



Expert Mechanism on the Rights of Indigenous Peoples
Right to Land under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
A Human Rights Focus

15th January, 2020

Joint submission by:

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2. Sisterhood Network – Nagaland
3. National Indigenous Women's Forum (NIWF) – Nepal
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I. Introduction

The Asia Pacific Forum on Women, Law and Development (APWLD)¹, in collaboration with its members and partners, appreciates the opportunity to contribute to the study of the Expert Mechanism on the Rights of Indigenous Peoples (the Mechanism) on the Right to Land under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP): a Human Rights Focus. This submission draws upon the collaborative work of the submitting organisations through Feminist Participatory Action Research on Women's Land Rights (Land FPAR²), particularly highlighting the stories and analysis of indigenous women from Nagaland (India), Nepal, Philippines, Burma/Myanmar and Cambodia in relation to their land rights.

Particularly for indigenous women, Land FPAR partner in Nagaland is working on increasing women's political participation at the village level. Meanwhile, indigenous women groups in Nepal, Philippines and Cambodia are struggling against land grabbing and evictions from their territories for extractive industries including big hydropower projects. Last but not least, Tavoyan Women's Union of Burma/Myanmar is advocating for the rights of Dawei indigenous women over their territories against the ongoing Special Economic Zone project in Dawei region.

II. Recognition of indigenous peoples' land rights in national laws and policies

Asia is home to approximately 260 million people belong to different indigenous groups³ who continue to face challenges in asserting their human rights and fundamental freedoms. Of particular concern is the systemic violation of access to and control over land and natural resources of indigenous peoples. This is evidenced in the form of **land and resource grabbing facilitated by macroeconomic policies** including trade and investment agreements which renders an unprecedented level of power and protection to large corporations; **conflicts over resources** facilitated by the growing convergence of militarism and authoritarian governance that increases the direct attacks on environmental, indigenous women human rights defenders by both state and private security forces; and **absolute lack of democratic participation**

¹ APWLD is a feminist, membership-driven network. Our member represents 248 diverse women's rights organisations and advocates from 27 countries in Asia and the Pacific. For more information about APWLD, please visit: www.apwld.org

² Land FPAR is an ongoing two-year journey (September 2018 - August 2020) of grassroots feminist organisations to amplify the voices of rural, indigenous, migrant and urban poor women's voices, shift power, taking an intersectional approach to build capacity and foster movement building, solidarity and collective actions among women in the Asia Pacific region.

³ Stefania Errico. [The Rights of Indigenous Peoples in Asia](#). International Labour Organisation. 2017.



of indigenous peoples over decision making, especially through their right to Free, Prior and Informed Consent (FPIC).

Fundamentally, the lack of recognition of indigenous peoples in national laws and policies is still a constant struggle for many indigenous groups across Asia and the Pacific. In addition to the existing threats, patriarchal and discriminatory land ownership laws, policies and practices deny the rights and control of indigenous women over land and natural resources. The UN Working Group on discrimination against women in law and practices recently confirmed that “women are more harshly affected by land tenure insecurity due to direct and indirect customary laws and practices at the national, community and family levels”.⁴

After decades of struggles, there has been a progress in recognising the indigenous peoples’ collective land rights in Constitution and/or other relevant laws and policies in some countries in Asia. However, in many cases, implementation of these laws and policies have been insignificant, while regressive laws have been enacted that, for instance, criminalise indigenous peoples when defending their lands and territories. Refer to Annex 1 for the summary table of relevant laws on indigenous peoples’ land rights and its consequences in Nepal, Cambodia, Burma/Myanmar, India and the Philippines.

III. Systemic and structural barriers to indigenous women’s access to and control over lands, territories and resources

Land rights should go beyond the right to ‘own’ land, and must provide for progress towards non-discriminatory holding of the full bundle of rights, including use, access, control, transfer, exclusion, inheritance, and all decision-making about land and natural resources.⁵ It should come with the recognition that rural women’s rights to land and natural resources, which include water, seeds, forestry, as well as fisheries, requires a gender-responsive approach to land rights that includes quality, legality (legitimacy) and effective implementation, participation, and enforceability. This entails implementing and supporting agrarian reform as a pro-poor and gender equitable sustainable development strategy.⁶ But the experiences of APWLD’s partners working with indigenous communities, in particular women from these communities, reflects a very different reality.

Patriarchal Laws and Gendered Norms

One of the major structural barriers impeding indigenous women’s access to and control over lands, territories and resources is patriarchal laws regarding inheritance and joint ownership of family lands and resources. Furthermore, there are also discriminatory governance systems that do not include the voices and meaningful participation of indigenous women who conserve, use and hold knowledge about the management of lands, territories and resources. In the majority of land acquisition projects, women’s voices are silenced and their right to free, prior and informed consent (FPIC) is not respected.

Other systemic barrier that impedes women’s land rights are the low representation of indigenous women in the local governments due to the compounded result of multiple exclusions they face, such as limited

⁴ OHCHR (2017), UN Working Group on the issue of discrimination against women in law and practice ‘Insecure land rights for women threaten progress on gender equality and sustainable development’

⁵ Report of the Expert Group Meeting on the CSW 62 Priority Theme: Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Rural Women and Girls.

⁶ APWLD Regional CSO Submission (2019): 25-Year Review of the Beijing Declaration and Platform for Action.



access to quality education. The administrative set up does have reserved positions (quota) for women but most of these positions are held by women from the upper classes and castes due to their generational advantage of accessing education opportunities. Another significant barrier is the gendered stereotypes of a woman's role that prevails even among indigenous communities that confines women's role merely as a primary caregiver and with household responsibilities. This deprives them of their opportunity to participate in political and economic activities and exercise their rights and voices. In every resistance of indigenous peoples against oppression and injustice, indigenous women have been at the forefront and taken the brunt of many State sponsored violent crackdowns. Yet, their contributions and voices have seldom got the due importance and recognition.

Land grabbing and corporate capture

The right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their lands and territories including water and coastal areas is guaranteed in Article 25 of the UNDRIP. Article 26 continues confirming the rights of indigenous peoples to own, develop and control their lands, territories and resources they have traditionally occupied and States shall recognise and protect the customs, traditions and land tenure systems of the indigenous peoples concerned.

Cambodia Volunteer for Society (CVS) reported, through the Land FPAR, the impacts of the Sombo Dam project in Kratie province. Sombo Dam is a large hydropower project that had been proposed by China to strengthen the cooperation between the two countries, China and Cambodia. The hydropower dam can generate up to 2,600 megawatts. To generate this amount of energy successfully, an 18km concrete dam across the Mekong river needs to be built. The dam will have significant impacts on fish and other water resources as it will block the flow of the Tonle Sap water to the Mekong river. Also, the dam will affect the livelihoods and other sources of nutrition in the region especially in the Mekong Delta region of Vietnam.

CVS further found that even though the hydropower project is still in its planning process, Kouy indigenous women strongly opposed the project as they saw the experience from other villages that had been affected by such a project e.g. Lower Sesan II experience. Kouy indigenous women in Sombo district are using the Mekong River for their livelihoods, such as fishing, irrigating agriculture crops, to grow their agriculture products and raising livestock (e.g. cow, and buffalo).

"If the hydropower project is implemented, all Kouy villages will be submerged and communities have to be relocated. The villages relying on the Mekong river will be severely affected. Forest and river are seen as their main sources of food and survival, therefore, if the Kouy women are going to be relocated, they will lose the connection to their land, culture and distinct identity as their source of survival. Kouy people will not be able to practice their traditional beliefs and pay respect to their forest spirit and ancestral graveyards as the sites will be wiped away once the dam is built." - **Cambodia Volunteer for Society (CVS)**

Similarly, in Nepal, Majhi women of Kunaui, Bhatauli and the neighbouring villages are threatened by the Sunkoshi Hydropower project. It is a pumped- storage project being built for the first time in Nepal. The Department of Electricity Development has planned to develop Sunkoshi -II (1,110 MW) and Sunkoshi -III (536 MW) projects as a pumped-storage project. According to the inception report of the SU-II project, the storage location is in Dudhbanjyan VDC in Sindhuli District and Rampur VDC in Ramechhap District.



A total catchment area of the storage is 10,396 Km² and the total length of the SU-II reservoir is 35km. The Sunkoshi-II Hydropower project will potentially inundate Khurkot to Manthali road affecting the Majhi indigenous group in Kunauri and Bhatauli villages. The preliminary study on the Feasibility and Environmental Impact Assessment was conducted by the Nepal Department of Electricity Development (DoED) without Free Prior Informed Consent (FPIC) of Majhi people.

Majhi women of Kunauri and Bhatauli villages are highly marginalised indigenous Majhi community whose main traditional livelihoods include animal husbandry, subsistence farming and local liquor production. Traditionally, their livelihoods and customary ways of life revolved round the local rivers. Government of Nepal is committed to achieve the so-called 'development' as it reiterates through the proclaimed commercialisation of hydroelectricity, even at the cost of social, cultural and economic lives of huge populations including indigenous communities in the country. Regrettably, the projects are carried out covertly compromising the rights of indigenous peoples to FPIC.

"Majhi women are extremely concerned with the Sunkoshi hydropower project plan. Their worries and assertions are broadly around their livelihoods, collective identity, and security of women. Sunkoshi Dam project will force Majhi peoples to leave their territory. Majhi people depend on the river for their daily needs and survival, thus, detaching them from the river would directly affect every aspect of their life and ultimately their survival. On the other hand, their economic life also relies on the aforementioned realities. Majhi women are also of the view that on the occasion of rites of passage and other rituals, the river and the land become inseparable. There has always been an integral linkage of their ancestral lands and every aspect of their life as indigenous peoples. Furthermore, the hydropower dam construction would affect Majhi men and women differently". - National Indigenous Women Forum (NIWF)

Far greater challenge for Majhi women is not only about adjustment in a new environment, but is to guarantee the security of women and girls in the relocation site. Many of the Majhi male members of the research communities were found migrating in search of work/employment opportunities. Consequently, Majhi women do not only look after family and home affairs, but also responsible in sustaining community livelihoods as well as natural resources management. Despite having male members out of home, the Majhi women feel confident and secured because they have been living together in their ancestral land for generations.

The planning of such a huge dam, having consequently displacing indigenous communities, is a result of the government's insistence on popularised *prosperity* that they find in the infrastructure build-up. This is also encouraged by the effects of globalisation and neoliberal market demands that prioritise 'economic growth' at the expense of people's rights, dignity and livelihoods. It is the notion of modernity and globalisation that rejects the notion of distinct identity and diversity that indigenous peoples have carried for generations. When globalisation and neoliberalism are considered as a path for development and prosperity, the basic human rights of indigenous peoples are neglected and the more vulnerable sections such as indigenous women are socially, physically and sexually threatened.

In the Philippines, through the Land FPAR, the findings and data gathered by Sabokahan Tomo Kamalitan (Unity of Lumad Women) throughout the process clearly expose the government's plans to displace the



Lumad people to allow for the seamless entry of multinational corporations for mining, logging, agribusiness, and other neoliberal ventures. The PASAKA Confederation of Lumad Organizations bared at least three mining tenements that were approved by the government, which papers are currently on the process in the province of Davao del Norte, to extract minerals such as gold, silver, copper, and other minerals that will cover around 17,000 hectares. These companies include the Penson Mining Corp., Lianju Mining Corp., and the Philippine Meng Di Mining & Development Corp.⁷

From personal experiences of the Lumad women which they communicated through storytelling, chants, dances, drawings, song, and speeches, it is undeniable that their livelihoods and collective identity cannot be disentangled from their land, food, and natural resources. It is clear through the interactions of young women and their elders that they rely on one another in this resistance against the plunder of their lands. It is profoundly clear, as well, that they are empowered by their participation in the resistance to defend their land, territories and resources.

Increasing oppression and militarisation on indigenous territories

Article 30 of the UNDRIP stated that military activities shall not take place in the lands or territories of indigenous peoples and the indigenous peoples concerned shall be appropriately consulted prior to using their lands or territories for military activities. However, Sabokahan Tomo Kamalitan (Unity of Lumad Women) working with indigenous women in Pantaron Mountain range of Mindanao, Philippines, reported that the existence of Martial Law in Mindanao, declared by the President on May 23, 2017, is functioning to further facilitate the intrusion of these extractive industries into Pantaron Range through the increased recruitment of Armed Forces of the Philippines (AFP) soldiers, Citizen Armed Force Geographical Unit (CAFGU) soldiers, and Alamara (Lumad comprised paramilitary groups trained by AFP).

The current situation in Mindanao has increased the number of barracks, barricades, encampments, checkpoints, and intelligence officers in Lumad communities, although this is against both national and international humanitarian laws including the UNDRIP Article 31 (1). Due to an increasing militarisation, the rate of human rights violations against Lumad group has grown exponentially, especially against women. The people have been evacuating to the city chronically since 2014 to flee aerial bombings, extrajudicial killings, and other militarised attacks. The violence and displacement disproportionately affect women and children. The presence of military and the occupation of Lumads land and territories fundamentally hinders the enjoyment of the community's right to land, if not a direct threat to their right to life.

"In a discussion with Lumad women, some of them shared stories of interactions they have had with soldiers where they feared for their lives or feared they would be raped. One woman from Talaingod told about how a mother and daughter in her community were raped by AFP soldiers and then harassed into dropping the charges against the soldier. The mother and daughter were then paid directly by his battalion, not even bribed with the perpetrator's personal money. She said this mother and daughter are no longer living in the evacuation center with them because they were escorted home by Alamara members. Other women described instances of sexual harassment in which soldiers cat-called them,

⁷Davao Today, 22 April 2019. [Lumad, peasant groups unite to defend Pantaron Range.](#)



watched them bathe, or took unconsensual photos of them.” - Sabokahan Tomo Kamalitan (Unity of Lumad Women)

Militarisation of the Lumad communities has not only disproportionately affected women in terms of gender-based violence but also in an economic sense, particularly their livelihoods condition. Being the primary providers of food in the household, the role of women in Pantaron area is greatly disrupted by militarisation. This clearly violates Article 26 of the UNDRIP.

“It is our role as mothers to provide for our children, our families. But if we lose our land, how can we provide?” - Lumad Woman.

The woman was referring specifically to her role as the gatherer of wild foods, the keeper of vegetable and fruit gardens, herb gardens, livestock, and the farm. Because of the infantry battalion in their communities, they are afraid to walk to their distant farms where they risk being ambushed, interrogated, raped, tortured, or even killed by soldiers. In Talaingod village, the corn mill was destroyed by military as were the seed banking. The military also slashed the irrigation hoses making the work of women like bathing small children, cooking, cleaning, washing clothes and dishes much more tiresome and taxing, having to fetch water at the spring and carry it back to the home.

Article 32 of the UNDRIP guarantees indigenous peoples’ right to self-determined development including deciding on priorities and strategies for the use of their lands, territories and resources for development purposes. States are also obliged to obtain the Free, Prior and Informed Consent of the affected indigenous groups prior to approving any development projects. However, in Burma/Myanmar, Dawei Special Economic Zone (DSEZ), one of the biggest projects in the country was developed during the military dictatorship in 2008 without any information to the affected communities, let alone their FPIC. Since the DSEZ initiated its operation, land grabbing is a major issue occurred in the Nebulal area where Dawei indigenous women are living. Moreover, there was no Land Law by the time as it was enacted only in 2012. The community residents were fearful to speak out about their rights as they are constantly monitored by the military forces and their land was forcibly confiscated to make way for the DSEZ.

“The Dawei Special Economic Zone Law was introduced by the quasi-civilian government on 27 January 2011. However, the law provides more benefits for the investors doing business in the project rather than promoting and protecting the rights of Dawei indigenous women. Furthermore, Dawei women are not able to access the information, related to the DSEZ law due to lack of access to electricity, internet on top of their unawareness. The security had been highly taken presence by security forces and DSEZ announced it as a restricted area for non-employees in 2012. Dawei women in Nebulal area have been affected and losing their livelihoods as a result of the implementation of the DSEZ. Analyzing DSEZ project plan and law, Tavoyan Women’s Union found that the women in Nebulal are neglected since the beginning of SEZ’s implementation. They are excluded under discrimination and social norms as they are not considered as part of decision-making processes in the community.” - Tavoyan Women’s Union (TWU)



Indigenous women and their right to Free, Prior, and Informed Consent

The right of indigenous peoples to Free, Prior and Informed Consent (FPIC) is guaranteed in UNDRIP as a collective right and is inseparable from their right to land, territories and resources. However, in exercising FPIC, more often than not, indigenous women are deprived of their right to meaningfully participate in the decision-making processes within the community as a result of patriarchal nature of customary laws in many countries in Asia.

In the context of Nagaland, a state in Northeast India, indigenous women face a myriad of problems. The patriarchal nature of the society still continue to have a negative impact on the women in the community. Customary laws and culture preclude the women in the Naga society from political status, decision-making bodies, land ownership and inheritance. Women play a vital role in the family and they are also given a respectable place in the community. However, while they are respected at home, they are mostly ignored and discriminated when customs and traditions are at play, particularly in decision making processes including related to lands, territories and resources. They are trapped within the long reign of patriarchy.

Patriarchy is the triggering factor for the rest of the existing problems of Naga women. Some of the problems faced are – decision making both at family and community levels, economic dependency, inheritance rights, restricted from moving freely, associated with only household duties and responsibilities, Violence Against Women (VAW), women being seen as politically inferior entity, women as unskilled and unprofessional, wine/liquor/drug abuser. The issues are interrelated to each other. Patriarchy embedded in customary practice restricts women from making decisions over their bodies, let alone over the land, territories and resources they have been managing for generations.

“Despite the advantage of the India constitutional provision of Article 371(A) in safeguarding the commons such as lands, customary law and traditional knowledge of indigenous peoples, it has adverse implications on the rights of Naga women. The struggle for representation of Naga women in decision making institutions at community level as well as municipal bodies is an example of how patriarchal customary law is reaffirmed by the Constitution. In Nagaland, the customary law mostly denies women the right to participate in village governance and decision making bodies. For instance, women are not allowed to be part of the “Putu Menden” (equals to Village Council) in Ao village and referring to Article 371 (A), Ao community continues to exclude women from its governance system, leading to the violation of their right to participate in decision making and failure of the community to obtain the Free, Prior and Informed Consent of indigenous women as part of the group as a whole. Furthermore, Naga women cannot inherit land or ancestral property. All property is inherited in the male line of lineage as per the indigenous customary law.” - Sisterhood Network

As also reported by the Sabokahan Tomo Kamalitan (Unity of Lumad Women) in the Philippines through its interaction with the Lumads, indigenous women are rich in knowledge related to land and natural resources management and use. When presenting a resource map of Talaingod, one Lumad woman said, *“Here is our pharmacy...and hospital -- the forest. Here is our grocery store-- also the forest.”* More than anyone, it is the women who know how to identify, tend to, and prepare medicinal plants. They view this as their responsibility as mothers as well as community health workers. When mapping their resources, Lumad women described the natural medicines they need while in evacuation site but cannot access.



In their ancestral lands in Pantaron Mountain range, Lumad women know which leaves can be prepared as a liquid medicine for women who are having trouble producing lactation, which is a symptom they say many women and their infants in the evacuation are now suffering from. The women also described plants that can be used to treat fungal infections, stomach bugs, coughs, colds, fever, excessive bleeding, sores, bites, high blood pressure, diabetes, menstrual cramps, diarrhea, swelling, and more. The more the natural environment is devastated, the less food and other livelihoods measures are secured, and thus longer and harder it will be for women to source sustenance for their families on a daily basis.

“Based on FPAR findings, in many indigenous communities, women are the main knowledge holders of natural resources management and use. Therefore, it is paramount to secure their access to and control over customary land, territories and natural resources. This requires ensuring meaningful participation of indigenous women to obtain their FPIC through their own representatives in decision making processes related to the use and management of community land, territories and resources.” - Asia Pacific Forum on Women, Law and Development (APWLD)

I. **Effective mechanisms/programmes/remedies by States**

Articles 8, 10, 28, 29, 32 of the UNDRIP provide indigenous peoples individual and collective rights to resist forced assimilation, destruction of their culture, or forced relocation from their lands without their Free, Prior and Informed Consent. Furthermore, States are obliged to provide effective mechanisms and programmes for prevention of and redress for any form of violation of indigenous peoples’ rights to their lands, territories and resources. However, the stories presented in this submission shows how regression of progressive laws, coupled with contradictory laws, regulations and policies are severely affecting indigenous communities, particularly indigenous women in asserting their rights to lands, territories and resources.

In **Burma/Myanmar**, Dawei indigenous women are losing their land and livelihoods as a result of the establishment of the Dawei Special Economic Zone by the national government. As their rights are limited to ‘user rights’ as stipulated in Myanmar Constitution, indigenous women are left with no option but to be daily labourers surrounded by the massive operations of the DSEZ. Despite land rights guaranteed in other laws and policies, the Constitution of Myanmar legally prevents the government to provide effective mechanisms, programmes and remedies for Dawei indigenous women.

Furthermore, there is an increasing concern after the Myanmar government amended the VFV Land Management Law (2012) towards the end of 2018, which requires the current users of the VFV lands to apply for a user permit within the six-month window. This amendment will result into the criminalisation of indigenous farmers and forest users in the country, most of whom are women. Those who failed to obtain permits from the government will lose their land, most possibly to big corporations operating on their land while the villagers can be charged for trespassing with two-year imprisonment. The 2018 amendment of VFV Land Management Law stated that customary lands are not included as VFV lands, however without definition and clear procedure to register customary land in any law in Myanmar, the provision remains empty for indigenous communities in the country. Until now, indigenous communities in Burma/Myanmar are still under siege and in limbo when it comes to implementation of the amended law.



Similarly, in **India**, the current government initiated to amend the Indian Forest Act 1927 in March 2019. Particularly for Northeast India, a group of indigenous peoples' organisations see the amendment as a government attempt to turn forested areas into military zone to promote and facilitate forest takeover by the corporate sector. Section 66 (2) of the draft amendment gives the forest officers the right to use firearms in securing forest area, detain suspicious villagers, searching their houses without providing any warrant. The current draft Act further provides procedures for the Indian government to restrict and prohibit shifting cultivation practices in all forest land, which is detrimental to the distinct identity and survival of the indigenous women and ultimately the whole indigenous groups in Northeast India.⁸ The draft Act also gives the state the right to take over forest area when conflicts are emerging between the state and the villagers. All the provisions above are clearly contradictory with the rights guaranteed in the Indian Constitution Article 371 (A) as well as the Forest Rights Act of 2006.

The Philippines with its IPRA enacted in 1997 made the country as one of the most progressive countries in Asia in terms of laws protecting collective land rights of indigenous peoples. IPRA provides the right for land claims for indigenous communities. However, one of its major issues is the existing land claims, especially mining and other concessions prior to the enactment of the law. This is particularly massive for the Mindanao region where many mining companies are granted Joint Venture Agreements supported by the Philippine Mining Act in 1995 before IPRA was enacted two years later. Land claim process and procedures remain main challenges for indigenous peoples in the country with rough amount reaching 10,000 USD on average for every 2,000 hectares of ancestral domain. Not to mention technical skills needed by the villagers to claim their land and they are left with the National Commission on Indigenous Peoples (NCIP) Administrative Orders, which requires licensed professional mappers to conduct the community mapping.

The requirement criminalises community mapping and hinders participation of peoples' organisations to provide assistance for acceleration of community land claims. Lack of resources provided by the Philippines government to NCIP is another challenge that hinders the implementation of IPRA. As of 2015, 158 Certificates of Ancestral Domain Titles (CADTs) and 258 Certificate of Ancestral Land Titles (CALTs) totaling 4.3 million hectares have been issued by the NCIP. 557 applications remain pending and it is projected that 23 percent of the total land of the Philippines will be reclaimed if the pending applications are processed.⁹

In **Cambodia**, in order to implement the Land Law 2001 and operationalise the registration of collective land titles, the government issued a Sub-decree in 2009 on procedures of Registration of the Land of indigenous communities, including step by step registration of collective property under two different ministries, namely the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction. For the entire land titling process, each indigenous community has to complete 13 steps involving three different ministries. It is a tedious, long and expensive process required for indigenous peoples to claim their land titles. By 2016, 15 years after the Land Law was enacted, with the help of civil society and indigenous peoples' organisations, only 15 indigenous communities in three provinces (Ratanakiri, Mondulakiri, Kampong Thom) obtained their land titles.¹⁰

⁸ [Joint Statement on draft Indian Forest Amendment Act 1927](#) issued by BPHRO, IWFNEI, KHRW, NPMHR, ZIF, 3 September 2019.

⁹ Jade Tessier, Prabindra Shakya, Joan Carling and Patricia Wattimena, [Indigenous Peoples' Initiatives for Land Rights Recognition in Asia](#), Asia Indigenous Peoples Pact, 2016.

¹⁰ *ibid.*



In **Nepal**, despite the fact that it is the only country which ratified ILO Convention 169, the government has yet to develop any specific legal provisions that shall support the implementation of the Convention. In addition, the government's actions are strongly contradictory with the provisions in the Convention. In the case of the Sunkoshi Dam-II project itself, for instance, Article 15 of ILO C. 169 has clearly been breached and bypassed.

Different cases above clearly show the current trend where many governments in Asia are exacerbating the situation of indigenous women and communities instead of recognising and promoting their rights as distinct peoples who live in balance with nature and are heavily dependent on their lands, territories and resources. Even in case when procedures or mechanisms are in place, they are either not affordable or extremely complicated for indigenous communities who are left with a very minimum assistance by the States, if at all.

IV. Conclusion

The Feminist Participatory Action Research (FPAR) on indigenous women's land rights clearly illustrates how indigenous women in many Asian countries are experiencing subjugation and discrimination both by external actors (both state and non-state actors) as well as within their own community. Indigenous women's rights to access to and control over their lands, territories and resources must be recognised and protected. This is inseparable from their right to Free, Prior and Informed Consent (FPIC) along with meaningful participation in every step of the decision-making process that may affect them. FPIC of an indigenous community is not an FPIC if it is obtained without genuine and meaningful participation of indigenous women.

Neoliberal globalisation and corporate capture of lands and resources in the Asia region exacerbate the situation of indigenous women. Militarisation and other forms of repression are being used to facilitate land and resource grabbing and suppress resistance by indigenous women and their communities. Furthermore, structural barriers rooted in patriarchal laws and traditions impede indigenous women's exercise of their land rights. Altogether, these forces bring about systematic undermining and violation of indigenous women's rights and fundamental freedoms.

Many governments in Asia have introduced mechanisms and measures to promote the land rights of indigenous peoples. However, indigenous women are often left out from the discussion and even if they are involved, more often than not, their voices are not reflected in the final decisions. Furthermore, comprehensive implementation of national laws and policies protecting indigenous women's access to and control over their lands, territories and natural resources is critical. It is critical to strike patriarchal concepts and legal provisions that promote gender inequality.

V. Recommendations

1. States shall take necessary measures to promote and support Feminist Participatory Action Research (FPAR) initiatives as indigenous women's collective action to amplify their voices, put forward evidence-based stories from and by the indigenous women concerned and inform/influence policy consultation and decision-making processes.
2. States shall take necessary measures and strengthen the promotion and protection of indigenous women land rights defenders and decriminalise any form of their efforts to defend their lands, territories and resources.



3. States shall ensure that indigenous women potentially affected by any development projects including in a Special Economic Zone (SEZ) are informed in every stage, in a culturally appropriate and understandable form, of the potential impacts on their lands, territories and resources.
4. States shall create an enabling environment for meaningful participation and inclusion of indigenous women, obtaining their Free, Prior and Informed Consent (FPIC) in every decision-making process that may affect their access to and control over their lands, territories and resources.
5. States shall refrain from militarising indigenous communities and prevent all forms of repression and coercion that undermine the integrity of the FPIC process.
6. States shall take necessary measures to provide remedies and compensations for the indigenous communities whose rights to land, territories and resources are affected by any state or state-sponsored business actions, with special attention given to indigenous women and children.
7. States shall establish and strengthen mechanisms to ensure the full implementation of international indigenous peoples' rights laws and principles, including ILO Convention No. 169 and UNDRIP.
8. States shall ensure the comprehensive implementation of national laws and policies recognising and protecting the collective rights of indigenous peoples to their lands, territories and resources.
9. States shall take necessary measures including revoking or amending discriminatory laws, policies and regulations adversely affecting indigenous women's rights to lands, territories and resources such as the amendments of Indian Forest Act (1927) and Myanmar VJV Land Management Law (2012); and ensure that national laws and regulations are in line with international human rights laws and principles.
10. States shall immediately investigate and prosecute the offenders on alleged human rights violations against indigenous women and their communities and undertake necessary measures to respect, protect, and fulfill indigenous peoples' rights and fundamental freedoms.
11. States shall institutionalise participatory environmental, gender and human rights impact assessment and make it mandatory in any development projects with meaningful participation of CSOs and the concerned communities.



Annex 1

Constitution	National laws and policies
Cambodia¹¹	
<p>The Constitution of Cambodia does not specifically mention or recognise “indigenous peoples”. in the Cambodia Constitution, hHowever, Article 44 of the Constitution instead guarantees collective ownership of immovable property as well as the right to fair and prior compensation to both individual and collective property owners.</p>	<p>National Policy on Development of Indigenous Peoples (NPDIP), 2009 - provides a framework to indigenous land use and rights through agricultural activities. It also recognises the and recognition of customary land registration, which supports indigenous peoples’ will ensure land tenure. However, instead of promoting the shifting cultivation as a traditional occupation of many indigenous groups in the country, the government of Cambodia encourages indigenous communities to shift to modern agriculture system, which would threaten their distinct identity.</p> <p>Land Law, 2001 - The only Law specifically recognises indigenous peoples’ land rights. Articles 23 - 28 of the law reaffirm collective land ownership through land titling as well as the role of customary institutions and mechanisms in collective decision making process. However, the fact that many indigenous communities in Cambodia have not obtained the legal title over their collective lands, which subsequently put them as ‘illegal users’ of their own land.</p> <p>Forestry Law, 2002 - Officially recognising community forest use and management, which can be obtained through the Forestry Administration. Article 11 of the Law stipulates also the demarcation and measurement for collective land titling and relevant ministries responsible for the process. Article 37 promotes shifting cultivation practices as it is included as the Forestry Community</p>

¹¹ Asia Indigenous Peoples Pact (2014), [Threatened Lands, Threatened Lives, Human Rights Situation of the Indigenous Peoples in Cambodia](#).



	<p>Development Plan. Article 45 protects cultural and sacred sites of indigenous peoples. Furthermore, under the Forestry Law, the right of indigenous communities to access non-timber forest products (NTFP) is also guaranteed even if the area is authorised for Economic Land Concession (ELC).</p> <p>Law on Natural Protection Zone, 2008 - Protects and recognises indigenous peoples' rights to land and natural resources inside and around protected areas, including access to traditionally used lands in accordance with indigenous peoples' tradition, and respect for their customs, beliefs and religions.</p>
<p>Nagaland (India)</p>	
<p>Article 41 of the Indian Constitution states that: "As far as possible, no acquisition of land shall be made in the Scheduled Areas¹²" and that families shall be resettled "preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity."¹³</p> <p>The Fifth and Sixth Schedules of Indian Constitution provides special provisions on Indigenous Peoples' land rights and self-governance applicable in Scheduled Areas including in Northeast India. Article 371 (A) of the Constitution has created special provisions for governance structure of Nagaland in order to "respect and protect" the customary laws and practices of Nagaland. One major provision states that no Act of Parliament can override laws in respect of:</p> <ol style="list-style-type: none"> i. Religious and social practices of the Nagas; ii. Naga customary law and procedure; 	<p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act also referred to as Forest Rights Act, 2006 - The Act provides recognition of the rights of indigenous peoples in India to forest lands both under individual or common occupation. The rights can be acquired through filing claims for the same through the forest rights committees at the village level. The FRA also reiterates the obligation of government and other private parties to obtain the consent of indigenous communities for acquisition of their lands and forests for any purpose and for their resettlement in any other site of their choice.</p>

¹² The Scheduled Areas (SAs) are parts of India identified by the Fifth and Sixth Schedules of the Constitution of India, inhabited mainly by indigenous communities or also known as Scheduled Tribes.

¹³ [The Indigenous World 2014](#). International Work Group on Indigenous Affairs.



<ul style="list-style-type: none"> iii. Administration of civil and criminal justice involving decisions according to Naga customary law; iv. Ownership and transfer of lands, territories and resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides; 	
Philippines	
<p>Article II, Sec. 22 of the Philippine Constitution of 1987 recognises and promotes <i>“the rights of indigenous cultural communities within the framework of national unity and development.”</i></p>	<p>Indigenous Peoples’ Rights Act (IPRA), 1997 - IPRA recognises indigenous peoples’ ownership of ancestral lands and ancestral domains through claim of ownership either occupied or possessed by themselves or since the time of their ancestors. Ancestral lands and domains ownership can be proven through testimony of elders, historical accounts, language used, treaties and pacts between or among indigenous communities and other parties.</p> <p>IPRA also provides indigenous communities the right to self-determined development where they can rightfully decide their priorities for development and that the community shall participate, collectively, in every stage of the decision-making processes that may affect them including their lands, territories and resources.</p> <p>However, Section 56 of the IPRA states that <i>“property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognised and respected.”</i> This section has been seen as a major issue for indigenous peoples in the country as it has been interpreted that any land ownership before 1997, mostly by corporations, has stronger legal basis than an ancestral claim guaranteed under IPRA.</p>



Burma/Myanmar

The 2008 Constitution of Myanmar Constitution, 2008, entitles is the main law regulating the land in the country and all laws must comply with the Constitution. It gives the government right as the ultimate owner of all lands in the country (Article 37). This means that only 'user rights' may be granted to its citizens/peoples while the government reserves the power to revoke these rights at its discretion.

Farmland Law, 2012 - Objective of this law is to secure rural land tenure through a land use certificate and registration system. However, it is weak as based on the Constitution, land rights of the people in the country are limited to user rights. If indigenous communities or farmers violates the conditions of use, such as not informing the government before using the land for other purposes aside from what is permitted, the government may at any time revoke the user rights.

Environment Conservation Law, 2012 - The Law stipulates the importance of sustainable use of land and requires Environmental and Social Impact Assessment (ESIA) mechanism to mitigate potential negative environmental or social impacts from any development aggression in the country.

Vacant, Fallow and Virgin (VFV) Lands Management Law, 2012 - VFV Lands Management Law is the legal basis of a long-term leases of State land to Myanmar citizens, private investors as well as Indigenous Peoples' Organisations for agriculture developments, mining, and other purposes allowed under the law. VFV Lands Management Law provides the right of the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV) to grant the leases. The law gives a way for indigenous farmers and families to apply for the use of VFV land with a maximum area of 50 acres, however, whether or not the indigenous farmers and families are able to develop and manage the land shall be decided by the Government. VFV land that is leased may not be transferred in any form without approval of the national government.



Nepal

The current Constitution of Nepal (2015) identifies Nepal as a Secular State. However, the explanatory provision defines secularism as protection of Hindu religion and culture. The Constitution promotes hierarchical caste system, which for generations has been a major issue for indigenous peoples in the country that led to their marginalisation and deprivation of their lands, territories and natural resources. Furthermore, the current Constitution of Nepal recognises Chetri, Bahun, Thakuri, Sanyasi, Dasnami (CBTDS) as Khas Arya (Ary race), while there is no definition for indigenous peoples, let alone their collective rights.

ILO Convention No. 169, 1989 - In 2007, Nepal became the first and until now the only Asian country ratifying the ILO Convention. The Convention provides the rights of indigenous peoples to lands, territories and resources in a number of Articles framed by Article 13 (1) which requires government to recognise and respect IPs relationship with their lands and territories, particularly the collective aspects of the relationship. Furthermore, Article 13 (2) defines 'lands' as used in the Convention as covering the environment and natural resources. Article 14 recognises IPs' collective rights over lands which they have traditionally occupied.

According to the provisions in Clause 9 of the Constitution of Nepal, each provision in the Convention is applicable similar to the laws of Nepal and provisions of the Convention shall prevail in case they contradict with the provisions in the existing laws. This Convention consists of substantive provisions of rights and procedural provisions for their implementation.¹⁴

¹⁴ National Human Rights Commission of Nepal. [Indigenous and Tribal Peoples Convention, 1989: Implementation Status Report](#). March, 2019.



Annex 2

Profile of Organisations:

Cambodian Volunteers for Society (CVS), Cambodia - CVS is a non-profit and non-political organisation established in 2005. Its mission is to mobilise youth to be agents of social change with voluntarism spirit for the society. With its research, CVS aims to advance the participation of rural and indigenous women in the decision-making process of the Sambo hydropower project that is due to be constructed in Kratie Province, Cambodia.

National Indigenous Women Forum (NIWF), Nepal - The NIWF was founded in 1998 with an aim to develop an equitable and equal level platform for indigenous women and other marginalised minorities in local, regional and national levels. NIWF works at empowering and strengthening the capacity of indigenous women and enhancing their decision-making skills at economic, cultural, social and political issues. The organisation aims to look into the potential impacts of Sunkoshi High Dam Project in eastern Nepal on Majhi women's human rights.

Sabokahan Tomo Kamalitan (Unity of Lumad Women), Philippines - Sabokahan is a grassroots organisation of Lumad women that seeks to empower Lumad women through education, organising, capacity building and participation in advancing women and indigenous rights as key to overcoming barriers that preclude women from being at the front lines of the struggle for land rights, self-determination, social justice, genuine peace and development. The organisation seeks to do a research on indigenous women's preservation of the natural environment in the Pantaron Mountain Range and the impact of the Pulangi Hydroelectric Dam on indigenous women in Mindanao.

Sisterhood Network, India - Sisterhood Network (SN) is a non-profit, non-sectarian, non-governmental organisation with the objective to empower women to reach their full potential through sustainable development, self-esteem and self-respect based in Nagaland, India. Through the programme, the organisation aims to better understand the land tenure system adopted by customary practices and how it can be revisited with women as key stakeholders.

Tavoyan Women's Union, Burma/Myanmar - The Tavoyan Women's Union (TWU) represents women of the Tavoyan minority ethnic group from the Tanintharyi Division in Southern Burma/Myanmar. TWU works actively to promote women's participation in society, improve safety and education for women, achieve gender equality and protect women's rights. Through its FPAR, TWU is analysing the impact of Dawei Special Economic Zone (DSEZ) project to the lives of Dawei indigenous women in Nebulal area.