

# An Introduction to Land Tenure, Sustainable Livelihoods and Indigenous Peoples in Asia:

## *Challenges and Opportunities*



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# 1. Asia

## 1.1. Who are the indigenous Peoples in Asia?

The International Labour Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent countries adopted in 1988 refers to:

- (a) Tribal peoples in independent countries [as those] whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulation; and
- (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographic region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, culture and political institutions.

ILO Convention 169 makes it clear that self-identification as indigenous or tribal shall be regarded as fundamental criterion for determining the groups to which the provisions of the Convention apply.

Further, the study conducted by Jose R. Martinez Cobo, Former Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, on his study of the problem of discrimination against indigenous populations, defines indigenous peoples as:

“...those which, having a historical continuity with pre-invasion and pre-colonial societies that developed their territories, consider themselves distinct from other sectors of societies now prevailing in those territories or parts of them. They form, at present, non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”<sup>1</sup>

It is estimated that there are 350-400 million indigenous peoples in 70 countries of the world and two-thirds of them live in Asia. Indigenous peoples in Asia share common experiences and issues while they remain culturally diverse. They have historically been dominated by others, either through colonization and /or through nation-state building and subsequent globalization. In the present time, in most cases, they still remain marginalized and subordinated economically, politically and culturally even though they provide the ethnic and cultural diversity of nation-state.

Though they represent a very diverse picture, common to indigenous peoples in Asia is the strong cultural attachment to and dependence for their livelihoods on their lands and territories, and the natural resources

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<sup>1</sup> Definition of indigenous peoples from the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Study of the Problem of Discrimination against Indigenous Populations, UN Doc. E./CN.4/Sub.2/1986/7/Add. 4. para 379 (1986); UNESCO (2002): <http://www.unesco.org/culture/ich/doc/src/00272-EN.doc>; UN (2004): [http://www.un.org/esa/socdev/unpfii/documents/workshop\\_data\\_background.doc](http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc).

found therein. Their lands, territories and resources are their source of identity, culture and spirituality, which defines their world view.

In Asia, indigenous peoples are called by different names by government and outsiders such as “hill tribes”, “aboriginal people”, “tribal people” or “native people”. Often, these names imply notions of cultural inferiority—being “primitive” or “backward”. At the local level, the peoples themselves use the names that their ancestors have given themselves. Most are small in number, and population of just a few thousand. But they have distinct language, culture, customary laws and social and political institutions that are different from those of the dominant social groups. They are distributed among the different Asian countries as follows:

Country	Number of Ethnic Groups	Estimated Total IP Population (percentage of national population)
Bangladesh	45	1.7 – 3.7 million (1.2 – 2.5%)
Myanmar/Burma	135	14.4 – 19.2 million (30 – 40%)
Cambodia	19 – 21	101,000 – 190,000 (0.9 – 1.45%)
China	Around 400 (55 officially recognized ethnic minorities)	105 million (8.5%)
India	622 – 635 (622 recognized scheduled tribes)	84.32 million (8.2%)
Indonesia	Over 700	50 – 70 million (20 – 29%)
Japan	2	Ainu: 50,000 – 100,000 (0.04 – 0.08%) Rukyus: 1.3 million (1%)
Laos	Around 200 (49 officially recognized ethnic minorities)	2.4 – 4.8 million (35 – 70%)
Malaysia	97	3.4 million (12%)
Nepal	Over 80 (59 recognized indigenous nationalities)	10.6 million (37.1%)
Pakistan	Over 20	35 – 42 million (21 – 25%)
Philippines	110 officially recognized indigenous peoples	6.9 – 12 million (10 – 15%)
Thailand	Over 25 (10 officially recognized hill tribes)	925,825 (1.5%)
Vietnam	Over 90 (53 officially recognized ethnic minorities)	15 million (13.8%)

Source: AIPP, IWGIA 2010, *Trakansuphakon 2010*

Over the past decades, with the advancement of the movements of indigenous peoples globally, the concept of indigenous peoples has evolved beyond the original meaning still found in dictionaries. This new meaning has political reference to Indigenous Peoples as groups with distinct identities that are entitled to certain collective rights and is now well established under international human rights instruments.

## 1.2. Status of legal recognition of Indigenous Peoples in Asia

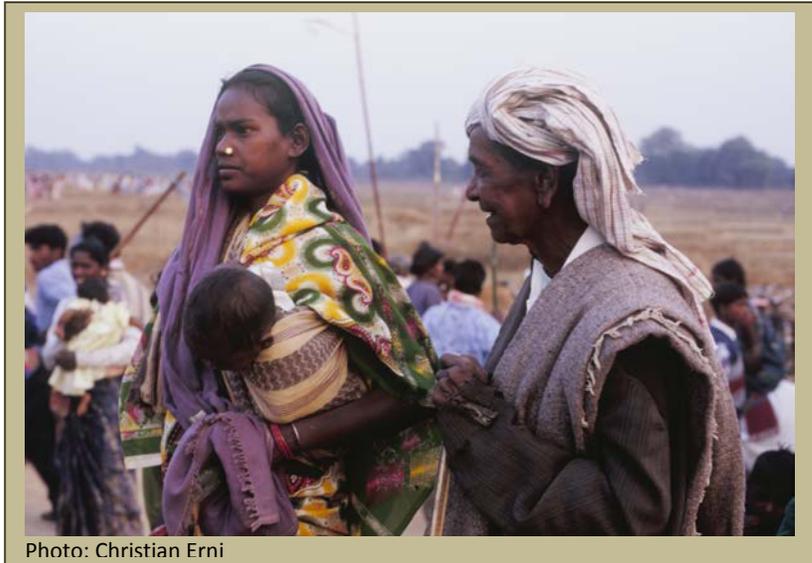
The legal recognition and status granted by Asian states to indigenous peoples vary from country to country. In colonial times, some were given special legal status, like in Bangladesh, India, Indonesia, Malaysia and Myanmar. After independence, however, many Asian countries asserted the principle of ‘national unity’ to suppress any specific recognition of indigenous peoples. This approach has begun to change in recent years. In a number of countries, indigenous peoples are granted constitutional recognition or are subject of special laws. However, in most countries, the recognition accorded relates more to their being culturally different from the rest of the population. It does not provide for their rights to their lands, territories and resources, and the right to self-determination.

Nonetheless, there is Constitutional recognition provided or progressive laws enacted in a number of countries that potentially offers good opportunity for enabling indigenous peoples to exercise their collective rights.

Constitutional recognition of indigenous peoples is provided in the Indian Constitution (1950) that has provisions for “schedule tribes”, the Constitution of Malaysia (1957) that has special provisions on the natives of Sarawak and Sabah, the Constitution of Pakistan (1973) that recognizes federally and provincially administered Tribal Areas, the Philippine Constitution (1987) and the Interim Constitution of Nepal (2006).

In some countries, they are recognized through special legislations including the Cambodian Land Law (2001), Philippine Indigenous Peoples Rights Act (IPRA) of 1997, Forest Rights Act (2006) of India, the Nepal National Foundation for the Development of Indigenous Nationalities Act (NFDIN) of 2002.

In China, Vietnam and Laos, they are given legal treatment similar to that of other minority groups. In Indonesia, those who identify themselves as indigenous peoples fall



under customary law or adat. Court decisions has also served to affirm indigenous peoples’ rights based on international indigenous rights standards such as in Japan in relation to Ainu; and Malaysia, where courts have affirmed aboriginal title of the Orang Asli over their traditional lands<sup>2</sup>.

The UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. The Declaration sets minimum standard in recognizing the collective rights of indigenous peoples. It provides for measures to address their particular situation in rectifying the historical injustices and discrimination against them regardless of how they are referred to in different countries.

### **1.3. Land tenure, community-based forest management and REDD+**

#### **1.3.1. Land Tenure**

Generalizing the status of recognition and trends in the administration of indigenous lands over such a vast region (Asia) is problematic. In general, even though individual land titling is promoted in some countries, most Asian states have been reluctant to recognize collective forms of landownership of indigenous peoples. This has undermined the traditional economies of indigenous peoples. The denial of land rights to indigenous peoples has often led them into abject poverty.

Broadly, there are two trends that can be seen with regard to land tenure in Asia. In one set of countries, such as in the Philippines and parts of India, the laws recognize indigenous collective tenures and provide

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<sup>2</sup> Stavenhagen, Rodolfo. UN Special Rapporteur report on the General Considerations on the situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Asia; A/HRC/6/15/Add.3, 1 November 2007.

strong ownership rights to the communities. In countries like Laos PDR and Cambodia too, legal provision exist for claiming communal land titles and the process has started in Laos. In other countries, such as Malaysia, Indonesia, Cambodia and Vietnam, the law grants usufruct rights to the communities.

In some countries, like India and Bangladesh, administrative measures exist (on paper) to prevent the sale of tribal<sup>3</sup> lands to *non-tribals*. However, most collective tenures (in general) in Asia allow land sales and other transfers of rights. Land markets and markets in timber or bio-fuels are thus prevalent in indigenous areas. But contrary to the expectations of those who have favoured land markets as an engine for 'development', there is a widespread evidence that land and resource mobilization has actually increased poverty, landlessness and environmental damage in indigenous areas<sup>4</sup>.

The issue of poverty, sustainable livelihood and general wellbeing of indigenous peoples is strongly linked to their collective ownership of lands and sound management of their resources. Such realization can be seen in countries like Laos PDR. The government in Lao PDR under the Prime Minister's Decree on Land Titling, No. 88 of 3 June 2006 has started issuing communal land titles in Sangthong District. This is also part of one of the objectives of the 5-year National Socio-Economic Development Plan to promote the wellbeing of the communities, which is at the same time a key element to environmental protection.

### 1.3.2. Community-based forest management and REDD+

Indigenous communities in Asia have long since had their own resource and forest management systems. They have also, in the course of time, adopted or developed and refined new techniques as they experimented with them.

Community-based Forest Management (CBFM) is a type of forest management that recognizes the capacity of the local community as the best managers. Sometimes it is also called community forest management or community forestry in different countries or context.

Indigenous peoples prefer to call it community-based forest management because this puts emphasize on the community as the foundation—the base—of forest management. This means that the community is recognized as the right-holder or, as the owner of the forest.

Community forest management can generally be defined as a form of "participatory" forest management, which means a type of forest management in which communities participate and governs with clear roles and responsibilities within the communities. This means that communities manage a forest which is their own, or they manage a forest which belongs to the government which has given the communities some rights to use the forest. Or the communities manage a forest on behalf of the government or a company who have the right over the forest, like under a contract, or there is a kind of joint management between communities and the government's forest department. There are many forms of forest management in which communities are somehow involved—in which they "participate"—and all these can be called "community forest management".

To recognize the communities as owners of the forest is not easy for some governments, because this means that they lose some of their control and power over forests. But still, there are governments in Asia that recognize and adopt this type of forest management because they understand the potential value of its contribution to forest conservation and well-being of the communities. There are several cases of good practices in Asia for this type of forest management, including the recognition of

Community forest management basically pursues two goals at the same time, to conserve forest and to improve the well being of the people living in and with the forest. To achieve this, the right of the communities to the forest is at least to some extent recognized.

<sup>3</sup> Indigenous peoples in India and Bangladesh are generally referred as 'tribals'.

<sup>4</sup> Colchester, M (ed.) 2001. A Survey of Indigenous Land Tenure: *A report for the land tenure service of the Food and Agriculture Organisation*, Forest Peoples Programme, UK.

indigenous communities as right-holders of forest lands in the Philippines and in parts of India. This type of forest management has improved the livelihoods and well-being of indigenous communities across Asia.

In addition, REDD+ seems to offer new opportunities for indigenous and local communities (in general), both in respect to livelihoods and the protection of their rights. This is in the context of the agreement reached at the UN Framework Convention on Climate Change (UNFCCC) 16 in Cancun. It is now widely accepted that REDD+ is not just about carbon anymore. REDD+ potentially can provide other benefits, such as conservation of biodiversity and take into the sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests<sup>5</sup>. However, this will depend on the actual recognition of their rights and on the terms of the implementation on the ground. For example, the potential for success is much higher if it is promoted as a Community-based REDD+ (CB REDD+).

#### **REDD+ and Bamboo**

As it is, bamboo has significant environmental qualities such as:

- High water absorption capacity helps to maintain soil stability, therefore, preventing soil erosion and stabilising road embankments
- As a fast growing plant, it can provide rapid vegetative cover to deforested areas
- Bamboo also has high carbon sequestration properties. A bamboo plantation in fact can absorb twice as much carbon dioxide per hectare to a similar type of forest made up of trees. Hence, it is one of the better options for countering pollution caused by carbon emissions.

*Source: Greijmans M., Hitzges C., 2012, SNV Bamboo Programme, Approaches, Lessons and Innovations in Lao PDR, SNV, Vientiane (p.7)*

If CB REDD+ is enforced in indigenous territories, for most indigenous communities, REDD+ will be an additional activity that they can integrate in their existing forest and resource management system. CB REDD+ can thus help in addressing the issue of rights and well-being of indigenous communities, including the prevention of carbon emissions and the enhancement of carbon uptake by forests. Such opportunities can be seen in many countries. For example, in Lao PDR, communal land titling has started in Sangthong District which is very rich in bamboo resources. The area is characterized by large tracts of natural bamboo forest. The communities in the area use the bamboo resources efficiently and sustainably through an elaborate management plan for various purposes, thus improving their livelihoods and cash income over the years. And if CB REDD+ is introduced, the additional benefits that the communities could get from it could be payment for eco-system services, prevention of carbon emissions, the enhancement of carbon uptake by forests and carbon credits.

### **1.3.3. Traditional Livelihoods and Indigenous Peoples**

Many of the indigenous communities in Asia usually live in the mountains, plains, river basins, forests and coastal areas. Often, the territories they live and interact with are biodiversity-rich areas, where they engage in a range of occupations for livelihood. While there is enormous diversity among indigenous peoples, common to all are a strong cultural attachment to the land and the dependence of their traditional livelihoods on the land, forests or sea, and the natural resources found therein.

The traditional occupations of indigenous communities in Asia include farming, livestock raising, fishing, hunting and gathering, making handicrafts and food items, sale of local products, small scale mining, among others. These kinds of occupations are still the chief sources of livelihood for them. During the 4<sup>th</sup> Indigenous Development Conference in Asia held in Sabah, Malaysia in 2008, it was estimated that traditional occupations accounts for 95 percent of their livelihoods in Timor Leste, 90 percent in Cambodia,

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<sup>5</sup> See Footnote to Annex 1, paragraph 2 of the Cancun agreement.

80 percent in Malaysia, 70 percent in Thailand, and 50 percent in the Philippines<sup>6</sup>. Some of the major traditional occupations are described below.

The majority of them are engaged in agriculture as a traditional livelihood. Agriculture is practiced both for subsistence and for the market. Sedentary agriculture in rice fields and vegetable gardens, as well as rotational cultivation or shifting cultivation are widely practiced. The majority of the communities practicing shifting cultivation belong to ethnic groups that are generally categorized as indigenous peoples<sup>7</sup>. For instance, Vietnam has approximately 3 million of its ethnic minorities practicing rotational farming.

Shifting cultivation is done in mountain slopes and forested areas where there is no dependable source of water. It is a sustainable farming system that shifts cultivation from place to place in a cycle in order to give recently cultivated fields ample time to lie fallow and recover their fertility and forest cover. In this sense, it is also carbon neutral.



Another system is crop rotation system of cultivation. This system depends on the cultivation of different type of crop in the same field every year, in recognition that different crop extract different nutrients from the soil.

Many indigenous communities living in forest also engage in hunting of wild animals, including gathering of materials or products as a major source of livelihood. For indigenous peoples living near water bodies like rivers, ponds, lakes and seas, fishing is a significant traditional occupation.

There are several other forms of traditional occupations still practiced in Asia. Some of them are listed below:

- Handicrafts like basketry, textile weaving, carpet making, pottery, blacksmithing metal, jewelry making, beadwork and others.
- Carpentry, wood or stone carving or sculpting.
- Traditional small-scale mining for gold and other metals.
- Wine and beer making, sugar making, salt making and other local food production and processing.

Many of the listed occupations are also produced for sale for tourists, travelers and other consumers. Thus they have also become a valuable source of cash income for local producers among indigenous peoples. There are also people who earn some or all their living as traditional specialists in healing, mediation with the ancestors and nature spirits, divining, and conflict mediation and resolution of intra-community and inter-community conflicts.

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<sup>6</sup> Lasimbang, J, *et al* (2010). Asia Indigenous Peoples' Perspectives on Development. Asia Indigenous Peoples Pact, Chiang Mai.

<sup>7</sup> AIPP, IWGIA publication: Who are the indigenous Peoples in Asia. Chiang Mai 2010

There are a few international instruments and standards that recognize or relates to traditional livelihoods. The most important ones are ILO Conventions 111, 169 and 107 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The table below lists the Asian countries that have ratified ILO Conventions 111, 169 and 107.

<b>Asian countries that have ratified ILO Conventions 111, 169 and 107</b>		
Convention 169	Convention107	Convention 111
Nepal	Bangladesh India Pakistan	Bangladesh Cambodia China India Indonesia Lao PDR Mongolia Nepal Pakistan Philippines Rep. of Korea Vietnam

*Source: ILO Committee on Legal Issues and International Labour Standards. Ratification and promotion of fundamental ILO Conventions. Geneva, November 2008, ILOLEX – 27.9. 2010*

The UNDRIP also sets out several provisions for indigenous communities to practice and apply the principle of their traditional economic systems. It contains a number of provisions and preambular paragraphs in relation to their livelihoods and provides the right to be free from discrimination in the exercise of their traditional economic practices. The preambular paragraphs 4, 6, 10 and 11; and Articles 3, 21, 26, 32 are of particular relevance to this.

## 2. Thailand

### 2.1. Who are the indigenous Peoples in Thailand?

The Kingdom of Thailand lies in the heart of Southeast Asia bordering Laos and Cambodia to its northeast and southeast respectively, Malaysia to its south, and the Andaman Sea and Myanmar/Burma to its west. Thailand comprises 76 provinces, and since 1932, the country has had a Constitutional Monarchy. It covers an area of 513,115 sq. km and has a total population of 62, 418,054 people<sup>8</sup>.

The indigenous peoples in Thailand are commonly referred to as “hill tribes”, sometimes as “ethnic minorities”. The 10 officially recognized groups are usually called

“*chao Khao*” (meaning “hill/mountain people” or “highlanders”). These officially recognized hill tribes are: Akha, Hmong, H’tin, Karen, Khmu, Lahu, Lisu, Lua, Mien and Mlabri.



These recognized hill tribes and other indigenous peoples live in the north and northwestern part of the country, and few other groups in the northeast while fisher communities and small population of hunter gatherers inhabit the south of Thailand. There is no comprehensive official census data available on the population of indigenous peoples, but as per the Department of Social Welfare and Development (2002), the total population of those officially recognized “hill tribe” is 925,825 people<sup>9</sup>. No official data is available yet for the groups in the south and northeast.

The indigenous peoples of Thailand belong to 5 linguistic families: Tai-Kadai (e.g. the various Tai groups live north, the Saek, or Shan, also called Thai Yai), Tibeto-Burman (e.g. the Akha, Karen, Lahu, Lisu), Mon-Khmer (e.g. Lua, Khmu, Kui, Mlabri), Hmong-Mien (Hmong, Mien), and Malayo-Polynesian (Moken).

A wide spread of misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Nonetheless, there are some positive developments, such as the rights of communities over their lands, forests and resources that are stipulated in the 2007 Constitution of Thailand in Chapter 3, Section 66.

### 2.2. Status of legal recognition of Indigenous Peoples in Thailand

Legal recognition of indigenous peoples in Thailand has been a contentious issue. As most other governments in Asia, Thailand has also rejected the application of the term “indigenous peoples”. They often have stated that the hill tribe or ethnic minorities are as much Thai citizens and are able to enjoy the

<sup>8</sup> Central Census Bureau publication of the Kingdom of Thailand, including Bangkok, the surrounding area, and the provinces. 31 December 2005.

<sup>9</sup> A directory of ethnic highland communities in 20 provinces, in Thailand B.E. 2545 (2002), provided by the Department of Social Development and Welfare.

fundamental rights and are protected by the laws of the Kingdom<sup>10</sup>. However, many scholars and civil society organizations agree that the 10 officially recognized hill tribes are indigenous peoples, including those that are not officially recognized as they have distinct language, culture, customary laws and social and political institutions that are different from those of the dominant social groups.

The problem has been compounded by cross-border migration of the tribes with recent arrivals of some of the communities in Thailand. However, migration among them is a common phenomenon that dates back to pre-colonial times. The problem arose with the drawing of national boundaries in Southeast Asia during the colonial era and in the wake of decolonization. With the drawing of the new national boundaries, many indigenous peoples living in remote highlands and forests were divided into different countries without their knowledge. Thus, there is not a single indigenous people that resides only in Thailand<sup>11</sup>.

Also, there are 296,000 indigenous persons in Thailand still lacking citizenship<sup>12</sup>, which restricts their ability to access public services such as basic health care or school admission. The main policy that impedes indigenous peoples from obtaining citizenship is the Nationality Act of 1965 Article 7(3), which states that “anyone born in the Thai Kingdom whose parents are alien is not eligible for Thai citizenship and thus, have entered the Kingdom illegally under the immigration law”. However, there are provisions in the by-laws/cabinet resolutions/regulations for obtaining citizenship on two broad administrative categories i.e. for those having resided in the country for a long time and for the new migrants. Three cut-off dates are given based on different period of migration of the applicants, and different procedures are applied for these three different categories.

The office of the Central Registration, Department of Provincial Administration (as of October 2009) uses the following broad classification for those applying for Thai Citizenship<sup>13</sup>:

- Persons believed to be Thai citizens, but who are not recorded as Thai
- Migrant workers who have moved to Thailand (Burmese, Laos)
- Persons surveyed but lacking registration status.

The procedure for the application of citizenship is a tedious process. At the onset, they need to provide sufficient proof that they are Thai nationals which include presentation of hospital records or birth certificates, which most of them do not have since most of them are not born in hospitals. Further, rectification of errors in filling up application forms for citizenship, which often occurs, is also very complicated and tedious.

### **2.3. Land tenure and community-based forest management**

Thailand host 409 protected areas, 27 marine national parks, 10 Ramsar<sup>14</sup> sites, 2 world Heritage sites and 4 biosphere reserves. The percentage of protected areas accounts for 20 percent of the total land area. The total forest area (2000) is 14,762,000 ha, with 9842,000 ha of natural forest and 4,920,000 ha of plantations

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<sup>10</sup> UNHCR, Sub-Commission on Prevention of Discrimination and Protection of Minorities. WGIP 10<sup>th</sup> session. E/CN4/Sub.2/1992/4.

<sup>11</sup> IWGIA (2012) *The Indigenous World*, IWGIA, Copenhagen.

<sup>12</sup> Office of National Security, workshop on finding solutions for illegal immigrants, 18 June 2009 at Rimkok resort.

<sup>13</sup> Information provided by Ms. Venat Sinuk, an official working on the registration of Thai Citizenship.

<sup>14</sup> Convention on Wetlands of International Importance; [http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1\\_4000\\_0\\_](http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0_).

accounting for 29 percent of the total land area<sup>15</sup>. Unfortunately, the rights of indigenous peoples living within the protected areas have continued to be a contentious issue.

The Thai 1961 National Park Law is framed within a conservationist approach, where protected areas are completely free of people and land use. Even forest-dwellers and forest-dependent people who had been living there before the promulgation of the law became illegal inhabitants. Currently, an estimated 460,000 people live and depend on the land and resources that the government has set aside for ecological values or tourism potential. This led to increasing conflicts between the people living in designated protected areas and government authorities.



Photo: Thaworn Kumpolkul, IKAP

This conflict over land tenure and forest management has generated a lot of debate in Thailand and the demand for community rights in this regard has been consistently raised. This has resulted in some positive developments at the law and policy level to deal with this issue.

The Constitution of 2007 reaffirmed the principle of enhancement of administration and decentralization of management of natural resources from the state to the communities and stakeholders that was enshrined in the Constitution of 1997. The rights of communities over their lands, forests and resources are stipulated in Chapter 3, Section 66 of the 2007 Constitution of Thailand. However, various forestry laws and Cabinet Resolutions passed before the 2007 Constitution continue to be obstacles in the realization of community rights in the Constitution of 2007.

On 7 June 2010, the government passed the Prime Minister's Office Regulation on Community Land Titling. The aim of this regulation is to temporarily allow communities to collectively occupy and use state land for settlements and farming. This is aimed not only at addressing the long-standing conflict between communities and the state with regard to land and forest use but also at ensuring the livelihood security—of communities—sustainable use of natural resources and conservation.

There is certain obscurity with regard to the definition of traditional land ownership rights and on how to operationalize the regulation on the ground. Despite these shortcomings, the regulation is seen as a first step towards the state's recognition of community land rights.

Further, the new government has stated that it will work towards a more comprehensive Community Rights Act regarding the management of natural resources (land, water, forests and seas).

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<sup>15</sup> Convention on Biological Diversity. Country Profile Thailand. <http://www.cbd.int/countries/?country=th>.

## 2.4. Traditional Livelihoods and food security

Diverse forms of traditional occupations are practiced by indigenous peoples in Thailand for their livelihoods and food security. In the hill areas, the major forms of traditional occupations for their livelihood include hunting and gathering—for the Mlabri, and agriculture i.e. both irrigated paddy fields and shifting cultivation for the other hill tribes. In the south, particularly in the coastal areas, communities such as the Chao Lay primarily earn their living from selling resources from the sea such as fish, sea plants and sea shells in exchange for rice, taro, potatoes and coconuts which are their main food. There are also traditional health practitioners who partially or wholly depend for their livelihood from the income of treating those in need of their services.

In the past, the hill peoples lived in subsistence and semi-subsistence economy. At present, most of the hill peoples have adopted cash cropping as a result of the government's policy for economic development in the highlands. Changing farming methods have led the hill farmers into debt and to depend more on external markets.

However, the most chronic issue relating to traditional occupation for the upland indigenous communities has been the controversies surrounding shifting cultivation. The government sees shifting cultivation as an ecologically harmful practice and a backward form of agriculture. On the other hand, for the upland indigenous communities, it is the main source of their livelihood and food security. Unfortunately, the general approach of the government has been to reduce or eradicate shifting cultivation one way or another. Furthermore, the expansion of national parks has subsumed traditional farm lands in many areas. This has resulted in occasional arrest of hill farmers and involuntary relocation of the hill tribal peoples for practicing shifting cultivation.

Down south, the declaration of government's policy to accelerate fishery industry more than 40 years ago resulted in the use of heavy fishing equipment and trawlers which destroyed the surface of the seabed and small fishes. The demarcation and declaration of fishing boundaries by neighboring countries also forced big fishing boats to come closer to the shore where small fishermen, including the Chao Lay used to fish. Hence, the livelihoods of the Chao Lay were strongly affected.

With the changing context, indigenous communities are also adapting and finding new ways of earning a living such as working for tourism industry or exploiting the tourism market.

Apart from the major occupations mentioned above, indigenous communities are also experts in weaving and handicraft making. There are many producer groups who are linked to market chains and sell their



products from which they make a living. There are also cooperatives linked to “fair trade” in Thailand that exports their products to other countries. Other sources of cash income come from selling of wild vegetables, sea plants, cash crops, traditional wine and beer, etc.

## **2.5. Challenges and Opportunities**

There are major hurdles to cross in order to address the key issues of indigenous peoples in Thailand. The major ones are recognition of their identity and collective rights relating to their land, territories and resources as right-holders. Nevertheless there are positive developments on which civil society organisations and indigenous organisations can capitalize on. The following developments offer new opportunities for indigenous communities:

- a) On 7 June 2010, the government passed the Prime Minister’s Office Regulation on Community Land Titling with the aim of addressing the long-standing conflict between communities and the state on the issue of land and resource use, and also with the intention of ensuring sustainable livelihood to the communities.
- b) Another initiative taken in 2010 to address the polarized political situation and views in Thailand is to undertake an institutional reform. In this regard, 2 independent mechanisms were established in early July 2012: the National Reform Committee (NRC) and the National Reform Assembly (NRA). These committees are open to hearing the demands of indigenous peoples and indigenous organisations are conducting consultations among themselves to put forward their demands.
- c) The Ethnic Affairs Institute, Department of Social and Welfare Development have drafted a strategic plan on social and welfare development for indigenous peoples and ethnic groups in Thailand. This plan specifies “indigenous peoples” as one of the key target groups and provides space for indigenous representatives to participate in the governance structure and have a role in approving projects and programmes to be submitted by indigenous communities and organisations. The strategic plan is being finalized and will be submitted to the cabinet for approval soon. Once it is passed, it will provide a new channel for indigenous peoples for promoting their rights.
- d) The present government has promised to develop a comprehensive law dealing with community rights, particularly in relation to the management of natural resources (land, water, forests and seas). This is yet another opportunity that indigenous peoples in Thailand can take advantage of.