

AIPP Submission to the Expert Mechanism on the Rights of Indigenous Peoples for its study on “Indigenous Peoples’ Rights in the Context of Borders, Migration and Displacement”

This submission is made to the EMRIP based on AIPP’s existing research on indigenous peoples’ situation in Asia as well as specific inputs on the theme of the EMRIP study by AIPP Executive Council and member organizations.

Asia has the largest number of indigenous peoples around the world – about 411 million live in the region as per a recent research of AIPP.¹ Their share in the national population varies from 0.9 percent in Cambodia to over 37 percent in Nepal. They live in highly diverse ecosystems from high mountains of Nepal to the coasts of Indonesian archipelago and in dry desert of western India as well as the rainforests of Borneo. They have distinct cultures and systems and enjoy various levels of legal recognition and protection from their States. However, at the same time, they face similar challenges in terms of discrimination, exclusion and dispossession of their lands and resources and violations of their human rights.

At the root of the challenges that indigenous peoples in Asia face lies the history and legacy of colonization and/or colonialism – by internal or external actors – of their traditional lands and territories. And it is primarily for the same reason that there are issues related to the rights of indigenous peoples in the context of borders, migration and displacement.

Before colonization, as scholars have suggested, indigenous peoples were the lawful occupants of their lands possessing close cultural ties with those lands over many generations and pursuing self-governance through their own political organizations.² With colonization came the ‘colonial administrators’ practice of establishing special laws and policies, and governance by establishing inner lines, scheduled areas, frontier zones and other special arrangements’. The impacts of those laws and lines continue till today resulting in dispossession of lands and resources of indigenous peoples while they were divided by national and international borderlines drawn by the colonial powers resulting in the loss of their political autonomy.

In similar vein, the concept of indigenous peoples migration is a complex one as though many indigenous peoples had history of movement for their livelihood practices or survival needs, such movement were mainly bound within their specific traditional territories. However, the fullest understanding of migration of indigenous peoples can only be possible if analysed in the context of loss of lands and resources. Nonetheless, that is not to say that members of indigenous communities have not voluntarily migrated, particularly from rural to urban areas but large part of their migration is definitely forced. So, although the root causes of migration of indigenous peoples may be similar, the degree and extent of

¹ <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and->

² "Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy, Kingsbury 1998, https://www.researchgate.net/publication/270194867_Indigenous_Peoples_in_International_Law_A_Constructivist_Approach_to_the_Asian_Controversy

migration vary widely due to reasons ranging from historical background to cultural diversity to individual stages of economic development and the need for survival.

In the modern nation-State system, most States have been following the footsteps of the colonial rulers' laws and policies and as such laws and policies are applied as a means of controlling the lands and territories under their jurisdiction. That has affected indigenous peoples' survival including their traditional ownership of lands and territories. In many places, indigenous peoples have suffered under assimilation policies, massacres and/or genocide/ethnocide leading to their displacement while there are also some cases where indigenous populations have been displaced from their territories in their entirety.

In the current state of affairs, two of the most important reasons of migration and displacement of indigenous peoples in Asia are non-recognition of indigenous peoples' rights coupled with development aggression, and militarization in their lands and territories, which are often linked to each other, while there are also other causal factors.

Development aggression and non-recognition of the rights of indigenous peoples

In recent decades, migration and displacement of indigenous peoples are closely related to 'development aggression'. Much of indigenous peoples' areas are rich in natural resources. As part of the so-called development projects or commercial investments, governments or businesses seize indigenous peoples' lands for resource extraction or other purposes without their consent, which cause conflicts with indigenous peoples and displace them from their territories. Non-recognition of the rights of indigenous peoples over their lands, territories and resources leads to forced evictions and displacement. The most common projects are mining, hydropower dams, and economic land concessions for plantations, among other resource extraction projects. The scales of massive displacement due to the projects have been well documented, for example with the hydropower dams.

In 1997, then Senior Adviser for Social Policy and Sociology, The World Bank, Environment Department, Michael M. Cernea presented a paper on the Hydropower Dams and Social Impacts: A Sociological Perspective. This Social Assessment Series, Paper No 16, January 1997, revealed that a dam built in CHT region, Bangladesh in 1960, 22 dams built in India and four built in Indonesia displaced more than 100,000 people. Similarly, 14 dams built in Laos, 3 dams built together with Thailand and Laos government, 7 dams constructed in Nepal caused displacement ranging from 6,000 to 60,000 people. The report also states that two dams were built in the Philippines, five in Thailand and one in Viet Nam where more than 57,000 people displaced³.

³ Michael M. Cernea, 1997, Hydropower Dams and Social Impacts: A Sociological Perspective, Social Assessment Series, Paper No 16, January 1997, Social Policy Department, The World Bank.)

More recently, with the construction of the Sardar Sarovar dam over the Narmada River in India inaugurated in 2017 despite strong protests, at least 200,000 people were displaced⁴ – around 57.6% of those were tribal Adivasi. In Borneo, Malaysia, 10,000 indigenous persons were displaced in 2011 by the Bakun dam that flooded 700 sq km of land (AIPP 2014).

In the CHT region of Bangladesh, the construction of Kaptai dam in the 1960s caused displacement of more than 100,000 indigenous persons. Among them, 40,000 took shelter in India, who have still been living there and 20,000 took shelter in Myanmar. 60 percent of their agricultural land was submerged. The indigenous peoples of the CHT region have been suffering from the consequences of the dam until today, including systematic human rights violations due to militarization in the region.

Similarly, in the Philippines' Cordillera region – homeland of the indigenous Igorots, large dams were constructed along the Agno river, namely the Ambuklao dam built between 1952-56 and the Binga Dam between 1956-60. The two dams submerged a total area of 650 hectares of precious farmlands and displaced 300 Ibaloi families.

At the same time, it appears that there will be no stop to the displacement, at least soon. According to International Rivers, the current hydropower development plan in Lao PDR includes 72 new large dams, 12 of which are under construction and nearly 25 in advanced planning stages. Hydropower development is directly responsible for resettlement, often forced, of indigenous people as in the case of 100 Jhru and Nyaheun families told to leave to make way for construction of two dams—the Xe-Pian and Xe-Namnoy Dam in Champasak province (IWGIA 2018).

Similarly, indigenous territories, for example in the Philippines, are often the sites for large-scale mining that flattens their sacred mountains or digs up the lands and remove the people from or restrict their access to their own lands. The other so-called development projects are biofuel plantations and renewable energy projects that are causing displacement of indigenous peoples when undertaken without their free, prior and informed consent. Indigenous peoples in Indonesia and Malaysia have lost vast swathes of forestlands because of palm oil plantation expansion. AIPP (2014) estimates that biofuel plantation expansion will displace some 60 million indigenous peoples in Asia region.

Commercial logging and conservation programs (e.g., reserve forests, national parks and protected areas) of governments and their partners have also heavily affected indigenous peoples and forced them to migrate. Indigenous peoples have been forcibly evicted from conservation areas as they are wrongly considered destroyers of nature. Indigenous peoples are treated as enemies of conservation and, consequently, their sustainable resource management systems and traditional livelihoods have been curtailed and even criminalized. The prohibitions of their livelihood activities in conservation or reserved forest areas have resulted in conflicts and threats to survival. For example, very recently, 500 indigenous families from the CHT region migrated to Myanmar because of the insecurity in Bangladesh.

⁴ <https://thediplomat.com/2018/10/indias-relentless-movement-to-save-the-narmada-river-and-a-peoples-livelihood/>

Development aggression and other conflicts with indigenous peoples for their lands and resources, including with business enterprises - many of them based outside of their country causes militarization in their lands and territories. State security forces, including military and paramilitary as well as private armed forces have been used to quell local resistance to development projects, resulting to wide-scale violations of our civil and political rights, including criminalization of legitimate actions of the communities to defend their rights. Besides, militarization, in the context of broader self-determination movements, is discussed below.

Militarization

Indigenous peoples in the Asia region have been involved in movements for their right to **self-determination**, which started during the colonial times itself. Historically, we have observed many resistances by the indigenous peoples, for example, Naga people's resistance against colonization to defend their territories is one of the oldest movements in the region. Similarly, the Igorot people in the Cordillera region of the Philippines and the Jumma people in the Chittagong Hill Tracts (CHT) region in Bangladesh have also been involved in long struggles for self-determination, to name a few. The self-determination movements of those peoples aim to defend their lands, territories and self-governance, which are deemed necessary to protect their cultures and identities. All those movements have been responded brutally by the respective States by use of excessive military forces.

Militarization in indigenous peoples' territories is one of the root causes of many forms of human rights violations and conflict. That results in violence and instability in indigenous territories. In Bangladesh, for example, a government program to resettle a large number of non-indigenous people from other parts of Bangladesh in the CHT region has encountered strong resistance by indigenous peoples and consequently the region has been heavily militarized. Frequent arsons and attacks in indigenous villages caused large refugee flow from the region to India in 1980s. The CHT region continues to be one of the most militarized areas in the world. An estimated one-third of the Bangladesh Army is deployed in the region in an area that only accounts for one percent of the country's total population and nine percent of land mass (IWGIA 2012).

Similarly, militarization, in the North East India with imposition of the Armed Forces Special Power Act 1957 and that in Cordillera and Mindanao regions of the Philippines has caused involuntary migration and displacement of indigenous peoples within and across national borders. Majority indigenous population inhabits all those regions in the countries.

Other causal factors

There are other reasons and factors for migration of indigenous peoples, including **social and economic needs**. Most of the indigenous peoples live in the remote areas with lack of infrastructure, formal educational facilities and adequate health services. As a result, many indigenous youth leave their communities and move to the urban centres. The trend of migration for educational and other social needs is on the rise continuously. At the same time, the number of young indigenous persons migrating for economic opportunities has also increased over the years as their traditional livelihoods have waned down. These trends

are also related to non-recognition of indigenous peoples' rights and conflicts in their lands and territories and need further examination.

At the same time, many indigenous families are also moving to urban areas for security of life by escaping the political instability and volatility in their territories. Such instability is also caused, for example, by lack of implementation of **treaties, agreements and other constructive arrangements** made between the States and indigenous peoples in many countries, including in India, Bangladesh and the Philippines. Those agreements recognized, to a certain extent, self-governance of indigenous peoples in their territories with their own customary laws and systems on the land use and management. Those treaties and agreements however still remain largely non-implemented, which is also a key reason of conflict that causes forced migration.

Recommendations

In view of above context, AIPP urges the Expert Mechanism to recommend, through the Human Rights Council, the States, particularly in Asia, to undertake the following measures in order to ensure the rights of indigenous peoples in the context of borders, migration and displacement.

- To cooperate with indigenous peoples through their representative institutions in order to duly demarcate their traditional lands and territories with legal recognition of their traditional land tenure and resource management systems in line with the UN Declaration on the Rights of Indigenous Peoples and ensure the protection of these lands and resources from expropriation and exploitation of those lands and resources without their free prior and informed consent;
- To ensure that State military interventions are not undertaken in indigenous territories and that military bases, camps or military training centres installed in those territories without their free prior and informed consent are removed immediately;
- To collaborate with the indigenous peoples concerned for the implementation of treaties, agreements and other constructive arrangements made with them for the promotion and protection of their rights, including in the context of borders;
- To establish mechanisms for sustained dialogues and consultations with indigenous peoples in their countries on ways and means to foster better relationships with them, and to enable them to fully exercise their civil, political, economic, social and cultural rights as indigenous peoples in a truly non-discriminatory manner.
- To undertake comprehensive studies, in conjunction with indigenous peoples, on the scale and trends of migration of indigenous peoples and identify and address the causes for forced migration.

Further, in line with the recently adopted UN General Assembly resolution on “Global Compact for Safe, Orderly and Regular Migration”, AIPP also requests the Expert Mechanism to recommend that States establish comprehensive policies and develop partnerships with indigenous peoples that provide indigenous migrants, regardless of their migration status,

with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights given their situation of vulnerability.

AIPP also recommends the Expert Mechanism to undertake periodic studies on the situation of indigenous peoples' rights in the context of borders, migration and displacement in order to provide advice to the Human Rights Council and assist States in implementing the Global Compact with respect for the UN Declaration on the Rights of Indigenous Peoples.