

**Indigenous Peoples
Rights to Lands, Territories
and Resources
in Asia and 2030 Agenda for
Sustainable Development**



Asia Indigenous Peoples Pact (AIPP)

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This briefing paper¹ analyses the importance and the situation of the rights of Indigenous Peoples to their lands, territories and resources in Asia towards achieving the Sustainable Development Goals (SDGs) under the 2030 Agenda for Sustainable Development. It also examines the efforts made by Asian States and Indigenous Peoples in addressing the rights of Indigenous Peoples, including rights to their lands, territories and resources, as well as the challenges in implementing those rights in the SDGs-related processes. It aims to respond to the need of data on the realisation of the rights of Indigenous Peoples to their lands, territories and resources in the context of achieving the SDGs in the region. The desk review undertaken to produce this briefing paper focuses on selected countries in Asia, namely Bangladesh, Cambodia, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, Nepal, the Philippines, Thailand and Vietnam.

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INTRODUCTION

Rights to lands, territories and resources are at the heart of Indigenous Peoples' struggles around the world and achieving the SDGs is not possible without fulfilling those rights of Indigenous Peoples. According to a 2019 International Labour Organization (ILO) report, Indigenous Peoples make up for over 6 percent of the world's population but account for 15 percent of the world's poorest people. Indigenous Peoples are nearly three times as likely to be living in extreme poverty as their non-indigenous counterparts and they account for almost 19 percent of the extreme poor living below US\$ 1.90 per day.² Thus, in order to meet the SDGs, including to “end poverty in all its forms everywhere” (SDG 1), they must address the specific needs and challenges of Indigenous Peoples – primary challenge is the lack of secure land rights of Indigenous Peoples.³ Land and resource rights of Indigenous Peoples also contribute to support food security (SDG 2) as well as ensure non-discrimination against them (SDG 10).

Further, advancing those rights also encourages long-term environmental benefits that are critical to meet the overall SDGs, in particular the SDG 13 (combatting climate change and its impacts). A recent research shows that Indigenous Peoples and local communities manage some of the richest carbon stocks in the world with indigenous and community lands holding at least 22 percent of the carbon stored in

2 International Labour Organization (ILO). 2020. Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future. Geneva: ILO. Available from https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_735575/lang--en/index.htm

3 Tauli-Corpuz, V. 2015. Opinion: Don't Leave Indigenous Peoples Behind in SDGs. In Inter Press Service News. Available from <http://www.ipsnews.net/2015/05/opinion-dont-leave-indigenous-peoples-behind-in-sdgs/>


tropical and subtropical forests and at least 17 percent of the total carbon (including soil carbon) stored in forests in 64 countries across the world. At least 293 billion metric tons of carbon are stored in collective forests of Indigenous Peoples and local communities, which is equivalent to 33 times global energy emissions in 2017. However, one-third of the carbon stored in tropical and subtropical forests are in areas where Indigenous Peoples and local communities lack formal recognition of their tenure rights putting them, their lands and the carbon stored therein at risk.⁴

Secure land and resource rights for Indigenous Peoples constitute a tested, cost-effective and practical solution to climate change. Legal recognition and protection of indigenous and community forests are associated with lower rates of deforestation and more carbon storage than those forests managed by government, private sector or other non-indigenous entities.⁵ There is also potential for more carbon storage in degraded indigenous lands if they are secured, protected and restored.⁶ Indigenous Peoples' sustainable stewardship of the lands and resources, including

4 Rights and Resources Initiative (RRI), Woods Hole Research Center (WHRC), and World Resources Institute (WRI). 2018. A Global Baseline of Carbon Storage in Collective Lands: INDIGENOUS AND LOCAL COMMUNITY CONTRIBUTIONS TO CLIMATE CHANGE MITIGATION. Available from https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline_RRI_Sept-2018.pdf

5 Stevens, C. Winterbottom, R., Springer, J., and Reyta, K. 2014. Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change. Washington, DC: World Resources Institute. Available from <https://wriorg.s3.amazonaws.com/s3fs-public/securingrights-full-report-english.pdf>

6 Mowat, H., and Veit, P. 2019. The IPCC Calls for Securing Community Land Rights to Fight Climate Change. World Resources Institute (WRI) blog. Available from <https://www.wri.org/blog/2019/08/ipcc-calls-securing-community-land-rights-to-ght-climate-change>



forests, of the world is key to reducing global emissions and limiting the global temperature rise to no more than 1.5°C by 2030.

Likewise, the rights of coastal indigenous communities to their lands and resources are important for the conservation and sustainable use of oceans, seas and marine resources for sustainable development (SDG 14). There are 27 million people worldwide living in more than 1,900 coastal indigenous communities across 87 countries, and their average per capita consumption of seafood is 15 times higher than that of non-indigenous populations.⁷ Over 3 billion people depend on marine and coastal biodiversity for their livelihoods, and oceans absorb about 30 per cent of the carbon dioxide produced by humans, thereby buffering the impacts of global warming; however, as much as 40 per cent of the world's oceans are heavily affected by human activities.⁸ Coastal indigenous communities rely on the ocean for sustenance and thus have a unique relationship with the ocean. This relationship is closely tied to their cultures, on the basis of which they have traditionally managed their environment, including the oceans, seabeds and other marine resources, in a sustainable manner to benefit all peoples and future generations.

Similarly, Indigenous Peoples' traditional knowledge – which is closely linked to their lands, territories and resources – is vital for combating desertification and halting and reversing land degradation and the loss of biodiversity (SDG 15). According to a 2008 World Bank report,

7 Cisneros-Montemayor, AM., Pauly, D., Weatherdon, LV., and Ota, Y. 2016. A Global Estimate of Seafood Consumption by Coastal Indigenous Peoples. PLoS ONE 11(12): e0166681. Available from <https://doi.org/10.1371/journal.pone.0166681>

8 United Nations Permanent Forum on Indigenous Issues (UNPFII). 2016. Study on the relationship between indigenous peoples and the Pacific Ocean. UN Doc. E/C.19/2016/3


“traditional indigenous territories encompass up to 22 per cent of the world’s land surface, coincide with areas that hold 80 per cent of the planet’s biodiversity, and 11 per cent of world forest lands are legally owned by Indigenous Peoples and communities”.⁹ Globally, Indigenous Peoples’ lands intersect with around 40 per cent of all terrestrial protected areas, account for 37 per cent of all remaining ecologically intact landscapes, and encompass more than 65 per cent of the remotest and least inhabited lands on Earth. Hence, “recognizing Indigenous Peoples’ rights to land, benefit sharing and institutions is essential to meeting local and global conservation goals”.¹⁰

The United Nations (UN) Permanent Forum on Indigenous Issues has stressed that ensuring the rights of Indigenous Peoples to their lands, territories and resources is not only for their well-being, but also for addressing some of the most pressing global challenges, such as climate change and environmental degradation. Advancing those rights is an effective way to protect critical ecosystems, waterways and biological diversity and is thus critical to meet several SDGs.¹¹ Lack of recognition of those rights of Indigenous Peoples results in land and resource conflicts, thus protecting them is also key to promoting peaceful and inclusive societies and providing access to justice (SDG 16). In Bangladesh, for example, there are reports of violence allegedly being used as part of an organised strategy to

9 Sobrevilla, C. 2008. The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners. Washington, DC: The World Bank. Available from <https://siteresources.worldbank.org/INTBIODIVERSITY/Resources/RoleofIndigenousPeoplesinBiodiversityConservation.pdf>

10 Garnett, S.T., Burgess, N.D., Fa, J.E. et al. A spatial overview of the global importance of Indigenous lands for conservation. *Nat Sustain* 1, 369–374 (2018). Available from <https://doi.org/10.1038/s41893-018-0100-6>

11 UNPFII. 2018a. Report on the seventeenth session (16-27 April 2018). UN Doc. E/C.19/2018/11



suppress Indigenous Peoples and grab their lands and resources, including widespread rape of indigenous women and girls, in the context of unresolved conflicts more than 20 years after the 1997 Chittagong Hill Tracts Peace Accord was signed.¹² Successful implementation of the Accord requires formal recognition of Indigenous Peoples' rights to their lands, territories and resources, among other rights.

A growing body of scientific evidence and other data, including from the world's leading scientists, recognise the importance of Indigenous Peoples' rights to their lands, territories and resources. For example, in its 2019 special report on climate change and land, the Intergovernmental Panel on Climate Change highlights the importance of securing community land for climate change adaptation and mitigation. The Panel has also emphasised that agricultural practices that include indigenous and local knowledge can contribute to overcoming the combined challenges of climate change, food security, biodiversity conservation, and combating desertification and land degradation. In this context, the contributions of indigenous women with their key role in protecting, utilising and transmitting indigenous traditional knowledge for sustainable natural resources management and conservation of biodiversity not only for sustenance of their families and communities but also for greater well-being of the environment are widely acknowledged and should be further promoted.¹³

12 International Work Group for Indigenous Affairs (IWGIA). 2018. Indigenous women target of rape in land-related conflicts in Bangladesh. Press Release. 8 March 2018. Available from <https://www.iwgia.org/en/bangladesh/3235-indigenous-women-target-of-rape-in-land-related-conflicts-in-bangladesh.html>

13 United Nations Office of the Special Advisor on Gender Issues and Advancement of Women (OSAGI), Secretariat of the United Nations Permanent Forum on Indigenous Issues (SPFII). n.d. Gender and Indigenous Peoples. New York: UN. Available from

There are a few SDG indicators for generating or improving data related to Indigenous Peoples as well as their land and resource rights, including by type of tenure. A good quantity of scientific data and other evidence also exists on the implementation, or lack implementation, of those rights (including in relation to the SDGs) that can be used to build on. However, relevant official data is still significantly lacking, for which more efforts by states, UN system and other bodies, in collaboration with the Indigenous Peoples concerned, are needed.


SITUATION OF INDIGENOUS PEOPLES RIGHTS TO LANDS, TERRITORIES AND RESOURCES IN ASIA

According to the ILO, Asia and the Pacific is the region with the highest proportion (70.5 percent) of an estimated 476.6 million Indigenous Peoples worldwide.¹⁴ However, Indigenous Peoples' organisations claim much higher number of Indigenous Peoples in the region with 411 million of them in Asia alone – most of whom are not officially recognised as “indigenous” and are thus not identified in national census and registration processes.¹⁵ Among the

<https://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf>; AIPP. 2013. Research on the Roles and Contributions of Indigenous Women in Sustainable Forest Management in Mekong Countries/Asia. Chiang Mai: Asia Indigenous Peoples Pact (AIPP). Available from <https://aippnet.org/research-on-the-roles-and-contributions-of-indigenous-women-in-sustainable-forest-management-in-mekong-countries/>

14 ILO, 2020. Supra note 2

15 Luithui-Erni, S. 2018. Status of Indigenous Peoples' Lands, Territories and Resources in Asia. Chiang Mai, Thailand: AIPP. Available from <https://aippnet.org/status-of-indigenous-peoples-lands-territories-and-resources-in-asia/>



countries under study, the laws and policies of Cambodia, Japan, Nepal and the Philippines recognise Indigenous Peoples (but not necessarily all the groups that identify as such) in the countries and their rights at varying levels. In other countries, groups that self-identify as Indigenous Peoples are not recognised as such but are often afforded special legal status and protections.

A 2016 report states that Indigenous Peoples and local communities¹⁶ customarily claim and manage over 50 percent of the world's land while they legally own just 10 percent. As a result, at least 40 percent of the world's land surface – around 5 billion hectares – remain unprotected and vulnerable to commercial pressures, including land grabbing by more powerful entities such as governments and corporations, as well as environmental destruction. Up to 2.5 billion people (one in three people worldwide), including from indigenous groups, depend on the land and natural resources that are held, used or managed collectively by them but are vulnerable to dispossession of their land and resources.¹⁷ Another study suggests that Asia has the largest proportion of total global land formally owned or controlled by Indigenous Peoples and local communities (26 percent),

16 There is no recognition of “local communities” under international law but they are considered to encompass communities that do not self-identify as indigenous but share similar characteristics of social, cultural, and economic conditions that distinguish them from other sections of the national community, whose status is regulated wholly or partially by their own customs or traditions, and who have long-standing, culturally constitutive relations to lands and resources. See Indigenous + Community Response to IPCC Report, available from <https://ipccresponse.org/home-en>

17 Oxfam, International Land Coalition, Rights and Resources Initiative. 2016. Common Ground. Securing Land Rights and Safeguarding the Earth. Oxford: Oxfam. Available from <https://www.oxfam.org/en/research/common-ground>


which is largely driven by community-based tenure regimes in China over grasslands and forests.¹⁸

In **Bangladesh**, the 1900 Chittagong Hill Tracts (CHT) Regulation Act remains the key legal reference in matters pertaining to land ownership and tenure and traditional tribal justice in the CHT region, which is predominantly inhabited by Indigenous Peoples. The law has been amended several times over the subsequent decades, most recently after the signing of the CHT Accord. The 1950 East Bengal State Acquisition and Tenancy Act forbids the transfer of lands owned by ‘aboriginals’ to ‘non-aboriginal’ persons without the express consent of the relevant government official. Further, the laws set up for the three CHT Hill District Councils also relate to land administration and the 2001 CHT Land Dispute Settlement Commission Act (amended in 2013) was enacted to resolve the land disputes of the region.

A vast majority of Indigenous Peoples in Bangladesh continue to practice customary tenure – many of which remains unrecognised by the government. According to recent studies¹⁹, 90 percent of Indigenous Peoples in the CHT had some form of land entitlements with median land ownership of 3.2 acres, usually in hilly lands. Almost everyone had some sort of land disputes or unrecognised ownership with 25 percent having lost their land in the past three decades. Worse, on average, two-thirds of the indigenous households in the plains were effectively landless and restrictions on land access were even higher for certain groups (Santals, Mahato, Pahan, etc.). In the past, land

18 Rights and Resources Initiative. 2015. Who Owns the World’s Land? A global baseline of formally recognized indigenous and community land rights. Washington, DC: RRI. Available from https://rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf

19 Indigenous Navigator and Kapaeeng Foundation. n.d. Factsheet – Bangladesh. Available from <https://indigenousnavigator.org/publication/bangladesh-fact-sheet-on-indigenous-peoples>



related conflicts occurred in connection with developmental and environmental projects such as hydropower generation, forest reserves and the creation of military bases, while lots of incidents of land grabbing for Bengali settlements, business and conservation projects and resource extraction without free prior and informed consent (FPIC) of the concerned Indigenous Peoples continue to occur. In 2017 alone, around 20,000 acres of lands belonging to Indigenous People were brought under the process of acquisition mostly for the establishment of special economic zones, tourism complexes, business establishments and creation of new reserve forests.²⁰

In **Cambodia**, the 2001 Land Law provides for collective land titling to formalise communal land claims of indigenous groups based on customary use. As of 2017, 166 communities had applied for collective land titling, of which 117 indigenous communities had been recognised by the Ministry of Rural Development and 111 had been recognised by the Ministry of Interior as a legal entity for issuance of collective land title. However, of the 166 applications, the Ministry of Land Management have only applied 19 land titles for 1,784 households covering an area of 16,271 hectares. At the same time, Indigenous Peoples continue to face challenges to their rights, particularly due to a large number of economic land concessions that the government grants to agribusiness, mining and other companies. Government data of 2014 provide an aggregate figure of 229 Economic Land Concessions covering a total of 1.22 million hectares, while the Social Land Concessions were granted for 113,167 ha of land registered (which is only 5 percent of the land granted for Economic Land Concessions) for

²⁰ See data on the Indigenous Navigator at <https://indigenousnavigator.org/data-explorer/2/>; Original source: <http://www.kapaeeng.org/p.25>

settlement, infrastructure and agriculture. Additionally, a recent government report suggests that mining exploration and exploitation licenses consist of 366 projects and cover a total area of 819,451 ha as of 2018. However, non-governmental data on all exploration licenses granted from 1995 to 2014 includes a list of projects covering a total area of 2.7 million ha – of those, a total area of 885,180 ha is referred to as ‘Government Data’ and the rest 1,88 million ha consists of other mining licenses reported in media, company profiles, NGO reports and other publications.²¹

India’s Constitution prohibits sale of tribal lands to non-tribals in areas under the fifth schedule (for central India) and recognises and protects customary rights of scheduled tribes in the autonomous areas under the sixth schedule (for some states of Northeast India) – the constitutional schedules apply to the regions with large concentration of Indigenous Peoples. The 1996 Panchayats (Extension to the Scheduled Areas) Act bestows primary powers of governance to the Gram Sabha (village assembly) in the Schedule Areas (Fifth Schedule area) including prevention of land alienation and to restore the illegally alienated land. Further, the 2006 Forest Rights Act 2006 specifically provides for the rights of scheduled tribes (Adivasi) and other traditional forest dwellers to forest lands under individual or common occupation through village assemblies and requires the consent of the community for their resettlement. As reported by the Ministry of Tribal Affairs, as of August 2018, a total of more than 4.2 million claims (including over 4.06 million individual and 0.14

21 Ingalls, M.L., Diepart, J.-C., Truong, N., Hayward, D., Neil, T., Phomphakdy, C., Bernhard, R., Fogarizzu, S., Epprecht, M., Nanthavong, V., Vo, D.H., Nguyen, D., Nguyen, P.A., Saphangthong, T., Inthavong, C., Hett, C. and Tagliarino, N. 2018. State of Land in the Mekong Region. Centre for Development and Environment, University of Bern and Mekong Region Land Governance. Bern, Switzerland and Vientiane, Lao PDR, with Bern Open Publishing.

million community claims) for forestland titles were received from across the country under the Act. Of those claims, 44.6 percent (1.8 million titles) were accepted and titles were distributed for over 15.5 million acres of forests, including 10.9 million acres as community forests, while 46.1 percent were rejected.²²

In **Indonesia**, following a 2013 decision by Indonesia's Constitutional Court recognising customary forests, 561,139 hectares of forest were recognised as designated for Indigenous Peoples and local communities between March 2017 and February 2018.²³ While the Ministry of Forestry claims 187 million hectares as state forest out of 191 million hectares of the total forest area of the country, the Indigenous Peoples' Alliance of the Archipelago (AMAN) had mapped more than 6.8 million hectares of customary lands by 2015 with the aim to complete mapping of 40 million hectares of customary land by 2020. As per a news report, by 2019, just over 50 indigenous groups had gained rights to customary forests for about 25,000 hectares – that is only a fraction of 7.7 million hectares of land, home to 704 indigenous communities, which they estimates must be recognised as

22 International Work Group for Indigenous Affairs (IWGIA). 2019. The Indigenous World 2019. Copenhagen: IWGIA. Available from <https://www.iwgia.org/en/resources/indigenous-world>

23 Rights and Resources Initiative (RRI). 2018. At a Crossroads: Consequential Trends in Recognition of Community-based Forest Tenure from 2002-2017. Washington, DC: RRI. Available from <https://rightsandresources.org/en/publication/at-a-crossroads-trends-in-recognition-of-community-based-forest-tenure-from-2002-2017/#.XpNG9MgzZEY>

24 Asia Indigenous Peoples Pact. 2016. Indigenous Peoples' Initiatives for Land Rights Recognition in Asia. Chiang Mai: AIPP. Available from <https://aippnet.org/indigenous-peoples-initiatives-for-land-rights-recognition-in-asia/>

ancestral forests.²⁵ The issuance of certificates of customary forest ownership is far short of the Indonesian President's own target of returning 12.7 million hectares of customary forests.²⁶


Earlier, in 2014, the National Human Rights Commission of Indonesia (Komnas HAM) had conducted its first national enquiry into the violation of Indigenous Peoples' land rights. It collected around 140 formal complaints from seven regional hearings that highlighted the issue of unauthorised land grabbing by big timber companies that have major interests in the opening of forests for oil palm plantations. Numerous companies were operating without permits using the police to brutalise and intimidate the indigenous communities. Moreover, the government has not registered the various Indigenous Peoples living in the forest. The Commission made various recommendations, including the licensing system for natural resource exploitation based on FPIC principles.²⁷

Japan has recognised the Ainu as Indigenous People of the country in 2008 and adopted the Ainu New Law in 2019. However, the law has been criticised for non-recognition of the Ainu's rights to their lands, territories and resources and to self-determination. As a result, disputes over the inherent Ainu right to use their land and resources freely for their own

25 Zein, Z. and Daubach, T. 2019. After a 40-year struggle, indigenous guardians of Indonesian forest gain rights over their land. Eco-Business. Available from <https://www.eco-business.com/news/after-a-40-year-struggle-indigenous-guardians-of-indonesian-forest-gain-rights-over-their-land/>

26 Cabinet Secretariat of the Republic of Indonesia. 2016. President Jokowi: Customary Forests Should Not be Traded. Available from <http://setkab.go.id/en/president-jokowi-customary-forests-should-not-be-traded/>; The Jakarta Post. 2018. Indonesia still behind in indigenous peoples land recognition. Available from <https://www.thejakartapost.com/news/2018/09/11/indonesia-still-behind-in-indigenous-peoples-land-recognition.html>

27 See AIPP, 2016. Supra note 24



community development continue despite loosening of restrictions on plant and timber harvesting and salmon fishing. Further, the Japanese government continue to deny indigenous status for Okinawans (Ryukyuan), who continue to struggle against the US military bases in Okinawa, among other things.

In **Lao PDR**, land titles – the most secure form of land tenure security – are generally restricted to urban and peri-urban areas²⁸, however, customary land tenure rights of ?? are recognised in principle but the legal recognition has been limited. The Prime Minister’s 2008 Decree on the Implementation of the Land Law reaffirms the state’s recognition of customary tenure but clarifies that these rights are legally recognised where officially documented.²⁹ Such requirement has been increasingly acknowledged as inadequate to protect the rights associated with customary land use. Lao PDR has also piloted a programme for communal land titling on a limited basis, but has not progressed beyond pilot areas largely due to technical concerns about implemented methods, as well as political concerns that communal titling may hinder national development efforts through land concessions. At the same time, large-scale land acquisitions through state-sponsored concessions have expanded drastically. As of 2019, 1,521 land deals have been made involving 1.02 million ha of land,

28 A recent sub-national assessment, carried out in preparation for the nascent National REDD+ Programme (covering six northern provinces) found that 17 percent of village lands had some form of documented recognition, ranging from land use books (7 percent), tax receipts (4 percent), Land titles (3 percent), Land Survey Certificates (2 percent) and Temporary Land Use Certificates (1 percent). See Ingalls et al, 2018. Supra note 21

29 The Decree provides that “the state recognises the customary land use rights of individual, organization, or village community by issuing the Land Survey Certificate or Land Title or Land Certificate on a case-by-case basis, as specified in the land law, through the application for land registration submitted to the Land Management Authority.” See Ingalls et al, 2018. Supra note 21


with an additional 237 deals involving 10.7 million ha (45 percent of the total land area of the country) granted for mineral exploration. Agriculture and tree plantation concessions account for the largest share of land under concessions with 0.6 million hectares, followed by mining concessions (with 415,527 ha) and hydropower stations (10,456 ha).³⁰

Malaysia's Constitution provides that state laws in Sabah and Sarawak may provide for the reservation of land for Indigenous Peoples or for giving preferential treatment to them in regards to the appropriation of land by the state. Also, in Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the Indigenous Peoples of the states are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the Indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the National Land Code, Orang Asli customary tenure is recognised under common law. The principal act that governs Orang Asli administration, including occupation of the land, is the *Aboriginal Peoples Act 1954*.³¹

Between 2005 and 2010, the National Human Rights Commission of Malaysia received over 1,100 complaints alleging various forms of human rights violations to customary lands. Sabah had the highest number at 814, followed by 229 in Sarawak, and 45 in Peninsular Malaysia.

30 See Ingalls et al, 2018. Supra note 21

31 International Work Group for Indigenous Affairs (IWGIA). 2021. The Indigenous World 2021. Copenhagen: IWGIA. Available from <https://www.iwgia.org/en/resources/indigenous-world>



In 2011, the Commission also launched its first national enquiry on land rights of Orang Asli. The Commission has made significant recommendations based on the UNDRIP, including FPIC to improve the current status of land rights for Indigenous Peoples in Malaysia.³²

In **Myanmar**, the 2012 Virgin Fallow and Vacant Law allows the government to take possession of unregistered land across the country and does not recognise rights to farming practices associated with Indigenous Peoples. Approximately 75 percent of virgin, fallow and vacant land are in the seven ethnic states and they are highly impacted by this law.³³ Indigenous agricultural practices of the Nagas and other groups that involve shifting cultivation on virgin, fallow and vacant lands have been particularly restricted.³⁴ Amendments to the law in 2019 require registration processes that remote-dwelling indigenous communities are unaware of, and are unable to meet due to inadequate support for documentation.³⁵ On the positive side, the 2016 National Land Use Policy provides for land-use rights of ethnic nationalities with customary land tenure protections not limited to agricultural land but also shifting cultivation practices in forestland as well as recognition of communal land tenure systems such as swidden farming. The policy also refers to land-use mapping and requirement of FPIC as a means to address land monopolisation and speculation.³⁶

At the same time, regional ethnic armed organisations of Myanmar have extensive governance structures that resemble those of the State, including their own land and resource policies. For example, the Karen National Union

32 See Luithui-Erni, 2018. *Supra* note 15

33 International Work Group for Indigenous Affairs, *Indigenous Peoples and land rights in Myanmar*, 2020, available at: <https://www.iwgia.org/en/myanmar/3904-indigenous-peoples-and-land-rights-in-myanmar.html>

has issued a land policy in 2016, which allows for individual titling of household plots of land, and provides for the demarcation, ownership and governance of six categories of land. Under the policy, individual household plot titles offer residents tenure security but do not accord full freehold rights: any moves to transfer or sell land by individuals must first be approved by village land committees. Till 2019, the Karen National Union has issued over 40,000 individual land titles, 100 community forests and 20 customary owned areas, and established a 1.3-million-acre Salween Peace Park through a bottom-up process with extensive community participation and widespread grassroots support. Further, land conflicts in Myanmar largely stem from unresolved seizures of land that occurred during the military junta rule, wherein thousands of agricultural households were dispossessed through large-scale land seizures, particularly in indigenous areas such as Shan state and Karen-dominated territories. Mechanism formed to address these disputes has not been effective with procedures and rulings often lacking transparency.³⁷


In **Nepal**, the only country in Asia that has ratified ILO Convention 169, national legal framework, including the 1964 Land Reform Act, does not recognise traditional collective land tenure systems of Indigenous Peoples and has largely abolished such systems to nationalise indigenous lands and distribute them. Loss of traditional land base was particularly dramatic in the southern plains, where lands

34 See Ingalls et al, 2018. Supra note 21

35 Asia Indigenous Peoples Pact. Cybersecurity in the Mekong region: An Analysis of the Relevant Legal Framework and Recommendations for the Protection of Indigenous Environment Human Rights Defenders. (forthcoming)

36 International Work Group for Indigenous Affairs (IWGIA). 2017. The Indigenous World 2017. Copenhagen: IWGIA. Available from <https://www.iwgia.org/en/resources/indigenous-world>

37 See Ingalls et al, 2018. Supra note 21



traditionally controlled by indigenous communities were lost to migrants from the hill districts in the 1950s and 1960s. Without protection for communal lands, individual land holdings were gradually lost due to the absence of or insecure titles, abuse and corruption, lack of access to the justice system, and indebtedness. Currently, about 80 percent marginalised hill Indigenous Peoples have average lands of 0.4166 hectares per household registered in their names, but 29.5 percent marginalised hill Indigenous Peoples, 25 percent hill Indigenous Peoples other than Newar and another 25 percent of plain Indigenous Peoples other than Tharu possess lands not yet registered in their names (title to the lands not legitimised). Some 38 percent Tharu and 28 percent other plain Indigenous Peoples cultivate lands of others.³⁸

Likewise, pursuant to the 1993 Forest Act, Indigenous Peoples were displaced from their traditional forests, which were transferred primarily to non-indigenous community forest user groups. Communities that have traditionally relied on the forests but that were not in possession of titles, or lacked resources to compete with private contractors, have lost access to their traditional forest lands. Fishing in rivers and lakes, as well as access to such water resources, have also been lost or restricted similarly, including in the name of conservation.³⁹ Government-owned forests, national parks and conservation areas, leasehold and community forests and hydropower and other development projects have continued to negatively impact Indigenous Peoples. Some 65 percent of ancestral lands of Indigenous Peoples has now reportedly

38 Indigenous Navigator. 2019. Baseline Factsheet on the Situation of Indigenous Peoples of Nepal. Available from <https://indigenousnavigator.org/publication/nepal-fact-sheet>

39 United Nations (UN). 2009. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum – Report on the Situation of Indigenous Peoples in Nepal. UN Doc. A/HRC/12/34/Add.3


been occupied by national parks and reserves causing loss of their traditional livelihoods and forcing majority of them to relocate elsewhere.

In the **Philippines**, the 1997 Indigenous Peoples' Rights Act recognises Indigenous Peoples' ownership to their ancestral territories and provides for titling of ancestral domain. It is one of the few laws for Indigenous Peoples globally, which includes a requirement for FPIC. According to the National Commission on Indigenous Peoples (NCIP), the Indigenous Peoples occupy about 7.7 million hectares of land, or 26 percent of the country's total land area of 30 million hectares. By 2019, the NCIP has issued 243 certificates of ancestral domain titles, with a total land area of 5.7 million hectares and a total of 1.3 million Indigenous Peoples as rights holders.⁴⁰ Earlier, as of 2016, Indigenous Peoples' organisations had reported that 4.5 million hectares of land were covered under such titles while an additional 4.5 million hectares were under pending applications for certificates of ancestral domain titles.⁴¹ Thus, while there seems inconsistencies in the land claims of the Indigenous Peoples and the government, the titling of ancestral domain also appears to have slowed significantly in recent time. In the meantime, there has also been a dramatic rise in the targeted killing and criminalisation of land and environmental defenders.

Further, the titling procedures have been criticised for being unnecessarily costly and lengthy, and lacking in cultural

40 Department of Agriculture. 2020. DA eyes idle ancestral lands as food prod'n areas. Available from <https://www.da.gov.ph/da-eyes-idle-ancestral-lands-as-food-prodn-areas/#:~:text=As%20of%202019%2C%20the%20NCIP,million%20IPs%20as%20rights%20holders>.

41 Tebtebba. 2019. The Philippines Factsheet on Indigenous Peoples. Available from https://indigenoustraveler.org/sites/indigenoustraveler.org/files/media/document/philippines_factsheet_infographics.pdf



sensitivity while the NCIP is allocated paltry budget – an average of 0.07 percent of the national budget. At the same time, there are several conflicting government policies and administrative orders causing further delay in the issuance of ancestral domain/land titles. Various Certificate of Land Ownership Award or mining permits, logging concession and industrial forestry management agreement issued by the Philippines government agencies conflict with and negatively affect the titling of ancestral domain. For example, the Certificates of Land Ownership Award to non-indigenous persons inside portions of the Buhid Mangyan’s ancestral domain have adversely affected their land rights and their ancestral domain land claims. Furthermore, despite the 1997 Indigenous Peoples’ Rights Act, other state laws such as the 1995 Mining Act have undermined Indigenous Peoples’ rights to their lands, territories and resources.⁴²

In **Thailand**, the 2010 Regulation of the Prime Minister’s Office on the Issuance of Community Land Title Deeds was considered somewhat positive for collective rights to land although it did not cover full recognition of Indigenous Peoples’ traditional land tenure and resource management systems. It nonetheless provided for the granting of land-use permits for communities to collectively manage and benefit from state-owned land for their livelihoods while the state retains ownership of these lands. As of 2012, more than 400 local communities were in waiting for community land title deeds, with only 55 community land titles approved.⁴³ There seems little recent efforts made to implement the regulation.

42 See Luithui-Erni, 2018. Supra note 15

43 Asia Indigenous Peoples Pact; Network of Indigenous Peoples of Thailand (AIPP, NIPT). 2017. Joint Civil Society Report on the Implementation of the ICCPR – Replies to the List of Issues (CCPR/C/THA/Q/2), for the Review of the Second Periodic Report of Thailand (CCPR/C/THA/2) at the 119th session of the UN Human Rights Committee. Available from


In 2014, the military junta of Thailand issued National Council for Peace and Orders 64/2014 and 66/2014 (also known as 'Return Forest Policy') and a Reforestation Master Plan to end deforestation and encroachment of reserves towards the government's goal of increasing forest cover in the country to 40 percent within 10 years. The Orders and the Master Plan have had a severe effect on indigenous communities – many of whom live in protected areas without their rights recognised – with recurrent cases of fines and sanctions, including imprisonment, against Indigenous People living in forest areas who are accused of encroachment on state-lands or illegal logging in national parks.⁴⁴ According to the National Human Rights Commission of Thailand, as of 2016, there were 50 complaints filed regarding land confiscation under the Orders from 30 provinces across Thailand for a total area of 8,340 hectares (50,000 rai), including a case of seizure of 363.67 hectares (2,182 rai) of land in Mae Sot district of Tak province that affected 100 families cultivating the land for generations since 1936.⁴⁵

Recently, Thailand has enacted the 2019 Community Forest Act, which provides legal recognition of the right of local

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26658_E.pdf; Hayward, D. 2017. Community Land Titling in Thailand: The legal evolution and piloting of titling policy (Chiang Mai and Vientiane: RCDSD-Mekong Land Research Forum and Mekong Region Land Governance). Available from <https://www.mrlg.org/publications/community-land-titling-in-thailand-the-legal-evolution-and-piloting-of-titling-policy/>

44 See AIPP, 2016. Supra note 24

45 Network of Indigenous Peoples in Thailand (NIPT). 2016. Review of Situation and National Legal and Policy Framework on the Rights of Indigenous and Tribal Peoples in Thailand: In Response to International Covenant on Civil and Political Rights (ICCPR). Available from https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_ICO_THA_23568_E.pdf



communities to manage their forests for the first time. However, it has also drawn criticisms for limitations in its scope and application. For example, the Act excludes communities living in or are dependent on forests within the protected areas (such as national parks) governed by the state. It provides only limited rights to the communities to use the resources from the community forest under a five-year plan that is assessed by the forest authorities. Thus, they retain significant control over the forest compared to the communities. That can result in continued charges of trespassing against them or their forced evictions while the Act falls short to recognise the ownership rights of communities to their forests.⁴⁶

In **Vietnam**, customary tenure of agricultural and forest land, which is most prevalent among Indigenous Peoples (ethnic minorities), is recognised in the 2013 Land Law that allows communities to receive Land Use Rights Certificates and land allocation or land use rights “to preserve national identities associated with the traditions and customs of the people”. However, the implementation of this legal provision has been irregular and generally weak. In particular, land within protected forest can be allocated to “communities” but only 2 percent of forest land (14,923.6 million hectares) has been allocated to communities as of 2015. Under the 2004

46 Chandran, R. 2019. Thai community forest bill won't benefit all, campaigners say (Bangkok, Reuters). Available at: <http://news.trust.org/item/20190221070445-25s3t/>; Manushya Foundation. 2019. Rights of Indigenous Peoples in Business Contexts in Thailand Thematic Assessment Chapter of the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand (Bangkok, Manushya).

Even in the absence of a law, Thailand has designated land as community forests and 9,855 community forests covered 750,457 hectares in Thailand as of August 2016. A government plan aims for 1.6 million hectares to be used in community forests by 2025, although recent legislation shoring up forest and protected land is creating insecurity both for existing and future projects.

Forestry Law, communities may apply to District People's Committees for access to use and manage forests that are important to the preservation of their customs and traditions. However, in practice, protection for communities is relatively weak compared to other forms of land use and management, given the ambiguity in the law regarding the formal status of "communities" as distinct categories from other legal entities.

At the same time, critical land shortages are rife among Indigenous Peoples. A total of 206,454 indigenous households indicated that they did not possess the minimum area required for household agricultural production and/or housing in their respective provinces. Besides the issue of land access, the quality of land allocated to minority households, as well as the productivity and use of lands for economic activities by ethnic minority groups are also among the key barriers to poverty reduction in minority areas. The Vietnamese government has implemented a number of programs and policies aimed at addressing this disparity but the implementation of these initiatives remains insufficient to address the disparity and insecurity in land access experienced by ethnic minorities. Further, ethnic minority communities remain vulnerable to losses and encroachments of communal forest land. Historically, the massive migration of ethnic Kinh into Vietnam's highlands has been a major driving force behind loss of land and resulting vulnerabilities, along with infrastructure construction and mining projects.

ADDRESSING THE RIGHTS OF INDIGENOUS PEOPLES, INCLUDING RIGHTS TO THEIR LANDS, TERRITORIES AND RESOURCES, IN SDGS PROCESSES IN ASIA

There are some efforts undertaken by Asian States and by Indigenous Peoples themselves to highlight and advance the rights of Indigenous Peoples, including rights to their lands, territories and resources, in the SDGs processes. Those include growing recognition of contributions of Indigenous Peoples as well as their vulnerability in meeting the SDGs, their participation and inclusion across all or some of the SDGs by a few states as well as Indigenous Peoples' self-initiatives for participation in the SDGs processes, disaggregation of data and respect for their rights to lands and resources as well as to development from local to international levels. These good practices need to be built on for further progress.

STATES

As reported in their Voluntary National Reviews (VNR) on the implementation of SDGs, the Asian States under review have made some efforts in relation to acknowledging and promoting the issues and rights of Indigenous Peoples, including rights to their land and resources, in their SDGs processes such as formulation of plans, implementation and reporting.


The **Philippines** has adopted the SDG framework in its Philippine Development Plan 2017-2022, whereby Indigenous Peoples and their issues are incorporated in various sectors. As per the Plan, for swift and fair administration of justice, a sub-strategy to streamline land disposition rules will involve taking into account the

jurisdiction of the NCIP in relation to Indigenous Peoples' ancestral domain claims. Further, for the delivery of fair and equal justice, victim's legal protection and assistance shall be strengthened, especially for persons with special needs, including Indigenous Peoples. The Plan also states that indigenous and local knowledge will be promoted as part of good farming and fishery practices. In line with the Plan's targets to ensure ecological integrity, clean and healthy environment, sustained biodiversity and functioning ecosystem services in forest and watershed areas, land administration and management need to be improved. This can be done by accelerating the delineation of ancestral domain and its waters, including the provision of economic and cultural services to Indigenous Peoples within the framework of their sociocultural integrity and ecological balance. It also aims to expand the development of sustainable resource-based industries by developing a system for access and benefit sharing of wealth from genetic resources and the traditional knowledge of indigenous communities.⁴⁷

In its 2019 VNR⁴⁸, the Philippines, under SDG 10 (reduced inequalities), has reported that the country has passed legislation to ensure upholding the rights of vulnerable groups, including the Indigenous Peoples' Rights Act. The National Commission on Indigenous Peoples is one of the governmental bodies established to ensure sector-specific issues are considered in the development discourse. As one of its best practice under the SDG, a modified conditional cash-transfer program is being implemented to address the

47 See Tebtebba, 2019. Supra note 41

48 See The 2019 Voluntary National Review of the Philippines: Review of the Status of the Implementation of the Sustainable Development Goals in the Philippines – Focusing on Empowering People and Ensuring Inclusiveness and Equality. Available from https://sustainabledevelopment.un.org/content/documents/23366Voluntary_National_Review_2019_Philippines.pdf



needs of specific sectors, including Indigenous Peoples in geographically isolated and disadvantaged areas. The VNR also includes information on the Philippines' targeted efforts towards education of indigenous children under SDG 4 (quality education) and birth registration in indigenous communities under SDG 16 (peace, justice and strong institutions).

Indonesia, under SDG 14, has reported that the government has developed a National Marine Spatial Plan as well as coastal zoning plan in some provinces by 2019 to support an integrated and sustainable use of marine and coastal resources through preservation of maritime socio-culture, indigenous communities and artisanal fisheries, among other ways. According to its 2017 VNR, a lesson learned in the management of marine and fisheries resources in Indonesia is that local wisdom (community rules/traditions recognised as customary law) is effective in ensuring sustainable use of fisheries resources.

The 2017 VNR also provides for inter-regional disparities in relation to achieving SDGs in Indonesia, which reflect the SDGs implementation or lack of implementation for Indigenous Peoples. For example, in relation to SDG 1, while the national poverty incidence of Indonesia is 10.7 percent, it is almost thrice that in Papua (28.4 percent). Similarly, the coverage of immunisation is lowest in Papua province (29.2 percent) compared to the national average of 66 percent as of 2012. The percentage of children with incomplete immunisation is highest in Maluku province (48.6 percent) while the AIDS case rate is highest in Papua (416.91 per 100,000) against the national rate of 28.45 per 100,000 persons, and the distribution of health personnel in Sulawesi (9.41 percent), Kalimantan (7.79 percent), Bali and Nusa Tenggara (5.96 percent) and Maluku and Papua (3.78 percent) is considerably lower than in Java (46.76 percent). Indonesia formed Working Groups comprising non-state

actors, which include academics, CSOs and community organisations' representatives, within its National Coordination Team for SDGs implementation but there is no information available of the participation of Indigenous Peoples' organisations in those Working Groups.

In its second VNR⁴⁹ in 2019, although there is no specific reference to Indigenous Peoples, the Indonesian Government has identified increasing community resilience to coastal and marine disasters as well as interregional and international cooperation in marine conservation, including through revitalisation of geographically isolated ethnic groups, traditional and local communities on small islands, as the way forward to achieving SDG 14.

Malaysia, in its VNR⁵⁰, under SDG 15, has committed that as part of the 11 Malaysia Plan, a strategic goal is to leverage indigenous and local communities in management of natural resources by empowering the communities in reporting of illegal activities, increasing the socioeconomic well-being of the communities to decrease dependency on extraction of natural resources, and empowering the communities to have the right to give or withhold consent to proposed projects that may affect their land. Malaysia has also explicitly referred to Indigenous Peoples in Sabah and Sarawak and Orang Asli in reporting under SDG 1 that the 'rural' poverty rate is higher than the national rate (1.6 percent compared to 0.6 percent), and that of Indigenous People is highest (Sabah and Sarawak

49 Republic of Indonesia. 2019. VOLUNTARY NATIONAL REVIEWS (VNR) Empowering People and Ensuring Inclusiveness and Equality. Available from https://sustainabledevelopment.un.org/content/documents/2380320190708_Final_VNR_2019_Indonesia_Rev3.pdf

50 **Government of Malaysia. 2017. Malaysia: Sustainable Development Goals Voluntary National Review 2017 – High-level Political Forum. Putrajaya, Malaysia: EPU. Available from** <https://sustainabledevelopment.un.org/content/documents/15881Malaysia.pdf>

[7.3 percent] while Orang Asli are the poorest). For SDGs implementation, Malaysia has established a multi-stakeholder and participatory governance structure under the National SDG Council chaired by the Prime Minister, held several symposiums and focus group sessions to promote awareness and participation of stakeholders, and conducted studies and mapping involving NGOs and private sector to align SDGs with 11 Malaysia Plan initiatives, among others. However, specific information about participation of Indigenous Peoples has not been provided.

In its 2019 VNR⁵¹, under SDG 10 (reduced inequalities), **Cambodia** has reported that registration of land of indigenous communities reached 24 communities (2,558 families). Under SDG 1 (no poverty), the government acknowledges that the probability of being poor is higher among ethnic minorities. There is no information provided about participation of Indigenous Peoples or their organisations in the SDGs processes while the government states that it has adopted regular consultations with civil society and business actors.

In the 2020 VNR⁵² of **Nepal**, the government, under SDG 15 (life on land), has affirmed that the country is cognisant of the need for a fine balance between the protection and sustainable regeneration of natural and biological resources, livelihood opportunities of the mountain people, promotion of their indigenous knowledge and culture, development of infrastructure and building resilience from natural disasters.


51 Royal Government of Cambodia. 2019. Cambodia's Voluntary National Review 2019 on the Implementation of the 2030 Agenda for Sustainable Development. Available from https://sustainabledevelopment.un.org/content/documents/23603Cambodia_VNR_PublishingHLPF.pdf

52 Government of Nepal. 2020. Nepal - National Review of Sustainable Development Goals. Available from https://sustainabledevelopment.un.org/content/documents/26539VNR_2020_Nepal_Report.pdf

Under SDG 5 (gender equality), reservations in public service for women and marginalised groups, including Indigenous People, introduced in 2007 has been reported as a remarkable development. Towards “leaving no one behind”, the country has established constitutional commissions on various disadvantaged and marginalised groups, including an Indigenous Nationalities Commission, to provide institutional and focused policy advice, conduct monitoring and suggest compliance of the implementation of policies. Some region- and area-specific programs, poverty eradication programs, and focused policies and programs related to Indigenous Peoples and other disadvantaged groups have resulted in the enhancement of meaningful participation of the marginalised groups and those left behind in national life.

The government has reported community forestry as one of its good practices, whereby effective participation of all sections of community and ethnic groups, including Indigenous Peoples, in policy decisions and implementation has been important. Similarly, under another good practice of social protection system, it has implemented new schemes each year after 2006. As a result, more than 80 schemes exist under the social protection floor by 2019. Thereby, almost three million people, about 12 percent of the population, received allowance-based social security assistance designed to account various degrees of vulnerability and deprivation, including social protection grants for indigenous and other groups on the verge of extinction. Under education-related grants, children from indigenous and other marginalised groups received scholarships.

The government identifies consolidation of multi-stakeholder partnerships as one of its next steps to fully engage the public and private sectors, cooperatives, civil society organisations, women, youth, Dalit, Madeshi, indigenous groups, sexual and gender minorities, LGBT and



other marginalised groups in accelerating towards the SDGs. As per the VNR, extensive discussions were held with the relevant stakeholders, including civil society organisations of indigenous groups, and their recommendations were also considered in preparation of the report. Nepal's earlier 2017 VNR⁵³, which did not have any significant information on Indigenous Peoples, had simply stated that its inter-governmental committees for SDGs coordination, implementation and monitoring were mandated to include 'invitee' members from private and cooperative sectors, NGOs, civil society, media, among others.

India, in its 2020 VNR⁵⁴, extensively refers to its Scheduled Tribes as one of the social groups at the risk of being left behind. As per the VNR, Adivasis, administratively termed as Scheduled Tribes (ST), signify many indigenous and tribal communities in the country. Among them, 75 tribes are classified as Particularly Vulnerable Tribal Groups (PVTG) on account of their exacerbated vulnerabilities. At 104 million, the Scheduled Tribes constitute 8.6 percent of the country's total population with nearly 90 percent of them residing in rural areas. The vulnerabilities associated with the Scheduled Tribes are recognised through various legal provisions of affirmative action in the Indian Constitution, such as prohibition of discrimination, equality of opportunity and reservation quotas in matters of public employment, political representation and promotion of educational and economic interests. Apart from dedicated institutional structures at the central and state level, including National

53 Government of Nepal. 2017. National Review of Sustainable Development Goals. Available from

<https://sustainabledevelopment.un.org/content/documents/16513Nepal.pdf>

54 Government of India. 2020. India VNR 2020 – Decade of Action: Taking SDGs from Global to Local. Available from


https://sustainabledevelopment.un.org/content/documents/26279VNR_2020_India_Report.pdf

Commissions for Scheduled Tribes and Minorities, budgetary provisions and specific schemes for multi-sectoral tribal development define the mainframe of state action towards tribal welfare.

In relation to SDG 4 (quality education) and SDG 10 (reduced inequalities), the government has reported that special attention has been given to improve educational access and attainment for social groups in vulnerable situations, including the Scheduled Tribes, through scholarships, improved teaching learning processes, aids, appliances and assistive devices, and special educators. Under SDG 15 (life on land), it affirms the 2006 Forest Rights Act that recognises the rights of the Scheduled Tribes and other Traditional Forest Dwellers to hold and live in the forest land under individual or common occupation for habitation or self-cultivation for livelihood. The Act also grants several other rights, including right of ownership, access to collect, use and dispose of minor forest produce, community rights over forest produce for domestic use, habitat rights for primitive tribal groups and pre-agricultural communities, etc. Further, as per the VNR, India's National Biodiversity Authority operationalises the access and benefit-sharing provisions of the Convention on Biological Diversity through a national network of Biodiversity Management Committees, which must have one-third representation of women and 18 percent from Scheduled Castes and Tribes.

The VNR identifies accelerating education and health⁵⁵ outcomes and expansion of livelihood opportunities for the

55 For example, in key health indicators such as stunting, immunization, institutional deliveries and anemia among women, the outcomes remain lower than the national average while the proportion of the budget allocated for welfare of the Scheduled Tribes has progressively increased from 1.01 per cent in 2015-16 to 1.16 per cent in 2017-18. See Government of India, 2020. Ibid



Scheduled Tribes as well as lack of awareness among the communities on the rights associated with the Forest Rights Act and Provisions of the Panchayats (Extension to the Scheduled Areas) Act as challenges ahead. For that, besides evaluation of health and education infrastructure, capacity building of the human resources engaged in tribal areas has been recommended in the VNR. At the same time, deterrence of trafficking from the fifth schedule areas through community awareness and vigilance in conjunction with monitoring, adequate reporting and prompt action with close collaboration between the state and the civil society, and allowing for customisation of national and state scheme-related activities to suit the hyper-local socioeconomic and geographic realities of the diverse Scheduled Tribes have also been recommended.

India has further identified de-notified⁵⁶, nomadic and semi-nomadic tribes as at risk of being left behind. Several commissions constituted in the interest of these communities have concluded that those tribes were the poorest among poor and marginalised. Their challenges include access to government certification, which determines beneficiary status, due to differences of classification among states and different generations as well as the mobility associated with the livelihood of some of the communities. Thus, uniformity in classification of those tribes across India, enumeration of those in official statistical systems for policy making as well as public awareness raising on their situation have been recommended.

Bangladesh refers to a “Whole of Society” approach in implementing and achieving the SDGs by engaging all

⁵⁶ De-notified Tribes refers to communities which were considered criminal under the purview of the colonial laws, such as the Criminal Tribes Act of 1871. The Indian Government repealed these laws in 1952 thereby ‘de-notifying’ these communities. See Government of India, 2020. Supra note 53

stakeholders. As per its 2020 VNR⁵⁷, the government held several consultations on stakeholders' engagement on the SDGs implementation, including NGOs, CSOs, ethnic minorities, professional groups, labour associations, women networks and media. The government acknowledges ethnic communities as one of the groups at risk of being left behind in the SDGs.

Under SDG 3 (good health and well-being), the VNR identifies launch of community clinics across Bangladesh as a good practice. Thereby, 13,743 such clinics are in operation and they have been one of the most useful tools to provide healthcare support to marginalised population such as ethnic minority groups who cannot afford out-of-pocket health expenditure in the absence of universal health coverage. Nonetheless, the government recognises that there are still equity issues involving ethnic and different forms of marginalisation. Thus, gradual expansion of activities such as service coverage in the hard-to-reach areas, effective implementation of tribal health plan and health workforce management, under the 4th Health, Population and Nutrition Sector Programme for addressing inequity issues, are continuing. Similarly, under SDG 4 (quality education), the government has reported that despite progress in enrolment of both boys and girls at the primary level, there are about 4 million children out of school throughout Bangladesh with specific groups of children facing greater constraints such as indigenous children. So, more emphasis on addressing disparity by ethnic groups is needed, among others.

57 See Bangladesh: Voluntary National Reviews (VNRs) 2020 – Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable, development, 2020, available from https://sustainabledevelopment.un.org/content/documents/26302VNR_2020_Bangladesh_Report.pdf

Separately, as per the VNR, the Prime Minister's Office has special projects/programmes for the betterment of other ethnic people in the plains. Further, the government reports that National Social Security Strategy must be seen as a core element of other policies and programmes that together comprise the broader Social Development Framework, which also includes the strategy for social inclusion of ethnic and religious minorities and the strategy for environmental protection and climate change management, among others.

The earlier 2017 VNRs of India⁵⁸ and Bangladesh⁵⁹ did not have any significant information on Indigenous Peoples, or their participation in the SDGs processes.

Countries such as Lao PDR, Thailand and Vietnam do not acknowledge Indigenous Peoples in their VNRs but they provide some data with references to ethnic groups or minorities, including a few specific cases of those groups as examples. **Vietnam** reports that the National Action Plan for Implementation of the 2030 Agenda for Sustainable Development pays particular attention to ethnic minorities (among other vulnerable groups) through policies aimed at promoting social equality. The 2018 VNR⁶⁰ of Vietnam makes references to ethnic minorities and provides some data and specific situation for mountainous areas or areas populated by ethnic minorities. For example, around 2

58 See India - Voluntary National Review Report on Implementation of Sustainable Development Goals, 2017, available from <https://sustainabledevelopment.un.org/content/documents/16693India.pdf>

59 Government of the People's Republic of Bangladesh. 2017. Eradicating poverty and promoting prosperity in a changing world - Voluntary National Review (VNR). Available from <https://sustainabledevelopment.un.org/content/documents/15826Bangladesh.pdf>

60 See Viet Nam's Voluntary National Review on the Implementation of the Sustainable Development Goals, June 2018, available from https://sustainabledevelopment.un.org/content/documents/19967VNR_of_Viet_Nam.pdf

percent of total households in mountainous and remote areas have no access to electricity, or to the national electricity grid. Vietnam reports that its VNR preparation included comments from ‘vulnerable groups’ (including ethnic minority people) on matters related to sustainable development. The report also uses an example of H’mong women selected for consultation on access to clean water, sanitation and sustainable energy.

Similarly, **Lao PDR** provides some good information and data related to ethnic groups in highland areas in its 2018 VNR⁶¹ while attributing development disparity to altitude and location rather than ethnicity. However, it often acknowledges the difference in ethnicity such as “The 26 percent of the population that lives in upland areas are said to ‘often be of a different ethnicity from that of lowland groups’ and face high levels of poverty (33 percent compared to 20 percent in lowland areas)” under SDG 1. The VNR also refers to village consolidation and resettlement policies in order to ‘provide adequate infrastructure’. Laos reports that the government has initiated preparation of a national SDG Roadmap, including through stakeholder consultations. It says that the National SDGs Secretariat organised a series of consultation in 2017 and 2018 with CSOs, INGOs, UN agencies, academia and other development partners for the VNR and that the VNR includes feedback from the CSOs.

Thailand’s VNR⁶² includes specific case studies and information on programs targeted for ethnic minorities such

61 Government of the Lao People’s Democratic Republic. 2018. Lao People’s Democratic Republic: Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development. Available from https://sustainabledevelopment.un.org/content/documents/19385Lao_Final_VNR_19_June_2018_web.pdf

62 See Thailand’s Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development, June 2017, available from <https://sustainabledevelopment.un.org/content/documents/16147Thailand.pdf>

as that of a non-governmental project to promote employment and income generation among ethnic minority women, effectively reducing prostitution among young women in Chiang Rai in relation to SDG 5 and vocational training through skill development programs for ethnic minorities under SDG 8, among others. Thailand has formed a National Committee for Sustainable Development responsible for sustainable development of the country. It comprises civil society and academia, along with private sector and agencies concerned. The process of VNR preparation included participation of local universities in regional consultations.

Japan's 2017 VNR⁶³ makes no mention of Indigenous Peoples or the Ainu but only makes vague references to marginalised/ vulnerable groups and 'diverse communities'. However, it demonstrates commitment or recognition of indigenous rights in countries with which Japan undertakes international cooperation.

INDIGENOUS PEOPLES

Indigenous Peoples have been consistently engaged in the processes related to the 2030 Agenda for Sustainable Development since the design of the Agenda at the UN level as one of the major groups of stakeholders. The Indigenous Peoples Major Group for Sustainable Development (IPMG) is facilitated by two Indigenous Peoples' organizations as global organizing partners and includes Indigenous Peoples' organizations or representatives as regional organizing partner focal points. It maintains global and regional list-serves for information sharing and coordination among

63 SDGs Promotion Headquarters. 2017. Japan's Voluntary National Review Report on the implementation of the Sustainable Development Goals.

Available from


<https://sustainabledevelopment.un.org/content/documents/16445JapanVNR2017.pdf>

Indigenous Peoples and their organisations. Accordingly, it is actively engaged in the SDGs-related processes, including the High-level Political Forum on Sustainable Development (HLPF) and its regional forums, through facilitation of participation of indigenous representatives in the meetings, preparation and submission of reports, position papers, statements as well as proposals and recommendations on behalf of Indigenous Peoples.⁶⁴

The IPMG has regularly raised issues relating to Indigenous Peoples' rights to lands, territories and resources in its engagement in the global SDGs processes. For example, in its report to the 2017 HLPF, the IPMG noted that poverty was a factor in the food insecurity of Indigenous Peoples due to historical colonisation, subjugation and assimilation, the prevailing discriminatory structures, and the systematic violation of their rights. The state of impoverishment of Indigenous Peoples resulted from widespread loss of their ownership and control over their lands, territories and resources and their lack of food security. The IPMG thus provided six key recommendations, including recognition of Indigenous Peoples as distinct groups with specific rights in poverty reduction and food security strategies and programmes, ensuring adequate resources for targeted programmes for them and data disaggregation based on indigenous identity, institutionalising mechanisms for effective participation of Indigenous Peoples in SDGs processes as well as legal recognition of their customary land rights.⁶⁵

64 See United Nations Sustainable Development Knowledge Platform, Indigenous Peoples, available from <https://sustainabledevelopment.un.org/majorgroups/indigenouspeoples#>

65 United Nations Permanent Forum on Indigenous Issues (UNPFII). 2018. Update on indigenous peoples and the 2030 Agenda for Sustainable Development. UN Doc. E/C.19/2018/2



Further, the IPMG has published a “Global Report on the Situation of Lands, Territories and Resources of Indigenous Peoples” that includes studies at regional levels, relevant data and case studies of challenges and good practices to inform the implementation of global commitments for sustainable development and various related processes. It has also produced a technical policy brief on SDG 15 for the HLPF entitled “The central roles of Indigenous Peoples and local communities in achieving global commitments on biodiversity” emphasising that biological and cultural diversity increased resilience to social, environmental and climate change and that Indigenous Peoples and local communities played a significant role in biodiversity conservation and sustainable use.⁶⁶

In its report prepared for the 2020 HLPF, the IPMG addressed the rising criminalisation, persecution and extrajudicial killings of Indigenous Peoples defending their rights to the lands, territories and resources that are at the heart of their survival. In its report, IPMG noted that COVID-19-related lockdowns have contributed to increased land-related violence and land grabbing. It pointed out that circumstances such as these illustrate the huge gap in the protection and realisation of the rights of Indigenous Peoples in relation to the implementation of the SDGs.⁶⁷

Indigenous Peoples’ organisations have also undertaken efforts for community-generated data that have been useful in the absence of official data related to them. Since 2014, a global partnership of Indigenous Peoples’ organisations and

66 Ibid.

67 See Indigenous Peoples Major Group for Sustainable Development, Thematic Report for the High-Level Political Forum of Agenda 2030 for Sustainable Development 2020, executive summary available at <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/global-reports/162-ipmg-thematic-report-for-hlpf-2020/file>.


their supporting NGOs, together with the ILO, has been implementing an Indigenous Navigator initiative to provide a framework and set of tools for and by Indigenous Peoples to systematically monitor the level of implementation of their rights. With the adoption of the 2030 Agenda, the initiative has also incorporated generation of community-based data on essential aspects of the SDGs. Piloted in Cameroon, Kenya, Nepal, Peru, Suriname and Thailand, the tools are currently being applied by Indigenous Peoples' organisations and communities in 11 countries, namely Bangladesh, Bolivia, Cambodia, Cameroon, Colombia, Kenya, Nepal, the Philippines, Peru, Suriname and Tanzania, and generated in-depth data posted on a global portal.⁶⁸

Land Rights Now: A Global Call to Secure Indigenous and Community Land Rights, which mobilises and engages active citizens, media, communities and organisations worldwide to promote and secure land rights of Indigenous Peoples and local communities, is another example of international solidarity formed to place Indigenous Peoples and local communities at the centre of sustainable development and enable them to decide their own future. With the target to double the global land area legally recognised as owned by Indigenous Peoples and local communities by 2020, the campaign aims to secure those rights everywhere.⁶⁹

There are also various successful measures undertaken by indigenous communities at national and local levels towards fulfilling their rights to lands, territories and resources and achieving sustainable development – often combining traditional knowledge and modern scientific methods against

68 See Indigenous Navigator, available from <https://indigenousnavigator.org/>. Some of the data generated under the Indigenous Navigator have also been used in this briefing paper.

69 See Land Rights Now, available from <https://www.landrightsnow.org/>



serious challenges such as climate change and land grabbing. Among such measures, mapping of indigenous lands has been a very important tool for Indigenous Peoples worldwide to secure land tenure rights, manage natural resources and strengthen cultures. Indigenous Peoples and their support organisations in Asia have undertaken participatory community-led mapping to assert their rights to lands, territories and resources in **Cambodia, India, Indonesia, Malaysia, Myanmar, the Philippines and Vietnam.**

Besides being used for official titling of indigenous lands and forests in India, Indonesia and the Philippines as noted in the section above, community mapping has been used in **Thailand** for Indigenous Peoples to negotiate with state officials for possible collaborative management of the forests so that they can continue to use their lands against threats of evictions in protected forests/areas, and have benefitted more than 80 villages of 10 tribes in northern Thailand. In **Myanmar**, indigenous communities are mapping their ancestral territories in Shan, Chin, Karen and Karenni states with the help of NGOs. Besides being a useful tool for advocacy, community mapping has also been empowering the indigenous communities to create unity with and among communities in case of boundary conflicts as well as facilitate intergenerational transfer of knowledge about indigenous territories⁷⁰.

70 Asia Indigenous Peoples Pact. 2019. Participation for Empowerment: How are indigenous peoples faring in the SDGs?. Chiang Mai: AIPP. Available from

https://aippnet.org/wp-content/uploads/2019/10/SDG_Briefing-paper-2019.pdf; Indigenous Peoples Major Group for Sustainable Development (IPMG).

2018. Global Report on the Situation of Lands, Territories and Resources of Indigenous Peoples. Available from


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

Indigenous communities and their organisations, such as in Malaysia, are also documenting community protocols on their customary laws and practices and presenting them to the decision makers to increase the resilience of their traditional institutions and natural resource stewardship systems through constructive engagement.⁷¹ Due to declining fish stocks and species, one such system called the *Tagal Hutan* (*Tagal* meaning prohibition and *Hutan* meaning forest) revived by indigenous communities in Sabah, which involves collective ownership and responsibility of sustainable resource use, has been so successful that its management now covers hundreds of kilometers and the state government has legally recognised it. In Thailand, traditional knowledge, particularly preserved and transmitted by indigenous women, on seeds banking has been documented to build community resilience to climate change.⁷²

Nepal provides a good practice in relation to Indigenous Peoples' self-organising in relation to SDGs processes. National indigenous formations and NGOs formed an Indigenous Peoples' Network for SDGs, Nepal that prepared a shadow VNR report following several rounds of meetings and researches. The report challenges the overall framework of Nepal's Constitution (as reported in Nepal's VNR) for SDG implementation in the country claiming that the constitution is discriminatory and exclusionary to the Indigenous Peoples. The report also provides some key statistics disaggregated for Indigenous Peoples in Nepal in relation to non-implementation of SDGs based on an

71 Chin, L., Thomas, GJ., and Jonas, H. 2018. Indigenous Peoples Present their Community Protocols to the Chief Judge of Sabah and Sarawak. The ICCA Consortium blog. Available from <https://www.iccaconsortium.org/index.php/2018/04/10/indigenous-peoples-present-their-community-protocols-to-the-chief-judge-of-sabah-and-sarawak/>

72 See AIPP, 2019. Supra note 70



ethnicity-based disaggregation of census data. For example, as per a study from an indigenous-led NGO, among hill Indigenous Peoples, nearly one-fourth (24.6 percent) are living below the poverty line whereas the hill Brahmin's poverty is 10.34 percent. The report makes specific recommendations to the government and other actors relevant to SDGs to ensure respect for the rights of Indigenous Peoples in SDG implementation in Nepal.

Likewise, in **Malaysia**, Asia Indigenous Peoples Pact brought together Indigenous Peoples' representatives in 2017 for group discussions to draw a list of recommendations by clusters in the SDG Roadmap of the country. They reported of non-involvement of Indigenous Peoples in formulation of the Roadmap and in strategies related to specific SDGs and recommended for inclusion of Indigenous Peoples in planning the SDGs implementation as well as overall economic plans. There were also recommendations on issues such as disaggregation of data on GDP, employment, etc. for Indigenous Peoples, inaccuracy of official data or inadequacies therein (for example in relation to forests, education, etc.), recognition of key concerns of Indigenous Peoples (including support for native customary land rights, indigenous justice systems, etc.) and inappropriateness of some indicators for their context (thus suggestions for new indicators were provided), among others.


In **Bangladesh**, Indigenous Peoples' organisations have joined Citizen's Platform for SDGs. There is no study or policy lobby of the platform on Indigenous Peoples' issues yet. However, associated organisations have conducted a few studies on their own focusing on specific areas.

CHALLENGES FOR INDIGENOUS PEOPLES, INCLUDING RIGHTS TO THEIR LANDS, TERRITORIES AND RESOURCES, IN ACHIEVING THE SDGs

Serious challenges abound to fulfil the rights to lands, territories and resources of Indigenous Peoples and thus to achieve the SDGs. Despite growing global realisation of the importance of securing their land and resource rights, progress is limited in Asia. As mentioned above, many Asian States under the study do not recognise the existence of Indigenous Peoples in their territories or their rights as well as the contributions of those groups in achieving the SDGs as evident in the analysis of the VNRs of the states in the section above. Even in countries where they afford some recognition of indigenous rights, they have stalled actions to implement or protect those rights.

Some progress at the global level is overshadowed by substantial reports of challenges to the rights of indigenous communities at the grassroots levels, including in the name of “development” or business projects that threaten lands and resources of many communities. Along with the lack of delivery of shared development, flawed environmental conservation measures and false climate change solutions are also robbing off indigenous lands and livelihoods. Indigenous communities and their defenders are facing increasing risks and reprisals for defending their lands.

Poverty among Indigenous Peoples globally continues to pose as a daunting challenge for the fulfillment of the SDGs. Although poverty is recognised as a multidimensional phenomenon in the 2030 Agenda for Sustainable Development, there is still an emphasis on gross domestic product growth, industrialisation and increased production. While the Agenda does not fully recognise collective rights



in relation to not only lands and resources but also health, education, culture and ways of living, it also lack cultural sensitivity in certain contexts, including within the SDGs and their targets relating to health and education, as evident in the absence of any reference to, for example, the provision of indigenous-mother-tongue-based multilingual education or traditional health systems. The implementation of the SDGs thus requires a human-rights-based approach through adherence to the principles of Indigenous Peoples' empowerment, inclusion and participation as equal partners, whereby not only Governments but also the private sector are held accountable for respecting indigenous rights.⁷³

Further, poverty among Indigenous Peoples is primarily linked to dispossession and insecurity of their lands and resources and historical, ongoing and systemic discrimination and exclusion in almost every country they live in. Thus, lack of secure land and resource rights of Indigenous Peoples is key among the specific needs and challenges of Indigenous Peoples in the SDGs. In 2015, the UN Special Rapporteur on the rights of Indigenous Peoples reported that Indigenous Peoples and local communities – estimated to number 1.5 billion worldwide – govern 6.8 billion hectares of land through customary tenure arrangements.⁷⁴ That constitutes over 50 percent of the global land area⁷⁵. But governments only recognise legal rights of

73 United Nations Office of the High Commissioner for Human Rights (OHCHR), Secretariat of the United Nations Permanent Forum on Indigenous Issues (SPFII). 2017. Briefing Note: Indigenous Peoples' Rights and the 2030 Agenda. Available from <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2016/10/Briefing-Paper-on-Indigenous-Peoples-Rights-and-the-2030-Agenda.pdf>

74 See Tauli-Corpuz, 2015. *Supra* note 3

75 Alden Wily, L. 2011. *The tragedy of public lands: The fate of the commons under global commercial pressure*. Rome: International Land Coalition (ILC). Available from

Indigenous Peoples and local communities to around 513 million hectares of forests, which is around one-eighth of the world's total.⁷⁶


A 2015 baseline study⁷⁷ of 64 countries constituting 82 percent of the global land area shows that only 18 percent of land worldwide is formally recognised as either owned by or designated for Indigenous Peoples and local communities, whereby they legally own just 10 percent of the global land. Fifty-six of those countries have at least one tenure regime that recognises the rights of Indigenous Peoples or local communities to own or control land, although some of those tenure regimes have not been implemented. However, in more than half of those countries, Indigenous Peoples and local communities have no formal legal avenue to obtain ownership of their lands, and the area formally recognised is much less than the area to which Indigenous Peoples and local communities hold customary rights. Thus, greater measures, including lobbying, capacity building and legislative and administrative reforms, are necessary to increase ownership and control of Indigenous Peoples to their lands, which has major implications for controlling climate change, ensuring food security, reducing political conflict and protecting the world's remaining natural resources.

Another study on community-based forest tenure from 2002-2017 across 58 countries worldwide suggests that legal forest tenure recognition for indigenous and local

https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_2012_Liberia_Course_Module_2_Commons_Web_Wily.pdf; Rights and Resources Initiative (RRI). 2014a. What Future for Reform? Progress and slowdown in forest tenure reform since 2002. Washington DC: Rights and Resources Initiative. Available from <https://rightsandresources.org/en/publication/view/what-future-for-reform/>

76 See Tauli-Corpuz, 2015. *Supra* note 3

77 See RRI, 2015. *Supra* note 18



communities in Asia progressed modestly over the 15 years while Latin America recorded marked increase between 2013 and 2017. The study reports that Indigenous Peoples and local communities in those countries have slowly increased their legal ownership to at least 447 million hectares of forestland and legally designated rights to over 80 million hectares of global forest area as of 2017. In contrast, private ownership by individuals and firms has remained relatively constant over the 15 years at no less than 419 million hectares (11.4 percent) of global forest area (excluding concessions), and governments legally claim administrative authority over more than 70 percent of the global forest area (2,482 million hectares) – much of which is claimed by Indigenous Peoples and local communities. The study warns that worrying legislative rollbacks and stalled reform processes threaten to undermine the progress seen at global level and legislative setbacks have also taken place since 2013, in some cases resulting in large-scale forest grabs. It thus calls for action as the progress in the recognition of community-based forest tenure remains inadequate to meet international commitments to tackle climate change and achieve sustainable development (RRI, 2018).

As noted in the study, many countries that recognise Indigenous Peoples' right to their traditional lands and resources have not done enough to implement and protect those rights. In Cambodia, for example, according to the latest non-governmental data, only 33 indigenous communities - just 7 percent of at least 455 indigenous villages across the country – have received collective titles for their traditional lands by early 2021 since the land titling began in 2009. The land titling process, which is being reviewed, has been criticised for being time-consuming, expensive, complex and arduous, and that even successful claimants are often granted title to just a fraction of their


customary land.⁷⁸ On the other hand, 267 economic land concessions have been granted for over 2 million hectares of land with at least 98 concessions within territories of 10 larger indigenous groups in the country.⁷⁹

Hence, there are significant concerns that Indigenous Peoples are not only being left behind but also pushed behind in the implementation of the SDGs on the pretext of “development” linked to economic growth, specifically through large-scale extractive industries, agribusinesses and other projects, which have often threatened their lands and resources. A 2014 review of around 73,000 mining, agricultural, and logging concessions in eight countries revealed that more than 93 percent of those projects involved lands inhabited by Indigenous Peoples and local communities.⁸⁰ As a result, indigenous communities suffer disproportionately from development-induced displacement that is also accompanied by environmental destruction. A case in point is **India**’s drive to ramp up coal output to meet the growing energy needs, which has displaced tens of thousands Adivasis from their ancestral lands, who have been forced to wait years for resettlement. A 2016 research found that one in six of the 87,000 Indians, who have been displaced over the past 40 years by the state-owned Coal India Ltd (CIL) is Adivasi. The research profiled three coal mines, which were all seeking to expand production, in central and eastern states of Chhattisgarh, Jharkhand and

78 Mongabay. 2021. Cambodia puts its arduous titling process for Indigenous land up for review. Available from <https://news.mongabay.com/2021/04/cambodia-puts-its-arduous-titling-process-for-indigenous-land-up-for-review/>

79 Indigenous Navigator. Country Baseline Factsheet of Cambodia. Available from <https://indigenousnavigator.org/indigenous-data/countries/cambodia>

80 Rights and Resources Initiative (RRI). 2014b. Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions. Washington, DC: RRI. Available from https://rightsandresources.org/wp-content/uploads/Communities-as-Counterparties-FINAL_Oct-211.pdf



Odisha, where over 26 million members of Adivasi communities live, nearly a quarter of India's Adivasi population.⁸¹

In many countries without strong safeguards for their rights, Indigenous Peoples have been robbed off their lands and livelihoods due to projects that rarely deliver on the promise of shared development. In **Indonesia**, for example, palm oil corporations have engulfed over 59 percent of community forests in West Kalimantan while the industry contributes less than 2 percent to Indonesia's GDP and has not increased rural employment. Inequality has risen as Indigenous Peoples' land rights have been transferred to corporations on a large scale. At the same time, Indonesia has one of the world's largest share of emissions of greenhouse gases, with almost 80 percent of emissions stemming from deforestation, land use change, and draining and burning of peatland.⁸² Thus, large scale projects for biofuels such as palm oil, which are usually undertaken to meet European demands, have not only exploited insecure land tenure of Indigenous Peoples and local communities but also contributed to carbon emissions with clearing lands for the projects.

Besides biofuels, other “solutions” proposed to combat climate change also violate rights to lands, territories and resources of Indigenous Peoples and cause significant carbon emissions. For example, mega hydropower dams result in irreversible damage to river and forest ecosystems as well as generation of major carbon emissions while also causing large scale displacement of indigenous communities and other human rights violations against them.⁸³ In **Lao PDR**,

81 Amnesty International India. 2016. “When Land Is Lost, Do We Eat Coal?” – Coal mining and violations of Adivasi Rights in India. Available from <https://www.amnesty.org/en/documents/asa20/4391/2016/en/>

82 See Tauli-Corpuz, 2015. Supra note 3

83 Land Rights Now. n.d. Tested, Cost-Effective and Practical: Securing the Land Rights of Indigenous Peoples and Local Communities is a Key Solution

for instance, the construction of seven hydropower cascade dams along the Nam Ou river, whereby diverse ethnic minority communities that have relied for generations on the river and surrounding forest resources for food, income and spiritual well-being, have displaced at least 12,000 people from their homes without adequate resettlement. The dams with the total capacity of approximately 1,146 MW are also expected to significantly impact the fish species, riverine wildlife and protected areas along the river.⁸⁴

Likewise, policies and measures for environmental protection, such as many protected areas established in biodiverse lands of indigenous communities following fortress conservation model, have led to evictions and loss of livelihoods and cultures and conflict with the communities and even killings of their members and defenders. A recent case in point is the forest reclamation orders and reforestation plan executed by **Thailand's** junta government in 2014 to increase the forest cover in the country by 40 percent within 10 years, which have exacerbated the challenges of forced relocation and criminalisation of indigenous and other communities living in or near forest areas.⁸⁵ By 2015 alone, the orders had affected nearly

to Climate Change. Available from https://www.landrightsnow.org/wp-content/uploads/2018/09/en_policy_brief_web.pdf

84 See International Rivers, Nam Ou River, available from <https://archive.internationalrivers.org/campaigns/nam-ou-river>; Radio Free Asia. 2020. Lao Dams Lower Water Levels on a Scenic River, Harming Tour Boat Operators and Other Local Businesses. Available from <https://www.rfa.org/english/news/laos/water-12312020170851.html>

85 Indigenous Women Network of Thailand (IWNT); Manushya Foundation (Manushya). 2019. Raising Our Voices to Save Our Future – Overview of the Human Rights Challenges Faced by Indigenous Women in Thailand & their Practical Solutions for a Sustainable Future. Bangkok: Manushya. Available from <https://www.manushyafoundation.org/iwnt-report>

1,800 families – mostly in the north and northeastern provinces that are home to large indigenous populations.⁸⁶

In 2016, the UN Special Rapporteur on the rights of Indigenous Peoples has reported that injustices against Indigenous Peoples in the pretext of conservation have continued unabated violating the rights of the communities and ignoring or preventing their role as environmental custodians. An ongoing series of investigative news reports has exposed how the international charity World Wide Fund for Nature (WWF) has also been involved in supporting such conservations efforts involving national parks or anti-poaching projects in Cameroon, Central African Republic, the Democratic Republic of the Congo, **India** and **Nepal**.⁸⁷ Experts have noted that while there seems to be strong incentives, especially in financial terms, to engage in conservation amid a growing understanding of the need to address climate change, preserve biological diversity and protect wildlife, there are fewer incentives that channeled conservation efforts towards protecting the rights of Indigenous Peoples or towards including Indigenous Peoples as partners in conservation.⁸⁸

Whereas Indigenous Peoples, particularly indigenous women, are vital to the sustainable management of the earth's natural resources for mitigating climate change, they are also likely to be particularly vulnerable to the impacts of

86 Network of Indigenous Peoples in Thailand (NIPT). The Rights of Indigenous Peoples in Thailand: 2nd cycle Universal Periodic Review: Thailand UPR 2016 – Advocacy Factsheet. Available from https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_ICO_THA_23570_E.pdf

87 BuzzFeed News. WWF's Secret War. Available from <https://www.buzzfeednews.com/collection/wwfsecretwar>

88 United Nations Permanent Forum on Indigenous Issues (UNPFII). 2020. Update on indigenous peoples and the 2030 Agenda for Sustainable Development. UN Doc. E/C.19/2020/2

climate change.⁸⁹ Insecure land and resource rights adds to such vulnerability. For example, Indigenous Badjao people in southern Philippines displaced by Typhoon Haiyan – widely connected to climate change – were unable to return and rebuild their homes due to lack of secure land tenure. After being displaced in 1987 from their original village due to decades of armed conflict, they moved to Isabel town when the disaster struck. Following the typhoon, in a vicious cycle of displacement and deprivation, they were prevented from returning to their homes after the landowner forbade them citing the government’s new rule on “no-build zones”.⁹⁰


In face of growing threats to their lands and resources, indigenous communities are mobilising to defend their rights and resist projects negatively affecting them. As a result, indigenous human rights defenders as well as wider communities are facing increasing reprisals and repression from state and non-state actors, including businesses. Such reprisals and repression often follow a typical pattern, including smear campaigns, criminal charges, harassments, detentions and arrests, prosecutions and imprisonment and even mass criminalisation while indigenous women defenders face even bigger challenges than men as they are targeted for violence for their activism as well as gender.⁹¹

89 Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report

of the Intergovernmental Panel on Climate Change. Cambridge: Cambridge University Press. Available from <https://www.ipcc.ch/site/assets/uploads/2018/03/ar4-wg2-intro.pdf>

90 The UN Refugee Agency (UNHCR). 2014. Typhoon Haiyan: Indigenous people seek to break cycle of displacement. Available from <https://www.unhcr.org/news/latest/2014/2/52f0c8e36/typhoon-haiyan-indigenous-people-seek-break-cycle-displacement.html>

91 Land Rights Now. n.d. Criminalised for defending our planet. Available from https://www.landrightsnow.org/wp-content/uploads/2018/09/2019-11-en-land-rights-now-defending-our-planet-brochure_print-no-cropmarks.pdf



Regrettably, many indigenous defenders and community members have even disappeared and/or killed because of their activism. A global analysis recorded the killing of at least 331 human rights defenders in 2020 – two-thirds of whom were working to protect environmental, land and Indigenous Peoples’ rights, indigenous activists made up nearly one third of those killed. As many as 919 more cases were documented whereby the defenders were harassed, attacked, threatened, arrested/detained, tortured, prosecuted or jailed.⁹² In another report in 2019 that documented 212 killings of land and environmental defenders, 40 percent of the victims belonged to indigenous communities. Mining was the deadliest sector that killed 50 defenders followed by 34 defenders killed in relation to agribusiness projects – 85 percent of those attacks were recorded in Asia.⁹³ Philippines has continued to be the deadliest country in Asia for land and environmental defenders with 43 killings in 2019 – more than half of them related to agribusiness. As per the report, nearly half of the killings of such defenders were recorded since President Duterte took power in 2016 and have been linked to the armed forces or paramilitary groups.⁹⁴ This situation of indigenous defenders and communities for defending their lands and resources reflects the serious challenges to their rights in the implementation of the SDGs. Furthermore, continued dispossession of lands and resources of Indigenous Peoples is among the root causes that drive

92 Front Line Defenders. Global Analysis 2020. Available from <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2020>

93 Global Witness. 2020. Defending Tomorrow. Available from <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>

94 Rappler. 2020. Philippines: The deadliest country in Asia for land defenders. Available from <https://www.rappler.com/nation/philippines-deadliest-country-asia-land-defenders>

political conflicts for them and non-reconciliation with wider populations. Often, such conflicts even involve violent hostilities between ethnic armed groups and the state and other non-state actors, which can result in further violence and injustice against indigenous communities. In such situations, indigenous women and other marginalised groups within indigenous communities face targeted violence, including sexual abuse. Conflict and non-reconciliation also impede the socio-economic and political inclusion of indigenous communities within the broader societies as well as their access to responsive, participatory and representative decision making.

When the 2030 Agenda for Sustainable Development was being drafted, the UN Special Rapporteur on the rights of Indigenous Peoples had stressed that the SDGs should include an indicator to measure recognition of collective land rights along with land rights of individuals (men and women), as well as a provision requiring that governments obtain the FPIC of Indigenous Peoples before making decisions affecting their lands. The Special Rapporteur had also consistently emphasised that “Indigenous Peoples' natural resource management has sustained some of the world's most intact ecosystems and holds important lessons for a planet that must change if it is to endure. They bring alternative thinking and perspectives to a development paradigm that has repeatedly put sustainability and human rights on the back burner and favoured short-term profits”.⁹⁵ The global indicator framework comprises indicators to measure proportion of population with secure land tenure by type and share of women owning and bearing rights of agricultural land by type of tenure⁹⁶. However, the Agenda do

95 See Tauli-Corpuz, 2015. *Supra* note 3

96 The indicators were reclassified in 2017 from Tier III to II status in 2017, which means now there are an internationally established methodology and standards available for the indicators, but data are not regularly produced by

not refer to or reflects the principle of FPIC and the concept of self-determination of Indigenous Peoples and thus risks undermining Indigenous Peoples' holistic development approaches.⁹⁷

That is particularly concerning because meaningful participation of Indigenous Peoples in the SDGs processes of most Asian States remains a serious challenge, which is also evident in the analysis of their VNRs. Such participation of Indigenous Peoples should entail equality in opportunity and outcomes, non-discrimination and special measures for inclusion, and effective representation in decision making at all levels. As found in a survey⁹⁸, among Indigenous Peoples' organisations in Bangladesh, Cambodia, India, Lao PDR, Malaysia, Nepal, the Philippines and Vietnam, the information and understanding on the SDGs is limited among Indigenous Peoples. In addition, the implementation of the SDGs has largely been centralised or top-down with little say of Indigenous Peoples on the processes and thus the "development" policies have failed to address their aspirations on the ground. The survey concludes that localisation must be at the heart of the SDGs and Indigenous Peoples and other marginalised communities must be kept at the centre of its programming and implementation if the SDGs were to "leave no one behind" and "reach the furthest behind first". In doing so, governments, development agencies and other stakeholders must dedicate financial and other resources and partner with Indigenous Peoples to

countries. At least 50% of all countries are required to collect data and report regularly on an indicator for it to be recognised as Tier I. See International Institute for Sustainable Development (IISD) SDG Knowledge Hub, "IAEG-SDGs Approves Tier II Status for Land Indicator 1.4.2", 16 November 2017, available from <https://sdg.iisd.org/news/iaeg-sdgs-approves-tier-ii-status-for-land-indicator-1-4-2/>

97 See OHCHR, SPFII, 2017. Supra note 73


98 See AIPP, 2019. Supra note 70

protect them from adverse impacts of development, ensure they can fully participate and benefit from development and support their collective right to self-determined development.

RECOMMENDATIONS

While securing the rights to lands, territories and resources of Indigenous Peoples are indispensable to achieve the SDGs, much needs to be done for the recognition and realisation of those rights in most Asian States, including legislative and administrative reforms as well as effective implementation of existing protections in case of certain states. The 2030 Agenda for Sustainable Development, including the SDGs, present an opportunity for the states to acknowledge and promote the land and resource rights of Indigenous Peoples not only for their well-being but also for tackling global challenges such as climate change and for the advantage of the whole humanity. Some states are taking such positive steps in their SDGs-related processes towards ensuring that Indigenous Peoples are not left behind. A few states have also strengthened implementation of land and resource rights of Indigenous Peoples through communal land titling and other measures. On their part, Indigenous Peoples have continued to safeguard their rights, including rights to their lands and resources, within the SDGs framework such as through mapping of their lands and resources, generation of community-based data and engagement in the global and national processes.

However, there are still daunting challenges to guarantee land and resource rights of Indigenous Peoples and achieve the SDGs for them and the entire world. Progress in securing those rights is often undermined by detrimental “development”, “conservation” and business projects that threaten the lands and resources of many indigenous communities. In such course, Indigenous Peoples and their



defenders are facing increasing risks and reprisals for defending their lands. The SDG framework itself cannot be considered adequate to respond to the holistic development aspirations of Indigenous Peoples. At the same time, they have also been facing obstacles in meaningfully participating in the SDGs-related processes as partners towards sustainable development. As a result, indigenous communities are not only being left behind but pushed behind in the pursuit to attain the SDGs, reaching them as “the furthest behind first” remains only as a principle.

In the above context, some general recommendations for fulfilling the rights of Indigenous Peoples to their lands, territories and resources in the context of the SDGs are listed below, which are not exhaustive:

1. States must include the recognition of customary rights or tenure of Indigenous Peoples to their lands and resources in their actions to achieve the SDGs and provide data on secure land-tenure rights in the SDGs reporting. One powerful data tool to give visibility to the lands and resources that Indigenous Peoples hold and emphasise their importance is mapping them. More collaborative efforts in conjunction or led by Indigenous Peoples are needed to produce such maps.
2. Titling of lands of indigenous communities and protection of their right to FPIC give the communities a powerful voice in all decisions affecting their lands. Those measures are paramount for preventing the widespread loss of critical ecosystems and thus indispensable for achieving the SDGs.
3. Governments must establish permanent, open and inclusive mechanisms for consultation, participation and representation of Indigenous Peoples in local, national, regional, and international processes and

bodies relating to the SDGs to ensure they can participate in, contribute to and benefit from the SDGs and related processes.

4. A thorough reflection of the 2030 Agenda for Sustainable Development is needed that accounts for the holistic development aspirations of Indigenous Peoples, facilitates closing the gaps between Indigenous Peoples and the majority society, regardless of the context, and that should be followed by appropriate localisation of the SDGs in conjunction with the concerned Indigenous Peoples.





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