

CASE STUDIES IN ASIA REGARDING INDIGENOUS WOMEN, DEVELOPMENT AND ACCESS TO JUSTICE¹

Asian Indigenous Peoples Pact

1. Introduction

Case studies were conducted in the five countries—Cambodia, Lao PDR, Malaysia, Philippines and Thailand—on issues that Indigenous women in Asia are facing with respect to development projects: access to justice; and the promotion, protection and respect of their rights both as women and as Indigenous Peoples. Development projects in this context refer to both State and corporate projects that are intended to support national development, i.e., economic growth or national priorities like the establishment of protected areas. These projects include mining, economic land concessions, national parks and plantations. The case studies look at the national legal and policy framework on women’s rights and Indigenous Peoples’ rights as it relates to the situation of Indigenous women in the respective countries. A community profile is provided for each case to establish the context. Information is shared on the development project and the violations of the rights of Indigenous women that the project causes. Analysis is also provided on obstacles that Indigenous women face for accessing justice related to the development project. In the conclusion, Indigenous women propose recommendations to address these obstacles to access to justice.

In the following, an overview on the community profiles is provided for all cases (Section 2). This is followed by a synthesis of the national legal framework for each case (Section 3); a synthesis of the impacts of each development project on Indigenous women

¹ This is an excerpt from Tilting the Balance: Indigenous Women, Development and Access to Justice, A Report on the Southeast Asia Consultation on Development, Access to Justice and Human Rights of Indigenous Women (October 30–November 2, 2012, Chiang Mai, Thailand), pp 50–66, Asia Indigenous Peoples Pact (AIPP), Overall writers: Bernice See and Charlotte Hinterberger, 2013, AIPP Press, Chiang Mai; the excerpt is reprinted here by permission of the AIPP. Minor editing and formatting adaptations have been made to the text for this publication.

(Section 4); and a synthesis of different development-induced violations of their rights (Section 5). Finally, a summary is provided of the international obligations of each government described in each of the studies (Section 6); as well as the key obstacles identified that hamper Indigenous women's right to justice across countries are outlined (Section 7).²

2. Profile of the communities

The five case studies provide background information on seven different Indigenous Peoples and their community profiles: the Kui (Cambodia), the Karen, Lisu and Akha (Thailand), the Kri (Laos), the B'laan (Philippines) and the Dayak (Sarawak, Malaysia).

Kui (Cambodia)

The Kui is one of the 24 Indigenous Peoples recognized by the Royal Government of Cambodia, part of the 1.34% of the country's total population of approximately 14 million based according to the 2008 census. The government collectively refers to Indigenous Peoples as *chuncheat* meaning 'national people.' Indigenous Peoples prefer to collectively refer to themselves as *chuncheat daoem pheak tech*, meaning original minority ethnic group. The site of the case study is Prame commune, District of Tbaeng Mean Chey, Preah Vihear Province. The commune is composed of three villages all peopled by Kui: Srey Preang, Bothum and Prame proper. It has a total population of 2,680 individuals belonging to 568 families and the inhabitants are predominantly young. The Kui have their own traditional political and social systems. There is a public elementary school (Grades 1–6). The nearest health facility is about 11 kilometers away. Although there is no public transportation to the three villages, the roads are in very good condition as Prame commune is traversed by the Asian Highway Network.

2 In the full AIPP publication subsequently, the case studies are presented in detail for each country, combined with testimonies on other development-induced rights violations faced by Indigenous women in South-East Asia.

Most of the Kui in Prame are heavily dependent on the forests. They get their subsistence from rotational rice cultivation, animal husbandry, hunting, honey collection, and gathering different kinds of non-timber forest products for subsistence. Cash income is earned from selling resin they gather from the forests and their own plantations. Kui women are mainly responsible for gathering food from the forests. They collect non-timber forest products like wild vegetables, fruits, honey, mushrooms, and others which form the bulk of the family's food supply. They also gather rattan, firewood, and resin. An important member of the Kui community is the Yeak Chaeng or Yeak Chheon Chaeng, a woman spiritual leader who is responsible for maintaining the faith and solidarity of the community. There are parts of the forests which are sacred sites, spirit forests, which are of significance to the Kui spiritual belief. Because of their affinity with the forest, Kui women regularly visit these sites for worship and spiritual renewal which are important for their mental/psychological well-being and community solidarity. However, despite their important role in ensuring family and community food security, Kui women are still marginalized in community decision-making processes. Although most of the adults, including women, can speak Khmer, Kui is the language in daily life in Prame. The three Indigenous communities have received a letter of community identity from Minister of Rural Development, and the traditional authorities (committee) have been acknowledged by Commune Council. Since April 2012, two companies which had been awarded economic land concessions (ELCs) have started bulldozing parts of the Kui territory destroying hectares of farm land, resin trees, forests, sacred sites and burial grounds. Because of the National Assembly election on 28 July 2013, there is a lull from the clearing operations. It is expected that the clearings accelerate after the election.

Karen, Lisu and Akha (Thailand)

Mainly in the uplands of northern and western Thailand, various groups of Indigenous Peoples live who are categorized as “Chao kao” (Thai), or “hill tribes”, such as the Karen, Lisu, Hmong, Lahu, Akha

and Mien, amongst others. According to the Department of Social Development and Welfare (2002), their total population is 925,825 in the north and west, but there are still no numbers available for the rest of the country. Almost all of them live in protected areas, including forest reserves, national parks, wildlife preserves. Over the course of time, the term ‘hill tribes’ has become closely connected to negative stereotypes such as opium cultivation and forest destruction. Indigenous Peoples prefer the term “chon phao phuen mueang” as the translation of Indigenous Peoples to refer to themselves. One part of the case study was conducted in the Lisu and Akha villages of Doi Chang and Doi Lan in the Mae Suai District of Chiang Rai Province, in northern Thailand. This is where the Lam Nam Kok National Park, as well as a national reserve forest and forest parks, is located. The livelihood of the Mae Suai Lisu and Akha combine both commercial production of coffee and other introduced temperate-climate crops and products and selling their labor. A Lisu and an Akha woman had been arrested for the crime of encroaching on national parks. The other site in the study is the Kaeng Krachan District, Phetchaburi Province in central Thailand at the Thailand-Burma border where the biggest national park in Thailand, Kaeng Krachan National Park, is located. The Indigenous Peoples who live here are the Karen who are almost fully dependent on their traditional rotational farming for their subsistence. The Kaeng Krachan Karen had their homes and other properties torched for being located in a national park several times, the worst being in 2011.

Kri (Laos)

Lao People’s Democratic Republic (PDR) refers to its Indigenous Peoples as ethnic groups while the peoples refer to themselves by their specific names. The Kri (alternative names: Krih, Kree; Kha Tong Luang, Yellow Leaves) in Laos have a complicated history of migration, and opinions of local and international anthropologists diverge considerably. It is widely agreed that Kri is a Vietec language and belongs to the Mon-Khmer language group, even though it has no written script. Nowadays, the Kri mainly inhabit the provinces of

Bolikhamsai and Khammuan near the Laos-Vietnam border. Locals refer to them as ‘Yellow Leaves’, similar to the Mlabri ethnic group in Thailand and Laos, as they build their homes from banana leaves which they leave once these turn yellow. There is no accurate data on the population of the Kri but they are considered one of the least numerous of the minorities in Laos.

The Kri depend on the forest, land and rivers for their sustenance, practicing rotational agriculture, forest product gathering and inland fishing. Kri women are especially dependent on mountain rice production, forests and the rivers as their task is to provide daily food and maintain the family’s welfare through their swiddens and forest food collection. They use the jungle to gather various forest products, vegetables and fruits. The study site is Sepon, Vilabouly District, Savannakhet Province, south-central Laos. The Kri have been relocated from their original villages under the government’s village clustering program by merging of villages and relocating them to priority zones or focal sites as a means of addressing access to basic services. After the pollution by mining of the river on which they depend for their livelihood, they voluntarily relocated to the mining project’s resettlement site.

B’laan (Philippines)

In the island of Mindanao, Philippines, the Indigenous Peoples are collectively called Lumad. One of these peoples is the B’laan. Bong Mal, which means “big river” in the local language of the B’laan, is a community that sits at the boundary of three provinces in Mindanao. It has several “sitio” or smaller zones, three of which are the focus of the study—Sitios Bosbang, Alyong 1 and Nakultana. These mountainous areas are home to an estimated 18 B’laan families or clans, with around 170 individual members. Women comprise 40% of the population. They subsist mainly on their own crops such as corn, glutinous rice, root crops and vegetables. They also hunt animals and gather other food and medicinal items from the forests. The B’laan women play a major role in the community as they are the producers of food and nurturers of the family. They do the farm work in their fields

and swidden farms or “*uma*,” along with the men. The community has a relatively strong functional Indigenous knowledge and socio-political systems. They consider the traditional leader, “*fulong*,” as their representative and leader, instead of the official barangay captain of the local government unit.

B’laan women traditionally enjoy an equal status with men in decision-making processes. In their culture of conducting “*kastifun*” or community consultation, all community members, including women and children, are present. Women may freely voice out their opinions during the *kastifun*. The “*fulong*” may not declare a final decision until there is a consensus of everyone in the community, including the women. Should there be a dissenting opinion, the *fulong* will talk to that person, until she or he finally accepts the resolution of the community. They also practice “*ksaafuh*” or getting permission from the owner before entering his or her house which also applies if one wants to enter another clan’s community. The practice of “*pangayaw*” or waging war is very strong, especially in the past years when mining companies started to encroach in their territory. The threat of displacement from their ancestral domain due to mining has forced the B’laan of Bong Mal to militantly oppose such incursions even declaring ‘*pangayaw*’ (armed defense of their ancestral domain) against the mining company. The State and the company have responded with more militarization and violence. The people have and are experiencing threats, harassments, intimidations, theft, extrajudicial killings, demolition of houses and crop storage facilities, destruction of farms lots and crops by agents of the military and paramilitary, and tribal warriors now declared as “bandits” and “fugitives” by the State forces and hunted as criminals. Like many Indigenous communities in the country, the community of Bong Mal lacks social services from the government.

Dayak (Sarawak, Malaysia)

Sarawak has an estimated population of 2.2 million and the Indigenous Peoples, the Dayak, form the majority of the population. The generic term “Dayak” covers various subgroups, each with its

own culture and language. One of these subgroups is the Iban. Eighty percent of Dayak are rural dwellers, subsistence agriculturists, hunters and gatherers. The Dayak are dependent on their land and forests for livelihood. They practice rice shifting cultivation, grow sago palms, fruit trees and vegetables. They collect forest products while their land and forests also provide them with traditional medicines and wild animals.

The Iban hold customary rights over land and territories that they have inhabited since time immemorial. Like most Indigenous Peoples of Sarawak, the Iban inhabit traditional longhouses (rumah), communal houses built on stilts that provide shelter for up to 100 families in separate living units. The Iban classify the land surrounding their longhouses under two general categories: the menoa which refers to the collective village territory with its own clear boundaries, and the temuda, which refers to land close to the longhouses, land cleared for farming and land left fallow to regenerate. The temuda extends to an area of communal land for the collection of forest products (fruit, medicinal plants, building materials), for hunting, fishing and to be used as burial grounds. The sites of the study are Rumah Nyawin in Bintulu and Rumah Bangga in Sungai Babai, both in Sarawak. The Rumah Nyawin was demolished and the Iban left with a relocation site which does not meet their needs and to which they do not have legal ownership. The Iban of Rumah Bangga suffered the death of one of their longhouse residents in a botched mission to arrest the protesting Iban leaders. Although the owners and the majority population in Sarawak, the Dayak are marginalized from both the political and economic life of the state, and at the national level.

In all of the case studies, it was not possible to get full information on populations, nor disaggregated data with respect to sex and ethnicity.

3. Legal and policy framework

Each case study provided background on the country's legal environment and legislation affecting Indigenous People in general and Indigenous women in particular. At the national level, there is little the legal recognition of Indigenous Peoples with collective rights

in these countries. The national constitutions of these countries grant the State the overall ownership over the national territory, and give it the power to regulate the ownership, use, control and access to any and all parts of the national territory. All countries have national women's organizations whose main function is the advancement of women's rights with the formulation of national action plans to operationalize this mandate. On the other hand, Malaysia, Philippines and Thailand have national human rights institutions to safeguard human rights. The key laws affecting Indigenous women in these countries can be summarized as follows:

Cambodia

Cambodia recognizes Indigenous Peoples as understood by international law in their legal and policy instruments. This recognition is reflected in their National Policy on the Development of Indigenous Peoples (2009), Strategic plan for the Development of Indigenous Peoples 2006–2008, the 2001 Land Law (Ch. 3 Sec. 2), and the 2002 Forestry Law (Art. 37). The Cambodian Constitution of 1993 regards Indigenous Peoples as equal citizens of Cambodia. The National Policy on the Development of Indigenous Peoples sets out policies related to Indigenous Peoples in the fields of culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy. The 2001 Land Law affirms the collective ownership of Indigenous land, recognizes traditional land management systems of Indigenous communities, and the right of men and women to co-own lands. This law sets the basis for the legal recognition of collective land rights of Indigenous communities, and affirms the role of traditional authorities, mechanisms and customs in decision-making processes. The 2002 Forest Law provides for the official recognition of community forestry. The 2005 Sub-decree on Economic Land Concessions (ELCs) stipulates that ELCs may be granted only on State private land on the condition that environmental and social impact assessments have been completed with respect to the land use and development plan. The 2009 Policy on Registration and Right

to Use of Land of Indigenous Communities and the Sub-Decree on Procedures of Registration of Land of Indigenous Communities (2009) strengthens the 2001 Land Law on communal/collective land titling.

Thailand

In Thailand, the 2007 Constitution includes several provisions that are closely linked to Indigenous Peoples' livelihood, although it does not recognize Indigenous Peoples as understood in international law. Article 66 provides the right of local communities to maintain their cultural traditions, as well as to protect and manage their environment and natural resources. According to Article 67, people have the right to participate with the State and communities in the conservation of natural resources under certain conditions. The Cabinet resolution approved in 2010 stipulates policies on the "Restoration of the Traditional Practices and Livelihoods of Karen people." However, these affirmative measures are overshadowed by the Forest Act of 1941 which states that any land not acquired under the land law is considered forest, and therefore belongs to the State. Further, the National Forest Policy of 1985 tries to frame forest policy within the context of overall national development and emphasizes the importance of a partnership between State and the private sector, meaning business, not Indigenous Peoples. This policy and all the related laws have been used to criminalize forest-dwelling Indigenous Peoples who are living in their homelands and practicing their traditional occupations. During the last decades, state agencies like the military and the Royal Forest Department (RFD) had been trying to secure protected areas and to eliminate conflicts over use-rights by using force, pursuing a strategy of exclusion and enforced resettlement of the Indigenous Peoples living the forest reserves.

Laos

In Lao PDR, the concept of "Indigenous Peoples" is not officially recognized. Article 8 of the Constitution of the Lao PDR stipulates that the State pursues a policy of promoting unity and equality among

all ethnic groups, and that all ethnic groups have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation. Further, it obliges the State to implement every measure to gradually develop and upgrade the socio-economic development levels of all ethnic groups. Various legal and policy instruments affect ethnic minorities, their livelihoods, living conditions, agricultural practices, village organization and administration as well as the provision of socio-economic and infrastructural facilities. Directive Order No.92004, Instruction Order on the Establishment of Village and Village Cluster for Merging Administration, is the most important policy in a series of decrees affecting ethnic minority communities. In order to contribute to poverty reduction, it regulates the merging of villages and relocating them to priority zones or focal sites. Directive No.9 is the major policy document cited by provinces and districts to grant concessions in order to turn land into economic opportunities to accelerate national development, as well as to resettle villages. Under national laws, the national territory and the minerals therein are owned by the national community represented by the State as stipulated in the Constitution (Art.15) and reiterated in the Land Law (No. 01/97/NA 2002) and Mining Law (No. 04/97/NA 1997). The State exercises administrative and regulatory functions over these resources. The State has the right to assign user rights to individuals, families, state and economic organizations. Generalized land classifications used in both forest and land legislation were elaborated by foresters, not ethnic minority groups, mainly in order to abate swidden agriculture. Therefore, they do not mirror ethnic groups' knowledge of different land types, resource management systems, or of general environmental and soil differences. The legislation does not recognize "communal land" collectively or customarily managed by a village community. Instead, the State claims ownership to all land not registered to an individual organization. In Lao PDR, customary tenure rights are not officially recognized even as they remain important to rural communities.

Philippines

Like Cambodia, the Philippines recognizes Indigenous Peoples as understood in international law through their legal and policy instruments. The Indigenous Peoples Rights Act (IPRA, 1997) of the Philippines states that the “State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development” (Sec.2a). This law has general provisions on protecting the rights of Indigenous Peoples to ancestral domain, self-governance, social justice and cultural integrity. Section 26 states that “indigenous women shall enjoy equal rights and opportunities with men,... in the decision-making process in all levels, as well as in the development of society...” The IPRA has a provision on “Free, Prior and Informed Consent” (FPIC) which is defined as: “the consensus of all the members of indigenous peoples to be determined in accordance with their respective customary laws and practices.” This is required before a development intervention takes place in a community. The National Commission on Indigenous Peoples (NCIP) created under IPRA released administrative orders (2002, 2006, and 2012) to serve as guidelines for the conduct of FPIC in Indigenous communities. The Philippines also enacted the Magna Carta of Women in 2009 which contains some provisions for Indigenous women specifically found in Chapter V (Rights and Empowerment of Marginalized Sectors), Section 20 (Food Security and Productive Resources), Paragraph (b) Right to Resources for Food production. Indigenous women are viewed as nurturers of resources and have important roles in the food security of Indigenous communities. Mechanisms for redress are also available at the local government units (provincial, municipal and police stations) where gender desks are established. Despite the affirmative laws which defend Indigenous Peoples rights, the Mining Act of 1995, which liberalised the mining industry giving more rights to corporations than communities, is the bone of contention between the State and corporation on one hand, and Indigenous communities on the other. The current mining program of the government hinges on the extraction and export of minerals which has not changed since Spanish colonization, and which is done mostly in Indigenous lands.

Malaysia

Malaysia is a federation with Sarawak as one of the thirteen states and three federal territories that comprise it. The powers of the state governments are limited by the Federal Constitution and under the terms of the Federation. Sabah and Sarawak are entitled to seats in House of Representatives, and the legislative assemblies of Sabah and Sarawak have the power to make laws on additional matters including native law and custom. Malaysia has a plural legal system and accepts the concurrent operation of distinct bodies of law. In Sarawak, customary laws are officially recognized by the Federal Constitution. Several constitutional provisions protect native customary practices. Traditional Indigenous decision making mechanisms, and native authorities and courts continue to administer local community affairs. In several state and federal court rulings, recognition of native titles have essentially been accorded to the lands, territories and resource traditionally owned, occupied or acquired by Indigenous Peoples, including those in Sarawak. However, federal government and its agencies have refused to accept these legal precedents of decisions of the local courts recognizing native titles, and instead require Indigenous communities to treat each native title claim as a fresh legal argument. On the other hand, some state courts assert autonomy on how states treat the rights of Indigenous Peoples to their traditional lands. There are specific national laws, e.g., the Land Code, which protect and promote Indigenous Peoples' rights, especially their Native Customary Rights (NCR), including the right to cultivate land, hunting and fishing rights, the right to use land for burial and ceremonial purposes, as well as rights of land inheritance and transfer.

4. Impacts of development projects on Indigenous women

The development projects covered in the five cases studies can be summarized as follows: they all are land—and resource-related cases, mostly impinging on access, use, control and the collective ownership of land, territories and resources of Indigenous Peoples and their impact on Indigenous women. Land grabbing, or alienation, in the

form of unilateral granting of concessions for plantations, mines and appropriation of Indigenous territories for national development and interests, like parks, denies the prior rights Indigenous Peoples have over their territories and their right to self-determination. It is clear that the Indigenous Peoples in the case study areas had possession of such territories even before the creation of the respective nation-states. In all cases, the Indigenous Peoples, especially the women, were not consulted nor did they give their consent for the use of their lands for the projects. In most of the cases, the women came to know of these projects only when they were about to be implemented.

Indigenous women in all the study areas are responsible for home management, ensuring family food security and welfare, and in this regard for community food security as a whole. They do so through the utilization of natural resources found in their territories, including lands, rivers and forests, flora and fauna for subsistence production, and the collection of wild products. This entails an intricate knowledge of the biodiversity, the soil and climatic conditions, etc., in their territories which had been handed down through generations of practice, and through experimentation, observation and exchanges. Indigenous women in these communities are the repositories of expert knowledge on food, firewood, fibers, and herbs. For those who maintain spiritual sites in forests, like the Kui women, because of their regular presence in the forests, they are also keepers of these spiritual sites. Land and territories also define the identity of the peoples or the individuals therein. Among the Karen, i.e., a newborn baby's umbilical cord and placenta are placed in a bamboo node, and hung up in a tree. This tree is nurtured as part of the family, and care is taken to ensure that that no harm comes to it as it is akin to being the person's twin. The intricate relationship between Indigenous women and their territories and resources are the sources of Indigenous knowledge, which allow for the sustainable use of such resources for the present and next generations. The case studies show that the Kri, Karen, Lisu, Akha, and Iban Indigenous women were very adversely impacted by the development projects that were implemented in their land and territories, or that the impact will be significant, e.g., among the Kui and B'laan. The major impacts experienced by the Indigenous women in each country are described below.

Cambodia

In Cambodia, the lands, resources and properties included in the ELCs, which were destroyed, included forests, farms, grasslands, burial grounds, the spirit forest called “Rolumtung”, ancient Kui sacred sites including the remnants of ancient Kui temples called Yaek Chung Kuoy (Grandmother Chung Kuoy) and YaekPluok (Grandmother with grey hair) and other temple ruins, as well as the nearby site of an ancient Kui village as shown by the shards, bones, etc. This has led to loss of food sources and livelihood, access to the spirit forests, sacred sites and other culturally-significant sites. Destruction of the forests and difficulty in accessing the forest eliminates or restricts the use of natural resources, gathering of resin, wild foods, wildlife and traditional medicine. The desecration of spirit forests, culturally-significant sites and burial grounds threatens the Kui identity. The destruction of Rolumtung has a direct impact on the solidarity of the community since this has destroyed some of the venues in which the priestess performs the solidarity rites. The plantations have caused reduction of the water supply further burdening the women in their home and health management. Intra-community conflicts have arisen among villagers because of the perceived benefits arising from the concessions and the harassment they face when they claim their rights. Kui women are more severely affected by the loss of natural resources and their access to these than the men because of their traditional role as main food providers and gatherers of forest food products. Apart from direct destruction, the ELCs have fenced part of their concessions denying access to the forests and farms by the road. Women now have to travel a longer route in order to reach the extant forests and farms beyond the concessions.

Thailand

For the Lisu, Akha and Karen women of Thailand, the denial and restrictions on their access to their lands and forests affects the women in all aspects of their lives. Just like Indigenous women in other countries, these women are the main food producers, natural

resource management experts, ethno-botanists, and transmitters of culture and Indigenous knowledge. The arrests, incarceration, intimidation, assaults, arson and forced evictions by park, police and military authorities not only traumatized the women, but also, resulted in loss of their livelihood, biogenetic resources, food, material culture, income, rest and recreation; as well as extra expenses, additional physical difficulties, more confusion on the law, and devaluation of their worth. A lack of awareness on the laws and policies turns the women unwittingly into offenders. On the other hand, the government is remiss in its duties to conform to the provisions of the laws to inform and consult affected communities; as well as to demarcate their lands prior to the establishment of parks; and to enforce the laws respecting Indigenous livelihoods and natural resource management practices. It has also been remiss in not making its laws aligned with its commitments to international law. The Akha and Lisu women victims in Mae Suai have experienced severe hardships due to the demarcation and ambiguous demarcation of protected areas, and aggravated by their lack of citizenship. In Kaeng Krachan, the violent eviction of Karen from their forest homes in Kaeng Krachan National Park resulted in hunger, poverty and depression among the affected forest-dwellers especially among women who are the traditional knowledge-keepers of forest resources. The Kaeng Krachan Karen women do not have access to natural resources making it impossible for them to provide traditional food for their families. As farming is extremely restricted, they suffer from food insecurity and increasing poverty. They are living in constant fear and uncertainty because they were violently evicted and suffered the use of force by wardens and the military forces. Almost all of their belongings were destroyed/burned, often, assets inherited from the grandparents and ancestors. Karen women who were forced to relocate cannot find jobs to meet their needs because they do not have the necessary knowledge and skill for the market economy. Also, because of their lack or limited Thai language skills and insecure legal status, it is difficult for them to go out and find jobs.

Laos

The Kri People have such a small population that they can be considered endangered. Removing them from their homeland would lead to their extinction as a people. Apart from this fundamental issue, the relocated Kri women face difficulties to find food and ensure potable water in their homes. Like many Indigenous Peoples in Laos, they are heavily dependent on natural resources in their territory for their subsistence. Their forced relocation to focal sites due to village clustering has alienated them from their source of identity—their territory. They had to leave these sites because the pollution of the river severely limited their traditional farming practices and subsistence sources, crucial parts of the Kri ethnic identity. As they are injected into a completely new environment, the Kri women are having trouble providing for their families as they do not have the necessary skills to compete in the labour market. For instance, they do not have the skills and knowledge for cash crop production, particularly in the form of monocrop plantation. If they are employed in this chemical- and technology-dependent mode of production, they do not know the safety measures to protect their health. The environmental differences can cause health problems. Even the diseases, like malaria, are new to the relocatees. Secondly, the design of the relocation area is not culturally friendly for the performance of rituals, and thus, the Kri cultural integrity has been undermined and threatened. Traditional knowledge and customary land management practices are likely to get lost as they cannot be practiced in the resettlement area. Third, the Kri and other peoples have been lumped together in one hamlet without much consideration for the cultural diversities and sensitivities of each people. Many women now work in the weaving center or as daily workers. As a consequence, community cooperation mechanisms and collective activities have changed. While the mine seems to have more benefits for young single individuals, already married women experience fewer benefits and greater hardship to adjust to lifestyle changes. Older women have gained the least from the mine's operations as they do not have any direct benefits from the

mine.³ Moreover, their integration into the cash economy forces them to use cash to meet their needs, something new compared to the non-cash subsistence economy in the mountains. Now, they have problems finding clean water to keep house and to drink since they have to have cash in order buy water or they have to compete with others for water from wells which is not sufficient for all, and is not clean. This is an added burden to women in the resettlement sites.

Philippines

The militarization of the Bong Mal B'laan community in the Philippines because of the mining project worsens the suffering of the B'laan women. Their already marginalized situation due to lack of social services has been aggravated by the presence of military agents in their community who are constantly harassing and intimidating them. Because of military operations, the women have been prohibited by military agents from going to their swidden farms. This has resulted in insufficient food for the family. Even help and relief goods from outside, such as from the church, have been barred from entering the community. The practice of “aksafu” or sharing of food has been limited because of this. The military detachment was erected on a place above the village and near the spring where the community gets their drinking water leading to contamination of the water source, not only physically but also spiritually. Water springs are considered sacred which must be kept ‘pure’ by barring the construction of human structures near them. The women now have to get water from a source farther away. With the ongoing “pangayaw” of the tribal warriors, their wives and children have been left vulnerable to attacks of the military. These tribal warriors are now declared “bandits” and “fugitives” by the state forces and are vulnerable to being executed without due process. There had been incidences where the wife and children of the warriors, who have been declared bandits and fugitives by the government, were intimidated into divulging where their husbands

3 International Council on Mining and Metals, Utilizing mining and mineral resources to foster the sustainable development of the Lao PDR (London: ICMM, 2011), <http://www.icmm.com/page/59737/utilizing-mining-and-mineral-resources-to-foster-the-sustainable-development-of-the>

and fathers are hiding. The wife and son of one of the tribal warriors were killed extra-judicially by military forces on October 18, 2012 on the pretext that it was a military operation to capture the husband warrior. Houses and crop storage facilities were demolished and farm lots with crops were destroyed. These incidents have not only resulted in insufficient food, but also psychological stress.

Malaysia

Iban women in Sarawak are mainly responsible for subsistence production which insures family food security and some cash income from forest products and handicrafts. They now lack access to crucial food and income sources, and can no longer produce their own goods and handicrafts, but most importantly, they lost part of their culture rooted in the NCR and the solidarity they enjoyed before their leader was co-opted. The promised 250-hectare land for them by MARDI is nowhere in sight. Family welfare depends on the decisions made by women as they are almost solely responsible for household chores and child-rearing depriving them of time and energy to participate in meetings or attend events where decisions are made and discussions are had that will ultimately affect their status and the role of women in that society. Thus, when it comes to community decision-making, they are marginalized. Additionally, most Iban women do not know how to read and write, and do not know about their rights. They also lack negotiation skills as they are not exposed to opportunities to develop such skills. Thus, when the Rumah Nyawin was demolished early one morning, mostly women and children were there, and they were not able to do anything except to ensure their family's safety. Until now, they are unable to take any action because they do not know their rights and what actions to be taken. For the Iban women of Rumah Nyawin, MARDI's appropriation of their NCR land led to the loss not only their rights over their land, but also their temuda (farm), basic source of their livelihood. As one woman describes it: "Our life is very poor and poor life makes us depressed." The women and men of Rumah Bangsa fought against Empresa because they knew what they will lose if they do not defend their NCR land.

5. Violations of Indigenous women's rights

Development-induced violations of Indigenous women's rights identified in each case study can be summarized as follows: the Constitutions of Cambodia, Laos PDR, Malaysia, Philippines and Thailand all contain non-discrimination as a principle, granting all citizens, men and women, ethnic groups, equal rights. Many of the natural resources needed for national development and priorities are now found mostly in Indigenous territories. Because the population of Indigenous Peoples is most often in the minority, these peoples are often sacrificed in the name of development. The greatest impact of these developments is the alienation of the Indigenous Peoples from their source of identity and subsistence, and the base of their culture including their spirituality. Their eviction from and the destruction of their territories impact on their collective rights as peoples. This is the case of the Kui of Prame in Cambodia whose territory has been handed over for an ELC to the Chinese companies Lan Feng and Rui Feng. Similar expropriations have occurred of the Iban territories for the MARDI and Empresa for plantations; of the B'laan territory for the Sagittarius Mines, Inc. (SMI) with the Anglo-Swiss firm Xstrata for the Tampakan Copper-Gold Project; and of the Karen in Thailand for national parks and/or forest reserves. The Kri of Sepon have been displaced several times from their original ancestral territory and the Lisu and Akha have traditionally been moved around the Mekong sub-region.

In all cases, there was lack of adequate information shared with the women and their communities beforehand in a language and manner that they would have understood and given in a timeframe that allowed them to analyze the impacts of the development—to either reject, approve or negotiate for better arrangements. Except for the B'laan who have had a long-drawn case, the others only came to know of the projects or the government action, when it was about to be done. For instance, the Kui women came to know of the plantation only when the clearing of their farms and forests was about to start. Iban women only came to know of the MARDI and Empresa plans when their longhouse was to be demolished. The Karen only came to know

of their eviction when soldiers came and burned their homes, despite the fact that had entertained them the day before. The Kri were only informed that their village will be affected by the mining but no input was sought from them on how the relocation was to be done. The Lisu and the Akha women of Mae Suai were arrested on the days they were summoned. In summary, violations of Indigenous women's rights in each country comprise the following aspects:

Cambodia

The Cambodian 2001 Land Law, which stipulates that no authority from outside of the community may acquire any rights to immovable collective property of the Kui People has been violated. The government has not provided official recognition of their community forests, which include their spirit forests, in violation of the provisions of the 2002 Forestry Law. No feasibility study and environmental and social impact assessment (ESIA) were conducted to demarcate clearly the perimeters of the concessions before the granting of ELCs. All this is in violation of the provisions of the 2005 sub-decree on ELCs. The sub-decree further requires that these documents must be shared with the affected communities. When the Kui women demanded these documents from the local authorities whose offices are mandated to have them, they were informed that no such documents exist.

Thailand

In Thailand, the arrests, intimidation, assaults and forced evictions by authorities of the Kaeng Krachan Karen is in direct contravention to the Thai Cabinet resolution 2010 on the restoration of Karen livelihood and traditional practices which explicitly grants the Karen people the right to remain on their land and to practice their traditional farming system. Sec. 57 of the 2007 Constitution provides that before any determination of land use is made that affects the material interest of the public, thorough public consultations must be undertaken. Sec. 85 reiterates the above principle on peoples' participation and indicates that the State shall encourage local communities to participate in the

determination of measures to conserve and protect the quality of the environment sustainably. Surely the Lisu and Akha in Mae Suai and the Karen in Kaeng Krachan are part of the public who have material interest in the establishment of parks and thanks to their traditional knowledge can contribute to environmental sustainability. This Constitutional provision has not been used to inform, consult and get the consent of the concerned peoples, even as national parks are being expanded, like Kaeng Krachan. Information on the National Forest Policy and all pertinent laws that affect their lives has not been shared with the Lisu and Akha of Mae Suai and the Karen of Kaeng Krachan. As a consequence, forest dwellers and people relying on forest resources often unwittingly become offenders even without being aware of it.

Laos

In Lao PDR, Kri women are protected under the 2002 Land Law as users of the land of good standing through their subsistence farming and sustainable forest products gathering. They are also assured by the Mining Law that they are entitled to a safe drinking water as mining companies have to guarantee that water quality in its area of operation is safe for human consumption and the environment (Art. 40). The 1997 Mining Law ensures environmental protection and states that studies on the socio-economic impacts of the mining operation, and environmental impact assessment are required for mining exploitation. Despite these requirements, until today, the affected Kri and others do not know if such studies and assessments were undertaken, and if so, what were the results. Remedies to the negative impacts, like the polluted waterways have been proposed to concerned company officials and authorities, but no action has been taken, nor is there assurance that action will be taken.

Philippines

In the Philippines, when SMI started its operations in the B'laan territory in Tampakan in 2002, they did not conduct any process to obtain the free, prior and informed consent (FPIC) of the B'laan. What they did was to connive with fake tribal leaders appointed by the local government unit. Material inducements were given in violation of the Implementing Rules and Regulations of the conduct of FPIC. Some community members were also hired as members of the Resettlement Committee which is tasked by SMI to act as conduit between the affected communities and SMI management to discuss resettlement plans and benefits. In one of the meetings conducted by the RC in the middle of 2012, packed lunches were distributed to community members. They were then asked to sign on a paper, without a heading. They found out later that their signatures signified their consent to the mining project. Personnel of the National Commission on Indigenous Peoples (NCIP) were reportedly present in this activity but were silent and did not even mention what FPIC is, as mandated of them. To further confuse and deceive the community into surrendering their lands, the process of "RUSH" was introduced. In this scheme, the community was made to believe by agents of SMI that their lands can be easily taken away from them since they do not have any proof of ownership. To remedy this, it was suggested that they should have their pictures taken in front of their fields. This picture would then become their proof of ownership of the land. However, these pictures were subsequently used by SMI as proof of the community member's consent to turn over the land to SMI for mining. Those who refused to have their pictures taken were threatened that their homes will be demolished. SMI also imposed a "cut-off date" (March 22, 2012) for the community to express their agreement to their relocation. If not, any structures built or improvements to the land done by the B'laan would not be compensated if they are destroyed once the open-pit mine operations started. The company also offered payment of land within a 20-year lease period but these were rejected. Since displacement from their land is like death, the community decided to put up barricades to prevent the agents of the company from entering their ancestral land.

Malaysia

In Malaysia, the issuance of licenses over NCR lands to MARDI and Empresa and the non-recognition of NCR land of the Rumah Nyawin and Rumah Bangga Iban are violations of the Constitution and the Sarawak Land Code which protects Native Customary Rights (NCR), including the right to cultivate land, hunting and fishing rights, the right to use land for burial and ceremonial purposes, as well as rights of land inheritance and transfer. The destruction of Rumah Nyawin and the arrest of the leaders of Rumah Bangga are violations of the Federal Constitution which grants the defense of private property. Moreover, despite Malaysia's national legislation, NCR lands often are not issued titles, or the process is too cumbersome and the Sarawak government continues to consider these native lands as "idle land". This is also because of differences in understanding of what constitutes NCR land among different government agencies. Logging licenses and provisional leases are often issued for communal land and reserved virgin forests. According to the national legislation, a survey has to be done before the government leases land in order to determine if Indigenous Peoples have rights over the area. Nevertheless, in case of the affected Iban, areas covered by leases include the Native Customary Rights land. In none of the cases was there an appropriate prior survey undertaken in the knowledge of the longhouse owners. Iban women continue to be discriminated against and their access to political life and basic social services limited, despite the avowed pronouncements of the Malaysian government that "the various ethnic groups are given the opportunity to participate at every level of political and decision making process as well as administration of the country."⁴ Furthermore, the government claims to have "developed comprehensive policies and strategies for the development of Indigenous groups which focuses on uplifting the status and quality of life of the Indigenous community via socio-economic programmes."⁵

4 HRC, Working Group on the Universal Periodic Review, National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Malaysia, HRC 4th Sess., UN doc. A/HRC/WG.6/4/MYS/1/Rev.1 (2009) para.51.

5 *Ibid.*, at para. 91.

Moreover, it recognised the right to shelter and adequate housing being “an imperative aspect of economic, social and cultural rights.”⁶ The eviction from and the appropriation of the Iban of Rumah Nyawin from their longhouse and NCR lands, and the attempt to do the same to the Rumah Bangga Iban in favour of corporate plantations has not given them the opportunity to participate in decision-making, nor has it uplifted their quality of life. These government actions, as a matter of fact, have violated their individual and collective rights. Iban women are not able to participate in decision-making because gender discrimination has not been eliminated not only in their culture, but in law and practice. In the case of Rumah Nyawin, the Bintulu LSD and MARDI did not ensure that the Iban women were part of the discussions and decisions.

6. International obligations

The governments of Cambodia, Lao PDR, Malaysia, Philippines and Thailand have also committed to promote, protect and respect the rights of Indigenous women and girls under national and international human rights treaties. Specifically, all these governments have committed to uphold the rights of Indigenous women and girls under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). To combat discrimination based on race, color, descent, national origin or ethnicity, Cambodia, Thailand, Lao PDR, and the Philippines are all States Parties to the International Convention on the Elimination of Racial Discrimination (ICERD) and the International Covenant on Economic, Social and Cultural Rights (IESCR). All subject countries of the case studies, including Malaysia, are State Parties to the Convention on Biological Diversity (CBD) of which they committed to the conservation, sustainable use and fair and equitable sharing of the use of biological diversity and its components, with due consideration for all rights related to these resources. Further, under the CBD, they are obliged to promote Indigenous knowledge and traditional ways of life in natural resource management and

6 *Ibid*, at para. 58.

conservation and to recognize rights to practice specific cultures and means of livelihood. All these countries have voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) in September 2007. The Declaration consolidates all the rights contained in international law as it relates to Indigenous Peoples into a single instrument.

Cambodia, Thailand, Laos, Philippines, Malaysia

All the countries, as State Parties to international treaties, have violated the rights of Indigenous women that they have committed to promote, protect and respect. They are obliged under the CEDAW and ICERD to take measures to eliminate discrimination against Indigenous women and Peoples due to differences in birth, race, Indigenous origin or identity, language, and sex, among others. All enunciate equal rights for all groups, and stipulate that there is no legal discrimination against any person or group. Although most of the States Parties have adopted measures and strategies in their legal policy framework, Indigenous women still cannot enjoy equal opportunities and fundamental rights and freedoms, as men do. In these countries, Indigenous women still belong to the most disadvantaged segment of society, as the national legislation fails to protect their rights and address their specific needs. For instance, facility of Indigenous women in the national language is a problem in all the cases, as well as knowledge of their rights. General Recommendation 23 (4d) of the CERD calls on States Parties to obtain the informed consent of Indigenous Peoples in decisions relating to their rights and interests. The Kui, the Kri, the Iban, the B'laan, the Lisu, Akha and Karen women and their communities have not given their informed consent on the projects and they remain socially and politically disadvantaged. Their access to political and public life as well as to the social services system remains limited due to physical, economic, social, political and cultural constraints that had not been addressed effectively by governments. Discrimination prevails, not only in the wider society and among authorities, but also within communities. This is also prevalent within the legal justice system, as has become evident in all these cases. The disproportionate impact

of the ELCs in Cambodia on the Kui; of Sepon Gold and Copper Project on the Kri; the MARDI and Empresa plantations on the Iban; the Tampakan Copper-Gold Project on the B'laan; and the National Forestry Policy on the Lisu, Akha and Karen women; discriminates against them as women and as Indigenous Peoples.

The governments of Cambodia, Laos, Malaysia, Philippines and Thailand have failed to fulfill their obligations under the CEDAW to end any form of discrimination against Indigenous women. They have not effectively undertaken measures that protect the Indigenous women from the discrimination they face due to development policies and natural resource exploitation. In Malaysia for instance, the non-recognition of NCR lands, the delayed processing of applications for NCR land recognition, forced evictions, etc. have disproportionate impacts on Iban women which constitutes discrimination. In its first ever periodic report to the CEDAW in 2004, the government of Malaysia acknowledges that “indigenous women and those who are in estates and plantations are marginalised in terms of access to health services and facilities.⁷ This marginalization denies the Iban women the right to reach their full potential as women and as Indigenous Peoples. The same is true of the Kui women in Cambodia, the Karen women in Thailand, the Kri women in Laos and the B'laan women in the Philippines.

The eviction of Indigenous women from their ancestral territories does not support the governments' commitments assumed under the CBD to support traditional knowledge and practices in natural resource management and conservation. The States Parties also have not amended their development policies in order to bring them in line with the CBD, but have actually strengthened national policies that will bring in more investments and create and expand more national parks in Indigenous Peoples territories. In granting concessions in Indigenous territories which include biologically critical resources, all governments violated their commitment under the Convention on

7 CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial and second periodic reports of States parties Malaysia, UN Doc. CEDAW/C/MYS/1#2 (2004) para.243.

Biological Diversity (CBD) and the UN Declaration on the Rights of Indigenous Peoples (the Declaration). The lack of recognition of land ownership and land use rights in the described cases also conflict with States Parties obligations under the CBD. In Thailand, for instance, state policies and laws on protected areas still have not been amended in order to bring them in line with the CBD. In granting plantation concessions over NCR lands of the Iban to MARDI and Empresa, Malaysia has reneged on its obligation to “respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.”

Article 1 of the ICESCR states, amongst others, that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” All the States Parties themselves violated the right of Indigenous men and women, to freely determine their social and cultural development and to maintain their traditional ways of living. The right to adequate food is a basic human right. Except for Malaysia, the other four countries are State Parties to the ICESCR, which comprehensively addresses the right to adequate food, and, therefore, have committed to progressively realize the right of everyone, including the Indigenous women, “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (art. 11.1). They have violated their obligation to fulfill this right by preventing Indigenous women’s access to their existing sources of subsistence—their traditional forest gardens, swidden, temuda, waterways, and cultivated farms and plantations. They have failed in their obligation to protect by giving concessions to Lan Feng, Rui Feng, MARDI, Empresa, SMI, MMG Limited, and appropriating forests for national parks, thus depriving Indigenous women of their access to adequate food. Despite the protests of the Prame Kui, Bintulu Iban, and Bong Mal B’laan demanding the cancelations of the concessions over their traditional sources of food, the States have failed in their obligation by not taking action to ensure the Indigenous Peoples’ right to their means of subsistence, including food security.

In all countries, the Indigenous women's rights to practice their traditional occupation and livelihood have been violated. States Parties are obligated to guarantee the right of employment and livelihood, including the provision of "continuing technical advice and support" (ICESCR art. 6). Indigenous Peoples, however, do not have the right to their traditional occupations and means of subsistence but are rather punished for practicing their traditional livelihood systems.

The governments' claims of ownership of all forestland and the imposition of national parks violate the governments' commitments to the Declaration. The fact that they have failed to consult the Indigenous women and their communities and not provided any information in a way understandable to them about the projects, violates the Indigenous Peoples' right to self-determination (Art. 1–5), their right to Free, Prior and Informed Consent (e.g., Art. 10, 11, 19, 28), as well as their right to land, territory and natural resources (e.g., Art. 25, 26, 8, and 10). The latter includes the right to practice cultural traditions and customs by maintaining religious and cultural sites. These initiatives disrespect Indigenous knowledge, cultures and traditional practice, which contribute to sustainable development and proper management of the environment (see Art. 11). The governments makes use of forcible eviction (as prohibited in Article 10, the Declaration) to undermine Indigenous Peoples' right to land, territory and resources (see Art. 26). The Declaration further stipulates that Indigenous Peoples have the right to determine their own priorities on development, health, economic and social programs. Despite these provisions, the Sarawak government continues to deny Indigenous People's rights, and the principles set out in the Declaration have yet to be explicitly incorporated in the national legislation.

Eviction and the use of force in Prame (Cambodia), Doi Chang, Doi Lan, Kaeng Krachan (Thailand), Vilabouly (Laos), Bintulu (Malaysia), and Bong Mal (Philippines) are contrary to the Declaration, the CBD and the International Covenant on Economic, Social and Cultural Rights. The denial of citizenship to Indigenous Peoples, especially Indigenous women, is a violation of their human rights, depriving them of fundamental rights, access to basic social services, and making them especially vulnerable for exploitation.

As Parties to the CRC, all these countries violate the principle of the best interest of the Indigenous boy and girl children by forcibly evicting them from their ancestral homelands and enforcing national development agendas which discriminate against and neglect Indigenous Peoples. This is exacerbated by the lack of remedial measures to mitigate the adverse impacts of such actions on Indigenous children.

7. Indigenous Women's Access to Justice: Key Obstacles

In the case studies, the Indigenous women suffer from multiple forms of discrimination due to their gender and ethnicity, which is often further aggravated by their socio-economic marginalization. The majority of them face significant barriers to accessing justice both in formal official and Indigenous justice systems. Even though these barriers are often country- or context-specific, some key factors can be identified that are severely limiting the Indigenous women's access to justice throughout Southeast Asia. The following analysis relied mainly on the case studies from Cambodia, Thailand, Laos, Philippines and Malaysia presented during the consultation and on the additional testimonies of other participants.

1. Weak enforcement of existing national laws and implementation of orders and decrees, as well as conflicting laws/policies, abuse of authority and powers, corruption, patronage

The lack of legal recognition of Indigenous Peoples and their collective rights as enshrined in the Declaration is the root of many violations inflicted against Indigenous Peoples in Southeast Asia. Some laws and policies in some countries mention the rights of communities to their lands but enforcement is weak or nonexistent.

Weak enforcement of laws and implementation of orders and decrees have been reported in all the case study countries due to any or all of the following: lack of knowledge of the law and other fiats by law enforcement agencies, corruption, absence of rule of law, militarization, patronage politics, poorly functioning law enforcement systems, among others. In Prame commune, the provincial and district officials did not

know the prerequisites under the Sub-decree on ELCs. The Cambodian Land Law, Forestry Law and the Sub-decree on ELCs are very clear on the rights of Indigenous Peoples with respect to their land and resources but these had not been enforced. In the case of the Karen of Kaeng Krachan, it is difficult to ascertain why there had been no redress on the arson that gutted their homes and properties by government authorities. In the Sepon mine case, the government has not acted on the repeated complaints by villagers regarding the polluted river which must be addressed under the Mining Law. In the Rumah Bangga case, the conditions of the lease to Empresa were not followed but still the longhouse was considered the violator of Empresa's rights.

Excessive number of laws and conflicting laws/policies/decrees have also been reported in Cambodia, Thailand, Philippines and Malaysia. Different government agencies do not coordinate and try to exercise their power over people to the detriment of human rights and the welfare of Indigenous women and their communities. In Thailand, despite Constitutional guarantees on the rights to maintain cultural traditions and to participate with the State and communities in the conservation of natural resources, parks seem to take precedence over the human rights of Indigenous Peoples. In the Philippines, the IPRA, the Forestry Reform Code and the Mining Act of 1995 are still not fully harmonized in terms of the rights of Indigenous Peoples over their land, territories and resources. In Sarawak, the federal government and its agencies refuse to accept legal precedents in state and federal court rulings recognizing native titles. Instead, they treat each native title claim as a new and unprecedented legal argument. In Cambodia, the titling and registration of communal land titles has been hampered by lack of or lackadaisical enforcement of relevant laws and decrees. Indigenous communities must meet 29 requirements before they are granted communal land titles. The Prime Minister's Directive 01 further confused Indigenous communities into thinking that to secure their lands, they must have individual titles as contained by the directive. In a very recent study⁸ on this, almost all respondents were

8 Peter Zsombor & Pheap Aun, "Land-Titling Project Denied Minorities of Property Rights" *The Cambodia Daily*, (23 April 2013), <http://www.cambodiadaily.com/archive/land-titling-project-denied-minorities-of-property-rights-19528/>

of the view that the directive has actually facilitated the loss of their ancestral lands through their individual titles because by having the latter, they cannot have communal titles.

Abuse of authority and power by government officials and corruption are rampant throughout the sub-region resulting in unlawful searches, seizures, detention, imprisonment, forced evacuations, and even extra-judicial killings. Homes and properties were torched in Kaeng Krachan; Juvy Capion of Bong Mal and her son were extra-judicially killed; the Rumah Nyawin, with only 120 residents, was unilaterally demolished by 200 policemen and two bulldozers and chainsaws.

2. Severe limitations in existing remedies provided either by law or in practice

Most legal systems fail to provide remedies to Indigenous women, by law or in practice, that are effective, preventive, timely, non-discriminatory, adequate, just and culturally-sensitive. The barriers that limit Indigenous women's access to existing remedies, like lack of education and illiteracy, poverty, language, lack of knowledge of their rights, among other factors, often hamper Indigenous women's use of available justice remedies. Since most of the Indigenous women and communities are poor, lack of free legal assistance limits access to quality legal advice and services. The Lisu and Akha women did not have counsel when they were interrogated. For instance, Meechae and Urai face financial difficulties in complying with the requirement to report every three weeks to the courts. The Rumah Bangga Iban could not have fought their cases if they did not have allies among the NGOs who gave them free service. The same is true for the Kui.

The experience of the participating Indigenous women has shown that apart from the fact that their FPIC has not been obtained before the entry of projects in their territories, there are no oversight mechanisms that will address emerging issues during the implementation and post-implementation of projects. For instance, so many human rights issues emerged after the grant of ELCs in Cambodia, the national parks in Thailand, the mines in Indonesia, Laos and Philippines, and the plantations in Malaysia. In terms of compensation and resettlement,

often the Indigenous women and their communities are not provided any participation in designing such programmes. In many cases, compensation and relocation programmes target per family without due consideration to the gender roles within the family and thus fail to seize the opportunity to provide more support for women during these trying times in their lives.

3. Inefficient justice systems, unresponsive complaint-making procedure, long delays of the legal process

Official justice systems are often further characterized by structural weaknesses and deficiencies. At the very outset, the complaint-making procedure is neither sensitive, nor responsive or conducive to receiving complaints from Indigenous women. As shown in the case of Rumah Bangga, the Iban reported the destruction of their property with the Belaru and Marudi police stations but the police refused to accept their complaint. Court cases are often greatly delayed, taking months or even years before trial. It took 13 years for Ndukmit anak Egot to get justice for the death of her husband in the Rumah Bangga case. Justice delayed is justice denied. For the Rumah Nyawin Iban, the court did not rule on the petition for injunction within a reasonable time that would have allowed the petitioners due process. Two months beyond the validity of the order, the eviction was enforced. In the experience of the Bong Mal B'laan and other Indigenous Peoples in the Philippines, the NCIP, as the facilitator of the FPIC process, has in almost all cases allowed corporations to manipulate the process, leading to the cooptation of some Indigenous leaders, and the granting of contentious Certificates of Precondition that certifies that such process took place. Procrastinations and court delays discourage female victims to take action and seek justice in official legal institutions. As for the Prame Kui, they have learned from previous court cases that the resolution of land cases linked to government officials and big corporations is very rarely in favour of victims, and cases are delayed endlessly. Thus, the Kui prefer to seek support from other communities in struggle, NGOs and the UN agencies in the country rather than relying on the formal justice system. Moreover, a court procedure is expensive and time-consuming.

4. Gender and ethnic biases in the legal system and laws, discrimination, discriminatory attitudes, internalization of racial prejudice, limited participation in decision-making in both formal and traditional systems

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

As parties to the CEDAW and ICERD, the governments of Cambodia, Lao PDR, Malaysia, Philippines and Thailand are obliged to take measures to combat discrimination in all its forms. The many barriers that Indigenous women face in seeking redress in the formal justice system show that Indigenous women are not particularly targeted in efforts to promote gender equality and combat discrimination. These barriers include their economic status. From the cases studies and testimonies, Indigenous women continue to belong to the poorest sectors of the society. Forced displacements and destruction of their means of subsistence due to state and corporate development projects exacerbate this situation. Indigenous women are disproportionately found in low- income and unreliable forms of employment, compared to their previous self-sustaining and autonomous status as practitioners of traditional livelihoods. The majority cannot afford the prohibitive costs of using the system, expensive legal procedures or a reliable legal representation. Often Indigenous women refrain from making use of existing institutions as they are afraid that they have to pay additional fees and/or bribes. The threat of sexual harassment within these formal systems is always hanging over their heads too. Since they are not used to public negotiations, they are afraid to negotiate with authorities. They shoulder the majority of domestic responsibilities which makes it doubly burdensome to meet the requirements of a legal battle. As a consequence of inequalities in educational opportunities, they frequently suffer from illiteracy and the limitations of monolingualism. All official systems and officials

use the national language. Indigenous women living in rural areas face the added barrier of geographical distance, as legal institutions are often based in town centers and capitals.

Constitutional guarantees are all in place that promote equality of men and women, and non-discrimination with respect to race, national or ethnic origin, color, sex, among other attributes, but there is a disproportionate impact of development projects on Indigenous Peoples because of the resources in their territories. Many government officials and authorities still hold the view that Indigenous Peoples are backward, ignorant, etc. In Thailand, the persistent attitude against Indigenous Peoples as national security threats, foreigners, forest destroyers and drug-related issues, among officials and the general majority Thai, creates a climate that does not augur well for a just and fair access to justice. An alternative report in 2008 recommended that the Thai government should train officials assigned to the Indigenous areas to have cultural sensitivity and gender perspective. The lack of citizenship of Indigenous women compounds their vulnerability and their gender makes them prone to sexual violence. In Cambodia, a parliamentarian openly used the name of an Indigenous People to insult a colleague, perpetuating discrimination against Indigenous Peoples in Cambodia by characterizing them as barbarians or savages.

The States, together with national women's organizations in the different countries, have the responsibility to ensure that women in general, and Indigenous women, in particular, do not face discrimination in all aspects of formal and traditional justice systems. They must take measures especially to eliminate discrimination among the state bureaucracy, including the justice system, which will enhance Indigenous women's access to justice. However, in all cases, the women's organizations have not been accessible to Indigenous women, nor their issues related to development projects included in official CEDAW reports. It is in the shadow reports that we find the reporting of Indigenous women's situation related to development projects. In

Cambodia, a shadow report⁹ mentioned that the official report did not mention the magnitude of human rights violations against Indigenous women which included the severe impact of land loss, exclusion from basic services like education, health services and clean water. In Malaysia, a shadow report¹⁰ cited the resettlement of Indigenous communities due to dams and the appropriation of customary lands for plantations as major concerns. The report concluded that the loss of safely accessible resources increases the burden and security risk for Indigenous women and when this happens, the traditional roles of forest product gathering is taken over by men.

The patriarchal ideologies within the dominant as well as the Indigenous societies cement gender inequalities in both formal and customary justice systems. When Indigenous Peoples face problems due to state and corporate development (as in the communities under study), Indigenous women suffer disproportionately. If this situation does not change, then the next generations of women will continue to be discriminated against and excluded from decision making processes and denied access to remedies for violations of their rights related to development projects.

5. Lack of adequate information about existing laws and remedies, limited knowledge of rights

Indigenous Peoples often have little knowledge of the existing legal framework, the court system in general, as well as specific legal procedures. As a consequence, they often lack confidence to

9 CEDAW NGO Working Group Thai Women Watch (TW2), Thailand's Second NGO Alternative Report on the Implementation of the Convention on the Elimination of all Form of Discrimination Against Women, (Bangkok: TW2, 2003), <http://www.iwraw---ap.org/resources/pdf/Thailand2005.pdf> also see NGO Committee on CEDAW & the Cambodian Committee of Women NGO, Joint Coalition Shadow Report for the CEDAW Committee, (Phnom Pehn: CCEDAW & CCW, 2006), <http://www.iwraw---ap.org/resources/pdf/Cambodia2005.pdf>

10 NGO Shadow Report Group & National Council for Women's Organizations, NGO Shadow Report on Initial and Secondary Report of the Government of Malaysia, Reviewing the Government's Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (Kuala Lumpur: NGOSRG, 2005), http://www.iwraw---ap.org/resources/pdf/Malaysia_SR.pdf

actively engage in a lawsuit. Compared to men, Indigenous women's knowledge and understanding of the existing laws, regulations, and policies is often even more limited as they have fewer opportunities of receiving education and have limited official language skills. Limited knowledge and language barriers, in turn, constitute constraints for Indigenous women to fully make their voice heard and to participate in formal legal processes, and to engage with government offices. Thus when Indigenous Peoples face problems due to state and corporate development (as in the communities under study), Indigenous women suffer disproportionately.

Many Indigenous women do not know their constitutional rights, let alone their rights under international law, and national laws and policies that relate to their land, territories and resources. As mentioned above, accessibility to adequate and quality information is hindered by their gender and ethnicity. In the Thailand case, although forestry laws are always used against Indigenous women, there has not been substantial efforts made from authorities to educate Indigenous Peoples on these laws and related policies, nor has there been a clear demarcation of parks with the participation of communities. Indigenous People only come to know that they are violating laws when they are arrested or evicted, as in the case of the Meechae and Urai, and the Rumah Nyawin Iban. Not enough time is given to process information or to seek legal advice. The psychological impacts of these experiences and the subsequent alienation from their lands and homes impact severely on the well-being of Indigenous women. In Thailand, many Indigenous women do not understand how their normal practice of traditional subsistence agriculture is considered a crime.

Even government authorities are often found to lack knowledge of the law and their enforcement, including the treaties to which the States are party to and the other international instruments that their governments are signatories to. In Cambodia, local authorities did not even know the requirements for the establishments of ELCs. Instead of responding to requests for documents, authorities just responded that whether they like it or not, the Kui lands will be taken away.

Lack of information on remedies further denies the Indigenous women access to justice. In the Sepon mine case, the Kri women

and others affected by the pollution of the river do not have any other knowledge of where else to bring their complaints as the local authorities and company have not given any concrete response nor advice to them of where to seek redress. The Rumah Nyawin were left with a coopted leader and the loss of their longhouse and NCR lands, for want of other options to redress their case. In all cases, it is Indigenous Peoples' organizations and advocates that had provided information on other remedies like alerting UN bodies and mechanisms, reporting to national human rights institutions, and the like.

6. Non-recognition of traditional justice and dispute resolution systems, limited available support systems, gag laws, weak organizational capacities

The lack of capacity of the majority of formal justice systems to accommodate the Indigenous justice and dispute resolution systems means the exclusion of resources that can facilitate the delivery of justice to Indigenous women for development-induced violations. As already mentioned, Indigenous justice systems in Asia are prevalently patriarchal but in the absence of an accessible alternative, they are the ones that are accessible and familiar, and Indigenous women are left with little choice.

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

Related to this, the freedoms of speech, association, religion or belief, and to information are slowly being curtailed in many of the countries where the case studies were conducted.

In addition to all these constraints, Indigenous women are also faced with weak organizational capacities. There are only a limited number of women's organizations in Southeast Asia which are taking on issues to redress violations of Indigenous women's rights, and advocating for changes for the promotion, protection and respect of these rights.