

Briefing Paper

INDIGENOUS WOMEN IN SOUTHEAST ASIA

CHALLENGES IN THEIR ACCESS TO JUSTICE

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GLOSSARY

AIPP	Asia Indigenous Peoples Pact
CBD	Convention on Biological Diversity
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>
CERD	Committee on the Elimination of Racial Discrimination
ELCs	economic land concessions
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FPIC	Free, prior and informed consent
FTAA	Financial and Technical Assistance Agreement
ICCs	Indigenous cultural communities
ICERD	International Convention on the Elimination of Racial Discrimination
IESCR	International Covenant on Economic, Social and Cultural Rights
IPRA	Indigenous Peoples Rights Act
KKNP	Kaeng Krachan National Park
LSD	Land and Survey Department
MARDI	Malaysia Agricultural Research and Development Institute
MOE	Ministry of Environment
NCIP	National Commission on Indigenous Peoples
NCR	Native Customary Right
NHRC	National Human Rights Commission
PDR	People's Democratic Republic
SMI	Sagittarius Mines, Inc.
UN	United Nations
UNDRIP	United Nations on the Rights of Indigenous Peoples
UN WOMEN	United Nations Entity on Gender Equality and the Empowerment of Women

1. INTRODUCTION

This briefing paper is prepared as part of the advocacy of the Asia Indigenous Peoples Pact (AIPP) for the respect, protection and recognition of the human rights of indigenous women. In this paper, we focus on access to justice for indigenous women in Southeast Asia facing development-induced violence. We draw on the results of the Southeast Asia Regional Consultation on Development, Access to Justice and the Human Rights of Indigenous Women, held on October 30 – November 02, 2012 in Chiang Mai, Thailand that the Asia Indigenous Peoples Pact (AIPP) convened in collaboration with the UN WOMEN Regional Office of Asia and Pacific. Focus of the cases and testimonies were on state and corporate development projects and their impact on the human rights of indigenous women. These projects included dams, mines, plantations, national parks and the like. The major issue that arose was the denial of the right of these indigenous peoples to determine their own path to political, social, economic and cultural development. This is patently seen in the lack of efforts to undertake meaningful and substantive consultation with them and obtain their free prior and informed consent on all projects and activities that are implemented in their communities. The lack of or limited access they have to seek justice remedies on violations arising from development projects are exacerbated by their non-recognition as rights-holder with collective rights. The imposition of development projects into indigenous territories has been called by indigenous peoples as development aggression.

The consultation was attended by twenty-nine indigenous women, as experts and rights-holders. There were joined by human rights experts from the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the UN WOMEN, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the Southeast Asia National Human Rights Institution Forum (SEANF), the National Commission on Violence Against Women of Indonesia (KOMNAS Perempuan), the National Human Rights Commission of Thailand, the Asia Pacific Forum for Women, Law and Development (APWLD), and Indigenous Peoples' International Centre for Policy Research and Education (Tebtebba).

Five case studies on the impacts of dams, plantations, mines, economic land concessions and national parks from Cambodia, Laos, Malaysia, Thailand, and the Philippines were presented. Additional testimonies were heard from Indonesia (plantation and mines), Malaysia (plantation), Myanmar (dams, plantations, gas-oil pipeline), the Philippines (mines), Thailand (parks), and Vietnam (road construction and dam). The participants came out with action points that are included in the recommendations in this paper.

2. OVERVIEW OF THE SITUATION OF INDIGENOUS WOMEN & ACCESS TO JUSTICE IN SOUTHEAST ASIA

Southeast Asia is home to the most diverse population of indigenous peoples in the world. Since a systematically disaggregated data on ethnicity and gender of indigenous peoples in the region is not available, AIPP has estimated a low 94 million to a high of 200 million based on information¹ from various sources. A safe estimate is that indigenous women make up 50% of this population. Indigenous peoples' territories are in mountains, plains, river basins, forests and coastal areas. While there is enormous diversity among them, common to all are a strong cultural attachment to the land and the dependence of their traditional livelihoods on the land, forests or sea, and the natural resources found therein. The location of indigenous people's homelands and the resources therein are of prime interest to both the state and corporations. This has resulted to the continuing struggles of the indigenous peoples in asserting their basic human rights, fundamental freedoms and their collective rights.

Most of human rights violations faced by indigenous peoples are connected to their right to their land, territory and resources. These cases include politically motivated killings, extra judicial killings, militarization of the ancestral territories of IP, forced displacement, harassment, threats and intimidation, vilification as insurgents or supporters of insurgents, forced recruitment to paramilitary groups, sexual violence including rape, abandonment of impregnated women by state forces, among others. The impact of these are reduced food self sufficiency, weakening of indigenous systems of resource management and conservation, loss of property and erosion of culture, intra-tribal and inter-tribal conflicts, erosion of indigenous governance institutions and systems, among others. However, despite the widespread opposition by indigenous communities, Southeast Asian governments are going ahead with large-scale natural resource exploitation as a development thrust to fuel national economic goals.

It is clear that indigenous peoples in Southeast Asia are systematically deprived of their right to freely determine and pursue their economic, social and cultural development. It is also obvious that they are disproportionately negatively impacted by corporate and national development projects.

Many indigenous peoples are not legally recognized as indigenous peoples with inherent collective rights in Southeast Asia. In numerous countries, they are excluded in law-making processes and generally marginalized in the formal justice systems. Remedies and mechanisms to address judicable issues are not accessible to them. In this sense, both indigenous men and women are marginalized. The formal justice system, remedies, and processes that may address issues related to access to justice use the national language which many indigenous peoples, especially indigenous women, are not functionally literate in. There are very limited institutions of formal legal services and institutions where indigenous peoples may have their cases fairly adjudicated. Indigenous justice systems are in the majority male dominated and have no space for women's voices or participation. The formal justice system and the traditional justice systems often do not have an interface nor does the formal justice system recognize customary legal systems. The formal justice system is sometimes dysfunctional and/or weak, making it more inaccessible to indigenous peoples. As indigenous peoples, indigenous women are subject to all the conditions that their own peoples suffer.

Given these difficulties in accessing formal justice systems, indigenous women have nowhere to turn to except the customary informal justice systems, even when these same systems may be biased against them. Without the necessary safeguards, indigenous women remain extremely vulnerable and in many areas in the region face little prospect of receiving justice for any violations of their human rights. The major cause of this vulnerability is the non-recognition of the indigenous peoples as peoples with collective rights, coupled with the limited political representation of and participation by indigenous peoples in general and indigenous women in particular in the South East Asian sub-region. This is topped by the failure of states to fulfil their obligations to raise the level of awareness of their citizens to their human rights and fundamental freedoms. In the commissioned study of the United Nations Development Programme that assessed the extent to which governance institutions in the Asia Pacific provide space to overcome the systematic exclusion of disadvantaged groups seeking to participate in decisions affecting them, the finding on *Who* are excluded explained that: "women and indigenous peoples suffer most from exclusion and discrimination in governance processes across the region."²

The international standard that indigenous peoples rights must adhere to is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This international human rights instrument sets forth the rights indigenous peoples must enjoy that are guaranteed under international law and sets the minimum standard for guaranteeing the collective rights of indigenous peoples. It is an affirmation of collective rights that have long been exercised by indigenous peoples. It is not a new set of rights granted by states; rather, it is a recognition of inherent rights and defines the obligations of states to respect these rights.

Throughout Asia, indigenous women suffer from the loss of land, territories and natural resources due to widespread development aggression, particularly economic land concessions, dams, plantations and mines. Development projects have caused the destruction of women's traditional and cultural practices, and their means of subsistence which, in turn, has led to their impoverishment and marginalization. The following cases that were shared in the consultation illustrate key challenges indigenous women encounter in their struggle for justice in different countries in Southeast Asia.

3. INDIGENOUS WOMEN AND DEVELOPMENT-INDUCED VIOLENCE IN SOUTHEAST ASIA

3.1 PRAME COMMUNE, TBAENG DISTRICT, PREAH VIHEAR PROVINCE CAMBODIA

In Cambodia, the Ministry of Agriculture granted two economic land concessions (ELCs) adjacent to each other to Land Feng and Ruy Feng (also written as Rui Feng) with a total area of 17, 856 hectares³ over the ancestral land of the Kui in Prame Commune, District of Tbaeng Mean Chey, the capital of Preah Vihear Province. There was neither substantive information shared nor meaningful consultation undertaken and free prior and informed consent obtained from the affected indigenous Kui communities of Srey Preang, Boh Thom and Prame. As of end of 2012, from ocular inspection, villagers have seen their paddy fields, gardens and around 600 resin trees owned by approximately 74 families, all of which had been inherited from their ancestors, cleared off the land. These include the remnants of an ancient Kui temple which is a sacred site, and the nearby site of an ancient Kui village as shown by the shards, bones, etc. that had been discovered there. Most of the Kui in Pramer traditionally get their subsistence from rotational rice cultivation, animal husbandry, hunting, honey collection, and gathering different kinds of non-timber forest products for subsistence. They earn cash income from selling resin. Kui women are mainly responsible for gathering food from the forests. They also collect non-timber forest products like rattan, firewood, vegetables (such as wild potatoes) and foliage which supports the family's food security and provides them some cash. There are parts of the forests which are sacred sites. Because of their affinity to the forest, Kui women regularly visit these sites for worship and spiritual renewal which important for their mental/psychological health, overburdened as they are ensuring food on the table.

Women have an esteemed position in Kui society related to ensuring community cohesion and spiritual belief apart from their central role in subsistence food production. A woman elder called Yeak Chaeng or Yeak Chheon Chaeng plays a very crucial role in maintaining the solidarity of the community as the ritual leader. She is responsible for performing and leading life-to-death ceremonies, propitiation rites, prayers, and such functions⁴. It is her role to propagate the spiritual belief sustained and heightened in order to keep the unity and solidarity amongst the Kui. She regularly visits sacred sites (either in the villages, farms or forests) to exercise her role. It is for this very prestigious role of a woman that Kui women are highly regarded in their communities which makes them also good at communication, networking and negotiations.

Despite the prestigious role of the female spiritual leader, Kui women are still marginalized in the community's political and public life as well as in decision-making processes. Although community meeting are open to all, the gender and subsistence production roles of women in the home often prevent them from regularly attending these fora, especially for widows. Despite this challenge, the Prame Kui women are the ones leading in the ground-working, networking and coordination of activities by working harder.

The ELCs severely affect the means of subsistence and traditional occupations of the Kui in the affected villages because of the destruction of the resource base - land, waters and forests. The loss

of access to land, forests and natural resources impacts directly the status of and further burdens Kui indigenous women. Particularly for women, this has led to loss of and access to food sources and livelihood, access to sacred sites and other cultural sites. The communities have taken action at different levels, including meeting with and sending letters to village, commune, district and provincial officials, networking and mobilization among communities in similar struggles, protests and demonstrations just to stop the companies' activities as well as the filing of complaints to relevant mechanisms. However, until now the company is continuing the clearings on the sly.

On February 11, 2013, a 56-year old woman leader from one of the Kui villages under siege was killed and her killer have not yet progressed in the investigation of the case. Interestingly, the day before, the Kui in the commune stopped a commune police officer from cutting trees in their forests.

3.2 BINTULU, SARAWAK, MALAYSIA

In Bintulu, Sarawak, Malaysia, the Rumah Nyawin longhouse composed of 11 Iban families located at Mile 32 on the Bintulu-Bakun road junction were forcefully evicted on January 4, 2007 by the Bintulu Land and Survey Department (LSD) allegedly at the behest of the Malaysia Agricultural Research and Development Institute (MARDI). For about 120 residents of the longhouse, the LSD mobilized a team of 200 enforcement personnel from state capital Kuching assisted by 20 police personnel and two bulldozers and chainsaws to tear down the longhouse. Earlier on October 4, 2006, the Rumah Nyawin received a 30-day eviction order from the LSD as allegedly illegal occupants of MARDI property which was granted title over this native customary rights (NCR) land in 2002 without their knowledge and consent. The area in contestation is a 300-hectare NCR land that actually belongs to the Penan community of Kampung Yoh that allowed the Iban families to utilise for an indefinite period through an oral permission from the Resident, Datuk Empani Laing more than 20 years back. No FPIC was obtained from the Penan owners either. On October 6th, the Rumah Nyawin filed an appeal for an injunction order until the case is heard. They also sought the side of MARDI which informed them on October 19th that it does not need nor wish to encroach on their land and it has not called for their eviction. Until the time of the eviction, the court has not taken action on the petition for an injunction order they filed three months earlier. In a twist of events, the Rumah Nyawin Iban lost their rights to the NCR land they were using and their longhouse. Their tuai rumah (village headman) Nyawin Ganing (Gawen) was coopted. Negotiations on all matters were done with the headman as the so-called representative of the longhouse. The women were never consulted at all nor the longhouse as a collective in order to get their final say on matters at hand. The women particularly were left without knowing what is actually happening and will happen to their lives. Without consulting them, Nyawin withdrew the court suit filed for the injunction order. Nor did he ask for their positions before he met with the Chief Minister of Sarawak Mahmud Taib. After his meeting with Taib, Nyawin came out of with a report that there was a 2.5 hectare plot to rebuild their longhouse and a 240-hectare farmland. He reported further that the New Rumah Nyawin is 24 kilometers from their original longhouse, has 16 doors and a tarred road leading to it. He then said, "What more can we ask?"⁵

On that January 7, 2007 morning, matters came to a head. In two hours, the 20 year old Rumah Nyawin was demolished. MARDI did not provide any payment and compensation for all the residents' losses but relocated them to a site near the Bintulu-Miri highway. They do not have electricity and water supply and are dependent on rain water. The 2-hectare resettlement area they are currently occupying is only temporary as it belongs to the government. Their forest-dependent livelihoods and temuda (farm) are lost. As one woman describes it: "Our life is very poor and poor life makes us depressed".⁶

Among the Iban of Bintulu, there is a defined division of labour between women and men in farming. For example in rice farming, the Iban men do the ploughing and clearing of the land, which are considered as heavy work. The women do the maintenance work that requires long hours and many days such as weeding, or planting in the nurseries. However, women decide on the variety of rice to be planted because they know what the family enjoys eating and where to find the different seed varieties as well as which type can be stored longer. Thus, the family's survival depends on the decisions made by women but they are marginalised in community decision-making. They are almost solely responsible for household chores depriving them of time to participate in meetings or attend events where decisions and discussion will ultimately affect the status and role of women in that society. Additionally, most of Rumah Iban women do not know how to read and write, and do not know about their rights. Thus, when their Nyawin Longhouse was demolished and mostly women and children were there in that early morning, they were not able to do anything except to ensure their families safety. Until now, they are unable to take any action because they do not know their rights and also actions to be made.

3.3 BONG MAL VILLAGE, KIBLAWAN MUNICIPALITY, DAVAO DEL SUR PROVINCE, PHILIPPINES

Bong Mal, which means "big river" in the local language of the Blaan, is a community that sits at the boundary of Kiblawan, Davao del Sur and Tampakan, South Cotabato in southern Philippines. Its ancestral domain is covered by the proposed operations of the mining firm, Sagittarius Mines, Inc. (SMI). SMI, which is developing the large-scale open-pit 9,605-hectare Tampakan Copper-Gold Project, backed by the Anglo-Swiss firm, Xtrata. About 7,095 hectares of the said area lie within the Blaan's ancestral domain where an estimated 2,600 families, or 4,000 Blaan reside. When the SMI acquired the Financial and Technical Assistance Agreement (FTAA) from Western Mining Corporation (WMC) in 2002, covering the areas of Tampakan, South Cotabato, Kiblawan, Davao del Sur and Columbio, Sultran Kudarat, they did not conduct any process to get the free, prior and informed consent (FPIC) of the Blaan community. SMI imposed a "cut-off date" (March 22, 2012) for the community to express their agreement to their relocation. If not, any structures built or improvements to the land done by the Blaan will not be compensated if they are destroyed once the open-pit mine operations start. The company also offered payment of Php 64,000.00 (approximately USD1,520.00) for every 10 hectares of land within a 20-year lease period. Because of this threat of displacement from their ancestral domain which is like death to them, and violation of their rights, the Blaan put up barricades to prevent the agents of the company from entering their ancestral land.

More than a decade earlier in the late 1990s, the Bong Mal Blaan were able to impede the operation of WMC until it transferred its mining permit to SMI in 2002. Despite this history of opposition to mining in their territory, the government did not make good effort to address the issues already raised by the affected community when SMI took over the FTAA. Instead, they just allowed SMI to proceed with its own business. The women leaders of Bong Mal also tried to talk with Mayor Leonardo Escobillo, the municipal mayor of Tampakan, South Cotabato, to no avail. He just told them to direct their complaints to their barangay⁷ captain. When they approached the captain, this official would not listen to them; first, because they are women and secondly, because he is pro-mining. Desperation led the Blaan to declare war, *pangayaw*, against the company. On 18 October 2012, Juvy Capion and her two sons were shot dead in their home. According to witnesses, members of the Philippine Army's 27th Infantry Battalion fired at Capion's house with their automatic rifles. Capion was a leader of the indigenous peoples' organisation KALGAD, an organization of the Blaan indigenous people resisting mining operations on their ancestral land. The Blaan community has been protesting against abuses committed by the Swiss-Australian mining company XSTRATA-Sagittarius Mines, Inc. (SMI) and Juvy and her community organisation had been complaining that no actions had been taken by the government to address their concerns. Up to now, the government has not effectively redressed the killing, allowing the relentless attack on these Blaan who are

struggling for their right to life.

The Blaan indigenous people subsist mainly through farming crops such as corn, glutinous rice, root crops and vegetables. Corn is the main cash crop sold that they also sell at town centers. They also hunt animals and gather other food and medicinal items and craft materials from the forest. The Blaan perform rituals for almost everything that they do to acknowledge the supremacy of the great Creator named *Malu* or *D'wata*, the source of everything. As the source of everything, permission must be sought in the use of everything in nature. The interdependency of the environment with the spirit world underpins their spirituality.

Women do the farm work in their fields and swidden farms or “*uma*”, along with the men. Women also weave mats and men, baskets. The mats are made from abaca which is abundant in their territory. Traditionally, they enjoy an equal status with men in decision-making processes. The Blaan is one of the indigenous peoples in Mindanao which has not adopted the culture of datu, which relies on an individual leader. In their culture of conducting “*kastifun*” or community consultation, all community members, including women and children, are present. Women may freely voice out their opinions during the *kastifun*. The “*fulong*” (traditional leader) may not declare a final decision until there is a consensus among those who are present, including women. Should there be a dissenting opinion, the *fulong*⁸ will talk to that person, until she or he finally accepts the resolution of the community. Women, like men, may own properties, such as farmlands. They may also be chosen as “*bae fulong*” or woman leader of the community. There have been a few “*bae fulong*” who led their community. Women also have roles in the performance of rituals in the community, especially related to. However, the current condition of the community, where social services are lacking, poses a burden on the women, who take a primary role in the care of the family and production of food. They do not have electricity. Water has to be fetched from a spring by foot a distance up from their village. Roads are rough, and only the single motorcycle called “*skylab*” can be used in going to and from the community to the outside. Health services are also nil. School children, including girls, have to hike for at least four hours to get to the nearest school, which offers only up to 3rd Grade. Higher levels of education become close to impossible due to distance and lack of resources.

3.4 SEPON, VILABOULY DISTRICT, SAVANNAKHET PROVINCE, LAOS

The copper-and-gold open pit Sepon Gold and Copper mine in Sepon town, Vilabouly District, Savannakhet Province, South-Central Laos, is now operated and owned by Lane Xang Minerals Limited (LXML), partly owned by the Lao Government. It started exploration in 1993 and production in 2003. Its revenue is the second highest, and it is also the second biggest employer in the country. The mining project is located in a mountainous area, covering 1,250 square kilometers of Vilabouly District⁹ and centered in Sepon town, but covering almost the whole of Vilabouly.

This mountainous area used to be underdeveloped and more difficult to access than the plains. Under the government’s policy of making basic services accessible to remote villages and to stop slash-and-burn farming and impose sedentary farming, it deemed fit to relocate these villages in so-called settled habitat development zones, usually in the lowlands along roads.¹⁰ This was the 1st experience of forced relocation by some indigenous peoples in the remote mountain areas of Vilabouly.

Fourteen villages directly within the core mine zone had been relocated. About seventy more villages are within the mine concession but these had not yet been asked to move. The communities impacted by the Sepon mine include Makong, Tri (Try), Kri and Lao Loum, the dominant ethnic Lao. Although many of the communities have not been asked to relocate, the pollution of the waters and the destruction of the forests of which they are dependent on forced many of them to ‘voluntarily’ leave their villages. Some of them resettled at the mine resettlement site.

Especially affected by the Sepone mining operations are indigenous Kri women in Vilabouly district due their very small population.¹¹ The forests and rivers are basic elements in the life of the Kri as their source of subsistence and identity. This people was earlier relocated as part of the sedentarization policy of the government, and now they had to relocate again due to a change of living conditions, e.g., water pollution and forest degradation. Those who left because of the lack of livelihood due the pollution of the rivers and due to the pollution itself were not given compensation although they were allowed to relocate to the resettlement site. Affected villages, including Kri men and women, tried to take action against the mining company, and repeatedly informed the responsible company person about their concerns. However, the company ignored the villager's complaints up to now.

Dependent on mountain rice production, forests and the rivers, Kri women grew rice once a year in swiddens with the men. Women used the jungle as their natural garden where they would collect vegetables and fruits. Fishing with nets was done by men and women helped to collect the fishes. Forest and waters are then important in the collective life of Kri communities and women ensure the family's daily subsistence through their swiddens and forest food collection. One Kri woman said that the responsibilities of a Kri woman to her family is a duty as a mother and wife that will never change, no matter how the environment changes.

3.5 KAENG KRACHAN, PETCHBURI PROVINCE, THAILAND

For more than 10 years now, the Thai government and National Parks, Wildlife and Plants Conservation Department¹² have been trying to forcibly evict Karen indigenous peoples from Kaeng Krachan National Park¹³ (KKNP) located along the Thai-Burma border in Petchburi, Thailand. They had been accused as forest destroyers, opium producers, drug traffickers, aliens from Burma, rebels from Burma, etc. There was no consultation at all in the creation of the National Park in 1981 with the Karen who had been living there as their ancestral land. But even before the KKNP, the Karen were displaced by the construction of the Kaeng Krachan dam in 1966 which inundated the Karen's traditional territory forcing some of them to resettle somewhere. Meanwhile, anti-insurgency operations in the same area had been on-going from from 1965 to 1971 further pushing the Karen deeper into the jungles and watershed areas of within that mountain range.

Evictions of the Karen forest owners within KKNP started in 1986 to force scattered ethnic Karen peasants to resettle in the Pong Luek-Bang Kloy community with the promise of land to till. Another major eviction in 1996 forced more to leave their forest homes under the government's relocation program with some income-generating projects. However, all government projects in this relocation site were suspended between 1998 and 2009. However, the land they received was very poor, full of rocks and gravel, and not all were given as promised. They could not take on jobs in town as many then did not have citizenship papers and would be arrested. This forced some of them to take migrant worker status despite their being indigenous because the process of getting this personal legal status is easier than getting citizenship. Hunger drove many to trickle back to their old homes in the forests. Within the last decade, numerous Karen families were expelled from their homes and forced to move to adjacent villages. The villagers were accused by Park Authorities and the Thai Military of illegally occupy land and destroying the forest reserve with their slash-and-burn farming methods.

Kaeng Krachan National Park official admitted that from 2009 to 2011, the national park had operated a "pushing strategy". In line with this, in the years 2010 and 2011, Karen houses, barns, and rice storages were repeatedly destroyed and burned by the Park wardens and Thai military forces. In the process, aside from losses due to the arson, various assets - such as money, jewellery, or farming equipment- were also stolen. Officials cut down fruit plantations, confiscated domestic

animals and arrested villagers and charged them of forest encroachment. Some of the arrested families were sent to Nong Yhaplaong Petchburi, 60 kilometers away from their original homes.¹⁴ Others had no choice but to seek refuge with their relatives at Bang Kloy Lang village, where many Karen-Thai have been relocated to during the last decades. Between April to June 2011, the series of forced evictions, dispossession and destructions culminated in the arson which gutted a total of 90 houses and rice storage sheds¹⁵. It was argued that the evictions were justified by the Forestry Law which prohibits people to occupy land within a national park¹⁶.

Karen believe that they neither create nor own natural resources, and therefore these must be conserved.¹⁷ Karen women own the swiddens, men own the rice paddies. Ownership here means the one who are responsible for the management and private individual owner. The swidden or rotational farm is far more biologically diverse and ecologically complex than rice fields. Thus, those who are responsible are considered experts in natural resource management and ethnobotany. It is for this reason that Karen women have a high position in community resource management even if the production tasks are shared with men. The high degree of expertise of Karen women is gained through their responsibility for the whole production cycle in the swidden, i.e., from the selection of suitable land for production, the selection of seeds, planting, maintenance, weeding, harvesting, and seed selection for the following season. This knowledge is a valuable resource in the community because it ensures the food security of the family and the community as a whole. Seed exchanges are common among families, relatives, villages and communities. For the Karen, the best present to bring for a visit is a bag of seeds.

3.6 NAUSUSU SUB-DISTRICT, TIMOR TENGAH SELATAN REGENCY, KUPANG PROVINCE, NUSA TENGGARA TIMUR, INDONESIA

Fatu Naususu is the indigenous Molo peoples' most sacred mountain, known as the "mother of all rocks" in local legend. Located at the foot of the Mutis forest complex, Molo, Naususu subdistrict, Fatumnasi Sub-district Timor Tengah Selatan District, in Nusa Tenggara Timur (East Nusa Tenggara), it is the natives' main source of nurturance, connecting them with their ancestors. The forest complex is a critical watershed for the island of Timor¹⁸.

The people of Molo make a living primarily from agriculture - wet and dryland rice and other crops, keeping livestock and harvesting forest products. Previously, they practised rotational agriculture, but this is now only practised by a few due to limitations on the amount of land available. The women in Molo communities shoulder the heaviest tasks of paddy agriculture as they do the main work of transplanting seedlings and harvesting, work that requires being under the heat of the sun. Just like other indigenous women, Molo women are responsible for the all the tasks at home and most especially to ensure family and community food security. They hold important roles as the guardian of nature, culture and natural sources. Traditionally, women are not allowed to speak in leaders' meetings¹⁹.

Among the Molo, nature, in the form of stones, trees and water are important identity symbols. Marble stones are particularly important for the Molo's base of life as they are considered the Earth's bones. Any desecration of these stones means a desecration of life to the Molo. However, capitalists look at the marble rocks in another way. In the early 1980s, companies were entering East Nusa Tenggara to mine high-quality marble without the expressed FPIC of the Molo peoples²⁰. One example is the conflict between the Molo with the company PT Teja Sekawan that was granted license to extract the marble of Fatu Ob/Faut Lik in Kuanoel Village, Fatumnasi Sub-district. The license was issued by the South Central Timor District Head without considering the interests and safety of the Molo.

People living around the mining sites continue to experience several forms of suffering, such as the destruction of their villages, the disappearance of agricultural fields (as much as 25 ha of agricultural fields), the loss of access to water caused by the damage done to springs, and water pollution because of mining wastes. As a consequence of water pollution, villagers suffer from various health problems. Environmental damages further include the disappearance of mountain rock, soil erosion, landslides, and disturbances of the community's crop production²¹. In the long run, the destruction of fields and the loss of available water have had further devastating impacts, namely the destruction of native biodiversity and reduced food production that has made jeopardised the families' and communities' food security. The destruction and removal of the marble rocks, themselves identity symbols, wreaked havoc on the culture and customs of the local people. Apart from that, intra- and inter-village conflicts were fanned with money and favors, and actively condoned by civil and police authorities. Intimidation and repressive actions by police, the army and/or thugs protecting the interests of the companies were a common experience since the communities started taking actions to assert their rights against mining in 2006 to 2010. Far from employing local, the companies brought in outsiders and their promises to build a health facility and a church were never fulfilled.

The destruction of the forests and pollution from mining is causing the most suffering for the Molo women. As home makers and food producers, water is of utmost importance to them. As a consequence of the environmental destruction due to the mining operations, women must walk long distances to fetch water, and crops cannot be grown in the mining site for many years. They led protests for months for their rights to their lands, supported by various environmental groups. Often, authorities used force and demonstrations ended violently. Nevertheless, the villagers were not to be intimidated. For example, 1000 tribe women occupied the largest marble quarry in the hills Naususu in symbolic protest by setting up their loom to weave, so the investors did not have any room for their activities. Finally, Molo men and women, led by a women, managed to stop all mining marble in the region. The strong community opposition for especially in the period 2008-2010 made five exploration companies marble scattered in District Fatumnasi, Mollo North and South Mollo to leave.

3.7 NA HANG, TUYEN QUANG PROVINCE, VIETNAM

In Vietnam, the Tuyen Quang Hydropower Project, also referred to as the Na Hang hydropower plant, construction started in 2002 in the Na Hang district in Tuyen Quang province in the northeastern part of the country. Five communes involving about 4,000 households from an area of almost 8,000 hectares had been inundated.²² The Tay and Dao were the majority in the Na Hang district when the dam was constructed.²³ Other indigenous peoples were the Hmong. The national majority only comprised about 10% of the population that time. Many directly affected peoples resigned to their fate of relocating away from their homes, with some nostalgia as one woman remarked: "We may be poor, but this is our home."²⁴

This was a drastic change in their lives and they needed time to prepare for this relocation. Local authorities encouraged people to move soon with the announcement that each household with get 4 million Dong if they moved as scheduled. A Tay woman whose 200-sq. m. residential lot and 4000-sq.m. food production area was submerged by the dam said that local and higher authorities announced in 2002 that she will be relocated. When she followed up the announcement, the local authorities said that the area where her family will be transferred was in the centre of the district so they did not have enough land to replace the original area of her land. They only gave her 100 square metres residential plot but no land for production. They also compensated her in the amount of seven million Dong (7M VND) for the period of six months upon relocation in 2003 for moving house, food and other relocation costs. For the relocation area, she knows that the government

transferred budget to province to build infrastructures like a hospital, school, road and water systems to be accomplished within 5 years starting in 2002. Until now, ten years after the promises, the provincial authorities have not completed these infrastructures. They have built an elementary and high school buildings, communal house, and a hospital but the other infrastructures, like the potable water system, the roads, and others that are in the resettlement program. This is unduly affecting their right to an adequate standard of living that allows them to enjoy the fruits of development like having potable water and the means to meet their subsistence needs. After the initial household support of six months, they were left to fend for themselves. With lack of land for food production, their family food security is in jeopardy and they have to face this every day.²⁵

3.8 HUGAWNG VALLEY, KACHIN STATE, MYANMAR

In 2001, the Hukawng (Hugawng) Valley Tiger Reserve in Kachin State was established by Myanmar with the support of the US-government funded non-profit group Wildlife Conservation Society. In 2004, the reserve area was expanded to cover a total of 21,890 km sq., making it the world's largest tiger reserve²⁶. The population of the valley is about 70,000, mostly Kachin with sprinkling of Naga and Shan. A year after, Gen. Than Shwe granted the powerful Burmese conglomerate Yuzana Company 200,000 acres (809 square kilometers) of this valley to develop as an "agricultural development zone". This zone is actually a monocrop plantation for cassava (tapioca for biofuel production), sugar cane and jathropa, using chemical fertilizers and herbicides that has been planted on previously fertile land of relatively self-sufficient subsistence farmers. Within the reserve, huge forest areas, animal corridors and traditional small-scale farms have been destroyed for the plantations, directly affecting at least 10,000 villagers in the valley. Some 600 local farmers were rendered landless with little or no compensation. Their villages, farms, and crops were bulldozed, razed, their lands confiscated and flattened, entire cemeteries leveled, and their forests ripped up, all without any consultation nor consent. The prohibition of fishing and gathering of forest products further threatened the farmer's food security. Living conditions got so bad as shortages of almost everything was happening – food, firewood, income, jobs, etc. People got sick of malaria and diarrhea. One woman had nothing to eat except cassava and she died afterwards as there was no firewood to cook it with. In the relocation site, without income, people could not repair their houses. Many had no choice but becoming wage laborers for the company on their own land.

Even though Yuzana is located in an officially protected area, there are no restrictions for its agricultural plantations regardless of the environmental consequences. Signboards that mark animal corridors and "no hunting zones" stand out starkly against a now barren landscape; they are all that is left of conservation efforts.

About 4,000 workers were brought in from outside of the state to work on the plantation. Yuzana is notorious for its unfair labor practices and exploitation of local workers, leaving many without payment after months of work. This forced many workers to steal from locals. All these have caused conflicts between Yuzana Company employees, local authorities, and local residents that have flared up and turned violent several times over the years. It should be noted that Yuzana is one of the companies in the blacklist many years both the US and European Union Burma sanctions. Matters came to a head which boiled over into an attack on residents of Ban Kawk village²⁷ in 2010 when armed officers beat people out of their houses and confiscated their money and assets²⁸. As of February 2010, a group composed of 163 families had been forced to live in temporary shelters on a relocation site which had no water, no firewood and little land. Since then, through further threats and intimidation, others families have been forced to take unreasonable small "compensation funds" which are insufficient to begin a new life, leaving them unable to meet their needs like before.

Nevertheless, the villagers were not to be intimidated and continued to struggle for their farmland and livelihoods. Until today, they have tried several courses of action: they actively resisted by documenting the destruction, by sending open letters of appeal to the authorities, by defending their land against clearings and by conducting ceremonies. As various government offices and authorities remained inactive, villagers started seeking support from national and international institutions, such as the National League for Democracy in Burma, the United Nations and the International Labor Organization. In July 2010, over 100 farmers initiated formal legal proceedings in Kachin State, ending in the conviction of the company owner Htay Myint²⁹ to pay the minor sum of \$80 per acre of land confiscated, and \$150 per house. The farmers did not accept this.

During these state court proceedings, the farmers were subjected to harsh interrogation like criminals especially for the elders who cannot speak Burmese. Intimidation was felt within the court room even. There were also delays that caused depression among the victims. With such an unjust ruling, the farmers took their case to the national level. There is no mechanism to punish the judge. In 2012, after further demonstrations and negotiations³⁰, Htay Mint promised to return two hundred thousand acre of confiscated farmland to the native landowners³¹. However, this is only for the farmers who went to court. Also, the quality of land given back is not suitable for farming. By now, tigers are said to be completely extinct in “world's largest” tiger reserve³² due to the massive environmental change that has taken place in the Hukaung valley over the last years due to Yuzana's operations.

4. INDIGENOUS WOMEN'S ACCESS TO JUSTICE: KEY OBSTACLES

Across Southeast Asia, indigenous women suffer from multiple discrimination due to their gender and ethnicity, which is often further aggravated by their socio-economic marginalization. The majority of them face significant barriers to accessing justice both in formal official and indigenous justice systems. Even though these barriers are often country- or context-specific, some key factors can be identified that are severely limiting the indigenous women's access to justice throughout Southeast Asia.

4.1 WEAK ENFORCEMENT OF EXISTING NATIONAL LAWS AND IMPLEMENTATION OF ORDERS AND DECREES, AS WELL AS CONFLICTING LAWS/POLICIES, ABUSE OF AUTHORITY AND POWERS, CORRUPTION, PATRONAGE

The lack of legal recognition of indigenous peoples and their collective rights as enshrined in the UNDRIP is very common in Southeast Asia. Some laws and policies in some countries mention about the rights of communities to their lands but these are either not properly implemented or not implemented at all.

Thailand: In the Thai kingdom, numerous national laws, resolutions and policies are directly and indirectly related to indigenous peoples' in general, and indigenous women in particular. Most notably, the *2007 Constitution* includes several provisions that are closely linked to indigenous peoples' livelihood. Article 66³³ provides for local communities to have the right to maintain their cultural traditions, as well as to protect and manage environment and natural resources. In Article 67³⁴, people have the right to participate with the State and communities in the conservation of natural resources under certain conditions. After 1997, a policy was formulated that requires public consultation, prior consent, a survey to determine habitation sites as well as an impact assessment on environment and culture³⁵ before protected areas are approved.

A Cabinet Resolution was approved in August 3, 2010 which defines policies regarding the "Restoration of the Traditional Practices and Livelihoods of Karen people". It explicitly grants Karen people the right to remain on their land and to practice their traditional farming system.

However, numerous forestry laws, policies and resolutions contradict the provisions of the 2007 Constitution and the 2010 Cabinet Resolution. The Cabinet Resolution has not been used to protect the Karen of Kaeng Krachan, nor are there clear laws which operationalise Articles 66 and 67 of the Constitution. Laws on natural resource management (such as the National Park Act 1961, or the National Reserved Forest Act, 1964, described above) suppress the rights of many indigenous communities to reside and cultivate within their territories.

In the case of the planned expansion of the Kaeng Krachan National Park (KKNP), there was no adequate consultation process and nor free prior and informed consent of the Kaeng Krachan Karen community regarding this. Instead, the park authorities insisted on fully implementing draconian forestry laws to evict the people without considering the constitutional provisions and other fiats that guarantee the rights of local communities who have lived in the area even before the demarcation of forest zones, protection areas and the like. The Kaeng Krachan Karen centenarian patriarch was given a silver coin by district authorities in 1962 to show he is a native of Thailand.³⁶ A member of the royal family confirmed the Karen patriarch as an old friend of his royal grandfather. He further remarked "How could you do this to the Karen who have long protected the forests for us" and criticised the national park chief for using the royally initiated project to justify the park's relocation programme.³⁷

The weak enforcement of existing laws and the absence of an oversight body, in turn, lead to abuse of authority and power. In the case of Kaeng Krachan, the KKNP park chief was arrested under the suspicion of being behind the killing of a Karen advocate who was shot in September 2011³⁸ because the latter threatened to expose the human rights violations against the Karen in Kaeng Krachan. The chief was released on bail and still retained his position as park chief. In 2011 he filed a lèse majesté complaint against NHRC subcommittee members, on charges of obstructing the royal project in Kaeng Krachan.³⁹

In the meantime, for the Karen evictees, life after forced relocation is full of hardship. "At the new place, no land to till. No rice to eat".⁴⁰

Cambodia: The Cambodian Constitution of 1993 regards indigenous peoples as equal citizens of Cambodia⁴¹. The 2001 Land Law affirms the collective ownership of indigenous land, and states that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community⁴². This law is of utmost importance for indigenous peoples because it sets the basis for the legal recognition of collective land rights of indigenous communities by the state, and affirms the role of traditional authorities, mechanisms and customs in decision-making processes. It further recognizes the practice of shifting cultivation as part of the traditional land management system of indigenous communities⁴³. Further, it states that women and men have the right to co-own land titles. The Interim Strategy of Land Policy Framework (2002) respects the community titles granted by the 2001 Land Law and goes further in ensuring user rights for forest products to local communities. It explicitly refers to the protection of traditional use rights of indigenous communities and their right to practice shifting cultivation. It also specifies that government policies shall grant indigenous communities collective ownership rights to their land.

However, despite the constitutional and legal guarantees that promote and protect the rights of indigenous peoples, the government's lack of political will to enforce the laws, decrees and policies is at the root of the Kui women's lack of access to justice. Economic development policies continue

to dictate the government's priorities over the indigenous peoples' well-being and exercise of rights, while the Prime Minister and provincial/district level authorities have the broad (or even absolute) power to give away land concessions without consulting the affected peoples. The 2001 Land Law and the 2002 Forestry Law are violated many times over due to the government's failure to issue clear decrees on the implementation of these laws.

The Land Law 2001 provides for collective land titling of indigenous lands. The implementing Sub-decree on the registration of indigenous land was only adopted in 2009. Although the Land Law mandates that indigenous "communities" be recognized as legal entities *prior to receiving collective title*, the sub-decree on registration of land states that *legal entity is required before* that community may lodge an application. The Sub-decree also limits the amount of spirit forest and burial grounds which can be included in collective titles to only 7 hectares each, and does not provide for other forms of indigenous ownership and use of forest. It thus directly contradicts the Land Law, which states that the boundaries of the immovable property of indigenous communities are to be determined by *the actual area used*. In 2012, the Prime Minister issued Directive 01 which encouraged the individual titling of lands but he stopped the process after a few months leading to more confusion among indigenous peoples who were made to believe that this is the process to secure their rights to their lands.

The Protected Area Law (2008) designates large areas under the jurisdiction of the Ministry of Environment (MOE), supposedly for protection. It provides indigenous peoples only with user rights as opposed to ownership or strong co-management rights. Customary user rights are allowed only in specific "sustainable use zones" or "community protected areas" determined by the MOE, and "local communities and indigenous people cannot obtain land title over farm land in community protected areas" (Art. 26). This provision is in direct conflict with the Land Law which provides for some state public land to be included in communal titles of indigenous peoples.

In the indigenous peoples submission to the 76th session of Committee on the Elimination of Racial Discrimination in 2010, it concluded that the "combination of the Land Law and Sub-Decree is seen to hold little protection for indigenous people's land due to the above reasons. They also do not include tenure over substantial forest and water resources within the traditional territories of indigenous peoples. They do, in theory, provide protection against violations of the agricultural lands of indigenous minorities in the interim period before titling of that land. However, as noted in a number of reports ..., this interim protection has been severely undermined."⁴⁴

The feasibility and impact studies of the Prame ELCs as required by the sub-decree on ELCs were not shared to the Kui despite demands to produce these. The village up to the provincial-level officials refused to implement them or may have implemented them but in ways that defeat the sub-decree's original intent. On the other hand, this sub-decree is discriminatory as it sees the respect of indigenous peoples' rights as subject to national interests that can be set aside to favour ELCs. The collective land registration process is complicated, costly and time consuming, and has been delayed in many cases. On the other hand, ELCs had been granted here and there. Although the 2001 Land Law does grant collective ownership rights to land, only three indigenous communities have received ownership title to their collective property⁴⁵ up to the present.

Further, the effectiveness of the overall legal framework is undermined by gaps and overlaps between laws and their implementing institutions. The fact that there are no documents as required by law in the District Governor's Office regarding the concessions (Lan Feng and Roi/Ruy Feng) is indicative of the absence of the rule of law. Denial of consultations demanded by the villagers both in written petitions and through mass actions, for the revocation of the concessions which did not pass through proper legal procedures have been met with vilification of leaders and the

communities, and threats. In theory, Cambodia's laws, policies and sub-decrees ensure the indigenous peoples' right to collective registration and of collective ownership. However, these specific rights are violated in the approval of ELCs in indigenous territories. This has resulted in land and forest alienation, as in the case of the Kui communities of Pramer.

The actions of authorities and the sub-decree on ELCs, and Directive 01 have "the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms of indigenous peoples. This submission explains that, despite provisions to safeguard indigenous peoples' land, customs, language and culture, discrimination against indigenous peoples in Cambodia, in effect, remains persistent and institutionalized."⁴⁶

Philippines: The Philippine Constitution of 1987 states that "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State" (Art.2, Sec. 2). The Constitution also specifically contains a protection of the rights of indigenous peoples: Section 5. "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being." It should be noted however that this protection is subject to national development priorities. Indigenous women are assured under Section 14, which calls for the provision of a working environment that protects them and also enable them to realise their full potential (Art. 13, Sec. 14).

The Philippines is so far more progressive in terms of legal statutes protecting women and indigenous peoples with its Indigenous Peoples Rights Act (IPRA). The IPRA was passed into law on September 13, 1997 which provides general provisions protecting the rights of indigenous peoples or indigenous cultural communities (ICCs) to ancestral domain, self-governance, social justice and cultural integrity. It also creates the National Commission on Indigenous Peoples (NCIP) as "the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs" (Sec 3.k). It also has specific provisions on Free, Prior and Informed Consent" which is defined as: *the consensus of all the members of indigenous peoples to be determined in accordance with their respective customary laws and practices*. The NCIP will not issue a certificate of pre-condition without the FPIC of concerned ICCs/IPs (Sec. 59) for the following cases: right to stay in territories, community intellectual rights, rights to religious, cultural sites and ceremonies, access to biological and genetic resources. Any grant of license, lease or permit for exploitation of natural resources affecting IP interests or their ancestral domains, shall only be given with the FPIC of concerned IPs. The NCIP released administrative orders (2002, 2006, 2012) to serve as guidelines for conduct of FPIC in indigenous communities. There are no specific provisions on women but Sec 26 of the IPRA must be applicable to FPIC processes. The IPRA also provides for the enjoyment of equal rights and opportunities for indigenous women and men in all spheres of life.⁴⁷

Although environmental impact assessment (EIA) is required under the Mining Act of 1995, it exempts "the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit", which contradicts the IPRA on FPIC for all matters impacting on their ancestral domain.

The Magna Carta of Women (Republic Act 9710) is the country's women's human rights law that seeks to eliminate discrimination through the recognition, protection, fulfilment and promotion of the rights of Filipino women, especially those belonging in the marginalized sectors of the society. It is the local translation of the provisions of the CEDAW, particularly in defining gender discrimination, state obligations, substantive equality, and temporary special measures. It also recognizes human

rights guaranteed by the international Covenant on Economic, Social and Cultural Rights (ICESCR).

The Commission on Human Rights of the Philippines is a constitutional body mandated to receive communications, investigate “all forms of human rights violations involving civil and political rights”, provide appropriate legal measures for the protection of human rights of all persons as well as provide for preventive measure and legal aid services to the underprivileged whose human rights have been violated or need protection. It also monitors the Philippine Government's compliance with international treaties on human rights.

A body under the Office of the President was created in 2003 called the Presidential Human Rights Committee (PHRC) to advise the President on how to effectively address all human rights issues in the country. Although advisory in nature, indigenous peoples have been submitting and copying this office with communications related to human rights violations.

The National Commission on Indigenous Peoples (NCIP), as the national agency tasked to uphold the welfare of indigenous peoples in the country also falls short of its duties. Despite its mandate, according to their own FPIC guidelines, their local personnel did not ensure that the rights of indigenous communities are respected and protected when the mining company imposed its project on the community. There is no grievance mechanism provided where previously granted FTAA's can be called for review by impacted communities. Proposals for the revision of the Implementing Rules and Regulation on the conduct of FPIC had been ignored. The rights of mining companies are well protected under the Mining Act of 1995 which was ensured to be legislated before the Indigenous Peoples Rights Act was passed in 1999.

Despite all these constitutional and legal guarantees, and the mechanisms that come with them, this has not prevented the implementation of mining in indigenous territories despite expressed and militant opposition of affected indigenous peoples. Thus, despite the right to their ancestral domain granted such rights constitutionally and legislatively, the Bong Mal Blaang are still being threatened of dispossession, denied access to justice, lack security in their persons and homes, because of absence of political will, and other factors related to lack of respect for the rule of law.

Laos: The 1997 Mining Law ensures environmental protection (Art. 5). Feasibility studies (Art. 30), whose one major content is the socio-economic impacts of the mining operation, and environmental impact assessment (Art. 31) are required for mining exploitation. The latter must elaborate on solutions and mitigation methods and measures on a project's environmental, ecological and social impacts and an assessment of potential losses of affected communities, and elaborated resettlement plans that ensure adequate compensation and livelihood. Art. 40 requires mining companies to guarantee that water quality in its area of operation is safe for human consumption and the environment. Further, mining operations that cover land, constructions, crops and others properties belonging to persons or organizations shall make appropriate compensation for their removal and damage. The Land Law specifically states that this regulatory function is to ensure that the management, use and protection of land contributes to national socio-economic development, including environmental protection. It stipulates the protection of rights and interests of land users under Article 5 while Article 6 exhorts that “individuals and organizations have obligations to protect land, keep it in good condition, Land use should have no bad effects to natural and social environment.” However, the pollution of the waterways and sources by the Sepon open-pit mines of used by communities around Sepon mines forced them to be relocated although they were not required to. The villagers repeatedly informed the responsible company staff about their concerns and attempted to convince the company's staff by presenting them facts of environmental pollution onsite. Until now, the company ignored the villager's complaints and the villagers also did not receive any help from the government nor outside on the redress of their grievances.

That the Lao government is not monitoring open-pit mining for its known environmental impacts is a violation of the government of its own laws. Clearly the Kri community members are protected under this the 2002 Land Law as they are users of the land of good standing through their subsistence farming and sustainable forest product gathering. They are also assured by the Mining Law that they are entitled to safe drinking water.

It becomes evident that although there are numerous domestic laws which regulate mining operations and protect the rights of affected individuals and communities, and there are regulatory bodies that monitor compliance of corporations to legal requirements for their operations, there is palpable lack of enforcement and implementation of these laws, orders and decrees.

The dedicated machinery for gender mainstreaming in the PDR is the National Commission for the Advancement of Women in Lao (NCAW Lao) established in early 2002. It is also mandated to monitor implementation of CEDAW, the Beijing Platform for Action, and other government commitments on equal rights between men and women.

Malaysia: In Malaysia's national policy framework, there are laws explicitly protecting indigenous peoples' rights, especially their national customary rights (NCR) land. For example, customary laws are protected by the Federal Constitution and the Sarawak Land Code. For native customs to have the status of customary laws, they must be given effect by the laws of Sarawak⁴⁸. The provisions of these laws, however, have often been ignored by plantation companies and by the authorities. Instead, the Sarawak government's current policies and economic development priorities affirm that all lands belong to the State. In the case of NCR land with no titles, natives remain without legitimate customary rights to the land, but occupy the land as licensees of the government. However, the State continues to consider all NCR lands as "idle land" in need of development to alleviate poverty. Thus, the government freely gives this out for use by large-scale development projects such as the oil palm plantations in violation of the Land Code and the Federal Constitution. The total disregard for the land and resource rights of many indigenous peoples are major sources of conflicts between the national government, the companies and the indigenous peoples.

Different interpretations of laws also contribute to the insecurity of people as to their legal ownership of their lands. Despite national legislation, NCR lands often do not have titles. The government's definition and/or understanding of NCR land claim is only restricted to cultivated areas or farmed areas ("temuda") which must have been cultivated or farmed before 1st January 1958. On the other hand, the natives believe that their NCR claim goes beyond their "temuda". It includes their communal lands ("pulau") and reserved virgin forests. Because of such difference in understanding of what constitutes NCR land, instead of resolving the coverage of NCR land, the government continues to issue logging licenses and provisional leases covering communal lands and reserved virgin forests. According to the law, a survey also has to be done before the government leases land in order to determine if indigenous people have rights over the area. This is not often followed. In the case of the Rumah Nyawin Iban, areas covered by leases include the NCR land.

Indonesia: The Indonesian Constitution (3rd amendment) recognizes indigenous peoples' rights in Article 18b-2, however, the State still has the power over lands and resources to be used for the benefit of the people. In more recent legislation, there is an implicit, though conditional, recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, such as Act No.5/1960 on Basic Agrarian Regulation, MPR (Parliament) Decree No. X/2001 on Agrarian Reform, Law No. 27/2007 on Coastal and Small Islands and Law No. 32/2009 on Protection and Management of Environment, and Act No.39/1999 on Human Rights.

The 1999 Law No. 39 Year on Human Rights stipulates the equality of rights of all citizens of Indonesia, including indigenous peoples, under the law. Indigenous peoples also have a number of rights which are the responsibility of states to fulfill, protect and respect, among which are: right to life, the right not to disappear forcibly, right to have family and descent, the right to develop themselves, the right to obtain justice, the right to personal liberty, the right to security, welfare rights, the right to participate in governance, women's rights, child rights, and rights to freedom of religion. Several other rights are expressly set forth in the 2005 Law No. 11 concerning the ratification of the International Covenant on Economic, Social and Cultural Rights which Indonesia (October 28, 2005) and 2005 Law No. 12 on the Ratification of International Covenant on Civil and Political Rights (October 28, 2005), and the United Nations Declaration on the Rights of Indigenous Peoples.

Indonesia has two human rights mechanisms, the National Commission on Human Rights (Komnas HAM) and the National Commission on Violence Against Women (Komisi Nasional Anti Kekerasan Terhadap Perempuan, Komnas Perempuan). Komnas Ham is mandated to do conduct public awareness campaigns, inquiries and investigations across the archipelago, including cases of gross human rights violations. Komnas Perempuan mandate is informed by the 1945 Constitution of the Republic of Indonesia, Law no 7/1984 on the Ratification of the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Law no 5/1998 on the Ratification of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment (CAT), the International Declaration on the Elimination of Violence against Women and other human rights policies.⁴⁹ Its mandate includes awareness raising, research, monitoring and documentation, policy recommendations and partnership-building, on violence against women and the protection and fulfilment of womens human rights.

Thus, although indigenous peoples' rights are explicitly and implicitly recognized in some parts of the Indonesian legislation, in the case of the Molo in Nusa Tenggara, the government failed to protect and promote their individual and collective rights by granting concessions to logging and mining companies without their expressed FPIC, causing multiple forms of suffering and human rights violations.

4.2 Severe limitations in existing remedies provided either by law or in practice

Moreover, most legal systems fail to provide remedies by law or in practice that are effective, preventive, timely, non-discriminatory, adequate, just and culturally appropriate.

Cambodia: There are no redress mechanisms for issues arising from development and corporate projects known to the Prame Kui which they can use to hold the government accountable for their actions. There is also no requirement for obtaining FPIC for developments being implemented in indigenous territories. Although the Prame Kui have taken it upon themselves to know their rights, the government does not provide the process by which they can participate in a meaningful dialogue. Nor were the Kui women and villagers informed of their rights. On the other hand, when the Prame Kui asserted their rights, and even quoted the provisions of the Sub-decree on ELCs and the Land Law, the authorities were sceptical and even branded them to be subversives who want to secede. That authorities do not know the law is already a breakdown in the rule of law.

Laos: The Lao national legislation does not officially recognize "indigenous peoples", so there is no specific legal basis for protection and remedies. For example, there is no mechanism ensuring the free, prior and informed consent of indigenous communities.

Under the Lao PDR laws, the national territory and the minerals therein are owned by the national community represented by the State as stipulated in the Constitution (Art. 15) and reiterated in the

Land Law (No. 01/97/NA 2002) and Mining Law (No. 04/97/NA 1997). The State exercises administrative and regulatory functions over these resources. Further, land cannot be bought and sold by individuals or organizations. Under this legal framework, the government can simply relocate people in the name of national development since these land are called authorized lands, meaning they had been designated for some use by the government. It is not surprising then that the communities impacted by the Sepon mine, which included Makong, Tri (Try), Kri and Lao Loum, the dominant ethnic Lao, need not have been consulted, only informed and then relocated.

There exist no post-project monitoring and grievance mechanisms. In case of the relocation of the Kri women, requirements of the law for resettlement plans that ensure proper settlement, adequate compensation and livelihood were not fulfilled. Further, the responses of the Sepon Gold and Copper Mining company when the environmental problems were presented to them shows that there had been no mitigation methods and measures put in place to address negative impacts as required by law. That the women and the villagers only engaged the company in dealing with these issues only shows that there is no clear mechanism that is known to the victims for the redress of issues. It becomes evident that the government does not have the capacity to provide access to justice to the Kri women as seen in the absence of a mechanism that will monitor compliance of companies of their contracts, nor for oversight after the grant of economic concessions.

4.3 INEFFICIENT JUSTICE SYSTEMS: LONG DELAYS OF THE LEGAL PROCESS

Official justice systems are often further characterized by structural weakness and deficiencies. For example, court cases are often greatly delayed, taking months or even years before trial. Procrastinations and court delays discourage female victims to take action and seek justice in official legal institutions.

Malaysia: According to the Rumah Naywin Iban the courts in Sarawak are notorious for delays, especially in land matters, so when the court did not respond to their petition for an injunction order, they took this to mean that no action was expected for years. Also, in their negotiations with the Bintulu LSD, they were told that a decision would be made by their superiors in Kuching, the state capital. Their verbal response was that a court decision would be sought on this petition. Without any response to their petition, they were confident that the rule of law would proceed as expected. They were shocked then on that January 7, 2007 morning, when the Bintulu demolished their 20 year old longhouse. MARDI did not provide any payment and compensation for all their losses.”¹

Cambodia: In Cambodia, court procedures are often extremely slow and time-consuming. The Prame Kui learned from other land conflicts cases that are linked to government authorities and large companies are delayed endlessly. They prefer to seek support from human rights NGOs and UN agencies rather than relying on the formal justice system on how to address their issues. Because of the very weak justice system in Cambodia, the Kui and other victims of human rights violations have taken to using campaigns to metalegal tactics.⁵⁰

In the experience of indigenous peoples of Cambodia and other human rights defenders, the courts will often not adjudicate cases concerning indigenous community rights until those rights and title have been registered (and legal personality conferred), thus hindering indigenous peoples’ ability to find resolution for land issues via the judiciary, contravening Article 6 of ICERD. These organizations believe that difficulties in obtaining legal community recognition and land titling under the above legislative mechanisms is in direct breach of Article 2(1)(c) of CERD that requires State Parties to

rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination, and among others Article 5(d)(v).⁵¹

4.4 GENDER AND ETHNIC BIASES IN THE LEGAL SYSTEM AND LAWS

Indigenous women often face multiple forms of gender- and ethnicity-based discrimination within formal justice systems, judicial and administrative offices. Due to inadequacies, existing laws fail to protect them, and gender-specific restrictions hamper them to find their way through the justice system and to demand their rights.

This includes their *economic status*: Indigenous women continue to belong to the poorest sectors of the society. They are disproportionately found in low income and unreliable forms of employment. The majority can't afford prohibitive costs of using the system, expensive legal procedures or a reliable legal representation. Often women refrain from making use of existing institution as they are afraid that they have to pay additional fees and bribes. They also shoulder the majority of domestic responsibilities. As a consequence of inequalities in educational opportunities, they frequently suffer from *illiteracy and monolingualism*. Additionally, also most of the system officials do not speak indigenous languages, and there is only a small number of interpreters. Indigenous women living in rural areas further face barriers of *geographical distance*, as legal institutions are often based in municipal capitals.

As parties to the CEDAW, States are obliged to take measures to combat discrimination in all its forms. That so many barriers are faced by indigenous women to access justice in the formal justice system shows that indigenous women are not particularly targeted in efforts to promote gender equality.

Cambodia: The Kui women's have fewer opportunities of receiving education, and they are less likely to attend and finish schooling than man, resulting in a lack of language skills. Limited knowledge and language barriers, in turn, set constraints for women to fully voice out and to participate in legal processes. Additionally, indigenous women belong to the most poverty-stricken segment among the indigenous population in the country. Therefore, financial hardship is also a crucial obstacle for Kui women to participate in the advocacy of their rights. Often, they can't afford legal assistance or even travel expenses and transportation costs to reach distant administrative offices. As they have to provide for their families, they cannot easily interrupt their daily work or spend money to support the community's struggle for justice.

Indonesia: The Law Forestry Law No. 41/1999 and Law No. 4/2009 on Mineral and Coal which have been the sources of conflicts and human rights violations against indigenous peoples because of the weak protection that they give for indigenous peoples vis-à-vis other businesses which want to exploit these resources. The Committee on the Elimination of Racial Discrimination has noted that Indonesia's land and forest laws are incompatible with Indonesia's obligations under the ICERD to which Indonesia is a signatory.

Laos: As poverty continues to disproportionately affect Lao ethnic minority women, such as the Kri, they often can neither afford the costs of using the system nor of an adequate legal representation. In particular, ethnic women lack of educational opportunities and thus, face additional obstacles (such as language barriers) when trying to access justice. Women in Laos, and in particular in rural areas and among ethnic groups, have lower levels of education than men, less opportunities to train their intellect and communication skills. For example, the Kri women's access to justice is hampered by the fact that they spend almost all their time to look for paying jobs in order to meet their families' basic needs of food, health and education. This denies them the time to participate in

decision-making even at the relocation site. Their dependence on the mining company for their cash income further hampers their critical engagement with the company because of the power relations involved.

With regard to its national legislation, the Lao Constitution warrants equal rights to men and women. The government also attempts to promote the advancement of women through its national policy framework and mainstreaming of gender in development policies. However, ethnic minority women and girls who represent more than 50 percent of the female population, still continue to belong to the most vulnerable segment of the society⁵². Women in ethnic groups comprise 70 per cent of the illiterate population and still suffer from isolation due to the fact that only a few of them speak the dominant language⁵³.

Thus, despite Lao's national (and international) legal obligations, varying degrees of discrimination against ethnic minority women - both as women and members of ethnic cultures- persists on many levels. For example, the Kri women in Vilabouly clearly are deprived of their basic right to preserve and promote their customs and cultures as stipulated in the Constitution. Their relocation as well as the increasing forest degradation due to government development policies and commercial resource exploitation cause a scarcity of natural resources and severely limit traditional farming practices and agricultural activities, crucial parts of the Kri ethnic identity. The loss of land, traditional resources and livelihood has resulted in worsening their economic and social conditions. Even though Laos law provides equal rights for women, traditional attitudes keep women in subordinate positions, also preventing them from equally accessing education.

Malaysia: Also in Malaysia, Iban women lack of access to education: they have higher levels of illiteracy and fewer years of schooling than men. The rural indigenous women thus often do not know how to read or write and are not aware of their rights. They lack of access to information on the existing legislation that protects indigenous peoples customary law. Another reason for the Iban women's lack of participation in meetings, also related to traditional structures, can also be seen in the women's overburden in household duties.

Thailand: Also amongst indigenous women in Thailand, fewer opportunities to access education result in a lack of the ability to speak Thai. Language difficulties and the inability to communicate in Thai, in turn, build an obstacle for many when seeking access to the formal justice system, and limits indigenous women's confidence to participate in decision making processes. As a consequence, many women have difficulties attaining the Thai citizenship. Restrictive and tedious bureaucratic mechanisms further complicate the process of obtaining an identity card. The lack of citizenship is one major obstacle to obtain their full rights as a State citizen. Indigenous women without legal documents have limited possibility of seeking justice, and cannot even refer to provisions of the existing legal framework regarding their land use rights. As they are disproportionately poorer than other segments of the society, indigenous women in Thailand often lack of means to afford legal assistance. For the Lisu women of Doi Chang and Doi Lan, costs for the law suit are high, e.g. for transportation due to geographical distance. Journeys to the court also cause a loss of production time and income for the women. Loss of income places a heavy burden particularly on indigenous women as main providers for their families.

4.5 LACK OF ADEQUATE INFORMATION ABOUT EXISTING LAWS AND LIMITED KNOWLEDGE OF RIGHTS.

Lack of education and illiteracy, in turn, limits the women's awareness of their rights and their ability to make use of them. Poverty combined with a lack of knowledge often hampers women to make use of justice services.

Cambodia: The Kui indigenous women's limited of access to educational opportunities often results in a lack of knowledge and adequate information on the existing legal framework on the court system in general as well as on specific legal procedures. As a consequence, the villagers often lack of confidence to actively engage in a judicial process. Likewise, the authorities from the ground up to the national level do not have the knowledge of the rights embodied in their own laws thus denying the Kui women their right to information.

Thailand: Also the Lisu, Akha and Karen women of Thailand have fewer opportunities to access education result in many indigenous women's lack of knowledge on their rights. Their access to justice is exacerbated by their lack of knowledge of their rights as women and as indigenous peoples, and even the laws that will enable them to access justice. Indigenous women in Thailand are disproportionately affected by development aggression. However, since the ethnic women often particularly lack of access to information and knowledge about their rights and the existing legislation, they have no power to protect themselves.

The Parties to the CEDAW are obligated to promote awareness of the Convention. The general lack of knowledge of indigenous women of their rights is indicative of the limited outreach that womens machineries among indigenous women. This is failure of the obligation of State parties to promote the human rights of women, to include indigenous women.

4.6 DISCRIMINATORY ATTITUDES, LIMITED PARTICIPATION IN DECISION-MAKING IN BOTH FORMAL AND TRADITIONAL SYSTEMS, INTERNALIZATION OF RACIAL PREJUDICE, WEAK ORGANIZATIONAL CAPACITIES

Patriarchal attitudes and ideologies are prevalent in both indigenous and non-indigenous societies. Public and political spheres remain dominated by men, also reflecting barriers for women to access justice. In this context, also official and non-state justice systems reinforce gender inequalities as many justice system officials hold racist perceptions and discriminatory attitudes toward indigenous women.

That they can easily be relocated without their FPIC and access to remedies for violations of the rights due to mining operations is discriminatory.

The States, together with national women's machineries in the different countries, have the responsibility to ensure that women in general, and indigenous women, in particular, do not face discrimination in all aspects of formal and traditional justice systems. They must take measures especially to eliminate discrimination among the state bureaucracy, including the justice system, that will enhance indigenous women's access to justice.

Cambodia: Kui indigenous women often face patriarchal ideologies within the dominant as well as their own indigenous societies which consolidate gender inequalities in both formal and customary justice systems. Within the justice system, they often face discriminatory attitudes of government officials.

Laos: Also Kri Women have a lower social status, and thus, limited freedom of expression and participation in public and political life. They are living in traditional patriarchal structures within their own ethnic communities, but also in the wider society. Deep-rooted stereotyped perception of inferiority even among the women themselves, depriving them of opportunities to access justice mechanisms.

Malaysia: One factor preventing Iban indigenous women in Malaysia to access justice is rooted in patriarchal attitudes and structures within the Iban community. The Iban indigenous women's role in decision-making is diminished by customs that give more power to the men, frequently justified as

“tradition and culture”. As a result, the women have little experience or skills on administrative matters of the community. Discrimination has gradually become a norm and is perpetuated through women’s lack of confidence, experience and knowledge. In Sarawak indigenous communities, decision making is an open process. Elders tend to plan and decide for the important and major roles played by members of the society because of the experience that they have. The family’s survival depends on the decisions made by women. Yet it is still not socially acceptable for women to make decisions on community matters. As in many indigenous groups and in particular in the Iban community there is no distinct opportunity for women to participate in decision making, for example with regard to the village activities such as rituals and ceremonies, festivals or the hearing of civil cases. Men also make the decisions on community welfare such as land security, new development project and other community activities while women stay on sidelines or play a lesser role. During community meetings and gatherings women get the task of preparing food and looking after the children.

Thailand: In Thailand, indigenous women have to face patriarchal ideologies within Thai, as well, as indigenous societies. Some indigenous societies, like the Lisu and Akha communities, are patriarchal societies where women are married into men's families, and all material assets and members of the household are considered the ‘property’ of men. Various cultural norms, values and practices are oppressive to indigenous women. Mostly, indigenous women are being brought up with limited space for autonomy and self-determination. The majority of them are also marginalized or excluded from participating in the public sphere and decision making activities. Within the official justice system, they often face discriminatory actions and attitudes widespread among government officials within the justice system. Their discrimination as uncivilized forest destroyers continues to influence government’s laws, policies and actions. Prevalent stereotypes are even being instrumentalised within the land use conflicts in protected areas.

One other issue in Thailand that indigenous peoples face is racial prejudice. Government officials, for instance the KKNP chief and others in the environment, agriculture and national security sector have the habit of branding indigenous peoples as “slash-and-burnmigrants from Myanmar who grew marijuana and supported ethnic Karen rebels across the border”. This kind of attitude of officials had been belied by the results of the investigations done by the National Human Rights Commission of Thailand. A human rights lawyer commented that the "forest officials also have no legal authority to torch people's houses and those allegations fan prejudice against indigenous peoples".⁵⁴

5. OBLIGATIONS UNDER INTERNATIONAL LAW

As members of the United Nations, all the countries in Southeast Asia have to abide by its Charter. They must promote and respect all human rights for all, without any distinction as to race, sex, language, or religion.

Countries in Southeast Asia have ratified several international human rights treaties. Some of these are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on Elimination of Racial Discrimination (ICERD). All the countries in Southeast Asia ratified or acceded to the CEDAW and CRC. However, a large number of these international treaties have not been adopted into national legislation or policies.

All Southeast Asian governments are also parties to the Convention on Biological Diversity which has the goals of biological diversity conservation, promoting the sustainable use of biodiversity and guaranteeing the equitable sharing of benefits derived from the use of genetic resources - all of

which are key issues affecting indigenous peoples, especially in relation to their lands, resources and traditional knowledge. Specific reference to indigenous peoples is made in Article 8 (j) of which States parties commit to preserve and maintain the knowledge, innovations and practices of indigenous and local communities which are relevant for the conservation and sustainable use of biological diversity. Article 10 (c) furthermore, calls on States to protect and encourage the use of biological resources in accordance with traditional cultural practices which support conservation or sustainable use.

In its 56th session, the Commission on the Status of Women adopted *Resolution 56/4 Indigenous women: key actors in poverty and hunger eradication*,⁵⁵ which recognizes the role of indigenous women and their traditional knowledge in the development process towards poverty eradication. Some important recommendations for States are as follows:

- (h) Comply with and effectively implement all their human rights obligations so as to ensure the full realization and equal enjoyment of the rights of indigenous women;
- (i) Take concrete measures to provide equal access to justice for indigenous women at all levels, and ensure that indigenous women have equal rights to own land and other property;
- (j) Recognize that poverty and discrimination increase the conditions that generate violence against women, and take actions at the national, local and community levels to prevent and eliminate all forms of violence against indigenous women;
- (k) Collect and disseminate disaggregated data on indigenous women, including those living in rural areas, in order to monitor and improve the impact of development policies and programmes for their well-being.

All Southeast Asian countries also voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). By their favourable adoption of the UNDRIP, countries have committed to promote and protect the rights of indigenous peoples, whether they are called by that name or not. This international human rights instrument sets the minimum standard for guaranteeing the collective rights of indigenous peoples. It is an affirmation of collective rights that have long been exercised by indigenous peoples. It is not a *new* set of rights granted by states; rather, it is a *recognition* of *inherent* rights and defines the *obligations* of states to respect these rights.

This instrument ensures indigenous peoples ownership of their lands, territories and resources which they traditionally owned or otherwise occupied or used (Art. 26), and right to fair redress for lands that have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent (e.g. Article 28).

The UNDRIP provides guidance on access to justice for indigenous women through the exercise of FPIC on the following grounds:

1. *Relocation (Art. 10)*
2. *Use of their cultural, intellectual, religious and spiritual property (Art. 11)*
3. *Adoption and implementation of legislative or administrative measures that may affect them (Art. 19)*
4. *Confiscation, appropriation, occupation, use or damage of lands, territories and resources which they have traditionally owned or otherwise occupied or used (Art. 28)*
5. *Storage or disposal of hazardous materials in their lands or territories (Art. 29)*
6. *Any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (art. 32)*

Further, Article 8 states that:

1. *Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*
2. *States shall provide effective mechanisms for prevention of, and redress for:*
 - (a) *Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
 - (b) *Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*
 - (c) *Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;*
 - (d) *Any form of forced assimilation or integration;*
 - (e) *Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.*

A majority of states who voted for the adoption of the UNDRIP still have not translated this into national laws, policies and programmes that fully recognize and respect the rights of indigenous peoples. Some states continue to deny the existence of indigenous peoples, excluding them from citizenship and, as a consequence, full access to basic social services. Indigenous women and children bear the brunt of lack of social support. Indigenous peoples' customary governance over their lands, territories and resources are not recognized and respected. They continue to be excluded from governance structures while their traditional socio-political institutions are marginalised. Their contributions to the sustainable management of forests and resources, through their traditional knowledge and practices, are not supported, but instead maligned as backward and destructive. The role that indigenous women play in ensuring the well-being of their communities are not given due recognition. Indigenous peoples are often in the fringes of modern development as their views and perspectives on self-determined development are not considered in mainstream policies and programmes.

Although there are domestic laws which regulate extractive industries and plantations, and protect the rights of affected individuals and communities, and there are regulatory bodies that monitor compliance of business operations to legal requirements, there is palpable lack of enforcement and implementation of these laws, orders and decrees.

Cambodia: Cambodia has violated the rights of the Pramer Kui that it has committed to respect, protect and fulfil under its international treaty obligations. Cambodia is party to the ICERD and the CEDAW, and therefore obliged to take actions to eliminate discrimination against people due to differences in birth, race, language as well as all discrimination against women in the political, public, economic and social life of the country⁵⁶. The State has committed to adopt measures and strategies in its legal policy framework to make sure that women can enjoy the equal opportunities and rights as men. However, the Kui women in Pramer remain socially disadvantaged as their access to political and public life as well as to the education system remains limited. Discrimination prevails, not only in the wider society and among local and provincial authorities, but also within communities.

The right to adequate food is a basic human right. Cambodia is party to the ICESCR which comprehensively addresses the right to adequate food. Cambodia has violated its obligation to progressively realize the right of everyone, including the Pramer Kui, "to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (Art. 11.1). It has failed in its obligation to fulfil this right by preventing access of Pramer Kui to their existing sources of subsistence. It has failed in its obligation to protect by giving land concessions to Lan Feng and Roi/Ruy Feng thus depriving them of their access to adequate food. The Cambodia government has clearly demonstrated its unwillingness

to comply with its obligations despite the protests of the Pramer Kui to cancel the concessions over their traditional sources of food and sacred sites and to redress to their grievances.

In granting the two ELCs in Prame commune, the Government's has violated its commitment under the CBD, the IESCR and the UNDRIP. Under the CBD, it has committed to promote indigenous knowledge and traditional ways of life in natural resource management and conservation. It committed to recognize rights to practice specific cultures and means of livelihood. That it has allowed the destruction of Prame Kui ancestral lands is a violation of this obligation. It has failed to consult the Pramer Kui and has not provided any information in a way understood by the villagers about the concessions in violation of the Kui's rights to FPIC, as well as their rights to land, territory and natural resources under the UNDRIP. These government actions also violate the Kui's right to practice cultural traditions and customs by maintaining religious and cultural sites. The Prame Kui have not exercised freely their right to determine their freely determine their social and cultural development and to maintain their traditional ways of living as stipulated in the IESCR (Art.1). It has not even instituted any measures to redress the destruction caused by the ELCs and has condoned the continuing violation of the Pramer Kui's rights by its very inaction.

As party to the International Convention on the Elimination of Racial Discrimination which obliges State Parties to ensure equal treatment before the tribunals and organs of justice, and the right to access effective remedies, it has been observed that lack of governance, perpetual corruption, and lack of independence of the courts have been used by land-grabbers to legitimize forced evictions.⁵⁷ The disproportionate high number of ELCs in indigenous territories definitely disproportionately impacts on the enjoyment of all human rights by indigenous peoples.

The Constitution of Cambodia itself states that Cambodia "shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of human Rights, the covenants and conventions related to human rights, women's and children's rights (Art. 31)." By its very actions, it has failed to promote, recognize, respect and fulfil the rights of indigenous peoples.

Indonesia: In its 71st session, the CERD expressed concern that "the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development (arts. 2 and 5)"⁵⁸. It urged then the Indonesian government to amend its domestic laws, regulation and practices to be truly inclusive of the ethnic diversity that the country so claims, and that "unity in diversity" be not used to violate indigenous peoples rights. Further, it recommended that the Indonesian government provide the conditions that allow the sustainable economic and social development of indigenous peoples to flourish according to their culture.

The Forestry Law No. 41/1999 and Law No. 4/2009 on Minerals and Coal which have been the sources of conflict and human rights violations against indigenous peoples because of the weak protection that they give to indigenous peoples vis-a-viz other businesses which want to exploit these resources. The CERD has noted that Indonesia's land and forest laws are incompatible with Indonesia's obligations under the ICERD.

Laos: The Lao government has failed to fulfill its obligation under the CEDAW to end any form of discrimination against women. It has not effectively implemented its laws that will protect the Kri women from the discrimination they face due to development policies and natural resource exploitation. Their identity is rooted in their territory. The destruction of their territory and their alienation from the material base of their culture, impact on their identity as indigenous peoples. As a party to the CBD, Lao PDR committed itself to support traditional knowledge and practices in natural resource management and conservation. But with the sedentarization and relocation

programs, these disproportionately impacts on the human rights of indigenous peoples as they are removed from their cultural base. This convention further obliges the State to amend development policies in order to bring them in line with the CBD.

The Kri are a people with a very small population that they can be considered endangered. Further displacing them would lead to their extinction as a people. Apart from this fundamental issue, the relocated Kri women face difficulties to meet their food and potable water needs in the relocation site. By the enforced relocation of the Kri peoples which deprived them of their traditional means of subsistence, the Lao government has failed in its obligation to undertake measures that will ensure that the mining company will not deprive the Kri peoples access to adequate food in a quantity and quality corresponding to their cultural traditions that will ensure their physical and mental well being and allow them a life of dignity.

Malaysia: Malaysia is party to the CEDAW, and therefore obliged to end all discrimination against women. It has to ensure the equality between women and men through provision of women's equal access with men to political and public life as well as education, health and employment. It is obligated to take all appropriate measures to ensure that women can enjoy all their human rights. This includes the incorporation of the principle of equality of men and women in their legal system, as well as to abolish all discriminatory laws. However, the reality looks rather different among indigenous women: indigenous women continue to be discriminated in their access to the political life as well as to basic social services.

The UNDRIP requires that States consult and cooperate with indigenous peoples through their own representative institutions in order to obtain their free prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.⁵⁹ However, in the Rumah Nyawin Iban case, companies and development projects launched their operations without consultation or consent of the affected villagers. The UNDRIP further stipulates the indigenous peoples have the right to determine their own priorities as to development, health and other economic and social programs⁶⁰. Despite these provisions, the Sarawak government continues to deny the indigenous people's rights, and the principles set out in the UNDRIP have yet to be explicitly incorporated in the national legislation.

As Party to the CBD, Malaysia is obliged to "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity⁶¹." The alienation of the Rymah Nyawin Iban from their temuda is a violation of Malaysia's obligation to the CBD.

Philippines: The Philippines is party to so many human rights treaties and instruments that provide standards for women's and indigenous peoples' rights. In fact, the country was one of the first to sign (15 July 1980) and ratify (5 August 1981) the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and was the first ASEAN member country to do so. The Philippines also favored the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. But before this, the country has already been implementing the Indigenous Peoples Rights Act of 1997. Despite these treaty obligations, indigenous peoples are facing relentless attacks on their rights with impunity.

Indigenous peoples have used the treaty monitoring bodies, particularly the Committee on the Elimination of Racial Discrimination (CERD) to call on Philippine government to fulfil its obligations. One of the CERD recommendations⁶² which was to have been addressed by January 2012, but which has not been, is as follows:

Recommendation (par) 23: The Committee seeks further clarification on the time frames for obtaining Ancestral Domains/Lands certificates and the number of applications filed and certificates issued for claiming collective land titles. The Committee recommends that the State party streamline the process for obtaining land rights certificates and take effective measures to protect communities from retaliations and violations when attempting to exercise their rights.

The failure of the Philippine government to provide a responsive, just, and efficient mechanism for the processing of Certificates of Ancestral Domain/Land titles (CADT/CALT) but allows the easy issuance of mining exploration and exploitation permits in ancestral domains of indigenous peoples is patent discrimination against indigenous peoples. That there extrajudicial killings, enforced disappearances, evacuation, harassment and “red-labeling” of indigenous peoples asserting their rights to their territory are pieces of evidence that show the failure of the Philippines to put in place effective measures to protect indigenous communities from retaliations and violations in relation to the exercise of their rights.

Thailand: As party to the CEDAW, Thailand is obliged to take measures to end all discrimination against women in the political, public, economic and social life of the country⁶³. The State has committed itself to take all measures to ensure that women can enjoy their fundamental rights and freedoms. This includes the incorporation of the CEDAW’s provision in the national legal framework. However, in Thailand, indigenous women still belong to the most disadvantaged segment of the society, as the national legislation fails to protect their rights and address their specific needs, like their right to nationality, to practice their traditional occupation, political participation, among others. Thus, their access to political life and to basic social services remains limited.

The lack of recognition of land ownership and land use rights of the Karen and other indigenous peoples of Thailand conflict with the CBD. In this Convention, the Thai government is obliged to support indigenous peoples to practice traditional knowledge in natural resource management, conservation and traditional livelihoods. State policies and laws on protected areas still have not been amended in order to bring them in line with the CBD. Eviction and the use of force as in Kaeng Krachan are also contrary to the UNDRIP, the CBD and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR Art.6 stipulates that “the state must guarantee the right of free employment and livelihood, including the provision of continuing technical advice and support”. Indigenous peoples, however, are punished for practicing their traditional livelihood systems.

State actions and attitude towards disregard indigenous peoples right to define their own path to development and their right to participate in decision-making in matters that affect them. The use of forcible eviction (as prohibited in UNDRIP Art. 10) undermines indigenous peoples, like the Karen, their right to land, territory and resources (UNDRIP Art. 26⁶⁴).

The denial of citizenship to indigenous peoples is a violation of their human rights, depriving them of access to fundamental rights, basic social services, and freedom of movement and leaving them especially vulnerable for exploitation⁶⁵. Without citizenship, proper resource management is impossible as people do not have the right to remain in their settlement areas. Finally, Thailand has ratified the ICERD which states that “discrimination against people due to differences in birth, race, language, age and gender is strictly prohibited” (Art.30). However, discrimination against indigenous peoples is still prevalent, even within the legal justice system, as it becomes evident in the case of Kaeng Krachan.

6. SUMMARY OF ISSUES

The main issues of indigenous women in South-east Asia identified during the consultation are the following:

5.1 WEAK ENFORCEMENT OF EXISTING NATIONAL LAWS AND IMPLEMENTATION OF ORDERS AND DECREES, AS WELL AS CONFLICTING LAWS/POLICIES, ABUSE OF AUTHORITY AND POWERS, CORRUPTION, PATRONAGE

Weak enforcement of laws and implementation of orders and decrees have been reported in all the countries where participants came from: Cambodia, Laos, Indonesia, Myanmar, Philippines, Thailand, and Vietnam, either due to lack of knowledge of the law by law enforcement agencies, corruption, absence of rule of law, militarization, patronage politics, poorly functioning law enforcement system, among others.

Excessive number of laws and conflicting laws/policies/decrees has also been reported in Cambodia, Thailand, Philippines and Malaysia. Different government agencies do not coordinate with each one trying to exercise their power over others to the detriment of the human rights and welfare of indigenous women.

Abuse of authority and powers by government officials and authorities are rampant throughout the sub-region resulting in unlawful searches, seizures, detention, imprisonment, and even extra-judicial killings.

5.2 SEVERE LIMITATIONS IN EXISTING REMEDIES PROVIDED EITHER BY LAW OR IN PRACTICE

Most legal systems fail to provide remedies by law or in practice that are effective, preventive, timely, non-discriminatory, adequate, and just and culturally appropriate. The experience of the participating indigenous women has shown that apart from the fact that their FPIC has not been obtained before the entry of projects in their territories, there are no oversight mechanisms that will address emerging issues during the implementation and post-implementation of projects. For instance, so many human rights issues emerged after the grant of ELCs in Cambodia, the national parks in Thailand, the mines in Indonesia, Laos and Philippines, and the plantations in Malaysia and Myanmar. In terms of compensation and resettlement, often the indigenous women and their communities are not provided any participation in designing such programmes in order to provide preventive timely, non-discriminatory, adequate, just and deterrent, culturally appropriate interventions. In many cases, compensation and relocation programmes target per family without due consideration to the gender roles within the family and thus fail to seize the opportunity to provide more support for women during these trying times in their lives

5.3 INEFFICIENT AND INACCESSIBLE JUSTICE SYSTEMS, LONG DELAYS OF THE LEGAL PROCESS

Official justice systems are often further characterized by structural weakness and deficiencies. Justice delayed is justice denied. Court cases are often greatly delayed, taking months or even years before trial. Procrastinations and court delays discourage female victims to take action and seek justice in official legal institutions. For instance, despite the years of lobbying done by the Na Hang dam evictees for the completion of the promised facilities, the local authorities have not been responding to these more than five years after their deadline. For the Rumah Nyawin Iban, the verbal promise of a 240-hectare farmland is nowhere in site five years after they were evicted. The

FPIC process in the Philippines has not provided meaningful participation for indigenous peoples in struggle but favored corporations and even coopted indigenous leaders.

5.4 GENDER BIAS IN THE LEGAL SYSTEM AND LAWS

Indigenous women often face multiple forms of gender- and ethnicity-based discrimination within formal justice systems, judicial and administrative offices. Due to inadequacies, existing laws fail to protect them, and gender-specific restrictions hamper them to find their way through the justice system and to demand their rights.

This includes their *economic status*. From the cases studies and testimonies, indigenous women continue to belong to the poorest sectors of the society. Because of their forced displacement due to state and corporate development projects, they are disproportionately found in low income and unreliable forms of employment, compared to their previous self-sustaining status practicing traditional livelihoods. The majority cannot afford prohibitive costs of using the system, expensive legal procedures or a reliable legal representation. Often women refrain from making use of existing institution as they are afraid that they have to pay additional fees and bribes. They also shoulder the majority of domestic responsibilities which makes it doubly burdensome to meet the requirements of a legal battle. As a consequence of inequalities in educational opportunities, they frequently suffer from *illiteracy and monolingualism*. Additionally, most of the official systems and officials use the national language, and there is only a small number of interpreters. Indigenous women living in rural areas further face the added barrier of *geographical distance*, as legal institutions are often based in town centers and capitals.

5.5 LACK OF ADEQUATE INFORMATION ABOUT EXISTING LAWS AND LIMITED KNOWLEDGE OF RIGHTS

Lack of education and illiteracy, in turn, limits the women's awareness of their rights and their ability to make use of them. Poverty, combined with a lack of knowledge of their rights, often hampers women to make use of justice services.

Many indigenous women do not know their constitutional rights, much more their rights under international law and laws and policies that relate to their land, territories and resources. As mentioned above, accessibility to adequate and quality information is hindered by their gender related contexts.

Even various government authorities are found to lack adequate information about what is supposed to exist under the law and their enforcement. These include the treaties to which the States are party to and the other international instruments that they signed into. As shown in many of the forced eviction cases in Laos, Vietnam, Malaysia, Cambodia and Thailand, government authorities just inform the indigenous communities that whether they like it or not, their homes will be demolished and their lands are not their own. In many cases, there is not enough time to process the information and then the action is done. The psychological impacts of these alienation from their lands and homes is impacts on the well-being of indigenous women.

5.6 Discriminatory attitudes, limited participation in decision-making in both formal and traditional systems, internalization of racial prejudice, weak organizational capacities

Patriarchal attitudes and ideologies are prevalent in both indigenous and non-indigenous societies. Public and political spheres remain dominated by men, also reflecting barriers for women to access justice. In this context, also official and non-state justice systems reinforce gender inequalities as

many justice system officials hold racist perceptions and discriminatory attitudes toward indigenous women. In Thailand, the persistent racist attitude against indigenous peoples among officials and the general majority Thai as national security threats and foreigners, and forest destroyers and related to drug issues, even with so many proofs otherwise, creates a climate that does not augur well for a just and fair access to justice. In Cambodia, a parliamentarian openly used the name of an indigenous people to insult a colleague, perpetuating discrimination against indigenous peoples in Cambodia as barbarian/savage.

Non-recognition of traditional dispute resolutions of indigenous peoples. The lack of capacity for the majority of formal justice systems to accommodate these indigenous systems is missing out on resources that can facilitate the delivery of services to development-induced violations against indigenous women. As already mentioned, indigenous justice systems in Asia are prevalently patriarchal but in the absence of an accessible alternative, indigenous women are left with little choice.

Lack of availability and limitations of alternative law groups, human rights organizations, other civil society actors in various Asian countries (such as Cambodia) restrict the provision or facilitation of remedies and of legal aid/counsel as well as the lobby for the repeal of laws that infringe indigenous people's rights. Several governments have enacted or are in the process of enacting laws that aim to regulate non-governmental organisations from exercising their watchdog functions in the respect, protection and fulfilment of the human rights of their constituencies. The overall aim is to gag criticism of government both as an institution and the officials holding positions. The legislation of laws that limit the freedoms of advocacy groups to operate independently also hampers support for access to justice for Indigenous women and their communities.

7. RECOMMENDATIONS

"Women's access to justice depends on the rule of law and also on women's economic and political empowerment and participation in decision-making."

UN Women's Executive Director, Michelle Bachelet
High-Level Meeting of the General Assembly on the Rule of Law
Sept 24, 2012

TO STATES:

1. To integrate provisions of the UNDRIP into national laws and policies that fully recognise and respect the collective rights of indigenous peoples.
2. To develop in partnership with indigenous peoples, systematic and sustained awareness-raising campaigns targeting indigenous women on their human rights both as women and as indigenous peoples in indigenous communities in a language that is understood and in a manner that is culturally appropriate.
3. To sensitize law-enforcement personnel and officials operating in indigenous communities and dealing with indigenous issues on indigenous peoples collective and women's human rights.
4. To legislate safeguards in accordance with international human rights standards adopted on businesses operating in indigenous peoples territories that respects the right to free, prior and informed consent of the affected indigenous peoples consistent with the UNDRIP.
5. To support the establishment of independent monitoring bodies and mechanisms on the impacts (human rights, socio-cultural, environment, health, gender assessment on all stages) of national laws, policies and projects relating to extractive industries, land, forestry, minerals and natural resources. These Monitoring bodies shall include representatives from the impacted communities freely chosen by them.
6. To undertake collaborative efforts as well as ensuring the full and effective participation of

indigenous women in identifying prevention mechanisms, strategies, measures and activities to address the root causes of violence against them, including those related to development projects shall be pursued and developed as an urgent concern. This shall include review of policies towards eliminating discrimination against them in law and in practice and in both the public and private sectors.

7. To develop and adopt, with the effective participation of indigenous women of a human rights-based access-to-justice practices and institutions by indigenous women that facilitate the resolution of development-induced violence against indigenous women
8. To establish an appropriate dispute resolution mechanisms with the effective participation of indigenous women taking into account their concerns including their views on the positive aspects and limitations of customary institutions, towards effective resolution of the grievances related to development projects.
9. To collect, dis-aggregate and systematize data on the prevalence, frequency, causes and consequences of violence induced by development projects against indigenous women and their communities and on the impact of measures to address such violence. Such data should be disaggregated by sex, race, age, ethnicity and other relevant characteristics. Qualitative research should also be intensified to cover the economic, political and social determinants and impacts of violence against indigenous women.

TO UN AGENCIES

1. To support efforts and initiatives of indigenous organizations, especially indigenous women in strengthening their capacities, conducting research, documentation and advocacy on the specific concerns of indigenous women in relation to access to justice and sustainable development.
2. To provide technical support in the conduct of data disaggregation in relation to the conditions of indigenous women and their specific issues and concerns
3. To establish and strengthen partnerships with indigenous organizations especially with indigenous women in addressing their concerns in relation to the protection, promotion and respect of their rights as indigenous peoples and as women.
4. Assist in the lobby or facilitate dialogues between indigenous peoples with the States for the recognition and respect of indigenous peoples rights as enshrined in the UNDRIP.
5. To ensure the disaggregation of data in the Human Development Report to reflect the situation of indigenous peoples and other communities impacted by state and corporate projects, including those undertaken through funding from the international financial institutions.

Development-induced violence, especially those due to development projects funded by international financial institutions (IFIs), have been documented and brought to the attention of these bodies. The fact that these are happening despite the presence of so-called safeguard policies is indicative of an ineffective mechanism for addressing issues that arise when the presence of indigenous peoples is established in such projects. The minimal engagement of indigenous peoples in grievance mechanisms of IFIs is also indicative of the problematic access of indigenous peoples to such remedies.

ENDNOTES

- ¹ http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER_print_Foma;.pdf
- ² Towards Inclusive Governance: Promoting the Participation of Disadvantaged Groups in Asia-Pacific, UNDP Regional Center Bangkok, 2007. Accessed 13 June 2012 at http://asia-pacific.undp.org/practices/governance/documents/Towards_Inclusive_Governance-200805.pdf
- ³ Licadho map (get details)
- ⁴ She negotiates and mediates between the people and the spirit world for guidance and goodwill to achieve happiness, prosperity and solutions to problems. Besides, she embodies the spirit of the people thus literally seen as the representative of the spirit world.
- ⁵ As per interview of researcher with an Iban woman from Rumah Nyawin, September 10, 2012, Bintulu, Sarawak.
- ⁶ Ibid.
- ⁷ The barangay is the smallest political unit in the Philippines and the head is called the barangay captain.
- ⁸ The position is inherited by the 1st born, male or female.
- ⁹ Vilabouly encompasses 55 villages in the lowlands, and 46 villages in the mountainous region.
- ¹⁰ Decree No. 07/PM was issued by the Prime Minister in 19 April 2004 to operationalize Decree No. 04/PM issued earlier on 12 April 2002 which gave instructions on the relocation and sedentary livelihood for nomadic people living in remote mountain areas
- ¹¹ In the 1995 national census of Laos, it is listed that the Kri had a population of only 739. Source: <http://joshuaproject.net/people-profile.php?peo3=11241&rog3=LA>.
- ¹² National Park Act of Thailand (BE 2540) that states that "in a National Park, no one is allowed to take hold or own any land, build anything or slash and burn the forest area." Further, the law states that in case of a violation, officials are authorized to order the perpetrators to destroy or remove such buildings or adjust the area back to its original state. The enforcement of these laws forces indigenous peoples to repeatedly move out of their homelands and arable areas, despite longstanding prior settlement and use.
- ¹³ <http://www.bangkokpost.com/print/280541/>
- ¹⁴ "Karen People forcibly expelled from the Kaeng Krachan National Park in Thailand", Forest Peoples Programme, January 31, 2012, <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/01/karen-people-forcibly-expelled-kaeng-krachan-natio>¹⁴
- ¹⁵ <http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2011/statement-karen-network-culture-and-environmen>
- ¹⁶ Coalition on Racial Discrimination Watch (2012).
- ¹⁷ Pga K'nyau Knowledge on Rotational Farming in Northern Thailand: A Case study of three Karen villages, IKAP-Network, Feb. 2006, Maria A. Salas, ed., Chiang Mai, Thailand.
- ¹⁸ The complex's steep forested slopes contain the headwaters of all of West Timor's major rivers, such as the Benain and Mina, as well as several feeding into East Timor. It also plays an important role in the culture and economy of the villages located in the area, serving as grazing area for livestock and a source of household water, building materials, and fuelwood.
- ¹⁹ I.e., in the so-called amaf council: Amaf is a traditional power holder whose duties are to solve problems in the community related to tribal ceremonials as well as conflicts that occur on a daily basis.
- ²⁰ Altogether, there are 19 marble mines scattered around Timor.
- ²¹ However, the region is an important area that feeds into two large riverbeds on Timor Island, Benanain and Noelmina, and hundreds of springs greatly depend on the existence of limestone/marble mountains in Molo.
- ²² <http://vietnamnews.vnagency.com.vn/Sunday/Features/206841/disturbing-the-fairies-of-na-hang-.html>
- ²³ http://cmsdata.iucn.org/downloads/parc_eia_tuyenquang.pdf
- ²⁴ http://cmsdata.iucn.org/downloads/parc_eia_giamriver.pdf
- ²⁵ More information about the Tuyen Quang Hydropower Project can be accessed at http://cmsdata.iucn.org/downloads/parc_eia_giamriver.pdf and http://cmsdata.iucn.org/downloads/parc_eia_giamriver.pdf
- ²⁶ <http://www.kachinnews.com/news/2438-activists-urge-obama-to-end-funding-for-sham-kachin-tiger-reserve.html>
- ²⁷ There are seven Kachin villages in the middle project area, Ban Kawk village being one of them.
- ²⁸ One woman was shot in the leg, six local residents were arrested
- ²⁹ The company that has close ties to military generals was founded by Htay Myint, one of Burmas leading real estate tycoons. His close relationship with former regional commander Maj-Gen Ohn Myint opened Yuzana's access to Hukawng, and in 2010, the company was granted a license to launch its operations. Htay Myint was subject to sanctions by the EU and the US due to his tight connection to the military.
- ³⁰ Supported by Bawk Ja (Bauk Ja), a representative of the farmers from the National Democratic Front. In the same year, community groups and farmers from northern Burma demanded the US government to stop funding the tiger reserve.
- ³¹ <http://kdng.org/news/34-news/271-yuzana-company-says-it-will-compensate-the-confiscate-land-in-hugawng-valley.html>
- ³² <http://www.kachinnews.com/news/2438-activists-urge-obama-to-end-funding-for-sham-kachin-tiger-reserve.html>

³³ Article 66: “Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”

³⁴ Article 67: “The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.”

³⁵ Before 1997, laws and policies in Thailand did not provide for any participation of people living in protected areas within the demarcation process, but the power to establish protected sites lay only with the government. For the declaration process, satellite pictures were used without any detailed survey of the areas in order to determine actual areas. Instead of identifying settlements and agricultural land use by indigenous peoples. National Human Rights Commission, “Report on the Situation of Human Rights Violations in Land and Forest Management, 2002-2005, c.f. IMPECT, 2009

³⁶ <http://www.bangkokpost.com/print/259158/>

³⁷ <http://www.bangkokpost.com/print/254877/>

³⁸ <http://www.bangkokpost.com/print/280541/>

³⁹ A subcommittee of the National Human Rights Commission had resolved to order the National Park to cancel the projects and review its plan to expand the park in preparation for declaring it a world heritage site and to allow the participation of local and indigenous people for the protection of their rights.

⁴⁰ <http://www.bangkokpost.com/blogs/index.php/2012/05/11/forest-dweller-s-fight-for-justice?blog=64>

⁴¹ Art. 31 of the Constitution states that: “the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and conventions related to human rights, women’s and children’s rights. According to Article 35 “Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation”.

www.ngoforum.org.kh/docs/publications/IMRP_FPIC_Report_English.pdf

⁴² see 2001 Land Law, Article 23-28,

http://www.landgovernance.org/system/files/Cambodia_landacquisition_impacts_indigenouspeople.pdf

⁴³ The 2001 Land Law classifies land into 4 main categories: state public property, state private property, private property and collective property. It has been criticized for leaving too much room for interpretation in terms of indigenous communities land titling, in particular with regard to the classification of land. Lack of distinction between state public and private land, for example, poses a challenge to the registration of land ownership.

See also: http://www.landgovernance.org/system/files/Cambodia_landacquisition_impacts_indigenouspeople.pdf

⁴⁴ The Rights of Indigenous Peoples in Cambodia, submitted by the Indigenous Peoples NGO Network, to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), February 2010, www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf.

⁴⁵ At the time of writing, 43 communities had been recognized by the Ministry of Rural Development, 20 had received legal community registration from the Ministry of Interior, and three have registered communal land. As the process can take years and has to pass various administrative stages, the indigenous communities’ attempt to gain legal recognition has often been stalled, see also: www.ngoforum.org.kh/docs/publications/IMRP_FPIC_Report_English.pdf

⁴⁶ The Rights of Indigenous Peoples in Cambodia, submitted by the Indigenous Peoples NGO Network, to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), February 2010, www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf.

⁴⁷ Chapter V (Social Justice and Human Rights): SEC. 26.

⁴⁸ This is further reinforced by the provisions of Section 9 of the Native Customs (Declaration) Ordinance 1996, which states: “If any provision of a code is found to be repugnant to or is inconsistent with a provision of any written law, the latter shall prevail”.

⁴⁹ <http://www.komnasperempuan.or.id/en/about/profil/>

⁵⁰ “Metalegal strategies, or tactics, are creative actions employed by the basic sectors to further their particular interests in cases where the relief or remedy provided by law is too slow or non-existent. They are, therefore, not prescribed by law nor are they prohibited by it. Metalegal strategies derive from the basic rights of the people to express themselves freely, by speech, press, and assembly, and to petition the government for redress of grievances. They are also anchored on the freedom to form associations, and, most of all, on the right to self-determination” in Participatory Metalegal and Legal Processes for the Coastal Development Plan of Bolinao, Pangasinan, Wenceslao N. Asido Jr.* and Liana Talaue-McManus, Marine Science Institute, College of Science

University of the Philippines, Diliman, Quezon City 1101 Philippines,

⁵¹ The Rights of Indigenous Peoples in Cambodia, submitted by the Indigenous Peoples NGO Network, to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), February 2010, www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf.

⁵² Participatory Poverty Assessment: Lao People’s Democratic Republic, 2002.

⁵³ <http://www.ruralpovertyportal.org/country/home/tags/laos>

⁵⁴ <http://www.bangkokpost.com/blogs/index.php/2012/05/11/forest-dweller-s-fight-for-justice?blog=64>

⁵⁵ Page 22, E/CN.6/2012/16

⁵⁶⁵⁶ See: Art. 30, ICERD, and Art. 7, 13a Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

⁵⁷ The Rights of Indigenous Peoples in Cambodia, submitted by the Indigenous Peoples NGO Network, to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010), February 2010.

⁵⁸ <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.IDN.CO.3.pdf>

⁵⁹ Article 19, UNDRIP

⁶⁰ Article 23, UNDRIP

⁶¹ Article 8j

⁶² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/450/81/PDF/G0945081.pdf?OpenElement>

⁶³ Art. 7, Art. 13/a, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

⁶⁴ “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”

⁶⁵ Nowadays, there are still around 296.000 indigenous peoples without citizenship in Thailand (NIPT, AIPP, IWGIA, 2010; Coalition on Racial Discrimination Watch, 2012).