinguishment. It is only recently, in 2008, following the ratification of the UNDRIP, that Japan recognized Ainu as Indigenous Peoples of Japan. But the Ryukyuans are still fighting for recognition, even if not the entire Okinawan population is concerned about this issue. (Government of Japan, 2000).

In February 2019, a bill for official recognition and action plans for Ainu was enacted. However, the bill is not going far enough: it only recognizes the cultural and education aspects, regardless of the land aspects and an apology.

4 Laos



[Laos map \(Source: Google map\)](#)

4.1 Background

Laos, officially known as Lao People's Democratic Republic, is an independent and unified country belonging to all multi-ethnic people as described in Article 1 of the Lao PDR Constitution of 2003. It is a landlocked, mountainous country sharing borders with China, Vietnam, Cambodia, Thailand and Myanmar. With a population of 6,658,160 (World Bank, 2017), it is the most ethnically diverse country in the Southeast Asia. It has 18 provinces including the capital city, Vientiane, with 145 districts and 8,615 villages. Many provinces are in mountainous areas and are difficult to access (World Health Organization Representative Office, Lao PDR, n.d.).



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Historically, the early inhabitants of Lao PDR were influenced by the Indian merchants who introduced Theravada Buddhism to them. The country was ruled by the Khmers from Cambodia until the 14th century when the ancestors of now Laotians established the Kingdom of Lan Xiang. The kingdom was once threatened by Burma but maintained its independence. However, Siam (now Thailand) gained control over the Kingdom of Lan Xiang until it became a part of the French Empire.

In 1941, the French fought a war with the Thais for Laotian territory. But part of Laos was given to the Thais when the Japanese forced an armistice. In April 1945, the Japanese forced the king to gain independence from the French but when the Japanese surrendered in September 1945, the government of Lao Issara (free Lao) was founded. However, the independence did not last long because the French gained control of Lao again in 1946.

In 1950, Pathet Lao (Land of Lao) was formed by pro-communist Prince Souphanouvong backed by the Viet Minh, a group formed to fight against French rule and Japanese occupation. Laos became an independent, constitutional monarchy when the French withdrew in 1953. In the 1950s, however, Lao was divided; most part was ruled by the Royalist with the support of USA and the other parts were ruled by the Pathet Lao assisted by Viet Minh.



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In 1960s, Laos got involved in the Second Indo-China War or the Vietnam War. The attempts to find political solutions failed after decades of civil war between the Royal Lao Government and the communist Pathet Lao. Then, in December 1975, a one-party state Lao People’s Democratic Republic (Lao PDR) was established by the Communist Lao People’s Revolutionary Party (LPRP). The royalists were defeated and monarchy was abolished (Lambert, 2018).

The Constitution of Lao PDR was adopted in 1991. Lao PDR joined the Association of Southeast Asian Nations (ASEAN) in 1997, the World Trade Organization (WTO) in 2013 and the ASEAN Economic Community (AEC) in 2015 (United Nations Development Program, 2019). As part of its pursuit to global integration, Lao PDR has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in August 1981, the International Covenant on Civil and Political Rights (ICCPR) in September 2009 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in February 2007. It also accessed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in February 1974 and Convention on the Rights of the Child (CRC) in May 1991 (United Nations Human Rights, n.d.).

In the 2018 Statistical Update of Human Development Indices and Indicators, Lao People’s Democratic Republic’s HDI value for 2017 is 0.601- which puts the country in the medium human development category -positioning it at 139 out of 189 countries and territories. Between 1990 and 2017, Lao People’s Democratic Republic’s HDI value increased from 0.400 to 0.601, an increase of 50.3 percent, life expectancy at birth increased by 13.4 years, mean years of schooling increased by 2.1 years and expected years of schooling increased by 4.5 years. Lao People’s Democratic Republic’s GNI per capita increased by about 250.5 percent between 1990 and 2017 (United Nations Development Program, 2018).

4.2 Ethnic Groups in Lao PDR

Initially, there were 49 ethnic groups officially recognized by the government and could be broken down to more than 200 ethnic sub-groups (Government of Lao, Department of Planning, Investment and Finance, 2018). But, on December 5, 2018, the National Assembly has approved the Brou as an official ethnic group of the Lao PDR. As a result, the country now has 50 ethnic groups. The total population of the Brou is estimated at 129,559 and majority of them are living in Savannakhet Province with some residing in neighboring provinces (KPL Lao News Agency, 2018). The ethnic groups can be categorized according to:

Historically, these 50 ethnic groups are identified in terms of their geographical locations. Mainly, there are three topographic locations: the Lao Loum (lowlands), Lao Theung (mid-lands), and Lao Soung (uplands)¹¹. Ethnic groups living in different categories imply practice of traditional agricultural production systems, with lowland peoples generally cultivating paddy rice, and midland and upland peoples pursuing shifting cultivation practices.

4.2.1. Ethno-linguistic Families

Table 4.1. Ethno-linguistic families (Mann & Luangkot, 2008) (Government of Lao PDR, 2015)

Ethnic Groups	Ethnic Sub-groups	Percentage based on Total Population	Topographical Location	Religion	Summary Characteristics
Lao-Tai (Lao Loum)	Xaek, Nhouan, Tai, Thaneua, Phouthay, Yang, Lao, Lue	67% / 65%	- living mostly along the well-connected Mekong corridor along the Thai border or in Northern lowlands	Buddhist and animist	- lowlanders - settled cultivators -urban dwellers - migrated to Lao PDR from 13 th century onwards
Mon-Khmer (Lao Theung)	Khmu, Katang, K’tu, Kriang, Kree, Khmer, Ngouan, Pray, Cheng, Phong, Samtao, Oy, S’dang, Xuay, Xingmoun, Nhaheun, Ta Oi, Triang, Tri, Toum, Thaen, Bid, Brao, Pa Co, Makong, Moy, Yrou, Yae, Lamed, Lavi, Oedou, Harak	23% /25%	-living mainly in highland areas in the North and Central South, and smaller groups (Khmou) in the Northern lowlands; the most diverse ethnic group and the first to inhabit large areas of Lao PDR - they dominate the middle hills (Ministry of Health Lao PDR, 2015, June)	Animist	- midlanders - shifting cultivators - fairly assimilated due to hundreds of years of interaction with Lao-Tai - other communities live in isolation as hunter-gatherers - practice swidden agriculture (rain fed upland hill rice, maize) - many of them raise cattle and reliant on forest products - they are isolated from the dominant lowland culture - many groups exhibit varying degrees of assimilation and adaptation to Tai-Lao culture - the original inhabitants of Southeast Asia

¹¹ <https://laos.opendevlopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/>

Ethnic Groups	Ethnic Sub-groups	Percentage based on Total Population	Topographical Location	Religion	Summary Characteristics
Chine-Tibet (Lao Sung)	Singsily, Sila, Lahu, LoLo, Hor, Akha, Hanyi	3% / 10%	- living mainly in poorly connected upland areas in the North - the highland Lao, Sino-Tibetan Burma and Hmong-Iu-mien	Buddhist and animist	- highlanders - Shifting cultivators -migrated to Lao PDR in 19th century from Southern China and Vietnam. - practicing swidden agriculture growing mainly hill rice, maize, and traditionally, many have grown opium
Hmong – Iu Mien (Lao Sung)	Hmong and Iu Mien	7%	- living mainly in mid and upland areas in the North - Hmong as largest subgroup	Animist with strong ancestor cults, although many converted to Christianity	- highlanders

The percentage of population based on the present total population varies from different sources, thus the different values written on the table. Nonetheless, these ethnic groups comprise of the approximately 34% of the total population of the country. They are not officially recognized by the government as Indigenous Peoples and are often referred to as ethnic groups or multi-ethnic people in the Lao Constitution. The government does not encourage the use of the topographic location to categorize the ethnic groups but it is commonly used to classify non-Lao ethnic groups which are widely used in practice (Government of Lao PDR, 2015).

4.3. Legal Status of Ethnic Groups

There are no specific statutes governing the indigenous groups in Lao PDR, however, there are laws and policies protecting their rights on their basic needs.

The country’s general policy governing the indigenous groups was designed to promote unity, solidarity and equality among ethnic groups. It is also to improve their living conditions and expand their heritage and ethnic identity. They also aim to enhance their capacity to participate in the affairs of the nation (Government of Lao, Department of Planning, Investment and Finance, 2018). This is found in Article 8 which also states prohibitions in the discrimination of ethnic groups (Government of Lao PDR, 1990).

The Constitution defines Lao PDR as a unified country belonging to the multi-ethnic people and guarantees that the rights of the people are exercised and ensured. It promotes equality and unity of all ethnic groups and the right to protect, preserve and promote their own customs and cultures. Thus, the Constitution grants equal status to all ethnic groups (Government of Lao PDR, 2003).

In Chapter IV, Articles 34-51, the government guarantees the fundamental rights and obligations of the Lao people. Article 35 states that Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs and ethnicity (Government of Lao PDR, 2003).

Additional support for the preservation of culture is in Article 23, wherein while the State accepts selected cultures around the world, it promotes to preserve the cultures and traditions of its citizens and the Indigenous People.

In Article 13, the government supports stable economic system for the improvement of the living condition of the multi-ethnic people, both material and spiritual.

Article 22 and 38 guarantees the ethnic groups the right to education and to upgrade themselves. Article 22 states that “The State attends to developing education and implements compulsory primary education in order to build good citizens with revolutionary competence, knowledge and abilities. The State and society attend to developing high quality national education, to create opportunities and [favorable] conditions in education for all people throughout the country, especially people in remote areas, ethnic groups, women and disadvantaged children.”

Article 25 ensures the people to have access to proper healthcare especially women and children, poor people and those living in remote areas.

There are specific policies to also protect the Hmongs found in the Hmong Policy 1981. In 1981, the Resolution of the Political Bureau Concerning the Affairs of Various Minorities, especially the Hmong Minority, was adapted to improve the living conditions of Hmong people and to increase national security for the country as a whole. In 1992, the Hmong Policy was adjusted and developed to become The Ethnic Minority Policy which applies to all ethnic groups throughout the country. It became an agreement that all ethnic groups should have improved access to services and to eradicate all forms of discrimination (Government of Lao, Department of Planning, Investment and Finance, 2018).

The Ethnic Minorities Committee under the National Assembly is responsible to draft, evaluate and lobby laws concerning ethnic groups. Research concerning ethnic groups is under the control of the Institute for Cultural Research under the Ministry of Information, Culture and Tourism (MoICT) and the Ethnic Affairs Department of Lao National Front for Construction are responsible on other affairs (Government of Lao, Department of Planning, Investment and Finance, 2018).

4.4. Laws on Land

Looking into the national laws in terms of land ownership help understand the situation on territorial rights. As a general rule, the land is considered as one of the natural resources belonging to the national community represented by the State. The State may grant the right of possession, use, transfer and inheritance of the land to other organizations, economic units and individuals as stated in Article 4 of Lao PDR Property Law but not the right to sell the land (Government of Lao PDR, 1990). In Article 17 of the Constitution, it also declares that the land is a national heritage and that the State ensures the rights to use and transfer and inherit it in accordance with the laws (Government of Lao PDR, 2003).

Article 5 of the Land Law protects the interest of the holder of land use rights in accordance with the law. The State grants the person an effective, peaceful, regular and long-term use of land and by ensuring the protection of the person’s right to use, usufruct, transfer and inheritance. In Article 9,

it reiterates the responsibility of the State to manage the land throughout the country in a centralized and uniform manner in accordance to Article 10 of this law wherein it lays out the Rights and Duties of Land Management Authorities (Government of Lao PDR, 2003).

Land is categorized into agricultural, forest, water area, industrial, communication, cultural, national defense and security, and construction. Each category has its own scope of use rights. The land registration policies are also different for each category as well as the type of land certificates and land titles.

The land titling programs for permanent land right use in urban and suburban areas; and land allocation programs for temporary land use rights for agricultural and forest areas have been formalized. As long as there are certificates of titles and temporary land use shown as evidence of ownership and usage, these lands may be passed through as inheritance but not transferred, leased or used as loan collaterals (Government of Lao, Department of Planning, Investment and Finance, 2018).

In 2015, the Lao government and its development partners agreed on the principle of communal land titling on the 12th High Level Round Table wherein they incorporated in their final report that: “Communal land titling should also be promoted and be accepted as means to formal land ownership. This would serve to protect the most vulnerable poor who have the least access to privately owned land and instead rely on rights of use of communal land.” The titling of collectively owned land (din luam muu) is provided in the Property Law of 1990, Land Law of 2013 and Prime Ministerial Decree No. 88 of 2008. A village land zoning has to be completed before a Communal Land Title (CLT) can be processed. It also has to distinguish if the land is a collectively owned land (din luam muu) belonging to a group of people within a collective, production unit or association or a communal land (din xoum xon) which is commonly owned by the village or indigenous group including ponds, forest, agricultural lands and cemeteries. While obtaining CLT provides legal security in terms of long term livelihood and protection of the land for future generations, the villagers may find it burdensome because of the cost and time-consuming process (Ling & Scurrah, 2017).

Traditionally, indigenous groups have their own laws and policies regarding ownership and management of land through community cooperation and labor contribution. Where land laws have not yet occurred, the ancestral domains are centered on the village. Individuals and groups make land and property management decisions and the land use rights are permanent or lasting as long as necessary. The rights are agreed through custom, practice and negotiation between sets of elders. When there are land disputes, they are resolved by the elders. These are just some examples of traditional ways of managing and protecting lands (Mann & Luangkot, 2008).

4.4.1. Customary Laws on Inheritance

In Article 6 of the Inheritance Law, it was stated that men and women inherit equally but succession tends to follow customary practices and varies among indigenous groups. The youngest daughter in matrilineal indigenous communities, like majority Lao Tai group, inherits the land and the family home while in patrilineal indigenous communities like Mon Khmer, Hmong-lu Mien and Chine Tibet groups, the land generally goes to the sons. Other indigenous minority groups, such as the Khmou, have followed more mixed residence and inheritance practices, whereby both male and female children are likely to inherit (Food and Agriculture Organization of the United Nations, n.d.).

4.5. Indigenous Agricultural Practices

The reason for slash and burn practice is thought to be increased population, including migration, and lack of suitable agricultural land. Shifting cultivation is the main farming system of 90% of the farmers which is mostly prevalent and the dominant cropping system in the northern and eastern provinces by different indigenous groups. A broad categorization provides three distinct groups practicing shifting cultivation: Lao Lum, mostly living in the valleys, Lao Theung, mostly living at middle altitudes, and Lao Sung, mostly living at higher altitudes (Souvanthong, 1995).

It is believed to be unsustainable and detrimental to the environment, rural development and economic development of the country as a whole. For three decades, the government enacted and implemented policies to stabilize and to eventually eradicate this practice. However, it has resulted in varying levels of success and criticisms (Kenney-Lazar, 2013).

On November 3, 1993, the Prime Minister issued Decree 163 on the Management and Use of Forests and Forest Land. Article 31 on Rotating Shifting Cultivation or Gardening by the Population encourages those who are involved in shifting cultivation to practice rotating slash and burn or orchard cultivation only for livelihood within a degraded or non-forest land only. This decree was issued in order to restrain the destruction of forests, water sources and the environment as a result of shifting cultivation. To ensure the populations living conditions, they are also encouraged to convert to the appropriate sedentary agricultural-forestry-livestock production (Government of Lao PDR, 1993).

In 1996, Land and Forest Allocation Schemes were also introduced with an aim to stabilize shifting cultivation. Through effective mobilization of internal resources combined with external assistance, the government achieved to reduce number of families involved in shifting cultivation from 150,000 families in 1996 to 75,000 families in 2000 (Akkharath, 2003).

In a report entitled “Shifting Cultivation in Laos: Transitions in Policy and Perspective,” the author mentioned lists of government’s measures to address problems on shifting cultivation.

“In 1999, the Ministry of Agriculture and Forestry (MAF) came out of the Government’s Strategic Vision for the Agricultural Sector to 2010 which was designed to execute the resolution of the 8th Party Congress and to achieve the targets of the 6th (National Socio-Economic Development Plan) NSEDP. ‘Stop Slash-and-Burn Cultivation’ is one of its goals requiring a total end of shifting cultivation practices by the end of 2010.

The action of MAF to implement this goal has focused on land use planning and the promotion of commercial crops. Efforts to develop new participatory procedures for land use planning have been led by a Division within at the National Agriculture and Forestry Extension Service (NAFES).

On 5th February 2010, MAF issued Decree 0022 ‘Instruction to stop Shifting Cultivation’. On 28th December the same year, the Vientiane Times reported that Government’s attempts to end slash and burn farming had fallen short of the target.

At the end of 2010, MAF also published the draft of the Agricultural Development Strategy for 2020 this includes: sustainable production patterns, including the stabilization of shifting cultivation and climate change adaptation measures, are adapted to the specific socioeconomic and agro-ecological conditions in each region” (Kenney-Lazar, 2013).

The government targeted remote poor areas as focal sites to introduce ways to stabilize shifting cultivation. However, the policies on land allocation and stabilizing shifting cultivation have been prejudicial to the livelihood of the people in the uplands because they were misconceived and poorly implemented. The people find the policy on land allocation to be the major cause of hardship because the area of land allocated for them for shifting cultivation is very small which means shortened rotation periods (Bestari, Mongcopa, Samson, & Ward, 2006).

4.6. Challenges Encountered by the Indigenous Peoples

The experiences of Indigenous Peoples around the world are of no difference from the challenges experienced by the members of Indigenous Peoples in Lao PDR.

The different indigenous groups in the country except the dominant Lao-Tai experience different issues around poverty, education, and health due to lifestyle and geographical difficulties. The smaller groups are on an average, poorer (Open Development Laos, 2018).

4.6.1. Government

The Government of Lao PDR has been a one-party state dominated by the Lao People's Revolutionary Party (LPRP) since they came into power in 1975. Political life remains dominated by the LPRP and its Lao-majority elite despite some ethnic minority representations in the government. Authoritarianism, inequality and corruption remain a persistent problem. Corruption results to large-scale distributions of land concessions to foreign investors to make way for hydroelectric and logging industries and extraction of natural resources which has disproportionate effect on the indigenous groups as the concessions are granted over the lands they have been residing for generations (Minority Rights Group International, 2018).

4.6.2. Human Rights Violations

There are also reports of human rights violations but are hard to verify. There are series of new decrees restricting freedom of expression and the government does not tolerate criticism of government policies (Minority Rights Group International, 2018).

Laos-China Railway: A railway project between the government of Lao PDR and China was launched in 2016 and the line is expected to open on December 2021. It is a railway connecting Kunming, in southern China, to Singapore, running through Laos, Thailand and Malaysia. Though this project serves to increase connectivity and the economic and political ties as aimed by China with other countries of the world, the construction will affect thousands of villagers, most of them impoverished people, living along the project line. Thus, an estimated 4,411 persons will be relocated, according to the numbers given by the government of Lao to Radio Free Asia (RFA), while the construction of this railway will also affect farmlands and forests. Although the government promised compensation to the affected families, they admit that the payments will be delayed and expected to be released in 2019 (Villadiego & Combate, 2019).

In a report made by the Vientiane Times on October 26, 2018, President Bounnhang Vorachit recently promulgated a new law requiring developers to compensate people displaced by a project within 24 months or two years after a compensation plan is approved. But implementation of the plan can be extended for another year after approval from a committee in charge of settlement and job provision, according to Article 22 of the law on settlement and job provision. Under the new law, the settlement must reflect the interests of those affected and be undertaken in a just, open and transparent manner with the involvement of all parties including the affected villagers. Although the law stipulates that compensation must be made within 24 months after the compensation plan is approved, it does not specify when the plan should be drawn up and how long it should take.

The Laos-China railway project is a case in point in which construction began some time ago but villagers have not yet received compensation as the compensation plan has not been completed. Additionally, previous reports suggested that many displaced villagers refused to accept the compensation offered. They said the money offered by the development projects was unreasonably low, despite the regulations stipulating that displaced villagers should enjoy better living conditions (Vientiane Times, 2018).

“Battery of Asia”: Laos, in its dream to become the “Battery of Asia,” is building dozens of dams along the Mekong River at a speed in order to sell energy to its neighboring countries in its aim to alleviate poverty in the country. There are currently 46 operating hydropower plants with another 54 under construction and set to go online by 2020, according to the Laos News Agency. It has targeted graduating from a lower-middle income country by 2020, according to its World Bank classification. According to the International Energy Agency, about 85% of all energy generated in Laos is exported mostly in Thai land wherein its capital Bangkok uses two-thirds of it. Almost 90 percent of Laos has access to electricity but supply can be patchy especially in rural areas (Phys Org, 2018).

While the Lao government sees power generation as a way to boost the country's economy, the projects are still controversial for their environmental impacts and financial arrangements. The Nam Ngun 2 dam which is located Vientiane Province is among those in operation. This project was initially planned in the 1990s but put on hold during the Asian financial crisis. The construction started at the end of 2006 and at the end of 2010, it was ready to produce energy for export to Thailand. During the construction of the dam, no less than 6,100 people from 17 villages, largely ethnic minorities Phuan, Tain Dam, Tai Deng, Khamu and Hmong, were to be displaced and needed to be resettled.



• New pylon towers used in power distribution, coming from hydro power plants, run through Pak Se District in the Champasak Province of Laos on July 25, 2018 (Phys Org, 2018).

During the process, it was reported that they were unable to participate in the planning of the so-called “focal sites.” There was also a report of evidence of human rights abuses in the process of eviction and lack of sustainable livelihoods at the common resettlement areas of all different indigenous groups. In the end, Finnish Construction Company in charge of the project presented the dam as a success story for the employment of 6,000 persons. But this short-term employment cannot be equaled to the irreversible economic, social, cultural and ecological loss, jeopardizing more than 6,000 Indigenous People, which are carrying the costs for the benefits of a few companies, the Lao government and energy-demanding Thailand (Scheidel, 2015).

The development of hydropower plant in Laos has been very contentious. The government advertised that the project is capable of producing energy after completion that can generate handsome profits but failed to mention that the Indigenous Peoples would be forced to leave their homes and livelihoods as well as the social and environmental risk of the dam was not mentioned. On July 23, 2018, a saddle dam at the Xe Pian Xe Namnoy hydropower project in Champassak Province collapsed resulting to severe flooding in the villages near Champassak and neighboring Attapeu Province. The fall of the dam caused the death of 34 people and hundreds of individuals were missing and displaced. Following the dam’s collapse, displaced Lao villagers filled temporary tent shelters. There were also concerns over health and sanitary conditions at the site where diseases like diarrhea, eye infections and skin rashes and mental health illnesses such as depression were spreading among the nearly 3,000 residents in the camp.

On Sept. 11, 2017, hundreds of thousands of cubic feet of muddy water flooded eight villages in central Laos’ Xaysomboun Province after the reservoir of the Nam Ao Dam upstream burst its banks following heavy rain. Although, no deaths were reported after the incident, the collapse of the dam brought great damage not only to the people of Lao but also to its neighboring country, Cambodia. Many of the 5,000 individuals affected by the flood from the Lao dam collapse have begun to demand compensation for lost farmland, crops and livestock. One military officer died transporting supplies for flood victims by motorcycle. More than 1,200 families from four communes in Siem Pang district, in Stung Treng province, which borders Laos, have raised grave concerns over fears of a food crisis after their crops and animals were washed away by the flood waters.

In both dam failures, the government held the project developers liable and accountable for faulty construction calling the construction “not standard” (Radio Free Asia, 2018).

In these cases, Laotian government banned international organizations such as the Red Cross and Save the Children from reporting the overall situation and the full toll of this catastrophe will likely never be known. Meanwhile, Laos’s government plans to construct more dams in its territory to sell electric power to Thailand and other countries. This, again, will definitely affect and cause displacement of many Laotians including the Indigenous Peoples (International Educational Development, Inc., 2018).

4.6.3. The Continuing Crisis of the Hmong People in the Lao People’s Democratic Republic

In the written statement submitted by the International Educational Development, Inc. on September 2018 to the United Nations General Assembly, together with the Associations of Humanitarian Lawyers, they expressed their concern over the situation of the Hmong people. They are appealing for an urgent action before the extermination of the Hmong people. They plead that given both the history of the Hmong people and their more than 40-year-long grave situation, they urge that the Hmong people have the right to self-determination as the only way to realize their basic human rights.

Historically, the Hmong are the indigenous group who supported the Americans against communist campaign before the current government took control in 1975. At present, the Lao Army continues to carry out actions against the Hmong peoples to meet what they refer to as the deadline of 2020 to rid Laos of all Hmong in the traditional territories, and before there is any action by the Council or the international community as a whole. At present, their numbers in Laos are catastrophically reduced with hundreds of thousands living in exile (International Educational Development, Inc., 2018).

4.6.4. Land Concessions

The Lao Soung also faces these challenges as they also practice slash-and-burn agriculture. However, their major challenges arise due to their opium cultivation which is of course illegal. They rely on opium cultivation for their livelihoods and thus, have a very great effect on their standard of living because of the government’s campaign for opium eradication (Open Development Laos, 2018).



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Land leases and concessions have become an important component of the Lao government's strategy for transitioning towards a market-based economy, generating rapid economic growth and enabling the country to graduate from the status of Least Developed Country by 2020. The government granted the land to local and foreign investors in a form of land leases and concessions for agriculture, forestry, mining, infrastructure, and manufacturing projects. The government has promoted these projects in order to facilitate economic growth, develop infrastructure in remote areas, create new industries and commodities for export, provide job opportunities, and generally reduce poverty.

Despite these potential benefits, reports and papers published by government agencies, development agencies, and academics have shown that leases and concessions can have negative social and environmental impacts in rural areas. Although land concessions legally provide state land to investors for use, the land that is transferred is commonly already in use and managed by local, rural communities for agricultural production, collection of forest products, and ecosystem services. Indigenous Peoples are often impacted heavily by concessions because they use and manage the upland swidden agriculture and forest landscapes that are most commonly targeted. Although villagers can receive financial compensation for some of the land which is lost, gain better access to road and electric infrastructure, and can earn a cash income from working as wage laborers (especially for plantation projects) studies have shown that the economic benefits gained do not sufficiently compensate for the lost land, resources, consumption, and income. Environmentally, land concessions have led to deforestation through processes of forest conversion and the expansion of illegal logging networks, the chemical pollution of soils and waterways, and the drying and blockage of local water sources. As a response to these issues on land leases and concessions, the government is revising the Land Law, Forest Law, and Investment Promotion Law, thus potentially shaping the future direction of land concessions in Laos (Open Development Laos, 2018).

4.6.5. Shifting Cultivation Issue

It was reported that the major environmental problem in Lao PDR is deforestation due to uncontrolled shifting cultivation resulting to environmental disasters like drought and flood.

Since 1975, the Government of Lao PDR sought to eradicate the practice of shifting cultivation because it is believed to be unsustainable and detrimental to the environment, rural development and economic development of the country as a whole. For three decades, the government enacted and implemented policies to stabilize and to eventually eradicate this practice. However, it resulted in varying levels of success criticisms (Kenney-Lazar, 2013).

In the above actions done by government, Indigenous Peoples in Laos have expressed in different venues and processes their advocacies to rectify stereotyping or understanding about Indigenous Peoples' knowledge and practices especially on shifting cultivation. For Indigenous Peoples, shifting cultivation refers to agricultural method in farming where Indigenous Peoples clear a parcel of land by cutting down trees. Normally, the land is left to fallow after a harvest long enough for vegetation to recover. Due to some observed clearing of land, felling of trees and burning, shifting cultivation has been viewed as a cause of deforestation.¹² Moreover, shifting cultivation is deeply intertwined with the culture and beliefs of ethnic minorities in Laos.



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For example, in the villages of the Kmhmu people in Oudomxay Province of northern Laos, a ritual to pray to the spirits is conducted before selecting a farming location, clearing it, burning it, seeding the rice and the harvest. Then again, after the harvest and before a new farming season, a festival to celebrate the New Year and pray for a plentiful harvest in the coming year is held (Higashi).

¹² <http://www.mekongwatch.org/platform/bp/english2-9.pdf>

Up to this date, ethnic minorities are advocating for their right to land more strongly to counter some government decisions and policies restraining them to effectively practice their agricultural production and traditional economies (i.e. shifting cultivation).

The government also promotes cash crops, fisheries and livestock as an alternative to shifting cultivation and it means relocation of the villagers to the lowlands (Kenney-Lazar, 2013). The government may perceive the programs on stabilizing shifting cultivation as an instrument to alleviate poverty in the remote areas and extending social services, however, some observers claim that the relocation program of the government cause the people to suffer and die due to poor sanitary conditions, lack of adequate resettlement facilities and spread of diseases (Bestari, Mongcopa, Samson, & Ward, 2006).

The intention of the government to stabilize shifting cultivation has also been connected to opium eradication (Kenney-Lazar, 2013). For many years, Lao PDR held a big part in supplying opium around the world. Upland farmers in the Northern Region were producing opium as source of income through shifting cultivation. Many poor farmers had given up growing opium because of the intense campaign of the government to eradicate opium. However, the government needs to come up with a sustainable livelihood program for the poor farmers to permanently eradicate opium cultivation (Bestari, Mongcopa, Samson, & Ward, 2006).

4.6.6. Education

Although Article 22 of the Lao PDR Constitution guarantees the indigenous groups of their right to proper education, they still face high illiteracy rate. This is likely due to difficult-to-access locations and insufficient school instructors and materials (Open Development Laos, 2018).

The government has been also promoting non-formal education with basic skill training in cooperation with international organizations including NGOs. They are carrying out programs such as curriculum development, training of leaders in the rural areas, extension of literacy, and life quality improvement and income enhancement. However, literacy curriculum and development of teaching materials for Indigenous People are behind (Japan International Cooperation Agency Planning Department, 1999).

According to the Ministry of Education, 47 out of 142 districts in 18 the provinces in Lao PDR have been categorized as the poorest districts. Most of these districts have Indigenous Peoples located in rural and mountainous areas of the country. Geographical, economic, and cultural constraints often result in limited education and health services for Indigenous People. According to the Census, indigenous groups often have poorer housing and sanitary conditions, lesser access to roads and markets, and lower levels of health and education. Indigenous communities may not value social services, and social service providers may have limited understanding of Indigenous Peoples' needs and values. Poverty among Indigenous Peoples is closely associated with limited access to education and training

opportunities. While the quality of education is a national concern, it is a particular concern for Indigenous Peoples in rural, remote and mountainous areas. According to the Education for All National Plan of Action, the main reasons include: (i) lack of infrastructure; (ii) physical inaccessibility to schools due to distance; (iii) language and cultural barriers; (iv) lack or limited quality of teachers, (v) lack of textbooks and teaching/learning materials, (vi) lack of relevant curricula to local situations; (vii) perceptions and beliefs that returns from education are low; (viii) and low household affordability (Government of Lao PDR, Ministry of Education, 2006).

The high illiteracy and the differences in language has been a limiting factor to Indigenous Peoples' ability to protect their rights and go against the grabbing of their lands. Indigenous Peoples strongly believe that the traditional law is enough to protect their ownership of the land. However, despite strong reliance to traditional ownership Indigenous Peoples with their very little knowledge on the statutory law leaves them vulnerable to land grabbing. When Indigenous Peoples' lands are taken away from them, they are forced to relocate to areas they are more difficult to reach. Relocation would mean loss of their traditional livelihood, and they are more submerged to poverty.

The case is different with the Lao Tai people however, since they are provided access to education and economic opportunity, and likely to they are more empowered to assert their rights (Open Development Laos, 2018).

4.6.7. Access to Healthcare Services

Aside from access to education, the Indigenous People are also facing problems in accessibility to healthcare services. The remote centers lack human resource and equipment while more remote areas do not have any centers at all to respond to the health needs of the people. The lack of land access and electricity even makes the situation more difficult. Due to this, there are an increasing number of cases of infant and maternal mortality rates.

To resolve this, government programs encouraged Indigenous People to relocate to cities. Another agenda for this is to however free up land for development projects. For those who acceded to the programs, they experienced having to be removed from their traditional livelihood sources. Also, that they had to adapt to the new environment. A large number from the highland areas were more vulnerable to malaria and dengue due to mosquito exposure in the lowland (Open Development Laos, 2018).

4.7. Government Programs for Indigenous People

Due to the challenges being faced by the Indigenous People, the government has taken some measures to address needs of ethnic minorities though these may still pose some challenges on how these actions or programs will make the ethnic minorities elevate in a better status. For issues under health, the Ethnic Group Development Plan (EGDP) was created in 2015 to mandate the inclusion of indigenous groups in the Health Services Improvement Project (HSIP). Its responsibility is to improve health systems in the village level through provision of health services on the district and provincial levels.

Current responses by the Lao government to issues with indigenous groups frequently involve developmental aid and international projects. One example is the Greater Mekong Region Health

Security Project, backed by the Asian Development Bank (ADB). The project dedicated US\$12.6 million to capacity-building for health services. The project is centered on health issues most common among rural indigenous groups, such as misuse of antibiotics, and centered in provinces where indigenous groups have a significant presence (Open Development Laos, 2018).

4.7.1. Coffee Production as an Alternative Crop to Opium

On August 1, 2017, the province of Sam Neua, districts of Xamtaï, Xone and Kuan in Lao PDR, have begun planting coffee seedlings through the culminating work between United Nations Office on Drugs and Crime (UNODC) and local authorities in the Huapanh province to introduce coffee as an alternative cash crop to opium. In November 2015, approximately 250 farmers initiated the transition from opium to coffee by establishing coffee nurseries under the guidance of technical experts from the project and support from District Agriculture and Forestry Offices. Accordingly, the project has the cooperation of the National Coffee Research Centre (NCRC) to ensure that farmers have access to the technology and knowledge required to produce high-quality beans (United Nations Office on Drugs and Crimes, n.d.).



● Farmers in Xone preparing coffee seedlings

4.7.2. Health Program

In May 23, 2018 in Vientiane, the Asian Development Bank (ADB) and the Government of the Lao People's Democratic Republic (Lao PDR) signed an agreement for a US\$30mn policy-based grant for the second subprogram of the Health Sector Governance Program to help expand healthcare coverage and improve health services in the country.

The purpose of this joint project is to continue supporting the government program to enhance the implementation of free healthcare for the poor, especially women and children, through national health insurance, improve health human resource management and improve the health sector's financial management system (IFM Correspondent, 2018).

4.8. Non-Governmental Organizations' Involvement for Advocacy on Indigenous Rights

There are many international and local non-government organizations which were organized to operate in Lao PDR. They focus to deliver development programs on agriculture, education, explosive remnants of war, gender, health, environment and natural resource management. Recently, some INGOs started to organize to influence development policy and present statements on land issues and natural resources management. They also seek donor and government support for these issues (Asian Development Bank, 2011).



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The Laotian government also understands the importance of education. It has been promoting non-formal education with basic skills training, in cooperation with international organization and NGOs for programs such as curriculum development, training of leaders in rural areas, extension of literacy and income enhancement. The Global Association of People and the Environment (GAPE), a Canadian-based organization, has signed different Memorandums of Understanding with the Non-Formal Education Department in the Ministry of Education. It has been implementing the Remote Village Education Support Project in the Attapeu province since 2001. The purpose of its program is to enhance the capacities of the communities in organizing themselves and build community system which is in line with their traditional livelihood, culture and aspirations (GAPE International, n.d.)

There are also local commercial and professional associations in Lao like the Luang Prabang Tuk-tuk Drivers Association, growers and producers group, water user's association and other CBOs. They are locally known as Non-Profit Associations (NPA) (Asian Development Bank, 2011).

There were also Non-Government Organizations which were involved towards the recognition of rights of the indigenous peoples. One is the Lao Women's Union which is a representation of women of all ethnic groups. This also includes other groups like the Lao People's Revolutionary Youth Union (LPRYU) and the Federation of Lao Trade Unions (FLTU) (Open Development Laos, 2018).

In general, because of Laos' emphasis on creating a multi-ethnic nation (where multiple ethnic groups live together in a certain community), specific initiatives targeting the individual needs of certain indigenous groups are limited. Civil society space for Indigenous People is also limited, and there are no government-recognized civil society organizations which work specifically for the needs of ethnic groups (Open Development Laos, 2018).

5 Myanmar



Myanmar map (Source: Google map)

5.1. A Short Overview of Political Benchmarks

To fully understand the current context of Indigenous Peoples¹³ in the Republic of the Union of Myanmar¹⁴, it is important to have in mind some historical benchmarks. In the 19th century, there were three Anglo-Burmese wars, all won by the British. The first one, 1823-1836, ended up with the British victory and the concession of some of the Western regions (Arakan, Manipur and Assam) to British India. The second Anglo-Burmese war, in 1852-1853 saw the annexation of Lower Burma (delta region, including Yangoon) the British colony and the last one, in 1885, and the annexation of the rest of the country to the British colony. Burma is a province of India, under British rules in 1886 (Government Offices of Sweden, 2018) (Institute for Security & Development Policy, 2018, July) (Steinberg, Aung, & Aung-Thwi, 20019).

In 1937, British Burma is created as a British colony in itself, independent from India. The independence of Burma was declared in January 1948 and the first Constitution of the country was adopted the same year.

In 1962, a coup d'état led and won by General Ne Win took place and a ruling entity called the Revolutionary Council was created. This event starts the era of the military-controlled single party system (Burma Socialist Programme Party) and a complete control over the country by military rules. The land and the industry were nationalized and all economic activities were controlled by the government. Myanmar enters the Association of Southeast Asian Nations (ASEAN) in 1997.

¹³ The terms indigenous peoples/people are not relevant in the context of Myanmar, in this paper, they will be called ethnic groups or ethnic minorities.

¹⁴ This is the official name of the country. For practical purposes, it will be called Myanmar in this paper.

After decades of crisis, uprising, protests, ceasefire agreements and breakdowns, in 2011, a democratic reform took place. Thein Sein is elected President by the legislature and a quasi-civilian government was created. Changes were on the move: Liberation of Aung San Suu Kyi from her house arrest, the establishment of a National Human Rights Commission, amnesties of more than 200 political prisoners, new laws allowing labour organizations and peaceful manifestations, cancellation of press censorship, among other reforms.

In October 2015, a National Ceasefire Agreement (NCA) is signed between 7 (out of 15 invited) Ethnic Armed Organizations (EAO) and the government. The elections of the Parliament in 2015 saw Aung San Suu Kyi's Party – the National League of Democracy (NLD) – wins the majority of seats in both Chambers of the Parliament. Military junta still owns 25% of the seats and has a veto on Constitution amendments. At the government level as well, the military still has a great importance, controlling several Ministries. Htin Kyaw from the NDL was elected President of the country in 2016. He resigned in March 2018, and few days after, on March 28, Win Myint of NDL was chosen to run the country (ibid).

5.2. Demographic, Geographic and Ethnographic Data on Ethnic Groups

In a country of 51,419,420 inhabitants, Yangoon, Mandalay and Sagaing are the most populated regions (14% and 12%, respectively), followed by Shan State with 11.3% of the population. The less densely populated states/regions are mainly where ethnic groups live, like the Chin and Kayah States, with respectively 0.9 and 0.6% of the total population (The Republic of the Union of Myanmar, 2015).

There is a commonly admitted but disputed list of 135 ethnic groups in Myanmar, with eight main “national races” (as called by the national government, see chapter “Status of ethnic groups in local laws”) which are Bamar, Shan, Karen, Mon, Kachin, Rakhine, Chin and Kayah. Seven states are named after them, highlighting the majority of ethnical groups living on the territory. The division of the country was made after the Independence from the British rules, in 1948. Most ethnic groups are living in remote areas, at the borders of the country or in mountainous areas.

As table 1 shows, the majority of population (68%) is Bamar, which is the dominant culture of Myanmar, followed by Shan and Karen people.

Table 5.1: Ethnic Composition in Myanmar (Oxford Burma Alliance, n.d.) (Sawe, 2018)

Name	Percentage of total population	States/Regions of living	Main religion	Origin
Bamar (Burman) Comprises 9 ethnic groups	68%	Central dry zones and delta regions	Theravada Buddhist	Sino-Tibetan descendants
Shan Comprises 33 ethnic groups	9%	Shan, Kachin Karen States, Mandalay Region, China, Thailand and Laos	Theravada Buddhist	Tai-Shan descendants, migration from the Yunnan region in the 10th century
Kayin (Karen) Comprises 11 ethnic groups	7%	Karen State, Thailand	Buddhist, Animist, Christian	

Name	Percentage of total population	States/Regions of living	Main religion	Origin
Rakhine (Arakan) Comprises 7 ethnic groups	3.5%	Rakhine State	Theravada Buddhist	
Chin Comprises 53 ethnic groups	2.5%	Chin State	Christian, Buddhist, Animist	Tibeto-Burman
Mon Comprises 1 ethnic group	2%	Mon State	Theravada Buddhist	Migration from China in the 6 th -7 th century
Kachin Comprises 12 ethnic groups	1.5%	Kachin State, Shan State, China, India	Christian Buddhist, Animist	Sino-Tibetan
Kayah (Karenni) Comprises 9 ethnic groups	0.75%	Kayah State	Buddhist, Animist, Christian	Migration from China in the 6 th -7 th century
Other groups including: Wa, Naga, Lahu, Palaung	4.5%			

5.3. Status of Ethnic Groups in the Laws

As part of the ASEAN, Myanmar has ratified the UN Declaration of the Rights of the Indigenous Peoples, on September 2007. However, Myanmar did not ratify the International Labor Organization (ILO) Convention 169, which is a milestone in defining Indigenous Peoples. The criteria suggested by the ILO Convention 169 to determine indigenous affiliations refer to self-identification of ethnic groups, traditional lifestyle, distinct culture and way of life, owning specific organization and political institutions and living an area with a historical continuity (International Labor Organization, 1991).

With its historical and political heritage, Myanmar's political system is highly centralized. The government gives very less power to the states/regions. Thereby, minorities, including ethnic groups, are not consulted and they must follow the laws and rules decided by the majority.

Burmese is the official language. Even if a large part of the population does not speak this language as their mother tongue, no other language is recognized.

In Myanmar official documents, there is no mention of Indigenous Peoples or ethnic groups anywhere. In the 2008 Constitution, the different groups composing the population of Myanmar are called national races (Art. 115, 161). There is no specific rights or status for these national races, neither a clear definition (Constitution of the Republic of the Union of Myanmar, 2008). Bamar, Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon, are considered as national races (Tessier, 2015).

In the 2008 Constitution, however, some articles refer to human rights, for instance, Art. 348 specifies: "The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth" (Constitution of the Republic of the Union of Myanmar, 2008). The recognition of some of the human rights and access to justice is now written in the law.

However, regarding the implementation of the law, some points needs to be highlighted. These articles refer to citizens only. As mentioned below, some ethnic groups are not recognized as having the possibility to be a citizen of Myanmar. The law, thereby, does not apply to them. Furthermore, the exercise of these human rights must be in accordance with the other laws, which are in themselves restrictive. So, in its day-to-day implementation, the Constitution does not provide and protect fundamental freedom for all, give a fair access to justice, eradicate gender discrimination nor guarantees peaceful assembly/association (2nd Cycle Universal Periodic Review Myanmar UPR 2015; Information on the Status of the Human Rights Situation in Myanmar, 2008).

The Burma Citizenship Law of 1982 is another document to be referred to, when speaking about ethnic groups and nationalities in Myanmar. Same as in the Constitution, the eight main races are listed, but there is no mention of the 135 other sub-groups, only "ethnic groups" is mentioned. The law says that the national citizens are people who belong to groups settled in Myanmar prior to the first Anglo-Burmese War, in 1823, and for children who are born from national parents (Art. 3). Two other kinds of citizenships exist, the associate and the naturalized. The first one requires the person to fulfil certain conditions. The naturalized citizenship refers to people who were established in Myanmar prior to the Independence of the country, January 4, 1948, with the need of providing conclusive evidences (art. 42) (Burma Citizenship Law (English Translation), (Pyithu Hluttaw Larv No 4 of 1982)). For both citizenship applications, the Central Body – the official entity deciding about the citizenship grant –asks for specific documentations that is often unobtainable or very hard to find. Additionally, some ethnic minorities do not follow the conditions for the naturalized nor the associate citizenship application, these include: Burmese Indian, Burmese Nepali, Chinese and Rohingya (MCRB, IHRB and DIHR, 2016).

In the last 2014 Census, the ethnicity was asked in the questionnaire. But no results show the ethnicity tendencies. The government gathered all data under geographical clusters, with no distinction of ethnic groups (The Republic of the Union of Myanmar, 2015).

The Protection of National Races Law has been enacted in February 2015. It deepens Art. 22 of the 2008 Constitution related to the National Races. This law could be seen as an important step for more clarification and recognition of ethnic groups. However, it contains gaps and unclear statements. For instance, it established the creation of a Minister of National Races. However, the existing Minister of Borders Affairs has already similar mandates, especially on the socio-economic development of the National Races areas. Nothing is indicated on the differences between the two entities. Furthermore, there is no mention regarding UNDRIP nor the free prior and informed consent, which is a commonly and efficiently used tool for projects located in indigenous areas. No explicit reference to protection of minorities against discrimination is included in the law. What could have been an occasion to clarify things and establish a fair legislation for minorities, is actually lacking of substance and coherence (MCRB, IHRB and DIHR, 2015).

During spring 2015, four laws on race and religion protection has been adopted, namely the Religious Conversion Bill, the Buddhist Women's Special Marriage Bill, the Population Control Healthcare Bill and the Monogamy Bill. Regarding human rights defenders, these laws contain many discriminatory provisions and do not comply with international standards of human rights. Especially women and non-Buddhists have high risks to be discriminated by the implementation of these laws. The Religious Conversion Bill put in great difficulties ethnic and religious minorities to exercises their rights (Amnesty International; International Commission of Jurists, 2015).

5.4. Aspects on Land

Adopted in 2016, the National Land Use Policy is the official document giving rules to promote a sustainable land use, strengthen land tenure, recognize and protect customary land rights and to promote people-centered development and participation. Prior to this, no laws or policies about land use had existed. During the military-controlled single party era, land was the propriety of the government. In so, land was taken by the government without local leaders' or residents' consent. Additionally, the lack of consultation with local inhabitants, having no official framework for land use had caused an absence of accurate statistics and maps. This brings issues between government, administrators, local residents and, nowadays, international industries. Nobody has a clear view of the environmental situation (The Republic of the Union of Myanmar, 2016).

In the National Land Use Policy, Part VIII is dedicated to “Land Use Rights of the Ethnic Nationalities”. It is one of the first time that the central government addresses ethnic groups access to land. For example, Article 64 mentions the rights of a formal recognition of customary land use by ethnic nationalities. Article 65 says “Duties shall be assigned for the preparation and revision of land use maps and records through public consultation processes by the ward or village tract land use committees [...]”, Article 67 encourages the participation of ethnic leaders, elders and women in the decision-making process related to land tenure rights (The Republic of the Union of Myanmar, 2015). This policy establishes a process for recognition of the rights of indigenous communities and not just individuals. Also to be noticed, Article 33 (f) mentions Free, Prior, Informed Consent (FPIC) as a means of addressing “land monopolization and speculation” (The Republic of the Union of Myanmar, 2016).

Access to land is an essential aspect of most indigenous cultures, ethnic groups have a strong relationship with their natural environment. In the UN Declaration on the Rights of Indigenous People (UNDRIP), many articles refer to the access to land and territories. For instance, articles 26 (1) “Indigenous Peoples have the right to the land, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (United Nations, 2008).

The state where most ethnic populations live – Shan, Kachin, Kayin, among others – have lots of natural sources – gold, teak, rubies and gas, among others. Now that the market is more open to international investments, industries are interested in doing business with Myanmar. However, the government needs to create a solid and efficient framework for business and policies. The government is certainly interested in foreign investments for economic development, but the international industries cannot invest in a country where the legal framework is not clear and where information is not available.

In December 2015, the Environment Impact Assessment Procedure was adopted by the Minister of Environmental Conservation and Forestry (MOECA). Generally, Myanmar's laws are lacking framework for ethnic groups and forced displacement. This Procedure, in Art 7, mentions international good practices regarding these points (The Government of the Republic of the Union of Myanmar, 2015). It would be useful to make this new procedure known by all stakeholders, and to make all projects available to the public, to be able to give suggestions and comments. Introducing international standards is a very important step. However, they should apply to every national and foreign project, without any discrimination (Myanmar Centre for Responsible Business, 2016).

The National Land Use Policy and the Environment Impact Assessment Procedure content are first steps to more ethnic recognition for land. However, a closed attention is needed to ensure that the law is implemented, enforced and monitored accordingly and that national or international interest are not hindering ethnic groups' rights to access their customary land.



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The Vacant, Fallow and Virgin Lands Management Law has been enacted in September 2018 and came into effect March 11, 2019. The purpose of the law is to clarify land claims, improve land use and address land use abuses. Individuals living on such lands – vacant, fallow or virgin – had up to March 2019 to apply for a permit. This law is however a kind of “trap” for ethnic minorities, indeed, they have the choice either to register and freely giving their right over their customary land to the central authorities and letting them control and manage their land. Or to become criminals, as by the law, if individual lives or uses VFV land, they risk up to two years of prison, USD 330 fine and will be categorized as trespasser (Karen Human Rights Group, 2019).

The UN Special Rapporteur on the situation of human rights in Myanmar said that the law fails to recognize shared land ownership practices, such as customary tenure, and land belong to internally displaced persons and refugees of conflict that has been left unattended (Human Rights Council, 2019). This law is directly impacting thousands of ethnic people and is affecting the poorest of the country, as 50 million of acres are supposedly VFV, and 82% of Myanmar landmass is located in ethnic areas.

5.5. Law Implementation and Ground Issues

5.5.1. Political Aspects

For many decades, neither the ethnic groups nor the rest of the population had access to a real and fair justice system, human rights respect and access to their ancestral land. Despite the changes in the government and political system in 2011, the government remains dominated by the military junta, who has a veto in the Parliament. Since 2011, every attempt to modify the Constitution has failed. In 2013, the Creation of



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a Constitutional Review Committee for the Reform of the Constitution gathered amendments suggestions and gave its report to the Burmese Parliament in January 2014. In June and July of the same year, the Parliament discussed the report. The military Parliamentarians rejected all amendments regarding their status (2nd Cycle Universal Periodic Review Myanmar UPR 2015; Information on the Status of the Human Rights Situation in Myanmar, 2008).

The question of federalism is at the core of many discussions. The lack of self-determination of ethnic groups is one of the main issues raised by the ethnic armed organizations (EAO) (2nd Cycle Universal Periodic Review Myanmar UPR 2015; Information on the Status of the Human Rights Situation in Myanmar, 2008). Since decades, conflicts between the Tatmadaw – the national military – and ethnic armed organizations are raging many areas of the country, principally because of the issue of independence, resource sharing, discrimination, marginalization and education.

5.5.2. “Burmanisation”

The tendency to impose the majority Bamar culture to the whole nation – called “Burmanisation” by the specialists – is still remaining. Without any legal status or recognition of ethnic groups, there is no justice mechanism related to violation of their rights. Even if the whole population is concerned by the lack of justice system, ethnic nationalities are particularly discriminated and marginalized.

As most of the ethnic groups are living in remote areas, far from the large cities and the capital (Yangon, Mandalay, Naypyidaw), access to education and basic

healthcare services is severely lacking. There is nearly twice as more poverty in rural areas than in urban regions, and the UNDP Myanmar webpage emphasizes that the remote border areas, mainly inhabited by ethnic groups, and the conflict areas are particularly poor (UNDP Myanmar).

5.5.3. Access to Land

Access to land is still not yet a right for ethnic minorities and quarrels are going on all over the country. Despite the recent reforms on land, administratively, things remain complicated. When asking for land registration, local offices are inaccessible and are asking for moneyed interests (Burma: Farmers Targets of Land Grabs, Livelihoods in Karen State Imperiled by Abusive Militias, Laws, and Local Officials, 2016). “In some cases, villagers alleged that local government officials acted as brokers for land deals or facilitated the granting of licenses for mining and other projects, leaving long-time residents and farmers empty-handed and without effective recourse” (ibid).

With the enforcement of the newly amended law on Vacant, Fallow and Virgin land in March 2019, people need to apply for land permit, if not, they are at risk of prison, fines and criminalization. Furthermore, the application process is difficult for isolated villagers who need to go far for registration offices, knowing that it is a costly process. Some villagers and farmers do not even know if their lands are considered VFV or not. No specific map exists.

Besides practical aspects, this law will put the ongoing peace process with ethnic armed organization at risks, as the core issue is the question of land management. The situation of thousands of civilians, comprising ethnic minorities and displaced people, will dramatically change (Karen Human Rights Group, 2019).

Displacement for plantation agriculture (instead of livelihood purposes), extraction of resource and infrastructure projects without proper consultation, information or benefits for the person displaced are the main concerns regarding land seizure. In this context, ethnic minorities are the most vulnerable (Human Rights Watch, 2016).

5.5.4. The Nationwide Ceasefire Agreement

In March 2015, a nationwide ceasefire agreement (NCA) has been signed, through the government-led entity, the Myanmar Peace Center. This is the first multilateral ceasefire process in the country, since all the attempted before were only bilateral and by states/regions. Only 15 EAO that previously signed a bilateral ceasefire agreement where invited to participate to the national peace process. Out of 15, only eight signed the final document, the seven others did not trust the final paper. This ceasefire agreement is a relief for many ethnic minorities, because a certain number of displaced people are able to go back to their homes - if not already totally destroyed. Also, farmers are able to go to their land again, without fear of being a target in the conflicts.

However, according to the Chin Human Rights Organization, the ceasefire is not implemented and civilians are still under threat. There is evidence that Tatmadaw continues operations and re-militarization in ceasefire areas (Chin Human Rights Organization, 2018). Besides, many parts of the country are not included in the ceasefire agreement and still suffer from armed conflicts between the EAO and the national army.

5.6. Human Rights Violations and its Implication for Ethnic Minorities in Myanmar

Myanmar is on the way towards a more democratic system, with important institutional changes. However, many issues, especially regarding respect of human rights, including indigenous rights, are to be tackled. The last visit of the Special Rapporteur, Mrs. Yanghee Lee, in Myanmar dates back to July 2017. After her 2017 country report, Myanmar government banned her from the national territory, on alleged complaints from local NGOs and civilians that her report was unbalanced, biased and lacked objectivity.

In January 2019, she made the official request to visit the country again, in purpose to make the report on the human rights situation in the country. The government maintained the ban. Mrs. Lee visited the neighboring countries of Thailand and Bangladesh in January 2019, to acquire information from NGO and refugees. This alone illustrates the deterioration of human rights situation in the country. Mrs. Lee even emphasizes in an interview with Aljazeera: “I am really deeply disappointed and very saddened by this decision of Myanmar to deny cooperation with my mandate and with any other human rights mechanisms, and most of all to silence people who speak out on these kinds of atrocities”, adding: “This declaration of non-cooperation with my mandate can only be viewed as a strong indication that there must be something terribly awful happening in Rakhine, as well as in the rest of the country” (Myanmar bars UN human rights envoy Yanghee Lee, 2017).

In her last report in September 2017, she observed that despite the will of the government for more democratic state and the start of institutional change, in 2017, human rights violations were escalating. Here are some of the highlights of the report (UN Human Rights Council, 2019):

- Constitutional and legislative framework should evolve towards more transparency: Law making processes are unclear and depends a lot on the person responsible. The Parliamentary Legal Affairs and Special Cases Assessment Commission can propose new laws and in interfere with lawmakers to give input on legislation. This Commission has suggested, for instance, amendments on the National Land Use Policy, which is interfering in a law that was previously adopted on a large-scale consultation and guarantees limitations.
- Legal and judicial system should be reformed: A majority of accused and convicted of offences or crimes in detention do not really understand the charge against them, do not have legal representation and they often meet their lawyer on the first day of the trial. The justice system is not transparent and lawyers themselves fear to be disbarred while defending their clients, because of misinterpretation of constitutional writs.
- Business, human rights and land rights: The land confiscation legal framework should be reformed to follow international standards. In three special economic zones (Yangon, Dawei and Kyaukphyu), complaints from civil society about huge negative impacts on the life of local resident were addressed, particularly during the initial phases or preparatory work. Projects are not implemented in accordance with the law, all phases should be carried with transparency, with a continuous information flow, population should be consulted and be able to suggest alternative options. Instead, confiscation of land is going on, there are no direct or indirect benefits for the locals and no information is available on the on-going projects. The mentioned issues are spread in many other parts of the country.
- Conflict-related rights violations and the peace process: The continuous armed conflicts between the Tatmadaw and the ethnic armed organizations result in widespread suffering and violation of international humanitarian and human right law. In Shan and Kachin States, serious human rights violations are increasing, including killings, torture and forced labour. Civilians have the feeling of being the target because of their indigenous ethnicity. The number of civilians killed during skirmishes between the Tatmadaw and ethnic armed groups is increasing.

- The situation of Internally Displaced People (IDP) is very serious: The conditions in the camps, if camps exist, are bad, and very few people can return to their homes. Some are asked to go back, even if the local situation is not yet safe. Furthermore, the restriction of areas for international or local humanitarian aid is of great concern. At the time of the visit in 2017, for a year, no authorization for international staff to go and give support in remote areas was released. No information of any kind exists on these removed government-controlled areas.
- Combatting and preventing religious intolerance and incitement to hatred and violence: Tensions between religious communities is an urgent problem the government needs to address. Majority of cases towards religious minority is reported in Rakhine State, but it is also common in other parts of the country, towards other religious minorities, including ethnic minorities. For example, in July 2017, in Teetaw Village, a village located in Sagaing Region with a majority of Chin ethnic minority, a group of villagers threw stone and damage the house of a Chin Christian resident, during a religious service. At least four persons were harmed and the house was seriously damaged. This attack was organized by local officials and Buddhist abbot.
- Protecting the rights of women and children: Women are totally excluded from peace building negotiations and resolution of conflicts, resulting of gender inequalities and of the hide of experience, grievances and needs of women. There is also a high concern regarding violence and rape perpetuated against indigenous women, by the armed forces.
- Child labor in armed conflict regions and forced child recruitment for the National Army or EAO, especially among ethnic groups is increasing. Also, cases of child detention reportedly charged of spying are alarming. The association of children with armed group should always be treated involuntary.

After her visit in the neighboring countries in January 2019, Mrs. Lee gave her first impressions. She highlighted some important points (United Nations Human Rights Office of the High Commissioner, 2019):

- Democratic transition is in a very fragile phase.
- Ethnic minorities are still highly discriminated and marginalized, despite the official stance that peace and democracy is being brought in the country.
- Despite the ceasefire agreement in Kachin and Shan States, armed conflicts are still on, as well as in Rakhine State, impacting hundred thousand of residents.
- Many people are concern about the implementation of the amendments to the 2012 Vacant, Fallow and Virgin Lands Management Law, that will cause many people to be landless.
- Big infrastructure projects, like dams, are being pursued, without consultation and lack of information. Free, Prior and Informed Consent is not an official tool in the construction processes, but clear information and consultation to involved communities is part of policies.

The armed conflicts have serious impact on the local population: structural inequalities, lack of socio-economic development, abuses against civilians. Generally, these include extra-judiciary killings, tortures, forced pottering, taxation, and destruction of propriety and displacement of people. The selected examples below illustrate with concrete stories the consequences of the armed conflicts on the local population including Indigenous Peoples and the violations of human rights. Most conflicts and indigenous rights violations are occurring where ethnic minorities live.

5.6.1. Shan State Human Rights Violation Examples

Shan State is the largest state in Myanmar, with over 5.5 million inhabitants. It is home for many ethnic minorities including Burman, Chinese, Kachin, Lahu, Lisu, Palaung/Ta'ang, Shan, and Wa. Also, several ethnic armed organizations (EAO) coexist, with only one, the Shan State Progressive Party/Shan State Army (SSPP/SSA) who

signed the National Ceasefire Agreement. In the northern parts of the state, conflicts between EAO and Tatmadaw are widespread and serious, and various human rights violations are observed..

In 2017, 59 protection incidents were reported. Certainly many more incidents occurred but were never reported because of the climate of fear and threat (UN Human Rights Council, 2019). The following demonstrate some cases of violation.

Transfer of Land without FPIC

The 22nd of October 2018, villagers from Mong Nim and Mong Gao, in Ke See township, received a letter from the General Administration Department regarding the transfer of 5,459 acres of land to Pinpet – an iron mine and steel factory – for the extraction of coal.

The land in question includes farmlands, pastures, lakes, forests, watersheds, temples, cemetery, school and clinic, used by the local community for generations. The legal ownership of the land is though not clear. The development of the coal industry will certainly destroy most of the landscape, without regards to the inhabitants and their environment.

The coal deposit is located 6 km under Nam Hen stream, which provides water for the fields of around 50 villages and is the main water source for over 18,000 residents. The fear of air and water pollution is real as 1,500 tons of coal is planned to be extracted and transported each day.

This example of land transfer is certainly not isolated, as the Union of Myanmar Economic Holdings Limited – hold by the Burma military – sold permits to different companies giving the right to extract minerals within Mong Gao concession area (Shan Human Rights Foundation, 2018).

Lack of Transparency on Project Implementation and its Impact

Upper Yeywa dam construction on the Namtu/Myitnge River started in 2008. It is only in 2014 that the indigenous residents of the neighboring village of Ta Long, in Hsipaw township, were informed about the project and about the need of their resettlement. The impact of the flooding will reach their village of over 600 inhabitants, farmland, schools, temples and stupas will be recovered with water as well.

On August 11, 2018, Ta Long villagers sent a letter to the Parliament asking to stop the project, claiming that the project seriously lacked transparency since its beginning. They were never consulted and learnt about the impacts of the dam very late. Before this letter, several appeals against the dam were already addressed to the Parliament, but they were never responded to (Shan Human Rights Foundation, 2018).

Attack against Indigenous Peoples

Nam Ma area is one of the most important areas of coal production in the country. The excavations started in the 1990s. Since 2004, the industry is owned and managed by a national enterprise, the Ngwe Yi Pale Company. Despite continuous complaints from local ethnic communities about the destruction of farmland, pollution of air and water sources, due to extensive mining activities, the company continues developing the mine, while destroying livelihood commodities of the local people.

On the 1st of May 2016, a manifestation of local villagers took place in Nam Ma temple. The crowds were asking the company to stop their extensive activities. Few days later, a Shan State Progress Party/Shan State Army (SSPP/SSA) troop – one of the EAO who signed the national ceasefire agreement – entered the region, to survey the Nam Ma areas and returned to the headquarter during the evening. The following day, on May 18, 2016, the army started a huge offensive action, involving over 500 militaries, militia troops and helicopter gunshots. Shelling and aerial bombing took place near ethnic minorities areas. The Tatmadaw committed severe abuses of human rights, including arbitrary arrests, torture of civilian during its mission to evict the SSPP/SSA from the coal mining area of Nam Ma, Hsipaw township.

The disproportion of the response is to be taken into consideration. Local human rights observers clearly interpret this serious attack as an act for the protection over the coal production business. For instance, an official precaution after the attack was to forbid farmers to work on their land for a period of three weeks, while the coal mine was able to re-open only after one week (Shan Human Rights Foundation, 2016).

5.6.2. Kachin State Human Rights Violation Examples

Kachin State is one of the regions where the most serious and continuous armed conflicts have occurred, greatly impacting the local indigenous population. In 2017, 56 incidents were reported in the first quarter of 2017, affecting 13,600 ethnic people, but most probably many more incidents occurred but were never reported because of the climate of fear and threat. Human rights violations against ethnic groups are regular (UN Human Rights Council, 2019).

Forced Evacuation by the Villagers

In Tanaï township, on the 3rd of June 2017, inhabitants of a specific area received the information from the Tatmadaw that they must evacuate their place in a very short period of time. The reason given by the army was that they will clear the environment, due to its degradation by unauthorized mining. They were warned that the remaining residents will be considered as collaborators to insurgent groups. Normally, five roads are going out of the area, but when civilians wanted to leave their village, only one road remained open, the army closed the others. Furthermore, the place where the villagers were asked to go was still under hostilities, between the Tatmadaw and the EAOM (UN Human Rights Council, 2019).

Violation of the Right of Freedom of Speech

On June 8 2017, around 25 young people belonging to the Kachin National Development Foundation distributed pamphlets describing the details of human rights violations committed by the National Army in the region of Hpakant township. These included rapes, killing of Kachin women, destructions of villages and religious sites. On June 13th, Major Kyi Min Htun of the National Army filed a criminal defamation complaint against Dashi Naw Lawin, the General Secretary of the Kachin National Development Foundation. Criminal defamation complaint can lead up to two years of prison for M. Dashi.

Cases of criminal complaints against activists who want to practice their right of freedom of expression are numerous. International laws protect the right of freedom of expression, except for specific situations. Dashi Naw Lawin's case does not enter into the category of "specific situation" described by international laws, the complaint is a

clear violation of human rights (Myanmar: Drop Criminal Defamation Charges Against Kachin Activist, 2017). The current law relating to the Right to Peaceful Assembly and Peaceful Procession is actually a “double-edged sword”, because it did end prior censorship of the press, but did not allow real expression of speech. The government still has a large room for maneuver in the definition of what is objective and admitted (Lakhdir, 2016).

5.6.3. Kayin State Human Rights Violation Examples

Despite the National Ceasefire Agreement signed in 2015, regular reports are addressed to the Karen Human Rights Group (KHRG) on breakdown of the peace process, by the national army and by ethnic armed organizations (EAO). Many villagers noticed that the Tatmadaw is very close to commit ceasefire violation and is reinforcing the soldiers’ presence in nearly every Karen districts, by entering into Karen National Union (KNU) delimited areas, reinforcing their troops and by patrolling in civilian areas, among other activities are observed (Karen Human Rights Group).

Furthermore, land confiscation for economic development is going on, despite the existing laws. Farmers are at risk to be charged for criminal trespass, if they continue cultivating their land. And if they want to show their disagreement by organizing or participating in protests, they will be arrested and face battle in court.

Displacement of More than 2,000 villagers in Lu Thaw

A concrete case of National Ceasefire Agreement violation is the displacement of around 2,295 people from Lu Thaw township, in the northern part of Karen State. Many villagers learnt about the venue of the Tatmadaw, afraid, they fled their home in anticipation. Repeated outbreak of fighting between the Karen National Liberation Army and the Home Guards convinced them to flee.

The displaced people are living in scarce conditions: poor or non-access to healthcare, food, and good shelter. Some of the villagers tried to go back to their home, to take rice provision, but they noticed that the Tatmadaw put up camps in their rice fields. They were not able to bring back food. Also, the children who followed their parents were not able to finish the school year. The parents are afraid they will not be able to continue schooling in the coming years (Karen Human Rights Group, 2018).

5.6.4. Chin State Human Rights Violation Examples

Chin State is one of the poorest states/regions and the less developed of the country. It is located in a remote and mountainous landscape, shares border with Bangladesh and India which makes it isolated from the rest of Myanmar (UNICEF).

Chin ethnic groups are particularly persecuted because of their religion, as the majority of them are Christian. Forced conversions to Buddhism were on-going for years. Restrictions on religious freedom, human rights violation linked with armed conflicts, non-respect of the ceasefire agreement and the lack of a safe and secure place of Chin communities to be able to develop activities for land are sensible concerns to be seriously taken into account (Chin Human Rights Organization, 2018).

Ban on cultivation on customary land

IMatupi township – located in high hills and deep valley, with scarce plateau – is home of major Chin ethnic groups, including Matu, Mara, Zotung, Lautu and Khumi. February 20, 2017, a senior officer of the Tatwadaw ordered to prohibit the cutting of trees for hillside cultivation. This restriction prevented 68 families of the region from their traditional livelihood activities, without any alternative to grow food.

Villagers who attempted to cultivate these fields were ordered to be killed. The impacted families were reallocated to other parcels, but during the lapse of time, the growing season was over, meaning that the 68 families had no livelihood for a year (Chin Human Rights Organization, 2018).

5.7. Good practices and improvements

5.7.1. Hopes and Steps Backward

Since 2011, a democratic reform is in progress. Thein Sein was elected President by the legislature and a quasi-civilian government took place. Legal, social and economic reforms were on the move. New laws were adopted following international standards. In 2015, parliamentary elections took place, with a multiple parties list, and the National League of Democracy (Aung San Suu Kyi’s Party) won the majority of seats in both Chambers of the Parliament. It opened the way for hopes of structural changes and more social justice, particularly towards ethnic minorities. Federalism was finally on the mouth of people and discussions about a new political regime started.

However, it seems that Myanmar government went a step backward and did not comply with human rights, Indigenous Peoples’ and women’s anti-discrimination international standards. Since 2015, the Rohingya humanitarian crisis is well known and documented. But in other parts of the country, human rights violation and discrimination against Indigenous People continues, despite the democratic reform process.

In 2015, the Nationwide Ceasefire Agreement was signed. Instead of continuing the negotiation with the ethnic armed organizations that did not sign or participate in the process, and try to make improvement in its implementation, there are proofs that the national army broke the ceasefire in certain areas of the country, especially in Shan and Kayin States. Establishing a peaceful environment is one of most important aspect but is also a big challenge in order to talk about resources sharing and inclusive economic development. Most of the armed conflicts in the country have ethnic roots and historical discriminatory reasons.

The Environmental Impact Assessment Procedure adopted in 2015 includes social impact assessment, and includes international good practices for project implementation, especially related to involuntary resettlement. The National Land Use Policy signed in 2016 establishes a process for recognition of rights of indigenous communities. Customary lands are recognized and the government must act accordingly. Both documents are considered as an important step forward for the country. However, many human rights observers reported, among others problems, serious failure on land appropriation by the national army, unplanned villagers’ resettlement, serious lack of transparency regarding ongoing projects, and no direct or indirect profit for local residents.

5.7.2. Foreign Business Investment, A Way Forward?

With the opening towards a democratic, multiparty political system, economic development is awaited, for both local government and foreign companies. Myanmar has a huge potential in the energy and mineral sectors. Many foreign firms are willing to collaborate with Myanmar. However, with continuous human rights' violations and on-going civil armed conflicts, the environment is not stable enough for foreigners to invest.

In May 2013, a joint statement on good governance and transparency in the energy sector was adopted between Myanmar and the United States. Both governments engaged in managing the energy sector in transparency and in lines with international best practices. Free, prior and informed consent is mentioned as mean to “improve the operating of the environment for industry, and help reduce the risk of conflict associate with resource development” (US Office of the Spokesperson, 2017). Myanmar committed to reform its energy sector and implement projects with more transparency, while benefiting from the US Energy Governance and Capacity Initiative. The United States intended to support Myanmar in its economic reform and to provide technical assistance in the implementation of international best practices.

Since 2014, Myanmar is a member of the Extractive Industries Transparency Initiative (EITI). The EITI is a tool to implement standard for good governance for gas, mineral and oil extractive industry, which includes transparency and accountability, especially towards local residents. EITI in Myanmar has done a first reconciliation report to assess the situation, from April 2013 to March 2014. Myanmar EITI team faced some difficulties, as in 2016, its leading committee was abolished by a Presidential Order (MEITI-MSG). So far, Myanmar is still waiting to be validated by the 2016 EITI Standard (Extractive Industries Transparency Initiative, 2019). So, it is hard to make any conclusion of the progress and to know if EITI is an efficient tool to make Myanmar a fairer and more transparent country, in relation to the energy sector.

The Myanmar Center for Responsible Business (MCRB) provides very good and accurate information on the current economic and development issues, intended to national and foreign companies, government, investors, locals, etc. Through research, sector-wide impact assessment (SWIA), organization of seminars and promotion of dialogue, the MCRB aims at building national and local capacities and partnerships on business and human rights related issues. This kind of initiative should be encouraged because it enables national and international companies to make business in Myanmar the most responsible way possible.

6 Nepal



[Nepal map \(Source: Google map\)](#)

6.1. Country Profile

According to the Human Development Indices and Indicator 2018 Statistical Update, Nepal ranks 149th with Medium Human Development Index with HDI value .574, GDI value .480, life expectancy at birth 70.6 years, expected years of schooling 12.2 years, GNI per capita \$2,471, multidimensional poverty index value. Literacy rate of adults is 0.154, (ages 15 and older) 59.6%, employment to population (ages 15 and older) ratio is 81.9 (United Nations Development Programme, 2018).

Nepal has ratified/acceded a number of international laws including the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965 acceded in 1971
- International Covenant on Civil and Political Rights (ICCPR) of 1966 acceded in 1991
- International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 acceded in 1991
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 ratified in 1991
- Convention on the Rights of the Child (CRC) of 1989 ratified in 1990.

Further, Nepal has also adopted the following:

- Indigenous and Tribal Peoples Convention (ILO Convention no. 169) of 1989 in 2007
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007
- Outcome Document of the World Conference of Indigenous Peoples (WCIP) in 2014. (University of Minnesota Human Right Library, n.d.); (International Labor Organization, 2007); (United Nations - Indigenous Peoples, n.d.)

6.1.1. Number of Indigenous Peoples, Percentage Compared to the Total Population

Indigenous academics and activists claim that Indigenous Peoples comprise in between two-thirds to majority of the total population of Nepal. No caste and ethnic disaggregated data was provided by the censuses taken before 1991. Data on caste/ethnicity, language and religion were provided since 1991 but census data were doctored to show low population size of indigenous peoples like Dalit, Madhesi and Muslim, mother tongue speakers and minority religious groups. Before 2011, at least 39 percent of the population is recognized as indigenous (Adivasi Janajati), amounting to at least 11 million out of 29 million inhabitants (AIPP, 2016).

According to a publication of the Central Bureau of Statistics (CBS) on the Census of 2011:

“The total population of *Adibasi/Janajati* groups (50 Hill and Mountain groups and 13 Tarai groups) is 9,267,870 or 34.97% of the total population of Nepal. Of them 50 groups (total population: 7,228,263) are from the Hill and Mountain districts and another 13 groups (total population: 2,039,407) are from the Tarai. Among the Hill *Adibasi/Janajati*, six groups alone (Magar, Tamang, Newar, Rai, Gurung and Limbu) make up (total population: 6,279,441) 86.9% of the total *Adibasi/Janajati* population. Among the *Tarai Adibasi/Janajati*, one group Tharu (1,737,470) account for 85.2% of the total *Tarai Adibasi/Janajati* groups. These seven *Adibasi/Janajati* groups comprise (8,016,911) 86.5% of the total *Adibasi/Janajati* population of Nepal” (Dahal D. R., 2014).

Relating to the missing Indigenous Peoples group from the 59 officially recognized groups of Indigenous Peoples, it is stated in a CBS publication that:

“The CBS could only record 42 *Adibasi/Janajati* groups with their population size in the 2001 census (17 groups were not identified) but the 2011 census added 6 more *Adibasi/Janajati* groups with their population size. However, the CBS in 2011 has not reported the following 11 groups: *Chairotan, Tin Gaule Thakali, Thudam, Free, Bankariya, Barah Gaunle, Tabe, Marphali Thakali, Larke, Siyar* and *Surel*. There could be two reasons for not reporting these groups in the 2011 Census: (i) The number of these groups is very small, and therefore the CBS finds it difficult to describe their various socio-economic characteristics and therefore omitted these groups from the list, and (ii) They were not found at the time of census enumeration. It is likely that the first reason is more plausible as the CBS has recorded many sub-groups with small numbers as well” (Dahal D. R., 2014).

In the Census of 2011, the total population of Nepal reported was 26,494,504 with 51.5% female and 48.5% male. Indigenous Peoples comprise of 35.80% of the total population with 18.6% indigenous female and 17.1% indigenous male. Although the census has identified 64 Indigenous Peoples, some Indigenous Peoples who are in the list of 59 legally recognized Indigenous Peoples are missing and some Indigenous Peoples have been demanding for legal recognition like *Ghale, Kulung, Bantawa, and Khawas* which were identified by the census.

Table 6.1. Population size of various caste/ethnic groups and Indigenous Peoples (2011 Census)

Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population	Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population
Caste – Origin: Hill Groups							
1. Brahman-Hill		3,226,903	12.2	3. Thakuri		425,623	1.6
2. Chhetri		4,398,053	16.6	4. Sanyasi (Dasnami)		227,822	0.8
Sub-group (Total) :4		8,278,401	31.246				

Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population	Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population
Hill Adibasi/Janajati groups							
1. Magar		1,887,733	7.1	26. Brahmu/Baramo		8,140	0.03
2. Tamang		1,539,830	5.8	27. Nachhring		7,154	0.03
3. Newar		1,321,933	5	28. Yamphu		6,933	0.03
4. Rai		620,004	2.3	29. Chamling		6,668	0.03
5. Gurung		522,641	2	30. Athpahariya		5,977	0.02
6. Limbu		387,300	1.5	31. Jirel		5,774	0.02
7. Kumal		121,196	0.5	32. Dura		5,394	0.02
8. Gharti/Bhujel		118,650	0.4	33. Bantaba		4,604	0.02
9. Majhi		83,727	0.3	34. Raji		4,235	0.01
10. Sherpa		112,946	0.4	35. Dolpo		4,107	0.02
11. Danuwar		84,115	0.3	36. Byansi/Sauka		3,895	0.01
12. Sunuwar		55,712	0.2	37. Thulung		3,535	0.01
13. Chepang/Praja		68,399	0.3	38. Lepcha		3,445	0.01
14. Thami		28,671	0.1	39. Mewahang Bala		3,100	0.01
15. Kulung		28,613	0.1	40. Bahing		3,096	0.01
16. Yakkha		24,336	0.1	41. Hayu		2,925	0.01
17. Ghale		22,881	0.08	42. Lhopa		2,624	0.01
18. Khawas		18,513	0.07	43. Sampang		1,681	0.006
19. Darai		16,789	0.06	44. Lhomi		1,614	0.004
20. Pahari		13,615	0.05	45. Khaling		1,571	0.006
21. Thakali		13,215	0.05	46. Topkegola		1,523	0.006
22. Bhoté		13,397	0.05	47. Walung		1,249	0.004
23. Chantyal/Chhantel		11,810	0.04	48. Lohorung		1,153	0.005
24. Hyolmo		10,752	0.04	49. Raute		618	0.002
25. Bote		10,397	0.04	50. Kusunda		273	0.001
Sub-group (Total): 50		7,228,463	27.283				

Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population	Broad ethnic/ caste category	Ethnic/ caste groups	Total population 2011	% of total population
Hill Dalit							
1. Kami		1,258,554	4.8	4. Badi		38,603	0.1
2. Damai/Dholi		472,862	1.8	5. Gaine		6,791	0.02
3. Sarki		374,816	1.4				
Sub-group (Total): 5		2,151,626	8.121				

(Dahal D. R., 2014)

Note: Although Dilli Ram Dahal has categorized Indigenous Peoples of the Terai and Inner Terai as Madhesi, the Tharu Kalyankari Sabha identifies the Tharu as Indigenous Peoples but not as Madhesi.

The National Foundation for Development of Indigenous Nationalities Act 2002 has identified 59 indigenous peoples of Nepal (Nepal Law Commission, 2009). Of the 50 Indigenous Peoples, 18 are from the mountains, 24 are from the Hills, 7 are from the Inner Terai and 10 are from the Terai.

Table 6.2.: Indigenous Peoples recognized by the Government of Nepal

Mountain	The Hill		Inner Terai	Terai
(1) Bara Gaunle	(1) Bankaria	(19) Rai	(1) Bote	(1) Dhanuk (Rajbanshi)
(2) Bhutia	(2) Baramo	(20) Sunuwar	(2) Danuwar	(2) Dhimal
(3) Byansi	(3) Bhujel/Gharti	(21) Surel	(3) Darai	(3) Gangai
(4) Chhairotan	(4) Chepang	(22) Tamang	(4) Kumal	(4) Jhangad
(5) Dolpo	(5) Chhantyal	(23) Thami	(5) Majhi	(5) Kisan
(6) Larke	(6) Dura	(24)Yakkha	(6) Raji	(6) Meche
(7) Lhomi (Shingsawa)	(7) Fri	(7) Raute	(7) Rajbanshi (Koch)	(7) Rajbanshi (Koch)
(8) Lhopa	(8) Gurung			(8) Satar/Santhal
(9) Marphali Thakali	(9) Hayu			(9) Tajpuria
(10) Siyar	(10) Hyolmo			(10) Tharu
(11) Mugali	(11) Jirel			
(12) Tangbe	(12) Kushbadia			
(13) Thakali	(13) Kusunda			
(14) Thudam	(14) Lepcha			
(15) Tingaunle Thakali	(15) Limbu			
(16) Topkegola	(16) Magar			
(17) Sherpa	(17) Newar			
(18) Wallung	(18) Pari			

(Indigenous Voice, n.d.)

The Nepal Federation of Indigenous Nationalities (NEFIN) has categorized these 59 Indigenous Peoples into five groups based on developmental indicators (e.g. literacy and education, income, wealth, land holding and other assets) (Government of Nepal, 2014):

- *Endangered group:* Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Meche, and Kusbadiya
- *Highly marginalized group:* Majhi, Siyar, Lohmi, Thudam, Dhanuk, Chepang, Satar (Santhal), Jhagad, Thami, Bote, Danuwar and Baramu

- *Marginalized group:* Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbansi, Gangai, Dhimal, Bhote, Darai, Tajpuria, Pahari, Topkeg ola, Dolpo, Phree (Free), Mugal, Larke, Lohpa, Dura, and Walung
- *Disadvantaged group:* Chhairotan, Tangbe, Tinganule Thakali, Bargaule, Marphali Thakali, Gurung, Magar, Rai, Limbu, Sherpa, Yakkha, Chhantyal, Jirel, Byansi, and Yolmo
- *Advanced group:* Newar and Thakali.

Nepal Government uses the term “Adivasi Janajati” in the official [Khas] Nepali language and “indigenous nationalities” in English, and 59 “indigenous nationalities” are legally recognized as Indigenous Peoples as per UNDRIP. As there were demands for inclusion of some left out Indigenous Peoples in the list of 59 Indigenous Peoples, the Nepal government had formed a task force in 2010 to revise the list but the report was not implemented as it became controversial. The Task Force came up with a list of 81 indigenous nationalities (Gurung O. P., *Adivasi Janajati Suchi Parimarjansambandhi Ucchastariya Karyadalle Nepal Sarkar laee Pratibedan* (Report Submitted by the High Level Task Force for Revision of the List of Indigenous Nationalities), 2010). It made the following changes relating to the list of 59 indigenous nationalities as follows:

- Took out *Phree* (Free) and *Chhairotan* as no one claimed about their existence
- Merged the *Bankariyas* with the *Chepangs*
- Renamed some groups (e.g. the *Sunuwar* as the *Kirat Koinch*, and the *Mugali* as the *Mugumpa*)
- The Rais had been retained as the *Kirat Rai* but some of the groups that were within the Rais are now listed as distinct indigenous nationalities, including the *Aathpahariya*, *Kulung and Yamfu*
- The Tharu had been retained but the *Rana Tharu*, which was within the *Tharu*, is now listed as a distinct group
- The newly identified indigenous nationalities that were added to the list include the *Karmarhong*, *Nyisyang*, *Chumba* and *Nimba*
- The Task Force amended the *Dhanuk (Rajbanshi)* to the *Dhanuk* by including all categories of *Dhanuk*, including the “untouchable” caste or *Dalits* and other non-indigenous Hindu caste groups, including *Amat*, *Gond* and *Sonaha*
- Despite heavy political pressure, the Task Force refused to include some other non-indigenous caste groups, including the *Bahuns* and the *Chetris*, on the list
- The list of sub-groups of *Kirant Rai*, *Gurung (Tamu)*, *Tharu*, and *Newar* has also created controversy.

The report’s positive side is that it has refused to name the dominant caste groups as indigenous nationalities and made recommendations to include 12 indigenous groups who were missing from the existing list of 59 indigenous nationalities. However, the downside of this report is that 10 non-indigenous Madhesi, “low” caste and “untouchable” caste group, namely *Amat*, *Kurmi*, *Kewat*, *Kewarat*, *Khadiya*, *Khunaha*, *Gaderia* (*Bhedihar*), *Gond*, *Nishad*, and *Sonaha* have now been recommended for listing as indigenous nationalities, which will increase the pressure to recognize them and, eventually, other remaining caste groups, as indigenous nationalities (Gurung O. P., *Adivasi Janajati Suchi Parimarjansambandhi Ucchastariya Karyadalle Nepal Sarkar laee Pratibedan* (Report Submitted by the High Level Task Force for Revision of the List of Indigenous Nationalities), 2010).

Indigenous nationalities who are listed by law and some who are yet to be listed are Indigenous Peoples, but those who belong to the Hindu caste groups including “Khas Arya”, Madhesi and Dalit and a few Muslims are not Indigenous Peoples. A respondent from the Ministry of Land Reform and Management of the Nepal Government, who filled in the questionnaire on LTR, replied that the Nepal government has recognized ethnic minorities as “indigenous peoples” in the sense of UNDRIP. But this is partially true as some of the 59 indigenous peoples whose population size is low are listed

as minorities along with other minorities belonging to the Hindu caste groups and Muslims. The following information provided in the Indigenous World 2018 will help to clarify it:

“As part of the requirement for local elections, and in accordance with a request from the Electoral Commission of Nepal, on 24 April 2017 the Government of Nepal published a list of 98 minorities to ensure their representation. This included 40 of the 59 indigenous peoples: *Kumal, Gharti/Bhujel, Rajbanshi, Sherpa, Dawar, Majhi, Chepang, Sunuwar, Sattar/Santhal, Jhangad/Dhangar, Gagngai, Thami, Dhimal, Yakkha, Tajpuria, Darai, Pahari, Bhote, Thakali, Chantyal, Hyolmo, Bote, Bragmu-Baramo, Jirel, Dura, Meche, Raji, Dolpi, Byanshi-Sauka, Lepcha, Pattharkatta/Kushbadiya, Kisan, Topkegola, Walung, Hayu, Lhopa, Koche, Lhomi, Raute and Kusunda. It also included 13 yet-to-be-listed indigenous peoples: Kulung, Ghale, Khawas, Nachhiring, Yamfu, Chamling, Aathparya, Bantawa, Thulung, Mewahang Wala, Bahing, Sampang, Khaling, and Loharung*” (IWGIA, 2018).

Some Indigenous Peoples were happy to be included in the list of minorities as it would ensure their representation. Many, including the Nepal Federation of Indigenous Nationalities (NEFIN) with the legal assistance of the Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), do not accept Indigenous Peoples as minority because as a minority, they have no right to self-determination. A Writ Petition was filed in the Supreme Court of Nepal against this decision. The case is ongoing (LAHURNIP, 2017).

6.1.2. Geographical Distribution

Nepal’s Indigenous Peoples are spread out in the Mountain, the Hills and the Terai from the east to the far-western parts of Nepal. Although historic dispossession of ancestral lands has forced many indigenous peoples to migrate in different parts of Nepal in search of livelihood and opportunities, many Indigenous People still have concentrated population in their ancestral lands. However, Indigenous Peoples are outnumbered by those people who have migrated and settled in the ancestral lands of Indigenous Peoples.

About the ancestral lands of those Indigenous Peoples whose population size is big, the Yakthung Laze, at present, known as Limbuan of the Yakthumba or Limbu is in the eastern Hills (Taplejung, Panthar, and Terathum districts) of Nepal with cross-border relations in Darjeeling and Sikkim of North-East India. The Khambuwan which is the ancestral land of the Khambu, known as Rais, is in the eastern Hills (Dhankutta, Sankhuwasahba, Bhojpur, Khotang and Solukhumbu Districts) of Nepal. The Khambu or Rai speak more than 38 mother tongues and each of these linguistic groups claim to be a separate indigenous peoples including Bahing, Bantawa, Chamling, Kulung, Koyu, Loharung and Thulung. The ancestral land of the Tamang or Murmi is the Tamsaling which is located around the Kathmandu Valley (Sindhulli, Kabhre, Sindhupalchok, Rasuwa, Nuwakot, Dhading and Makawanppur Districts). The ancestral land of the Newar is the Nepal Mandala in Kathmandu and adjoining areas of the Kathmandu Valley (Kathmandu, Lalitpur, Bhaktapur districts and parts of Kavre district). Ancestral land of the Tamu or Gurung is the Tamuwani in the western Hills of Nepal (Lamjung, Kaski, Syanja, Gorkha and Tanahu Districts). Ancestral land of the Magars is the Magarat in the mid-western and western Hills (Tanahun, Myagdi, Palpa, Baglung, Pyutan and Rolpa districts) of Nepal. Ancestral lands of the Tharus are the Tharuhat in the southern plains (Dang, Banke, Bardiya, Kailali and Kanchanpur Districts) of mid-western and far-western Nepal. Their ancestral land is the Tahruhat or Tharuwan in the Terai region of Nepal. The Rautes are the only nomads located on the far- and mid-western Hill and Terai of Nepal.

The first, second and third most populated districts for each of the 59 Indigenous Peoples are shown in Table 6.3. (See also Map 1 and Map 2).

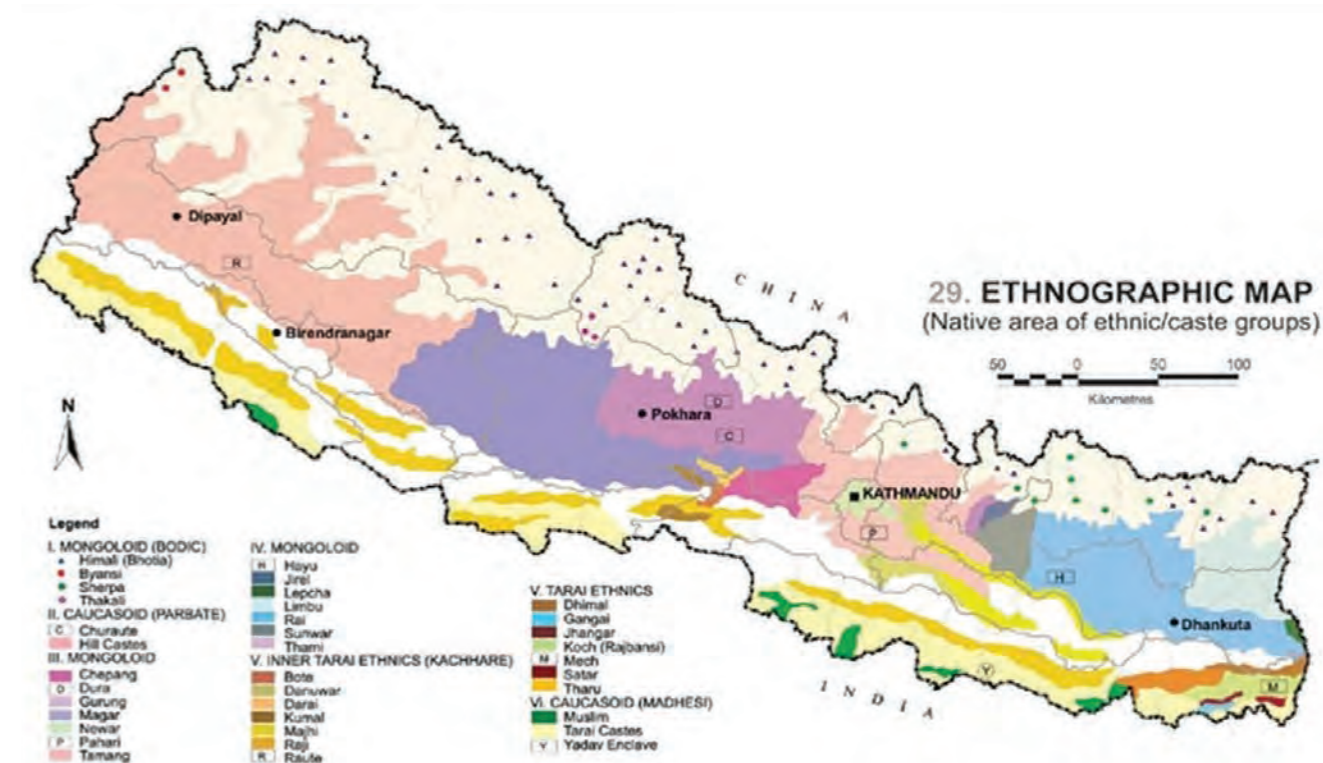
Table 6.3: First, second and third most populated districts for each of the 59 Indigenous Peoples (Census of 2011)

Indigenous Nationalities	First Most Populated Districts	Second Most Populated Districts	Third Most Populated Districts	Major concentration
1. Magar	Tanahun, Myagdi, Palpa, Baglung, Nawalparasi, Pyutan, Rolpa	Saptari, Syangja, Rukum, Salyan, Surkhet	Udayapur, Sindhuli, Rolpa, Mustang, Parbat, Gulmi, Dang, Arghakhanchi	
2. Tharu	Sunsari, Dang, Bardiya, Kailali	Bara, Parsa, Chitwan, Rupandehi, Kapilbastu, Banke, Saptari, Kanchanpur	Morang, Nawalparasi	
3. Tamang	Sindhulli, Kabhre, Sindhupalchok, Rasuwa, Nuwakot, Dhading, Makawanppur	Ramechhap, Dolakha	Sankhuwasabha, Bhojppur, Manang	
4. Newar	Kathmandu, Lalitpur, Bhaktapur	-	Ramechhap, Sindhuli	
5. Rai	Ilam, Dhankutta, Sankhuwasahba, Bhojpur, Khotang Solukhumbu	Panchthar, Okhaldhunga, Udayapur	-	
6. Gurung	Gorkha, Lamjung, Manang, Mustang	Kaski, Dolpa	Rasuwa, Tanahun	
7. Limbu	Taplejung, Panthar, Terathum		Ilam, Dhankutta	
8. Dhanuk		Solukhumbu, Manang	Humla	Saptari, Siraha, Dhanusa, Mahottari
9. Sherpa				Kathmandu, Solukhumbu, Sindhupalchowk
10. Bhujel			Jhapa	Morang, Tanahun
11. Kumal				Nawalparashi, Gorkha, Chitawan, Gulmi, Tanahun, Dang
12. Rajbansi				Jhapa, Morang, Sunsari
13. Sunuwar				Dhanusa, Sindhuli, Ramechhap, Bara, Mahottari,
14. Majhi				Morang, Sindhuli, Ramechhap, Sarlahi, Sindhupalchowk
15. Danuwar				Sindhuli, Udayapur, Siraha
16. Chepang				Chittawan, Makawanpur, Dhading, Gorkha
17. Satar/ Santhal				Jhapa, Morang, Dhanusa

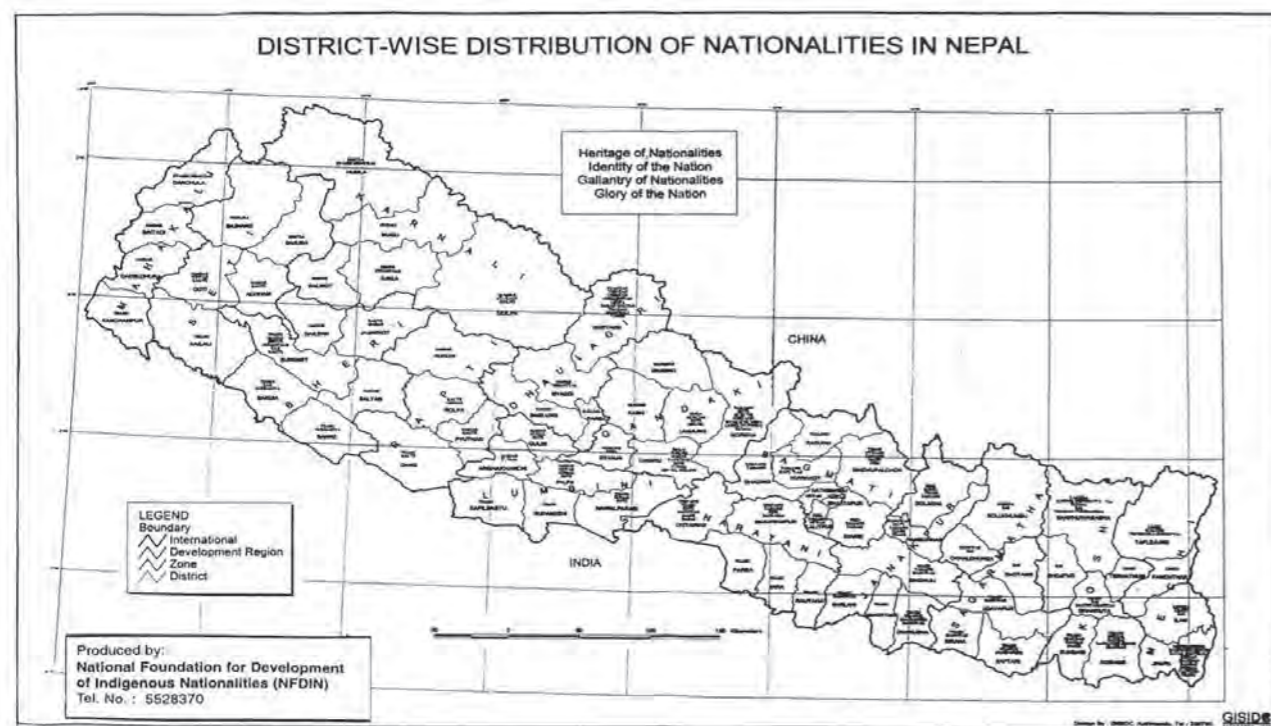
Indigenous Nationalities	First Most Populated Districts	Second Most Populated Districts	Third Most Populated Districts	Major concentration
18. Jhagar/Dhangar				Sunsari, Jhapa, Morang
19. Ganagai				Jhapa, Morang
20. Thami				Dolakha, Ramechhap, Sindhupalchowk
21. Dhimal				Jhapa, Morang
22. Bhote				Sankhuwashabha
23. Yakkha				Sankhuwashabha, Morang, Dhankuta, Ilam
24. Darai				Chitawan, Tanahun, Nawalparasi
25. Tajpuria				Jhapa, Morang
26. Thakali				Mustang, Kaski
27. Pahari				Kathmandu, Myagdi, Rupandehi
28. Chhantel				Myagdi, Baglung, Gulmi
29. Bote				Chitawan, Tanahun, Nawalparasi
30. Baramu				Gorkha, Dhading
31. Jirel				Dolakha
32. Dura				Lamjung
33. Meche				Jhapa, Sunshari
34. Lepcha				Ilam
35. Kisan				Jhapa
36. Raji				Surkhet, Bardiya, Kailali
37. Byasi				Darchula
38. Hayu				Sindhuli, Ramechhap
39. Walung				Taplejung, Morang, Kathmandu
40. Raute				Dandeldhura, Doti, Surkhet, Jajarkot
41. Hyolmo				Ilam, Kathmandu, Sindhupalchok
42. Kusbadiya (Pattharkatta)				Kapilwastu, Banke
43. Kusunda				Pyuthan, Dang, Tanahun
Indigenous Peoples' groups missed in the Census of 2001				
44. Dolpo	-	-	-	Dolpa
45. Lhopa	-	-	-	Mustang
46. Siyar	-	-	-	Dhading
47. Baragaunle	-	-	-	Mustang
48. Teengaunle Thakali	-	-	-	Mustang

Indigenous Nationalities	First Most Populated Districts	Second Most Populated Districts	Third Most Populated Districts	Major concentration
49. Marphalee Thakali	-	-	-	Mustang
50. Chhairotan	-	-	-	Mustang
51. Tangbe	-	-	-	Mustang
52. Larke	-	-	-	Gorkha
53. Mugali	-	-	-	Mugu
54. Thudam	-	-	-	Taplejung
55. Topkegola	-	-	-	Taplejung
56. Lhomi	-	-	-	Sankhuwasabha
57. Phree (Free)	-	-	-	Lalitpur, Kavrepalanchowk, Makawanpur, Sindhupalchowk
58. Bankariya	-	-	-	Makawanpur
59. Surel	-	-	-	Dolkaha

(Bhattachan K. B., Country Technical Notes on Indigenous Peoples' Issues Federal Democratic Republic of Nepal, 2012)



Map 1: Ethnographic Map of Nepal



Map 2: Distribution of Nationalities in Nepal.

6.2. Area of Lands Controlled and Legally Owned by Indigenous Peoples, and of Lands Claimed by the State or Private Actors

The total area of Nepal is 147,181 sq. km. It is difficult to collect the data of area of land controlled and land legally owned by the Indigenous Peoples, and land claimed by the State or private actors because they are not available. Nevertheless, as Indigenous Peoples have close relations with forests and resources, some estimation could be made based on available data on different types of forests.

As most of the ancestral lands of Indigenous Peoples are in the following six categories of Protected Areas and Forests that were dispossessed by the State, the following data is a good indicator of indigenous land not just claimed but owned by the State. According to Hari Bhadra Acharya, land area covered by the six types of Protected Areas and Forests are as follows:

1. 20 Protected Areas (PA) which includes 10 National Parks, 3 Wildlife Reserves, 6 Conservation Areas and a Hunting Reserve. Buffer Zones are declared in 12 protected areas with a total area of 34,193 sq. km. (23.23%)
2. Community Forest of 18,133 Community Forest User's Groups (CFUGs) with a total area of 17,000 sq. km.
3. Leasehold Forest of 7,413 households with a total area of 427.73 sq. km.
4. Protection Forest with a total area of 1,337.55 sq. km.
5. Collaborative Forest with a total area of 226.06 sq. km.
6. Corridor and Connectivity where three corridors are identified as important for mobility of *mega fauna* (Acharya, 2014).

Indigenous Peoples have become “strangers” or “refugees” in their own ancestral lands. For example, Bankaria Indigenous Peoples, whose population is 81 now, are using their own ancestral land that is, at present, under the Parsa National Park as a lease for 20 years since 2003. In community forests and collaborative forests, the community forest user's groups and the collaborative forest committees are controlled by Non-indigenous Peoples, especially the dominant caste group, i.e. *Bahun-Chhetri*, who make all of its decisions that often limit the customary rights of indigenous peoples (Battachan & Hatelbakk, 2005).

Data of percentage compared to the total country area is not available.

6.3. Legal Status of the Indigenous Peoples

Nepal's international commitment is very strong in Asia as Nepal had voted Yes for adoption of UNDRIP on 14 September 2007 and Nepal is the only country in Asia and second in the Asia Pacific after Fiji that has ratified the ILO Convention no. 169 which went in force in 13 September 2008 as part of the peace process ending ten years (1996-2006) of armed insurgency in Nepal. According to Article 9 of the treaty Act, 1990, “Treaty Provisions Enforceable as good as Laws: (1) In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent 5 provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. (2) Any treaty which has not been ratified, accede to, accepted or approved by the Parliament, though to which Nepal or Government of Nepal is a party, imposes any additional obligation or burden upon Nepal, or Government of Nepal, and in case legal arrangements need to be made for its enforcement, Government of Nepal shall initiate action as soon as possible to enact laws for its enforcement” (Government of Nepal, 1990).



6.4. Laws and Policies on Indigenous Land Rights

6.4.1. National Laws and Policies Recognizing Indigenous Peoples LTR Rights

Historically, the *King Prithvi Narayan Shah*, who had territorially integrated Nepal as a part of the Gorkha expansion and as a part of colonization of Indigenous Peoples had agreed to give autonomy and self-rule to the *Limbu* of the Eastern Nepal in a decree. An eminent economic historian Mahesh Chandra Regmi has quoted from the decree issued by *King Prithvi Narayan Shah*: “Although we have conquered your country by dint of our valor, we have afforded you and your kinsmen protection. We hereby pardon all of your crimes, and confirm all the customs and traditions, rights and privileges of your country. Enjoy the land from generation to generation, as long as it remains in existence. In case we confiscate your lands, may our ancestral gods destroy our kingdom”, (Regmi, Land Tenure and Taxation in Nepal, 1965) Regmi has analyzed in detail the land tenure system in the past that had have tremendous negative consequences to indigenous peoples of Nepal. He has clearly shown that since the territorial integration of Nepal in 1769, rulers misused *Birta* (land granted to the Brahmins only), *Jagir* (land, instead of cash, granted to army personnel) and *Rakam* land tenure systems to give away Indigenous Peoples’ lands and resources to the ruling Bahun and *Chetri* caste groups. Although Indigenous Peoples’ lands, territories and resources were recognized by the *Shah* and *Rana* rulers of the past in the form of *Kipat* land tenure system¹⁵, but it was the *Limbu* who enjoyed it until 1963 but after 1963 they too lost its ownership and control with the implementation of land reform system that permitted to transfer *Kipat* land into the *Raikar* (State owned, leased to individual) land (Regmi, Land Tenure and Land Taxation in Nepal: Religious and Charitable Land Endowments, 1978).

Lionel Caplan, in his study on land and social change in east Nepal with focus on Hindu-Tribal interface, more specifically the cleavage between *Limbus* and *Brahmans*, had analyzed government land policy in during the time of his field work in 1960s, has written: “By confirming the rights of *Limbus* to hold land under *Kipat* tenure, the government by no means abrogated its own privilege to determine the course of events in its easternmost region. Following the incorporation of Limbuan into the kingdom, the policy which came to be followed by successive administrations in Kathmandu was double-edged. On the one hand, they sought to placate the *Limbus*, ever jealous of their rights, by providing safeguards of their lands. On the other hand, they lost no opportunity to reduce the area under *kipat* tenure and at the same time convert these lands to *raikar* tenure. The results of this policy are evident in *Ilam*. In the district today, only 39.7 percent of irrigated lands (*khet*) are under *kipat* tenure, with the remaining 60.3 percent under *raikar* tenure. In the *Ilam-Darda* subdivision of the district, the figures are 40.5 percent under *Kipat* and 59.5 percent under *Raikar*” (Caplan, 1970).

¹⁵ Kipat is practiced by Daras in Humla and Limbus and Rais in east. Thus lands of Barah and Paanch Gaun owned and used in traditionally by people dwelling in that area. It is lands which is not demarcated. The Section 2.2a of Land Reform Act, 1964 defines “in the case of Kipat, a person who possesses such land on payment of government revenue in accordance with the customs, traditions and practices or a person who possesses such land on making payment of revenue to such person”. The Kipat Lands are customary lands and administered accordingly. It is traditional lands of Indigenous Peoples which was legally recognized prior to 1964 and existing laws are silent in term of recognizing Kipat Lands.

Caplan analyzes how Brahman manipulated government land policy and has mentioned Brahman ‘treachery’ as told by *Limbu* informants. He quotes a rhyme said by a *Limbu* informant relating to such treachery:

“Tip of the sugar-cane, root of the radish,
Keeping a servant is the ruin of a house.
Left in the barn he drinks the cream,
Left in the home, he takes your spouse.” (Caplan, 1970)

The LTR policies of the State in the past still haunt Indigenous Peoples living at present as they are struggling to reclaim their LTR.

The respondent from the Ministry of Land Reform and Management has mentioned that there is no law entitling indigenous peoples LTR in Nepal. There is indeed no national (before 2015) or federal, provincial and local laws and policies that recognize Indigenous Peoples LTR rights in Nepal although Nepal is a State party to ILO Convention no. 169 and has adopted UNDRIP, both, in 2007. Nepal, as a State party to ILO Convention no. 169, is obliged to domesticate it in its national or federal, provincial and local laws and policies but have failed to do so. Nepal has international legal obligation to meaningfully implement ILO Convention no. 169, UNDRIP, WCIP 2014 and other number of international commitments relating to Indigenous Peoples of Nepal but Nepal’s constitution, existing laws and draft acts, policies, plans, and programs are not in line with these international laws and commitments. Nepal Government’s relevant 10 Ministries had prepared a National Plan of Action for implementation of ILO Convention no. 169 in 2009 but it is gathering dust as the Council of Ministers (Cabinet) never passed it (Gurung O. , 2009). The 2015 Constitution of Nepal is a racist constitution that defines *Khas Aryan* racial group but does not define Indigenous Peoples/nationalities like *Dalit*, *Madhesi*, and *Muslim*, and maintain supremacy of the *Khas Arya*.

Forests are defined as national and private forests. The national forest is further classified as community, leasehold, religious, government managed, and protected forests. 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. The newly enacted laws and draft laws in progress based on the Constitution of Nepal 2015 also do not recognize Indigenous Peoples LTR and no FPIC procedure was in place during the making of the constitution and drafting of amendment or new laws and its enactment.

According to Nanda Kandangwa, national laws and policies are against territorial customary land of Indigenous Peoples/ancestral domain of Indigenous Peoples as the rulers have adopted the doctrine of *terra nullius*, encroachment and control over Indigenous Peoples lands by using fictive kinship such as Meet, land tenure systems such as *Birta*, and lack of knowledge of land registration by individual (Kandangwa, 2017).

Concerning policies of the state, in Article 51 of the Constitution of Nepal 2015, the State shall pursue 13 policies including policies relating to protection, promotion and use of natural resources. In Article 51 (g) policies relating to conservation, management and use of natural resources are as follows:

- The State shall pursue a policy of conserving the natural resources available in the country by imbibing the norms of intergeneration judicious use of it and for the national interest. It shall also be about its sustainable use in an environmental friendly way. The policy shall ensure the fair distribution of the benefits generated by it by giving local people the priority and preferential rights.
- The State shall pursue a policy of prioritizing national investment in water resources based on people’s participation and making a multi utility development of water resources.

- The State shall pursue a policy of developing and producing renewable energy, ensuring cheap, easily available and dependable supply of energy, and making an appropriate use of it to meet the basic needs of the citizens.
- Developing a sustainable and dependable irrigation system by controlling water-related natural disasters with the management of the river systems.
- The State shall pursue a policy of making a sustainable use of biodiversity through the conservation and management of forests, fauna and flora, and by minimizing the negative impacts of industrialization and physical development by promoting public awareness on environmental cleanliness and protection.
- The State shall pursue a policy of keeping necessary landmass as forest area in order to strike an environmental balance.
- The State shall pursue a policy of adopting appropriate ways of minimizing or stopping negative effects on environment if it is there, or if there is a possibility of such an impact on nature, environment, or biodiversity.
- The State shall formulate policies and enact laws on the basis of the principle of sustainable environment development based on pre-warning and pre-informed agreements regarding environmental protection.
- The State shall formulate and pursue a policy of designing a pre-warning system, disaster preparedness, rescue, relief works and rehabilitation in order to minimize the risks of natural disasters (Government of Nepal, 2015).

Dananjaya Lamichhane, the Under-Secretary of the Ministry of Forest and Soil Conservation has analyzed policy status of Forestry Sector Gender and Social Inclusion Strategy of 2008, Herbs and Non-Timber Forest Products Development Policy of 2004, National Rangeland Policy of 2012, National Forest Policy of 2015, National Biodiversity Strategy and Action Plan of 2014-2020 and the Fourteenth Plan (2073/74-75/76) Approach Paper of 2073. Concerning implementation of these policies, he writes, “Community-based forest management programs, including community forestry, leasehold forestry, and collaborative forestry have been substantially contributing to the livelihoods of many indigenous and backward communities by providing forest-based products, generating income and employment” (Lamichhane, 2017).

There are policies on LTR which are listed as follows:

“The Ministry of Forest and Soil Conservation (MoFSC) has developed policies on forest. These are: (i) National Biodiversity Strategy and Action Plan, 2014-2020, (ii) National Forest Policy, 2015, (iii) National Wetlands Policy, 2013, (iv) National Rangeland Policy, 2012, (v) Forestry Sector Gender and Social Inclusion Strategy, 2008, and (v) Herbs and Non-Timber Forest Products Development Policy, 2004 (for detail cf. a paper by Dhananjaya Lamichhane). Also, the Ministry of Energy (MoE) has developed energy policies. These are: (i) the Hydropower Development Policy, 2001, (ii) National Water Plan, and (iii) Water resources strategy.” (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017)

- “Policies on land that are enforced are the Land Related Act, 2021, Land Related Regulation, 2021, Land (Naap Janch) Act, 2019, Act, 2034, Land Acquisition Regulation, 2026, Land Acquisition Regulation, 2016, Malpot Act. 2034, Malpot Regulation, 2036.
- Other policies related to natural resources that are enforce are Compensation Act, 2019, Public Road Act, 2031, Consumer Protection Act, 2054, Local Autonomous Rule Act, 2055, Local Autonomous Rule Regulation, 2056, and provisions of natural resources in the Constitution of Nepal, 2015” (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017).

- Policies on environment that are enforce are the Environment Protection Act, 2053, Environment Protection Regulation, 2054, National Wetland Policy, 2059, Land and Watershed Protection Act, 2039, Jalchar Thek Niyam, 2019, Jalchar Samrachyan Ain, 2017, Natural Disaster Relief Act, 2039, National Nature Protection Fund Act, 2039, and Ancient Monument Protection Act, 2013 (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017).



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6.4.2. Limitations and Contradictions of these Laws and policies

Dhananjaya Lammichane has stated several limitations or gaps or problems in implementation of the existing forest policies. These are:

- Despite some achievements, there are still several gaps between words and actions, for example, supporting local communities and Indigenous Peoples against poverty and marginalization by promoting greater national commitment and action towards policy, legal and institutional reforms that secure their rights to own, control and benefit from natural resources, especially forests.
- There is also a substantial gap in framing policies and their effective implementation by making necessary laws to realize the policies and international commitments.
- Institutional/organizational gaps are prevalent such as lack of regular meetings of various steering committee, coordination committee and implementation committee mainly due to lack of financial and human resources or them.
- Monitoring and evaluation is not very objective to assess the effectiveness of policies, programs and activities and consistencies among them.
- “Scattered, small and patchy programs are not reaping the fruits of development activities as desired” (Lamichhane, 2017).

Thus, laws and policies are marred with limitation and contradictions. Ratification of ILO convention no. 169 does not mean its domestication in national or federal, provincial and local laws and policies. Enactment of the Treaty Law with provisions nullify national laws in case it contradicts with international law but in practice no existing law has been changed or revised in line with ILO Convention no. 169, UNDRIP and other international laws and commitment. Handing out the forest to a community according to the Forest Act doesn't change the ownership of the land, which remains to the state.

With regards to limitation in the laws, LAHURNIP responded, LAHURNIP's response to a survey states that the National laws and policies protects individual land rights but not the collective lands rights of Indigenous Peoples. It added that the lack of explicit national legal framework regarding protection of Indigenous People's collective lands rights Indigenous Peoples cannot enjoy rights over lands and territories. These led to encroachment of their lands in the name of development and extraction of natural resources by the State and private sectors. Relating to contradiction in laws, LAHURNIP further responded that Nepal is party to and signatory of the ILO Convention 169 and the UNDRIP of which the State has to implement the provisions of those legal instruments but due to incompatible national legal framework it is difficult to implement them. Thus, many legal provisions are contradictory to the provisions of the ILO Convention 169 and UNDRIP.

On the other hand, the National Indigenous Women's Federation (NIWF) in Nepal responded that the Indigenous Customary laws have not been accepted by the government which is considered as a limitation and a gap in the policies of the Nepal Government.

6.4.3. Implementation Success and Problems of These Laws and Policies

Om Gurung in his doctoral dissertation on Customary Systems of Natural Resource Management among Tarami Magars of Western Nepal, by studying local historical knowledge and state documents discovered in the village, has argued that the emergence of the state of Nepal in the eighteenth century, political centralization in the later decades of the nineteenth century and then the devolution of administrative and judicial powers to local rulers in the early twentieth century was characterized by increased state appropriation and thus degradation of local resources. He has shown that the historical encouragement of in-migration to areas like *Tara Khola* during the *Rana* and post-*Rana* periods and political transformations in recent decades led population growth placing higher demand on local resource and these events had two major effects; (1) local systems of resources management were disrupted, and (2) exploitation and consumption of local resources increased. He concluded that the customary systems of Tarami Magars can effectively manage and sustain local resources and distribute them equally (Gurung O. P., Customary Systems of Natural Resource Management among Tarand Magars of Western Nepal, 1996).

In the present context, with regards to some examples of successes met by communities when they tried to implement the rights provided by these laws, LAHURNIP stated:

“Though national legal frameworks are not in favor of the indigenous peoples and contradictory to the ILO Convention No 169 and UNDRIP, the Indigenous Peoples have been constantly struggling to insure their rights on de-facto basis at the community level. For instance, the road expansion project massively affects the indigenous *Newars* of Kathmandu valley. If the project is implemented fully, approximately 150,000 individuals will be displaced and affected directly. Apart from it, the project also has adverse impact to their sacred sites, cultural heritages etc. No consultations had been made and no consent from the communities were taken prior and during the implementation of the

project. However, in 2017 the full bench of the Supreme Court has issued verdicts in favor of Indigenous Peoples indicating consultations to the communities, consent of the affected communities and justifiable compensations to their land and properties etc. But the government has approached to the court for judicial review of the decision. Now, the hearing process in the extended full bench is going on.”

On the implementation of policies stated in the 2015 Constitution of Nepal, its policies on natural resources, forest and water were drafted and finalized without conducting free, prior and informed consent (FPIC) of Indigenous Peoples. Also, the constitution was promulgated amidst controversy showing barrels of gun and strong protests from the *Madhesi* and indigenous peoples including the *Tharus*. It has not been implemented yet except in the formation of Council of Ministers, election of President, Vice President, Speaker and Deputy Speakers of the House and appointment of Supreme Court Justices and ambassadors. A commission is working on making recommendation for restructuring of local bodies and the main political parties are debating on the need of electing local bodies.

As the Article 52 of the constitution states, “Obligations of the State: It shall be the obligation of the State to make Nepal a prosperous and affluent country by protecting and promoting fundamental rights and human rights, pursuing directive principles of the State and 44 gradually implementing policies of the State, while keeping intact the freedom, sovereignty, territorial integrity and independence of Nepal” and Article 55 clearly states, “No question shall be raised in any court as to whether any matter contained in this Part has been implemented or not” (Government of Nepal, 2015). It is hard to believe that any of these nine policies would ever be implemented effectively, whatever policies of the state are stated in the constitution. The makers of the constitution have no intention of implementing it and they have got immunity for doing so. As these policies on natural resources are interconnected with other constitutional provisions, including the structure of the state, such policies would not be fair and just as per international standards of human rights as long as the existing constitution is not rewritten complying with international laws that Nepal is a party to (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017).

There is also poor implementation of other policies as there is no compliance of UNDRIP and ILO Convention No. 169 in Nepal government's policies related to forest, water and other resources. All existing policies that are predatory to and/or against Indigenous Peoples' human rights regarding forest, water and other resources are fully implemented but there is indeed no policy that has been formulated to fully, effectively and meaningfully implement UNDRIP and ILO Convention No. 169. In Nepal, most of the aggressive development works are done by Nepal Government with financial and technical support from various bilateral and multilateral aid agencies but both are not serious about its implementation (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017). For example, talking about implementation of World bank's policies on indigenous peoples, it was reported in a news article that “There was often no intent on the part of the governments to comply — and there was often no intent on the part of the Bank's management to enforce,” said Navin Rai, a former World Bank official who oversaw the Bank's protections for Indigenous Peoples from 2000 to 2012. “That was how the game was played” (Chavkin, 2015).

6.5. Challenges

6.5.1. National Laws and Policies Violating the Land Rights of Indigenous Peoples or Criminalizing the Exercise of These Rights

Concerning Indigenous Peoples and forest policies, Dhananjaya Lamichhane has identified some challenges, these are as follows:

- Unstable political situation and lingered socio-political and economic transition in the country have become the main challenges for effective implementation of existing policies, rules and regulations regarding the rights of Indigenous Peoples.
- Many development activities have been superseded by the political agendas such as delayed Constitution making process, conflict resolution and peace process so that root causes of rural poverty could not be prioritized and addressed.
- Policies are not supplemented by necessary legal, institutional and administrative arrangements.
- International commitments and obligations needs to be complied with adequate national instruments such as ratification, law-making and preparing for their implementation mechanism.
- Need to supporting the Indigenous Peoples and local communities in forests and other rural areas, helping them to secure and realize the rights to own, control, and benefit from the natural resources they have depended on for generations (Lamichhane, 2017).

According to LAHURNIP, threatening, arrests, and criminalization are major threats to such initiatives. Apart from that, divide and rule and pressures by political parties, security forces and private sectors are also taking place at the project sites. While NIWF response to the survey, stated that the Nepal Government is in the process of amending policies and laws where Indigenous People's particularly women were not included in the consultation process. At the same time, they were not also included in the 5-year planning which is a threat to the legal recognition of Indigenous Peoples.

“We [Nepal Government] never formulated development policy with due concern on relationship of Raute with forest, of Manage and Marwadi with trade, of Gurung, Bhote and Sherpa with lamb, yak and pasture, of Sherpa with the Himalaya, of Majhi with water” (Dahal L., 2017).

Dahal has noted a challenge thus: “Adopt special measure based on the principle of compensation by establishing the lost rights of the Indigenous Peoples and there is a challenge to incorporate and implement Articles 13 to Article 19 under the title Part 2 Lands of the ILO Convention of 1989 No. 169 in the national laws”. He has noted another challenge thus: “Nepal's constitution has a policy to implement international treaties and agreements that Nepal is a party to. ILO Convention of 1989 (no. 160) has been ratified. But, till now, its implementation status is almost none. Those provisions are not incorporated in the laws. Whereas the Convention has stated that plenty of working procedures will be ensured in the national legal system. Displacement of Indigenous Peoples is increasing due to development works. Development concept has exerted too much pressure”¹⁶ (Dahal L., 2017).

The Indigenous Women Legal Awareness Group (INOWLAG) of Nepal mentioned three threats to indigenous people's initiatives. These are criminalization, government pressure and caste discrimination.

Bhattachan has listed the following challenges:

- Elimination of Bahunbad (“Brahmanism”)
- Effective and meaningful implementation of UNDRIP and ILO C. No. 169
- Generate political and bureaucratic commitment to revise existing and emerging policies to make it compatible with UNDRIP and ILO C. No. 169
- Full, effective, meaningful participation of Indigenous Peoples in policy formulation and implementation
- Establish FPIC mechanism
- Mention of Indigenous Peoples in all policy documents
- Focus and priority on traditional livelihood of indigenous peoples
- Focus on collective rights-based approach
- Treat Indigenous Peoples as stakeholders and local community members than the rights holders
- Constitutional and legal recognition of customary laws and institutions of indigenous peoples
- Putting Indigenous Peoples at the center
- Equitable benefit sharing
- Identity of indigenous women (Bhattachan K. B., Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities, 2017)

6.5.2. Draft Laws and Policies Threatening Indigenous Peoples Land Rights

The deadline to amend Nepal laws that are contradictory to the constitution by the Federal Parliament is on 5 March 2019. The Parliament has passed the Bill to some Nepal Laws in line with the Constitution on 12 February 2019. The amendments included 109 laws. These include the National Park and Wildlife Conservation Act, Public Road Act, National Nature Conservation Trust Act, National Electricity Authority Act, National Foundation for Development of Indigenous Nationalities Act, Indigenous Nationalities Commission Act, the Tharu Commission Act, National Social Inclusion Commission Act, and local administration Act. The passed Act has not been made public in the website of the Federal Parliament. The tabled bill, Article 29, relating to the Public Road Act is a threat to the Indigenous Peoples as they will be the one directly affected with the development in the Public Road Act categorized as the national highway, province highway, local road, rural road, urban road, agriculture road, and other road as designated (Public Roads Act, 2031 (1974), 1974). As the road expansion project in the Kathmandu Valley is destroying ancestral lands of the Newar Indigenous Peoples, including their collective way of life, house, community, cultural heritage, sacred sites etc., the new categories of roads are sure to destroy ancestral lands of Indigenous Peoples in all parts of Nepal.

A bill on Speedy Construction and Development of National Priority Projects was registered at the Federal House of Representatives on 12 March 2019 and it is under discussion.¹⁷ Article 1 of this bill defines the national priority projects as (a) roads that is at least 50 km. long two lane road or at least 25 km. long four lane road or at least 2 km. long tunnel road, (b) airport, (c) electricity power plant of at least 200 megawatt, (d) high tension electricity transmission line of more than 220 KV, railway line of at least 100 km long or at least 5 km long tunnel rail way, irrigation project of more than 20,000 hectare of land, (f) drinking water project with supply capacity of more than 1 billion liter of water every day, and (g) any state of the art project. What is problematic about this bill is its section 5 on land acquisition and

¹⁶ Translation from Khas Nepal to English mine.

¹⁷ <http://hr.parliament.gov.np/uploads/attachments/bsdtqpefkuztfwli.pdf>

environment where it allows the project office to acquire land through public meeting, dialogue with the land owner for acquisition and resettlement of rehabilitation. Article 25 states that land can be acquired even if the land owner refuses to take compensation and Article 28 gives rights of way to such projects. The bill is indeed a response for the government to litigation by the victims, with the help of LAHURNIP, of road expansion, hydropower and high-tension electricity projects. This Bill is not in line with ILO Convention no. 168 and UNDRIP. No consultation was done or FPIC taken with Indigenous Peoples in drafting and passing of this bill.

Further, in the National Indigenous Commission Act and Tharu Commission Act, the amendment is from “giving necessary directives” to “make necessary recommendations or give advice to Nepal Government for implementation”. It means both the Commissions’ power has been curtailed making the Commissions powerless.¹⁸

So far, the National Foundation for Development of Indigenous Nationalities in 2002 has a power to revise the list of 59 Indigenous Peoples. There is a danger that the National Indigenous Commission may come up with a definition and identification of Indigenous Peoples with malicious intention of including the Khas Arya as Indigenous Peoples of Nepal, as they have been trying to do so. In many amended laws, there are provisions for representation but none for indigenous peoples.

In brief, these amendments were not done in consultation with and representation of Indigenous Peoples through their customary processes, and also by not having FPIC of Indigenous Peoples. All these amendments and laws contradict with UNDRIP and other international laws including ILO Convention no. 169, Convention on Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and cultural Rights, and also with WCIP Outcome document of 2014.

LAHURNIP response to a survey about current laws and policies threatening indigenous legal recognition and LTR rights states that the Constitution and laws related to land, national parks and protected areas apparently threatens the Indigenous People’s LTR rights. Where there is no space for Indigenous Peoples in consultation, FPIC. The organization further states that the ambiguities in the 2015 Constitution threatens the legal recognition of indigenous peoples in Nepal like several terms used in the constitution without explicit definition for Indigenous Peoples such as indigenous, indigenous nationalities, minorities whereas the Khas Aryas is apparently defined; further the State has listed 40 Indigenous Peoples groups as minorities. Lastly, it added that mainly the laws pertaining to hydropower development has given no recognition to the indigenous peoples. However, these laws mention about the local communities which are not sufficient in protecting and promoting rights of Indigenous Peoples, and are contradictory to the provisions of Convention No. 69 and UNDRIP per se.

¹⁸ See laws to be in line with the constitution at <http://hr.parliament.gov.np/uploads/attachments/igvmi0cit7davzvt.pdf>
See some amendments in existing laws at <http://hr.parliament.gov.np/uploads/attachments/vshazkmupmjerkkk.pdf>
See land use laws at <http://hr.parliament.gov.np/uploads/attachments/ajmcsmiowycnteed.pdf>

6.6. Good practices

6.6.1. Initiatives of the Indigenous peoples to Assert Their Land Rights and Their Success

Initiatives of the Indigenous Peoples to assert their land rights used to be at the national level through Indigenous Peoples’ movement led by NEFIN and various other Indigenous Peoples movements and/or organizations. But, there was no significant Indigenous Peoples’ land rights movement emerging from the grassroots or community or local level. Soon after the promulgation of the racist constitution of Nepal in 2015, Indigenous Peoples’ land rights movement slowly emerging from the local community level.



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Janak Rai, who has studied the Dhimal Indigenous movement for his doctoral dissertation, interviewed a Dhimal farmer from Morang who stated that there are many reasons for not having ownership of land in the past when land came under the State’s ownership. The farmer went on to say that it was too much of hardship/suffering to keep the land under one’s name or ownership (*ekdam dupkha jamin rakhna àphno nammà*). At that time, there were fewer people, but land was plentiful. For example, you have land but no people to plow your farm. This would drown you. So, what do you do? You need to find and please people to plow your farm by offering them money in advance, a place to live, cattle to herd, and so many other things. You need to take care of these people more than your own children. And then there was this problem. People could not sell their crops in the market. There were no demands for crops in the market. People could not pay the land tax, and then their lands were taken by Jimādār and Pañwārā and given to others.¹⁹ Not that the land tax was high. But where would people get money? There was a shortage of money (cash). They could not even sell their crops. There were few traders (Indians) who used to come to Rangeli [now a town located in the southern part of Morang, bordering with India, former district headquarters of Morang]. Not all of them could take their crops there to sell. Not many people knew how to make connections with these traders. It was so much trouble (*dherai jhan^jhañ thiyo*)” (Rai J., 2015).

¹⁹ A *Jimādār* was a local functionary entrusted with the responsibility of collecting revenues at the level of a *moujà* – the lowest revenue collection unit that included a village or many settlements in the state land (raikar). A *Pañwārā* was the village functionary appointed by the state to assist the *Jimādār* in collecting land taxes and maintaining records and accounts (see Regmi 1978: 132–139).

Concerning Indigenous Peoples' assertion of LTR, it was heightened during the making of the Constitution by the first Constituent Assembly in 2008-2012. It was decided unanimously that restricted use of the State would be done by using identity as the primary and viability as the secondary criteria. Hence, the State Restructuring and State power Division Committee of the Constituent Assembly recommended to form 14 identity (ethnic/community, linguistic, cultural, geographical/regional continuity, and historical continuity) based provinces, including Indigenous Peoples' seven identity based provinces, namely, Limbuwan, Kirata, Sherpa, Tamsaling, Newa, Tamuwan, Magarat, and (Lumbini-Awadh-) Tharuwan, along with 23 autonomous regions, all are of the Indigenous Peoples, namely Kochila, Jhangad/Urau, Dhimal, Meche, Santhal, Lepche, Yakkha, Chepang, Dura, Kumal, Danuwar, Pahari, Thami, Majhi, Baram, Thamali, Chantyal, Sunuwar, Danuwar, Surel, Jirel, Helmu, and Byansi; and Protected Areas and Special Areas for needy caste, ethnic and other groups, including Indigenous Peoples such as Raute and Bnakaria who are at the verge of extinction (Government of Nepal Constituent Assembly, 2009). Later the State Restructuring Commission formed by the Constituent Assembly endorsed indigenous peoples' seven of the eight identity-based provinces by excluding the Sherpa province; added autonomous regions to other indigenous peoples, and retained Protected and Special Areas for the indigenous peoples. But, these recommendations were never implemented by the Constituent Assembly. The Constitution of Nepal written by the second Constituent Assembly and promulgated in 2015 is based on geographical federalism with 7 provinces named as Province number 1 to 7 in spite of strong protest movement by the Madhesi and Tharu Indigenous Peoples.

Given suppression and oppression of Indigenous Peoples' issues and collective rights for centuries, movement for reclaim of LTR did not take momentum in Nepal from local to the national levels in a meaningful way. Mukta S. Lama has aptly noted in the context of Tamba (Tamang), "The territorial consciousness of Tamsaling is generated by contemporary activism in Nepal through reworking some parts of the dominant historical materials and by regenerating local narratives and memory. My investigation of fragmentary documentary evidence relating to conquest, land tenure, and other interactions between the Tamangs and the Nepalese State, suggests that the relations between of territoriality are evoked by Tamang activism echoes the spirit of the Indigenous Peoples' movements in other parts of the globe and should not be taken as mere cultural politics." (Tamang, 2009)

Dambar Dhoj Chemjong, in his doctoral dissertation entitled "Limbuwan is our Home-land, Nepal is Our Country": History, Territory, and Identity in Limbuwan's Movement", examined "the Indigenous People's history, particularly the history of war against conquerors, as a resource for political movements today, thereby illustrating the link between ancestral pasts and present day political relationships. Ethnographically, this dissertation highlights the resurrection of ancestral war heroes and invokes war scenes from the past as sources of inspiration for people living today, thereby demonstrating that people make their own history under given circumstances." (Chemjong, Cornell University eCommons Digital Repository, 2017) He writes, "Ancestral history in relation to defending territory [that-thalo] is central to Limbu identity politics" (Chemjong, Limbuwan is Our Home-land, Nepal is Our Country: History, Territory, and Identity in Limbuwan's Movement, 2017). According to Chemjong, Limbuwan Politics with a goal to reclaim their primordial ancestral lands are struggling in two fronts, one is through Limbuwan Political Parties and the other through Limbuwan social movement but by now both has not yielded desired results.

After failure of identity-based movement during drafting of the new constitution by the second Constituent Assembly, cooperation of NEFIN and Indigenous Peoples organizations by the main political parties, and promulgation of a racist Constitution of Nepal in 2015 (Limbu, 2016) Indigenous Peoples movement was pacified. During such a hopeless situation, LAHURNIP ignited a grass-root or Indigenous Peoples community-based movement to reclaim indigenous peoples LTR.

LAHURNIP is the only leading Indigenous Peoples lawyer's organization that has been taking several initiatives, legal (national and international), awareness raising and advocacy, struggle group formation, litigation, workshops, seminars, interaction programs, high-level dialogues, research and publication, monitoring, and networking with the National Human Rights Commission and indigenous peoples organizations to assert LTR and have been successful in many cases.²⁰ They have documented dozens of cases of violation of LTR of Indigenous Peoples. Cases include LTR issues including army encroachment in the Dhorpatan Hunting Reserve, hydropower projects, electricity transmission lines, sacred sites, waste management area and so on (Rai, Ghale, Limbu, Rai, & Thami, 2016).



● Christian Erni

According to the LAHURNIP, aggressive Road Expansion Project (*Gair Nyayik Sadak Bistar*), "Illegal road expansion," executed by Kathmandu Valley Development Corporation in the traditional homeland of Newar Indigenous Peoples, adversely impacting more than 150,000 peoples including women, elders and children. Gross human rights violations including mass-forced eviction, demolition of symbol of identity such as cultural sites, tangible and intangible heritages, torture and intimidation have been observed. The Constitution guarantees rights to housing, fair compensation, protection of cultural rights and assets and under the existing laws (Land Acquisition Act -1977, Acquisition and Requisition of Immovable Property 1960, Ancient Monument Preservation Act 1956 etc.) to some extent. Thus, a Writ petition was filed in the Supreme Court. Looking at urgency, the Supreme Court issued an Interim Order to suspend all road expansion related works. The Interim Order was not respected in many areas and the issue was brought to the National Human Rights Commission and to the Special Rapporteurs (Indigenous, Cultural Rights and Minority) who then sent urgent letters to the Government. Referring to ILO Convention No. 169 a representation has been launched in the ILO and the Governing Body issued standing order and the case is under sub-judice.

²⁰ To download publications in and Khas Nepali language go to <http://www.lahurnip.org/publications.html>.



● Christian Erni

On September 17 2017, the Supreme Court Full Bench issued a Director Order on the Case of Shanu Shrestha vs. Prime Minister’s Office et.al. The Court issued following directive orders for all acquisition of land from this point forth:

- Acquire land lawfully before marking the road boundaries since Section 4 of Public Road Act 2031
- Acquire land lawfully before marking the road boundaries since Section 4 of Public Road Act 2031 requires land acquisition to be done for road boundaries.
- Treat the act of depriving the right to housing as an extremely sensitive manner and do not proceed with any work that adversely affects the security of a house, unless there are no alternative solutions.
- In the event of road having to run through residential areas, consider the children’s right to education and provide ample time to find alternative solutions to avoid adversely affecting them.
- Since talks are an easy, simple, effective and indisputable means of acquiring land, highly prioritize talks between expert groups and stakeholders to acquire land.
- The rights to relocation and rehousing of the displaced should be addressed equitably and benefits and compensation provided as per sections 13, 16 of Land Acquisition Act 2034 and Land Acquisition Regulations 2026
- Keep environment conservation and conservation of sites of archeological significance at the center of developing and executing a development project

According to the LAHURNIP, as responded in the questionnaire, “Empowerment of indigenous peoples is an instrumental to assert Indigenous Peoples’ rights. For that LAHURNIP has been constantly engaged in capacity development of Indigenous Peoples including policy lobbying and dialogues. Apart from that use of international mechanisms, such as the CERD, ILO, UN special

rapporteurs on Indigenous Peoples, minority, culture, forced displacement etc., is also been effective to create pressure to the State, international funding agencies and corporate sector.”

Responding to the questionnaire, the INOWLAG stated that one of the most important initiatives taken by their organization is to represent Tanahu Hydropower project victims and provide them awareness and training regarding their LTR rights and collective rights. The initiatives of the Indigenous Peoples to assert their LTR rights were: lobbying, advocacy, awareness, group discussion, protest, and pressuring the government to change the land right related laws.

6.6.2. Contribution of Indigenous Women

Indigenous women of Nepal are making a big contribution by struggling within the “mainstream” women’s movement to fight for collective rights of Indigenous Peoples, including indigenous women, and also within Indigenous Peoples’ movement to fight for gender equality. The most active women’s Indigenous Peoples’ organizations are the National Indigenous Women Forum (NIWF), the National Indigenous Women’s Federation (NIWF) of Nepal with 41 members’ organizations, Indigenous Women Legal Awareness Group (INWOLAG) and the National Indigenous Disabled Women Association Nepal (NIDWAN). In their shadow report submitted to CEDAW in 2018, they have given emphasis on LTR, and self-determination. They have stated, “The fundamental difference between indigenous women and “mainstream” women are: (i) “mainstream” women are recognized as a legal entity under constitution, laws and policies; in contrast, Indigenous women are not recognized, (ii) indigenous women are invisible in constitution, laws, plans, policies and programs, and are victims of historical injustice and structural violence; in contrast, “mainstream” women, who belong to the ruling Hindu caste and dominant group, are visible, (iii) indigenous women are victims of triple discriminations: (a) stateless and colonization due to denial of right to self-determination, (b) dispossession of lands, territories and resources, and (c) loss of identity due to state-led process of assimilation; (iv) indigenous women are victims of patriarchy in two different ways: (a) Many Indigenous Peoples, who have been influenced by State-led process of Hinduization and Sanskritization, practice patriarchy and discriminate against women and girls; and (b) The State that is based on the ideology of Hindu patriarchy treats all women, including indigenous women, as second class citizen” (NIWF, NIWF, NIDWAN, & INLOWAG, 2018).

Women account for 66% of the agricultural labor force but own only an estimated 8% of the land. Traditionally, indigenous women have had equal access to and control over collective land and natural resources, and some indigenous communities in South and Southeast Asia have land ownership rights, similar to indigenous women in other parts of the world. They have conserved and propagated many varieties of seeds as well as developed detailed knowledge about the forest products they collect and use (Feiring, 2013).

A recent study carried on by the National Indigenous Women’s Federation (NIWF) Nepal and the United Nations Development Program (UNDP) Nepal on economic empowerment of indigenous women revealed that indigenous women are struggling to have access to natural resources in their ancestral lands for making their living by using their customary knowledge and skills in spite of government’s control over their lands, territories and resources and implementation of policy of criminalization of use of such resources (NIWF & UNDP, Economic Empowerment of Indigenous Women in Nepal, 2018). Contribution of indigenous women is great in terms of continuing use of natural resources based on their customary knowledge and skills for making a living and also for economic activities to sustain their livelihood. The research team has made recommendations to amend constitution, laws and policies to give ownership and control over lands, territories and resources to Indigenous Peoples. Then, only, indigenous women could optimally use lands and resources by applying their customary knowledge and skills for meaningful economic empowerment.

The Committee on the Elimination of Discrimination against Women issued Concluding observations on the sixth periodic report of Nepal CEDAW on 14 November 2018 has observed in Para 40 (a) thus: “The lack of recognition of the rights of indigenous women in the Constitution and the general lack of recognition of the right of Indigenous Peoples to self-determination;” and accordingly made recommendation to State party Nepal in Para 41 (a) thus: “Amend the Constitution to explicitly recognize the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples” (CEDAW, 2018).

Responding to the questionnaire, NIWF, Nepal stated, “Women are not included in any consultation process”; hence, it is meaningless to talk about their initiatives.

6.6.3. Young and Disabled People in Initiatives

According to the LAHURNIP, the roles of women and youths are to mobilize communities for empowerment and struggles because in their experience, the role of youth and women can make big differences in policy influences and in protecting their land rights through dialogues. In some initiatives the persons with disabilities are also accommodated but not as much as expected.

According to the INWOLAG, as per their response to the questionnaire, young and persons with disabilities took active participations in the programs organized by different indigenous peoples’ organizations and women. They were eager to take part in our program and they took active participation in the protest, discussion and meeting and lobbying with the concerned authorities (ministries as well as local level.).

6.6.4. Challenges of these Initiatives

Nanda Kandangwa, in his article, has identified three concerns with LTR. These are: (a) Identification of Indigenous Peoples’ lands is challenging. However, the Constitution of Nepal has a provision of autonomous, special and protected areas for Indigenous Peoples. They were long standing political demands of Indigenous Peoples of Nepal that are yet to be meaningfully implemented. (b) How to eliminate constitutional and legal provisions that are contradictory to international laws and (c) how to resolve emerging conflicts on these issues (Kandangwa, 2017).

Amendment of the constitution in line with international laws, particularly UNDRIP, ILO Convention no. 169, CERD and the Outcome document of WCIP is a must. But there is a huge challenge in doing so due to continuing prevalence of the culture of silence, the necessity of lots of orientation and motivational meetings to initiate assertion for indigenous peoples land rights and legal support, the difficulty in taking united and common stand by the Indigenous Peoples’ community members on Indigenous Peoples land rights, the hesitancy among emerging young leaders to lead and old leaders who lead have no trust of the community members, the divide and rule and cooptation of leaders by the political parties led by the dominant caste groups, and the absence of proactive assertion on Indigenous Peoples land rights as it has been primary and mostly reactive

6.7. Cases

6.7.1. Legal Cases Concerning the Land Rights of an Indigenous Peoples Group in the Country

According to the Indigenous World 2018:

“As Indigenous Peoples’ awareness of their rights increases, and the state and private sectors intensify their aggressive developments, Indigenous Peoples are resisting further loss of their individual and collective control over land, territories and resources. In 2017, LAHURNIP provided legal support to 13 cases of human rights violations and to the resistance movements in different parts of Nepal. Of the 13 cases of violations, two are related to displacement by road expansion projects (one in Kathmandu and one in Dhankutta), two are related to hydropower projects, Padam Khola Hydropower Project and Uper Trishuli-1 Hydropower Project, two relate to high-tension electricity transmission lines, Kabeli and Bhulbule Marsyangdi, one is a case of mining of limestone in Palpa, one a case of an animal slaughter house in Gulariya in Bardiya, one a case of pollution by Birat Poultry Farm in Morang, one a case of dignity and identity of the Khadgi in Kathmandu, one a case of forest, water and sacred sites of the Magar in Kailali, one a case against land takeovers by the Nepal Army in Panchthar, and one a continuing case of gross human rights violation by the state against Tharu Indigenous Peoples in Kailali. What is common to all these cases is that neither the state nor the private sector have ever sought FPIC or given due compensation to those whose lands and property have been destroyed” (IWGIA, 2018).

Legal cases already discussed in a section on Initiatives of the Indigenous Peoples to Assert Their Land Rights and Their Successes under the Good Practices are also applicable here. There is additional information about the legal cases.

Fourteen Indigenous Leaders were detained in judicial custody on charge of Organized Crime and Treason since 16 October 2016. The alleged leaders were organized under Mongol Mulbasi Rastriya Force (Kirat) and involved in advocating political, social and cultural rights of Indigenous Peoples in Nepal. They were critical to the systematic discrimination against Indigenous Peoples. They were arbitrarily arrested and kept in illegal detention for more than 59 days so a petition of habeas corpus was launched in the Supreme Court. The government created false case of Organized Crime and Treason against these leaders.

These cases were reported to the respected Committee during its 95th Session through Shadow Report submitted by LAHURNIP.

These leaders were acquitted from the charge on November 5, 2018 by the District Court Bhaktapur from the bench of Justice Dr. Shriprashad Upreti. This decision will have ripple impact to another case of Treason which is sub-judice in the Special Court of Kathmandu. Accused leaders were acquitted from the Special Court as well.

LAHURNIP brought hope to the Indigenous People by winning these legal battles for them:

Legal cases

- Sanu Shrestha et al. vs. Government of Nepal et al. (Kathmandu - Road): The Supreme court made decision in favor of indigenous Newar community of Kathmandu regarding road expansion where the Kathmandu government has intervened without consultation and consent to the affected community.
- Surendraswor Moktan vs. Government of Nepal (Sindhuli - Transmission): The Court made a decision in favor of the community where lands of Indigenous Peoples were acquired without FPIC.

- Swiss Boarding School vs. Government of Nepal (Sindhuli - Transmission Line): The school won the case for acquisition of land without FPIC that affected school and other sacred sites in Sindhuli District.
- Ramesh Shrestha vs. Government of Nepal (Khimti Dhalkebar - Transmission Line): The Court made a decision in favor of the community where lands of Indigenous Peoples were acquired without FPIC.
- Government of Nepal vs. Prithvi Limbu et. al. (Case Organized Crime /Treason)
- Bhuvan Baramu vs. Government of Nepal (Autonomous and Protected areas/region): Claim for protected and autonomous region to Baramu community in their traditional land as per the provision of the constitution

Sub-judicial cases

- Bekharam Mahrjan et al. vs. CDO office Kathmandu (Harisiddhi- Bricks and tile factory): Long back the land of Newar was acquired for the bricks and tile factory without proper consultation, information and dissemination. Later the government is in the process to transfer the land to the corporate house. The community claimed the return of their land as per the Land Acquisition Act.
- Surya Prasad Shrestha et al. vs. Government of Nepal (Balaju road): The case is against the illegal road expansions that caused massive displacement of the Newar Indigenous Peoples from their ancestral land and also have adverse impacts to their sacred sites.
- Mayadevi Maharjan vs. Government of Nepal (Harisiddhi road): The case is against illegal road expansion project of the government that caused massive displacement of Newar community causing adverse impacts to their cultural heritages and sacred site.
- Datta Singh Basnet vs. Government of Nepal (upper solu hydro): The case is against land acquisition without FPIC.
- LAHURNIP vs. Government of Nepal (Chhaya Devi Complex, Thamel): The sacred site of archaeological, cultural and religious importance Newar community encroached by the private company and constructed business complex, hotel and other infrastructure. In the past, the land was under the community ownership and control but transferred to a corporate house.
- Shankar Limbu et al. vs. Prime Minister of Nepal et. al Case: Certiorari and Mandamus to reform existing laws in line with the ILO Convention No. 169 and UNDRIP
- Bhim Rai vs. Prime Minister of Nepal et. al. Case: Certiorari and Mandamus on violation of right to inclusion.

7 Sri Lanka



Sri Lanka map (Source: Google map)

7.1. Country Profile

The Human Development Indices and Indicators (HDII): 2018 Statistical Update rank Sri Lanka at 76th with High Human Development Index (HDI) value of .770, Gender Development Index (GDI) value of 0.354, life expectancy at birth of 75.5 years, expected years of schooling of 13.9 years, GNI per capita of \$ 11,326, literacy rate of adult (ages 15 and older) 91.2%, employment to population (ages 15 and older) ratio is 51.4 (UNDP, 2018).

7.1.1. Number of Indigenous Peoples Percentage Compared to the Total Population

Sri Lanka is also known as “The Tear Drop of India”, and Wiveca Stegeborn (2004:43) writes, “If that “Tear Drop” was shed by anyone, it was most likely by these Indigenous Peoples who call themselves Wanniyala-Ayetto [wamia-la-atto], meaning “Forest Beings” or “Forest-dwellers”. “Sri Lanka’s Indigenous Peoples, the Veddas (forest-dwellers), have inhabited Sri Lanka’s semi-evergreen monsoon dry forest for at least 16,000 years and probably much longer. Even though the Veddas were the first people in Sri Lanka, they have never controlled the country since the Indian immigrants settled in Sri Lanka about 2500 years ago.” (IJSRP 2017: 17).

Wanniyala-Ayetto, is the only Indigenous Peoples in Sri Lanka with the smallest population among Indigenous Peoples of Asia and their collective way of life is at risk of further destruction. Many scholars and organizations have shown their concern for such a sad state of affairs. Of the total 20 million populations, Sinhalese comprise 74%, Tamils 18%, Moors (Descendants of Arab Traders, and Malyas, Berghers and the Indigenous Peoples 1% (Stegeborn, 2004: 43). Forest dwelling Wanniyala-Ayetto’s population is about 2,000 whom the Non-Indigenous peoples refer to them as “Veddha” (“huntmen/ archers”) (Stegeborn 2004: 43); now commonly referred to as Vadda (IWGIA, 2012). In the report by the Cultural Survival of Sri Lanka states Veddah has “a direct line of descent from the island’s original Neolithic community dating from at least 14,000 BC and probably far earlier according to current scientific opinion.” Further reports from census data show that the Veddah population has been decreasing from 4,510 in 1921 to 2,361 in 1946. A study done in 1978, identified 6,000 Veddas in the Anuradhapura district alone (Cultural Survival of Sri Lanka, 1994).

“While colonial census reports portrayed the Vadda people as a distinct ethnic group and gave population figures of between 1,229 and 4,510 people, census surveys of the last three decades have not distinguished them as a separate ethnic group” (IWGIA, 2012). The forest-dwelling Wanniyala-Aetto Indigenous Peoples have a very small population, who are at the verge of extinction (Minority Rights Group International, 2018). Data from censuses (see tables below) show a declining trend of population among the different ethnic groups in Sri Lanka and the Veddah Indigenous Peoples are not exempted.

Table 4.1. Population on Ethnic Groups in Census Year.

Ethnic Group	1921	1931	1946	1953	1963	1971	1981	2001	2012
Total	4,498.6	5,306.0	6,657.3	8,097.9	10,582.0	12,689.9	14,846.8	16,929.7	20,359.4
Low - Country Sinhalese	1,927.1	2,216.2	2,902.5	3,469.5	4,470.3	5,425.8	10,979.4	13,876.2	15,250.1
Kandyan Sinhalese	1,089.1	1,256.8	1,718.0	2,147.2	3,042.6	3,705.5	Low Country Sinhalese and Kandyan Sinhalese are combined.		
Sri Lankan Tamils	517.3	598.9	733.7	884.7	1,164.7	1,424.0	1,886.9	732.1	2,269.3
Indian Tamils	602.7	818.5	780.6	974.1	1,123.0	1,174.9	818.7	855.0	839.5
Sri Lankan Moors	251.9	289.6	373.6	464.0	626.8	828.3	1,046.9	1,339.3	1,892.6
Indian Moors	33.0	36.3	35.6	47.5	55.4	27.4	*	*	*
Europeans	8.1	9.2	5.4	6.5	*	*	*	*	*
Burghers and Eurasians	29.4	32.3	41.9	46.0	45.9	45.4	39.4	35.3	38.3

Malays	13.4	16.0	22.5	25.4	33.4	43.5	47.0	54.8	44.1
Veddahs	4.5	5.2	2.4	0.8	0.4	*	*	*	*
Others	22.0	27.4	41.1	32.2	19.5	15.5	28.4	23.9	18.2

Source: Table 2.10 in Population by ethnic group and census years (Thousands) in Ethnic Group and Religion in DCS 2016⁽¹⁾

Note: * Included under Others

Ethnic Group	Actual Number	Percent	Estimated	Percent
Sinhalese	13,876,245	82.0	14,011,734	74.5
Sri Lanka Tamil	732,149	4.3	2,233,624	11.9
Indian Tamil	855,025	5.1	859,052	4.6
Sri Lanka Moor	1,339,331	7.9	1,561,910	8.3
Burgher	35,283	0.2	38,388	0.2
Malay	54,782	0.3	55,352	0.3
Other	36,842	0.2	37,197	0.2
Total	16,929,689	100.0	18,797,257	100.0

Source: Census of Population and Housing 2001; Table 3 in Silva n.d.: 8.

<http://www.statistics.gov.lk/Abstract2016/CHAP2/2.10.pdf>

7.1.2. Geographical Distribution

Wiveca Stegeborn writes that Wanniyala-Ayetto lives in Uva province of Sri Lanka, which is a dry zone located about 200 meter above the sea level in the east of the central mountain massif. He further explained that the land borders eastern Province and the “thick tropical forest covers the high mountains and low lands, interspersed with rocky hills that thrust out above the trees” and “tall grasses predominate close to the east coast, where the land is drier, flatter, and more open”, (Stegeborn, 2004). According to IWGIA, “The Vadda comprise independent groups who originally coexisted alongside their non-Vadda neighbours and were once widespread in the south-eastern and eastern coastal belt; the northern tracts and the central part of the island where they are, however, less known”, (IWGIA, 2012). According to IWGIA, within the Sinhalese, Muslims and Tamils⁵, “there are a few self-designated Vadda groups that were recognized during the European colonial period, and who reside in Ampara, Monaragala, Polonnaruwa, Batticaloa and Mahiyangana Districts” and “these communities are nationally recognised and are the recipients of varying degrees of benefits from a welfare programme designed to assist them” (IWGIA, 2012).

7.1.3. Area of Lands Controlled by IPs, of Lands Legally Owned by the IPs, and of Lands Claimed by the State or Private Actors; Percentage Compared to the Total Country area

Sri Lanka has a total area of 6.56 million hectares (ha.) and a population of about 18 million, of which nearly 80 percent is rural-based. Approximately 82 percent of the land is controlled by the state, with the balance being held privately. Over two million hectares are under agricultural usage: 1.38 million hectares are state-owned agricultural land farmed by private farmers under varying tenure arrangements while 0.88 million hectares are privately-held agricultural land largely located in the Wet Zone of the country. The remaining 4.3 million hectares are urban land, state land comprised of forests, sparsely used land, and land reserved for future use. The net per capita availability of land is 0.15 hectares. (The World Bank, 2008)

When the government launched the Mahaweli Development Scheme in 1977, wide areas of forestland have been exploited for logging and ultimately colonized. The last *Wanniyalaeto* hunting domain covering the area of 145,450 acres of forest between the western chain of reservoirs and the Maduru Oya irrigation dam was turned into the Maduru Oya National Park in 1983.

However, the Fauna and Flora Ordinance has provisions, such as, “No person shall be entitled to enter any National Park, except for the purpose of observing the fauna and flora therein”, and “no animal shall be hunted, killed and taken and no plant shall be damaged, collected, or destroyed in a National Park.” It means the customary practices of indigenous peoples have been criminalized without their participation in decision making and also without any consultation leading to their consent. Given this ordinance, Indigenous Peoples are only allowed to observe the fauna and flora found in the declared park, and need to take a permit issued by an officer and make payment of the prescribed fee for it (Cultural Survival of Sri Lanka n.d.: 2). Currently, *Vadda* people have no rights to collect wild vegetables, fruits, herbs, and crops, hunt animals and catch fish for maintenance of their customary livelihood and food security.

7.1.4. Legal Status of the IPs

Sri Lanka had voted in favor of UNDRIP [1] but there are no local enactments to ensure these rights” (Uthayakumar 201). One instance that shows how indigenous peoples are regarded is on the issue of citizenship. [Indigenous Peoples] refused the opportunity to obtain Sri Lankan passports/travel documents because institutionally there is a failure to consider *Wanniyalaeto* as citizens- they are considered ‘not real Sri Lankans’. This leads to *social injustice and increased vulnerabilities among these communities*” (Uthayakumar 2015: 4). Clearly, *Wanniyala-Ayett* (“*Veddah*”) Indigenous Peoples are not legally recognized by Sri Lanka in line with UNDRIP and ILO Convention no. 169. Hence, it is the obligation of Sri Lanka to meaningfully implement UNDRIP by changing its constitution, laws, policies, plans and programs to make fully in line with UNDRIP.

7.2. Laws and Policies on IPs Land Rights

7.2.1. National Laws and Policies Recognizing IPs LTR Rights.

There are no laws and policies on lands rights of *Wanniyala-Ayett* (“*Veddah*”) Indigenous Peoples though it has adopted UNDRIP in 2007 and is a party to other international conventions- ICERD, ICCPR, ICESCR, CEDAW, and CRC. Moreover, Sri Lanka has not ratified ILO Convention No. 107 and ILO Convention No. 169.

In addition, IWGIA noted the following when it came to laws and policies on LTR:

- National legislations do not recognize the status and protect the LTR rights of the *Vyadda* and other forest people;
- The State has done nothing to ratify ILO 169;
- Existing Fauna and Flora Protection Ordinance and forest laws not only restrict but also criminalize traditional livelihood practices in wildlife protected areas (PA);
- The proposed forest reserves have threatened their traditional livelihoods and customary practices forcing the Indigenous Peoples to find employment in unskilled labor sector in local areas making them economic vulnerable.
- The National Policy on Traditional Knowledge that has been finalized for submission to cabinet for approval recognizes traditional forest peoples’ rights;

- It is positive that the Biodiversity Secretariat of the Ministry of Environment and relevant government and non-governmental agencies has already implemented some of the recommendations made in the National Policy on Traditional Knowledge.
- The Memorandum of Understanding was signed between the Department of Wildlife Conservation and the *Vadda* Custodians in 2011, giving permits to *Vadda* youth for the use of forest resources and fishing in selected water bodies in protected areas in line with the CBD (IWGIA 2012: 382).

There are three basic types of land registration system in Sri Lanka: (a) Private conveyance, (b) Registration of deeds (Registration of Document Ordinance of 1927, Prevention of Fraud Ordinance 1980, and Notary Ordinance), and (c) Registration of Title (Registration of Title Act no 21 of 1998 (RTA) (Perera n.d.: 74-96). There is no legislation to protect land rights of *Wanniyala-Ayett* (“*Veddah*”). Existing laws, especially wildlife conservation laws have prevented hunting and cultivation in forests. *Wanniyala-Ayett* (“*Veddah*”) has lived for thousands of years in harmony with nature, and their hunting and agricultural practices were not for commercial purpose but merely for survival. These regulations have criminalized their livelihood, without any considerations towards the cultural circumstances.

“*Wanniyalaeto* leaders” alleged that “since 1974 they have listened to official assurances that a sanctuary of 1,800-acre extent will be created for them to pursue their traditional way of life’ and that the “succeeding governments have repeated this pledge, but to date still no government has implemented its pledge” (Cultural Survival of Sri Lanka n.d.: 3).

7.2.2. Limitations and Contradictions of These Laws and Policies

As Sri Lanka has adopted the UNDRIP, it is an obligation on the State to amend or change its laws and policies that contradicts with the UNDRIP. The Shadow Report submitted to the United Nations Committee on Economic Social and Cultural Rights by Law and Society Trust, narrated that some state laws and policies have adverse impact on indigenous peoples’ right to their land.

- The “designation of large tracts of land as national parks and sanctuaries has led to the *Veddas* losing access to hunting grounds, *chena* (shifting) cultivation and to forest produce that is central to their food as well as other material and the spiritual needs of the community” (Law and Society Trust 2017: 7); it means, the state’s regulation of land, forest and agriculture is in contradiction to the UNDRIP.
- “The exclusion of the *Veddas* from the Maduru Oya National Park had especially serious consequences, which have been mitigated to a very limited extent by an agreement reached with the State in 2011 to permit collection of honey and fishing” and on the other, “conflicts continue as the *Veddas* seek accommodation of their traditional ways of living” (Law and Society Trust 2017: 7).
- The State had provided some land to the community in *Vakarai* for cultivation but later the Forest Department has deprived them from cultivating their land (Law and Society Trust 2017:7).

7.3. Challenges

7.3.1. National Laws and Policies Violating the Land Rights of IPs or Criminalizing the Exercise of These Rights

The constitution of Sri Lanka states that all citizens are equal before law. Following this logic, the national park regulations proscribe any one from hunting, picking flowers, collecting honey, lighting a camp fire, and certainly from making a living in any “park” (usually the forest or domain of indigenous peoples), the *Wanniyala-Aetto* were hit hard. From one day to the next, their ancient way of life became criminal in the eyes of the law. Yesterday’s hunter-gatherers are today’s poachers”, (Stegeborn (2004:56).

Some laws with anticipated negative impact to indigenous peoples include [1]:

- Forest Conservation Ordinance (2 January 1908)
- Land Development Ordinance (15 October 1935)
- Land Settlement Ordinance (23 October 1941)
- Land Registers (Reconstructed Folios) Ordinance (24 August 1945)
- Land Acquisition Act (9 March 1950)
- Land Reform Law (22 August 1972)
- Land Grants (Special Provisions) Act (25 June 1979)
- Land Reform (Special Provisions) Act 1 (20 June 1986)
- Land Resumption Ordinance (24 January 1987)
- Land Betterment Charges Law (30 November 2001)
- Land (Restrictions on Alienation Act) (23, July 2014)

The above laws were not drafted and enacted in consultation with and participation of, Indigenous Peoples. All these laws are not in line with UNDRIP and ILO Convention no. 169 and other international laws, such as ICERD.

7.3.2. Forced Displacement of Indigenous Peoples

As there are existing laws and the draft are laws not in line with the UNDRIP, *Wanniyalaetto* Indigenous Peoples’ land rights are under serious threat. “The vulnerable position of the *Wanniyalaetto* vis-a-vis mainstream society may be said to stem from two principal causes. One is that they have never received secure land tenure that recognizes their collective custodianship over traditional hunting and gathering ranges. The other reason is that they have never been consulted or represented in the decision-making process that affects their daily lives. Given the secured right to manage their traditional habitat according to their ways and given a voice to represent their collective aspirations within the framework of society at large, the *Wanniyalaetto* are more than capable of preserving both their endangered forest habitat and their ancestral culture for the benefit of all”, (Cultural Survival of Sri Lanka, p. 1).

The extent and severity of threat to Indigenous Peoples by Sri Lanka Government’s policies and plan is described in a research proposal published by IJSRP thus:

“Thus it was that the majority of the last nine hundred *Veddas* families who still remained in the forest have finally been evicted. Approximately 5,300 men, women, and children were forced to resettle into three different districts, splitting up their community and destroying the highly integrated social structure on which the *Veddas* traditionally depend. These resettlement areas are situated outside the forest, in rice-growing areas totally unfamiliar to the *Veddas* and unsuitable for their

traditional small scale agriculture. The forest beings are now considered trespassers in their own forest (Obeysekara 1990:26). A smaller number of *Vedda* families, which the government authorities missed to identify or uncounted due to practical reasons were living in virtual forests. The original occupants of the country are suffering a cultural decline. Many traditions are rapidly vanishing. The rituals to the gods and spirits, the great and important annual ceremonies, have become rare. The rock arts, bow and arrow, traditional costumes are no longer visible. Indeed, these are precisely the elements of their cultural heritage that the *Veddas* are most anxious to preserve for future generations.” (IJSRP 2017: 18).

7.4. Good Practices

7.4.1. Initiatives of the IPs to Assert Their Land Rights

Though most of the *Wanniyala-Aetto* have changed their way of life as they could not resist the government’s decision, the old Chief Uru Warige Tissahamy and his extended family refused to abandon the forest. In 1998, Uru Warige Punci Banda was shot and subsequently died in prison (Stegeborn 2004: 43-63). After his death, *Wanniyala-Aetto* attended the UN’s work group on indigenous populations in 1996 and two years later the President allowed them to continue their traditional way of life.

The review of existing literature clearly suggests that the *Wanniyala-Aetto* have not written their stories by themselves and that their movement, including the LTR movement, is very passive leading to a threat of extinction. There is a need for raising a community based LTR movement of the *Wanniyala-Aetto* Indigenous Peoples that would provide immediate benefits for their community members in terms of decriminalization of customary practices, access to and use of forest resources from the national parks and other forests. At the national and international level, Indigenous Peoples’ organizations and movements need to work in collaboration with the *Wanniyala-Aetto* to assert their land rights in a meaningful way.

Apart from strengthening collaboration among the *Vedda* people to advance their advocacy, some initiatives presented by Prasha Uthayakumar in 2015, mentioned the following:

- “National Committee for the International Year for the World’s Indigenous People: A plan is now being formulated by the NGO Cultural Survival of Sri Lanka in consultation with the *Wanniyalaetto* that will eventually return the day-to-day management of the Maduru Oya National Park back to the *Wanniyalaetto*.
- *Wannietto* Trust: Cultural Survival’s close affiliation with the island’s indigenous forest dwellers or *Wanniya-laetto*, has led to its appointment to the board of the Government - sponsored *Wannietto* Trust created by Presidential Cabinet order “to protect and nurture *Veddha* *Wannietto* culture”. Despite resistance from those with vested interests, Cultural Survival has campaigned fearlessly to carry out the Trust’s mandate and is lobbying for the creation of an indigenous self-managed *Wanniya-laetto* Heritage Sanctuary at Dambana.
- The active cooperation and participation of the Ministry of Lands, Irrigation and Mahaweli Development, the Ministry of Environment, other concerned ministries and international development aid agencies which are keen to develop them” (Uthayakumar 2015: 5).

7.5. Lessons from the Past Experience

In a research titled, “The Veddas”, the Indigenous Peoples of Sri Lanka : Attitude on Cultural Heritage Identification after Relocation from their Forest Homeland” published in the International Journal of Scientific and Research Publications, it provided details about Sri Lanka Government’s Mahaweli development project that ‘robbed’ rights of the Indigenous Peoples over their LTR.

According to the study, the Mahaweli Project was the largest development program that commenced in 1977. The “plan provided that the 335 km. long Mahaweli River would be developed, channeled, and diverted into tunnels to produce electricity, then guided to reservoirs and canals for artificial irrigation.” What is troublesome is that about 640,000 acres of formerly “undeveloped” land would be opened for cultivation and the project would provide new agricultural lands and homesteads for 140,000 families (Keuneman 1983: 64). Aside from this, the following observations were noted:

- The plan called for the last portion of tropical forest inhabited by the Indigenous Peoples of Sri Lanka to become colonies and Wildlife Reserve catchments area.
- As the Accelerated Mahaweli Development Project evolved, the old “Veddas’ Country” was segmented into “systems” labeled with alphabetic designations. The northern half of the forest belonged to System B (north of the river Maduru Oya) and the southwestern half to System C. The trees were logged, and the hunting grounds and traditional honey bee sites were leveled by bulldozers.
- The Veddas Country underwent dramatic change into vast areas of rice-paddy cultivation, towns, villages, highways, and infrastructure.
- Thousands of people were resettled into the area.
- Eleven thousand hectares of hunting ground were inundated.

The government plan was also to establish a system of national parks stretching from the borders of these new colonies towards the eastern beaches. This would form a chain of islets of natural sanctuaries. On November 9, 1983, the home-land of the Veddas measuring approximately 51468 hectares was designated as the Maduru Oya National Park administered by the Mahaweli Environmental Authority (Dharmadasa 1990:50).

Barriers, guards, and outposts were stationed along the borders. No one could enter the park without a written permission from the Wildlife Department located in the capital, Colombo, on the other side of the country. Most Veddas cannot read and write. From one day to the next, their ancient livelihood became criminal in the eyes of the law. Yesterday’s hunter-gatherers are today’s poachers. Since they were not allowed to carry out the only subsistence they knew they finally went to the government for help. They learned that they could no longer collect food as in the past. The forest-dwellers must abide by the government’s plan to cut the trees, blast through the mountains, and dig ditches in their hunting grounds. They were told they could never again return to their traditional life in the forest. The waters of the rivers were diverted for rice paddies, and their hunting grounds now were reserved for wildlife.” (IJSRP 2017: 17-18).

[1] <https://www.un.org/press/en/2007/ga10612.doc.htm>

[1] <http://srilankalaw.lk/Table/Alphabetical-List-of-Statutes/LTaiwan>

8 Taiwan



Taiwan map (Source: Google map)

8.1. Taiwan Indigenous Population and Land Profile

Taiwan, formerly known as “Formosa”, is an island located in the eastern part of Asia and the northwestern of the Pacific Ocean. It is located between the Ryukyu Islands and the Philippine Islands. It covers an area of about 36,000 square kilometers and is the 38th largest island in the world.

The 23,745,593 million people (World Population Review, 2019) of Taiwan’s population comprise four main ethnic groups: the aboriginal (accounting for around 2% of the total population), two groups of Taiwanese (the Fukien/Hoklo and the Hakka, accounting for around 83%), and mainland Chinese (accounting for around 15%, Copper 2019). The aboriginals are officially recognized as the first inhabitant of the island and were once, the only people living there. Their presence is established to have start more than 10,000 years ago

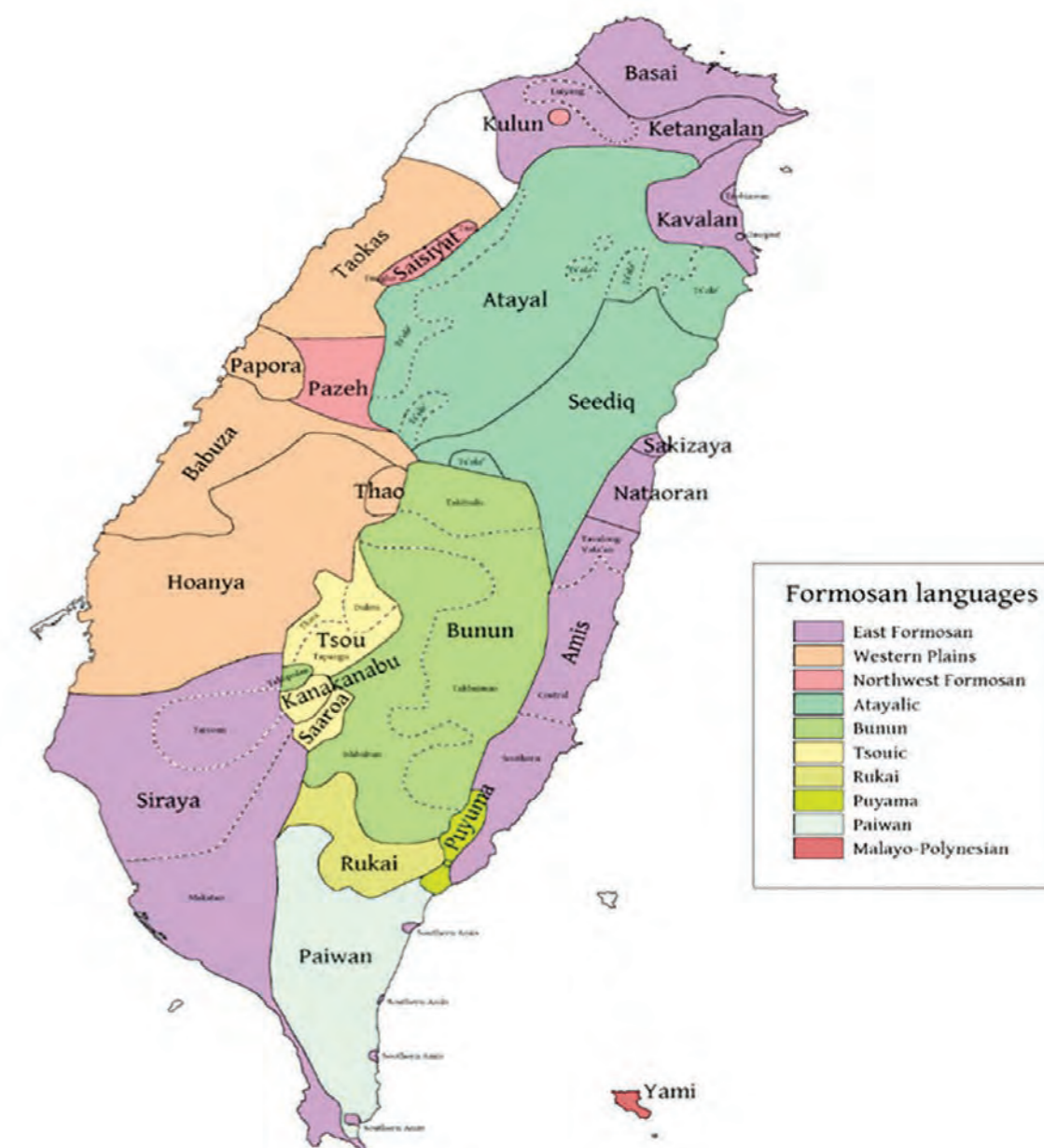
Most Fukien/Hoklo and the Hakka arrived on the island between the 14th and the 17th, when some of these Taiwanese immigrated earlier. The Hakka are originally from Guandong and the Fukien from southern Fukien. As for the latest comers, the mainland Chinese immigrated in Taiwan after World War II, as the Japanese rulers departed. Around 1.5 million arrived in 1949, after the defeat of Chiang Kai-shek and its Nationalist Party, against Mao Zedong's party. This mass migration in a very short lapse of time created tensions in Taiwan, at that time.

Taiwan is a multiethnic state, with 16 Indigenous Peoples' tribes officially recognized. However, 10 indigenous minorities belonging to the Pingpu tribe are not yet recognized by the law. There are around 400,000 people (International Work Group for Indigenous Affairs, n.d.).

Table 8.1: Total Population of Indigenous Peoples recognized by the la in Taiwan (Council of Indigenous Peoples, n.d.)

Tribes	Male	Female	Total
Amis	103,108	107,923	211,031
Atayal	43,001	47,883	90,884
Bunun	28,339	30,555	58,894
Hla'alua	211	193	404
Kanakanavu	176	167	343
Kavalan	730	752	1,482
Paiwan	49,064	52,408	101,472
Puyuma	6,919	7,421	14,340
Rukai	6,467	6,925	13,392
Saisiyat	3,196	3,466	6,662
Sakizaya	479	479	958
Seediq	5,073	5,120	10,193
Tao	2,293	2,336	4,629
Thao (Yami)	379	420	799
Truku (Taroko)	15,353	16,473	31,826
Tsou	3,154	3,513	6,667
Others	6,296	5,289	11,585
Total	274,238	286,715	552,655

Map 8.1: Indigenous Peoples' Distribution in Taiwan, by language



(Source: Wikiwand website)

Most Taiwanese Indigenous Peoples belong to the Austronesian languages, only the Yami/Tao group belongs to the Bataan language groups of the Malay-Polynesian language group. Most of the Indigenous Peoples recognized by law are distributed in the eastern and southern parts of Taiwan.

8.2. Historical and Political Aspects

It's commonly said that up to the mid-17th century, the Taiwanese Indigenous Peoples were relatively isolated, except from the Dutch and Spanish presences, who introduce Christianity to many Indigenous Peoples. The Chinese occupation starting in 1683 under the Qing dynasty, followed by the Japanese rules from 1895 to 1945, saw the Indigenous Peoples' population and their customary lands divided by two (Copper, 2019). Forced assimilation, military assaults to wipe out the aboriginal resistances, and other massacres often occurred towards Indigenous Peoples (Minority

Rights Group International, n.d.). The Kuomintang (also known as the National Party of China, led by Chiang Kay-Shek) ruled the island from 1949, with an authoritarian single-party state. During that time, Indigenous Peoples faced similar issues as under Japanese rules, the government adopted assimilationist rules, like forcing all Taiwan inhabitants to speak Mandarin in public life, nationalizing land located in mountainous areas – where most Indigenous People used to live, or forcing adoption of Chinese names.

It is only recently, starting in late 80s – 1987 marking the end of martial law – that Indigenous Peoples were fully recognized. In 1994, the amended Republic of China’s Constitution recognized that the Indigenous Peoples are the “original inhabitants”, instead of previously mentioned as the “mountainous compatriots”. And it is only since the 2000s that their rights to access ancestral land, autonomy, use of indigenous language and names were written in the laws (ibid).

Taiwan is not part of the United Nations, as China still considers Taiwan as part of its territory and it does not recognize its sovereignty. UN membership needs to be voted at the UN Security Council, where China is a member. Each of the five states of the Security Council has a veto and therefore, China imposed its veto for the entrance of Taiwan in the UN system. In these circumstances, Taiwan has no official way to position itself about UN conventions or declaration, like the UN Declaration of Rights of Indigenous Peoples or the ILO Convention 169 (Jacquelin-Andersen, 2018).

8.3. Legal Status of indigenous peoples

The current Constitution was adopted in 1946. In 1991, the Temporary Provisions against the Communist Rebellion – policies in forced from 1948 to 1991 to deal with the threat of the Chinese Communist Party – was abolished and new articles were added during seven rounds of revision, between 1991 and 2002 (Executive Yuan, Republic of China Taiwan, 2016).

To designate Indigenous Peoples, the Constitution (Taiwan (Republic of China)’s Constitution of 1947 with Amendments through 2005, Translated by Max Planck Institute, 2005) uses the terms aboriginal, and also refer to ethnic groups, including the whole population. It recognizes aboriginal and ethnic equalities. It provides all citizens equality before the law (Article 7), freedom of religion (Article 13). Article 5 stipulates “There shall be complete equality among the various ethnic groups in the Republic of China.”

Article 10 of the Additional Articles says that “The State affirms cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures” (ibid) Political participation is guaranteed and “assistance and encouragement for aboriginal education, culture, transportation, water conservation, health and medical care, economic activity, land and social welfare” is also provided. These provisions also include people from Penghu, Kinmen, and Matsu areas. When referring to Frontier Regions, the Constitution says that the State shall accord legal protection of ethnic groups’ status, and give special assistance to their local self-government activities (Article 168).

The Constitution also guarantees legislative representation, with currently 7% of the national parliament seat occupied by aborigines. At the local level too, the six main cities and many municipalities have reserved seats for aboriginals.

Theses added articles of the Constitution are important steps forward for the recognition of aboriginal in the country, as they are the first constitutional recognition. Knowing that for years, Indigenous Peoples had no specific rights and had to obey assimilationist strict rules.

The Indigenous Peoples Basic Law is the first law in Taiwan history promoting the rights of the aboriginals. Promulgated in February 2005, it has been amended twice in 2015. Article 1 stipulates that “This Law is enacted for the purposes of protecting the fundamental rights of Indigenous Peoples, promoting their subsistence and development and building inter-ethnic relations based on co-existence and prosperity” (Council of Indigenous Peoples, 2018).

To implement the indigenous policies and affairs, the government has established the Council of Indigenous People (CIP). Its main role is to build up an Indigenous Peoples’ legal system, to plan indigenous administration, to foster indigenous villages development, to advance indigenous education and culture, to safeguard indigenous employment and health and to secure indigenous land right. The later point includes the set-up of a legal system for indigenous land issues, the strengthening of indigenous land planning measures, and the completion of surveys of traditional tribal lands and territories – to define boundaries and draw village maps, to serve as references for planning based on traditional indigenous lands and territories (Council of Indigenous Peoples, 2007).

8.4. Laws on Land

8.4.1. Historic Perspective

Under Japanese occupation, economic policies on industrial development have been enacted, like the Rules for the elimination of the manufacturing of forests and camphor and they resulted in a plundering of indigenous resources. More than 1.6 million hectares of land space was classified as state-owned and forced reallocations occurred. These policies shaped the indigenous territories for decades. It is only since the mid-2000 that indigenous lands were given back.

8.4.2. The Indigenous Peoples’ Basic Law

Legal framework for Indigenous Peoples right on land exists, different laws enacts them. In the Indigenous Peoples Basic Law, for example, article 5 says: “Indigenous land: refers to the traditional territories and reservation land of indigenous peoples.” “The government recognizes Indigenous Peoples’ rights to land and natural resources.” (Article 20). The Presidential Palace amended the Indigenous Peoples Basic Law on June 2017 and added the notion of obtaining consent of the aboriginal and sharing benefits of the project, enacted in article 21 (1) “When governments or private parties engage in land development, resource utilization, ecology conservation and academic research in indigenous land, tribe and their adjoin-land which owned by governments, they shall consult and obtain consent by Indigenous Peoples or tribes, even their participation, and share benefits with Indigenous Peoples.”

8.4.3. The Indigenous Peoples Reservation Land Development Management Procedure

The Indigenous Peoples Reservation Land Development Management Procedure (adopted in March 1990, revised in July 2007) is the reference document regulating Reservation Land of indigenous peoples of Taiwan (Council of the Indigenous Peoples, 1998).

Other laws

But other laws like Water Law, the Mining Law, the Measures for the Use of Land and Stone, the Wild Animal Conservation Law and the National Park Law have not been amended in the sense of giving more right on land and use of customary territories.

8.5 Implementations Challenges and Ground Issues

The recent issues on land use and implementation of the laws mainly focused on the definition and delimitation of the reserves, which refers to the return of traditional land to the indigenous peoples. A five-year survey, called Indigenous Traditional Territory Survey, was undertaken by the Council of the Indigenous Peoples and ended, in 2017 with Guidelines for Demarcating Indigenous Traditional Territory.

8.5.1. Scope of Ownership and Free Prior and Informed Consent

Indigenous Peoples have certain rights on their official recognized traditional land, but they do not have ownership on them. The aboriginal reserves belong to the State, which means that they do not have all rights on their land (Jacquelin-Andersen, 2018).

Article 3 of the Regulations for Demarcating Indigenous Traditional Territories defines the traditional territory as being restricted to the scope of public land, they do not have ownership over it. The Free, Prior and Informed Consent (FPIC) can be claimed by the local community, when it comes to projects development on the traditional territory. The FPIC provides the community with relevant information on the development plan, in advance, then a consultation takes place within the community and it ends with a vote, to allow or not, the development project.

However, this FPIC can only be claimed on reserved land, meaning that projects planned on private land do not have to go through a FPIC process. Following the law, this is coherent. But for Indigenous Peoples, this is very disappointing for two main reasons. First, aboriginals still claim right on many private land areas, until these particular territories are not recognized as indigenous, they will be unsatisfied. And second, development projects on private land may also affect indigenous peoples living nearby.

These disagreement lead to rallies and street protests - described below.

8.5.2. Indigenous Reservation Management Enters in Confrontation with Environment Maintenance

The purpose of the government to set up indigenous reservations is to “protect the indigenous livelihood and implement indigenous administration.” (article 3 of the Indigenous Reserve Development Management Measures), to promote the development of indigenous individuals and family livelihoods and to take into account the “whole” living space of the indigenous and the development of the ethnic economy (Council of the Indigenous Peoples, 1998) .

The total area of the existing indigenous reservation is more than 250,000 hectares. It is distributed in 39 townships in 12 counties of Taiwan, including Taipei, Taoyuan, Hsinchu, Miaoli, Taichung, Nantou, Chiayi, Kaohsiung, Pingtan, Taitung, Hualien and Yilan. Most of the indigenous reservations are concentrated on hillsides of 400 to 1200 meters. There are not reserves above 2000 meters (Council of Indigenous Peoples, 208).

However, around 40% of reservation land is under strict management for the environment conservation, including rules to protect and control water sources, forests, wildlife, among others. About 4 % of the reservation is covering National Park where even more sever rules apply, in terms of environment use and management

8.5.3. Indigenous Reservations Areas Based on Administrative Convenience

Instead of developing a mapping of the reserve areas in participation with the aboriginal, the government used the historical boundaries, inherited from Japanese occupation and continued under the Kuomintang era. These boundaries do not follow indigenous historical land and are insensitive at the historical lineage and impact these boundaries have on Indigenous Peoples.

8.5.4. Differences between “mountain-mountain compatriots” and “plains mountain compatriote”

This distinction between the Indigenous Peoples from the mountain and those from the lowlands were established since the 1950’s, under the Kuomintang era. This distinction is still in vigor, which has an impact on the number of representatives at the national legislative and on land access. The aboriginal plains groups, like the Amis, Kavalan or Puyuma, live near the Taiwanese and Chinese and are more difficult to be distinguished, because of the longer year of assimilation, than the “mountain-mountain” indigenous (Simon, 2017).

The survey undertook by the Council for Indigenous Peoples that ended with the “Guidelines for Demarcating Indigenous Traditional Territory” follow this historically division. The traditional indigenous land is mainly considered in the mountain areas. Very few, nay no traditional land is in phase to be recognized in the low land. In the coastal land of the Amis groups, for instance, the “Guidelines for Demarcating Indigenous Traditional Territory” promulgated by the Council for Indigenous Peoples would not change anything as their land is mainly registered under private property.

8.6. Indigenous Movement in Taiwan

Indigenous movement in Taiwan is commonly admitted to have started in 1983. During this year, students from the National Taiwan University published and disseminated a magazine calling for ethnic consciousness to rise and to fight for survival rights. The authoritarian Kuomintang government banned the magazine and kept a close eye on the indigenous leaders who wrote it. This event was one of the first of this kind in Taiwan (Yang, 2015).

During the mid-1980, indigenous party and groups were created, with for instance the Dangwai became the Democratic Progressive Party in 1986 and the creation of Alliance of Taiwan Aborigines in 1984. With fall of martial law in 1987, the movement increased. Three waves of indigenous right movement took place in 1988, 1989 and 1993. The government answered from the two first was

scarce, with the enlargement of indigenous reservation size. The impact of the third wave was more important: correction of the name – to restore indigenous names to mountains, areas, cities, among other –, creation of the Council of Indigenous Peoples, reform in the Constitution (in 1997) or change in the state policy from assimilation to a multiculturalism approach. But very few were done regarding land aspect: aboriginal does not have ownership on their land yet.

It is only in 2002, that the president enacted a “new partnership policy” between the government and the Indigenous Peoples. This helped to draft an indigenous self-government act and to fund research for indigenous community mapping. From 2002 to 2007, the Indigenous Traditional Territory Survey took place. The aims were to give an ethno-historical basis for future land returns, and to map the indigenous autonomous region – based on sections of land traditionally used by indigenous peoples since the Japanese era.

Even if this survey is the first of its kind in Taiwan’s history and shows the government willing to meet indigenous needs, the survey was criticized, because it was not respecting aboriginals’ perspectives. It was a top-down decision instead of to really support indigenous people’s needs, it was seen more like a tool for the government to have domination on indigenous land. There was no consideration of aboriginals’ knowledge on their land and environment, which are more fluid, dynamic and multilayered towards nature, which is different from the dominant perspective. In the same view, the mapping technology used was not considering Indigenous Knowledge and Approach, which created more inequalities within aboriginals’ groups. It favored indigenous elites.

In response to the governmental mapping approach, indigenous mapping initiatives took place. The Bunun Cultural and Educational Foundation (BCEF) initiatives are a good example to illustrate how the indigenous perspective can be taken into mapping projects. Created in 1995, the BCEEF is the first NGO funded by Taiwanese Indigenous Peoples, which aims are to foster sustainable development, elevate culture awareness, and promote cultural Bunun identity and indigenous empowerment. The mapping approach emphasized on indigenous knowledge, including elders “root-searching” (Yang, 2015).

This down-to-bottom and participatory approach is efficient in the sense that it leaves no one behind, it keeps the tradition alive, instead of fixing traditional territory in a rigid perspective. The BCEF were able to mix different forms of knowledge in asserting territorial claims, in its aim of mapping traditional land.

8.6.1. Ketagalan Boulevard Protest

In February 2017, the Council for Indigenous Peoples announced that “Guidelines for Demarcating Indigenous Traditional Territory”. The survey was made through concertation and participation of over 800 Indigenous Peoples, officials and experts. The guidelines will restore around 800,000 hectares of land and classified as traditional territory (Jacquelin-Andersen, 2018).

However, the Indigenous Peoples were not satisfied with this result, because the survey did not take into account private land, which are historical traditional land. Historical land was initially included in the draft proposal around 1.8 million hectares were designated as traditional land. But in the final version, only 800,000 remained. Furthermore, this also means that no FRIC can be asked for development projects on “private land, even if designated traditional land by the aboriginals themselves”.

To show their disagreement, Indigenous Peoples went into the street and protest in front of the Presidential Office Building. Famous indigenous personalities attended the manifestation. This event is commonly called the Indigenous Ketagalan Boulevard protest (Gerber, 2017).

8.6.2. Disagreement between the Truku Community and the Asian Cement Corporation of Taiwan

The Truku community of Hualian County has fought for decades against the limestone quarrying and cement production, by the Asia Cement Corporation of Taiwan.

The Xincheng Mountain Mine – as the site is called – is located on a mountain slope, in the traditional territory claimed by the Truku: there were 50 indigenous households of the Ayu community who lived there before. The Ayu community first thought that the land was rented to the company for a short period of time. But in 1973, the township officer obtained the right to use the land by a fake land-abandoned consent and the whole Ayu community was forced to move to the foot of the mountain, 300 meters below.

According to the Truku people, the company generated profit up to US\$1.68 billion, without any compensation for their environmental and water pollution and huge destruction of landscape belonging to them. For forty years, the Xincheng Mountain has been mined and the entire hill flattened. A bowl shape now replaces the hill. In addition to population and noise made by the explosions, the inhabitants of Fushi are scared about the collapse of the pit, if heavy rains.



● The Xincheng Mountain Mining. (Source: 101 News Media website)

In June 2017, Truku people, accompanied by environmentalist groups, organized a large rally in Taipei City to make their fight known all around the country, and in November of the same year, did a road-block protest. Their demands were to include FPIC in the Mining Act and to put an end to the company permit (Jacquelin-Andersen, 2018).

8.6.3. Thao Peacock Park BOT Development Case

In Nantou county, Yuchih township, the development of a hotel and tourist attractions in Peacock, located by the Sun Moon Lake, is the struggles of aborigines Thao living in the region. The Sun Moon Lake Peacock was originally a small park managed by the Nantou County Government. After the closure in 2016, the land was rezoned and a tender was open. The Developer Peacock Park Tourism Co won the tender and got a 50-years operation permit. The project is to build a hotel and a tourist attraction (Chieh-yu, 2017) (Chiu, 2017).

The garden is Thao's holy land; they used to hold traditional activities in the park. However, Thao peoples refer to article 21 of the "Indigenous Peoples Basic Law", which states that "When governments or private parties engage in land development, resource utilization, ecology conservation and academic research in indigenous land, tribe and their adjoining land owned by governments, they shall consult and obtain consent by Indigenous Peoples or tribes, even their participation, and share benefits with Indigenous People" (Council of Indigenous Peoples, 2018). They say that the government did not consult nor respect Thao's demand of not rezoning the place.

They are protesting against the rezoning and project development as Thao people recognize this area as their customary land. However, Peacock Park has not yet been officially recognized as aboriginal land. Therefore, the project is legal according to the official procedure

9 Timor-Leste



Timor-Leste map (Source: Google map)

9.1. The History

East Timor or Timor-Leste is the eastern part of the Island of Timor found in the Malay Archipelago. It is about 640 kilometers from Darwin, Australia. It shares its border with the Indonesian West Timor (Neupert & Lopes, 2006).

It has a very long history of being occupied by different nations. Its people have been oppressed and enculturated by whichever superpower that held it in its hands to the point that they were in the brink of losing their original identity.

The original Timor territory was split in half in 1749 after the battle between the Portuguese and Dutch, where the Portuguese took the eastern half and which is now known as East Timor (BBC News, 2018). During their occupation, the territory was known as Portuguese Timor. Similar to what Australia is to the British, it served as a place of exile by the Portuguese for political prisoners and ordinary criminals (East Timor Government Website, 2012).

After 400 years of rule by the Portuguese, the Australian and Dutch Forces occupied the region during World War II. It served as a defense fort to be able to secure it against the Japanese Invasion. The Japanese however were able to conquer the troops and occupied Timor in February 1942. During the occupation, there were a total of 40,000-70,000 deaths due to burning of Timorese villages (East Timor Government Website, 2012).

Portugal again gained control of the territory after the war. The expected rehabilitation with the help of Portugal did not take place. It remained neglected with no developments in infrastructure, education and healthcare (East Timor Government Website, 2012).

In 1975, however, Indonesia invaded Timor with the aim to fight communism. East Timor's leading political party, the FRETILIN was a communist party. The fear of spread of communism compelled Indonesia to take control over the territory, which was supported by the US and Australia (Neupert & Lopes, 2006). They annexed the territory as their 27th province despite that it was not recognized by the United Nations (BBC News, 2018) (Neupert & Lopes, 2006).

Majority of the Timorese people opposed the invasion and thus some formed a guerilla group called the FALINTIL to fight against it. To control this resistance, Indonesia regulated most of the subsistence farming practice as well as controlled access to agriculture, food and health services. This resulted in numbers of deaths among the Timorese. There were an estimated 102,800 deaths from 1974 to 1999 because of this; 18,600 deaths due to killing and 84,200 deaths due to hunger and illnesses (Neupert & Lopes, 2006).

It took 25 years for East Timor to be free from Indonesian control. When the then President Suharto resigned in May 1998, B.J. Habibie succeeded him. On January 27, 1999, he passed a referendum allowing the people of Timor-Leste to decide whether to have independence or not. The result of the poll on August 30, 1999 showed that about 98.6% of the registered voters opted for independence (Lumintang, n.d.).

During the five-day ballot count facilitated by the UN, anti-independence militia started imposing violence in the state. They attacked Dili, killing 1,400 citizens and displacing 260,000 people. This was resolved by the help of the UN peacekeeping force until on September 4, 1999 UN Secretary general Kofi Annan announced the independence of the country (Cultural Survival, 2016) (East Timor Government Website , 2012).

About 70% of Timorese properties were wrecked and damaged during the militia attack. This was another challenge the Timorese had to face even after gaining independence. This resulted in a three-year massive rehabilitation led by the United Nations. Manned civilian advisers, 8,000 peacekeeping missionaries, 1,300 police officers and volunteers all over the world worked for the reconstruction of the nation (East Timor Government Website, 2012). At present, the state is now called the Democratic Republic of Timor-Leste

9.1.1. Demographics

East Timor has an area total of 14,874 sq. kilometers, which is purely land as they do not have any water bodies. It is the 160th among other countries in terms of land area. In terms of maritime claims, they have 12 nm of territorial sea, 24 nm of contiguous zone and 200 nm of exclusive fishing zone (Central Intelligence Agency, n.d.).

Population:	1, 345, 856 (2019 est.)
Population growth rate:	2.32 (2018 est.); 2.13 (2019 est.)
Birth rate:	32.9/1,000 population (2018 est.)
Death rate:	5.8 deaths/1,000 population (2018 est.)
Net migration rate:	3.9 migrant(s)/1,000 population (2018 est.);
Nationality:	
noun:	Timorese
adjective:	Timorese
Ethnic groups:	Austronesian (Malayo-Polynesian), Papuan, small Chinese minority
Religions:	Roman Catholic 97.6%, Protestant/Evangelical 2%, Muslim 0.2%, other 0.2% (2015 est.) The Timorese government reports that most Christians continue to practice animist traditions. A minority, called serani, do not.
Languages:	Tetun Prasa 30.6%, Mambai 16.6%, Makasai 10.5%, Tetun Terik 6.1%, Baikenu 5.9%, Kemak 5.8%, Bunak 5.5%, Tokodede 4%, Fataluku 3.5%, Waima'a 1.8%, Galoli 1.4%, Naueti 1.4%, Idate 1.2%, Midiki 1.2%, other 4.5% CITATION Cen \l 1033 (Central Intelligence Agency, n.d.)
Note:	data represent population by mother tongue; Tetun and Portuguese are official languages; Indonesian and English are working languages; there are about 32 indigenous languages.
Literacy:	CITATION Cen \l 1033 (Central Intelligence Agency, n.d.)
Definition:	age 15 and over can read and write (2015 est.)
Total population:	67.5%
Male:	71.5%
Female:	63.4% (2015 est.)

Source: (Central Intelligence Agency, n.d.);

Its population has increased over time despite the killing of many of its citizens. On July 2002, it was estimated at 952,618 (East Timor Government Website, 2012). It increased to 1,183,643 based on the Census in 2015. This includes 601,112 males and 582,531 females, with 29.5% living in urban areas and 69.5% in rural areas (CI-GEF PROJECT AGENCY, 2017). Another source however claims that the total population in 2015 is 1,261, 000 (Ethnologue Languages of the World, n.d.). In the July 2018 estimate, it increased to 1,321,929. It is the 156th country in the world in terms of population (Central Intelligence Agency, n.d.)

It has thirteen municipalities where the most populous one is Dili, the national capital, with 277,279 inhabitants (CI-GEF PROJECT AGENCY, 2017). The municipalities are namely Aileu, Ainaro, Baucau, Bobonaro, Cova-Lima, Dili, Ermera, Lautém, Liquiçá, Manatuto, Manufahi, Oecussi-Ambeno and Viqueque (East Timor Government, 2012)

The present East Timor has a parliamentary system of government. Its constitution took effect when the territory officially became independent. The president is the head of state and the prime minister as head of government (East Timor Government Website, 2012).

The country has a lower average income than the world average. 37.4% are living below the poverty line and about 50% are illiterate (HJTYDGE, n.d.). Moreover, it is ranked 132 in the Human Development Index, among 189 countries, with a rate of 0.625 in 2018. Despite the low HDI score, which is below average for countries in the medium human development group, the country has shown a 23.3% of increase from 2000 to 2017 (UNDP, 2018)

East Timor is widely agricultural with 79.6% of its households engaged in crop production. 37.7% of these are in urban areas and 94.8% in rural areas. There are also 87.2% engaged in livestock (CI-GEF PROJECT AGENCY, 2017). Agricultural production is more of low input subsistence farming which also results to low output cropping. Their main staple foods are rice and maize (Neupert & Lopes, 2006).

Subsistence agriculture is characterized into three types. The ones living in the uplands, the ones in the rugged hills, and the mountains are the poorest with very low opportunities for cash income. Most live under the below poverty threshold. Their main product in these areas is corn. In some parts, some also grow coffee as a cash crop, and only a few of them are engaged in this type of farming because the yield is low and the production varies according to climatic conditions (Neupert & Lopes, 2006).

In the valleys, also called wetlands, and in the coastal regions is where the rice growers are found. They are able to produce a fair amount and also able to sell their surplus. They also raise livestock and produce cash crops. Yields are however low. Aside from rice, the coastal communities are able to fish and produce staple crops, vegetables and fruits (ibid).

The 2011 data showed that 25.1% of the total land area is agricultural, 10.1 % is arable, 4.9% is planted with permanent crops and 10.1% is pastureland. Forest land total to up to 49.1% of the total. Other classifications make up 25.8%. In 2012, there is an estimated 350 square kilometers of irrigated lands (Central Intelligence Agency, n.d.).

East Timor's terrain is described as mountainous with elevation extremes. They have gold, petroleum, natural gas, manganese and marble as natural resources (East Timor Government Website, 2012).

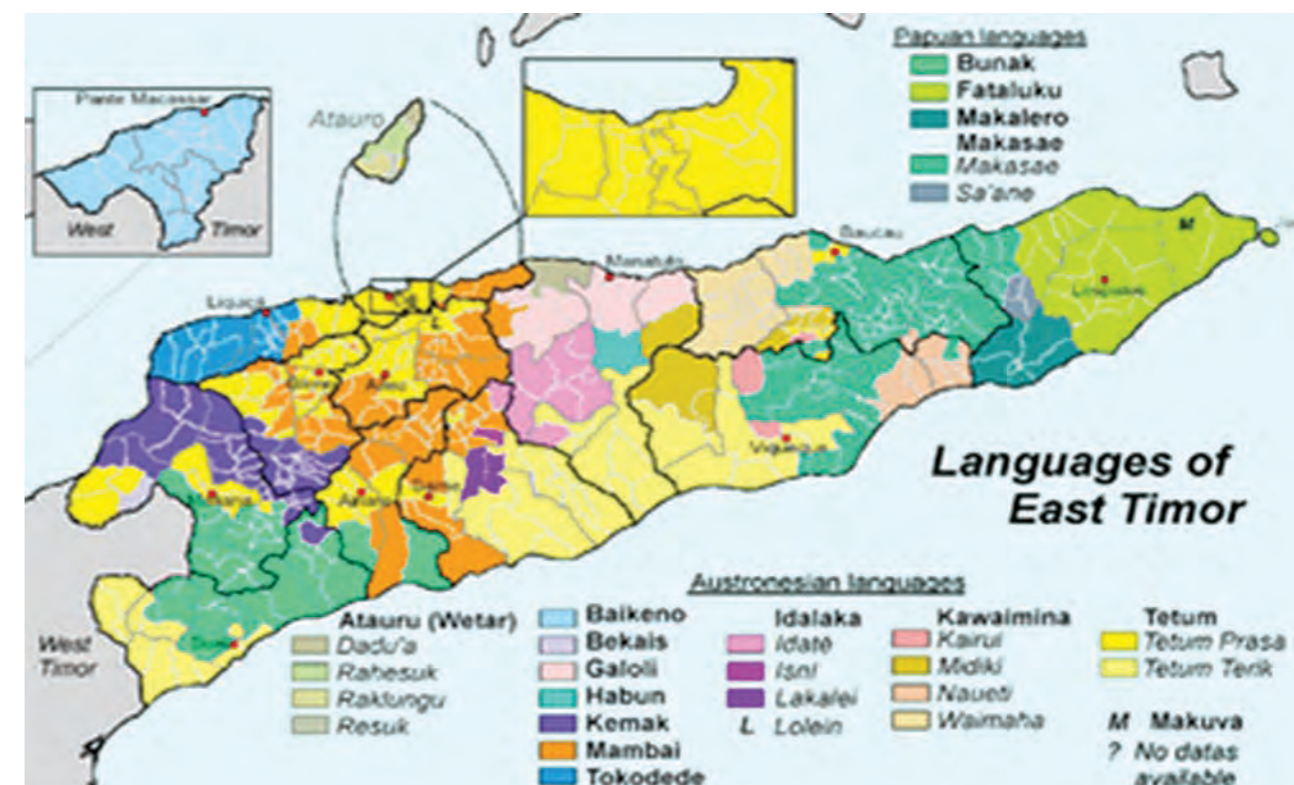
Ainaro's main resources include organic coffee and sandalwood. It is also known for its numerous streams, rugged terrain and agriculture-susceptible lands. It is also where the highest peak in East Timor is found, Mt. Ramelau (East Timor Government, 2012)

9.1.2. The Indigenous Communities

The Tetum name for Timor Leste is Timór Lorosa'e which means "Timor of the Rising Sun".

The Timorese belong to numerous ethnically diverse groups. The country is both multiethnic and multilingual. Prior to the Portuguese invasion, in a population of 650,000, there were approximately 37 dialects and 11 distinct languages being spoken in the island. During the Portuguese colonization, Portuguese became the national language. The most widely spoken language among the indigenous populations was however Tetum (Kwiatkowski, 1983).

In 2007 however, estimates show that Mambae was the widely-spoken with 24.6% of the population speaking the language. This was followed by Tetum with 17.4% then Macasae with 11.7% speakers. Kemak and Tetum Terik are at both 6.3%. This was followed by Bauqueno at 6.2%, Bunak on the other hand is spoken by 5.7% of the population, and Tokodete 5.2. Other languages totaled to 16.5% (Mother Tongue by Rural and Urban Areas and by District, According to Gender, n.d.)



The Timorese are generally called Maubere, which used to be a derogatory name used to separate them with the Portuguese and the Indonesians. Eventually, it turned to be their identity, which they acknowledged during the resistance movement.

The indigenous communities are called masyarakat adat. In 2016, there were more than twenty Indigenous languages and dialects in active use and nine indigenous groups recorded (Cultural Survival, 2016). Recently, "there are already 39 indigenous groups present" (Centro Juventude Covalima, 2019)

After independence, the state had an attempt to create a national identity. However, due to assimilation in educational settings, the Portuguese language was still prioritized as the language being used in schools (UNHRC, 2016).

The Indigenous Peoples in Timor-Leste came from two origins. The Tetum, Mambae, Tukudede, Galoli, Kenmak and Baikeno are of the Malayo-Polynesian origin. The Tetum are the largest with a population of about 100,000 (Cultural Survival, 2016) or 25% of the population. Most of them live around Dili, Suai and Viqueque (Minority Rights Group International). Next is the Mambae at about 80,000 or 10 % of the population and are found in the central mountains. They are followed by the Tukudede at around 63, 170 while the Galoli and Kemak are estimated to be both about 50,000. The Baikeno is only about 20, 000 (Cultural Survival, 2016).

On the other hand, the Bunak, Fataluku and the Makasae are of Papuan origin. "The Bunak are estimated at 50,000, while the Fataluku are around 30,000 and the Makasae are about 70,000" (Cultural Survival, 2016). About 90% of the East Timor populations are indigenous peoples (Centro Juventude Covalima, 2019).

9.1.3. The Indigenous Timori's Connection to Land

In rural areas in Timor, land is the anchor for livelihood and social, ecological and spiritual relations. At least 75% of Timor's population practice subsistence and semi-subsistence agriculture in rural areas. They have four main types of farming namely the rain-dependent dry land farming, irrigated rice production and plantation cash crops. They are also into hunting and foraging (Batterbury, et al., 2015).

Aside from the fact that land is the source of livelihood, their land ties are based on the histories of their ancestral origins and movements as recalled in oral histories. They regard sites as sacred because of their history and thus ceremonies are held on these sites to commemorate spiritual ties. The Timorese feel a sense of belongingness including social, cultural and ecological identity to a place, based on its proximity, to the place where they originated from. They also feel a sense of having rights as well as an obligation to land water and forest and other local resources around the area (Batterbury, et al., 2015).



● A traditional Timorese House in Bertakefe, Timor Leste (UN Photo/Martine Perret. www.unmultimedia.org/photo/)

Thus, traditionally, land ownership is based on whether an individual or family belongs to the lineage of the original settlers in the area. Land ownership is marked through a ritual of covenant. Land to them has a material and non-material quality and is not equivalent to any monetary value. Thus, acquiring land is not done by buying it but based on one's roots or by marriage (Batterbury, et al., 2015).

9.2. The Disruption of the Practice of their Rights

9.2.1. Displacements

During the four hundred years of Portuguese colonization and twenty-four years of Indonesian control, the people of East Timor have been constantly uprooted from their ancestral domains to cut their ties with the Fretelin, a revolutionary group advocating for independence from the Portuguese. This has caused disruption in the way of living of the Timorese. Uprooting them would mean cutting their connection to their culture, spirituality, livelihood and all of their being (Kwiatkowski, 1983). The loss of livelihood is due to the destruction of their crops, livestock, housing, agricultural implements and land (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

In 2011 about 55% of the households were reported to have been displaced. Displacements have mostly occurred during the period of 1975-1980 during the initial invasion of the Indonesian military forces (Silva & Ball, 2006) (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005). Most of the displacements were local and only 2.4% outside of Timor-Leste. According to the 1990 census, there were a total of 2,011 displacement events between 1974-1999 (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

In the process of "Indonesation" of East Timor, oppression was felt by the Indigenous Peoples under the political and military control. The cultural and civil rights of Timorese peoples were also oppressed. Their right to practice their traditional ways of life, speak their language and live on lands they choose, and to be an integral part of the political processes under which they live. The most basic right to life was also violated because of genocides.

For the Kemak for example, their social organizations are based on the founding village and associated founding ancestors. Displacing them made it hard for them to trace this. The Kemak has several structures also meant for various uses, aside from their homes, such as houses used for rituals and as granaries. The displacement and the inability to build these structures have limited their traditional practices (Molnar, 2005)

The subsistence economy of the Indigenous Peoples was affected largely. The decrease in number of livestock in 1973 to 1980 caused a great fall to their economy since it is where means of production, transportation and wealth. This caused starvation and death to most East Timorese (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

9.2.2. Rights to Self-determination

During the Indonesian rule, there were many violations to the right of the people in Timor-Leste. The Commission for Reception, Truth, and Reconciliation stated that the one who should be held accountable for this violation was President Suharto himself (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

The military rule under the Republic also suppressed any practice of the Timor Leste peoples' right to self-determination.

9.2.3. Rights over Natural Resources

Along with the non-provision of the rights to self-determination is also the non-provision of their rights to dispose of the natural resources and wealth freely. Another instance is the arrangements

that Indonesian authorities put place in the coffee industry. Other resources such as their sandalwood and timber were also exploited without any regulations on the use of these resources at the same time disregarding sustainability (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

The approval of the Timor Sea Treaty between Indonesia and Australia was also concluded without consultation with the people of Timor (ibid). This was a joint development project in a location called as “Timor gap” on the south-eastern waters. This is regarding the petroleum and natural gas resources (East Timor Government Website, 2012).

9.2.4. Rights over Land

Because of colonization and the presence of legal and administrative structures, the traditional ideas about land and territorial entitlements have shifted (Batterbury et al., 2015). In many of the villages, traditional justice is still being followed. It was however recommended to reexamine how their traditional justice system is adjunct to the present justice system specially those which are conflicting.

Aside from these the idea of making land as private properties through titling has started during the Portuguese era, though only a few titles were issued. It was only during the Indonesian occupation that there was rampant movement to have the lands titled to mark ownership. This was due to the application of Indonesian laws and norms in the area. Most of these happened in the urban centers (Batterbury et al., 2015).

The “repeated displacements, constant redrawing on the administrative boundaries and the non-recognition of customary and land ownership and land-use practices produced a legacy of landlessness” among the Timorese (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

Despite that, Indonesia has granted independence to Timor-Leste, many of its “infrastructure, agricultural livelihoods, and technological competencies” has been greatly affected. During the raid of the militia after the 1999 referendum, the killing of the livestock and the relocation also affected the Indigenous Peoples. The indigenous women were a “target for sexual and physical violence” who experienced “gang-rape, sexual enslavement and killing” (Cultural Survival, 2016).

During independence, there were instances where because it is a developing state, infrastructures were being built around the territory, it was noted that people in the affected communities were not informed and were not included to participate in the processes. The people in the community are not enjoined to participate on their land agreements and be able to benefit from resources fairly (UNHRC, 2016).

In 2007, Timor-Leste endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Cultural Survival, 2016). At present, since it is dominated by the indigenous peoples, Timor Leste’s law recognizes the rights of the indigenous peoples on lands, territories and resources (Centro Juventude Covalima, 2019)

There are however some limitations of the laws regarding this. These include weak legal support on land ownership by clans or tribes when there are land disputes or when the government wants to acquire the land. Collective ownership is however not recognized by the government and thus, there was no way for them to register communal lands to be able to have control over it.

In other cases, because land compensation is provided by the government, these lead to conflict among community members who are sharing the collective land status. Compensations are being collected only by the tribal leaders or given to individuals but not as a collective compensation. (Centro Juventude Covalima, 2019).

9.2.5. Rights to Health and Education

The displacement and the fleeing of the Timorese to farther areas have snowballed into the inaccessibility to health and education services. During the Indonesian rule, although the country had health and education programs in place and the people in relocation areas were provided services, the ones provided to them were substandard. These were “ineffective in overcoming chronic public health problems or meeting basic learning need” (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005)

The schools were used to indoctrinate the young into “Indonezation”. The languages taught in schools were not the mother language of the Indigenous Peoples but Bahasa. The “education was used in this way as part of an integrated security approach whose overriding objective was to ensure that pro-independence sentiment did not take root in a new generation”. (ibid).

9.2.6. Violence Against Indigenous Women

Indigenous women are one of the most vulnerable groups in terms of rights. The vulnerability is even higher depending on the geographic location. The farther they are from the urban areas the more the resources are limited. These resources may either be safe houses where they can run to in cases of abuse, medical care and even psychological and judiciary support (Cultural Survival, 2016).

A law against domestic violence was passed in Timor Leste, however, there is no mechanism in place on the support services when and violent incident occurs. One of the regarded reasons why the rights of indigenous women are not supported is the lack of enough representation of females in the village elections (Cultural Survival, 2016).

9.3. Advancement on the Assertion of Rights

The first thing that human rights activists started working out right after independence was to assist in the humanitarian operations after the raid by the anti-independence militia. Once the operations were established by the year 2000, they then started working on cases and issues of past crimes, which resulted from the raid. To which the UN responded that those accountable for the crimes should be held responsible (Commission for Reception, Truth, and Reconciliation Timor-Leste, 2005).

In late 1999, the United Nations sent a Commission of Inquiry to investigate recent events and to recommend how those responsible for them should be held accountable. The Commission recommended an International Tribunal be established to try cases of 1999 crimes. Instead the UN established a Serious Crimes process in Timor-Leste and encouraged the Indonesian Government to show its commitment to the rule of law by using its own judicial system to try people residing in Indonesia. On 7 March 2000, at a conference of its Comissão Política Nacional (National Political Commission, NPC) the CNRT decided to form a commission for reconciliation. In June 2000, the CNRT Reconciliation Commission conducted a workshop with support from Uppsala University (Sweden) and the Human Rights Unit of UNTAET. Participants included members of political

organizations, human rights activists and members of the Catholic Church, who explored the idea of a truth and reconciliation commission. The group brought this idea to the August 2000 CNRT National Congress, a landmark gathering to help formulate the vision for the new independent Timor-Leste. The Congress endorsed the idea of a truth and reconciliation commission and established a steering committee to conduct consultations to determine whether the idea was acceptable to the broader East Timorese community (ibid).

When President Habibie was in power, the first time that the Timor Leste People were given the right to self-determination was in 1999 during the declaration of the referendum (ibid).

The customary system of land tenure in the country stayed resilient all throughout the changes that have happened, evolving and adapting over time. However, despite how harmoniously it is working with the common people, the elites and the foreign advisors are strongly against it (Batterbury et al., 2015).

The formalization of land rights in East Timor was driven by land scarcity. This is however only true in towns, cities and suburban areas but not true across the country. The more viable reason is the land pressure which was observed during the conduct of appropriation of land for conservation, potential agribusiness and industrial development projects in 2000. There were cases on community disputes due to collectively owned lands being legally reclassified as alienated to the state; or if these are sold as individual properties or as discussed earlier, caused by forced displacement brought about by colonial occupation.

The Government also respects the protected areas that were identified as place for cultural practices such as places for rituals. Spring water sources by the community also remains untouched as part of the protection by the government (Centro Juventude Covalima, 2019).

9.3.1. The Indigenous Peoples Initiatives to Assert their Rights

The Indigenous Peoples took measure to also assert their rights during the changing times. They learned to register their private lands in accordance to land laws but in the meantime maintaining the tribes' collective land status.

The community leaders are also involved in the determination of land rights. The Indigenous People have their rules regarding intergenerational transfers, "operational rules", their designated rights and obligations relating to the land as well as terminologies used to describe the social relations. The rules may differ a little across the regions but are similar (Batterbury, et al., 2015).

The Timorese people follow a traditional justice system where local leaders are sought to hear and make rulings over any violations. This represents a way of life that has been passed on from one generation to the next (Marshall, 2004)

Thus, the leaders have a say for government or private sector projects that are introduced in the territory. The leaders may assert that projects should not affect any of the collective lands, protective areas and sources of livelihood of the Indigenous Peoples' groups (Centro Juventude Covalima, 2019).

9.3.2. Gender and Youth Involvement

In the case of women involvement, there are various systems applicable on each tribe. In groups where they follow the patriarchal system, however, there is very little involvement on the

determination of land status in households (Centro Juventude Covalima, 2019). In the patrilineal system, rights are given to males as first line owner of lands (TAFARA.TL, 2019)

The young people as well as persons with disabilities are given equal opportunities of involvement to land issues (Centro Juventude Covalima, 2019).

In a report by the UNDP in 2018, the youth has shown value on their cultures. They participate in the cultural activities and that they value their cultural heritage. Cultural identity is also deemed important among 80% of them. Most of them have stated that they participate in spiritual and religious activities and about 99% still observe the lulik (sacred) traditions (Saikia, 2018).

9.4. Synthesis and Recommendations

Timor Leste has had a long history of oppression and control from different countries until they finally gained independence. Still, they are faced with many challenges even after independence as they need to rebuild their damaged infrastructures while also organizing their government.

The situation of the Indigenous Peoples in the country have been waves and waves of displacement from their original territories which resulted to a disconnection on their cultural ways of life and their people, especially to the younger generation. The assimilation into the Portuguese culture and then later on the Indonesian culture has caused more challenges for them to assert their rights in practicing their culture as well as on their rights to self-determination and access to lands and resources.

The history of constant killing and oppression also has had a large impact on losing empowerment by these indigenous groups.

East Timor's majority populations (90%) are Indigenous Peoples. However, since these belong to different groups, it may be considered that there are dominant and minority groups. The dominant groups usually live in the capital and the plains where they are relatively more privileged in terms of access to resources such as health, employment and education than the minority who live in the mountains.

The minority groups who live in mountainous regions rely on subsistence farming and are not able to grow cash crops. Also, that access to education and health resources is very limited. Due to a very low educational attainment, most of them do not understand the laws on having rights over their land. More often, literacy is seen as a tool of empowerment of the Indigenous Peoples to be able to educate themselves on their rights. Thus, the ones who were able to read and understand national laws on property ownership were the ones who were able to register their private lands under their names. Communal properties are however under government control since there is no law which provides the recognition of these properties. The Indigenous Peoples who own these common territories were not provided the rights for self-determination when development projects are introduced. During the independence however, the country claims that they are involving elders in deciding over development projects on their land. The country still has to work on how these communal properties can be registered under a certain group.

Cultural and spiritual activities are respected by the present governance. Sacred places are respected by the government including communal water sources. This should be a good start in declaring other territories as indigenous owned and managed.

10 Vietnam



Vietnam map (Source: Google map)

10.1. Introduction

Vietnam is located in southeastern Asia, bordering the Gulf of Thailand, Gulf of Tonkin, and South China Sea, as well as China, Lao, and Cambodia. And has a population of 97,040,334 (July 2018 est.). Vietnam's GDP was \$124 billion in 2011, with 20% attributed to Agriculture, 40% to industry and 40% to service (CIA, n.d.).

In Vietnam, 87% of the total population comprises of the indigenous Kinh and occupies about half of the country's territory, especially in the coastal and low-lying areas, and have been engaged in intensive rice farming and fishing. On the other hand, most of the 53 official ethnic groups inhabit the interior mountains and highlands, though some, like the Khmer Krom, Hoa, and Lao are concentrated in the cities or lowlands. Most of the other remaining minorities with their huge diversity in languages, origins and writings tend to live in the mountains of the north, down the Truong Son mountain range, and in the central highlands (Table1).

Table 1. Indigenous Peoples and their distribution (MRGI, 2018)

Ethnic Group	Percentage of total population	Language	Location
Kinh	85.7%		Concentrated in about half of the country's territory, especially in low-lying areas, and have been engaged in intensive irrigated-rice cultivation and fishing, increasingly changing pattern
Tay	1.9%	Tai-Kadai	North of Vietnam, villages based at the feet of mountains about 15-20 households each
Thai	1.8%		Concentrated in the north-west and western parts of north Vietnam
Muong	1.5%	Vietic language	Inhabit the mountainous region of northern Vietnam, and are generally found in Hoa Binh and Thanh Hoa province
Khmer Krom	1.5%	Kmer	Concentrated in the south, in the delta region of the Mekong River. Inhabited the Mekong Delta since before the arrival of Vietnamese.

The Degar or Montanards, a French term related to their presence in the highlands, composed of more than 30 indigenous communities, inhabit the central highlands having different cultures and their languages belong to two distinct family groups: the Malayo-Polynesian and the Mon-Khmer. Most of them are Protestants and their total number is possibly between 1 and 2 million people. Among the largest groups are the Jarai, Rhade and Bahnar (MRGI, 2018).

10.1.1. Characteristics of Indigenous Peoples in Vietnam

The non-Chinese Indigenous Peoples of Vietnam are for the most part highlanders who live in relative independence and follow their own traditional customs and culture. There are two groups that inhabit the four major areas: the northern Chinese border region and the uplands adjacent to the Red River Delta, the northwestern border region adjoining Lao and China, the Central Highlands and the area along the Gai Truong Son, and parts of the Mekong River Delta and the Central coastal strip. These groups are classified as either sedentary groups, the numerous of the two kinds, engaged mainly in the cultivation of wet rice and industrial crops; and the nomadic groups practicing slash-and-burn farming in forested areas for a brief period of cultivation. Their cultural characteristics are diverse and are distinguished from one another through language, cultural features such as architecture, colors and shapes of dress and personal ornaments, religious practices, and systems of social organization (Hays, 2014).

Based on the languages spoken, ethnologists separate Vietnamese residents into eight major groups that count up to 54 subgroups (Northern Vietnam, 2019):

1. Vietic (Chut, Kinh, Muong, Tho)
2. Austroasiatic (Ba Na, Brau, Bru Van Kieu, Cho Ro, CO, Co Ho, Co Tu, Gie Trieng, Hre, Khang, Khmer, Kho Mu, Ma Mang, M' nong, O Du, Ro Mam, Ta Oi, Xinh Mun, Xo Dang, a Xtieng)
3. Tay-Thai (Bo Y, Giay, Lao, Lu, Nung, San Chay, Tay, Thai)
4. Tibeto-Burman (Cong, Ha Nhi, La Hu, Lo Lo, Phu La, La Si)
5. Malayo-Polynesian (Cham, Chu Ru, E De, Gia Rai, Ra Glai)
6. Kadai (Co, Lao, La Chi, H La and Pu Peo)
7. Mong-Dao (Dao, H' mong, Pa Then)

Some of the subgroups can be divided further according to the color of their clothes. The Hmong have prominent colors of red, white, black, green, flowers while the Dao are more on red, black, with white pants, with blue jackets and silver coins. With the Tay group clothes are not as colorful as with other Indigenous Peoples. Clothes are made of cotton that is dyed indigo color. There is not much to see like embroidery or other decorations. Women wear skirts or pants, polo shirt and black scarf, men wear trousers and shirt or T-shirt. Thu Lao Indigenous Peoples wear a cone-shaped scarf on their heads and the Indigenous Peoples dresses like Thai residents of Mai Chau Town (North Vietnam, 2019)

Indigenous Peoples in Vietnam share common elements in their daily life from rural farming lifestyle, similar village architecture dwelling, traditional rituals like appointment of a child after reaching a certain age, long history of tribal warfare, many of these groups are semi-nomadic and drinking rice wine is popular with village celebrations (North Vietnam, 2019).



● Christian Erni



● Christian Erni

10.1.2. Recognition of Indigenous Peoples of Vietnam

Indigenous Peoples in Vietnam account for about 13.4 million people, or 14.6% of the national population (95 million). Vietnam has 54 recognized indigenous groups, 53 of which are minority ethnic groups, and is therefore considered a multi-ethnic country. The Government of Vietnam does not apply the term “Indigenous Peoples” to any of these minority ethnic groups. The term “ethnic minorities” is used instead (IWGIA, n.d.).

10.1.3. Legal Rights of Indigenous Peoples

Vietnam voted in favor of UNDRIP but has not ratified ILO Convention 169 at the same time that it does not recognize ethnic minorities as Indigenous Peoples. There is no specific law on Indigenous Peoples, but an agency at the ministerial level, the Committee on Indigenous Peoples’ Affairs, is in charge of the affairs of the Indigenous Peoples. The government has ratified CERD, CEDAW and CRC. All Indigenous Peoples have Vietnamese citizenship, and the Vietnam Constitution guarantees that all people have the same rights. Indigenous Peoples’ groups have their own culture and different traditions (www.iwgia.org).

10.2. Land Ownership

In Vietnam, private ownership of land is technically not permitted, but the law allows ownership of a right to use land called the Land Use Right (LUR) (Embassy of the Socialist Republic of Vietnam in the United States, n.d.).

The land ownership regime has formed and developed through different historical periods. In the feudal period, the law recognized two forms of land ownership: first public ownership, whereby the land of every village and commune and all public communes throughout the country fell under the King's supreme ownership (State ownership); and the second is private ownership of land by landlords and farmers.

The Vietnam Constitution and Land Laws of 2013 stated that land is the property of the entire people, which is allocated or leased by the State to organizations, households or individuals for long-term or limited-term uses. Depending on their status, land users are fully or partly granted the rights of land to exchange, transfer, lease, sublease, inherit, donate, mortgage land use right, and contribute capital in form of land use right (Nang, 2015).

Traditionally, land in Vietnam mostly belonged to the community in the 19th century, as it was considered the discovery of the whole community. The powerful people in the community divided land and gave to people for their production and benefit. People with land were responsible for supporting others after natural disasters, failed crops, or other crises. During the Colonial Period (1858-1945), the French colonialists started exerting possession over the whole country and carried out measuring, cadastral mapping and documenting in many regions countrywide to control and protect land protection rights. French law system gradually replaced the Vietnamese feudalistic law. Land law in this period stipulated four kinds of possession protected by law: public legal person possession, private legal person possession, public possession, and private possession. In 1945-1975 periods, with the establishment of the Democratic Vietnam Republic in 1945, private ownership of land was still maintained, but tax reduction policies were applied. Land of the French colonialists and government advisors were collected and distributed to farmers.

From the end of 1953 until the middle of 1956, reform efforts completely eradicated possession rights of feudalistic landlords. Land was distributed to farmers and ownership rights belonged to the individual, mainly middle and lower class farmers. The decision to establish agricultural cooperatives in 1958 changed the nature of land possession in the North. By the end of 1960, agricultural cooperatives managed 85.6% of the farmers and 73% of the land. The 1958 Constitution stipulated three types of land possessions including state ownership, cooperative possession and individual labor possession.

From 1975 until now, the agricultural cooperative model was applied in the South, but not long later was proved to be inefficient. The 1980 Constitution stipulated that land was the possession of all citizens. Later, the 1988 Land Law stipulated three basic rights related to land: Possession, Management/Control and Usage. However, this law did not allow farm users the right to transfer use rights. This law was neutral in gender, hence was understood to not discriminate between men and women in basic rights to land.

The 1992 Constitution and 1993 Land Law still stipulated for land to be state owned, but farmer households with land given for long term use had rights to rent/lease, mortgage transfer, exchange, and inherit. Land users were issued a Land use right certificate. However, this land use right certificate was issued for the households, often under the name of the heads of households, who were mostly men. The 2003 Land Law stipulated a Land Use Right Certificate (LURC) is to be issued for each plot, and if a plot was joint asset of both husband and wife, then the LURC would need to have both signatures (Alvarado et al, n.d.).

10.2.1. Land Classification and Tenure Rights

Land tenure and the allocation of forest land to communities is one of the challenges of the Indigenous Peoples in Vietnam which vary from one province to another and create uncertainty and insecurity for many. In 2015, only 26% of the total area of forest land was allocated to households and 2% of that land was allocated to communities for management. Complaints were raised on the low quality of forest allocated to households and communities. It has no plant cover and thus cannot generate income (IWGIA, n.d.).

Land tenure system in Vietnam started with the traditional system of owning and using lands, which has been established and practiced for a long period of time among the indigenous peoples, from before 1945. In 1988, it changed from traditional land tenure to the concentration of land under government rule followed by the decentralization from 1988 to the present where the land rights are transferred from the State to households, individuals and organizations while the role of land administration of community has reduced. The land reform in Vietnam including Renovation 10 and the 1993 Land Law has had many impacts on tenure of Indigenous Peoples. These policies have encouraged the farmers to maximize land use by expanding land under cultivation and crops, eventually this reduced shifting cultivation and increased agricultural productions. Parallel to these positive impacts are the negative impacts such as unfair land uses between households, land disputes, lack of land, and forest degradation (Vuong, n.d.).

In terms of classification, Vietnam has a total land area of 33 million hectares where 81% of it was classified by the government as agricultural land (35%), forest land (45%), and aquaculture (1%) in 2013. Land area allotted solely for rice cultivation is 3.8 million hectares which is only 35% of all cropland which is threatened with the government's priorities for land use from 2016-2020 focused on infrastructure construction, industrialization, and urban expansion. Agricultural lands threatened by droughts, salinization, and climate change will be given permission to transfer land to other agricultural purposes. These environmental effects linked to dam construction and deforestation are increasingly affecting coastal agricultural land, including 970,000 ha in the Mekong Delta (Open Development, 2018).

The height of industrialization and urbanization poses threat to agriculture particularly rice production as these signs of progress are covering more lands which may include land areas solely allotted to agriculture and at the same threatens land use right certificate holders.

Land tenure rights in Vietnam are essentially usufruct rights where the land use rights holders may use the land, but cannot own it. Therefore, sustainability of a parcel of land is dependent upon the duration of the land tenure given to a land use right holder. The longer the land tenure gives the land users greater incentives to invest and care for the land as well as longer opportunities for production.

Land use Right Certificates (LURCs) are issued by the State to individuals and organizations for lands allocated or leased to them. These certificates may be exchanged, transferred, mortgaged, leased, and inherited. Different types of lands are granted varied rights: residential land is allocated for indefinite terms; agricultural LURCs (“red books”) and forest land for 50-year terms. Farmers are not allowed to convert agricultural land to other uses with the state permission. Restrictions are tighter with forest user’s rights to use allocated land, especially in harvesting timber. Tenure for land use limits the land use certificate holders’ management of the lands allotted to them depending on the duration given them especially for lands allotted for residential lands which can be denied them any time due to the indefinite term for it (Open Development, 2018)

10.3. Land Laws and Policies

The Democratic Republic of Vietnam was born after the 1945 Revolution. Land in the country during this time was owned by different elements of society: The State, landlords, the bourgeoisie and the farmers. Land ownership was merely a general political declaration suitable for the nation’s situation and it was not addressed in the first constitution. It was aimed at establishing a new political regime with the hope of uniting the people in the struggle against the threats to the nation’s independence. However, the 1946 Constitution recognized citizen’s fundamental rights and laid the foundation for the state apparatus without otherwise formulating principles on the economic regime on general and land ownership in particular. Only Article 12 contains provisions of the property rights of citizens (Vietnam Law Magazine).



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Land Administration in Vietnam in the 1490s was established as a cadastral book focusing on collection of agricultural tax. During the French and American war, Vietnam applied the old French Land Administration system. While in 1975 onwards changes were made with the Land Administration as the country coped with the land innovations and technology. Currently, Vietnam is applying the land administration system stipulated in its constitution and Land Law 2013 where the land is the property of the entire people which is allocated or leased by the State to organizations, households or individuals for long-term or limited-term use. Land users are fully or partially granted the rights of land to exchange, transfer, lease, sublease, inherit, donate, mortgage land use right, contribute capital in form of land use right depending on their status (Nang, 2015).



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10.3.1. Land Laws in Vietnam in Relation to Indigenous Peoples

Land ownership among Indigenous Peoples has not been secured in most parts of South-East Asia. The States in the region have a different view to the concept of indigenous ownership. There is no recognition of individual ownership, including Indigenous Persons; and there is limited protection to indigenous land rights. Simply put, this system means that Indigenous Peoples, as well as non-indigenous peoples, have no real ownership (Truong et al, n.d.).

The Constitution of Vietnam provides in Article 5 that:

“The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and forbids all acts of national discrimination and division.

Every nationality has the right to use its own language and system of writing, to preserve its national identity, and to promote its fine customs, habits, traditions and culture”.

Noteworthy Prime Minister's decisions relating to Indigenous People's land rights and development were crafted as follows:

Decision 132/2002/QĐ-TTg dated October 8th, 2002 on solution of cultivated land and residential land for local minority people in Central Highland. The minimum area of allocated land per household is 1 ha of slope swidden land or 0.5 ha of yearly-one-crop wet rice or 0.3 ha of yearly-two-crop wet rice. Each shall allocate forest land to households in case of no available cultivated land. The land users shall direct manage and use land and shall not be allowed to transfer or mortgage allocated land within 10 years. In case of violation, the land shall be taken back by the state without any compensation.

Decision 134/2004/QĐ-TTg dated July 20th, 2004 on policy of assisting poor difficult ethnic minority households with cultivated land, residential land, houses and fresh water. The minimum area of allocated land per household is 0.5 ha of slope swidden land or 0.25 ha of one-crop-annum wet rice or 0.15 ha of two-crop-annum wet rice. The poor ethnic people with bad houses shall be assisted of VND 5 million from central budget plus other sources of assistance to build new house. Local people can access forest to take wood for their house improvement according to specific provincial regulations. Central budget assists an equivalence of 0.5 ton of cement or VND 300,000 per household. Assistance of 100% and 50% expenditure for common fresh water system shall be offered from central budget to community, which consists of more than 50% and 20-50% of ethnic minority people respectively.

Decision 146/2005/QĐ-TTg dated June 15th, 2005 on taking land back from state farms and state forest enterprises to redistribute to poor ethnic minority households. The receivers should use land according to the laws and can get yields from existed trees on the reallocated land. They have to use land according to state planning and cannot legally transfer land within 10 years after the date of reallocation. If they are not in need of land usage, the state will take land back without compensation.

Decision 304/2005/QĐ-TTg dated November 23rd, 2005 on piloting models of forest allocation, contract to local ethnic minorities' village-level community and households in the Central Highland for forest protection. The allocated forest receiver shall gain entire yields from the forest. The forest contractor shall receive VND 50,000 per hectare annually. The forest users and contractors shall be obliged to protect forest according to the laws to fulfill obligations according to the contract.

Decision No. 18/2007/QĐ-TTg, dated February, 5th, 2007, by the Prime Minister to enclose "Vietnam Forestry Development Strategy for Period 2006 – 2020" gave priority for using forest extension agents belonging to ethnic minority groups in remote, isolated areas. Other attentions are paid to ethnic groups: Firstly, quickly develop voluntary forestry extension organizations for the communes and villages, particularly in remote, isolated areas. Secondly, focus on training and forestry extension activities for the poor, particularly ethnic minorities and women, so that they are able to generate stable incomes from diversification of crops and livestock. Thirdly, pay special attention to training for ethnic minority youth and forestry staff in remote, isolated areas. Fourthly, create favorable conditions to attract young researchers, women and ethnic minority peoples to be involved in scientific research and teaching.



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10.4. Challenges

10.4.1. Customary Laws and Gender Issues

The influence of Confucian ethics in Vietnam's traditional values which carries that a man is the head of the family and the sole decision maker regarding family assets, including land limits, the role of women when it comes to the management of the use of land or land use rights certificates (FAO, 2012).

It is also the culture that women are not given preference when it comes to inheritance where married women have limited rights to joint property, except in cases involving purchase or sale of major property for which the law requires written contracts. This is why one of the most important additions in the 2013 Land Law is the provision of the issuance of land use certificates for joint ownership between a husband and wife where both of them affix their signatures as co-owners (Countries and Cultures, n.d.).



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The 1993 Land Law provides for equal land-use rights between women and men and the 2003 Land Law provides for land-use certificate to bear the names of both husband and wife; however traditionally, most land use certificates are in the name of the husband who is considered the head of household (FAO, 2012).

Article 23 of Decree 70/2001/ND-CP states that the use-rights held or inherited by each spouse prior to marriage shall remain his/her separate private property. Furthermore, Article 24-25 provide for the division of land use-rights upon divorce. However, in practice, women almost never have land use-rights registered in their own names and customarily do not have the right to a share of the assets acquired during marriage (FAO, 2012).

Vietnam's laws emphasize gender equality regarding access to property and land rights. However, women are still disadvantaged compared to men being allocated with lesser land areas and often not included on land-use right certificates or have limited or not at all equal land managers with their husbands, especially that these certificates mandated by are necessary for formal state recognition of use rights, security of tenure, formal land transactions, and access to formal credit and legal protection of land-use rights (USAID, n.d.).

Changes in land distribution, tenure, laws and policies, land remain an important productive resource for Indigenous Peoples particularly those living in remote areas. These communities attach high political and cultural significance to land, and their control over it as well as customary institution and management are present in many ethnic villages, even though agricultural collectivization and nationalization of forestland in the past have weakened them (Truong and Genotiva, 2010).

In the past, between and within communities, ownership of land and forest was regulated by a system of highly effective customary laws and traditional rules. This has now been replaced resulting in limited access by Indigenous Peoples. Customary laws of highland indigenous groups have harmoniously and effectively regulated the relationship between the communities and the ecosystem as well as the social relationships between communities. And this system is now being threatened with the new land laws and policies governing forest lands (ADB, 2012).

10.4.2. Land Ownership Issues

Article 5 of the 1992 Constitution stated that all people are equal by law. However, it fails to recognize that most Indigenous People are underprivileged and marginalized. The Constitution does not offer special protection to Indigenous Peoples despite their historical status and contemporary marginalization, especially when it comes to land ownership. Despite State policies being implemented, these Indigenous Peoples are often left behind in social development and have become the most disadvantaged groups (Truong and Genotiva, 2010).

The Vietnamese government, in line with socialist ideology, does not legally recognize private land ownership. Since the early 1990s, the government has made moves to recognize de facto land ownership by granting individuals long-term leaseholds. This trend received more formal recognition with the passage of the 1998 Land Law. Control over land is extremely contentious. With the recent growth of a market economy, land has become an extremely valuable commodity, and many cases of corrupt officials illegally selling land-use rights or seizing it for personal uses have been reported. Ambiguities in the law and the lack of transparent legal processes exacerbate tensions and make land disputes difficult to resolve (Countries and Cultures/Vietnam, n.d.).

10.4.3. Threats to Land Use Rights

The land held and claimed by Vietnam's Indigenous Peoples may also require special protection because of the growing pressure from large foreign mining corporations and development projects. National demand for cheap energy and increasing world-wide scarcity of mineral resources mean that large tracts of Indigenous Peoples' land can no longer be considered remote. This land has attracted the interest of national development planners and international investors for the construction of hydropower dams and mining operations. For example, Vietnam is estimated to hold the world's third-largest bauxite ore reserves, most of which are located in the Central Highlands (Tay Nguyen). Several mining projects are already underway, and preparations for several aluminum processing plants in the Central Highlands are very advanced (Truong and Genotiva, 2010).

Indigenous Peoples' land is also under threat from other sources related to changes in global commodity markets and governance regimes. Worldwide demand for rubber, coffee, pepper, and other primary commodities is revalorizing the land of previously remote Indigenous Peoples' villages, attracting interests by Kinh migrants, State companies, and outside investors. New forest governance initiatives, such as Payments for Forest Ecosystem Services (PFES) and Reduced Emissions from Deforestation and Forest Degradation (REDD+), are attaching new values to forests thereby making them a profitable target for State companies and private investors. All this outside interest in Indigenous Peoples' land has the potential to cause serious conflict between these communities and outsiders and to marginalize them further (Truong and Genotiva, 2010).

Vietnam Land Law now permits communities to hold formal land-use rights, institutional recognition of communal tenure has not occurred in practice. Nevertheless, there are still areas where land-use right certificates have not been issued and groups following communal tenure practices are especially vulnerable to encroachment by others, including migrating population and companies seeking to exploit various natural resources mostly in the highlands. The risk of conflict and need for increased secure Indigenous Peoples or communities practicing communal tenure. (USAID, n.d.)

10.4.4. Human Rights Violations

The government's policies of forced resettlement, State-appropriation of land, expropriation and population displacement have effectively deprived the indigenous peoples of the right to own and inherit ancestral homelands. This widespread policy, together with the spontaneous and State-sponsored migration of ethnic Vietnamese into the highland areas, is undermining the traditional culture and social organization of Indigenous Peoples. The State confiscation of ancestral Montagnard lands to plant cash crops such as coffee is also a discriminative policy enriching the ethnic Kinh from the profits rather than the Montagnards (Vietnam Committee on Human Rights, 2012).

In cases of land disputes, affected citizens go through official channels. In the event that the petition does not give positive outcomes, the individuals may turn to the media or public actions such as demonstrations in front of government offices in Hanoi, Ho Chi Minh City, and other provincial centers. Security allows such protests but intervenes with force if disputes become widespread. Among the most prominent land conflicts in recent years were the Doan Van Vuon expropriation case in Tien Lang district, Haiphong (Hansen, 2013) and construction of the Ecopark new urban area outside Hanoi or in Dong Tam Village, Hanoi. Causes of most land conflicts are: improper procedures of land acquisition, low level of compensation, and/or perceived corruption. Few disputes are adjudicated in the courts. Main land disputes are between local indigenous peoples and state/private forestry companies. Such is the typical dispute case in July 2018 when a Nung person from Quang Truc commune, Guy Duc district, Dac Nong province was convicted and sentenced to death because he shot and killed three people and injured another 16. This violent case was a consequence of a prolonged land disputes for many years with a private company trying to encroach the land are reclaimed by the indigenous peoples (IWGIA, 2019).

10.4.5. Government Programs to Address Key Issues in Indigenous Peoples and Mountainous Areas

Four key issues with regard to Indigenous Peoples are poverty, environmental degradation, changes in land ownership of forest and the impact of development interventions (ADB, 2012).

Government efforts are being done to resolve issues on poverty. One example is the advances done in Quang Nam Province which paid considerable attention to Indigenous Peoples issues by allocating 25% of its total provincial budget to fund infrastructure resulting to 43 communes, out of 62, now accessible by cars and 12 have access to national electricity grid. Strikingly, almost all communes have schools and health centers. However, better facilities do not go hand and hand in improving the life of Indigenous Peoples. Food security remains unanswered. There is a considerable decrease in the average consumption per capita. In 1976, consumption per person per year was 375 kilograms; in 1998, it was 272; and in 2001, it was 180. Aside from hunger, cultural life is stagnant and traditional practices are fading away and despite the number of people attending school, literacy remains unchanged. This shows that the presence of infrastructures does not guarantee alleviation of poverty (ADB, 2012).

There is rapid and drastic environmental degradation among the majority of the Indigenous People's population inhabiting remote or mountainous areas. The serious environmental degradation is brought about by such interventions as war, migration, and development programs. The forest covers in 1943 was 57%; by 1979 it was 39% and in 1990 was 26%. Forest in some provinces is now only 8-9%. It is estimated that 3 to 325 metric tons of soil wash away per hectare of land every year in these areas. Moreover, a number of studies in Indigenous Peoples groups have limited access to timber to build their houses, firewood now has been scarce and they have to travel far to gather

firewood, while the natural resources and other forestry products as sources of their daily needs has dwindled (ADB, 2012).

All ethnic families were able to obtain enough land for cultivation in the past. Thus, they did not have a concept of land ownership. They believed that land belonged to communities and no monetary value. The customary laws were respected. Their strong beliefs were based on good and bad spirits that have absolute control of all natural resources. However, since the early 1960's, structure of ownership and use of land and forest nationwide has changed. Land and forests have been managed by state agencies or state owned farms and enterprises or agricultural cooperatives. With the agricultural reform process, land and forests were allotted to or transferred to households or groups of households. The Central Highlands underwent this process with drastic changes from 1975 to the 1980's. This resulted to the reduction of living areas including farmland and forest areas that acted as reserve for resources that provided essential products of the daily lives of the indigenous communities in the highlands. There is now unclear legal and management system of land and forest where traditional heritage is disregarded adding to it the lack of solutions to protect disadvantaged groups. This, Indigenous Peoples are losing their lands and land disputes are increasing (ADB, 2012).

Upland cultivation as practiced by many Indigenous Peoples' groups is a production system that uses the slash-and-burn technique and discontinuous cultivation in each piece of land. The cultivation period in each field is very short, about 2–3 years; the field is then left fallow for many years until the trees have regrown and the land has recovered before it can be burnt for cultivation again. This technique requires large areas and low population density. The campaign on fixed settlement and cultivation has limited the mobility of Indigenous People's communities, but progress in improving their crop yields has not matched their population growth rate and the decreasing size of their farmland. Recently, allocation of land and forest to individual households has transformed much of the former common property of the community (ADB, 2012).

In order to address shifting cultivation, households of groups that practice this were allocated few hectares for cultivation, with ownership for 20 to 30 years. The result is very short and fallow periods and consequent impoverishment and erosion of the soil (ADB, 2012).

Development interventions have dramatically changed the social structure and the traditional cultures of Indigenous People's communities. Many positive cultural changes have taken place. For instance, the suppression during the feudal period has been eliminated (mainly in more developed ethnic groups such as the Tay, Thai, and Hmong) and some customs that were proven to be harmful to human health have been eliminated.

However, development activities have broken down or weakened the traditional social and cultural structure including systems of values, religious beliefs, standards (customary laws), languages, and local knowledge; also affected are village intellectuals, the traditional family form, and village organization.

Studies on the general situation and changes in the lives of upland Indigenous Peoples groups show that the development policies themselves have brought about achievements as well as current problems. With basically correct principles, development policies have been implemented with insufficient resources, incorrect guidelines, poor management, and lack of long-term monitoring. Some aspects of the general development policies in Vietnam that have resulted in the present state of poverty of Indigenous Peoples' groups (ADB, 2012).

10.5. CASES

On April 24, 2012, the state ordered riot police to take possession of farmland in Van Giang district—east of Hanoi—in order to clear the land for the development of a luxury housing project. As Reuter’s reports, the confrontation between thousands of police and farmers turned violent, as villagers threw bottles of gasoline and police beat villagers with clubs and threw stun grenades. Local farmers refused to relinquish their land use rights when local authorities announced that they would forcibly appropriate 70 hectares of land for use in a city development called Ecopark. Many farmers camped out overnight to burn bonfires and keep vigil. Regardless, local officials came in with bulldozers to clear the land and destroy crops. Ever since the Ecopark project was initially announced several years prior, farmers in this district have been protesting, claiming that the government granted land to the developers without proper consultation or compensation.

In August 2002, more than a year after the City Ring Road Project had been approved, the District gathered residents to tell them about the project plans and each family was given a plan map and decrees concerning land 26 clearance and compensation. The map of the road they were given was different than the one they had seen in a public exhibit of Hanoi urban planning. The map they were given at the meeting was asymmetrical, which would affect the residents of Green alley, unlike the symmetrical map at the public exhibit. The residents refused to accept the asymmetrical map as legitimate because the Prime Minister did not sign it. Some sent petitions to district and city offices, which actually slowed down the project by several years. In 2006 the Communist Party Cell in Green Alley appointed a group of nine persons to act on the resident’s behalf in fighting against the eviction. The leader, Thanh, gained access to the original documents of the Third City Road Project through friends he had in some government ministries, which included the symmetrical road plan. However, the group did not know how to use the documents that Thanh had obtained to their advantage.

Fortunately, a man named Hung, a police officer trained in law, joined their struggle after he learned that he would be evicted from his house as well. Hung reorganized the entire campaign, framing it around the rhetoric of anti-corruption. Their struggle was no longer localized; “residents saw themselves as fighting within a more national framework against government corruption...the struggle now aimed not only to protect their rights and their property but also to protect the transparency of the government and national justice” (Nguyen, p. 95).

A victory for the Green Valley residents occurred in November of 2006, when an hour-long TV program specifically on the problem in Thanh Xuan district was broadcast as part of the anti-corruption campaign launched by the prime minister. In total, 12 news articles were written about the Green Alley protestors and six TV programs were broadcasted. The Ministry of Communications and Transport decided to legitimize the falsified asymmetrical road plan by sending it to the Prime Minister for approval. However, he rejected the asymmetrical plan and in December 2007, the Ministry of Communications and Transport 27 requested that the project planning committee revise the intersection to make it symmetrical. The residents of Green Alley were spared their houses and the project was officially completed in September 2009.

The agreement that ended the hostage crisis in Dong Tam could be a model for other local governments in Vietnam. Conflicts over land, tween the state and the people, appear to be leading Vietnam into unpredictable developments. When news emerged on April 15 that Vietnamese villagers in the rural My Duc district Dong Tam, located in the outskirts of Hanoi, had detained 38 police officials in a protest over a land seizure, everyone was nervous about how the hostage crisis might end. Seven days later on April 22, everyone was breathing a collective sigh of relief that the hostages had been released unharmed.

The people of Dong Tam became the first to secure some important commitments from the government, leading to the peaceful resolution. The Dong Tam land dispute is characteristic of contemporary disputes that involve State repossession of agricultural land for development, the use of police to evict farmers, as well as allegations of corrupt government officials. In the Dong Tam case, the dispute began in 2014 when the defense minister allocated 6.8 hectares of agricultural land to a communication firm, the Viettel Group.

There are competing versions regarding the intended use of the land. While the local authorities stated that was for a defense project, the local people alleged state officials had misappropriated the land for private purposes and had engaged in obstructive behaviors to prevent the agricultural land being allocated to the people. On April 15, as local police arrested four protesters in Dong Tam, hundreds of people in turn detained 38 police officers. A standoff had begun and the battle to control the narrative and public opinion of the dispute was launched.

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