

Chapter 3: Impact at the National Level

Changes at both the policy and programmatic levels, as well as in the larger contextual environment of individual countries, can be discerned between 1995 and 2004 with respect to the rights of indigenous peoples in Asia. However, the declaration of the Decade per se exerted a minimal influence on these changes. Although there were some celebrations of the Decade, these were not a major factor in facilitating change. Instead it has been changes in political systems and regimes, the strength of indigenous peoples' movements, and the influence of international multilateral and bilateral agencies that have been pushing for policy reform, to which changes in the rights and livelihoods of indigenous peoples can be attributed.



D. Sherpa

General Awareness of the Decade

While general awareness of the Decade was low, a significant level of awareness was raised among certain groups (e.g., within the UN system and indigenous representatives and activists). Maximum awareness of the Decade was found among indigenous representatives and activists who had the opportunity to participate at the international level in various meetings or trainings organised by the UN. In places where these representatives went on to organise further programmes for awareness creation, training, and other forms of capacity building, some indigenous groups, many of which are politically active in negotiating with the state at the national level for the rights of indigenous peoples, were also aware of the Decade. Much of this awareness was concentrated in urban areas or areas where indigenous communities are found in large numbers. However, in general, awareness of the Decade did not permeate to the common indigenous person at the grassroots.

Although the Decade raised considerable awareness on indigenous peoples' issues within the UN system, there was little awareness of the Decade among staff of UN agencies who were not directly involved with indigenous programmes and projects. This reflects a larger problem of lack of cohesion within the UN system and, particularly, the limited influence of the UN over nation states on sensitive issues such as identity and citizenship. The UN agencies that were most aware of the Decade and proactive about indigenous peoples' issues were the United Nations Permanent Forum on Indigenous Issues (UNPFII) and International Fund for Agricultural Development (IFAD).

Over the years, awareness of indigenous peoples and some of the issues that they have been raising has increased considerably in civil society at large. However, direct awareness of the Decade in civil society was low. This was found to be true even among academics who work on social inclusion.

Workshops and meetings held to undertake the present assessment were often the first time that indigenous peoples and others learned of the Decade. This absence

In general, awareness of the Decade was surprisingly low among staff members of international agencies, government organisations, and indigenous people who were not working directly on indigenous peoples' issues.

of awareness was attributed by several indigenous activists who had participated at the international level to the lack of funds available for awareness raising. While funds are indeed a major constraint, it seems that indigenous activists involved in deliberations at the UN and international level get caught up in a meetings and conferences conveyor-belt, which becomes an occupation in itself. Ultimately, the issue of awareness of the Decade and responsibility for creating awareness brought up a larger question of who was the Decade really meant for? One indigenous activist who has been active at the international level contended that the Decade was meant primarily for negotiations within the UN and at the international level. He asked, 'what is the point in taking the Decade to the grassroots unless the Draft Declaration is adopted?' Perhaps this calls for a more conscious discussion of this question among indigenous activists.

Impact of the Decade

Strengthening solidarity among indigenous peoples

The most positive impact of the Decade is arguably the creation of heightened awareness of indigenous peoples' issues at the international level. The creation of formal spaces within the UN system, such as the Permanent Forum on Indigenous Issues, has enabled indigenous activists from different parts of the world to come together and has opened avenues for dialogue with national governments. This has not only engendered greater solidarity among indigenous peoples, but also given their voices and the issues raised a certain moral legitimacy, force, and urgency. In the words of an indigenous activist from India, 'we are now more confident in asserting our rights knowing that many other indigenous people around the world are facing similar problems'. The 'International Day of Indigenous People', 9 August, is celebrated by indigenous peoples' organisations with great gusto in most countries and has played an important role in spreading awareness about indigenous peoples issues. Even though most states do not afford official legitimacy to the use of the term 'indigenous peoples', increased international pressure, as well as national level advocacy, has resulted in indigenous peoples being acknowledged indirectly by representatives of the state. One example of this can be found in Bangladesh (see box).

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Prime Minister's Message on the International Day of the World's Indigenous People

Despite the Government of Bangladesh's denial of the existence of indigenous peoples and lack of participation in the UN Decade of the World's Indigenous People and the International Day of the World's Indigenous People, on the occasion of the Indigenous People's Day in 2000, the then Prime Minister of Bangladesh Ms Sheikh Hasina mentioned to the magazine 'Sanghati' that Bangladesh is home to 2 million indigenous people. Similarly, the present Prime Minister Begum Khaleda Zia, in a message to the same magazine on the same occasion in 2003, also acknowledged the significant contribution of indigenous people to the liberation war and to the country's welfare.

(Drong et al. 2006)

An indicator of this increased solidarity is the presence of several indigenous peoples' networks operating at different levels, many of which were born in the course of the Decade. These active networks include:

- Asia Indigenous Women's Network (AIWN) – Asia wide
- Asian Indigenous and Tribal Peoples Network (AITPN) – Asia wide
- Asian Indigenous Peoples Pact (AIPP) – Asia wide
- Assembly of Indigenous and Tribal Peoples (AITT) – Thailand

- Bangladesh Adivasi Forum (BAF) – Bangladesh
- Centre for Organisation Research and Education (CORE) – Active in Northeast India
- Chin Human Rights Organization – India, Bangladesh, and Burma
- Cordillera Peoples Alliance – Philippines
- Highlanders Association – Cambodia
- Indian Confederation of Indigenous and Tribal People (ICITP) – India
- Indigenous Knowledge and Peoples (IKAP) (for mainland montane Southeast Asia [MMSEA] – China, Burma, Cambodia, Laos, Vietnam, and Thailand)
- Indigenous Peoples Alliance of the Archipelago (AMAN) – Indonesia
- Indigenous Peoples Forum – Cambodia
- International Alliance of Indigenous and Tribal People of Tropical Forests (AITPTF) – worldwide
- Khmers Kampuchea-Krom Federation (KKF) – southern Vietnam
- Nepal Federation of Indigenous Nationalities (NEFIN) – Nepal
- Regional Initiative on Indigenous Peoples’ Rights and Development (RIPP) of UNDP – Asia and the Pacific
- Regional Network for Indigenous Peoples in Southeast Asia (RNIP) – Thailand, Malaysia, Indonesia, Philippines, and Vietnam
- Indigenous Peoples’ International Centre for Policy Research and Education (Tebtebba Foundation) – Philippines
- Thirteen Tribes Forum⁴ and Thai National Assembly of Tribal People⁵ – Thailand
- Tribal Women’s Network – Thailand

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The creation of networks has played an important role in advocacy at the national, regional, and international levels. Some of these networks have consultative status with the Economic and Social Council, which allows them to formally present stands on various issues. Some networks are contributing to a body of research on indigenous peoples’ issues in order to make them more widely available to the proceedings and reports of the UN system. The work of the Tebtebba Foundation is particularly notable in this regard. Tebtebba’s role is notable not only within the



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⁴ A learning network among leaders of the 13 tribes in Thailand: Karen, Khamu, Sakai, Palaung, Htin, Shan, Hmong, Mien, M’lawbri, Lahu, Lisu, Lu’a, and Akha

⁵ The main goal of this Thai National Assembly of Tribal People was to create a people’s movement to jointly solve the problems related to two issues: natural resource management and the personal legal status of Thai mountain people.

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UN; Tebtebba is also leading the Philippines in policy advocacy in relation to issues such as free, prior, and informed consent (FPIC) and education. Key achievements have also been attained elsewhere by other networks such as the Indigenous Peoples Alliance of the Archipelago (AMAN) of Indonesia and the Assembly of Indigenous and Tribal Peoples (AITT) of Thailand in 1999. AMAN was a prime-mover on indigenous peoples' policy advocacy and programme development. In addition, regional networks established earlier such as the Asian Indigenous Peoples' Pact (AIPP) and Asian Indigenous Women's Network (AIWN) have carried out significant activities such as the Second Asian Indigenous Women's Conference, held from 4-8 May 2004. Other activities carried out by various indigenous peoples' organisations, indigenous peoples' advocacy organisations, and NGOs range from education, training, awareness-raising, policy advocacy, research and publications, socioeconomic livelihood work, and campaigning. However, most of these networks are only able to influence national development and political agendas to a limited extent.

While networks have played an extremely important role, their solidarity with each other should not be romanticised, a point clearly seen during this assessment. Evidence was found of tensions and rivalry between networks, often reflecting deep intra- and inter-indigenous disputes touching upon issues of inclusion and exclusion among them. This also reflects the issue of what could be termed 'elite capture of indigenous peoples' voices' and the rotation of power among network members. Interviews with some respondents in India, indicated that the definition of indigenous peoples contributed to this rivalry in the Northeast. This is because in Northeast India, the situation is far more complicated than tribal/indigenous versus non-tribal/non-indigenous, with layered migration and political connotations attached to the term 'indigenous', and many people claiming to be indigenous. As a result, there is the possibility of groups of non-tribal people or powerful tribal groups dominating less powerful non-tribal or tribal groups. However, it must be noted that destructive disunities occur not only between indigenous peoples, but also in other movements. It is a priority for indigenous peoples to work towards overcoming this disunity as soon as possible.

Attitudes towards indigenous peoples in 'mainstream' civil society

Much has been written about the negative and pejorative attitudes towards indigenous peoples and the origin of these attitudes in colonial times. Anthropological literature on India, suggests that the concept of 'tribals' arose out of a colonial construct under which all those living on the margins of mainstream agrarian society, within the structure of the Hindu caste system, were delineated as 'primitive' and tribal. This discourse underlined the civilising mission of the colonisers and justified their appropriation of indigenous peoples' territories. However, discriminatory attitudes were prevalent in many pre-colonised and non-colonised societies to justify cultural superiority and economic exploitation.



Traits of being ‘barbaric’ and ‘uncivilised’ attributed to indigenous people spilled over into the post-Colonial era, explaining why the term ‘tribal’ is rejected by many indigenous people (for example, by the Jumma people of Bangladesh). The term tribal itself means ‘primitive’ as is stated in leading dictionaries. That is why the term is rejected and insulting. This continuing attitude was reflected in the policy arena by states pursuing policies of ‘assimilation’ towards indigenous peoples; seeking to bring them into the national ‘mainstream’ and neglecting to respect their cultural distinctiveness. This has changed in later years to a more ‘integrationist’ approach, at least in theory, if not in practice.

Discriminatory attitudes towards indigenous peoples in mainstream society are still widespread. The present assessment found this to be the case even among the staff of development agencies that work in implementation on the ground level, who blame what they deem to be ‘traditional’ and ‘backward’ attitudes of indigenous peoples for the lack of progress and change in the areas that indigenous people inhabit. Attitudes that over-romanticise indigenous peoples are equally discriminatory, these are also common among development agencies. This perhaps points to a need for an awareness programme to destroy myths among staff of development agencies at different levels. In many areas there continues to be a high rate of illiteracy among indigenous people, which in turn creates a lack of confidence among them to counter these stereotypes.

Nevertheless, evidence can also be found of changing attitudes among secular, liberal individuals and organisations in mainstream society. In Bangladesh, for example, a number of networks involving both indigenous and non-indigenous people have grown, such as the ‘Bangladesh Adivasi Odhikar Andolan’, which is working to support and create national opinion on indigenous peoples’ causes.

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Role of the Media

The role played by the media in covering the struggle and issues of indigenous peoples over the course of the Decade presents a mixed picture. While media coverage of indigenous peoples’ issues has increased compared to earlier times, still not enough space is allocated. This can be attributed to a number of structural factors.

Firstly, the coverage of social issues is receiving less and less space in a media increasingly driven by commercial and corporate concerns. As a result, the coverage of issues such as development-induced displacement or the struggle for forest rights, which have a direct impact on indigenous peoples’ lives, is greater in what are popularly understood as ‘left-leaning’ papers or alternative media, which tend to cater to a specific readership.

Secondly, when it comes to political coverage, it is only when a ‘critical event’ occurs or during time of political change when space opens for indigenous activists to assert their rights that they come into the spotlight. A current example of this can be found in Nepal, which is undergoing a political transformation from a monarchy to a federal republic. Indigenous peoples are using this time of change to press for adequate political representation in the new system, which is amply covered in the media.

A third structural reason for poor media coverage of indigenous peoples’ issues is that the media has traditionally been overwhelmingly dominated by non-indigenous people, who, in the past, have not necessarily been sensitive to indigenous peoples’ issues. This in turn links to the point made earlier about high rates of illiteracy among indigenous peoples, as well as the domination of the national media by

Indigenous People in the Media – Nepal

A survey conducted in 2000 among 104 mainstream publications in Kathmandu and 20 other cities in Nepal found that indigenous people constituted only 14 per cent of the editorial staff, 22 per cent of the managerial staff, and 12 per cent of columnists. These are low percentages considering that indigenous people account for approximately 35 per cent of Nepal's population.

(Gurung and Serchan 2006)

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mainstream languages, both of which are barriers to the entry of indigenous people into the media.

However, there were some positive changes during the Decade. Many indigenous peoples' organisations have started their own magazines in their own languages. The greatest advances can perhaps be seen in the medium of radio broadcasting. For example, in Nepal, the state run channel Radio Nepal has started broadcasting news in the languages of several indigenous communities such as Gurung, Magar, Newar, Tamang, Sherpa, Limbu, Maithili, and Bhojpuri, and an Association of Nepal Indigenous Journalists has also been established. Community radio is emerging as an increasingly popular and effective way of reaching far-flung communities and facilitating the active participation and initiative of indigenous peoples. Positive changes can also be observed in Vietnam, where radio and television programmes are now available in 14 ethnic languages. The Government of Vietnam has also decided to provide, free of charge, 17 newspapers and magazines in various languages for the most remote hamlets, villages, and communes.

Specific coverage of the Decade in the media was poor and was largely limited to regional and local media and events such as the celebration of 9 August. However, there are some examples of indigenous peoples' issues receiving media coverage not directly connected to the Decade. There has been media coverage of issues (including indigenous issues) surrounding the Convention on Biological Diversity (CBD), and there has also been coverage of major policy-level changes such as the Scheduled Tribes: Recognition of Forest Rights Bill in India and the Indigenous Peoples Rights Act (IPRA) in the Philippines. There has also been increasing media coverage of the often violent struggles over land between states and indigenous peoples when national parks are created or when large dams displace millions of people. However, the extent of coverage accorded to these issues still has a long way to go to be satisfactory. An important area of capacity-building support identified by indigenous people is the need, on the one hand, to sensitise journalists to indigenous peoples' issues and, on the other, to train indigenous people themselves in techniques of influencing the media. Even though the media is key in general awareness raising, there is no mention of the way indigeneity/ethnicity is treated in the media, in other words how indigenous peoples are depicted, and whether ethnicity is mentioned as a factor in normal news, leading to the perpetuation of stereotypes.

Role of the Judiciary

The role of the judiciary in upholding the rights of indigenous peoples has been increasingly realised over the past decade with the rise in public interest litigation (PIL). Public interest litigation has been used to redress violations of environmental rights. However, the extent to which the judiciary has upheld the rights of indigenous people has been affected by the structural factor of its independence from the executive arm of the government and also by the frequent mitigation of often positive judgements by the economic imperatives of the state. In Bangladesh, for

example, the judiciary still needs to be separated from the executive. The role of the judiciary also needs to be highlighted in the context of the discussion of the legitimacy of customary laws versus state laws, an area that remains contested and, indeed, strikes at the heart of the issue of the recognition of the collective rights of indigenous peoples. The issue of taking special measures or providing privileges for indigenous peoples (giving them other rights than mainstream society) goes beyond just customary law, and is a key issue in the indigenous peoples debate.

There are also quite a few examples of the positive role played by the judiciary. In the Chittagong Hill Tracts (CHT) in Bangladesh, a high level court upheld customary law in a dispute over the succession of the chieftainship of the Bohmong circle. In accordance with the customary laws of the Bohmong circle, the court ruled against the government's recognition of one family member as the chief. This decision has been regarded as a positive precedent in protecting customary law and upholding the rights of the indigenous peoples in the CHT. A crucial question, however, is whether or not the Bangladesh courts will be as sympathetic towards customary resource rights as they have been in the case of customary personal laws. The positive role that the judiciary can play in the CHT is still constrained by the fact that civil and criminal judicial authority, now vested in civil servants, has still not been transferred to the judicial officers of the Ministry of Law and Justice, despite the passing of the CHT Regulation (Amendment) Act of 2003.

Judicial enquiries have also been made in cases of abduction of indigenous persons by non-indigenous persons in the CHT. However, the perpetrators of human rights violations have gone unpunished, as reports of enquiry commissions have not been published. The case of the kidnapping of Kalpana Chakma in 1996 is evidence of this (Drong et al. 2006).

The most well-known case of the judiciary upholding the rights of indigenous peoples is the Samata judgement 1997 in India, which asserted the rights of tribal people over their land and resources, as enshrined in the Indian Constitution (Fifth Schedule). However, this judgement was overruled in 2001, with the economic policy of the country taking priority over social issues (see box).

In India, the period from 2000 onwards saw the governments of different states, particularly in Andhra Pradesh, Jharkhand, Chhattisgarh, and Orissa, which have large tribal populations, granting numerous mining leases to multinationals to exploit mineral resources in Scheduled Areas.

The BALCO Judgement 2001, India

In 2001, the Supreme Court of India upheld a judgement sanctioning the transfer of 51 per cent of the shares in the Bharat Aluminium Company (BALCO), a public sector company, to a private company, in violation of the laws of the land, thereby over-riding the Samata judgement, which had prohibited the alienation of tribal land to non-tribal ownership. When land was acquired from local tribal people in Madhya Pradesh for BALCO it was legitimised as being taken for a public purpose. However, this is not permissible according to the Samata judgement as this is a private purpose and so tribal people have rights over their land and resources. However, through the BALCO judgement it became permissible to transfer land belonging to tribal people to a non-tribal entity.

The BALCO sale also violated provisions of the Land Acquisition Act (a central government act), which lays down procedures to be followed for the compulsory acquisition of land in India.

(Kujjur 2006)

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Another major case, which is well known internationally, in which the judiciary did not finally uphold the rights of tribal people is that filed by the Narmada Bachao Andolan against the Sardar Sarovar project in central India. The Narmada Bachao Andolan has been contesting the height of the Narmada dam, but the Supreme Court has not stopped the raising of the dam. Instead it has only insisted upon rehabilitation.

Even where the judiciary has passed judgements supporting the rights of indigenous peoples, compliance by the administration is often poor (Indian Social Institute 2006, pp 77-78), mitigating against the potential for positive change that inheres in the judiciary.

The assessment also found that in other countries, like Nepal for example, the judiciary is still considered by indigenous peoples to be unsympathetic and conservative. This is borne out by the Supreme Court's decision to be cautious in certain matters, as well as its decision about the languages of indigenous nationalities. On 1 June 1999, the Supreme Court struck down the decision of the Kathmandu Metropolitan City to use Newari at the local level as unconstitutional. The Court thus barred the use of what the 1990 Constitution has called 'national languages', which include the languages of indigenous nationalities, at any level of government.

Land Rights and Access to Natural Resources

Common issues

Land alienation and dispossession of rights to ancestral territories have been uniformly cited as among the biggest problems confronting indigenous peoples in the world today. The demand by indigenous peoples for self-determination and the recognition of collective rights (the main issues on which there has been no consensus, stalling the passing of the Draft Declaration on the Rights of Indigenous Peoples) links directly to the issue of land rights. The issue of land rights is highly contested, not only as it relates to the ownership of land, but also to access to natural resources. Although participatory regimes of natural resource management have found wide acceptance in policy and practice, the rights accorded to indigenous and other communities remain rights of concession. Further, little analysis can be found on the impact of some participatory regimes that have been widely praised, such as community forestry, specifically as they relate to indigenous peoples. A case from Nepal shows that community forestry can displace indigenous peoples from the land they occupy and depend on for their daily subsistence, and that even if the land is still legally accessible to them, they are forced to use it for permanent forestry instead of traditional purposes.

Indigenous peoples' rights to their land and territories are not only undermined by conservation imperatives, but also exponentially by extractive industries such as mining. As mentioned earlier, neo-liberal economic policies of states reign supreme, posing an ever-more urgent challenge to the rights of indigenous peoples. The lands, forests, and territories of indigenous peoples are still being acquired to build dams, create national parks and protected areas, and for mining and mineral extraction, without 'free, prior, and informed consent'⁶ of indigenous peoples. The issue of internal displacement of indigenous peoples continues to remain inadequately addressed. Where compensation, resettlement, and rehabilitation are provided, they are usually provided in a way that destroys the social fabric of indigenous communities, for whom the symbolic significance of their lands in the spiritual and cultural sense is as important as its material value.

⁶ Agencies like the World Bank, which provide substantial amounts of financing for large infrastructure and dam projects, still recognise only 'free, prior, and informed *consultation*', not consent.

Little account is taken of indigenous peoples' traditional livelihoods, which are often forest-dependent or based on shifting cultivation or nomadic herding. The discourse around these livelihood forms has become dominated by arguments that they are 'primitive', unproductive, and environmentally unsustainable. Most governments have put in place policies and orders that discourage or place outright bans on shifting cultivation.⁷

The Resettlement of the Miao in Southwest China

A visit made to Napo county in the Guangxi province in Southwest China found a problem with ethnic minorities not wanting to stay at the resettlement sites provided by the government. The two ethnic minority groups found in this township are the Miao and the Zhuang. The Miao usually live on the 'top of mountains' as one county official put it, while the Zhuang inhabit the valleys. The Miao are in the minority and one of the poorest ethnic groups. The areas where they live are remote and not connected to electricity, roads, and public drinking water supply systems. The government, as part of its poverty eradication programme, has been trying to resettle the Miao in sites in the valleys to bring them down from the mountains. Their practice of swidden agriculture is discouraged and they are targeted for the adoption of standard poverty alleviation packages and programmes. However, many of the Miao, especially those of the older generation, do not stay for long at the resettlement sites and try to return to their own way of life and ancestral lands. A dominant perception of the Miao among the county officials is that the Miao are 'not capable of taking up activities related to the IFAD project, are lazy, drunks and gamble', and that this is why they return. While symptomatic of a larger problem of resettlement, this particular case also demonstrates the need for development agencies to go beyond the delivery of standard packages and instead design and facilitate more innovative and flexible projects in order to be able to reach the poorest and remotest of communities.

(Field visit made as part of the assessment, July 2006)

In the case of displacement, indigenous peoples are often confined to subsistence agriculture and provided with barren and uncultivable resettlement sites. Sometimes this leads to the indigenous people going back to their own lands and territories, which often results in violent confrontations with state authorities.

Several laws and policies were passed in the course of the Decade that impact on land rights and access to resources of indigenous peoples. Not all of these laws and policies are negative, and some create spaces that did not previously exist for the recognition of indigenous peoples' rights to their ancestral domains. These laws and policies are the outcome of the increased mobilisation of indigenous peoples in the past 20 years to secure their rights to land. While success has been achieved in some countries, it is in its infancy in others. State recognition of indigenous peoples' rights to land and resources varies quite significantly from country to country in Asia. Sometimes the right is simply not recognised, whereas other times even though it is recognised, indigenous persons are not given access to it, because they are not able to fulfil the bureaucratic requirements.

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⁷ ICIMOD, with the support of IFAD and five partner countries (Bangladesh, Bhutan, India, Myanmar, and Nepal), devised a new, unbiased proposal for an initiative on shifting cultivation to try to comprehend why hundreds of millions of farmers continue this practice, despite rigorous and extensive government efforts to eradicate the tradition. The study looked at farmers' innovations that helped maintain the system despite a non-supportive external context. The goal was to increase awareness about shifting cultivation, develop a platform for sharing of ideas, and develop comprehensive policy recommendations to aid governments (Kerkhoff and Sharma 2006).

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Preliminary analysis has found that much more information needs to be disseminated to communities to enable them to understand the legal and policy regime and how to assert their rights within it. This is particularly important as there is evidence of alienation of the lands of indigenous communities at the hands of powerful and elite indigenous individuals who often collude with external commercial forces to serve their personal interests. The issue of inequities within indigenous communities, as well as intra-indigenous conflict, needs to be given much more attention in the contemporary context.

While these are some of the common, over-arching issues relating to the issue of land-rights and access to natural resources, different countries have different policy regimes and laws. The section below provides a brief outline of some of the major contemporary issues pertaining to land rights in the countries covered by this assessment. This outline is by no means exhaustive. As this is a synthesis report, only significant issues that have come up, particularly within the frame of the Decade, have been highlighted.

Bangladesh

In the CHT, the issue of state-sponsored migration of Bengali Muslim settlers from the plains to the lands of the Jumma people, despite the CHT Peace Accord of 1997, continues to be a pressing one. Since 1979, more than 400,000 Bengali Muslims have migrated to the CHT with land-grants, rations, and cash given by the government as incentives. As no cultivable land was vacant for settlement, the settlers have forcibly occupied the lands of the indigenous Jumma people.

Other projects that have disenfranchised indigenous peoples in Bangladesh include the commercial forestry projects in the plains, implemented with financial support from the Asian Development Bank (ADB), and the creation of rubber, tobacco, and other mono-plantations in the CHT on long leases of land from the indigenous peoples. The impact of these on indigenous peoples' livelihoods, as well as on biodiversity, needs further research.

Political Settlements in the CHT, Bangladesh

As recently as January 2005, Bengali Muslim settlers from the Maischari cluster village in Khagrachari district of the CHT constructed houses on the recorded lands of the indigenous Jumma people in the Gamaridhala area with the help of the army. A huge military presence continues to be an issue for indigenous peoples in many areas of Asia.

(Drong et al. 2006)

Cambodia

A progressive land law that protects the rights of indigenous peoples to their land was passed in Cambodia in 2001. The Land Law of 2001 allows indigenous communities to manage their community and immovable property according to their traditional customs before their legal status is determined under a law on communities. It also recognises shifting cultivation as one of the agricultural methods practised by these communities and grants ownership of immovable property to indigenous communities as collective ownership.

Compared to the land laws of other countries, this law is extremely positive. However, two points need to be noted about this law. Firstly, it is qualified by the principle of the eminent domain of the state and, secondly, notwithstanding this law, around

4.7 million hectares of the 18.1 million hectares of Cambodia's total area are currently on the concession list of 21 local and international logging companies. Among these concession areas, around 2.4 million hectares (about 50%) are located in four north-east provinces where indigenous highland populations reside. Furthermore, many current practices in land use and disposal are against the Land Law 2001, with many cases of land sales being approved by individual community members in an environment of insufficient information and, often, threats and intimidation. There are also cases where the lands of indigenous peoples are being taken over by non-indigenous individuals with power and connections, without the approval or acceptance of the indigenous communities.

There has been a dramatic increase in the immigration of Khmers to the highlands, encouraged by policies of economic development, and facilitated by new roads and other infrastructure. Between the 1992 Census and the National Census in 1998, the population of Ratanakiri Province grew by around 41 per cent and by 82 per cent in the provincial capital Banglung (Ironsides 2004).

The case of Cambodia illustrates the need for awareness creation and capacity building of indigenous groups about the provisions of new laws and their rights under them, instead of assuming that the passing of a law will necessarily reverse earlier detrimental situations. The lack of enforcement of the 2001 Land Law is also a result of the lack of access to information on land rights.

China

Between 1998 and 2000, two significant changes in forest and land resource tenure were announced in China, nullifying all previous forest and land tenure arrangements:

- A ban was placed on commercial logging in the upper reaches of the Yangzi river under the Natural Forest Protection Programme.
- The Sloping Farmland Conversion Programme was implemented, which seeks to decrease cultivation and increase forest cover on all slopes over 25 degrees.

Both of these policies are problematic from the perspective of indigenous peoples and ethnic minorities. In the case of the Sloping Farmland Conversion Programme, although the State will compensate farmers for the loss of grain yields in the form of grain and cash for education and health services, this is only for a period of eight years. This leads to uncertainty in the long term. The ownership of trees already being grown by people is not clear. The old livelihood system has been destroyed, without a clear vision for what will happen after eight years. It also effectively bans all swidden (shifting) cultivation, which has been the mainstay of many indigenous communities, even though this practice provides rotational forest cover on the land used for agriculture. This, in turn, has tremendous implications for the survival of traditional and staple food varieties, as the case of the Dulong illustrates (see box).

For many years, farmers gained development opportunities from forestry operations. After the ban on commercial logging, farmers not only lost income from timber sales, but also from transportation, restaurants, and lodging facilities. A study estimated that throughout Yunnan the logging ban would decrease household incomes by around 200 Yuan and put 2,525,000 farmers back below the poverty line (Zhao 2001).

Finally, the huge construction of infrastructure under programmes for poverty alleviation has had implications for the land rights of ethnic minorities.

Cambodia's Land Law of 2001 is a progressive law that protects the rights of indigenous peoples to their land.

Loss of Agrobiodiversity in Dulongjiang

The Dulong people of China traditionally practice swidden (rotational) agriculture. A study of the impact of the Sloping Farmland Conversion Programme on agrobiodiversity in Dulongjiang reported the following:

- Since implementation, many crops and varieties that used to be planted in the swiddens have basically disappeared. The survey identified 49 crop varieties. The seeds of 5 varieties have totally disappeared, the seeds of 17 varieties are kept by very few households, and the seeds of 8 varieties are still planted regularly. The remainder are no longer planted.
- Many of the varieties whose seeds still survive can only be planted in swidden fields and many seeds will lose their viability if they are not planted soon.

(Centre for Biodiversity and Indigenous Knowledge 2006)

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India

In India, the principle of the ‘eminent domain of the State’ – whereby the state in the name of ‘public purpose’ (although justified as in the ‘national interest’) can acquire any and all land – remains supreme, overriding, when invoked, all other land laws, provisions, and policies. It is under this principle that lands are acquired to build infrastructure, mines, dams, and other projects by Indian and foreign companies (see box). ‘Public purpose’ has not been defined in the 113 years since the Land Acquisition Act was enacted in 1894. However, in 1998 a draft Land Acquisition (Amendment) Bill was introduced by the Government of India, which provided for ‘just’ compensation. While the first part of the eminent domain has been followed unabated, compensation has been pushed to the back burner and the draft Land Acquisition Bill has yet to be passed.

The following are some of the causes of land alienation and lack of access to natural resources in India:

- **Government policy:** Government policies on forests, wildlife, and water, despite moving towards participatory management, have generally been detrimental to the rights of indigenous and tribal peoples, as they have been pushed out to make room for conservation areas. Ownership rights remain vested with the state (except in Northeast India, where the Sixth Schedule and Article 371 of the Constitution of India apply, see Chapter 4 on policy) and customary

Dams in Northeast India

The rights of indigenous peoples in Northeast India are being urgently threatened by the planned construction of hundreds of major dams. The Minister for Power, Government of India, outlined in the Rajya Sabha on 14 March 2002, plans to build ten major hydroelectric dams in the region with an estimated potential of 58,971 MW or 38% of the country’s total power (*The Assam Tribune*, 15 March 2002). On 24 May 2003, the former Prime Minister Mr A. B. Vajpayee launched the 50,000 MW Northeast Initiative (*The Telegraph*, 25 May 2003). In order to achieve this objective, 48 dams are being studied and a list of 156 has been prepared.

This decision has serious implications for the indigenous peoples of the region because most of the planned dams are in tribal areas. Of the 156 possible dams in seven states, 59 are in Arunachal Pradesh alone where most of the tribes live according to their community-based customary law, which is in conflict with the land laws that only recognise individual ownership.

(Fernandes et al. 2006)

Land Alienation, Immigration, and Conflict in Northeast India

An important cause of land alienation and, by implication, conflict is immigration. Historically, immigration is not new to Northeast India. For over a thousand years nomadic communities from East and Southeast Asia have settled in the region and integrated themselves with its peoples. Conflict did not exist at the time of their settlement because resources were abundant so their immigration did not cause a major loss of livelihood for those already resident. The myths and languages spoken in the region substantiate the assertion that it is a region of immigrants. The region continued to witness immigration in the 19th and 20th centuries under colonial policies. Such immigration is now the basis of many conflicts. Prominent among such immigrants are the Adivasi and other tea garden workers. They were displaced from Jharkhand and its neighbouring regions, impoverished by the Permanent Settlement of 1793, and brought to Assam as indentured labours to work in the tea gardens.

Since the late 1970s, Bangladeshi Muslims, and Hindus from Bangladesh and Nepal, have also come to the region. As a result of the immigration of Bengali Hindus, the tribal population of Tripura has declined from 58% in 1951 (Sen 1993, p13) to 31% today. According to estimates, there are more than 200,000 Burmese refugees living in countries neighbouring Burma, over 40,000 of them in Northeast India, mostly in Mizoram.

Both push and pull factors facilitate immigration and encroachment. The push factors are poverty, feudalism, and lack of land reforms in the immigrants' place of origin, e.g., Bihar, Nepal, and Bangladesh. A major pull factor is that the legal system in the Northeast encourages encroachment on tribal common property resources, which the formal law treats as State property. For example, Bihari immigrants have encroached on what were called the wastelands of Karbi Anglong in Assam. The Karbis allege that they get pattas (deeds) by bribing State officials. The second pull factor is the need for cheap labour. Immigrants are usually willing to work at lower wage rates than locals. As most immigrants are agricultural labourers, they bring with them techniques of cultivation that they use to prosper and can grow up to three crops a year on the land. Most people in the Northeast are used to a single crop economy. The immigrants work for daily wages in construction and other areas at lower wages than the local people. The share-cropper system in regions like Assam deprived small farmers of the motivation to grow a second crop, as half or more of what they grew went to the zamindar or landlord. In the hill areas, the system of jhum kept the communities at a single crop.

Conflict results when local people try to defend their livelihood by initially reacting to all outsiders who they feel prosper at their cost. When shortages overtake them, local people compete among themselves for the remaining scarce resources.

(Fernandes et al. 2006)

rights to land that have not been recorded are generally not recognised. The rights of indigenous and tribal people to access forest produce, for instance, are negatively impacted by the diversion to industries with a preference for plantations instead of mixed forests and the nationalisation of non-timber forest products (NTFPs). Although the government has set up tribal cooperatives in many states to help indigenous people, these cooperatives have become just another agency of exploitation as they procure most tribal products far below market prices.

- **Immigration:** An important cause of land alienation and the resulting conflict is immigration. This is particularly an issue in Northeast India, where much of the violent conflict is partly rooted in the protection of lands and territories against outsiders in defence of ethnic identities.

- **Mining and mineral extraction:** A major cause of land alienation among tribal and indigenous people in India is state encouraged mining and mineral extraction. As mentioned earlier, in contravention of the Samata Judgement, state governments have been leasing out tribal lands to private and multinational mining companies. The governments of Orissa and Jharkhand have already signed 86 memorandums with multinational companies to set up steel, aluminium, hydro, and other mineral-based industries in predominantly tribal inhabited regions. Police atrocities towards tribal people protesting mining projects in Orissa, for instance, have been widely reported in the press.
- **Indigenous landlordism:** An increasing trend seen particularly in Northeast India is what has been called 'indigenous landlordism' (Ironsides 2004). There are several cases of the privatisation of communal land encouraged by government bank loan policies and programmes promoting cash crops, which are manipulated by local indigenous elites to their own advantage.

Indonesia

Land is one of the most contested natural resources in Indonesia. The concept of the eminent domain of the state is also found in Indonesia and can be traced back to Basic Agrarian Law, which came into place over forty-five years ago. The concept of state domain inheres in the idea of hak menguasai negara (controlling right of state), according to which the state does not own lands, but has the highest authority to govern them for the prosperity of all peoples. However, the state, in practice, acts as a legal person, which entails the right to own land. For this reason, the state in Indonesia claims all untitled land as its property. This concept also has an odd position with respect to masyarakat adat (indigenous peoples) and hukum adat (customary law), where the latter must not be against national and state interests. This conditionality also applies to hak ulayat (customary rights). This policy has been used to pursue the pro-market policies contained in Government Regulation No. 40/1996, wherein rights over land can be taken over for investment in commercial enterprise. The impact of this has been most visible in plantations, one of the most popular commercial activities in Indonesia that is very destructive to the rights of indigenous peoples. Land is appropriated mostly through repressive means, including forced eviction, the signing of blank letters of agreement, and below market price compensation. The booming oil palm industry in Indonesia is underpinned by this policy.

Some of the positive and negative policies and laws of the Indonesia Government in relation to the rights of indigenous peoples over land and natural resources are summarised below:

- **Land registration:** In 1997, the Government initiated a scheme of land registration through order No. 24/1997 in order to provide land security. However, land registration clearly privileges private property over communal property.
- **Customary land rights:** In 1999, as an outcome of the advocacy of indigenous peoples and the fall of the Suharto regime, the government issued Regulation No. 5/1999 in relation to the Guidelines on the Settlement of Customary Land Rights of masyarakat hukum adat. This policy is progressive and allows for the recognition of customary rights. However, the Regulation has a clause that requires research to prove the existence of masyarakat hukum adat, which can hinder the recognition process. It is also important to note that the final outcome of this process is to identify indigenous lands on land-use maps and not to give communal land titles.

The concept of the eminent domain of the state is also found in Indonesia and is used to appropriate land for plantations, often through repressive means.

- **Forestry:** In the realm of forestry, during the Decade Indonesia saw a new law, No. 41/1999, which marked a positive paradigm shift by recognising the existence of communities living in and around forests, including indigenous peoples. However, here too, the law employs a conditional recognition approach. The other loophole in the law is that it claims indigenous forest lands as forest areas, unless they have land titles. It defines indigenous forest lands as state forests that lie within the territory of masyarakat hukum adat. Further, the passing of laws in 1999 also divided forests into various categories including the category of ‘production’ forests, which allows for logging concessions to feed the timber industry. In order to appease indigenous and other vulnerable people, a community-based forestry scheme was introduced in 2001. However, the scheme is only allowed in protection forests and production forests, which are not already let out, in effect giving indigenous communities only the ‘crumbs’.
- **Mining:** Mining is also a crucial component of the Indonesian economy. A new law was passed in 2001 that does not take into account the aspirations and needs of indigenous communities. The law requires that a contract between a concessionaire and the Executive Board of Oil and Gas Mining, on behalf of the state, shall include a clause on community development and the recognition of indigenous rights (Article 113p). However, it is not clear as to how this clause should be implemented. Moreover, such an approach implies that the state transfers its constitutional duty in protecting the rights of vulnerable groups to the private sector.
- **Spatial planning:** In 1992, parliament agreed to pass the Spatial Planning Law (No. 24/1992), followed by a Regulation in 1996, which opened up opportunities for peoples’ participation. However, there is no mechanism to ensure community input into the spatial plans. On the other hand, the state tends to be friendly to the market by accommodating the needs of investment schemes in spatial plans. Local communities can express their objection to the spatial plans, but the final decision is in the hands of the central government at the national level, and both the regional government and local parliament at the regional level.
- **Swidden agriculture:** Most indigenous people in Indonesia still practice swidden agriculture. The government labels this practice ‘destructive to the environment’ and has been trying to impose sedentary agriculture. In 1993, a decree was issued to resettle the swidden cultivators out of forest areas.
- **Marine and fishery sector:** One area in which there appeared to have been extremely positive changes in the resource rights of indigenous peoples in Indonesia is in the marine and fishery sector. A policy was drafted in consultation with Indigenous Peoples Alliance of the Archipelago (AMAN) containing articles in favour of roles, interests, and practices of masyarakat adat in coastal zone management, including the application of adat sanctions for criminal violations. However, the draft submitted by the Ministry of Marine Affairs and Fishery to the Parliament in 2005 was changed substantially to favour the government at both national and regional levels, while significantly reducing the role of local/indigenous communities in decision making.

As an outcome of the advocacy of indigenous peoples and the change in regime, the Indonesian Government has implemented a progressive policy (Regulation No. 5/1999), which allows for the recognition of customary land rights.

Nepal

As in the case of the other countries studied, in Nepal the loss of rights of access to forests, water bodies, and land with the creation of national parks and other nature conservation areas has led to the displacement of indigenous peoples from their traditional lands. The traditional cultivable lands and pastures of indigenous peoples have been incorporated into wildlife sanctuaries and national parks without any compensation.

The creation of protected areas in Nepal has led to the loss of rights of access to forests, water bodies, and land, and the displacement of indigenous peoples from their traditional lands.

The following policies and practices have affected the rights of indigenous peoples over land and natural resources in Nepal:

- **Community forestry:** While Community Forestry in Nepal has been widely hailed as a model to emulate throughout the world, and one of the most progressive in terms of giving forest rights to local communities, it has never been analysed from the specific perspective of indigenous peoples. People who have traditionally occupied lands, but who do not have the necessary official documents to prove ownership, have been displaced by the establishment of community forests. Indigenous communities are also affected by a prohibition on clearing land for cultivation in community forests, an act which attracts severe penalties.
- **Shifting cultivation:** Shifting cultivation in Nepal is locally known as khoriya or basme (in the east). It is a traditional farming system for many indigenous peoples and strongly linked to their culture and identity. It is mostly practised in areas where permanent cropping is not possible because of steepness. Fields are cleared of (forest) vegetation on a rotational basis, after which they are cultivated for one or two years. After the cropping phase, the land is left fallow for 7 to 12 years and the forest regenerates. This rotational agroforestry practice should not be confused with the clearing of forest for permanent cultivation. Its main practitioners are the indigenous Chepang, Magar, Sherpa, Rai, and Tamang people. There is certainly a cultural dimension to the practice of shifting cultivation in the sense that only certain ethnic groups have the expertise to make it work. It is these groups who depend on it for their livelihoods. Although shifting cultivation is practised in many hill areas of Nepal, the government and development organisations have been discouraging or ignoring it. It is seen as a sign of underdevelopment, thus most policy makers claim it no longer exists in Nepal.

Shifting cultivators generally belong to the poorest farmers, who resort to the most marginal lands. In fact, the term khoriya refers to the land that is too steep for terrace cultivation. In recent decades, the pressure on these lands has increased, causing a shortening of the fallow period in many areas from 10 years to only 2-3 years. Factors that have contributed to the shortening of fallow periods are the allocation of shifting cultivation land to other purposes (e.g., community forestry and cardamom cultivation) and population pressure. The communities themselves are growing and migration is increasing from other parts of Nepal to some areas.

Working Towards Environmental Justice: A Movement of Indigenous Fishing Minorities in Chitwan National Park, Nepal

Indigenous peoples reliant upon natural resources have been distressed by policies dealing with wildlife preservation and biodiversity conservation. The Chitwan National Park (CNP) in southern Nepal is inhabited by two indigenous fishing communities, the Bote-Majhi and the Musahar. Their struggles have not received much attention in the popular discourse of Nepal, as concern has been focused on survival of the Asiatic one-horned rhinoceros. As the park remains under the control of the forest bureaucracy, the palace, and the Nepal Army, local people are not sufficiently engaged in protecting its biodiversity. This has brought about a grassroots movement that has resulted in an increased political and social space for the rights of indigenous peoples. A recent ICIMOD 'Talking Points' book examines the relationship between the multifaceted topic of policy formulation with reference to wildlife conservation and the lives of indigenous peoples affected by these policies and, furthermore, brings forth insights for the democratisation of protected area management.

(Jana 2007)

Philippines

When it comes to the issue of land rights and recognition of indigenous peoples' ancestral domains, the most progressive law in Asia, and perhaps the world, can be found in the Philippines. Despite obstacles in its implementation and various technical, conceptual, and legal issues that need to be resolved, the Indigenous Peoples Rights Act (IPRA) 1997 has provided hope to indigenous peoples that change is indeed possible, not only in the Philippines but around the world.

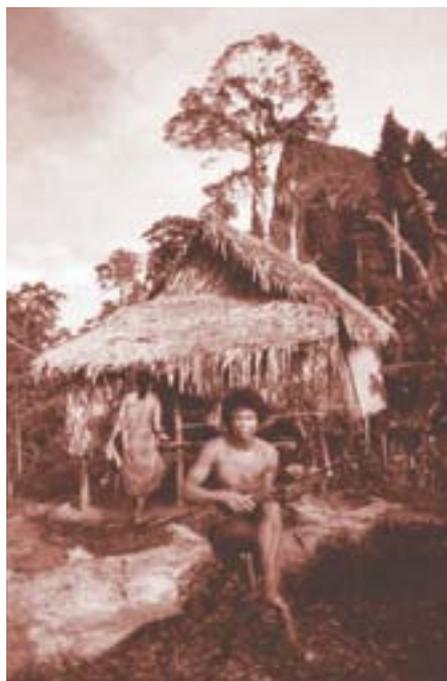
The enactment of the IPRA came after a long and arduous struggle by indigenous peoples and civil society. It took a decade to pass the Act and the lobbying for its enactment was a very long process. The legal bases for the enactment of IPRA are the state policies on indigenous peoples and ancestral domains as expressed in the 1987 Philippine Constitution, and this was further helped by international treaties and conventions (notably ILO Convention 169) and the UN Draft Declaration on the Rights of Indigenous Peoples.

The IPRA has been hailed internationally and locally as a landmark piece of legislation, being the first and most comprehensive law on indigenous peoples in Asia. It is also a striking example of a legal instrument that incorporates customary laws on property rights while at the same time operating on a constitutional mandate to recognise and promote indigenous peoples' rights. The law codifies a wide range of indigenous peoples' rights, foremost of which are:

- the right to ancestral domains and lands;
- the right to self-governance and empowerment;
- social justice and human rights; and
- the right to cultural integrity

Almost a decade after the enactment of the IPRA, several aspects of the law remain controversial and need to be the focus of renewed advocacy and lobbying.

- **State ownership of untitled land and natural resources:** While the IPRA, in principle, provides for legal ownership and titling of ancestral domains and land, this shall be carried out "...within the framework of national unity and development in accordance with the Constitution and applicable norms and principles". This implies that the IPRA recognises state ownership and control over untitled land and natural resources including all other property rights to ancestral domains that existed prior to, or are vested by, the enactment of the IPRA, while upholding the rights of indigenous peoples to their ancestral lands and territories. This scenario may result in competing and overlapping claims over a certain area of land. For example, existing contracts, licences, concessions, leases, permits, logging concessions, and mining permits for the exploitation of natural resources within an ancestral domain may continue to take effect until they expire. The presence of multiple rights over the same land area will increase the conflict over land and resource access and control in the implementation of the IPRA.



TEBTEBBA

When it comes to the issue of land rights and recognition of indigenous peoples' ancestral domains, the most progressive law in Asia, and perhaps the world, is the Indigenous Peoples Rights Act (IPRA) enacted in the Philippines in 1997.

The Philippines is also an example of the success of indigenous peoples' lobbying in discouraging the mining industry

- **Right to ancestral domains and land:** The right of indigenous peoples in the Philippines to their ancestral domains and land is formally established by the issuance of a Certificate of Ancestral Domain Title (CADT) or Certificate of Ancestral Land Title (CALT) on the basis of native title. By granting land titles, the IPRA has the potential to be a powerful legal instrument for addressing indigenous groups' collective rights to land. The awarding of a CADT or CALT is done through a delineation process, which is highly contentious because indigenous peoples have to go through a long and tedious process requiring a significant investment both financially and in terms of manpower. One of the main hurdles is the requirement of a technical survey, which requires sophisticated equipment and adequate funds to produce. Prior to the survey, the claimant must submit proof of claim, which is rather cumbersome for indigenous people who, in general, are financially and technically incapable of producing such evidence. Another issue is the settling of boundary conflicts with contiguous areas. Existing claims by other entities can cause delays in the delineation process.
- **Free, prior, and informed consent:** Another point of contention in the IPRA is the issue of free, prior, and informed consent (FPIC). As provided in the law, any individual or company, whether government or private, that is interested in setting up a development project within the ancestral domain or land should first secure the FPIC of the indigenous community. The final approval of an FPIC application is given by the National Commission on Indigenous Peoples (NCIP) on the basis of the 'community's recommendation'. The process of generating consent from community leaders and peoples is open to manipulation by private groups and individuals.

The Philippines is also an example of the success of indigenous peoples' lobbying in discouraging the mining industry, despite the neo-liberal economic policy of the government. One recently issued policy was the National Policy Agenda on Revitalizing Mining in the Philippines, as contained in EO 270, in January 2004. The Executive Order (EO) provides for the Philippine Government to promote responsible mineral resources exploration, development, and utilisation, in order to enhance economic growth. The EO was silent on the resources inside ancestral domain areas. However, under pressure from the National Anti-Poverty Commission – Indigenous Peoples (NAPC-IP), in coordination with the NCIP, the EO was amended to include a stipulation that the “rights of affected communities,

Filipino Indigenous Peoples' Successful Advocacy Against Mining

After the slump of the mining industry in the Philippines in 1985 (which was mainly due to the mounting protests of indigenous peoples and the depletion of mineral resources by the extraction boom of the 1960s and 1970s), the government set its sights in the 1990s on encouraging foreign investment in mining. This coincided with a time of economic liberalisation. The Philippine Mining Act of 1995 was enacted with the support of the Asian Development Bank (ADB). Its enactment resulted in a massive influx of foreign mining corporations. However, despite the increase in mining applications, the expectation that the Mining Act of 1995 would revitalise the mining industry was not realised, mainly because of the mounting protests from various stakeholders, especially the indigenous peoples in whose territories most of these mines were situated.

The mining industry has its own view of the failure of the expected boom. They claimed that the boom failed because of questions about the legality of the Act in 1997 raised in the LaBugal case and because of increasing conflicts about land use due to the presence of multi-layered policies and laws.

(Cadiogan 2006)

including the rights of indigenous cultural communities, especially the free and prior informed consent, shall be protected”.

Thailand

In Thailand there is virtually no recognition of indigenous peoples’ rights to land and forests. There is no mechanism for indigenous people to obtain legal documents for communal or individually owned farms, swidden land, or even community forests. About 40 per cent of the country is managed by the Forest Department, including the homelands of indigenous peoples. The government has consistently blamed the highlanders for deforestation and used this argument to justify relocating them to lowland villages. The fact that many indigenous people lack citizenship certificates denies them even the normal rights and protection accorded to Thai citizens.



B. Leduc

In Thailand there is virtually no recognition of indigenous peoples’ rights to land and forests.

Since the mid-1990s, the indigenous peoples of the highlands, with the support of NGOs, have started pressing for usufruct rights to use, manage, and control community forests in the uplands. A Community Forestry Act was enacted in 1997, but could not be implemented due to opposition by national conservation groups. The Act was amended in 1998 to prevent the recognition of communal forests in areas zoned as watershed protection and priority conservation zones. The movement for the recognition of communal forests continues (Colchester 2004).

Another programme that has been destructive of indigenous peoples’ ways of life is the Master Plan for Community and Environment Development and Narcotic Plant Suppression in the High Areas, which is currently in its third phase. This programme has led to the forced relocation of indigenous peoples to lowland areas, often at sites that are unsuitable for cultivation. Indigenous peoples’ networks, such as the Tribal People Assembly of Thailand (TPAT), proposed an alternative plan in 2003 to promote community development in a sustainable way. The outcome of their proposal remains to be seen. The draft was approved by the Permanent Subcommittee on Investigations and is currently being refined and combined with the existing State Master Plan. However, unfortunately, the combined state and people sector mechanism was recently abolished by the new Cabinet.

The present assessment found that the attempt to integrate the plans, or to draft a master plan for high area community development, inspired communities to think about community development and to realise the significance of developing a master plan to cooperate with public sector organisations at various levels. This has resulted in many more highland development programmes being initiated by NGOs and indigenous peoples’ organisations.

Vietnam

Huge poverty reduction programmes have been in place in Vietnam since the early 1990s. Vietnam is one of the countries that is making rapid progress towards the Millennium Development Goals (MDGs). However, even though there has been a reduction in the poverty levels of indigenous peoples, there is still a huge disparity between lowland and highland peoples. Furthermore, the changes have not necessarily been positive in relation to indigenous peoples’ access to natural resources. Much of the economic growth has been fuelled by a fundamental change



L.T. Oanh

In Vietnam, all land is owned by the State and allocated to households for forestry and agricultural purposes. However, because many ethnic minority groups lack the ability to invest, they are excluded from a large share of land allocation.

in the economic structure in which the proportion of agriculture and forestry has been falling sharply (from 90 per cent in 1990, to less than 56 per cent in 2003). There has been a large-scale conversion of forests into plantations and agricultural extension tends to favour lowland rice over upland crops.

The Central Highlands have been lagging behind other ethnic minority areas. A World Bank study, using data from the 1998 Vietnam Living Standards Survey and the 1999 Census, found that, while northern highland minorities benefited from economic growth in the 1990s, the growth of central highland minorities has stagnated. According to Baulch et al. (2002) the same ethnic groups whose living standards have risen fastest are those that have the highest school enrolment rates and are most likely to intermarry with Kinh partners. Furthermore, the creation of 'New Economic Zones' has created intense conflict over land by encouraging the immigration of people from the lowlands. In 2001, the press reported widely on protests by the central highlanders (which met with state violence) against the government's plan to turning the indigenous peoples' ancestral forests into the country's largest coffee growing region (BBC 2001 and BBC 2004).

In Vietnam, all land is owned by the state and allocated to households for forestry and agricultural purposes. However, the allocation of perennial crop land or forestry land is often linked to the ability to invest labour and capital into the land. Many ethnic minority groups lack this and, therefore, are excluded from a large share of land allocation. Furthermore, State forestry enterprises control almost 40 per cent of the forest land.

Progress has been made in the formal titling of forestry land. In addition, a revised law on forest protection and development was approved by the National Assembly in 2004. This law provides an overall framework for a move towards social and community-based forestry. The Act protects the forest-user rights of households, communities, and other sectors, as well as their ownership of plantation forests. It also provides for the multiple-use of protection forests in the uplands and for exploitation rights within these, thereby holding the potential for a radically new management system. However, there has been little involvement of forest-dependent communities, who are mainly ethnic minorities, in the development of national and local-level commune forest plans. There is a need to create a greater understanding of forest policies (Swinkelo 2006).

Language and Education

Common issues

The issue of the use of indigenous languages in education of indigenous peoples' children is double-edged. On the one hand, if the use of indigenous languages is facilitated by state policy, it could perhaps be seen as an indicator of a genuine move away from the practice of assimilation. On the other hand, if indigenous peoples are to enter the mainstream political and economic domain and engage with the majority on equal terms, they need to learn the language of the majority. While, ideally, this should not be the situation, it is a product of a long history of the marginalisation of indigenous peoples. At the same time, the very survival of many indigenous languages is under threat. The survival of indigenous cultures and knowledge is also inextricably linked to the language issue. The answer to this dilemma has emerged in advocacy for school curriculum material to be produced and taught bilingually. The advances on this front are at different stages in the various countries. Existing high rates of illiteracy draw attention to the issue of language and education. Where schools are provided, often there is a high drop-out rate or poor performance among indigenous children because the medium of instruction is not in their language and, in addition, the content is often far removed from the substance of their daily lives and experiences.

The survival of indigenous cultures and knowledge is inextricably linked to the issue of language.

Bangladesh

The Baseline Survey on Indigenous Peoples in North-west Bangladesh (conducted by the NGO Research and Development Collective) published in November 2000, reports the literacy rates of Santal, Koch, and Mahalis as 22 per cent, 17 per cent, and 25 per cent respectively. Bhumija, a local NGO working in the south-west region, has developed a database on 20 different groups within the indigenous population. Among them, the literacy rate of Buno is 7 per cent and Rajbanshi is 14 per cent. The primary school enrolment rate is 12.5 per cent. The majority of indigenous children usually attend NGO run or private schools. There is little or no information available on the status of education in the CHT. It was observed that only one in five villages had primary level educational institutions in the CHT. In contrast, at the national level there are two schools for every three villages. This clearly points to the fact that children in the CHT have fewer opportunities for education than children in the rest of Bangladesh (Drong et al. 2006).



S. Drong

The CHT Accord of 1997 provides for the introduction of primary education in the languages of the indigenous peoples. However, concrete measures to reform school curricula have yet to be taken.

Studying in the national language (Bengali), which is not the mother tongue of the indigenous people, leads to learning difficulties. The CHT Accord of 1997 provides for the introduction of primary education in the languages of the indigenous peoples. However, concrete measures to reform school curricula have yet to be taken. No similar arrangements have been proposed for the plains. These omissions are contrary to the provisions of ILO Convention No.107 and the Convention on the Rights of the Child, both ratified by Bangladesh.

Cambodia

In the area of education for indigenous minority people, a number of positive trends can be seen but also some disturbing trends. In 2003, the Ministry of Education, Youth and Sport formulated a policy to strengthen the non-formal education system and bilingual languages of indigenous peoples. This policy promotes the development of literacy in indigenous languages as a bridge to Khmer literacy. NGOs are working in close cooperation with the Ministry of Education, Youth and Sports to create a model for bilingual education in formal education. Another positive trend is the success of non-formal education (NFE), both bilingual and monolingual. An important reason for the success has been that indigenous minority communities have been given the flexibility to manage classes at the time most suited to their seasonal and daily lives. Another feature of NFE is that indigenous minority people are the teachers and have been able to use indigenous languages to support Khmer literacy. However, the NFE lacks materials and classes in post-basic literacy.

China

In China there has been recognition of ethnic minority languages in education. However, despite the use of bilingual or ethnic minority languages in some areas, the focus is most often on the transmission of knowledge and values from mainstream Han culture. A series of supportive policies (including the elimination of fees in some areas) has served to enhance school attendance rates in ethnic minority areas. However, there are concerns over the content of school education in these areas. In some areas bilingual textbooks have been produced and in some cases they are in use, although this is often restricted to specified schools. For example, in 2000 in Sichuan province only around 20 per cent of students in minority autonomous areas were receiving bilingual education. The remainder followed the mainstream Han language education. Some 85 per cent of those receiving bilingual education were attending schools where most courses are taught in Han Chinese and only the ethnic minority language was taught in the students' own language. The issue of the use of ethnic minority languages in education is a reflection of the fact that, although state discourses on ethnic minority areas stress the right of ethnic minorities to subsistence and development, it is implicitly assumed that this means the adoption of 'modern' or 'scientific' practices and culture, which are more associated with the Han culture. Even the Tenth Five-Year Poverty Reduction Plan Outline (State Council 2001) states that "feudalism and superstition and backward living customs should be rooted out".

India

The Government of India has not initiated any special programme or policy on the educational rights and privileges of tribal peoples in response to UN declarations like the 'Right to Equal Access to Education', although some policy statements in conformity with those voiced in the UN declaration could be read in the Programme of Action 1993. The Programme of Action 1993 proposes actions for the use of tribal languages in elementary and adult education programmes and provides for the participation of local people in formulating, planning, and implementing education programmes at the village level, i.e., through the village education committees

(VEC). However, very few village education committees have been formed and, where formed, they have not done any outstanding work.

Government reports are vague in relation to the number of Scheduled Tribes that have benefited during the Decade, be it through the formal or non-formal education system. The 'Right to Education



W. Fernandes

Amendment' was passed in November 2001 by parliament, with the stated aim of attaining universal elementary education, the reduction of disparities, and the equalisation of educational opportunities. However, the Amendment does not mention any particular provision for Scheduled Tribes, unlike the National Policy on Education, 1986.

Very few Indian states have started using tribal languages in their school curricula or as their medium of instruction. In Meghalaya, primary education is in the Khasi language in the Khasi area and in Garo in the Garo area. In Assam, the Boro have begun a school curriculum in Boro language, and in Jharkhand some tribal languages are used in education. However, in Tripura, although tribal people have started some studies in Kok Borok, much of the education is in Bengali, and in Arunachal Pradesh the medium of instruction is in Hindi. Most of the other states use English, Assamese, Bengali, or Hindi in their school curricula and as their medium of instruction. A fair number of navodaya vidyalayas⁸ have been set up in tribal districts. However, it needs to be seen how far these schools are meeting the socio-cultural needs of tribal people and to what extent the local communities are involved in the various activities of the schools.

Indonesia

For the Government of Indonesia, the Bahasa language is crucial in building a sense of national identity. As formal education programmes reach villages, children of indigenous people also attend school. However, at these schools, as in the whole country, Bahasa Indonesian is used as the language of instruction. Teaching of local languages does exist in some provinces, but only the languages of the dominant local cultures.

In 2003, Law No. 2/1989 on the National Educational System was replaced by Law No. 20/2003, recognising the different needs of vulnerable groups. Article 5 of this law states that "citizens in remote or backward regions as well as masyarakat adat in remote areas are entitled to a special service of education programmes". Although, it is not clear what is meant by special service, the Law opens a window of opportunity for indigenous peoples. With the decentralisation of educational policies, the law allows schools to develop local content (muatan lokal) in their curricula. Some groups in West Kalimantan have done this. The Institute Dayakologi of Pancur Kasih, for example, produces books containing Dayak stories to be used in elementary schools. Meanwhile, the masyarakat adat of Landak District, in a statement issued on 27 February 2004, demanded that the government incorporate their traditions, language, local wisdom, and adat laws into the curricula from kindergarten up to high school.

⁸ Navodaya vidyalayas were started by the Government of India to provide free education to talented students from rural backgrounds in every district of India.

Very few Indian states use tribal languages in their school curricula or as their medium of instruction.

A noteworthy symbolic initiative of the Government of Nepal is the broadcasting of five-minute news bulletins on Radio Nepal in various indigenous languages.

Nepal

One of the significant government initiatives in Nepal to focus on indigenous nationalities has been that related to language. The 1990 Constitution of Nepal provided for the right to education in mother tongues other than Khas-Nepali up to the primary level (Article 18.2), although the responsibility for the provision of such education lay with the people of the community concerned, not the government. The indigenous nationalities themselves have, nonetheless, taken up this responsibility and, by pressuring the government, have prepared related teaching materials and begun classes at the primary level.

However, given that the languages of indigenous nationalities are not the language used by government, for administration, or for education, proficiency in their own language does not provide job opportunities for indigenous people. Hence, the usefulness of learning their own language is questioned by some indigenous nationalities.

Nevertheless, indigenous nationalities have, on their own initiative with minimal assistance from the government, continued to try and foster their mother tongue education. The Kirat Yakthung Chumlung, an organisation representing indigenous Limbus, have even successfully managed to tap international donors like the Danish International Development Agency (DANIDA) for what has been called pioneering mother-tongue education for Limbus.

During the course of the Decade, one of the major programmes initiated by the government was the Education for All National Plan (2001-2015). With advocacy by NEFIN, the Ministry of Education was pressured to form an additional thematic group on the right of indigenous nationalities and mother-tongue speakers to basic and primary education in their own language. The thematic group, comprised of indigenous nationality experts, leaders, and activists, came forth with various recommendations, most of which were incorporated in the national plan of action.

Another noteworthy symbolic initiative of the government regarding the language of indigenous nationalities is the broadcasting of five-minute news bulletins on Radio Nepal in various languages.

Philippines

The right to education for indigenous peoples is clearly provided by Section 30, Chapter VI of the Republic Act 8371 of 1997. Known as the Indigenous Peoples Rights Act (IPRA), it provides that:

“The State shall provide equal access to various cultural opportunities to the IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children and youth shall have the right to all levels and forms of education of the State.”

Yet in the Philippines, many indigenous peoples still face many problems and challenges in education. These range from the long-standing, nationalist-driven basic curriculum to a state-driven pedagogy.

Policies are not always translated into good programmes or even meet the policy expectations. Nine years have passed and few programmes have been

conceptualised and implemented on education for indigenous peoples in the Philippines. The NCIP through its Education, Culture, and Health office has implemented programmes limited to the granting of scholarships and, more recently, employed the development of an Indigenous Peoples' Basic Curriculum. The Department of Education has introduced some programmes for indigenous peoples through its Bureau of Alternative Learning System⁹ (formerly the Bureau of Non-Formal Education). Towards the end of 1999, the Department of Education started work on indigenising a curriculum for the public schools in indigenous communities. Many indigenous peoples expressed the opinion that the framework used by the Bureau of Alternative Learning System (BALS) is not favourable to indigenous peoples as it is largely operating on a dichotomised paradigm: the structured modern versus the unstructured traditional. BALS is largely premised on the idea that traditional forms of knowledge and learning systems are not formal and thus are unscientific. While debates continue to grow on this dichotomy, indigenous peoples find it derogatory to categorise their education and efforts as 'informal' and 'unscientific'. Indigenous peoples are calling for recognition of the level that indigenous peoples' learning systems can reach.

In the Philippines, the right to education for indigenous peoples is clearly provided for in the Indigenous Peoples Rights Act (IPRA).

Since 1999, Tebtebba has worked to help address the problems faced by indigenous peoples in the area of education. Tebtebba first worked in a project funded by ADB to assess the country's Bureau of Non-Formal Education (BNFE). Tebtebba produced a consolidated report and a programme proposal for the Department of Education to pursue, but has since been set back by resource problems as it is dependent on funding for such programmes to work. Tebtebba, together with partner indigenous peoples' organisations in the Philippines, then moved on to engage in grassroots education work, focusing on three aspects:

- Revitalisation and strengthening of indigenous knowledge
- Indigenisation of the formal education curriculum
- Value-added education in which education work is directly linked to indigenous peoples' campaigns and advocacy

Two workshops on Grassroots Education in Indigenous Peoples' Communities were organised and implemented by Tebtebba in the Philippines in February 2004 (for indigenous peoples in the southern Philippines) and August 2004 (for the northern Philippines group). This effort was followed by a Mindanao Forum on Indigenous Peoples' Education and Learning Systems, held from 15-17 August 2005 at Tagum, Davao City, which was again organised and implemented by Tebtebba and SILDAP.¹⁰

Thailand

In 1999, the Education Act was passed in Thailand. In it, the State made a commitment to provide twelve years of basic education free of charge. Another notable point about the Act is that it invites the participation of individuals, families, community organisations, local administrative organisations, NGOs, and other civil society institutions to take part in the provision of education. This law has opened up space for alternative education for indigenous peoples, such as the study of the student's mother tongue and their ancestral culture, including local curriculum development. However, in practice, the State has not yet actualised the

⁹ The Philippine Department of Education's non-formal education programme focuses on: 1) promotion of literacy programmes for the attainment of basic skills that include numeracy and functional literacy; 2) development of livelihood skills that manifest in individual specific competencies aimed at achieving economic productivity; and 3) expansion of certification and equivalency programmes, which are administered by the formal education subsystem, into the non-formal sector.

¹⁰ SILDAP-Southeastern (Community Learning Centre in the Philippines) is a local NGO based in Davao which is working with indigenous peoples in the southern Philippines. They have established schools for indigenous children at the elementary level and have developed some curricula for use with indigenous children.

IMPECT in Thailand and CSDM in Vietnam are examples of networks that have contributed significantly to capacity building in education.

free 12-year basic education for all. Under this law, the school is a corporate and autonomous body, which can charge various indirect expenses to parents. All these conditions make it hard for indigenous children to access educational services. Further, those without citizenship certificates can only receive basic education and cannot continue to higher education. All these problems have prompted concerned organisations and groups to start a network to strive for an alternative education bill.

Individual organisations have initiated innovative work on studying and compiling indigenous bodies of knowledge and using these to develop curricula that would result in a systematic process of transmitting this knowledge. The objective of this is to support the development of education, agriculture, and forestry extension in line with the needs of indigenous communities.¹¹ For example, the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) has contributed significantly in the fields of capacity building in education, natural resource management, and livelihood work of indigenous peoples especially in the highlands.

Vietnam

Government policy on education in Vietnam is contradictory in that, although it is officially committed to maintaining the unique cultural identity of indigenous groups, especially the dances, folklore, and modes of dress, the standard textbooks tend to emphasize Kinh culture and history. There has been a massive expansion of education facilities for ethnic minorities in Vietnam (Baulch et al. 2002). There are more than 95,000 pupils in 25 provinces, with 144 districts and 1239 schools. However, Vietnamese remains the dominant language of instruction and most officially sanctioned textbooks are in Vietnamese. This scenario may be changing slowly as the assessment found that eight ethnic languages are taught in ethnic schools (Oanh 2006).

Finally, similar to Thailand, the Centre for Sustainable Development of Mountainous Areas (CSDM) provides an example of a network that has done a lot with regard to natural resource management, livelihoods, and capacity building on education.



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¹¹ This project of the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) was carried out from 1998 to 2000 with support from INDISCO/ILO.