

# Indigenous Peoples and ASEAN Integration



Asia Indigenous Peoples Pact





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Asia Indigenous Peoples Pact (AIPP)

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Editor: Luchie Maranan

Writer: Jade Tessier

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## TABLE OF CONTENTS

1. Introduction .....	3
2. ASEAN Resources and Brief Socio-Economic Profile of ASEAN’s Indigenous Peoples ..	3
3. Overview of International Human Rights Obligations Relevant to Indigenous Peoples ..	7
4. The ASEAN Human Rights Framework and Mechanisms.....	10
4.1 ASEAN Charter.....	10
4.2 ASEAN Declaration on Human Rights.....	12
4.3 Mechanisms.....	14
4.3.1 The ASEAN Intergovernmental Commission on Human Rights (AICHR).....	14
4.3.2 The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children .....	16
4.3.3 The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers .....	18
5. Road Map to Development and Implications on Indigenous Peoples’ Rights.....	19
5.1 Introduction to the Three Pillars.....	19
5.2 The ASEAN Political Security Community (APSC) and Indigenous Peoples.....	20
5.2.1 Indigenous Peoples’ Access to Justice.....	22
5.2.2 Human Rights Defenders at Risk.....	24
5.3. The ASEAN and Economic Community (AEC) and Indigenous Peoples.....	25
5.3.1 Indigenous Peoples’ Rights to Land and Resources.....	27
5.3.2 No Free, Prior and Informed Consent (FPIC).....	35
5.3.3 Non-recognition and criminalization of traditional livelihood practices.....	35
5.3.4 Self-sufficient economies of indigenous peoples.....	36
5.4 The ASEAN Socio-Cultural Community (ASCC) and Indigenous Peoples.....	36
5.4.1 Indigenous Women’s and Children’s Rights.....	38
5.4.2 Corporate Social Responsibility under ASCC.....	40
5.4.3 The ASEAN Forestry Network (ASFN).....	43
6. Indigenous Peoples’ Common Issues in the ASEAN countries .....	44
6.1 Legal Recognition .....	44
6.2 Violations to Indigenous Peoples’ Right to Land, Territories and Resources .....	47
6.3 Climate Change and Indigenous Peoples’ Vulnerability .....	49
6.3.1 Climate Change and the ASEAN .....	49
6.3.2 REDD+ and Indigenous Peoples .....	51
6.4 Violations of the Rights of Indigenous Women and Children .....	52
6.5 Lack of Access to Social Services .....	53
7. Impacts of the ASEAN Developments on Indigenous Peoples .....	55
8. Indigenous Peoples’ Advocacy on ASEAN .....	58
9. Conclusion .....	59
10.Recommendations .....	60



## ACRONYMS

AADMER	ASEAN Agreement on Disaster Management and Emergency Response
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ADSDPPs	Ancestral Domain Sustainable Development and Protection Plans
AEC	ASEAN Economic Community
AFN	ASEAN Forestry Network
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMMSWD	ASEAN Ministerial Meeting on Social Welfare and Development
APAEC	ASEAN Plan of Action for Energy Cooperation
APG	ASEAN Power Grid
APSC	ASEAN Political Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CPO	Crude Palm Oil
CSR	Corporate Social Responsibility Network
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FPIC	Free, Prior and Informed Consent
HDI	Human Development Index
IAI	Initiative for ASEAN Integration
ILO	International Labour Organisation
Komnas HAM	Komisi Nasional Hak Asasi Manusia
OD	Outcome Document of the World Conference on Indigenous Peoples
MP3EI	Master Plan for the Acceleration and Expansion of Economic Development
PDR	Peoples Democratic Republic
REDD	Reducing Emissions from Deforestation and Forest Degradation
SR Cambodia	Special Rapporteur on the Human Rights Situation in Cambodia
SR Myanmar	Special Rapporteur on the Human Rights Situation in Myanmar
SR IPR	Special Rapporteur on the Rights of Indigenous Peoples
SUHAKAM	Suruhaniaya Hak Asasi Manusia
TAGP	Trans-ASEAN Gas Pipeline
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change



# Indigenous Peoples in the ASEAN: A Regional Overview

## 1. Introduction

Southeast Asia is homeland to an estimated 93 to 124 million<sup>1</sup> of the world's 370 self-identified indigenous peoples, and takes pride in claiming to be a region with one of the world's most ethnic, cultural and linguistic diversity. Hosting about 20% of the world's plant and animal species on only 3% of the earth's surface, Southeast Asia is also at the heart of the world's most biologically diverse area.<sup>2</sup> Most of this diversity is found in indigenous territories, where indigenous peoples have sustainably managed the ecosystems through their lifetimes until today. The vast human and natural resources in the region have historically proven to be a strategic potential for development in the Asia. With global regions defined by economic and political interests and influences, the necessity for protection and cooperation was deemed imperative by South East Asian governments. Thus was the basis for the founding of the Association of South East Asian Nations (ASEAN) as a political and economic grouping of ten nation-states: Brunei Darussalam, Cambodia, Indonesia, Lao Peoples Democratic Republic (PDR), Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

ASEAN was founded on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand, and, except for the latter, the founding countries were newly established sovereign nation-states after World War II. This, combined with the onset of the Cold War, meant that all of the governments of the founding countries sensed the vulnerability of their

rule to challenges, be they from neighboring countries or from internal threats (conveniently referred to by governments as “communist insurgency”).<sup>3</sup> The driving motivation behind the founding of ASEAN was to help guard the governments against challenges to their rule. Subsequently, non-interference in the internal affairs of Member States was established as a key principle of ASEAN, with consensus as a means of reaching decisions to ensure that the organization remains loyal to this founding principle up to the present day. Brunei Darussalam joined in 1984, Vietnam in 1995, Lao PDR and Myanmar in 1997, and Cambodia in 1999.

## 2. ASEAN's Resources and Brief Socio-economic Profile of ASEAN's Peoples

Rich in mineral resources, South East Asian production of tin, nickel and copper accounts for a significant share of world production,<sup>4</sup> with half of global tin resources coming from only three ASEAN Member States – Indonesia, Malaysia and Thailand. In 2000, South East Asian exports of tin and copper accounted for 45% and 28% respectively, of the world's total and 10% of the nickel trade.<sup>5</sup>

ASEAN countries are cashing in on their climatic advantage over West Africa and the limited pests and disease problems in the region, to massively convert forests and croplands to oil palm plantations, mostly in indigenous territories especially in Indonesia and Malaysia. Indonesia is now the world's top Crude Palm Oil (CPO) producer and has the largest cumulative area of plantations which covered 7.8 million hectares in 2011, out of which 6.1 million

<sup>1</sup> Estimated from various sources.

<sup>2</sup> Vol 7 #4, October – December 2008, ASEAN biodiversity, ASEAN CENTRE for BIODIVERSITY, [www.aseanbiodiversity.org](http://www.aseanbiodiversity.org)

<sup>3</sup> Primer on ASEAN and Human Rights. FORUM-ASIA. Unpublished.

<sup>4</sup> <http://aadcp2.org/file/04-009a-FinalReport.pdf>, p.6. Accessed June 16, 2015.

<sup>5</sup> Ibid, p. 7.

hectares were productive plantations under harvest.<sup>6</sup> About 75 percent of plantation estates and CPO production are located in Sumatra and Kalimantan, which are predominantly indigenous territories. Malaysia comes second as the world's largest oil palm producer and is racing to expand its hectareage by converting a million more hectares of indigenous forest lands in Sarawak on the island of Borneo to oil palm plantations. Malaysia and Indonesia combined produce 85% of the world's palm oil.<sup>7</sup>

Except for Thailand, all these countries have huge hydropower and geothermal potentials that are considered "underexploited."<sup>8</sup> Twelve planned mega-dam projects<sup>9</sup> are located in the state of Sarawak with stiff opposition by affected indigenous peoples. In 2003, the Malaysian government said that 260 'suitable' dam sites had been identified. According to the Burma Rivers Network,<sup>10</sup> 25 large dams are being built or planned on all of Burma's major rivers and their tributaries, which are all located in indigenous peoples' territories, where ethnic resistance armies have been battling the military regime for decades. The smallest among these, the Hatgyi Dam will see the forced displacement of dozens of villages and the negative impacts on about 500,000 villagers downstream.<sup>11</sup>

Hydropower is seen as a key provider for the industrialization thrusts of the ASEAN Member States and as an engine to power ASEAN

<sup>6</sup> <http://blog.cifor.org/17798/fact-file-indonesia-world-leader-in-palm-oil-production#.VYF-ovntmko>. Accessed June 17, 2015.

<sup>7</sup> [http://www.simedarby.com/upload/Palm\\_Oil\\_Facts\\_and\\_Figures.pdf](http://www.simedarby.com/upload/Palm_Oil_Facts_and_Figures.pdf). Accessed June 17, 2015.

<sup>8</sup> Ibid.

<sup>9</sup> <http://www.ens-newswire.com/ens/feb2012/2012-02-19-01.html>

<sup>10</sup> [http://www.salweenwatch.org/index.php?option=com\\_content&view=article&id=283:stop-damming-burmas-rivers&catid=36:campaigns&Itemid=64](http://www.salweenwatch.org/index.php?option=com_content&view=article&id=283:stop-damming-burmas-rivers&catid=36:campaigns&Itemid=64)

<sup>11</sup> <http://www.bnionline.net/news/kic/11860-environmental-groups-call-on-government-to-stop-salween-river-dams.html>

economic integration. However, electrification is still not accessible to the greater majority of populations, except for Brunei, Malaysia, Singapore and Thailand. Although 97.3% of households in Vietnam have access to electricity, the power supply is still erratic in the rural areas. Only 26% of Burma's population have access to electricity and while Lao PDR serves 78% of its population, most of them are in urbanized areas as only 8% of rural households have electricity. The Philippines is 87.1% energized, Indonesia is energized at 57% but 90 million still do not have access. Most of these unreached areas in Burma, Indonesia, Thailand, Philippines, Laos and Vietnam are in rural areas populated mostly by indigenous peoples. These data from 2006 seem not to have changed a lot as shown by the 2011 data( see Table 3).

**Table 1: Electrification Ratio in the ASEAN, 2011, 20**



**Rationale: Sustainable Energy Access for All**

**Electrification Ratio in the ASEAN**

Country	Electrification Rate (%)	Un electrified Population (million, approx.)
Myanmar	26.0	44.4
Cambodia	24.0	10.6
Laos PDR	78.0	1.4
Indonesia	73.7	62.4
<b>Total ASEAN-4</b>	<b>63.8</b>	<b>118.8</b>
Philippines	89.7	9.5
Vietnam	97.3	2.1
Thailand	99.3	0.5
Malaysia	99.4	0.2
Brunei	99.7	0.0
Singapore	100.0	0.0
<b>Total ASEAN-6</b>	<b>85.6</b>	<b>12.3</b>
<b>Total ASEAN-10</b>	<b>73.9</b>	<b>131.1</b>

Source: WEO 2011; ASEAN-RESP 2012; PLN 2012; MoEM Lao PDR 2012.

Source: <http://www.gms-sef.org/docs/workshops/National/myanmar%20ppt/day%202/S6.2%20Arne%20GIZ.pdf>. Accessed June 18, 2015.

Despite the wealth of ASEAN countries, the socio-economic conditions of the constituencies do not reflect this. Looking closely, except for Brunei, Myanmar, Malaysia, Singapore and Thailand, the percentages of population living under \$1.25 a day was 31% in Laos and 14% in Vietnam in 2010. Six out of the ten ASEAN Member States have Human Development Index (HDI) below the regional average.

**Table 2: Poverty Profile in ASEAN: 2005, 2010**

## 09 ASEAN social development

Table 39

**ASEAN Member States: Population Living under PPP \$1.25, in percent for periods indicated**

Country	2005	2010*
Brunei Darussalam	n.a.	n.a.
Cambodia	36	28
Indonesia	21	16
Lao PDR	39	31
Malaysia	-	-
Myanmar	-	-
Philippines	22	23
Singapore	n.a.	n.a.
Thailand	0	0
Viet Nam	23	14

\* 2010 figures were computed by ASEANstats for the few missing years of ASEAN Member States' data. Brunei Darussalam and Singapore do not have a national poverty line. Meanwhile, Myanmar and Malaysia have no available data.

Notes: - means no data available

n.a. Not applicable

Sources: PovcalNet, the on-line tool for poverty measurement developed by the Development Research Group of the World Bank, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTPOVRESEXTPOVGALNET>, and ASEAN Statistical Report on the MDGs 2012.

Source: <http://www.asean.org/images/resources/2014/May/2.%20Feb%202014%20-%20ASEAN%20Community%20in%20Figures%202013.pdf>

**Table 3: Human Development Index in ASEAN, 2014**

### Human Development Index (HDI) 2014

Country	HDI	HDI Rank
Singapore	0.901	9 Very high
Brunei Darussalam	0.851	30 Very high
Malaysia	0.761	61 High
Thailand	0.722	89 High
Indonesia	0.684	108 Medium
Philippines	0.660	117 Medium
Vietnam	0.638	121 Medium
Cambodia	0.584	136 Medium
Laos	0.569	139 Medium
Myanmar	0.524	150 Low
East Asia and Pacific	0.703	

UNDP (2014)

If one were to break down the poverty data in Table 3, indigenous peoples are overrepresented among the poor. In its study released in 2010 on “*Indigenous Peoples, Poverty, and Development*,”<sup>12</sup> the World Bank concluded that “Indigenous Peoples worldwide continue to be among the poorest of the poor and continue to suffer from higher poverty, lower education, and a greater incidence of disease and discrimination than other groups.” In the study among the ethnic minorities in Lao PDR, 50% experience poverty compared to 20% among the majority ethnic Lao-Tai.<sup>13</sup> In Vietnam, although poverty rate has improved significantly to 42% from a high 52% in 1993-2006, this is still worrisome. In Thailand, although it is considered a middle-income country, its rural population is poor with “88% of the country’s 5.4 million poor living in rural areas. Some regions—particularly the North and Northeast—and some ethnic groups

<sup>12</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,contentMDK:22556986~pagePK:148956~piPK:149081~theSitePK:407802,00.html>

<sup>13</sup> [http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1285599693282/Lao\\_PDR\\_brief111210.pdf](http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1285599693282/Lao_PDR_brief111210.pdf)

lag greatly behind others, and the benefits of economic success have not been shared equally, especially between Bangkok, Thailand's largest urban area, and the rest of the country. Income inequality and lack of equal opportunities have persisted."<sup>14</sup> Most of the indigenous peoples in Thailand are also rural-based.

Similarly in Myanmar, indigenous peoples' ancestral lands are in the ethnic states which are mostly rural, and agriculture-dependent. Most of the poor live either in the central dry zone – where soils are sandy, rainfall low and population density high – or in hill tracts populated by ethnic groups, which are remote, have limited arable land and have been affected by conflict."<sup>15</sup> The poverty incidence is “twice as high in rural than urban areas at 29% and 15% respectively. Rural areas account for almost 85% of total poverty. The highest values of poverty incidence are in Chin at 73% followed by Rakhine (44%), Tanintharyi (33%), Shan (33%) and Ayeyarwady (32%). The four major contributing states/regions to national poverty incidence are Ayeyarwady (19%), Mandalay (15%), Rakhine (12%) and Shan State (11%).<sup>16</sup>

All these are predominantly populated by indigenous peoples, or so-called ethnic nationalities. In Malaysia, Sabah, a predominantly indigenous territory of various indigenous peoples, it is “currently afflicted with relatively high rates of poverty; indeed, Sabah has the highest poverty rate of all states in Malaysia . In 2004, 23% of households were below the poverty line. Meanwhile, 6.5% of Sabahan

households are categorised as “hardcore poor.” While there have been some success in tackling this problem, there is still much to be done.<sup>17</sup>

These indigenous territories in the ASEAN countries that contain so much wealth coveted by governments and corporations also define the identity of indigenous peoples who own these lands. These indigenous peoples have strong cultural attachment to their lands, forests and waters and their sustenance and survival depend on the natural resources therein. They have their own distinct languages, cultures, customary laws and social and political institutions that differ greatly from those of the dominant ethnolinguistic groups in their countries. While there is no common definition of indigenous peoples, the ILO (International Labour Organisation) Convention 169 provides criteria for their protection under international law, referring to their self-identification, traditional life styles, distinct culture and way of life that set them apart from the other segments of the national population, own social organizations and political institutions, and the fact that they live in historical continuity in a certain area, or before others “invaded” or came to their area.

These common features differentiate and distinguish indigenous peoples from the majority of the population in each country. In fact, they maintain their distinct identities such as Karen, Kadazan Dusun, Mangyan, Toraja, Hmong, Bunung among others, and are commonly and collectively referred to as “ethnic minorities” in Vietnam, “ethnic nationalities” in Myanmar, “hilltribes” in Thailand, “masyarakat adat” in Indonesia and “Orang Asal” in Malaysia.

<sup>14</sup> <http://www.th.undp.org/content/thailand/en/home/countryinfo.html>

<sup>15</sup> <http://www.ruralpovertyportal.org/country/home/tags/myanmar>

<sup>16</sup> [http://www.mm.undp.org/content/dam/myanmar/docs/FA1MMRPovertyProfile\\_Eng.pdf](http://www.mm.undp.org/content/dam/myanmar/docs/FA1MMRPovertyProfile_Eng.pdf)

<sup>17</sup> SABAH DEVELOPMENT CORRIDOR SOCIO-ECONOMIC BLUEPRINT 2008 – 2025 [http://www.sedia.com.my/SDC\\_Blueprint/Blueprint\\_Eng/6.ImproveIncomeDistributionandLivingStandardsofthePeople.pdf](http://www.sedia.com.my/SDC_Blueprint/Blueprint_Eng/6.ImproveIncomeDistributionandLivingStandardsofthePeople.pdf). Accessed 31 August 2015.

### 3. Overview of International Human Rights Obligations Relevant to Indigenous Peoples

ASEAN Member States, together with the other members of the United Nations (UN) General Assembly, adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007. They further reiterated their commitment to achieve the ends of the UNDRIP when they adopted the Outcome Document (OD) of the high-level plenary meeting of the UN General Assembly known as the World Conference on Indigenous Peoples (WCIP) on September 22, 2014. Through the OD, the Member States reaffirmed their commitment to recognize the rights of indigenous peoples through several measures at the national level.

The UNDRIP is the most comprehensive international human rights instrument on the rights of indigenous peoples to date, establishing collective rights to self-determination, to lands, territories and resources, to development, as well as the rights to culturally appropriate education, employment, health, religion, language and more. The rights contained in the UNDRIP are also stipulated in other international treaties such as the Indigenous and Tribal Peoples Convention 169 of the International Labour Organisation (ILO), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The UNDRIP exerts a considerable moral and political pressure towards the states on their duties to respect, protect and fulfill indigenous peoples' rights. The first of the UNDRIP's 46 articles declares that "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and

fundamental freedoms as recognized in the Charter of the UN, the Universal Declaration of Human Rights and international human rights law." Therefore, the UNDRIP is also a reflection of universal human rights as they pertain to indigenous peoples. It is complementary to, and underpinned by, the full range of human rights instruments.

Towards the promotion and protection of indigenous peoples' rights, several UN bodies relating to indigenous peoples had been established such as the UN Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Special Rapporteur on the rights of indigenous peoples (SR IPR). These bodies provide advice to States and UN agencies in implementing/integrating indigenous peoples' rights in their work, promote good practices on indigenous peoples' rights, conduct studies, and report on the overall human rights situation of indigenous peoples.

ASEAN Member States are State Parties to various human rights treaties of which they are legally bound to comply with their stipulated obligations to respect, protect and fulfill the rights of indigenous peoples. Below is a table showing the treaties that these States are legally bound to enforce and whose principles underpin the UNDRIP.

No.	Treaty/ State	CAMBODIA	INDONESIA	LAOS	PHILIPPINES	THAILAND	VIETNAM	MALAYSIA	MYANMAR	BRUNEI	SINGAPORE
1	<a href="#">ICERD</a> <sup>18</sup>	Ratification 28 Nov 1983	Accession 25 Jun 1999	Accession 22 Feb 1974	Ratification 15 Sep 1967	Accession 28 Jun 2003	Accession 09 Jun 1982				
2	<a href="#">ICCPR</a> <sup>19</sup>	Ratification 26 May 1992	Accession 23 Feb 2006	Ratification 25 Sep 2009	Ratification 23 Oct 1986	Accession 29 Oct 1996	Accession 24 Sep 1982				
3	<a href="#">ICESCR</a> <sup>20</sup>	Ratification 26 May 1992	Accession 23 Feb 2006	Ratification 13 Feb 2007	Ratification 07 Jun 1974	Accession 05 Sep 1999	Accession 24 Sep 1982				
4	<a href="#">CEDAW</a> <sup>21</sup>	Ratification 15 Oct 1992	Ratification 13 Sep 1984	Ratification 14 Aug 1981	Ratification 5 Aug 1981	Accession 9 Aug 1985	Ratification 17 Feb 1982	Accession 5 Jul 1995	Accession 22 Jul 1997	Accession 24 May 2006	Accession 5 Oct 1995
5	<a href="#">CAT</a> <sup>22</sup>	Accession 15 Oct 1992	Ratification 23 Oct 1998	Ratification 26 Sep 2012	Accession 18 Jun 1986	Accession 2 Oct 2007	Ratification 5 Feb 2015				
6	<a href="#">CRC</a> <sup>23</sup>	Accession 15 Oct 1992	Ratification 5 Sep 1990	Accession 8 May 1991	Ratification 21 Aug 1990	Accession 27 Mar 1992	Ratification 28 Feb 1990	Accession 17 Feb 1995	Accession 15 Jul 1991	Accession 27 Dec 1995	Accession 5 Oct 1995
7	<a href="#">ICRMW</a> <sup>24</sup>		Ratification 31 May 2012		Ratification 05 Jul 1995		Accession 01 May 2004				
8	<a href="#">ICPPED</a> <sup>25</sup>	Accession 27 Jun 2013									
9	<a href="#">ICRPD</a> <sup>26</sup>	Ratification 20 Dec 2012	Ratification 30 Nov 2011	Ratification 25 Sep 2009	Ratification 15 Apr 2008	Ratification 29 Jul 2008	Ratification 5 Feb 2015	Ratification 19 Jul 2010	Accession 7 Dec 2011		Ratification 18 Jul 2013
10	<a href="#">ICCPR</a> <sup>27</sup>				Ratification						
11	<a href="#">ICCPR- OP2</a> <sup>28</sup>				Ratification 22 Aug 1989						
12	<a href="#">OP- CEDAW</a> <sup>29</sup>				Ratification 20 Nov 2007	Ratification 14 Jun 2000					
13	<a href="#">OP-CRC- AC</a> <sup>30</sup>	Ratification 16 Jul 2004	Ratification 24 Sep 2012	Accession 20 Sep 2006	Ratification 26 Aug 2003	Accession 27 Feb 2006	Ratification 20 Dec 2001	Accession 12 Apr 2012			Ratification 11 Dec 2008
14	<a href="#">OP-CRC- SC</a> <sup>31</sup>	Ratification 30 May 2002	Ratification 24 Sept 2012	Accession 20 Sep 2006	Ratification 28 May 2002	Accession 11 Jan 2006	Ratification 20 Dec 2001	Accession 12 Apr 2012	Accession 16 Jan 2012	Accession 21 Nov 2006	
15	<a href="#">OP-CAT</a> <sup>32</sup>	Ratification 30 Mar 2007			Accession 17 Apr 2012						

18 International Convention on the Elimination of All Forms of Racial Discrimination.

19 International Covenant on Civil and Political Rights.

20 International Covenant on Economic, Social and Cultural Rights.

21 Convention on the Elimination of All Forms of Discrimination against Women.

22 Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

23 Convention on the Rights of the Child.

24 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

25 Convention for the Protection of All Persons from Enforced Disappearance.

26 Convention on the Rights of Persons with Disabilities.

27 1st Optional Protocol to the International Covenant on Civil and Political Rights.

28 Second Optional Protocol to the International Covenant on Civil and Political Rights.

29 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

30 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

31 Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

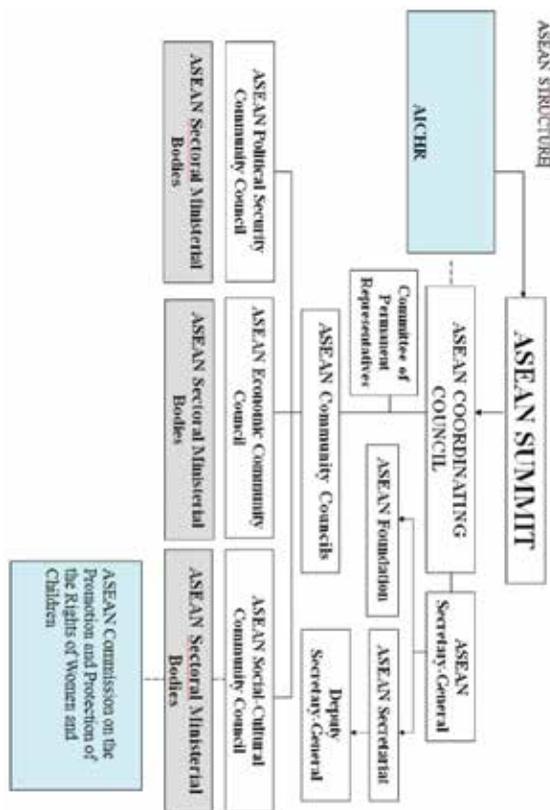
32 Optional Protocol of the Convention Against Torture.

All ASEAN Member States are parties to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The CRC is one treaty which incorporates the full range of human rights – including civil, political, economic, social and cultural rights – articulated in other human rights instruments that must be realized for children to develop their full potentials as human beings. It is noteworthy that the CRC has issued General Recommendations No. 11 (2009) on Indigenous Children. Majority, six out of the 10 Member States, are parties to the ICCPR, IESCR, and ICERD. Brunei, Malaysia, Myanmar and Singapore have not acceded to these, but they have obligations in the CRC that covers these rights.

However, among the ASEAN Member States, the individual and collective rights of peoples who self-identify as indigenous peoples are being violated on a daily basis. All too often, their territories are sacrificed and expropriated for state-sponsored development and corporate projects. These lead to gross and wide-scale violations of their collective rights to their lands, territories, and resources, apart from their individual rights. Although all ASEAN states voted for the adoption of the UNDRIP in 2007, most of them still refuse to respect indigenous peoples’ collective rights to their lands, territories and resources and to self-determination. They have also failed to implement their commitments to the UNDRIP like enforcing the process of getting the Free, Prior and Informed Consent (FPIC) of affected indigenous peoples on any project that affects their territories, nor consult them on legislation, policies and programs intended for them. Several ASEAN governments, underpinned by legal systems inherited from colonial times, have arrogated to themselves the right to

allocate, regulate and determine ownership, use, control and development of lands and resources within their national jurisdiction. These systems that are imposed often do not recognize the historical and customary use of lands and resources that have been nurtured and managed for centuries based on the inherent rights and traditions of indigenous peoples. This is causing the erosion and eventual loss of the indigenous peoples’ cumulative and collective indigenous knowledge and worldview that have enabled them to sustainably develop their fragile homelands and unique cultures over the centuries. This also can lead to the loss of their identity.

#### 4. The ASEAN Human Rights Framework and Mechanisms



## 4.1 The ASEAN Charter

The ASEAN did not have any organic law to govern its existence when it was established. The founding states only agreed on principles to govern their relationship with each other under the Treaty of Amity and Cooperation in Southeast Asia (TAC) that established the fundamental principles of ASEAN in February 1967 before they established ASEAN on 8 August that same year. The fundamental principles that govern ASEAN since then are the following:

- » Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations
- » The right of every State to lead its national existence free from external interference, subversion, and coercion
- » Non-interference in the internal affairs of members
- » Settlement of differences or disputes through peaceful means
- » Renunciation of threats or use of force
- » Effective cooperation among the members

On 20 November 2007, the ASEAN Member States finally adopted the ASEAN Charter at the 13th ASEAN Summit which then went into force on December 15, 2008. The Charter gives ASEAN a legal personality, therefore, accountability; it clarifies common objectives and principles and defines its structure, mechanisms and operations. It codifies past agreements within ASEAN and reiterates the principles of cooperation and relationship contained in its basic documents: declarations,

agreements, conventions, concords, treaties and other instruments. These basic principles are: sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity. It also called for the establishment of mechanisms to address regional issues on human rights, migrant workers, women and children.

The Preamble of the Charter starts with: “**WE, THE PEOPLES** of the Member States of the Association of Southeast Asian Nations (ASEAN), as represented by the Heads of State or Government ....” It affirms ASEAN’s commitment to adhere “to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms.” The “promotion and protection of human rights, fundamental freedom, and rule of law” are mentioned in its preamble, principle, and goal. It also contains the regional vision - “One Vision, One Identity and One Caring and Sharing Community.” To build this ASEAN community which is comprised of the ASEAN Political Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC), there is a need for regional cooperation and integration of the blueprints for each community. In its Article 16, it defines its engagement with other entities, including civil society, thus: “ASEAN may engage with entities which support the ASEAN Charter, in particular its purposes and principles.” The Charter includes a list of so-called associated entities which can engage officially with ASEAN. The list is limited only to those who went through the accreditation process.

The Charter contains an economic goal: “To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital” [Article 1(5)]. The Charter provides the ASEAN with a legal personality as a bloc in its conduct of business with outside countries and other regional blocs, especially in seeking trade and economic agreements. It also allows it to develop its structure in order to achieve the regional community it envisions in the ASEAN Vision 2015.

## **Critique of the Charter**

Civil society has been actively engaged in trying to input into the drafting of the Charter but many of its recommendations were ignored. The following points which had been raised on the Charter:

### *1. Citizens’ participation*

The Charter promotes a people-oriented ASEAN and “encourages” all sectors of society to participate in and benefit from the integration and community-building processes (Article 1 (13)). However, it does not spell out specific mechanisms for the full and effective participation of the peoples of the ASEAN, particularly of the leaders and representatives of peoples’ organizations and movements, including indigenous peoples. The principles laid down in the Charter define how Member States relate with each other but not how to deal with their respective citizens or the collective constituency of the whole bloc. It lays down the rights of the Member States but not of its citizens. It lacks clarity on the participation of its citizens in its structure and processes.

The criteria for representation in the ASEAN organs are not transparent and there are no clear mechanisms to ensure effective and inclusive representation. What are evident are political appointments not based on individual integrity relating to transparency and accountability, proven expertise or outstanding track record of good performance and professionalism and pro-poor commitment, among others. With this, the functioning of the ASEAN bodies will be dominated by the political agenda and personal interests of the appointing bodies.

Although “other entities” can encompass civil society and indigenous peoples’ organisations, it also includes business entities [Article 16(1)]. In the Charter’s Annex 2, the entities already accredited with ASEAN are mostly business, civic and sports organisations.

### *2. Lack of disciplinary or dispute mechanisms*

Although the Charter provides the ASEAN a legal personality as a collective, there are no disciplinary or dispute mechanisms where accountability of members can be registered and acted upon. This is due to the Charter’s overarching principle and framework for cooperation and non-intervention in the internal affairs of the ASEAN Member States [Article 2 (2)]. As a regional intergovernmental body, ASEAN cannot impose sanctions on any of its members even in cases of violation of their international human rights obligations. When Cyclone Nargis hit Myanmar and the government refused to allow the immediate entry of volunteers and relief, ASEAN was only able to persuade the Myanmar government to open the space for humanitarian work under the ASEAN Agreement on Disaster Management and Emergency Response (AADMER).

### 3. Human rights, social justice and economics

The ASEAN has made some progress in integrating human rights as part of its framework. In all its documents, however, it does not refer in any way to indigenous peoples and their recognition as distinct peoples with inherent collective rights over their lands, territories and resources. This, despite the fact that all ASEAN Member States have voted in favour of the adoption of the UNDRIP.

For indigenous peoples, the entry of state and corporate projects without their free and prior informed consent (FPIC), means further violations of their rights and the destruction of their ancestral lands. States and multi-transnational corporations have been targeting the rich natural resources of their communities for mineral extractions.<sup>33</sup> The impact of this economic approach to development is elaborated further in the section on the ASEAN Economic Community.

#### 4.2. The ASEAN Human Rights Declaration

The ASEAN Human Rights Declaration (AHRD) was adopted on November 2012 at the 21st ASEAN Summit in Phnom Penh, Cambodia and bolstered with the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration. The ASEAN Heads of State, in their statement, reaffirmed that the AHRD would be implemented “in accordance with our commitment to the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and other international human rights instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights.” Notably, the principle of “non-

<sup>33</sup> <http://iva.aippnet.org/sea-indigenous-people-to-media-give-voice-to-our-struggles/>.

interference in the internal affairs of ASEAN Member States” is not included in the AHRD, a departure from its Charter guiding principles. Its adoption is a step in the development of regional human rights standards for the bloc, albeit, with a weak start.

Indigenous peoples have expressed their disappointment with the AHRD due to its non-inclusion of indigenous peoples’ rights.<sup>34</sup> The AHRD makes no specific reference to indigenous peoples, which goes against the Member States’ reaffirmation of their commitment to the Universal Declaration of Human Rights, to the Charter of the United Nations and to the Vienna Declaration. Paragraph 20 of the Vienna Declaration calls upon States to take concerted positive steps to ensure “the full and free participation of indigenous people in all aspects of society“ and also to “take concerted positive steps to ensure respect for all human rights and fundamental freedoms of Indigenous people, on the basis of equality and non-discrimination, and to recognize the value and diversity of their distinct identities, cultures and social organization.” However, it can also be seen in a positive light for highlighting the importance of the rights of vulnerable and marginalised groups.<sup>35</sup>

Article 4’s recognition that the rights of “vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights...” may have its roots in the 1993 Bangkok Declaration which emphasizes “the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial,

<sup>34</sup> Asian Indigenous Peoples Pact, ‘Indigenous Peoples Statement on the ASEAN Human Rights Declaration’ (Statement, 4 December 2012).

<sup>35</sup> AHRD Art. 4: The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.

religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons.” There were suggestions from concerned CSOs for the inclusion in Article 4 of explicit recognition of minorities, indigenous peoples, persons deprived of liberty, or LGBTQ persons as those “whose human rights have been under attack both within ASEAN and globally,” but these were rejected by the drafters of the AHRD and read in light of the Bangkok Declaration’s language, such groups would have reasonable grounds to demonstrate that they fall under the Article’s protection.<sup>36</sup>

All ASEAN Member States voted in favor of the UNDRIP, therefore accepting their moral obligation to take appropriate measures to achieve the ends of the Declaration (Article 38, UNDRIP). All States have proclaimed the right of indigenous peoples to freely determine their political status and their economic, social and cultural development (UNDRIP, article 3). However, contextualized recognition and protection of indigenous rights, given their unique historical background and social organization, which is an important aspect of the UNDRIP, is missing from the AHRD. The AHRD does not specifically address indigenous peoples’ rights contained in the UNDRIP and an emerging body of international norms; that is to say, indigenous peoples’ identity and their lands, territories and resources; self-determination; and free, prior and informed consent in matters that concern indigenous peoples.<sup>37</sup>

Article 7 of the AHRD states that “the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.” This has the potential of licensing a Member State to place extensive restrictions on principles of equality and nondiscrimination contained in Articles 3 and 9, respectively. Article 7 of the AHRD is, therefore, consistent with the principle of non-intervention contained in the ASEAN Charter, seemingly deferring indigenous peoples’ rights to the State level.

Article 8 provides that human rights and fundamental freedoms shall be subject to such limitations ‘solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others’ and to meet the ‘just requirements’ for among others, the ‘general welfare of the peoples in a democratic society.’ It is then up to the Member State to determine what is ‘just’ in the context of human rights and fundamental freedoms. The ‘general welfare’ principle can be used by the State to impose developmental policies upon indigenous communities in the interest of national interest, ‘general welfare’ or ‘majority need.’ In Malaysia, the Orang Asli land rights policy involving the grant of individual titles for cash crops was rejected by the Orang Asli community because it involved the potential loss of customary lands, apart from lack of FPIC.<sup>38</sup> This is a situation that may repeat itself if the Member State is left to determine what ‘general welfare’ is.

<sup>36</sup> THE ASEAN HUMAN RIGHTS DECLARATION: A LEGAL ANALYSIS, *American Bar Association Rule of Law Initiative*. P.11. Accessed at <http://www.americanbar.org/content/dam/aba/directories/roli/asean/asean-human-rights-declaration-legal-analysis-2014.authcheckdam.pdf>, 29 June 2015.

<sup>37</sup> The AHRD and indigenous peoples rights, Yogeswaran Subramaniam, <http://www.austlii.edu.au/au/journals/ILB/2013/1.pdf>.

<sup>38</sup> See Yogeswaran Subramaniam, ‘Rights Denied: Orang Asli and Rights to Participate in Decision-Making in Peninsular Malaysia’ (2011) 19(2) *Waikato Law Review* 44, 63-4.

“Article 8, by allowing the enjoyment of *all* AHRD rights to be limited on grounds of national security, public order, public health, public safety, public morality, and the general welfare of the peoples in a democratic society, is inconsistent with all ASEAN Member States’ international obligations to guarantee absolutely freedom from torture, slavery and *ex post facto* laws.”<sup>39</sup>

Article 35 of the AHRD states that ‘The right to development is an inalienable human right’ in which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. This right is granted to both individuals and peoples, which could be interpreted to apply to indigenous peoples, “but is ambiguously worded”.<sup>40</sup> In the realization of the right to development, the article provides for ‘developmental and environmental needs of present and future generations,’ but it never refers to indigenous peoples’ right to plan their own development, nor their right to self-determination, nor does it include the right to adequate and just remedy from harm or loss arising from development projects. In addition to Article 3 of the UNDRIP, the right to freely pursue economic, social and cultural development is entrenched in Article 1 paragraph 1 of the ICCPR, an instrument ratified by six ASEAN Member States.

<sup>39</sup> THE ASEAN HUMAN RIGHTS DECLARATION: A LEGAL ANALYSIS, *American Bar Association Rule of Law Initiative*. P.21.

<sup>40</sup> *Ibid.*, p.112.

## 4.3 ASEAN Mechanisms

### 4.3.1 The ASEAN Inter-governmental Commission on Human Rights (AICHR)

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is a Charter body stipulated in Article 14 of the ASEAN Charter. It is mandated as the umbrella for the other two human rights bodies: the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on the Promotion and Protection of the Rights of Migrant Workers (ACMW) (Art 6.9). Located under the ASEAN Political-Security Pillar, it reports to the ASEAN Foreign Ministers Meeting (AMM). According to its Terms of Reference (ToR), the main objectives of the AICHR are “to promote and protect human rights and fundamental freedoms of the peoples of ASEAN.”<sup>41</sup> The AICHR is an overarching body with a cross cutting mandate that handles matters related to human rights cooperation with other ASEAN bodies, external partners and stakeholders (Cha-am Declaration para. 8).

The AICHR is an inter-governmental, consultative body whose 10 members represent each Member State. The representatives are accountable to the appointing government (Art. 5.2) and can be replaced anytime (Art. 5.6), but must act impartially according to the ASEAN Charter and its TOR (Art. 5.7). In line with the ASEAN way, decision-making is by consultation and consensus. The Chair shall be rotated every three years following the country holding the chair of the ASEAN. Since the accountability of AICHR representatives is to the appointing government, this has implications on their independence as they are beholden to their

<sup>41</sup> ASEAN, ASEAN Intergovernmental Commission on Human Rights (Terms of Reference).

governments, as evidenced by the term used for the members of the Commission – “government representatives” and not as commissioners who may have independent views and decisions. Again, decision-making is by consensus, indicating that decisions on cases will not be based on the merits, but on the governments’ politics.

The protection mandate of the AICHR is very limited. Out of 24 items on its mandate and functions, 12 are promotional while only two are on protection (Art. 4.10 and Art. 4.12). Though the purposes of the AICHR is to emphasize the promotion and protection of human rights and to endorse the international standards of human rights, the work of AICHR is limited due to ASEAN’s norms of “non -interference in the internal affairs of ASEAN Member states”<sup>42</sup> and “respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion”<sup>43</sup> as well as the norm of “pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights.”<sup>44</sup>

Apart from a weak protection mandate, the AICHR does not have the power to sanction human rights violators. The closest to protection that AICHR could provide is mentioned in Art. 4.10: *To obtain information from ASEAN Member States on the promotion and protection of human rights*, and in Art. 4.12: *To prepare studies on thematic issues of human rights in ASEAN*. Attempts by civil society, including indigenous peoples, to engage the AICHR through these mandates had not been

successful. Cases on human rights violations were submitted to the AICHR but were rejected because the body said there were no Rules of Procedure (RoP) yet to define how these submissions will be handled, and that there were no RoP on how the body will engage with civil society. It was only in Feb 15, 2015 that the AICHR came out with its “Guidelines on the AICHR’s Relations With Civil Society Organisations.” The guidelines set out 11 conditions and procedures to follow whereby it will set up a Screening Panel that “will assess the eligibility of the CSOs and institutions for consultation as well as consider the suspension or revocation of their consultative relationship.” It is composed of three appointed members of the AICHR with a term of one year.

Thematic studies had been and are prepared by experts without participation from civil society, nor is there a systematic attempt to get inputs from civil society despite demands from the latter for such. Art. 4.8 of the TOR states that AICHR should “engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter.”

However, it is important to continue to advocate for a stronger mandate of the AICHR for human rights protection including the protection of indigenous peoples’ collective rights. The AICHR ToR shall be initially reviewed five years after its entry into force, pursuant to Articles 9.6 and 9.7 of the AICHR.

In this connection, the AICHR is currently assessing its work and submitting recommendations for the consideration of the ASEAN Foreign Ministers Meeting

<sup>42</sup> <http://www.iwgia.org/human-rights/regional-bodies-and-mechanisms/asean-intergovernmental-commission-onhuman-rights>.

Article 2.1.b, ToR of AICHR.

<sup>43</sup> Article 2.1.c, ToR of AICHR.

<sup>44</sup> Article 2.4, ToR of AICHR

regarding future efforts that could be undertaken in the promotion and protection of human rights within ASEAN, consistent with the principles and purposes of the ASEAN Charter and the ToR. While the AICHR does not have a clear mandate yet on communications, systematic violations against indigenous peoples' rights<sup>45</sup> are piling up and indigenous peoples in ASEAN continue to suffer from social and political injustices and systematic discrimination. For indigenous peoples, there is no clear indication that the AICHR will start discussing and addressing the human rights situation of indigenous peoples in Southeast Asia in the near future.<sup>46</sup>

Despite the engagement of indigenous peoples, the AICHR, and the ASEAN as a whole, have not moved forward in recognizing indigenous peoples and their rights. The AHRD, besides falling below international standards with its flawed principles, has failed to include provisions recognizing indigenous peoples' rights. It contradicts the ASEAN Member States' commitment to the UNDRIP, and runs counter to their obligations under the human rights treaties they are parties to. Some Member States have legislation and/or policies that recognize indigenous peoples and their rights, but most have none. In cases where there are laws recognizing indigenous peoples and their collective rights, these are also regularly violated. The egregious violations against the Lumad in Mindanao, Philippines is an example of how indigenous peoples are treated with impunity when they assert and defend their rights. Some claim that there are no indigenous peoples in their country or that everyone is indigenous, or consider the recognition of ethnic diversity as subversive. For states that have legislation/

<sup>45</sup> <http://humanrightsinasean.info/campaign/2014-%E2%80%93aichrs-term-reference-will-be-due-review.html#sthash.BBAyKYF4.dpuf>.

<sup>46</sup> <http://www.iwgia.org/human-rights/regional-bodies-and-mechanisms/asean-intergovernmental-commission-on-human-rights>.

policy/landmark rulings on indigenous peoples, implementation has been dismal.

### **4.3.2 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)**

The ACWC is the second ASEAN human rights mechanism that was established as mandated by the 2004 Vientiane Action Program. It is also an inter-governmental consultative body under the ASEAN Socio-Cultural Community Blueprint and reports to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD). It was established to promote, protect, uphold, respect, fulfill fundamental human rights and freedoms of women and children; prohibit and eliminate discrimination, and facilitate and fulfill gender equality. It is mandated to uphold the principles of non-discrimination and substantive equality.

Part of the action plan of the ASCC was to work toward the establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. Since all of the ASEAN Member States have signed the CEDAW and the CRC, the Member States agreed to the establishment of the ACWC as an inter-governmental commission with two representatives from each country, one representing women and one representing children and youth. The commission was established in 2010 and the output and outcomes of the commission have yet to be evaluated. On the issue of violence against women, efforts are being made to address this by UN Women, civil society organizations, and various government agencies through workshops and seminars. It is not certain, however, that the ASCC Work Plan to Operationalize the Declaration on the Elimination of Violence Against Women in ASEAN will be concretized.<sup>47</sup> Nowhere in the

<sup>47</sup> [http://www.jcie.org/japan/j/pdf/pub/publst/1451/15\\_amara.pdf](http://www.jcie.org/japan/j/pdf/pub/publst/1451/15_amara.pdf).

Work Plan of the ACWC is there mention of attention to indigenous women and children.

At present, one of the critical issues affecting vulnerable groups is the trafficking of women and children from rural areas, and indigenous women and children represent a population particularly at risk. Further, the destruction of indigenous peoples' livelihoods, their physical displacement and forced relocation increases the vulnerability of indigenous women and girls to trafficking. Human trafficking is a notorious phenomenon in Asia, and in recent decades, as globalization intensified, human trafficking has become an increasingly transnational and organized crime, involving vast international and local crime networks. During its tenth meeting, the ACWC adopted the Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons which aims to support the improvement and enhancement of practices in handling cases of women and girl victims of trafficking by law enforcement agencies, social workers, health officers, service providers, and other frontline agencies and NGOs that are dealing with human trafficking cases.

Being established only under the ASCC pillar and not mainstreamed in the ASEAN as a major mechanism, the ACWC has been criticized and has created some degree of tension with the AICHR.

Under its ToR, the ACWC has the following mandate and functions which are important areas for engagement:

5.9. To promote studies and research related to the situation and well-being of women and children with the view to fostering effective implementation of the rights of women and children in the region.

5.10. To encourage ASEAN Member States to undertake periodic reviews of national legislations, regulations, policies, and practices related to the rights of women and children.

5.11. To facilitate sharing of experiences and good practices, including thematic issues, between and among ASEAN Member States related to the situation and well-being of women and children and to enhance the effective implementation of CEDAW and CRC through, among others, exchange of visits, seminars and conferences.

5.12. To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims.

**Under its RULES of PROCEDURE, it has the following provisions which are possible areas of engagement for indigenous peoples:**

\* 43. For the preparation and adoption of the reports to the AMMSWD, the ACWC shall gather information from all sources it deems necessary and appropriate, which includes but not limited to information from ASEAN Member States and other relevant ASEAN sectoral bodies.

\* 53. The ACWC shall engage with civil society and stakeholders wherever possible. Such participation shall respect the principles of transparency, effective and meaningful dialogue.

\* 55. The ACWC may also wish to engage in dialogue and consultation with entities concerned with the promotion and protection of the rights of women and children not listed in Annex 2 of the ASEAN Charter as and when necessary. The entities to be engaged are decided by the ACWC based on consensus.

#### **Making the ACWC work for indigenous women:**

1. Contribute to the thematic studies [TOR 5.9]
2. Seek for review of national legislations, regulations, policies, and practices related to the rights of women and children. [TOR 5.10]
3. Propose appropriate measures, mechanisms and strategies for the prevention and elimination of VAW/VAC [5.12]
4. Seek consultations for the promotion and protection of indigenous women's rights [RoP 55]
5. Input into the review of the 5-Year Workplan [2012-2015] and TOR [2015] [TOR 10.5/10.6] and adoption of a new Work Plan
6. Contribute to the annual report [TOR 7.5/RoP 43]

7. Request for information related to the work of the ACWC [RoP 30]

#### **4.3.3 ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)**

The ACMW was established on June 30, 2007 by the AMM and reports to the Senior Labour Officials Meeting (SLOM) for the following purposes:<sup>48</sup>

1. Ensure the effective implementation of the commitments made under the Declaration; and
2. Facilitate the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

It is composed of one representative from each ASEAN Member State and a representative of the ASEAN Secretariat.

Along its mandate to implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ASEAN Instrument), the ACMW works along four major areas:

1. Step up protection and promotion of the rights of migrant workers against exploitation and mistreatment, discrimination, and violence
2. Strengthen protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries

<sup>48</sup> <http://www.asean.org/communities/asean-political-security-community/item/statement-of-the-establishment-of-the-asean-committee-on-the-implementation-of-the-asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers>

3. Regional cooperation to fight human trafficking in ASEAN
4. Develop an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

The ACMW was adopted by the ASEAN heads of State at the 12<sup>th</sup> ASEAN Summit on January 2007 in Cebu, Philippines. Following the signing of the Declaration, a Committee on the Implementation of the Declaration was set up to advance efforts in these areas. As one of the Committee's recommended activities, ASEAN convenes a yearly Forum on Migrant Labour, which serves as a platform for review, discussion and exchange of best practices and ideas between governments, workers' and employers' organisations, and civil society stakeholders on key issues facing migrant workers in Southeast Asia. The Forum seeks to develop recommendations to advance the implementation of the principles of the ASEAN Declaration.

The ASEAN Foreign Ministers subsequently agreed to set up an ASEAN Committee on the Implementation of the ACMW to carry forward the regional work on migration. This Committee has been established and is mandated to oversee the implementation of the Declaration including the realization of the commitment on the development of a legally binding instrument.

The South East Asia National Human Rights Institutions Forum issued a paper analyzing the statement, and highlighting the fact that the scope and coverage of the ASEAN Instrument should address all issues relating to migrant workers.<sup>49</sup> It argued that ASEAN should use the principle of "national treatment," which is defined as non-discriminatory treatment that

ensures migrant workers receive treatment no less favorable than the treatment accorded to nationals of the labour receiving state. This principle should be explicitly stated in the ASEAN Instrument in relation to wages and conditions of work for migrants, and respect to the terms and conditions of work contracts. All aspects of laws and regulations should be equally applied to migrant workers, with special attention to those relating to wages, labour, housing, social protection, access to grievance handling and legal procedures, and judicial redress insofar as they are not inconsistent with the contract of employment. In case where migrant workers are also indigenous peoples, such as in Thailand, where many of the over half a million<sup>50</sup> stateless population are indigenous peoples, their specific situation should be further taken into account and mentioned as such in the statement.

The ASEAN Instrument, like other international instruments on migrant workers, does not deal with issues related to the impacts of in-migration of workers and other outsiders into indigenous communities when development and corporate projects are implemented in indigenous territories. There is no protection whatsoever, e.g., on the cultures, lands, resources and livelihoods of indigenous peoples, when migrant workers are brought in, even prioritised over locals, for corporate and state projects in their territories.

## **5. ASEAN's Road Map to Development and Implications on Indigenous Peoples' Rights**

### **5.1 Introduction to the Three Pillars**

The ASEAN Vision 2020<sup>51</sup>, adopted on December 15, 1997 by the Member States

<sup>49</sup> <http://www.suhakam.org.my/wp-content/uploads/2013/12/SEANF-Paper-on-Migrant-Workers-2010.pdf>.

<sup>50</sup> UNHCR, <http://www.unhcr.org/pages/49e489646.html>, accessed 4 April 2014.

<sup>51</sup> <http://www.asean.org/asean/about-asean/overview>.

for the creation of an ASEAN Community, is characterised by the following:

- “a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.”
- “We envision our nations being governed with the consent and greater participation of the people with its focus on the welfare and dignity of the human person and the good of the community.”

To concretize the ASEAN Vision 2020, the ASEAN Heads of States/Governments adopted the Declaration of ASEAN Concord II (Bali Concord II) in 2003 to establish an ASEAN Community by 2020 comprising three pillars... all of which are closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region.”<sup>52</sup>

On March 1, 2009, the Heads of State adopted the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015) which accelerated the timeline of the ASEAN Community building from 2020 to 2015. The ASEAN Community is comprised of three pillars, namely the ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC). Each pillar has its own Blueprint, and, together with the Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan Phase II (2009-2015), they form the Roadmap for ASEAN Community

<sup>52</sup> Roadmap for an ASEAN Community 2009 – 2015, <http://inter.oop.cmu.ac.th/ASEAN/RoadmapASEANCommunity.pdf>

2009-2015. All ASEAN Member States committed to ensure the Roadmap’s timely implementation.



## 5.2 The ASEAN Political Security Community (APSC)

The framework is based on political and security cooperation where countries live at peace with one another, and the ASEAN, with the world at large.

### Features

- \* Principles are *non-interference, consensus, national and regional resilience, and respect for sovereignty.*
- \* Elements of the Blueprint: *political development, shaping and sharing of norms on counter terrorism and nuclear free zones, inter-state conflict prevention and post-conflict peace-building; combating terrorism*

### CRITIQUE

- \* State-centric in perspective (national security)
- Existing internal conflicts should

be addressed: over resources, over self-determination/identity

❑ Governments (policies) are sources of conflict

- \* **Does not provide for political participation and representation of civil society**
- \* **No reference and adherence to international human rights standards and principles**
- \* **No dispute mechanism on internal conflicts, intra-state conflicts, separatism**
- \* **No recognition of internally displaced people (IDPs)**
- \* **Cultural diversity is not addressed , non-recognition of diversities in ethnicity and religion, and of marginalization**
- \* **Need to strengthen and monitor existing regional instruments on migrants, women, children, and CSO and public participation in processes**
- \* **Promote regional civilian peace keeping forces**

The APSC Blueprint was agreed upon by Member States in 2009, which consists of three main aspirations to be attained by end-2015: forming a rules-based community; becoming a cohesive, peaceful, stable and resilient region; and becoming a dynamic and outward-looking region within an increasingly integrated world. However, without any implementation schedule or scorecard, serious questions have been raised over the effectiveness of the blueprint, especially since it is a general document without quantifiable targets. In fact, ASEAN plans and efforts to form a Political-Security Community

by the end of 2015 to coordinate regional security policies have been hampered by rising tensions in the South China Sea and the bloc's inability to speak with one voice on the issue.<sup>53</sup>

The APSC aims to promote cooperation in political development and inter-state solidarity (settlement of intra-regional differences). Its main elements are: political development, shaping and sharing of norms, conflict prevention, conflict resolution, post-conflict peace building, combating terrorism and implementing mechanisms. The principles of non-interference, consensus decision-making, national and regional resilience and respect for sovereignty are also reiterated.<sup>54</sup> Another aim is to promote and protect human rights and fundamental freedoms of the ASEAN peoples. Non-discrimination is affirmed as to gender, race, religion, language, or social and cultural background in participating in, and benefiting from, the process of ASEAN integration and community building. Tolerance, respect for diversity, equality and mutual understanding are aspirational goals. Although human rights and fundamental freedoms, rule of law, good governance and democracy are mentioned, these are to be taken "with due regard to the rights and responsibilities of States."

The individual and collective rights enshrined in the internationally binding instruments to which ASEAN Member States are parties to, underpin the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Thus it is imperative that the States implement the provisions of the UNDRIP through national legislations, policy formulations, programmes and other concrete measures for the full realization of the rights of indigenous peoples.

<sup>53</sup> <http://www.iphrdefenders.net/country-updates/asean/992-asean-political-security-community-still-a-distant-goal>.

<sup>54</sup> Who we are: ASEAN's indigenous peoples, AIPP and IWGIA, 2011.

The APSC likewise seeks to promote understanding and appreciation of political systems, culture and history. However, this mainly refers to the dominant and mainstream political systems, cultures and history. Indigenous peoples across ASEAN are not acknowledged and recognized for their own customary laws and political systems and history of struggles in asserting their collective identities and dignity as distinct peoples. While it promotes peace and stability by addressing religious and ethnic conflicts, it does not account for the root causes of conflicts, nor does it provide for measures to address these based on the principle of respecting human rights, and upholding justice, equality and non-discrimination.

The APSC is also committed to the promotion of good governance and principles of democracy, but it again does not include reference to recognizing and respecting the collective rights of indigenous peoples as distinct peoples within the ASEAN. In addition, the ASEAN Convention on Counter-Terrorism has now been ratified by all ten ASEAN Member States. It serves “as framework for regional cooperation to counter, prevent and suppress terrorism and deepen counter-terrorism cooperation,” but it can also be utilized as a potential tool for further political repression among indigenous leaders and communities and other human rights defenders and civil society leaders in Southeast Asia. In sum, the APSC Blueprint has no mention at all of indigenous peoples who are also part of the ASEAN community, and how it will address the crosscutting human rights issues of indigenous peoples in the region.

### **5.2.1 Indigenous Peoples’ Access to Justice**

The EMRIP issued an advice in 2013 regarding the “access to justice in the promotion and protection of the rights of indigenous peoples.”<sup>55</sup> It insisted that the UNDRIP should be the basis of all action, including at the legislative and policy levels, on the protection and promotion of indigenous peoples’ right to access justice. Before even undertaking activities, there should be a common understanding of the best means to respect, promote and protect indigenous peoples’ access to justice, in line with their right to participate in decision-making on matters affecting them. The EMRIP also recommended States to recognize and provide support to indigenous peoples’ own justice systems and consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and State systems.

Indigenous peoples’ lack of access to justice is a concern of the Special Rapporteur on the human rights situation in Myanmar. Her 2015 report indicates that it is common for persons to be subject to criminal proceedings for defamation or providing false information when they make allegations against the military. She was concerned that following reports on the murder of two indigenous Kachin schoolteachers in northern Shan State in January 2015, the military, after initial investigations, publicly stated that its soldiers were not responsible and that public comments accusing the military would be met with legal action.

The SR further recommended that the government take immediate measures to ensure that victims are not penalized for bringing complaints and seeking redress against alleged

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<sup>55</sup> Advice of the Expert Mechanism on the Rights of Indigenous Peoples, Volume VI, 2013-2014, Compiled and Edited by Fergus MacKay, p. 104-105.

human rights violations by the Myanmar military.<sup>56</sup>

The CEDAW, in its Concluding Observations in 2008, expressed concern that the Myanmar Human Rights Body lacks a comprehensive and effective legal system for receiving complaints, “especially from women of ethnic groups,” and thus urged the State party to strengthen the legal complaints mechanism to “ensure that women, especially women of ethnic groups, have effective access to justice.”<sup>57</sup>

In Lao PDR, the lack of complaints alerted the Committee on the Elimination of Racial Discrimination (CERD) such that in 2012, it deemed that the absence of complaints did not signify a lack of racial discrimination, and cited its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. It then recommended that the State party verify whether the absence of complaints was not the result of the victims’ lack of awareness of their rights, fear of reprisals, limited access to remedies, lack of confidence in the police and judicial authorities, or the authorities’ lack of attention or sensitivity to cases of racial discrimination. Lao PDR adopted the Law on Complaints in 2005 and implemented its Master Plan on Development of the Rule of Law to improve access to justice, but the rate of complaints is still very low. This is surprising specifically in the context of Lao PDR as it is a multi-ethnic society with 49 officially recognized ethnic groups.

The CERD raised the same issue for Vietnam in 2012, with “the lack of information on complaints about acts of racial discrimination lodged with courts and other relevant authorities, despite persistent reports of de

facto discrimination against members of certain minority groups.”<sup>58</sup> It further pointed out the lack of a comprehensive, effective and independent complaints mechanism in the State party as well as “the lack of effective implementation of the existing legal, policy and institutional frameworks to combat racial discrimination.”

The CEDAW expressed its concern in 2013 in its Concluding Observations on Cambodia regarding legal aid and access to justice when it opined that “the State party lacks a comprehensive legal aid system, which negatively affects women’s access to justice, and that they incur additional court expenses because of corrupt practices when pursuing their cases. It is also concerned that legal aid is mainly provided by non-governmental organisations and that the funding provided by the State party to the Bar Association for this purpose is inadequate.”<sup>59</sup> In particular, it urged the State party to pursue investigations and “prosecute allegations of corruption in the administration of justice and, where applicable, punish the perpetrators.”<sup>60</sup> There are relevant observations for the redress of land rights issues that many indigenous communities in Cambodia are facing.

In his 2013 report, the Special Rapporteur on the human rights situation in Cambodia (SR Cambodia) noted the regression in the promotion and protection of the rights of indigenous peoples:

*“...it seemed that the indigenous land titling programmes were being deprioritized, and resources diverted from the Ministry of Land Management, Urban Planning and*

<sup>58</sup> CERD/C/VNM/CO para 9 and 10.

<sup>59</sup> CEDAW/C/KHM/CO/4-5

<sup>60</sup> Ibid.

<sup>56</sup> A/HRC/28/72, Para 59, 23 March 2015.

<sup>57</sup> CEDAW/C/MMR/CO/3, p.4.

*Construction. There have been reports of intimidation, harassment and coercion of indigenous peoples in some cases, and in other cases confusion among some indigenous individuals who opted for private land title without fully understanding their rights to communal land title. Affected villages include those of the Suoy peoples in Kampong Speu province, the Jarai, Tumpoun, Krung and Kachak peoples in Ratanakiri province, the Phnong [Bunong] and Stieng peoples in Mondulakiri, and the Kuy [Kui] people in Preah Vihear.”<sup>61</sup>*

The documented cases submitted to these UN mechanisms, besides those that had not been communicated, show that human rights violations against indigenous communities in Cambodia arise from the poor enforcement of laws governing economic land concessions, such as: non-compliance with pre-project requirements, environmental and social impact assessments and community consultations, outright circumvention of procedures, and the absence of effective redress mechanisms for victim-communities. In 2007, the Cambodia Office of the High Commissioner on Human Rights and the SR Cambodia reported that “(t)he alienation of indigenous land through the grant of concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law... Instead of promoting rural development and poverty reduction, economic land concessions have compromised the rights and livelihoods of rural communities in Cambodia.”<sup>62</sup> In the same report, he noted that this has been a continuing problem: “Since 1996, successive Special

<sup>61</sup> A/HRC/24/36, para 27.

<sup>62</sup> Special Representative of the Secretary-General for human rights in Cambodia, Economic Land concessions in Cambodia: A human rights perspective, p. 1, 2007.

Representatives of the Secretary-General for human rights in Cambodia have expressed concern about the impact of economic land concessions on the human rights and livelihoods of rural communities. The concerns raised over the past decade remain the same today.”

## **5.2.2 Indigenous Peoples’ Human Rights Defenders At Risk**

In its advice No. 6<sup>63</sup> of 2014 entitled “Restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth and persons with disabilities,” EMRIP reminded states of their obligation to protect and support the work of indigenous human rights defenders in the promotion of access to justice for indigenous peoples, in accordance with the Human Rights Council resolution 22/6.

Extrajudicial killings are one of the human rights violations against indigenous peoples’ human rights defenders in various ASEAN Member States. These killings are, in all cases, related to the defense of indigenous communities of their rights to their lands, territories and resources. The Committee on Civil and Political Rights (CCPR) expressed concern over the continued perpetration of extrajudicial killings and enforced disappearances in the Philippines.<sup>64</sup> In March 2014, William Bugatti, an indigenous Tuwali from Ifugao province and a human rights defender was killed and his murder has not been solved to date. The concern over the arming and use of “force multipliers” for counter-insurgency and other purposes pursuant to Presidential Executive Order No. 546 had already been raised with the Human Rights Committee as early as 2012. The same

<sup>63</sup> Advice of the Expert Mechanism on the Rights of Indigenous Peoples, Volume VI, 2013-2014, Compiled and Edited by Fergus MacKay, p. 107.

<sup>64</sup> CCPR/C/PHL/CO/4, para 14.

was expressed by the CERD, stating that the extrajudicial killings, enforced disappearances, evacuation, harassment and “red-labeling” of indigenous peoples asserting their rights to their territory “ are evidence of the failure of the Philippine government to put in place effective measures to protect indigenous communities from retaliations and violations in relation to the exercise of their rights.”<sup>65</sup> The State party accounted for 151 extrajudicial killings of indigenous peoples between 2001 and 2010,<sup>66</sup> as reported by the National Federation of Indigenous Peoples in the Philippines to the 13th session of the UPR of the Philippine government in 2012. Based on the SR’s 2009 report on Extrajudicial Killings, the country has seen only one conviction in the period 2007-2008 of cases involving extrajudicial executions. There is a great disparity in the number of extrajudicial killings recorded by civil society organizations and those acknowledged as such by the Government.<sup>67</sup> The National Commission for Culture and the Arts said in its September 2015 statement that since 2010, more than 68 cases of extrajudicial killings of indigenous peoples were recorded. There were 84 reported cases of attacks on community schools affecting lumad or indigenous children. To date, the number of IP evacuees has peaked to 2,262 as per the last report of Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KATRIBU).

The UN General Assembly passed the International Convention for the Protection of All Persons from Enforced Disappearance in 2006<sup>68</sup> but the Philippines had not accessed this treaty. At the time of its adoption, extra-judicial killings and enforced disappearances were

<sup>65</sup> CERD/C/PHIL/CO/20, para 23, (September 23rd, 2009).

<sup>66</sup> Submission of the National Alliance of Indigenous Peoples in the Philippines to the 2012 Human Rights Council, para 19.

<sup>67</sup> A/HRC/11/2/Add.8, 2009, para. 24 and 25.

<sup>68</sup> US Department of State, ‘Philippines’ (March 2007), <<http://www.state.gov/j/drl/rls/hrrpt/2006/78788.htm>>.

prevalent in the country, as shown in the US State Department’s report on the status of human rights in the Philippines, where there were 72 cases of enforced disappearance in 2006. In 2007, 35 victims of enforced disappearance were recorded including the case of James Balao, an indigenous activist from the Cordillera.<sup>69</sup> The cases of enforced disappearance continue up to the current administration of President Benigno Simeon Aquino III.

### **5.3 The ASEAN Economic Community (AEC) and Indigenous Peoples’ Right to Land and Resources**

#### **Features:**

- \* a single market and production base,
- \* a highly competitive economic region,
- \* a region of equitable economic development, and
- \* a region fully integrated into the global economy
- \* Priority Integration Sectors: agro-based products; air travel; automotives; e-ASEAN; electronics; fisheries; healthcare; rubber-based products; textiles and apparels; tourism; wood-based products; and logistics (additional sector as may be identified by the Ministers after the agreement)

#### **CRITIQUE**

- \* Strong focus on trade, investment and finance liberalization
- \* Only protects end-users (consumers)

<sup>69</sup> US Department of State, ‘Philippines’ (March 2008), <<http://www.state.gov/j/drl/rls/hrrpt/2007/100535.htm>>.

- \* Lacks clear assurance of environmental and livelihood sustainability
- \* Disregards existing bilateral economic agreements
- \* Lacks details on how the region acts as a whole

Sustained economic growth is one key element of sustainable development. From this perspective, economic development is enabling people to improve their living standards, including adequate access to health and education. Furthermore, economic growth is seen as allowing measures to be taken to preserve and protect the environment and natural resources, which in turn builds the basis for life and permits further economic growth. Steps undertaken by ASEAN towards accelerated growth comprise, among others, are the ASEAN Free Trade Area (AFTA) and the ASEAN Investment Area (AIA). To facilitate economic growth, infrastructure network is obligatory, such as highways, telecommunications, power grids as well as water and gas pipelines. ASEAN Vision 2020 demands for development in the fields of energy, gas and water through the APG and the Trans-ASEAN Gas Pipeline (TAGP) and Water Pipeline, as well as the use of alternative energy resources (cf. ASEAN Economic Community Blueprint, Section B, Competitive Economic Region).

The ASEAN Economic Community (AEC) embodies the economic integration envisioned by the ASEAN leaders. The Declaration on the AEC Blueprint states that the end-goal of the ASEAN economic integration is the full realization of an AEC, wherein the region will be transformed “into a single market and production base, a highly competitive region, a region of equitable economic development, and a region fully integrated into the global

economy.” According to the ASEAN economic Blueprint, article 4, the aim of the signatory governments is “to transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital.” The AEC is on track to eliminate tariffs on almost all goods and by the end of 2015, it is also expected that a comprehensive competition law will be in place in at least seven Member States.<sup>70</sup> Its Priority Integration Sectors are: agro-based products, air travel, automotives, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, wood-based products, and logistics.

On the other hand, the promotion of a single market and production base means promoting a market-driven economy based on free trade which will, however be, detrimental to poorer, smaller economies. ASEAN State parties are pushing for a free trade and investment plan that includes projects that threaten indigenous peoples’ communities. These include interconnecting roads and highways, economic zones, mining, dams and power projects, palm oil plantation and other bio-fuel projects, commercial agriculture, as well as land concessions for economic purposes or for real estate development and commercial tourism.

The market-driven economy being promoted by the AEC endangers indigenous communities as their lands and territories are being used and exploited in the name of development that does not benefit them. In fact, it is leading to increasing gaps between the rich and the poor, further marginalizing indigenous peoples. It completely ignores the right of indigenous peoples over their land and resources and gives no regard to the practices of self-sufficiency and sustainable resource management systems

<sup>70</sup> <http://www.asean.org/news/asean-secretariat-news/item/asean-formulates-a-post-2015-vision-and-strategicaction-plan-on-competition>.

of indigenous communities. Further, it does not provide for measures for economic equity and social safeguards. The international standards include the requirement for the FPIC of indigenous communities on development projects, programs and policies that affect them and the AEC must conform to this as well. Policy against displacements or resettlement of indigenous communities without their consent should be put in place and enforced. The ASEAN senior officials are currently drafting the Post-2015 Economic Vision and Plan, supposed to contain a new plan to chart the direction for deeper regional integration for 2016 until 2025.<sup>71</sup>

### **5.3.1 Indigenous Peoples' Right to Land and Resources**

The General Recommendation No.23: Indigenous Peoples (GR 23) of the Committee on the Elimination of Racial Discrimination (CERD) call upon State parties “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.” GR 23 interprets the scope of the ICERD with respect to indigenous peoples.<sup>72</sup>

While acknowledging the existing legal framework, the Human Rights Committee (HRC) in its 2015 Concluding Observations on the second periodic report of Cambodia expressed concern that indigenous peoples in the country are not sufficiently consulted on the decision-making process with respect to issues affecting their rights, including management of their communal lands and land allocation for extractive industries and agribusiness. The HRC recommended that the State establish and ensure meaningful and effective consultation

<sup>71</sup> <http://www.vietnambreakingnews.com/2015/02/asean-post-2015-economic-vision-draft-to-be-completed-inmid-2015/>.

<sup>72</sup> 23rd General Recommendation of the CERD

mechanisms with indigenous peoples in decision-making in all areas that have impact on their rights.<sup>73</sup> More specifically, concern was raised over indigenous communities who are “deprived of their land as a result of land grabbing and forced evictions carried out by people in positions of power,”<sup>74</sup> despite the adoption of the Law on Expropriation in February 2010 and the Circular on Temporary Settlements in May 2010 which were supposed to legislate the issue.

In his seventh mission in May 2012, the Special Rapporteur on the Human Rights Situation in Cambodia (SR Cambodia) reported exclusively on economic land concessions and the effects on indigenous peoples. He mentioned that from 25 concessions known to have been granted in 2007, “at least 98 land concessions were granted on indigenous peoples’ land” in 2012.<sup>75</sup> He declared that “[t]he granting of concessions on indigenous peoples’ land affects the cohesiveness of the community, and therefore their ability to apply for communal land title, in turn affecting their livelihood and ability to gather food and forest products and to practice their cultural rights.”<sup>76</sup>

The United Nations Office of the High Commissioner on Human Rights (OHCHR) field office in Cambodia, after looking into the report of NGO Forum in Cambodia on cases of indigenous peoples’ land alienation in 2004 and 2005, sent communications to the government. Several cases were also shared at the international level including at the annual sessions of the UNPFII and the EMRIP. NGOs

<sup>73</sup> Concluding observations on the second periodic report of Cambodia\* CCPR/C/KHM/CO para 28, 2015.

<sup>74</sup> Concluding observations on the second periodic report of Cambodia\* CCPR/C/KHM/CO para 61, 2015.

<sup>75</sup> A/HRC/21/63/Add.1/Rev., p. 38. Also see the annex in the same report of a list of land concessions granted in areas inhabited and traditionally used by indigenous communities.

<sup>76</sup> Ibid, para 120.

and indigenous peoples' organizations have also contributed to the stakeholders' report to the Cambodia UPR, the shadow report to the CEDAW, and sent communications to the SR IPR, the SR Cambodia, and the CERD. Various other NGOs and donors in Cambodia have time and again been raising issues on the rights of indigenous peoples to their lands, territories and resources. However, the Cambodian government has consistently ignored these matters.<sup>77</sup>

Similar issues have been raised in the other Mekong countries by various treaty monitoring bodies. In Lao PDR, the CERD expressed in its 2012 Concluding Observations its concern that "the land regime of the State party, whereby land is allotted for housing, farming, gardening and grazing, fails to recognize a link between the cultural identity of ethnic groups and their land." It therefore called upon the State party to review its land regime with a view to recognizing the cultural aspect of land as an integral part of the identity of some ethnic groups.<sup>63</sup> The Land Law is currently under review but although draft amendments were submitted to the National Assembly in 2012, the revisions have not yet been adopted. The revisions shall provide a legal framework for large-scale land reform. The government has also drafted a new comprehensive national land policy that prioritizes increased local land management. It plans to focus on increasing access to land and tenure security for rural households as part of its continued efforts to alleviate poverty.<sup>64</sup> The revised Land Law<sup>79</sup> shall also address the issue of land concessions to foreign investors, which has led to the eviction of indigenous peoples and local communities from their lands. The CERD noted its concern on the same 2012 Concluding Observations on the implementation of

the relocation policy which has uprooted communities and forced them to adopt new lifestyles and livelihoods, and the need to develop alternatives to relocation, taking into consideration the "ethnic groups' ties to land."<sup>80</sup>

For Vietnam, the ICESCR expressed its concern in 2014 on the sedentarization (settling of a nomadic population) and land revocation programmes of the government, as they do not ensure, in law and in practice, the FPIC of ethnic minorities on decisions that affect them and lead to forced evictions.<sup>81</sup>

The Special Rapporteur on the Human Rights Situation in Myanmar (SR Myanmar) was concerned with the challenges relating to sustainable and profitable land development and how the people in the country can benefit from available opportunities. In October 2014, the government released its draft National Land Use Policy for public consideration and comment. For its current work towards a national land use policy, the SR Myanmar recommended particular proposals to the Government to strengthen security of tenure for marginalized and vulnerable groups, such as informal or non-registered land rights-holders, ethnic minorities and women.<sup>82</sup>

In Malaysia, a positive step regarding land rights has been noted. The Suruhaniaya Hak Asasi Manusia (SUHAKAM), the Human Rights Commission of Malaysia, conducted a nationwide Native Customary Land Rights Inquiry starting in 2011 until the middle of 2012, after receiving complaints of land grabbing and eroding native customary land rights. The EMRIP referred to it as an example of good

<sup>77</sup> *Threatened lands, threatened lives, report on Cambodia*, AIPP 2014.

<sup>78</sup> CERD/C/LAO/CO PARA 14, 13 APR 2012.

<sup>79</sup> PR Newswire 2012; Sengdara 2012.

<sup>80</sup> CERD/C/LAO/CO Para 18, 13 APR 2012.

<sup>81</sup> Vietnam CESCR, E/C.12/VNM/CO para 29, 15 DEC 2014.

<sup>82</sup> A/HRC/28/72, PARA 51), 23 March 2015

practice.<sup>83</sup> Under its 2012-2016 Strategic Plan, SUHAKAM has received numerous complaints of human rights violations from the Orang Asal, and most of the cases remain unresolved, thus not much has changed on the ground. The findings of the inquiry were made public in August 2013 but the government has not acted on the recommendations. Instead of looking into the implementation of the findings, it formed a Task Force “to review and verify the truth of the allegations contained in the SUHAKAM Report.”<sup>84</sup> In December 2013, the government clarified during the Universal Periodic Review (UPR) that the “task force comprising senior officials had been established to review and formulate the necessary strategy regarding the issue of indigenous peoples’ land rights, pursuant to the national inquiry into the land rights of indigenous peoples in Malaysia undertaken by SUHAKAM.”<sup>85</sup>

In a parliamentary briefing to 20 members of Parliament at the Opposition Party Office on June 17, 2015, Jaringan Orang Asal SeMalaysia, the national organization for indigenous peoples, urged the establishment of a parliamentary select committee (PSC) as part of the recommendations following the findings of the task force on the National Land Inquiry.<sup>86</sup> The indigenous peoples added that the PSC should also look into the drafting of law and procedures on obtaining the FPIC of the Orang

Asal if and when their land is involved in any development project. The PSC can also look into the establishment of the National Commission on Indigenous Peoples.

In the July 2012 UPR of the Human Rights Council, the Philippines was advised to “implement the Indigenous Peoples’ Rights Act (IPRA) to ensure that economic activity, in particular mining, does not negatively affect the rights of indigenous peoples.”<sup>87</sup> The indigenous peoples have used the treaty monitoring bodies extensively, particularly the CERD, to call on the Philippine government to fulfill its obligations. One of the CERD’s recommendations which was to have been addressed by January 2012 is as follows: “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 but allows the easy issuance of mining exploration and exploitation permits in ancestral domains of indigenous peoples is patent discrimination against indigenous peoples.”<sup>88</sup> Apart from the fact that very few titles to Ancestral Domains and even less Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs) have been formally recognized by the State as required by the Indigenous Peoples Rights Act (IPRA) of 1997, it is also to be taken into account that most plans have been elaborated without

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<sup>83</sup> United Nations General Assembly, Human Rights Council, Eighteenth session, Report of the Expert Mechanism on the Rights of Indigenous Peoples Final report of the study on indigenous peoples and the right to participate in decision-making, 17 August 2011, A/HRC/18/42/78.

<sup>84</sup> [http://www.malaysianbar.org.my/press\\_statements/press\\_release\\_implement\\_recommendations\\_made\\_in\\_suhakam\\_report\\_of\\_the\\_national\\_inquiry\\_into\\_land\\_rights\\_of\\_indigenous\\_peoples.html](http://www.malaysianbar.org.my/press_statements/press_release_implement_recommendations_made_in_suhakam_report_of_the_national_inquiry_into_land_rights_of_indigenous_peoples.html), Accessed June 18, 2015.

<sup>85</sup> United Nations General Assembly, Human Rights Council, Twenty-fifth session, Report of the Working Group on the Universal Periodic Review, A/HRC/25/10, recommendation 131.

<sup>86</sup> <https://www.malaysiakini.com/letters/302705>.

<sup>87</sup> 9 July 2012, A/HRC/21/12, 129.44.

<sup>88</sup> CERD/C/PHIL/CO/20, para 23, (September 23rd, 2009<sup>9</sup>).

the participation of the IP communities.<sup>89</sup> The CERD expressed its concern regarding the formal process for claiming collective land titles that it qualified as "unduly burdensome,"<sup>90</sup> and over the fact that the indigenous communities bear the burden of proof when submitting applications. Thus it recommended that in consultation with indigenous peoples, the State party conduct an independent review of the legislative framework in relation to indigenous property, particularly on the question of consistency of the IPRA with its implementing guidelines, the Regalian doctrine and other related doctrines, as well as the Mining Act of 1995. In 2012, the Government of the Philippines promulgated Executive Order 79 supposedly to make several innovations on the Mining Act regarding the expansion of the areas closed to mining applications. However, indigenous peoples continue to oppose the new mining policy as it is just a reiteration of the Philippine Mining Act of 1995.<sup>91</sup>

The CERD also highlighted in the same 2007 Concluding Observations that the "2007 Anti-Religious and Racial Profiling" bill was still pending consideration by Congress<sup>92</sup> implying that the ICERD, although ratified by the Government of Philippines, was not yet fully applied in the national legal system as there has been no adoption of the necessary legislation. This bill which includes provisions on indigenous peoples' rights to lands, territories and resources in its section 3 has still not been passed into a law in 2015<sup>93</sup> thus the State party has not adopted a comprehensive anti-discrimination law that protects indigenous

peoples against discrimination. In its 2009 Concluding Observations on the Philippines, the CERD noted that "it did not receive adequate clarifications regarding the status of the Convention in the national legal system," although "many provisions in the convention are not self-executing and require national legislation to take effect at the national level."<sup>94</sup> The CERD Committee sent a letter to the UN permanent representative of the Philippines in 2007,<sup>95</sup> regarding the situation of the community of the Subanen people of Mount Canatuan in Zamboanga, Philippines. In the 1990s, having obtained the consent of a company-supported Council of Elders, a concession was granted to a Canadian mining company authorizing activities on Mount Canatuan, a sacred site of the Subanen people. This process did not comply with customary law and with the opinion of the highest Subanen judicial authority who, in 2004, described the Council of Elders as illegal and illegitimate, and the CERD, in its letter,<sup>96</sup> demanded the National Commission of Indigenous Peoples NCIP to nullify the agreements with the false council of elders. However, there were no government efforts to support the Subanen case, and mining activities started in 2004. The CERD reiterated in its Early Warning letters in 2008, 2010 and 2012<sup>97</sup> that mining activities were continually carried out without consultation where 330,000 indigenous peoples lived.<sup>98</sup> In May 2011, the company admitted that it failed to recognize the Subanen leaders and the sacred mountain,

<sup>94</sup> CERD/C/PHIL/CO/20, para 14, (September 23rd, 2009).

<sup>95</sup> [http://www2.ohchr.org/english/bodies/cerd/docs/philippines\\_letter.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/philippines_letter.pdf).

<sup>96</sup> UN CERD Complaint 2007: Discrimination against the Subanon of Mt Canatuan, Siocon, Zambonga del Norte, Philippines in the context of large-scale gold mining on their ancestral domain.

<sup>97</sup> <http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx>.

<sup>98</sup> <https://ejatlas.org/conflict/mt-canatuan-gold-mine-on-subanon-ancestral-lands-western-mindanao-philippines>.

<sup>89</sup> <http://www.tebtebba.org/index.php/content/270-philippine-indigenous-peoples-agenda>.

<sup>90</sup> CERD/C/PHL/CO/20, para. 22.

<sup>91</sup> <http://www.rappler.com/move-ph/10219-is-pnoy-snubbing-indigenous-peoples>.

<sup>92</sup> CERD/C/PHL/CO/20, para. 14 and 15.

<sup>93</sup> <http://lorenlegarda.com.ph/senate-bill-no-1357-anti-religious-and-racial-profiling-act/>.

and committed to pay fines to the community, under an indigenous justice trial.<sup>99</sup> A 2013 article mentioned the same company's land grabbing for a concession in three villages, sowing fear among the people after the 2012 extrajudicial killings of a Subanen tribal leader and his son.<sup>100</sup> Strong opposition to the mining activities continued until the end of operations in 2014 after ore reserves were exhausted, leaving indigenous farmers and fishermen suffering from the mining's negative impacts.

In 2002, Rodolfo Stavenhagen, UN Special Rapporteur for the human rights and fundamental freedoms of indigenous peoples visited the Philippines and reported: "Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment. These activities are often carried out without their free, prior, and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as "development aggression". Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries."<sup>101</sup>

It is, however, notable that in 2011, the Chairperson of the Commission on Human Rights of the Philippines made a statement on their findings following the complaints of

<sup>99</sup> Mines and Communities (24/05/2011): "Canadian company TVI submits to Philippine tribal justice".

<sup>100</sup> <http://www.columban.org.au/archives/features/2012/columbans-lament-subanen-murders>

<sup>101</sup> Stavenhagen, Rodolfo. 2003, *Human Rights and Indigenous Issues in the Philippines*, Report for 59th UN Commission on Human Rights in Geneva.

indigenous peoples on the violations allegedly perpetrated by Oceana Gold, a foreign-owned mining company operating in the Philippines. The Commission then issued a resolution that recommended the Government to "consider the probable withdrawal of the Financial and Technical Assistance Agreement granted to the foreign company in view of the gross violations of human rights it has committed."<sup>102</sup> The Commission also "directed" its own regional office to "actively advocate for the human rights of the affected community and to take every step possible to avoid the occurrence of further violence and oppression."<sup>103</sup> However, the government has allowed the company to proceed with its operations, with the company claiming that it was practicing "ethical, responsible and sustainable mining."

In May 2014, Komisi Nasional Hak Asasi Manusia (Komnas HAM), the Human Rights Commission of Indonesia, launched its first national inquiry into alleged human rights violations of indigenous peoples linked to land conflicts. Komnas HAM collected around 140 formal complaints from seven regional hearings held in Sumatra, Java, Bali-Nusa, Sulawesi, Kalimantan, Maluku and Papua, in addition to a national hearing. Each hearing involved witnesses, experts, local leaders and advocates from civil society organizations,<sup>104</sup> and issued recommendations to President Joko Widodo.<sup>105</sup> The public hearings started in August 2014 in

<sup>102</sup> [www.chr.gov.ph/MAIN%20PAGES/news/PS\\_17Jan2011\\_didipio.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/PS_17Jan2011_didipio.htm).

<sup>103</sup> Commission on Human Rights of the Philippines, « Statement on the human rights situation in Barangay Dipidio, Kasibu, Nueva Vizcaya », 17 January 2011, [http://www.chr.gov.ph/MAIN%20PAGES/news/PS\\_17Jan2011\\_didipio.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/PS_17Jan2011_didipio.htm), accessed August 2014.

<sup>104</sup> Thomson Reuters Foundation, Indonesia probes violations of indigenous rights in contested forests, 29 May 2014, <http://www.trust.org/item/20140529110927-5sw62>.

<sup>105</sup> Business and Human Rights Resource Centre, <http://business-humanrights.org/en/indonesia-human-rightscommission>.

Palu, island of Sulawesi,<sup>106</sup> while the hearing for the Papua region was held on November 26-28, 2014. Five cases were investigated, including on oil palm plantations and complaints against logging companies. Several findings were noted one of which was that indigenous peoples' rights have been ignored by the State's unilateral classification and establishment of forest status without taking into account the existence of Papuan indigenous peoples, resulting to a weakened link to their forests. In addition, it was found that the local government has not exerted control over developments in indigenous community lands and has allowed disputes over land and natural resource management to break out. The hearing recommended 14 points for the Papua region.<sup>107</sup>

Although KOMNAS HAM concluded the national inquiry in the beginning of 2015, it has not yet come out with a preliminary or full report. According to AMAN, the results made clear that police brutality has become a serial feature; that legions of companies are operating without permits; and that the government has not even catalogued the myriad groups of indigenous peoples who live in the forest. Two major abuses were highlighted in the hearings: land grabbing by huge timber companies which do not have legal authorization but have a major interest in clearing the forest to plant oil palm; and the 'divide and conquer' strategy used by companies and officials to separate communities from their rights to their territory. The hearing in Pontianak, West Kalimantan in October cited the case of Semunying Jaya village, where a subsidiary of palm oil giant Duta Palma was shown to have cleared a forest

without a crucial permit, causing division even among familial bonds. Two close cousins, one hired by the firm and the other opposed to it, testified on opposite sides of the aisle during the hearing.

Further, a Declaration instituting a National Programme for the Recognition and Protection of Customary Communities through REDD+ (Reduction of Emissions from Deforestation and Forest and Peat-land Degradation) was issued jointly on 1st September 2014 by the Coordinating Ministry of People's Welfare, Ministry of Internal Affairs, Ministry of Law and Human Rights, Ministry of Forestry, Ministry of the Environment, National Land Agency (BPN), the National Geospatial Information Agency, National Commission on Human Rights, and the national REDD+ Agency.<sup>108</sup>

In several instances, the CERD has been addressing the situation of the estimated 50,000 Malind and other indigenous peoples (Muyu, Mandobo, Mappi, Asmatnd Auyu)<sup>109</sup> in Maruke District in Papua Province, Indonesia, who are directly affected by the Maruke Integrated Food and Energy Estate Project (MIFEE). The MIFEE is an agro-industrial mega-project initiated by the State and implemented by various corporate entities which reportedly appropriated two million hectares of traditional indigenous peoples' land for palm oil and logging operations. The CERD first addressed the MIFEE issue in its 2007 Concluding Observation<sup>110</sup> where it expressed concern on the allegations of threats and irreparable harm caused by the MIFEE to the affected peoples. It then issued two letters

<sup>106</sup> Indonesia to hear indigenous peoples' grievances on land disputes, August 22, 2014, <http://news.mongabay.com/2014/0822-lbell-indonesia-land-disputes.html>

<sup>107</sup> Komnas HAM's National Inquiry into Indigenous Rights arrives in Papua, November 30, 2014, <https://awasmifee.Potager.org/?p=1101>.

<sup>108</sup> Alternative report on Indonesia, 52nd session, CESCR, April/May 2014, submitted by Aliansi Masyarakat Adat Nusantara, YMC, HUMA, Paradisea, and the Rainforest Foundation Norway <http://files/news/2014/09/Declaration%20>

<sup>109</sup> <http://www.downtoearth-indonesia.org/story/indonesia-taken-task-over-mifee> (November 2011)

<sup>110</sup> CERD/C/IDN/CO/3.

in 2009 and 2011, both asking the Indonesian government to act on and address the issue. Another early warning letter in August 2013<sup>111</sup> referred to the 2013 Supreme Court ruling that certain provisions of the Forestry Act 41/1999 are unconstitutional due to the classification of "customary forests" as part of "state forests", as is the case with the MIFEE's land grabbing. The last letter in January 2014 asked for information on actions taken to change the situation of the Malind and other affected communities. Again, there was no answer from the State party. With the Constitutional Court Ruling No. 35/PUU-X/2012 of May 16, 2013 recognizing that customary forests of indigenous peoples are not 'State Forest Areas', the Malind may be able to use this to get back their forests.

In June 2005, the Indonesian government announced a Kalimantan oil palm mega-project to develop the world's largest oil palm plantation in a five or ten-kilometer band along the border between Indonesia and Malaysia, including plantations covering 1.8 million hectares.<sup>112</sup> This area covered the ancestral territory of 1-1.4 million Dayak people. The Dayak were never involved in any decision-making nor their FPIC sought or obtained. The CERD addressed the issue in its 2007 Concluding Observations: "While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it."<sup>113</sup>

<sup>111</sup> [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT\\_CERD\\_ALE\\_IDN\\_7098\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_7098_E.pdf).

<sup>112</sup> *Between Frontiers: Nation and Identity in a Southeast Asian Borderland*, Noboru Ishikawa, Ohio Press University, 2010, p. 220-221.

<sup>113</sup> CERD/C/IDN/CO/3, para. 17.

The plan gave rise to campaign and lobbying efforts by NGOs, Indonesian media and foreign diplomats that forced the Indonesian government to revise its position on the project and the President acknowledged that conservation consensus had to be taken into account. However, despite the cancellation of the mega-project, palm oil companies have already moved into the border area, and there are ongoing plans to develop the Kalimantan area.

In the same Concluding Observations the CERD explicitly called on the government of Indonesia to amend its laws<sup>99</sup> to recognize indigenous peoples' rights: "The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands." Chapter 5 of Indonesia's Company Law, article 74, states that "companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility" but it also obliges companies "who do not put their obligation into practice (...) to be liable to sanctions in accordance with the provisions of legislative regulations." The problem lies in the State's very weak capacity to enforce such a law.<sup>115</sup>

The CERD expressed its concern on the killing of young Hmong persons in the Xaisomboune Special Zone in Lao PDR in May 2004, and argued that allegations of acts of violence against Hmong people are not properly and impartially investigated.<sup>116</sup>

<sup>114</sup> Palm oil and indigenous peoples in South East Asia, Marcus Colchester, International Land Coalition, 2011, p. 14-15.

<sup>115</sup> Ibid.

<sup>116</sup> CERD/C/LAO/CO PARA 11, 13 April 2012.

In Myanmar, the continuing conflict between the military and ethnic armed groups results to widespread suffering and violations of international humanitarian and human rights law. As of January 2015, there were an estimated 240,000 displaced persons in Myanmar.<sup>117</sup> The SR Myanmar had planned to visit the camps in northern Shan State and meet the people who are internally displaced by the conflict between the Burma Army and the Kachin Independence Army which have not gotten into a ceasefire agreement. The skirmishes, attacks and counter-attacks at the time of her visit prevented her from going. However, she received reports that some internally displaced persons were concerned about being returned prematurely to their villages before safety and stability can be properly re-established. The SR was further informed that accountability for human rights and land rights violations is not a priority issue in the ceasefire negotiations. Moreover, her discussions with representatives from ethnic nationalities revealed the deep level of mistrust and despair over the peace process. At the heart of the conflict lie historically entrenched inequalities, land and natural resource rights issues, discrimination against minorities and widespread human rights abuses. The SR stressed the importance of addressing human rights issues during the negotiation phase, including commitments and mechanisms for accountability, equality and non-discrimination after the ceasefire is achieved.<sup>118</sup>

In Cambodia, conflicts regarding territories often come to an end because indigenous peoples, who are normally the weaker party, are threatened, harassed and forced to accept sub-standard compensation. Land dispute settlements are

<sup>117</sup> ice for the Coordination of Humanitarian Affairs, 2015 Myanmar Humanitarian Response Plan. Available from [www.humanitarianresponse.info/system/files/documents/files/HRP%20Myanmar\\_FINAL.pdf](http://www.humanitarianresponse.info/system/files/documents/files/HRP%20Myanmar_FINAL.pdf).

<sup>118</sup> A/HRC/28/72, PARA 31 and 33, 23 March 2015.

decided based on the stronger party's ability to intimidate the weak, to monopolize support from various public authorities, and to manipulate the judicial system. The stronger party's influence over the different levels of government enables them to act with impunity. These parties are often the politician-capitalists, local capitalists with entrenched relations with powerful politicians, foreign individuals and corporations. Indigenous peoples and other poor communities in Cambodia lack access to effective remedies and do not trust the courts, which favor rich, well-connected individuals and companies.<sup>119</sup>

In Thailand, the case of Mr. Pholachi Rakchongcharoen or "Billy" who was last seen in the afternoon of April 17, 2014 with the head of Kaeng Krachan National Park, Wildlife and Plant Conservation Office Mr. Chaiwat Limlikitaksorn remains unsolved. Billy was from the Karen village of Ban Bang Kloy inside the Kaeng Krachan National Park. He was in the forefront of the Karen peoples' struggle to assert their rights to their lands inside the Park where they were time and again forcibly displaced. In 2011, their houses, granaries and other properties were burned down by the Army and park officials. Billy was a paralegal volunteer in a litigation launched by the villagers against the Department of National Parks, Wildlife and Plant Conservation and the Ministry of Natural Resources and the Environment with the Central Administrative Court for the forced eviction and arson of properties belonging to more than 20 families in Ban Bang Kloy in May 2011. The operation 'The Replication of the Deportation, Eviction/ Arrest of Ethnic Minorities Encroaching the Area of Kaeng Krachan National Park along the Thailand-Burma Border Project' or 'Operation Tanao Sri', was led by Limlikitaksorn.

<sup>119</sup> *Threatened lands, threatened lives, report on Cambodia*, AIPP 2014.

It aimed to push out the villagers from the area despite previous studies that affirmed the ethnic Karens as aboriginal peoples who have been dwelling in the area for more than a century. Billy disappeared while he was preparing information to support the legal case for the next hearing which was to take place on 19 May 2014. In addition, Billy was preparing to submit a petition to His Majesty, the King, on the same matter. It is believed that Billy was disappeared along with documents and evidence related to the legal case and the petition.<sup>120</sup>

Billy's wife filed a case for habeas corpus with the Petchaburi Provincial Court which dismissed the case as it was not convinced that Billy is still in the hands of National Park officials. The wife appealed the decision with the Appeals Court Region 7 but the latter concurred with the lower court's decision. The case was submitted to the National Commission on Human Rights of Thailand and also the Office of Public Sector Anti-Corruption Commission (PACC) but to date, the government stands pat on the courts decisions. The case is being supported by several organizations like the Human Rights Lawyers Association (HRLA) of Thailand which is calling for the State to fulfill its obligation under the International Convention for the Protection of All Persons from Enforced Disappearance of which it is a State party, to provide for necessary measures to prevent enforced disappearance and impunity of the perpetrators.<sup>121</sup>

### **5.3.2 No Free, Prior and Informed Consent (FPIC)**

AEC will intensify the natural resources extraction including purchasing/expropriating land to accelerate market integration, e.g., for facilitating accessibility through roads and ports. Land alienation will be faster by

supporting legal effort to formalize land or territory ownership into certificates. AEC has no reference on social safeguard including FPIC to protect small farmers, and indigenous peoples who mostly have no land certificate. Without enough protection from the government, fantastic benefits promised by land speculators will tantalize them to rush into selling land that permanently will alienate them from their lands. The previous accounts already show the trend towards land alienation of indigenous territories in the name of economic development.

### **5.3.3 Non-recognition and criminalization of traditional livelihood practices**

In South and Southeast Asia, millions of indigenous peoples depend fully or partly on shifting cultivation for their livelihood and food security. The number of shifting cultivators in Southeast Asia, majority of which are indigenous peoples has been estimated to be between 14 to 34 million people.<sup>122</sup>

Shifting cultivation has been misunderstood to be an economically inefficient and ecologically harmful practice. Many states in Asia commonly view shifting cultivation as one of the drivers of deforestation and a major source of carbon emission. Laws and policies were passed by many Asian states seeking to eradicate shifting cultivation in the name of forest conservation and climate change mitigation. Shifting cultivators are thereby heavily restricted, if not prohibited, from engaging in their livelihood activities in areas declared as national parks or conservation areas. In Thailand, many Karen villagers residing inside national parks have been evicted as in the case of the Karens in Kaeng Krachan.<sup>123</sup> It

<sup>122</sup> AIPP and IWGIA (2015) "Shifting Cultivation, Livelihood and Food Security: New and Old Challenges for Indigenous Peoples in Asia" (Chiang Mai: AIPP, IWGIA).

<sup>123</sup> See <http://www.aippnet.org/index.php/videos/1370-when-can-we-go-back>.

<sup>120</sup> <https://voicefromthais.wordpress.com/2015/04/18/4305/>.

<sup>121</sup> Ibid.

should be noted that many indigenous peoples in Thailand have traditionally been forest-dwellers in the now-declared national parks. Many were also arbitrarily arrested for practicing their traditional livelihood and charged with criminal offenses. Further, security guards and personnel of national parks have committed cases of violence against indigenous women who tried to gather food items and non-forest products inside national parks.

The aforementioned views on shifting cultivation have been proven inaccurate or outright wrong as this practice was actually found to be “an ideal solution for agriculture in the humid tropics, as long as the human population density is not too high and fallow periods are long enough to restore soil fertility. This agricultural system is ecologically sound including on carbon sequestration, and meets a variety of human needs with great efficiency, particularly with regard to labor and other agricultural inputs.”<sup>124</sup> The results of the case studies conducted by AIPP with the Food and Agriculture Organization (FAO) confirmed that “despite profound changes taking place in indigenous communities across Asia and the overall decline of shifting cultivation, this practice still plays an important role in providing livelihood and food security in many communities. For these communities, the importance of shifting cultivation goes beyond mere economic concerns. It is the pivot around which annual work and ritual cycles revolve and thus an intricate part of their way of life and closely tied to their cultural identity.”<sup>125</sup> Further, shifting cultivation “has allowed not only a sustainable use of but also equity in access to land and resources, thus ensuring livelihood and food security for all.”<sup>126</sup>

### **5.3.4 Self-sufficient economies of indigenous peoples**

Policy in national level will be established to support economic integrity including building small economic region. In Merauke Papua Indonesia, there are local and national regulations to have an integrated economic territory such as the MIFEE (Merauke Integrated Food and Energy Estate) which now strongly pushes people to support the area as a provider of market demands. To do so, the people are guided and channeled to be just producers or laborers of commodities for the market and do away with the practice of traditional self-sufficient economy. These peoples are forced to be in the front line of the production chain for the market, a system which they are not familiar with and which they never had to grapple with in their history. They have no skill, knowledge and requirements for a market-driven economy. Eventually, for the sake of efficiency, skilled labor will be imported from outside of the island. This is a repetition of a violent history against indigenous peoples where the government encouraged market-savvy migrants to come into the homeland of indigenous peoples as the workers and allied service providers of development and corporate projects which eventually made them accumulate wealth over and above their indigenous inhabitants. This condition has led and can possibly trigger massive social conflict between indigenous peoples and migrants.

### **5.4 The ASEAN Socio-Cultural Community (ASCC) and Indigenous Peoples**

#### **Features**

- \* promotion of human development and security
- \* narrowing the development gap

<sup>124</sup> Ibid.

<sup>125</sup> Ibid p. 3-4.

<sup>126</sup> Ibid p. 8.

- \* ensuring environmental sustainability
- \* building an ASEAN identity
- \* Wide coverage of issues: Poverty, Health, Disaster Management, Education, Food security, Social impact of integration, Environmental sustainability, Migrant labor, Women and children's rights, Science and Technology

## CRITIQUE

- \* Social justice vs. social protection; systemic vs. symptomatic
- \* Systemic solutions to address social injustice: problems of access, conflicting interests with commercial/industrial interests
- \* Participation should not be limited to this sphere.
- \* Diversity and identity of peoples within member countries

The ASCC envisages a community of caring societies and founded on a common regional identity, with cooperation focused on social development aimed at raising the standard of living of disadvantaged groups and the rural population, and it shall seek the active involvement of all sectors of society, in particular women, youth, and local communities.

Its main aims are the promotion of human rights and social justice, human development and security, narrowing the development gap, ensuring environmental sustainability, and building an ASEAN identity. The ASCC Blueprint's primary goal is "to contribute to realising a people-centered and socially responsible ASEAN Community by forging a common identity and building a caring and sharing society."

The ASCC Blueprint covers a wide variety of issues such as poverty, health, disaster management, education, food security, social impact of integration, environmental sustainability, migrant labor, women and children's rights, science and technology and corporate social responsibility. It also includes references to respect for rights and fundamental freedoms and promotion and protection of human rights and social justice, with specific mention of disadvantaged, vulnerable and marginalized groups. Although there is no direct mention of indigenous peoples, the state neglect, non-recognition, human rights violations and discrimination that indigenous peoples are constantly facing make them fall within this category. The actions foreseen under Social Justice and Rights, however, are addressing symptoms rather than the underlying systemic factors like access to justice, conflicting interests between indigenous peoples and corporations, or participation in decision making.

The ASCC Blueprint further provides for social welfare protection which includes enhancement of people's livelihoods but fails to acknowledge sustainable livelihoods of indigenous peoples, nor mention safety nets for traditional livelihoods. In terms of education, it only talks of the mainstream education and does not refer to issues that are critical in a region so diverse in languages, like the provision of mother tongue-based education. Instead, it emphasizes the use of English as an international language at the work place, which implies fewer chances for employment for members of less educated, marginalized communities.<sup>127</sup>

The ASCC Blueprint mentions the social safety net and protection against negative impacts of globalization, but does not refer to any concrete and substantive measures for social safeguards. The reference to regional food security ignores

<sup>127</sup> Who we are: ASEAN's indigenous peoples, AIPP and IWGIA, 2011

the production aspect, i.e. the threats of trade liberalization to small farmers and traditional livelihoods, and thus food security of indigenous peoples.

Compared to the two other pillars of ASEAN, ASCC is the only one pillar that makes specific language on indigenous peoples. Stated in the paragraph on Social Justice and Rights, it says that in building disaster-resilient nations and safer communities, one action should be strengthening community-based disaster preparedness and participation through promotion of indigenous knowledge and practices, implementation of public awareness and education and sharing of best practices and lessons learnt to build a disaster resilient community. By experience, indigenous peoples' existence is not only about their traditional knowledge on disaster. Citing indigenous knowledge only to promote community-based disaster resilience precisely limits the useful contribution of indigenous peoples in building the cultural character of ASEAN.

In the section addressing the promotion and protection of rights of society's vulnerable sectors, only the rights of the welfare of women, children, elderly, persons with disabilities and migrants are mentioned, and there is no reference to indigenous peoples. Finally, while the promotion of corporate social responsibility and environmental protection is included, there is also no mention of concrete measures to ensure compliance of corporations in the ASEAN region with social and environmental safeguard standards.

Moreover, generating economic benefit from indigenous peoples' culture seems to be the main idea behind lip-service to the promotion of national and regional expressions of culture. The ASCC blueprint aims to facilitate "research

and cross-country exchange of experience in promoting the integration of safe, effective and quality Traditional Medicine (...) into the national healthcare system." It presents traditional medicine as just physical processes and forgets to capture the spirit behind it. As a physical process, it will entail formal justification such as giving certificate and license. Thus, promoting traditional medicine does not mean respecting how indigenous peoples maintain their way of life and nature but how to access the open market and process traditional medicine which will mostly benefit government agencies, investors and license-holders. Traditional handicraft is mentioned in the section entitled 'Building an ASEAN identity' where it identifies a need to "preserve and develop the traditional handicraft villages and occupations in the rural areas, particularly among ethnic minority groups." The ASCC's promotion of traditional handicraft does not depart from the same objective on traditional medicine: Handicraft as the object of tourism, art to generate money. There is no formulation in the ASCC blueprint that promotes indigenous territory or collective rights as inherently connected or related with the skills and process of carving, weaving, etc. From the government's side, handicraft is physical art and commodity and has no link to issues on rights to land, territory, identity and any other collective rights of indigenous peoples.

#### **5.4.1 Indigenous Women and Children's Rights**

In Myanmar, the CEDAW put forward its deep concern about the "high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women, including Shan, Mon, Karen, Palaung and Chin women."<sup>128</sup>

<sup>128</sup> CEDAW/C/MMR/CO/3 7 Nov 2008.

The Committee also expressed its concern about the apparent impunity of the perpetrators of such violence — though a few cases have been prosecuted — and at reports of threats, intimidation and punishment of the victims. Another issue is the lack of information on mechanisms and remedies available to victims of sexual violence as well as measures to bring perpetrators to justice.

The SR Myanmar also underlined the fact that “members of groups that have traditionally been marginalized, such as ethnic and religious minorities, and women, should be particularly encouraged to run for public office and engage in public discussion on election-related issues.” In a new and aspiring democracy, it is essential that all members of the public are able to develop informed opinions, independently and without coercion, manipulation or retribution.<sup>129</sup> In Lao PDR in 2009, the CEDAW expressed its concern on the access to justice of women from rural areas because of the low rate of complaints.<sup>130</sup> The Concluding Observations of the CERD in 2012, as well as the Universal Periodic Review, emphasized the issue of trafficking in the county, affecting mostly the rural population and indigenous women and children. The CERD called upon the Lao government “to address the root causes of trafficking and to pay attention to any manifestation of vulnerability thereto due to ethnicity or subsequent to relocation.”<sup>131</sup> It advised that indigenous women, being more vulnerable to trafficking, should therefore have the opportunity to submit complaints in an accessible way, regardless of the language and location of the complaint-handling system.

<sup>129</sup> Human Rights Committee, general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, paras. 12 and 190

<sup>130</sup> CEDAW CEDAW/C/LAO/CO para 14, 14 August 2009.

<sup>131</sup> CERD/C/LAO/CO, para 13.

In other places, indigenous women are taking actions to address problems they face as they do not get any response from governments. In Kampong Thom, Cambodia, Kui women led the formation of a community forest watch group to protect and regularly patrol their forests. At the inter-village level, women share and learn about advocacy tactics of other indigenous communities during meetings and workshops. However, indigenous women are increasingly experiencing pressure not only from the government, but also sometimes, from their husbands.<sup>132</sup>

The Philippines is party to 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 ratify the CEDAW on 5 August 1981 and was the first ASEAN Member State to do so. However, the situation of indigenous women in areas of conflict is not being addressed. Forced evacuation, displacement, harassment, and other human rights violations related to exploitation of natural resources in their communities with militarization as a support mechanism, are severely affecting indigenous women because of their typical gender roles as household managers. Judy Capión, an indigenous woman human rights defender, was summarily killed because her community was militantly against the entry of mining. In the midst of these, women and girls may be raped. In September 2015, three soldiers were court martialed for the rape of a Lumad minor during military operations.

In Malaysia, the last State Party periodic report on the human rights situation of women did

<sup>132</sup> Asia Indigenous Peoples Pact (2013). *Tilting the Balance: Indigenous Women, Development and Access to Justice*. Accessed at: <http://www.aippnet.org/index.php/publicationsp-2697/human-rights/1266-tilting-the-balance-indigenous-women-developmentand-access-to-justice/>.

not provide information about the position of women from various ethnic groups as requested earlier by the CEDAW, so that the situation of rural women could not be assessed by the Committee. The CEDAW urged the State party to include in its next report, data disaggregated by sex and ethnicity in all areas covered by the Convention and current sex-disaggregated data and information on the de facto position of rural women in all sectors.<sup>133</sup>

In its 2009 UPR, the Malaysia government accepted the recommendations to “continue to intensify its efforts to prevent and combat disparities against children belonging to vulnerable groups, including children of indigenous groups, children with disabilities as well as those living in remote areas.”<sup>134</sup> In a report submitted in 2013 for the 2nd cycle of the UPR on Malaysia, it was reported that although efforts had been made to provide highly qualified teachers to enhance the teaching profession, most rural areas of the country, like Sabah, Sarawak and the Orang Asli settlements still lacked good teachers. This has also significantly resulted to the low ability of students to comprehend the lessons that leads to a loss of interest to stay in school, and subsequently causes high dropout rates especially when transitioning from primary to secondary school education. The states with higher poverty rates, rural areas with limited access to education, are in indigenous communities in Sabah and Sarawak and the Orang Asli communities in Pahang which registered the highest drop-out rates. There was often no access to secondary schools in those areas, and children had to walk very far to attend school, or had to stay

in school hostels, leaving their families in order to attend secondary schools. In Indonesia, in its 2012 Concluding Observations, the CEDAW expressed its deep concern regarding the disadvantaged position of rural and indigenous women and their difficulties in accessing education, health and social services as well as the existence of discrimination with respect to the ownership and inheritance of land. It also highlighted the cases of discrimination, violence and sexual intimidation specifically targeting indigenous women and violations of the rights of indigenous women to access their land, water and natural resources.<sup>135</sup>

Despite their human rights obligations, ASEAN Member States as a whole, have not moved forward in recognizing indigenous women’s and children’s rights, and have neglected their obligation to fulfill the economic, social and cultural rights of indigenous women and children.

Despite their obligation under the CEDAW and CRC to respect, protect and fulfill the rights of indigenous women and children, ASEAN Member States are neglectful of their obligations to indigenous women and children, as observations of the treaty bodies themselves show.

#### **5.4.2 Corporate Social Responsibility under ASCC**

The objective of promoting corporate social responsibility (CSR) is also included in the ASCC Blueprint, “to ensure that Corporate Social Responsibility is incorporated in the corporate agenda and contribute toward sustainable socioeconomic development in ASEAN member states.” What is needed is corporate accountability as CSR is often

<sup>133</sup> CEDAW/C/MYS/CO/2, para 29 and 30, 31 May 2006.

<sup>134</sup> Malaysia Stakeholder Report on Malaysia – Submission by World Vision Malaysia For Universal Periodic Review (UPR), Second Cycle, 2013 Children are Educated for Life; file:///C:/Users/Administrator.GGG-01504291123/Downloads/WVM\_UPR17\_MYS\_E\_Main.pdf. P. 3.

<sup>135</sup> CEDAW, Fifty-second session, 9-27 July 2012, para 45.

practiced more as philanthropy. The truth is that the lives of indigenous peoples in ASEAN countries continue to be threatened by corporate activities. This includes mining, oil drilling, dams, deforestation, toxic pesticides, proliferation of agribusiness, water privatization and appropriation, and a range of other activities carried out on or near indigenous peoples' lands without their FPIC. Corporate activities desecrate sacred places, undermine food sovereignty and traditional livelihoods, and jeopardize community and health, including reproductive health, with little regard for violations of these and other individual and collective human rights of indigenous peoples. Nor are there adequate safety measures in place to mitigate impacts of corporate operations on the communities. In all the cases discussed, violation of the right of indigenous communities to FPIC had been consistently violated by corporations and states. The impact of the corporate sector's exploitation of natural resources and the environment in indigenous peoples' territories in the ASEAN countries must therefore be addressed.

On 6 October 2010, five ASEAN Member States established the ASEAN CSR Network at the 2nd International Singapore CSR Summit. The ASEAN CSR Network aims to be "a network of networks," with the objectives of realizing the ASCC Blueprint, developing a public policy model for ASEAN based on international social responsibility standards, and developing multi-stakeholder engagement for holistic sustainable socio-economic development.<sup>136</sup> Subsequently, in 2011, the ASEAN Foundation and ASEAN CSR Network signed an agreement to undertake

the project 'ASEAN CSR Network: Promoting Corporate Social Responsibility in ASEAN'. The ASEAN CSR Network was officially launched on 11 January 2011 and its policy statement on their website states that businesses in the participating countries of the ASEAN CSR Network should be committed to support and respect the protection of internationally proclaimed human rights<sup>137</sup> and to ensure that they are not complicit in human rights abuses. Cambodia, Lao PDR and Myanmar rank among the 30 most corrupt countries in the 2014 Transparency International's Corruption Perceptions Index, and it is to be noted that the CSR network also provides recommendations on the environment, labor and anti-corruption. The aim of the ASEAN CSR network is to encourage corporations to develop and adopt a rights-based approach in their total production process rather than presenting CSR as a separate image-making activity. Despite CSR's rising profile and the emergence of a number of CSR networks in ASEAN there is still no definition of CSR that has been agreed upon. Likewise, an authoritative assessment of the performance of CSR in the ASEAN region has not been undertaken to date.

In June 2011, the UN Human Rights Council unanimously endorsed the UN Special Representative's "Guiding Principles for the Implementation of the UN 'Protect-Respect-Remedy' Framework." Known and the Guidelines on Business and Human Rights. The guidelines establish an authoritative global reference point for preventing and addressing the risk of adverse impacts on human rights linked to business activities. As a consequence, in the same year, the International Coordination Committee of the National Human Rights Institutions [ICC] adopted "Business and

<sup>136</sup> Tay, E. (2010) "New ASEAN CSR Network Launched at the International Singapore Compact CSR Summit" Green Business Times Published online on 6.10.10 [www.greenbusinesstimes.com/2010/10/06/new-asean-csr-networklaunched-at-theinternational-singapore-compact-csr-summit/](http://www.greenbusinesstimes.com/2010/10/06/new-asean-csr-networklaunched-at-theinternational-singapore-compact-csr-summit/).

<sup>137</sup> ASEAN CSR Network CSR Policy Statement Retrieved from [www.asean-csr-network.org/c/news-resources/csrpolicy-statement](http://www.asean-csr-network.org/c/news-resources/csrpolicy-statement).

Human Rights” as a theme for ICC activities for the year 2012–2013. CSR policies have the potential either to commit businesses to high standards of practice in the absence of rigorous legal requirements by the State, or act to hide poor practices behind public relations campaigns. CSR is used to induce indigenous communities to accept corporate projects without full disclosure of information on the extent of corporate operations and the immediate and potential impacts of these. Often, indigenous communities, often neglected by national governments, are left without recourse except to accept CSR projects in exchange for their consent. In these cases, governments abscond on their obligations to corporations with the latter providing the basic social services indigenous communities are entitled to, like schools, health services, teachers, roads, etc. In the end, indigenous peoples turn over their territories to corporate exploitation and oftentimes, irreversible destruction, because they have no choice. CSR then, to indigenous peoples, means the collusion of corporations and the State to deprive them of their lands, territories and resources, to make them objects of development simply because for so long they have been neglected by governments. With CSR, they are even made to appear ungrateful if they reject these.

There are stark contradictions between corporate mission statements and CSR policies on the one hand, and the company’s practices on the ground in direct violation of indigenous peoples’ rights, on the other hand. This further underscores the need to move beyond voluntary CSR mechanisms towards a legally-defined and binding corporate accountability as existing voluntary standards appear inadequate alone. It is important to emphasize that the regional economic liberalization agenda, which is the main political emphasis in ASEAN, should not undermine mechanisms within ASEAN

that pursue corporate accountability, rather than weaken legal safeguards with voluntary arrangements.<sup>138</sup>

While CSR is typically promoted as a corporate tool to demonstrate corporate conscience, contribute positively to social change and protect the environment and human rights, CSR’s objectives, implementation and compliance reporting rest largely on the voluntary discretion of the business. As such, while some CSR strategies appear good on paper, implementation and enforcement is often a challenge and, if CSR is undertaken superficially, businesses’ CSR objectives remain either unambitious or unmet.<sup>139</sup>

Still, and despite the CSR policies, over half of the cases of reported abuses in Southeast Asia involve land rights issues, including forced evictions, loss of livelihoods and disregard for the right to free, prior and informed consent. An example is the development of the Dawei Special Economic Zone, a 205-square kilometer industrial complex in the highly populated Tanintharyi Division in the fishing-rich coastal region of southern Myanmar. Several ethnic nationalities such as Dawei, Bamar, Mon, Kayin, Rakhine, Shan and Salone call Dawei their home. The estate includes the development of the Dawei deep seaport, industrial estate, pipeline along the road-link to Thailand, highways and railroad to Thailand. The Dawei Deep Sea Port and Industrial Estate is surrounded by controversies about lack of thorough participatory social and strategic environmental assessments, FPIC, and other human rights and capacity concerns, but the Myanmar government is bent on pushing the

<sup>138</sup> <http://www.forum-asia.org/uploads/publications/2013/September/Corporate-AccountabilityASEAN-FINAL.pdf>.

<sup>139</sup> Corporate Accountability in ASEAN: A Human Rights-Based Approach, Forum-ASIA 2013.

project with the backing of the Thai government without addressing the issues raised. The International Commission of Jurists have reported on the complaints of affected villagers about displacement, loss of livelihood and negative impacts on local culture by the project. It concludes that the project “has faced consistent questions about its potential impact on the area residents’ right to an adequate standard of living, an in particular in respect to the rights to housing, food and water”.<sup>140</sup> Protests and formal complaints have not changed the government direction and the newest Kyaukphyu Special Economic Zone, being developed on an island off Rakhine State, is now displacing local communities without proper compensation.<sup>141</sup>

#### 5.4.3. The ASEAN Forestry Network

According to the ASCC blueprint, the Sustainable Forest Management aims to promote forest management by involving the community living in and surrounding the forest for its sustainability and the people’s prosperity. The ASEAN Forestry Network (ASFN) was established by the ASEAN Senior Officials on Forestry in 2005 with a vision to promote social forestry policy and practices in ASEAN Member States.<sup>142</sup> It holds annual conferences to strengthen the representation and engagement of CSOs in the ASEAN social forestry and climate change initiatives. Since its creation, the ASFN has played an important role in the implementation of the ASEAN Multisectoral Framework on Climate Change: Agriculture and Forestry towards Food Security (AFCC), the Strategic Plan of Actions of the ASEAN

Cooperation in Forestry, and the ASEAN Blueprints for ASEAN Community Building, particularly for the AEC and the ASCC, among others. Its flagship is the annual conduct of the ASFN Civil Society Forum.<sup>143</sup>

The ASFN Civil Society Forum was formalized in 2012 and assumed its pertinent role of being the platform and avenue of local communities, indigenous peoples’ organizations, and civil society organizations to distill, consolidate and elevate its important messages to the Member States of the ASEAN through the ASFN. It seeks to provide effective information, facilitate capacity and provide technical support on forest concerns such as income generation from forest access and tenure, traditional ecological knowledge systems, and climate change themes such as REDD+. At present, the forum is comprised of a growing number of local communities, civil society organizations, network and membership organizations and indigenous peoples’ organizations and networks actively working in the ASEAN region on forestry issues. Indigenous peoples raise their voice through the participation of Asia Indigenous Peoples Pact as an implementation partner in the ASFN.<sup>144</sup>

The ASFN Civil Society Forum was held in Cambodia in June 2012 and it heralded the formation of a constituency that will regularly engage with ASEAN on social forestry concerns. CSO participants shared updates arising and experiences and developments in the previous year which are relevant to the thematic proposals from the First ASFN Civil Society Forum. CSOs from eight ASEAN countries

<sup>140</sup> <http://www.icj.org/myanmar-dawei-special-economic-zone-should-protect-rights-of-area-residents/>

<sup>141</sup> <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>.

<sup>142</sup> <http://communitycarbonpool.info/en/news/current/33-social-forestry-in-asean-countries>.

<sup>143</sup> Concept Note & Programme, The Sixth Conference of the ASEAN Social Forestry Network: “ASEAN Economic Community and Its Inter-relationships with Community Livelihoods and Environment Conservation”, Inle Lake, Nyaung Shwe, Myanmar, 1-3 June 2015.

<sup>144</sup> ASEAN Social Forestry Network (ASFN) Civil Society Forum 2015, Concept Note.

crafted a statement entitled “CSO Proposals for Strengthening CSO Engagement with ASEAN on Social Forestry and Climate Change”, which proposed measures to strengthen social forestry initiatives and inclusive climate change mechanisms in ASEAN and its Member States.<sup>145</sup> As reported during the ASFN CSO meeting in January 2014, the ASFN conference outputs and recommendations were presented at the ASFN Annual Meeting and the CSO proposals were accepted in its entirety.

The recommendations by the CSOs include the explicit promotion of the rights of indigenous peoples and forest-dependent communities, but also the need to formulate ASEAN FPIC guidelines with the full and effective participation of indigenous peoples,<sup>146</sup> among others. The CSOs also recommended the institutionalization of a grievance mechanism on the impacts of climate change. However, and despite climate change being on the ASEAN leaders’ agenda, there is still no effective mechanism on climate change at the regional level and the other recommendations are yet to be implemented.

## 6. Indigenous Peoples’ Common Issues in the ASEAN countries

### 6.1 Legal Recognition

The formal legal recognition and status granted by ASEAN Member States to indigenous peoples vary from country to country. In the Philippines, Malaysia and Cambodia, indigenous peoples have constitutional recognition, while in the rest of the ASEAN, they are invisible in the

fundamental law of the land, or the use and applicability of the term “indigenous peoples” remain contentious.<sup>147</sup> The non-recognition as indigenous peoples based on the claim that all citizens in the country are “equally indigenous” betrays an underlying assimilationist attitude of the respective State, which is itself an expression of the still prevailing discrimination of indigenous peoples within mainstream society in most nation-states of Southeast Asia.<sup>148</sup> However, legal recognition, even when conferred, does not always guarantee the full range and enjoyment of individual and collective rights. In some ASEAN countries, it is limited, conditional or is not properly implemented.

In the Philippines, the rights of “indigenous cultural communities/indigenous peoples” are constitutionally guaranteed (Article 2, section 22) and enabled through Republic Act 8371 or the Indigenous Peoples’ Rights Act (IPRA). The IPRA protects and promotes indigenous peoples’ cultural integrity, the right to own and develop their ancestral lands/domains, and the right to FPIC. However, the implementation of FPIC and land rights has been problematic and manipulated resulting to conflicts and gross violations of land rights. The lack of disaggregated statistical data regarding indigenous peoples in the country has also been highlighted by the CERD recognition as indigenous peoples and the enjoyment of their rights.<sup>149</sup>

In Cambodia, the 2009 National Policy on Development of Indigenous Peoples uses the term “chuncheat daoem pheak tech” which

<sup>145</sup> Second ASEAN Social Forestry Network (ASFN) Civil Society Forum 13-14 June 2013, Siem Reap, Cambodia Brief Summary.

<sup>146</sup> ASFN CSO Forum, Working Paper Series, Paving future actions to engage ASEAN on Social, Forestry and Climate Change towards a people-centered ASEAN Economic Community, ASFN 2014

<sup>147</sup> Overview of the State of Indigenous Peoples in Asia, AIPP 2014. 3 Who we are: ASEAN’s indigenous peoples, AIPP and IWGIA, 2011. 4 <http://www.thejakartapost.com/news/2014/09/25/jokowi-should-apologize-ri-s-indigenous-peoples-aman.html#sthash.75wicBC2.dpuf>

<sup>148</sup> Who we are: ASEAN’s Indigenous Peoples, AIPP and IWGIA, 2011.

<sup>149</sup> CERD/C/PHL/CO/20, para 17.

literally means “minority original ethnicity” in its documents to refer to peoples who are not Khmers, Chams, Chinese, Laos, Thais, or Kinh (Vietnamese). This term is also used in the 2001 Land Law and in the 2002 Forestry Law. While aimed at providing a general framework for land ownership in the country, the Land Law also guarantees the recognition and protection of indigenous communities (“original ethnic minorities”), traditional natural resource management systems and traditional customary land, making it the only law with specific provisions recognizing indigenous peoples’ land rights. The Forestry Law 2002, governing the management of the country’s forests, contains provisions for the official recognition of community forests, which is customary among indigenous communities in the country.<sup>150</sup>

In Indonesia, the Constitution (Article 18 B-2) recognizes and respects traditional communities and their customary rights where these exist, and as long as these are in accordance with the societal development and principles of the state. Some laws on agrarian reform (Decree 9/2001), agrarian regulations (Act 5/1960) and human rights (Act 39/1999) give implicit, though conditional, recognition of some rights of “masyarakat adat” or custom law-based communities. The Constitution recognizes the cultural identity of indigenous peoples but in practice, this right is not enjoyed by many indigenous peoples. President Joko Widodo has shown a strong interest in addressing demands of indigenous peoples for legal recognition and therefore indigenous peoples expect the eventual approval of the bill on the rights of indigenous peoples.<sup>151</sup>

<sup>150</sup> Threatened lands, threatened lives: Human Rights Situation of the Indigenous Peoples in Cambodia, AIPP 2015.

<sup>151</sup> <http://www.thejakartapost.com/news/2014/09/25/jokowi-should-apologize-ri-s-indigenous-peoples-aman.html#sthash.75wicBC2.dpuf>.

The 2012 UPR recommended to Indonesia to “(p)rovide more resources for implementing the national policies and programmes in favor of social vulnerable groups like women, children, poor people, ethnic minorities and migrants.”<sup>152</sup> There is a pending bill, the RUU Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat or Law on the Recognition and Protection of the Rights of Indigenous Peoples, that has not yet been discussed in the Parliament despite being at the House of Representatives since April 2013. This is an indication of the lack of significant progress in the recognition and protection of indigenous peoples’ rights.<sup>153</sup>

If legislated, Indonesia will be the second ASEAN country to have a specific law on indigenous peoples after the Philippines.

Malaysia’s Federal Constitution recognizes the notion of indigenous peoples to a certain extent in its Articles 160(2) and 161(A). However these articles are contentious in the case of Sabah natives, incomplete in the case of a number of Sarawak natives being left out in the detailed list, and non-inclusive and completely omitted in the case of the Orang Asli of Peninsular Malaysia. The Federal Constitution of Malaysia specifically states who is a native of Sabah and Sarawak whereas the Orang Asli are made to ‘prove’ that they are indigenous peoples. The recognition in the Constitution, however, does not go hand-in-hand with the measures to ensure that indigenous peoples are given the necessary support and respect related to other recognized rights, including lands and territories, traditional ways of life, or documents as proof of citizenship. Many indigenous peoples, especially from remote areas, have great difficulty getting their citizenship papers

<sup>152</sup> A/HRC/21/7 108.58, July 2012.

<sup>153</sup> <http://ekuatorial.com/en/forests/indonesian-aman-dorong-pengesahan-ruu-masyarakat-adat#!/story=post-7494&loc=-6.163824999999996,106.7940258,7>

due to late registration of birth, and/or to poor access to the registration department, or not even knowing that such is necessary.

The Constitution of Myanmar mentions seven ethnic populations who are referred to as “national races” (art. 115, 161). They are grouped primarily according to the regions where they live rather than to linguistic or ethnic affiliation (Ch. 2, art. 49). Therefore, only the indigenous groups referred to as “national races,” including the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon, are commonly considered to be indigenous.

In Thailand, the military junta, which aims to establish a new Constitution has replaced the 2007 Constitution with the Interim Constitution 2014. It does not expressly mention indigenous peoples, however, its Section 4 states: “Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.” Therefore, Thailand is bound by its moral obligation both under the UNDRIP and its Interim Constitution to acknowledge international instruments. The Cabinet Resolution of the Royal Thai Government of August 3, 2010, on “Recovering the Karen Livelihood in Thailand” proposed by the Ministry of Culture, aims to recover the Karen livelihood in Thailand via policies and principals of implementation assigned to government agencies and organizations such as the support to the biodiversity of highland communities and the promotion and support of the Karen people’s ethnic identity and culture.<sup>154</sup>

In the same year, another resolution was passed to protect the way of life of the Chao Lay or

<sup>154</sup> <http://www.ikap-mmsea.org/thailand.htm>.

indigenous peoples along the Andaman coast, but this has been ineffective as almost all their coastal territories have been converted into national parks and privatized as tourist-related businesses. In Thailand, many of the over half a million stateless population are indigenous peoples.<sup>155</sup> Due to lack of citizenship rights, the indigenous peoples are considered ‘illegal aliens’ and have been subjected to arbitrary arrest, discrimination, denial of basic rights and social services such as education and health care, freedom of movement, and land ownership. Having no adequate documents such as birth registration, the absence of citizenship renders the indigenous peoples in Thailand even more vulnerable to human rights violations.

In Vietnam’s Constitution (Article 5), indigenous peoples are referred to as “ethnic minorities” who “have the right to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures.”

Under its Constitution, Laos is defined as a multi-ethnic society where all “ethnic groups” have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation (Article 8).

The non-applicability of the concept of indigenous peoples as recognized under international law remains a major and critical concern for millions of indigenous peoples. The idea that all citizens of a state are indigenous and thus entitled to the same rights has been used as a justification for denying recognition of particular indigenous peoples, as in Indonesia<sup>156</sup> during

<sup>155</sup> UNHCR, <http://www.unhcr.org/pages/49e489646.html>, accessed 4 April 2014.

<sup>156</sup> General Assembly, Sixty-first General Assembly Plenary, 13 September 2007, *idem.*, In 2010, an indigenous community was granted a collective title for the first time. Protection of indigenous peoples’ land rights is, however, vastly inadequate and threatened by the increase in granting of concessions for plantations, mining and hydroelectric dams.

the UPR by the UN Human Rights Council in 2012. Consequently, governments have rejected calls for the recognition of collective rights by groups identifying themselves as indigenous. The states' continuous denial of their indigenous peoples as distinct peoples who have been systematically discriminated and marginalized, is against the very principle of achieving social justice as affirmed by the UNDRIP and the universal drive to combat discrimination.

## **6.2 Violations of Indigenous Peoples' Right to Land, Territories and Resources**

The concept of land and territories has many dimensions vital to indigenous peoples' collective identity. The matter of historical connection and deep affinity to land, resources and territories, which the indigenous peoples have managed and controlled in their own sustainable ways is a reason for their persistence to hold on to these. The UNDRIP fully recognizes the importance of land, territories and resources for indigenous peoples. This is further emphasized by the recognition of indigenous peoples' right to FPIC as requirement to safeguard their right over their land, territories, resources and their right to self-determination. This includes the right to define their own approaches to and plans for development.

In Vietnam, over 90,000 people, mostly ethnic Thai, were relocated to make way for the Son La hydropower plant that Vietnamese scientists said left many without access to agricultural land in 2010.<sup>157</sup> In Cambodia, economic land concessions (ELCs) for commercial plantations such as rubber, cassava, corn for biofuel, etc. have been granted on indigenous territories. In the Prey Lang Forest complex, which is home to the Kui indigenous peoples, official

land grants of tens of thousands of hectares of forest for mineral extraction, timber and rubber plantations have forced many to give up their traditional livelihoods.<sup>158</sup> From 1996 to 2013, 117 companies were granted economic land concessions (ELC)<sup>159</sup> over 50% of the arable land in Cambodia, many of these in indigenous territories. Although the Cambodia government declared a moratorium on ELC issuance in May 2012, the procedure for a review of existing ELCs has created conflicts within communities. These include privatization of traditional communal lands, and threats and intimidation to communities and their representatives who refused individual land titles and fought to reclaim their communal land. In these conflicts, local and national authorities were supported by ELC companies.

Some indigenous communities in Cambodia have accessed international remedies against land concessionaires in 2014. In a complaint filed against the World Bank's private lending arm, International Finance Corporation (IFC), 17 indigenous communities of the Jarai, Tumpun and Katchok peoples in Ratanakiri province reported illegal land seizures by the Vietnamese company Hoang Anh Gia Lai (HAGL). IFC is an investor in HAGL through a Vietnamese equity fund. HAGL's land concession took over the indigenous communities' farm and pasture lands and destroyed forests and sacred sites, resulting to the loss of territory, livelihoods and culturally significant sites which invariably impacted on their traditional way of life and identity. The complaint, which called for the return of their lands, accused IFC of investing in companies that violate Cambodian and international laws as well as the World Bank's own environmental and social policy safeguards.

<sup>158</sup> Overview of the State of Indigenous Peoples in Asia, AIPP 2014.

<sup>159</sup> According to the Ministry of Agriculture, Forestry and Fisheries.

<sup>157</sup> <http://www.dw.de/indigenous-peoples-threatened-by-resource-exploitation/a-16065981>

In Lao PDR, a 2012 study found that “continued hydropower development along the Mekong will have a devastating impact on the livelihoods of millions of the basin’s inhabitants,”<sup>160</sup> mostly in areas where indigenous peoples live. The study also warned that dams will impact on already-declining fish stocks and lead to losses of arable farmland. According to the same study, “In the Lower Mekong Basin, at least twelve potential mainstream hydropower developments are currently being considered by private sector developers.”<sup>161</sup> Ten of these proposed projects are planned for Lao PDR, and the other two for Cambodia.<sup>162</sup> Despite concerns expressed by the Cambodian and Vietnamese governments through the Mekong River Commission, Laos proceeded with the construction of Xayaburi Dam, one of the major dams and as of March 2014, the Lao government reported that construction was 30% complete.<sup>163</sup> This was carried out without any Environmental Impact Assessment or the indigenous peoples’ FPIC. The Laos government’s power sector development plan includes 72 new large dams, 12 of which are under construction and nearly 25 more which are at advanced stages of planning. Moreover, previous high-profile cases in the Xekong Province dating back several years continue to go unresolved, with national and provincial authorities unable to arrive at suitable conclusions.

The lands of indigenous peoples in Malaysia and Indonesia are being taken away for oil palm plantations. Malaysia has an estimated 4 million hectares of oil palm plantations while

in Indonesia, over 7.5 million hectares of land are already covered by oil palm plantations.<sup>164</sup> A recent Constitutional Court decision in Indonesia declaring that customary forests do not belong to the state is in danger of not seeing full and proper implementation. In response to a case filed by indigenous peoples, the Court issued a judgment on May 16, 2013 affirming the right of 40 million indigenous peoples in Indonesia over their customary forest.<sup>165</sup> On March 6, 2014, a member of the Suku Anak Dalam indigenous community was killed and five others were injured during a clash with security forces at an oil palm concession owned by PT Asiatic Persada in Sumatra which encroached on their territory.

Another source of violations of the rights of indigenous peoples to their lands and resources are large-scale mining operations, one of the region’s major economic sectors. Of the more than a hundred corporate mines currently operating in indigenous territories in Asia, not a single company has undertaken a credible process of obtaining the FPIC of affected indigenous communities. In fact, some governments have even provided security services to these companies in the face of growing resistance of indigenous peoples and other affected communities (e.g., in Indonesia and the Philippines). The use of military and paramilitary forces to protect mining operations has resulted to massive human rights violations such as extrajudicial killings, torture, arbitrary arrests and detention of indigenous peoples, as well as sexual violence and abuse of indigenous women.

<sup>160</sup> Scott Pearse-Smith The impact of continued Mekong basin hydropower development on local livelihoods (Consilience: the journal of sustainable development, 2012) - See more at: <http://www.scidev.net/global/agriculture/news/laos-green-energy-asian-economic.html#sthash.FMotz5Qx.dpuf>

<sup>161</sup> MRC, 2009a.

<sup>162</sup> ICEM, 2010a.

<sup>163</sup> [http://www.internationalrivers.org/files/attached-files/xayaburi\\_dam\\_timeline\\_of\\_events\\_april\\_2014.pdf](http://www.internationalrivers.org/files/attached-files/xayaburi_dam_timeline_of_events_april_2014.pdf). Accessed on June 22, 2015.

<sup>164</sup> Colchester, Marcus 2010. Palm oil and indigenous peoples in South East Asia. Land acquisition, human rights violations and indigenous peoples on the palm oil frontier. Forest Peoples Programme. Draft,p.4,[http://www.forestpeoples.org/documents/prv\\_sector/oil\\_palm/palm\\_oil\\_ips\\_se\\_asia\\_ILC\\_MC\\_jul10\\_eng.pdf](http://www.forestpeoples.org/documents/prv_sector/oil_palm/palm_oil_ips_se_asia_ILC_MC_jul10_eng.pdf)

<sup>165</sup> Case No.35/PUU-X/20; (May 16, 2013), Mahkamah Konstitusi Republik Indonesia [Constitutional Court of the Republic of Indonesia], accessed 3 April 2014.

The Philippines hosts one of the world's biggest deposits of minerals such as gold and copper, and 60% of its predominantly indigenous northern Cordillera region is covered by either mining operations or mining applications. Indigenous communities in Mindanao in Southern Philippines that have resisted mining were dealt with repression and militarization. Most of the killings of indigenous leaders and members of peoples' organizations, under the current administration, were results of mining resistance in various indigenous communities in the country.

### **6.3 Climate Change and Indigenous Peoples' Vulnerability**

#### **6.3.1 Climate Change and the ASEAN**

Strategy to deal with climate change has been formulated in the ASCC. To ensure environmental sustainability as the basic objective of environmental aspect, ASCC said that ASEAN will actively participate in global efforts towards addressing global environmental challenges, including climate change and the ozone layer protection, as well as developing and adapting environmentally-sound technology for development needs and environmental sustainability. ASCC also specifically explained its efforts regarding climate change in paragraph D.10, titled "Responding to climate change and addressing its impact." This paragraph describes actions that should be taken on mitigation and adaptation to climate change. All of those actions are related to technicalities on how to deal with climate change by developing transfer of technology, strategy of low carbon economy, expanding research, developing measures and baseline, reducing deforestation and forest degradation, afforestation and reforestation.

The ASEAN Heads of States have issued a declaration to the 2007 Bali UN Climate Change Conference which set the two-year road map for the current negotiations, and on 24th October 2009 issued a Joint Statement to the December 2009 Copenhagen UN Climate Change Conference where a new climate change arrangement is expected to be concluded. The Road Map for an ASEAN Community 2009-2015 adopted by the Governments situates the ASEAN climate change agenda in the context of sustainable development outlining strategies and actions in the ASCC Blueprint, AEC Blueprint, APSC Blueprint, and the Initiative for ASEAN Integration Second Work Plan.

The ASEAN Environment Ministers have endorsed the ToR of the ASEAN Climate Change Initiative (ACCI). The ACCI is envisaged to be a consultative platform to further strengthen regional coordination and cooperation in addressing climate change, and to undertake concrete actions to respond to its adverse impacts. The ACCI seeks to enhance regional and international cooperation to address climate change and its impacts on socio-economic development, health and the environment, in ASEAN Member States through implementation of mitigation and adaptation measures. The scope of collaboration through the ACCI will include: policy and strategy formulation, information sharing, capacity building and technology transfer. The ASEAN Climate Change Initiative is being coordinated by the ASEAN Working Group on Climate Change (AWGCC) chaired by Thailand to implement the ACCI actions of the environment ASCC Blueprint. The AWGCC was established in 2009 to oversee the implementation of the relevant action lines of the ASCC Blueprint. The Action Plan on Joint Response to Climate Change was also developed in 2012 to provide a more detailed reference in implementing

the Blueprint. However, and due to the cross-sectoral nature of climate change issues, climate change is addressed not only by the AWGCC but also by other relevant working groups in environment sector and beyond, such as agriculture and forestry, energy and transport, science and technology.

On 27 April 2015, the ASEAN Heads of State and Government have signed a declaration committing to economic, social, cultural, physical and environmental measures that will reduce vulnerability to disaster and climate-related risks. The signatories pledged their intention to systematically mainstream disaster risk management and climate change adaptation into policy making at the local, national and regional levels through multi-stakeholder engagement .

Cyclone Nargis that hit Myanmar in May 2008 was the disaster that tested ASEAN's responsiveness, and cooperation disaster. Despite Myanmar's external aid, the ASEAN-Emergency Rapid Assessment Team (ASEAN-ERAT) was assembled, and the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) was invoked to persuade Myanmar authorities to permit the entry of relief workers. The Myanmar military junta finally relented and ASEAN's first-ever collective engagement in a disaster management and humanitarian assistance mission was immediately implemented.

This sounds too general and saying something without clarifying anything. The last sentence seems unnecessary and only those engaged in the climate change negos would understand what is this international fora, forward backward etc. May be better to delete, as it may be too much to elaborate.

In a 2014 study relating to the 'Promotion and protection of the rights of indigenous peoples in disaster risk reduction, prevention and preparedness initiatives,' the EMRIP underlined that 'poverty and a range of other underlying factors create vulnerability, resulting in insufficient capacity or measures to reduce the potential negative consequences of disaster risk' for indigenous peoples'<sup>166</sup> Indigenous peoples often live in marginal and fragile ecosystems, such as tropical and temperate forest zones, low-lying coastlines, high mountainous areas, floodplains and riverbanks where they rely on natural resources, fishing and agriculture for their daily sustenance. These areas are some of the most threatened by climatic uncertainties and unpredictable extreme weather events that can severely impact on the lives of indigenous peoples, since their livelihood systems are directly dependent on their ecosystems. Indigenous peoples are now observing weather changes such as intensifying heat waves, droughts, floods, and tropical cyclones which have also become annual occurrences.

Despite being one of the most minimal carbon footprint producers, indigenous peoples bear the brunt and burden of the impacts of climate change and the effects of flawed solutions being implemented to mitigate it. Their traditional lifestyle and customary resource management systems provide for a prudent and sustainable use of resources, in which they take and replenish only what they need. However, with the degradation and loss of their lands and environment due to wanton resource extraction, their vulnerability to extreme weather conditions has increased. At the same time, these have reduced their capacity to cope and adapt to climate change. Many indigenous peoples in Asia are becoming climate change victims, and coping with the impacts has led to additional

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<sup>166</sup> A/HRC/27/66, August 2014, para 26 and 35.

physical and financial burdens for both men and women.

In the Philippines in 2013, the most devastating and record-breaking typhoon Haiyan killed more than 6,000 people and rendered 4 million homeless. Indigenous communities, particularly the Tagbanua in the Calamian Group of Islands and the Tumanduks in Panay Island, were among the victims and the least served in terms of relief and rehabilitation. However, not only are indigenous peoples suffering from climate change impacts, but the solutions for mitigation being widely promoted and implemented by the government and private corporations are compounding their plight. Among these are biofuels, hydroelectric power dams and geothermal plants as alternative energy sources, and carbon sinks and forest conservation programs for carbon sequestration.

On 5 June 2015, an earthquake struck Mount Kinabalu, a sacred mountain among the indigenous peoples in Sabah, Malaysia. Eighteen lives were lost, and buildings, water systems and livelihoods were damaged in remote areas, therefore strongly impacting on the indigenous peoples who live around the mountain.<sup>167</sup> Rains exacerbated the already damaged water systems, and production areas with waterways were clogged with logs and lumber, rocks and other debris, both as a result of the earthquake, and the logging.

Conservation programs of governments and their partners (e.g., national parks and protected areas) have also impacted heavily on indigenous peoples. Forest-dependent indigenous peoples, as well as those relying on coastal resources, have been forcibly evicted from conservation areas as they are considered destroyers of nature. Indigenous peoples are treated as enemies

of conservation and, as a consequence, their sustainable resource management systems and traditional livelihoods have been curtailed and even criminalized. The eviction of indigenous peoples and prohibitions of their livelihood activities in conservation areas have resulted in food insecurity, loss of biodiversity and conflicts, among others.

On the other hand, continuous and unabated commercial logging and commercial fishing, which have taken over their lands and waters impact negatively on the environment and on indigenous peoples' rights and livelihoods. Yet indigenous peoples have traditional knowledge that can contribute to viable solutions for the problems caused by climate change.

### **6.3.2 REDD+ and Indigenous Peoples**

Despite bearing the brunt of climate change impacts and solutions as well as having knowledge that can potentially address these problems, indigenous peoples have very little participation in UNFCCC negotiations and decision-making processes. It is only through the International Indigenous Peoples Forum on Climate Change established in 2000 that indigenous peoples around the world have been able to sustain their lobby and advocacy in UNFCCC meetings and sessions.

The advent of Reducing Emissions from Deforestation and Forest Degradation (REDD) in the climate change negotiations has created some space to raise indigenous issues and concerns and to collaborate at different levels with government and UN agencies and civil society organizations. REDD is an idea to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. "REDD+" goes beyond deforestation and

<sup>167</sup> <http://www.nst.com.my/node/87371>

forest degradation, and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.<sup>168</sup>

Asia Indigenous Peoples Pact, in collaboration with national project partners, implemented a project entitled “Promoting Rights-Based, Equitable and Pro-Poor REDD+ Strategies in the Mekong Sub-Region.” The project covered five ASEAN Mekong sub-region countries (Cambodia, Lao PDR, Myanmar, Thailand and Vietnam). The overall goal of the project is to promote approaches in national REDD+ strategies that take both long-term forest conservation and the rights and concerns of indigenous peoples into account. The overall project indicator is that national governments in the project countries are integrating the issues of indigenous peoples’ rights in their respective REDD+ strategies. Starting in September 2009, it ended in September 2013. The project progress in Lao PDR is limited in comparison to Cambodia and Vietnam due to the rather restrictive political environment for indigenous peoples in that country.<sup>169</sup>

While they are now represented in the UN-REDD Programme and in the World Bank’s Forest Carbon Partnership Facility and Forest Investment Programme, most of indigenous peoples’ concerns, especially in relation to recognition of their forest and related collective rights as raised by indigenous peoples in REDD+ countries like Myanmar, Cambodia, Indonesia and Vietnam, have yet to be fully addressed. Thus their engagement in REDD+ processes will continue to focus on the resolution of these issues.

In Vietnam, communities are planting dense mangroves along the coast to diffuse tropical storm waves. Indigenous peoples in Asia have long been collectively and sustainably

managing their forest resources, contributing to the abatement of greenhouse gases. But this has not been sufficiently recognized and compensated by the United Nations Framework Convention on Climate Change (UNFCCC) and other multilateral and bilateral agencies

#### **6.4. Violations of the Rights of Indigenous Women and Children**

Indigenous women and children are rights holders who belong to some of the most vulnerable sectors of society who need to have their rights protected and fulfilled. However, this is not the case as their rights are continuously violated by both the state and their own communities.

Legal policy frameworks and indigenous peoples’ legal status also present obstacles to women’s access to social services, especially adequate healthcare. In the Philippines, there is no systematic recording or registration of births among Mangyan communities (AIPP submission to UNPFII, January 2014), which is a barrier to much-needed health services which are unaffordable, inaccessible and aggravated by language barrier. In the same vein, the long standing problem of citizenship rights for indigenous peoples in Thailand where almost four out of 10 have no citizenship<sup>170</sup> makes them ineligible for basic social services, including healthcare, education and income generating activities. Indigenous women in Southeast Asia also face higher rates of HIV/AIDs and sexual violence as a result of tourism.<sup>171</sup> Even with the ratification of the CEDAW by most ASEAN Member States, the conditions of indigenous women have not significantly improved.

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<sup>170</sup> David Feingold, Trafficking and HIV/AIDS Project Coordinator, UNESCO Bangkok)

<sup>171</sup> (AIPP Statement, Commission on the Status of Women, 58th session November 2013)

<sup>168</sup> <http://www.un-redd.org/aboutredd>.

<sup>169</sup> AIPP/RAI/December 2013.

Despite their important contribution to agricultural production and the family's subsistence activities, women in most traditionally male-dominated indigenous communities in the ASEAN region are only marginally involved or are fully excluded from decision-making processes at the local and national levels. Regarded as inferior and weak, they have virtually no voice in the political affairs of the community and country. Violence against indigenous women, like bride kidnapping, forced marriage and domestic violence, are practices that still persist in some cultures. Indigenous women in the rural areas are hardest hit by poverty. In general, poverty affects women more severely than men since the burden of providing for the family rests more heavily on women, while matters affecting domestic economy and even most crucial issues directly affecting women like reproduction are decided by men.<sup>172</sup>

By virtue of their gender and ethnicity, indigenous women bear particular impacts and greater vulnerability from the consequent loss of traditional livelihoods, displacement, conflict and increasing poverty. In Laos, they have been forced to become migrant workers and daily wage earners in cash crop plantations. The International Fund for Agricultural Development states that more than forty percent of hill tribe women and girls in Thailand who migrate to cities for work end up in the sex industry. In countries with ongoing conflicts, women fall prey to sexual harassment and rape by state security forces as in Myanmar and the Philippines. In Myanmar's indigenous territories, trafficking of indigenous women and children for sexual exploitation and forced labour has become a major issue.<sup>173</sup> The trafficking of a growing number of indigenous

women is rampant, as they seek work in urban centers or overseas to support their families. With limited skills and knowledge of the realities of urban living, they frequently end up as abused domestic helpers or victims of sexual abuse including rape, are forced into prostitution or become mistresses.<sup>174</sup>

## 6.5. Lack of Access to Social Services

While their lands and resources are exploited for "national development," indigenous peoples remain part of the most marginalized sector. This invisibility is reflected in the poor state of social services among indigenous peoples in Asia, especially in education and health, which belies the social benefits touted by this kind of development. Indigenous peoples rank disproportionately high in most indicators of poor health, according to the UN Secretariat Department of Economic and Social Affairs. In a district in Vietnam's northern Ha Giang Province, only 24 percent of households have potable water and none have latrines or toilets. In Thailand, due to the lack of citizenship rights, the indigenous peoples are considered "illegal aliens" and have been denied of basic rights and social services, such as education and healthcare.<sup>175</sup> Indigenous peoples are also at risk to preventable sexually transmitted infections due to lack of education, geographic isolation and prejudice, according to the Joint United Nations Programme on HIV/AIDS. Resettlement further increases health vulnerabilities. There is a lot of resettlement being done in the Greater Mekong region, home to 95 ethnic groups in Myanmar, Cambodia, Laos, Vietnam and Thailand due to development projects or government policy. However, health education is often not conducted in native languages resulting to poor

<sup>172</sup> Who we are: ASEAN's indigenous peoples, AIPP and IWGIA, 2011.

<sup>173</sup> IWCF and AIPP 2010.

<sup>174</sup> Overview of the State of Indigenous Peoples in Asia, AIPP 2014.

<sup>175</sup> David Feingold, Trafficking and HIV/AIDS Project Coordinator, UNESCO Bangkok.

health and sanitation condition. Moreover, the lack of recognition of their legal status also puts the health of millions of indigenous peoples across Asia at risk, according to experts, as it hinders data collection, making their medical problems invisible in most national health surveys. Without adequate data, their specific health problems and interventions cannot be sufficiently determined.

Regarding education, children from ethnic minorities and indigenous groups are the largest population at risk for not attending school. Indigenous students have lower enrolment rates, higher dropout rates and poorer education outcomes than non-indigenous people in the same countries. The basic issue is indigenous children's access to relevant education that is consistent with the rights of the child, but also respects their right "to have access, when possible, to an education in their own culture and provided in their own language" (UNDRIP Art. 14.3). In Thailand, indigenous educators, organisations and support groups had been pushing for Mother Tongue Based Multilingual/Bilingual Education (MTB-MLE) approach which has been found "to be one of the successful models for appropriate education for indigenous children in formal schools and in other settings."<sup>176</sup>

In addition to what Orang Asli children in Malaysia experience, Lumad children in the Philippines are compelled to walk for hours every day to attend their classes as the schools have been built in town centers far from upland communities. Children unable to endure the difficulty choose not to attend school. That is why the Lumad elders in Mindanao,

with the support of CSOs and church-based organizations, put up schools in their own community 10 years ago. A total of not less than 146 Lumad community schools provide formal and non-formal education to children in various indigenous communities in Mindanao and majority implement the accredited formal education. They also provide literacy and numeracy programs and introduce scientific agriculture while strengthening the Lumad's indigenous culture and traditions. However, the Department of Education Division of Davao del Norte Superintendent endorsed the closure of at least 24 schools of Salugpongan Ta'Tanu Igkanogon Community Learning Center and Mindanao Interfaith Services Foundation Inc. Academy.

Until September 2015, there have been 84 state-instigated attacks on 57 indigenous community schools and day care centers in Mindanao, and many have been closed and evacuated due to military presence as documented and reported by the Children's Rehabilitation Center. In Southern Mindanao alone, at least 13 cases have been documented and reported from January to May of this year.<sup>177</sup> Only last September 2015, the Executive Director of ALCADDEV (Alternative Learning Center for Agriculture and Livelihood Development) in Surigao del Sur was murdered by para-military troops because the lumad school was regarded by state authorities as a "communist" learning center.

Despite the Millennium Development Goal to achieve universal primary education by 2015, many indigenous children are being left behind. In general, the indigenous peoples' experience is that most education systems and

<sup>176</sup> ALTERNATIVE REPORT ON THE SITUATION OF ACCESS TO QUALITY AND RELEVANT EDUCATION FOR INDIGENOUS CHILDREN AND YOUTH IN THAILAND1, 55th Session on ESCR (NIPT and IEN- Thailand), paragraph 9.

<sup>177</sup> [https://www.change.org/p/petition-keep-lumad-children-in-school-end-military-attacks-on-schools?recruiter=43568434&utm\\_source=share\\_petition&utm\\_medium=facebook&utm\\_campaign=autopublish&utm\\_term=des-lg-share\\_petition-no\\_msg&fb\\_ref=Default](https://www.change.org/p/petition-keep-lumad-children-in-school-end-military-attacks-on-schools?recruiter=43568434&utm_source=share_petition&utm_medium=facebook&utm_campaign=autopublish&utm_term=des-lg-share_petition-no_msg&fb_ref=Default).

available curricula do not, at best, reflect their cultures and values; and, at worst, devalue their competences, cultures, languages and lifestyles.

Thus, the ASCC Blueprint needs scrutiny with regards its enhancement of “the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to human development opportunities by promoting and investing in education and lifelong learning, human resource training and capacity building, ...” in the context of the well-being and livelihood of indigenous peoples.

## 7. Impacts of ASEAN Integration on Indigenous Peoples

Indigenous peoples live in areas rich in natural resources which have become targets of resource extraction and development programs by governments and multinational companies. In the name of modernization and development of the nation, indigenous communities are faced with the impact of mining and logging, large-scale plantations and infrastructure programs. These projects are implemented without consultation and consent from the affected communities; cause massive displacement of indigenous communities, and consequently the loss of their livelihood, culture and identity. The following provides a few examples of the forms of imposed development on indigenous communities in the ASEAN region.<sup>178</sup>

The socioeconomic Development Master Plan, initiated by the Vietnamese government and ratified by Cambodian and Laotian authorities, is part of the ASEAN Integration Plan. This phenomenal economic project is supposed to stimulate economic growth by increasing capital forces, attracting foreign investments,

intensifying commercial relationships and any form of socio-economic activities that can provide monetary return among the concerned countries throughout 13 provinces (four in northeast Cambodia including Ratanakiri, four in south Laos and five in central Vietnam). ELCs granted to Cambodians and overseas companies have facilitated the Master Plan’s quick effective implementation not only in the region under scrutiny but everywhere in the country. The Indigenous Right Active Members claim that more than five million hectares of indigenous peoples’ land has been taken away by the Cambodian government and given to the miners and developers of agricultural plantations.<sup>179</sup> Reliable Information is hard to get: a map of ELCs and mining concessions would reflect the officially available government information which remains partial because a very large number of concessions have been granted on lands overlapping with indigenous traditional lands.<sup>180</sup>

There is increasing pressure in Laos’ drive for development to exploit the land and its natural resources.<sup>181</sup> In particular, mining projects, hydroelectric dams and tree plantations are sectors in which both Laos and international investors are showing increased interest. This is affecting indigenous peoples who are facing challenges to their traditional livelihoods as well as being forced at times to resettle. Moreover, since the government facilitates direct investment from China for rubber tree plantations, the lives of indigenous peoples have become more difficult as significant portions of their lands have been conceded to

<sup>179</sup> NGO forum 2013: 41.

<sup>180</sup> NGO forum 2013: 41.

<sup>181</sup> From the Indigenous World 2009, Laos’, which provides more details on these issues and how they are affecting ethnic groups in Laos: <http://www.iwgia.org/graphics/offentlig/pdf/Laos.pdf>.

<sup>178</sup> Who we are: ASEAN’s indigenous peoples, AIPP and IWGIA, 2011.

Chinese investors.<sup>182</sup> At present, more than 150,000 hectares of land have been ceded to private investors for 30-50 years. Yunnan Natural Rubber Industrial Co. is the main investor with 66,700 hectares already allotted for rubber plantations. The company doubled its planting, with 133,300 hectares in 2010 and 333,300 hectares in 2015.<sup>183</sup> The Don Sahong dam which is going to be constructed without any consultation with the people at the Lao border will also have social and environmental impacts on indigenous territories along the Mekong River in Cambodia and Vietnam.

With increasing investment and economic integration in the region, pressures on land and natural resources are likely to intensify, and protests about forced evictions are likely to increase unless governments provide protection and enforce proper compensation. Instead, new legislations in many ASEAN countries are in the direction of undermining land rights. For example, the Thai military government's mining bill seems designed to give businesses easy access to more land without the need for impact mitigation while Myanmar's new foreign investment law risks undermining human rights for not including land rights protection.<sup>184</sup> Also in Myanmar, Karen villagers from the Palet Wa region in Thandaung Township in Kayin State who lost their homes and land to the Thaukyekat hydro-power dam are protesting and demanding from the companies to end the dam project, return their confiscated lands and instead build new bridges.

Amidst the continuing threats to indigenous peoples' rights, ASEAN governments have committed to "inclusive and sustainable growth," which could only happen if accompanied by significant improvements in human rights protection for the people of the region. Still, there is some hope and small progress, such as Myanmar which recently committed to develop a National Action Plan on business and human rights.<sup>185</sup>

Malaysia is currently pursuing the APG project, the flagship program mandated in 1997 by the ASEAN Heads of States/Governments under the ASEAN Vision 2020.<sup>186</sup> The APG aims for regional energy security while promoting the efficient utilization and sharing of resources for mutual benefit; enhancing electricity trade across borders through the integration of national power grids to meet the rising electricity demand and improve access to energy services; and sharing of surplus reserve generation capacity between ASEAN Member States to enhance overall system security and reduce system costs.<sup>187</sup> Malaysia, through the various interconnection projects with Thailand, Philippines, Singapore, Indonesia and Brunei is planning to sell 6,830 MW of electricity. Powering these projects are mega dams that have been and will be built on indigenous territories such as the Bakun, Murum and proposed Baram dams in Sarawak, and several proposed dams in Peninsular Malaysia and Sabah. These dams will devastate ancestral lands and displace indigenous communities into resettlement shacks as seen in Bakun and Murum.<sup>188</sup>

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<sup>182</sup> Lao people's Democratic Republic, Country technical notes on indigenous peoples' issues, IFAD, 2012.

<sup>183</sup> Megan Goldin, Laos face thorny land issues in Asia's orchid, 2008.

<sup>184</sup> <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>.

<sup>185</sup> <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>.

<sup>186</sup> <http://www.asean.org/communities/asean-economic-community/item/memorandum-of-understanding-on-the-asean-power-grid>.

<sup>187</sup> Ibrahim, Syaful. 2014. "Barriers and opportunities for electricity interconnection: The southeast asian experience". HAPUA Secretariat.

<sup>188</sup> Indigenous Peoples in the ASEAN – Malaysia, JOAS, October 2014.

To realize the ASEAN Integration Plan, the government of Indonesia, during the administration of President Susilo Bambang Yudhoyono, enacted new regulations to support large-scale agribusiness. Among those laws, the most prominent is Law 2/2012 on land acquisition for development in support of public interest. This law makes land acquisition easier than before. Similarly, the Master Plan for the Acceleration and Expansion of Economic Development, more commonly known as MP3EI,<sup>189</sup> has also had significant impact on indigenous peoples.<sup>190</sup> MP3EI targeted food and energy security and regulated communal land ownership of indigenous peoples in the context of accelerating large-scale investment. In the initial months of his tenure, President Joko Widodo implied that he would rescind MP3EI.<sup>191</sup> This is still has to be done.

Since 1990, the Philippine government has approved more than 300 mineral production sharing agreements and four financial and technical assistance agreements. Presently, large-scale corporate mining remains to be the main issue of indigenous peoples as most of the land covered by mining permits are found in indigenous peoples' territories and were approved before the enactment of the IPRA. Before President Benigno Aquino III passed Executive Order 79 as its mining policy, there were 281 approved applications with a land area of 507,000 hectares which are within indigenous peoples' ancestral lands, all without due consideration to the obligations of the government to indigenous peoples under the IPRA and UNDRIP. Many fear that large-

scale mining will cause massive environmental destruction and strip them of their traditional livelihood and control over their ancestral lands. This runs counter to the government's view that mining drives the country's economic development. As a matter of fact government statistics provide a shamefully dismal contribution of mining to Philippines development, to wit:<sup>192</sup>

- ❑ *Mining's contribution to the economy is small, ranging merely from 0.6 to 1.0 percent of the GDP during the said period. In 2012, mining accounted for merely 0.7 percent of the GDP*
- ❑ *Contribution to Exports. Mining has not contributed much to exports either with the sector's contribution to total exports remaining at single digits, hovering around two to six percent.*
- ❑ *Contribution to Employment. The mining (and quarrying) sector's contribution to national total employment has consistently been below one percent*

Part of the Philippine government's commitment to the ASEAN within the AEC pillar, the ASEAN Plan of Action for Energy Cooperation (APAEC) covers the energy component of the AEC Blueprint 2015 as it aims to ensure a secure and reliable energy supply for the region through collaborative partnerships in the APG and TAGP. Recognizing the limited global reserve of fossil fuels and unstable energy prices, the APAEC emphasizes strategies to further strengthen renewable energy development, such as bio-fuels. Also, APAEC will promote open trade,

<sup>189</sup> Presidential Regulation 32 Tahun 2011.

<sup>190</sup> Indigenous peoples in Indonesia, Myrna A. Safitri, AIPP 2015.

<sup>191</sup> <http://nasional.kompas.com/read/komentar/2014/09/05/17485041/Jokowi.Isyaratkan.Tak.Lanjutkan.ProgramMP3EI.dalam.Pemerintahannya>, accessed 15-1-2015.

<sup>192</sup> Policy Brief: Realizing the Philippines' Mining Potential, SENATE ECONOMIC PLANNING OFFICE, December 2013. Accessed at [http://www.senate.gov.ph/publications/PB%202013-12%20-%20Mining\\_Policy%20Brief\\_final\\_revised\\_010614.pdf](http://www.senate.gov.ph/publications/PB%202013-12%20-%20Mining_Policy%20Brief_final_revised_010614.pdf), 01 October 2015.

facilitation and cooperation in the renewable energy industry. Bio-fuels are included which may include large-scale planting of oil palm, cassava and sugar cane for bio-ethanol and jathropa. Again, many of these, particularly oil palm plantations are found in indigenous peoples' territories.<sup>193</sup> Those initiatives threaten indigenous peoples' rights to their ancestral land as even the Secretary of the Department of Environment and Natural Resources mentioned that 8 million hectares of idle and denuded lands may be good sites for oil palm plantations.<sup>194</sup>

## 8. Indigenous Peoples' Advocacy on ASEAN

In recent years, indigenous peoples in Southeast Asia have engaged the ASEAN for the recognition and protection of their individual and collective rights. Pivotal to their engagement was the creation in 2009 of the Indigenous Peoples Task Force (IPTF ) by AIPP which is composed of indigenous leaders from ASEAN countries whose objective is to coordinate the participation and engagement of indigenous peoples in the work of the ASEAN and its relevant bodies, and to serve as a platform for solidarity and unity for indigenous peoples to lobby the ASEAN and individual governments in the region. It directed its first engagements with the AICHR, particularly the representatives who were friendly with civil society organizations. The advocacy agenda focused on the legal recognition of indigenous peoples as distinct peoples with collective rights as already recognized in international law. The IPTF also engages other civil society organizations to support indigenous issues and build a common platform for ASEAN advocacy as it expands its advocacy to the other ASEAN

bodies, like the ASFN. Indigenous peoples' organisations have also started to engage officials at the national level.

Indigenous peoples have been engaging with the ASEAN processes since the drafting of the ASEAN Charter where they participated with other civil society organisations through their inputs in the lobby documents for the inclusion of indigenous peoples in their work. In 2009 the Asian Civil Society Conference interfaced with the ASEAN Secretary-General, where an intervention was made for the inclusion of indigenous peoples in the ASEAN work. Subsequent work was done to input into the CSO advocacy paper on the TOR of the AICHR, and the AHRD.

Since its formation in 2009, the IPTF has launched activities including information dissemination, trainings and workshops for indigenous peoples and dialogues with ASEAN officials and their governments. To sensitize the AICHR to indigenous peoples and their rights, a workshop was conducted in 2010 with the CSO-friendly members of the AICHR, to get them to support the indigenous peoples' advocacy agenda. The AIPP and IPTF also adopted a peer-to-peer strategy in 2011 by inviting an expert on indigenous peoples' rights from the Working Group on Indigenous Peoples of the African Commission on Human and Peoples' Rights (ACHPR) to discuss the work of the ACHPR on indigenous peoples' rights, especially the creation of the Working Group on Indigenous Peoples. Although only three representatives out of the 10 attended the meeting, it was a breakthrough nonetheless with three members of the Southeast Asia National Human Rights Institutions Forum (SEANF), and plans were discussed to facilitate an exchange visit of AICHR representatives to one of the sessions of the ACHPR.

<sup>193</sup> Study on Profile of Indigenous Peoples in the ASEAN, Component on Philippines, Tyrone Edward Beyer, AIPP 2015.

<sup>194</sup> Lagsa, 2014, Philippine Daily Inquirer, <http://newsinfo.inquirer.net/605424/8m-ha-eyed-for-oil-palm-plantations>).

In 2013, a AICHR representative with a representative from the Inter-American Commission on Human Rights and indigenous leaders from Asia visited the ACHPR in Gambia. The participants learned about the work of the ACHPR and the AICHR on indigenous peoples and how they have established working groups/rapporteurships within their commissions.

The IPTF made three submissions to the AICHR and there was strong support from civil society on the inclusion of several provisions on indigenous peoples. Informal dialogues were also conducted by indigenous peoples in Thailand with both their past and current AICHR representatives, who have been receptive to the issues raised by their indigenous constituency, and the cases submitted to them. However, the fact that the ASEAN insists on the consensus decision-making modality eventually kills whatever proposals the friendly representatives put on the table on indigenous peoples. One key recommendation of indigenous peoples to the AICHR is the creation of a body dedicated to indigenous issues which can be a task force, focal person, working group, special rapporteur or whatever appropriate term applies.

Putting indigenous peoples in the processes of ASEAN advocacy is a continuing struggle. Several ASEAN Member States, especially from the Mekong sub-region consider even the term “indigenous peoples” as too sensitive as they see it as divisive. This is contrary to what their constitutions claim as multi-ethnic states, or what their tourism departments celebrate as cultural diversity in their tourism advertisements. Several indigenous organisations are now engaging their national ASEAN officials in addition to making their governments accountable to their human rights obligations under international human rights law.

The thematic studies of the AICHR is one area where indigenous peoples see an arena of engagement, however, the participation of civil society is limited as these studies are conducted by so-called experts without getting inputs from civil society. In their first study which is on Corporate Social Responsibility, indigenous peoples and civil society organisations did their own case studies on the counter theme of Corporate Accountability. AIPP published its own set of case studies and submitted to the AICHR aside from contributing to the civil society initiative.

## 9. CONCLUSION

Indigenous peoples in the ASEAN have advanced their engagement and participation in regional and international bodies, including with UN agencies and processes. They have been engaging, along with civil society organisations, with the ASEAN, particularly with the ASEAN AICHR.

As a matter of fact, the ASEAN has made some progress in integrating human rights as part of its framework. Indeed, the ASEAN three pillars’ blueprints as well as the Charter and AHRD are full of progressive language such as governance, democracy, human rights, rule of law, anti-corruption, and equality but not in substance in terms of upholding and ensuring peoples’ rights, interests and welfare. Moreover, there is no reference to indigenous peoples and their recognition as distinct peoples with inherent collective rights over their lands, territories and resources in the blueprints of the ASEAN Charter, in the AHRD, nor in the work of the AICHR and the other bodies.

The ASEAN Charter and three pillars’ blueprints promote development and market-driven economy as the way for the region’s

economic growth and strengthening of regional integrity. There have been initiatives to support national legislation to raise the issue on accelerating development and promoting cultural identity of ASEAN. However they have not complied with instruments that recognize the rights of indigenous peoples. Some other government initiatives to bring peace, security, prosperity and development of ASEAN as one integrated economy and community remain as mere rhetorics. Without safeguards, efforts to promote the market could be a way of excluding indigenous peoples from the development process and threaten their territory. The ASEAN should reflect the reality on the ground and look specifically into the needs of vulnerable groups including indigenous peoples to improve the protection, fulfillment, and realization of human rights. Therefore, the challenge to ASEAN is to make indigenous peoples visible towards the recognition of their rights and contributions in all aspects of the ASEAN community.

Indigenous peoples in Asia may face even more land loss and destruction with the coming ASEAN economic integration. ASEAN economic growth involves massive infrastructure development in energy, transport and communications that will not only claim the indigenous peoples' traditional territories but exploit their natural resources such as minerals and river systems to boost power demand. Among the planned infrastructure are the APG, Trans-ASEAN Gas Pipeline, ASEAN Highway Network, Singapore-Kunming Rail Link and regional telecommunications networks. In the Mekong region, construction of long planned hydroelectric power projects in the Lower Mekong River in Laos and in Cambodia has started to displace indigenous communities. The resources needed to build the development projects are found in indigenous territories. The failure of the ASEAN to address the plight of its indigenous peoples despite its expressed

commitment to human rights and social justice is a shortcoming that needs to be corrected. Unless indigenous peoples are fully recognized as integral part of a culturally diverse ASEAN, and unless their collective rights and identity are respected, ASEAN's goal of development with equity, democracy and respect for human rights cannot be achieved.

## 10. RECOMMENDATIONS

### **For the ASEAN Member States to implement their commitments in the Outcome Document of the UN World Conference on Indigenous Peoples,<sup>195</sup> adopted in September 2014**

1. Consult and cooperate with indigenous peoples in good faith in order to obtain their FPIC before approval and implementation of projects in their territories and before adopting and implementing legislative or administrative measures that may affect them;
2. In conjunction with concerned indigenous peoples, establish at the national level, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources;
3. Work with indigenous peoples to disaggregate data, as appropriate, or conduct surveys, and to utilize holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, particularly older people, women, youth, children and persons with disabilities;
4. Support the empowerment and capacity-building of indigenous youth, including their full and effective participation in decision making processes in matters that affect them;

<sup>195</sup> <http://www.un.org/en/ga/president/68/pdf/letters/9152014WCIP%20-%20CFs%20on%20Draft%20Outcome%20Document.pdf>.

5. Support measures which will ensure the full and effective participation of indigenous women in decision making processes at all levels and in all areas, and eliminate barriers for their participation in political, economic, social and cultural life;

6. In conjunction with indigenous peoples concerned and where appropriate, develop policies, programmes and resources to support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition;

7. Give due consideration to all the rights of indigenous peoples in the elaboration of the post-2015 development agenda.

8. Properly implement the national laws and policies recognizing the collective rights of indigenous peoples over their lands and resources; and stop land grabbing and evictions caused by projects being implemented without the free, prior and consent of indigenous peoples.

**For the ASEAN Member States to implement their international human rights obligations and commitments:**

1. Refer to indigenous peoples in all three pillars of the ASEAN Community regarding the protection of their rights to land, territory, identity and collective rights;

2. Include the promotion and protection of the rights of women and children in all ASEAN pillars as a priority for the ASEAN countries. Indigenous women should be taken into account as well as their specific issues;

3. Create a regional mechanism to address climate change concerns in accordance with international commitments and the ASEAN Declaration on Environmental Sustainability.

4. Enforce international standards on corporate accountability, including compliance with the UN Guidelines on Business and Human Rights ensuring the requirement for FPIC in all projects affecting indigenous peoples.

5. Ensure the effective implementation of social and environmental safeguards and measures, including the conduct of human rights due diligence in the planning and implementation of the ambitious ASEAN Investment Plan and other related projects.

6. Based on the UN Guidelines and Business and Human Rights, to review the socioeconomic Development Master Plan initiated by the Vietnamese government and ratified by Cambodian and Laotian authorities as part of the ASEAN Integration Plan which has been facilitated through Economic Land Concessions (ELCs) granted to Cambodians and overseas companies;

7. Review the APG project as it involves mega dams to be built on indigenous territories in the ASEAN Member Countries along the Mekong, Malaysia, Philippines, and including the gas pipelines and transmission lines.

**To the ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS – AICHR:**

1. To establish open and transparent mechanisms for consultation and engagement with indigenous peoples at the national and regional levels for the promotion and protection of human rights of indigenous peoples based on international human rights standards and instruments.

2. To include human rights protection measures in its mandate, such as receiving and investigating information/communications on human rights violations; and provide strong recommendations to ASEAN Member States to comply with their human rights obligations, including to indigenous peoples.

3. To designate a focal person for indigenous issues amongst the members of the AICHR towards the formation of a Working Group for indigenous peoples.

## AIPP Publication Feedback Form

Dear Friends,

As we endeavor to publish more useful and relevant materials relating to indigenous peoples, we would greatly appreciate if you could spend some of your valuable time to provide your constructive comments and suggestions on this publication. Your comments and suggestions will help us to improve our publications and enhance our outreach to wider audiences.

Please fill up the table below and send back the filled form to [aippmail@aippnet.org](mailto:aippmail@aippnet.org)

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You can also send the filled in form by post at this mailing address: **Asia Indigenous People Pact (AIPP), 108 Moo 5 Tambon Sanpranate, Amphur Sansai, Chiang Mai 50210 Thailand.**

**Title:** .....

Area	Excellent	Good	Fair	Poor	Remarks
Clarity of the Content					
Well Defined/explained Concepts					
Coherence of the topics					
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**Overall rating** (Please select one)

Excellent     Good     Fair     Poor

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Thank you very much for your feedback.

AIPP Secretariat



## **INDIGENOUS PEOPLES HUMAN RIGHTS DEFENDERS NETWORK**

The Indigenous Peoples Human Rights Defenders Network (IPHRD Net) is a platform for solidarity, coordination and support among indigenous human rights defenders and their organizations. Through the IPHRD Net, indigenous peoples human rights defenders can more effectively address human rights issues and violations wherever these occur by working with other indigenous peoples organisations, other human right organisations, and with regional and international human rights mechanisms and bodies.

### **THE FUNCTIONS OF THE IPHRDS NET ARE AS FOLLOWS:**

1. Mechanism for exchange of information and updates relating to human rights of indigenous peoples
2. Facilitation of technical, logistics and other forms of support
3. Forum for planning, capacity building and skills enhancement of network members
4. Mechanism for strengthening solidarity and cooperation.

### **ACTIVITIES**

1. Documentation of human rights violations against indigenous peoples for use in lobby and advocacy at all levels
2. Manage the database of human rights violations against indigenous peoples in Asia
3. Capacity-building on human rights documentation and advocacy
4. Awareness-raising on human rights, in particular the UN Declaration on the Rights of Indigenous Peoples
5. Advocacy on indigenous peoples issues at all levels
6. Networking with other civil society organisations to gather support on the issues and concerns of indigenous peoples
7. Facilitate direct support to indigenous peoples human rights defenders at risk.

Website: [www.iphrdefenders.net](http://www.iphrdefenders.net)

Have you witnessed a human rights violation against indigenous peoples?  
Report to: [www.iphrdefenders.net/index.php/iphrd-human-rights-violation-form](http://www.iphrdefenders.net/index.php/iphrd-human-rights-violation-form)

Are you an IPHRD at risk needing assistance?  
Contact us at: [www.iphrdefenders.net/index.php/request-for-assistance-form](http://www.iphrdefenders.net/index.php/request-for-assistance-form)



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## **AIPP MEMBERS in the ASEAN Member-Countries**

### **Cambodia**

Indigenous Rights Active Member (IRAM)  
Cambodia Indigenous Youth Association (CIYA)  
Highlander Association (HA)  
Organization to Promote Kui Culture (OPKC)

### **Indonesia**

Alliance of Indigenous Peoples of the Archipelago (AMAN)

### **Laos**

Community Knowledge Support Association (CKSA)  
Gender and Development Association (GDA)

### **Malaysia**

Jaringan Orang Asal SeMalaysia (JOAS)  
Partners of Community Organization (PACOS)

### **Myanmar**

Chin Human Rights Organisation (CHRO)  
Nationalities Youth Forum (NYF)

### **Philippines**

Cordillera Peoples' Alliance (CPA)  
Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP)  
Panagtagbo

### **Thailand**

Assembly of Indigenous and Tribal Peoples of Thailand (AITT)  
Hmong Association for Development in Thailand (MDT)  
Indigenous Women's Network of Thailand (IWNT)  
Inter Mountain Peoples Education and Culture in Thailand (IMPECT)  
Karen Network for Culture and Environment (KNCE)

### **Vietnam**

Center for Sustainable Development in Mountainous Areas (CSDM)

**Asia Indigenous Peoples Pact (AIPP)**

108 Moo 5, Tamboon Sanpranate, Amphur Sansai, Chiang Mai 50210, THAILAND

Web: [www.aippnet.org](http://www.aippnet.org)

E-mail: [aippmail@aippnet.org](mailto:aippmail@aippnet.org)

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