



Photos: Colin Nicholas



Regional Synthesis

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AIPP FOUNDATION

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Chewong in their forest hamlet, Krau, Pahang

Photo: Colin Nicholas

1. Introduction

This regional synthesis paper covers the natural resource management country studies conducted in Thailand, Malaysia, Bangladesh and Cambodia in 2005 and 2006. It draws some key conclusions and recommendations, as well as an overall comparison of the situations found in the individual studies.

In the country studies, there are various terms used to refer to indigenous peoples. For example, in Thailand the term used is “indigenous hill peoples”, while in Malaysia they are referred to as “indigenous peoples” generally and “Orang Asli” specifically for the indigenous groups in Peninsular Malaysia. With the exception of Bangladesh, each country study dedicates a chapter to explain the term(s) used in each country and brief backgrounds and histories of the indigenous peoples. In this synthesis paper, the term “indigenous peoples” is used.

2. Indigenous Peoples and Natural Resource Management

2.1 Indigenous Peoples’ Status

With the exception of Malaysia, a common feature mentioned in all studies is the non-recognition by the state of indigenous peoples as distinct groups with their own distinct systems. Nevertheless, this does not indicate the absence of a concept of “indigenous peoples”, and the constitutions and laws of some of the countries do refer to, or have special provisions for, indigenous peoples.

Table1: References to indigenous peoples in Constitutions and relevant laws

	References in the Constitution	References in various Laws
Cambodia	No special provisions	<i>Land Law 2001</i> (indigenous communities) <i>Forestry Law of 2002</i> (local communities)
Malaysia	"Natives" of Sabah and Sarawak "Orang Asli" of Peninsular Malaysia	Various laws in Sabah, including: <i>Land Ordinance 1930</i> ; <i>Inland Fisheries and Aquaculture Enactment 2003</i> ; <i>Forest Enactment 1968</i> ("Natives" or "Anak Negeri"); <i>Aboriginal Peoples Act 1954</i> ("Aborigine" or "Orang Asli")
Thailand	"Original" or "local" communities	"Thailand National Forest Policy 1985" ("Hill Tribe Minorities")
Bangladesh	"Backward Section of Citizens" includes indigenous peoples	<i>HADC Act 1989</i> ("tribe" or "tribal"); <i>Act 12 of 1995</i> ("Primitive Hill Dwellers")

A common feature in all of the countries studied, even where the status of indigenous peoples is recognized, is the experience of discrimination and exclusion by indigenous peoples in regards to land ownership and natural resource management. Even when there is historical evidence showing indigenous peoples are rights-holders of particular resources, governments have still ignored these and continued to alienate land to companies and government agencies, and to resettle outsiders on indigenous peoples' lands.

In a landmark court case brought by the Orang Asli in Peninsular Malaysia, the judges decided that the government had failed in its fiduciary duties to the Orang Asli. In Thailand, the enforcement of the Citizenship Act and the fact that most indigenous people could not speak Thai at the time of the nationality surveys made it difficult to prove their origin even if they had been living in Thailand for hundreds of years. In Bangladesh, the government's population transfer programme of the 1980s into plain lands and gently sloping lands, already occupied and owned by indigenous peoples on the basis of formal private titles or customary law, resulted in violent land-grabbing in which state security forces have been directly implicated. As a result, large numbers of indigenous peoples were forced to seek shelter in the remoter hill and forest areas, putting pressure on existing inhabitants of those areas and depleting the available resources.

2.2 Indigenous Resource Management Systems

The studies note that natural resources of indigenous peoples include land, forest, agricultural areas, and rivers and coastal areas, in which land is central and often understood to encompass all natural resources collectively. Traditional communities have a close relationship to land and resources and see themselves as part of the whole ecosystem. Natural resources are significant not only as a means of production, but also as part of indigenous peoples' spiritual and cultural traditions, central to their identity as peoples. Indigenous knowledge, innovations and practices on natural resource management are little understood by outsiders yet are highly complex systems, closely interlinked with other indigenous systems. They incorporate a keen awareness of the environment, an appreciation for conservation and continuity, encourage sustainable innovation, and place the long-term well-being of the community as the focus of all activities. Natural resource management involves both the physical and spiritual realms and is easily embraced by every indigenous person in their daily activities, such that it has become a way of life for the community. Indigenous peoples believe that the balance between the spiritual and physical realms determines the condition of the universe as well as the immediate environment, including that of the people.

Indigenous resource management systems are closely linked with other indigenous social, cultural, spiritual, economic, governance, juridical, health, technological and learning systems. Examples provided in the studies include juridical systems with clear concepts of punishment, such as that of the *Brao* community in Cambodia, and the indigenous peoples of Sabah, Malaysia. In all case study countries, customary management of natural resources has been established for generations and unwritten laws transmitted by parents or elders in the community. Institutional control over resources is still strong in traditional communities with traditional elders, such as the *mauza* headman and village *karbaries* in Bangladesh, and those in Cambodia, using customary laws and socialization of the whole community to ensure effective management of resources.

All the studies cite non-recognition of indigenous resource management systems as a serious issue that stems from:

- i. lack of understanding by the state of indigenous resource management;
 - ii. lack of official recognition of traditional administrations;
 - iii. conservation ideas that do not recognize other systems of resource management, particularly those that are considered “non-scientific”;
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Table 2 : Indigenous Resource Management System

	Cambodia	Malaysia	Thailand	Bangladesh
Land	<ul style="list-style-type: none"> • Maintain clear territorial boundaries between community land • Sub-divide land into several individually managed plots • Rotate farm plots and maintain evenly dispersed populations • Festivals and ceremonies are tied into agricultural cycles 	<ul style="list-style-type: none"> • Traditional ownership of a plot of land • Traditional ownership is confirmed by a headman and is identifiable by the presence of certain signs of land-ownership • Practice of leaving the last fruits 	<ul style="list-style-type: none"> • Choose farming sites carefully, based on cultivation methods • Use traditional knowledge on soil identification suitable for specific crops • Prevent exploitation of land beyond what it can sustain • Leave the land fallow for seven to ten years • Communal ownership of land • Land only cleared during dry season • Practice swidden cultivation 	<ul style="list-style-type: none"> • Able to retain possession, and at least partial control of their homesteads and farmlands • Subsistence-based agriculture
Forests	<ul style="list-style-type: none"> • Forest spirits are kept as protectors • Only old or knowledgeable herbalists, mostly women, are allowed to collect medicinal plants • Many plant species are protected based on similar beliefs as for wild animals (see below) 	<ul style="list-style-type: none"> • Ensure forest resources are not taken freely without permission of the owner • Ensure forests are healthy and productive • Unnecessary cleaning and cutting of trees is prohibited 	<ul style="list-style-type: none"> • Identify forest areas which are cultivable • Forests are categorized and differentiated based on a number of factors 	

Wildlife	<ul style="list-style-type: none"> • Demarcate hunting areas • Certain breeding areas are not disturbed • Discourage over-hunting 	<ul style="list-style-type: none"> • Ensure wildlife continues to thrive • Practice selective hunting • Demarcate community hunting areas and have community wildlife wardens 	<ul style="list-style-type: none"> • Believe there is an owner for each and every life form • Believe that wildlife and forest environment are interdependent and related to each other • Conduct a ceremony before any hunting expedition 	
Rivers, Watershed and Aquatic Life	<ul style="list-style-type: none"> • Only allow fishing methods that do not deplete fish resources • Outsiders are not allowed to fish • To ensure a constant supply of fish communities prohibit the cutting down of fruit trees that are known to be a good source of food for aquatic life 	<ul style="list-style-type: none"> • Mark a stretch of river as “no fishing” zone for a certain period of time (six months to a year) 	<ul style="list-style-type: none"> • Beliefs and taboos against disturbing any watershed area or springs 	<ul style="list-style-type: none"> • Streams and other aquifers situated within the community-managed mauza reserve forests are protected from bank erosion and siltation
Traditional Medicines	<ul style="list-style-type: none"> • Collected from forest areas that are conserved by communities for curing certain ailments 	<ul style="list-style-type: none"> • Believe medicinal plants have a spirit and that respect is necessary before taking any plants • The concept of “use and protect” ensures plants and animals with medicinal properties are not over-harvested, and promotes practices such as taking only what is needed 		
Seeds and Plants	<ul style="list-style-type: none"> • An intricate system of seed sharing and exchange 	<ul style="list-style-type: none"> • An intricate system of seed sharing and exchange 		

- iv. the pursuit by states of profits, modernization, and a development paradigm that is in conflict with indigenous resource management: such development ideas have led to the alienation of the rich resources in indigenous territories from the traditional owners.

The country studies also mention only a limited recognition of customary resource rights within the laws of the country. This is discussed in more detail in Chapter 4.

3. Laws and Policies on Natural Resource Management

All the studies involved an extensive review of natural resource management laws and policies that relate to indigenous peoples and identified gaps in their provisions. Natural resource management laws in Bangladesh and Malaysia appear to have common provisions and underlying concepts, perhaps derived from the laws of colonial Britain. For example, forest laws and policies tend to reject community management of forests in favor of management through government bodies — usually, the Forest Department — which integrates policing and administrative functions. Land laws incorporate customary laws but these are limited and often have inaccurate concepts of land ownership and management, undermining the limited recognition provided.

3.1 Institutional Framework on Natural Resource Management

Management of natural resources in the four countries studied is administered by the following:

- i. Government Departments or Agencies

Natural resources are compartmentalized and placed under the jurisdiction of specific government departments. Malaysia, as a federation of 13 states, has placed land and forest matters under state control. The Federal Constitution accords them substantial powers over land use and natural resource management. Also, as every state is independent under the constitution, federal legislation in most cases is not binding on the states, so the government departments managing natural resources are directly under the purview of state law. In the other countries, these departments are centralized and under the direct control of the central government.

- ii. District/Provincial Council/Body and Sub-District Council/Body

The implementation and monitoring of natural resource management laws is decentralized to councils/bodies at the district or provincial level, and subsequently to the sub-district

Box 1 – Tambon (Sub-District) Administration

In Thailand, the Constitution of 1997 heralded a significant benchmark towards a more inclusive participatory approach. Moreover, the Tambon Council, *Tambon Authority Act* and *Decentralization Act*—if implemented effectively and sincerely—have the potential not only to overhaul the bureaucratic set-up of natural resource management, but also the whole administrative structure. In Tambons, such as the Ban Luang Tambon Administrative Organisation, where there is a strong representation of indigenous communities, there are already signs of the local administration being more receptive to resource management initiatives of indigenous peoples. Although community forests do not have a legal basis, authorities have informally started recognizing them, indicating a more open interpretation of laws.

Note, at the time of publication the Constitution of 1997 had been overturned by the coup of 2006, with a new constitution in the process of being drafted. It is not clear which provisions for local participation will be retained in the new constitution.

level. For the Chittagong Hill Tracts (CHT) in Bangladesh, the Hill District Council is rather pluralistic in that it includes traditional, bureaucratic and elected regional authorities with separate, and sometimes concurrent, responsibilities. It is at the district or sub-district level that indigenous peoples are more likely to influence decisions on natural resources.

3.2 Summary of Laws and Policies on Natural Resource Management

The laws and policies on natural resource management identified in the country studies are summarized in Table 3, with a brief outline of the gaps in the provisions that relate to indigenous peoples. Gaps not related to the implementation of the laws and policies are outlined later in this chapter.

- **Inter-Departmental Coordination**

As a way to manage natural resources, all the countries involved in the study have compartmentalized natural resources, with laws governing the use and management of

Box 2 – Sabah Wildlife and Sabah Foundation

The Sabah Wildlife Department Pilot Project (See pages 210 -211) highlights inter-departmental coordination as one of the major constraints in making sustainable resource management in collaboration with local communities successful. It also highlights the hurdle for communities in exercising their rights to participate in natural resource management as stipulated in various enactments and policies such as the Forest Enactment and the Sustainable Forest Management System. In this case the Sabah Foundation, which was granted a 100-year term to manage a forest area sustainably, is not willing to recognize the Community Hunting Area identified by the Murut community in Inarad. The Sabah Foundation plans to allow logging at this site. Community Hunting Areas are recognised under the *Sabah Wildlife Conservation Enactment 1997*. There is ongoing dialogue between the Sabah Wildlife Department, communities and relevant government agencies to make Sabah Foundation comply with their obligations under the Sustainable Forest Management System, and for them to recognize the importance of involving local communities in natural resource management.

these resources. While this may provide focus for the specific department or unit charged with a certain resource, it could also prove to be a setback. As pointed out in the country studies, the lack of inter-departmental coordination has only exacerbated problems and defeats the purpose of managing resources effectively.

- **Non-conformity with National Constitutions**

In some cases, there appears to be non-conformity between some laws and the national constitution. In Thailand, for example, Article 46 of the Constitution states that:

“Individuals who form traditional, local communities have rights to preserve and revive their customs, local knowledge, arts or culture at the local and national levels; and to participate in the more balanced and sustainable management, maintenance, and utilization of natural resources and the environment. This must be in accordance with the enacted law.”

Yet Thailand’s laws on natural resource management do not provide for indigenous peoples to participate effectively in natural resource management; nor are there provisions

which respect indigenous peoples' culture, particularly culture related to natural resource management. As a further example, in Malaysia, the judge in a landmark case brought by the Orang Asli (*Sagong Tasi v Kerajaan Negeri Selangor*) ruled that relevant portions of the *Aboriginal Peoples Act 1954* "had to be brought into conformity with the Constitution".

- **Negative Perceptions on Indigenous Peoples**

The Bangladesh study notes that historically, indigenous peoples have been systematically denied access to lands that were required by the empires, kingdoms or colonizers. The legacies of these past policies have continued in different forms up to the present day, particularly with regard to lands categorized as "forests" or required for state forestry. In Thailand, indigenous peoples were initially excluded from getting titles over land on the basis that they were not Thai citizens when the *Land Code* came into being. More recently, exclusion from ownership rights has been based on the watershed classification that designates most highland areas as off limits for any human activity. In Cambodia, challenges in developing partnerships and mutual learning are enormous as this goes against the history of relationships between indigenous peoples and outsiders. For indigenous groups, particularly in Northeast Cambodia, the slave trade, which continued over such a long period and with such intensity, was cultural rape. The disharmony continued with the relocation of *Brao* and *Kavet* people to lowland villages adjacent to the Sekong and Se San Rivers in the early 1960s, in order to "educate" and "Khmerise" them; then with the draconian policies of the Khmer Rouge to make wet rice paddy rice cultivators out of swidden agriculture farmers; and finally, with the policies of the Cambodian government to keep the people in the lowlands.

Box 3: Thailand National Forestry Policy 1985

Thailand's National Forestry Policy (TNFP) contains discriminatory attitudes towards indigenous peoples. This is most evident in the key aims of the Policy: "to formulate guidelines to deal with *forest degradation problems e.g. shifting agriculture, forest fires, forest clearing by the hill tribe minorities* etc; incentive for reforestation by the private sector; and rural settlement planning to conform with national natural resources management and conservation plans" (emphasis added).

- **Poor Implementation of Laws**

More progressive natural resource management laws have emerged in the last few years in Sabah, Malaysia, and Cambodia, while the fate of the Community Forestry Bill in Thailand remains unclear. However, for other laws which have been in existence for quite a while, the common complaint has been the poor implementation of laws that support the rights of indigenous peoples. In Bangladesh, for example, the study found that most of the land reform laws have hardly been implemented due in large part to structural prejudices deeply ingrained in the society, and reflected through all sorts of bad governance, vested interests, existing power structures and corruption, among other factors.

- **Contentions over Sub-surface Resources**

Although not discussed in the country reports, contention over sub-surface resources found in indigenous territories continues to be an issue. According to the laws of the countries studied, mineral rights fall under the control of the state. In Malaysia, state-federal conflicts have also ensued because mineral rights are directly under the Federal Government. Apart from sub-surface resources, there is also contention over above ground resources, such as timber, which also fall directly under the purview of state governments.

Table 3 : Provisions and Gaps in NRM Laws and Policies

Cambodia			
Title of Law/ Policy	Subject	Provision	Gap
Constitution of Cambodia 1993	Individual and collective ownership of property	Article 44: All persons, individually or collectively, shall have the right to ownership; citizens of Khmer nationality shall have the right to own lands	No specific recognition of indigenous identity for land ownership
Constitution of Cambodia 1993	State property	Article 58 stipulates that land, water, airspace, air, geology, ecological systems, mines, energy, petroleum and gas, rocks and sand, precious stones, forests and forest products, wildlife, fish and aquatic resources, economic and cultural centers are all state property	No provision for access for indigenous peoples

Constitution of Cambodia 1993	Protection and management	Article 59: The state shall protect the environment and balance of abundant natural resources and establish a precise plan of management of lands water, air, wind, geology, ecological systems, mines, energy, petrol and gas, rocks and sand, gems, forests, and forest products, wildlife, fish and aquatic resources	No guarantee on inalienability of natural resources that are essential for livelihood subsistence; lack of definition of the term 'state'
Land Law 2001	Definition of indigenous peoples and recognition in Cambodia	Article 23: Definition of indigenous peoples as a group of people residing in the territory of Cambodia, manifesting ethnic, social, cultural, economic unity, who practice a traditional lifestyle and who cultivate the lands in their possession according to customary rules of collective use	"Lands in their possession" may exclude lands that have been taken by others through fraud
<i>Land Law 2001</i>	Self-Identification	Article 24: An individual who meets the criterion of article 23 of being part of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered a member of the community	No recognition of customary law for procedure
<i>Land Law 2001</i>	Lands of indigenous communities	Article 25: Lands where the said communities have established their residences and where they carry out traditional agriculture, not only lands actually cultivated but also reserves necessary for the shifting of cultivation	Provision that such lands should be those "recognized by the administrative authorities" weakens the article immensely
<i>Land Law 2001</i>	Communal Title	Article 25 gives indigenous communities the right to claim for communal title based on negotiations with neighboring villages and authorities "according to the factual situation as asserted by the communities"	Dependent on negotiations
<i>Land Law 2001</i>	Alienable rights	Article 26 stipulates that ownership rights related to the immovable property of an indigenous community includes all the rights and protections enjoyed by private owners, including rights to dispose of the land	Provides opportunity for indigenous peoples to sell land and resources

<i>Land Law 2001</i>	Transfer	Article 27 mentions the possibility to transfer land rights to individuals within the community	No guarantee for collective ownership
<i>Land Law 2001</i>	Rights of indigenous peoples	Article 28: No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community	
<i>Land Law 2001</i>	Transforming possession into ownership	Article 38: In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, and notorious to the public, continuous and in good faith	Unclear whether land left fallow as part of the traditional cultivation system is an obstacle to acquisition of ownership
<i>Land Law 2001</i>	Transfer of ownership	Article 69 provides that the transfer of ownership shall be considered valid only upon the registration of the contract of sale with the Cadastral Registry Unit	Land can be legally transferred through a contract between the buyer and the seller without the requirement of registration
Forestry Law 2003	Identification of local communities	Articles 11(ii) and 37(i) – Identification of local communities	
Forestry Law 2003	Rights of traditional users	Article 2 ensures local communities have traditional user rights over timber products and non-timber forest products	Does not specifically mention indigenous peoples' communities
Forestry Law 2003	Full public participation	Article 4: All government decisions that have potential impact on concerned communities, livelihoods of local communities and forest resources	
Sub-decree on Customary Management 2003	Criteria of local minorities	Article 5 – Criteria for local community identification: Local community as a minority, as ethnic community, or a group of local residents with original settlement in one or more villages	No mention about collectivity; no clear distinction between indigenous and non-indigenous minorities
Environmental Protection and Natural Resources Management 1996	Environmental plan	Articles 2 and 3	
<i>Environmental Protection and Natural Resources Management 1996</i>	Protection and Sustainable resources Management	Article 3	

<i>Environmental Protection and Natural Resources Management 1996</i>	Environmental Impact Assessment	Article 6 requires an Environmental Impact Assessment to be conducted for any project	
<i>Environmental Protection and Natural Resources Management 1996</i>	Participation of the public	Article 16 provides for participation of the public in protecting and managing natural resources	No clear procedural provision
<i>Commune Administrative law 2001</i>	Opportunity to have a say	Recognition of a Commune Council provides indigenous communities the opportunity to have a say in local affairs	No clear provision to make commune chief accountable to the community

Thailand			
Title of Law/ Policy	Subject	Provision	Gap
Constitution of Kingdom of Thailand 1997	Recognition of the rights of traditional local communities; participation	Article 46: Persons from traditional local communities have rights to preserve and revive their customs, local knowledge, arts or culture at the local and national levels; and to participate in more balanced and sustainable management maintenance, and utilization of natural resources and the environment provided by law	
Constitution of Kingdom of Thailand 1997	Legal protection for quality, healthy and consistent survival	Article 56: The right to collaborate with the state as well as community in the maintenance and benefit sharing of natural resources and biological diversity, and protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to health and sanitary condition, welfare and quality of life shall be protected by law	No specific mention on the rights of indigenous communities
Constitution of Kingdom of Thailand 1997	Right to be informed, explained to and reasoned with	Article 59: Individuals have the right to be informed, explained to and reasoned with, by government organizations, state agencies, enterprises, or local official organizations prior to the approval or implementation of a project or activity that may affect the quality of the environment, health, quality of life, or other communities, and the right to express their opinion on such an issue as well as the right to have a public hearing	No specific mention of indigenous communities

Constitution of Kingdom of Thailand 1997	State obligation to encourage and promote peoples' participation in preserving, maintaining and utilizing natural resources and biological diversity	Article 79: State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, protection and maintenance of the quality of the environment in accordance with the persistence of development principles as well as control and eradicate pollution	
Constitution of Kingdom of Thailand 1997	Conservation of natural resources in accordance with the law	Article 69: Every person shall have a duty to protect and pass on and conserve natural resources and the environment as provided by law	
Constitution of Kingdom of Thailand 1997	Powers and duties of local government	Article 290: Local government has powers and duties as provided by law to preserve natural resources and environment	No clear provision for indigenous peoples' participation at the local level
Thailand National Forestry Policy 1985	Key aims	Maintaining <i>40% of the country area under forests with 25% as protected forest and 15% as production forest</i> ; encouraging <i>reforestation and export of wood and wood products and community forestry such as reforestation on public land by private sector, tree planting on marginal agricultural land</i> ; to formulate guidelines to deal with <i>forest degradation problems e.g. shifting agriculture, forest fires, forest clearing by the hill tribe minorities</i> etc; incentives for reforestation by private sector	Many negative perceptions and effects on resources of indigenous peoples
<i>Forest Act 1941</i>	Definition of "forest"	Section 4(1): Land not acquired or possessed under the land law considered as forest	Control swidden farming
<i>Forest Act 1941</i>	Prohibited activities	Section 54 prohibits the clearing, burning, occupying or possession of forest land; breach punishable by fine of B50,000 to B100,000	Prohibits traditional methods of indigenous farming and alienates indigenous peoples from traditional territories
<i>National Reserved Forest Act 1964</i>	Forest domain	Section 4: Forest includes mountain, creek, swamp, canal, marsh, basin, waterway, lake, island and seashore not acquired by a person in accordance with the law	Lawful acquisition does not include customary ownership

<i>National Reserved Forest Act 1964</i>	Prohibited activities	Section 14: No person shall occupy, possess exploit or inhabit the land, develop, clear, burn the forest, collect the forest products or cause by any other means whatsoever any damage to the nature of the National Reserved Forest	Adverse affect on indigenous way of life
<i>National Reserved Forest Act 1964</i>	Logging or collection of forest products	Sections 15 and 16: Logging or collection of forest products and logging of reserved timber species may be carried out after obtaining permission from the Director General	No consideration for indigenous peoples' opinion
<i>National Reserved Forest Act 1964</i>	Possibility for inhabitation	Section 16(1): A person can apply to inhabit and exploit the deteriorated lands	
<i>National Reserved Forest Act 1964</i>	Punishment on offence	Persons involved in any activities against the provision of the Act shall be fined B500 to 15 years imprisonment	
<i>National Park Act 1961</i>	Prohibited activities	Section 16: No person shall: (1) occupy or possess land including build up, or clear or burn the forest; (2) collect, take out or alter any act whatsoever things, endanger or deteriorate timber gum, resin, wood-oil, turpentine, mineral or other natural resources; (3) take wildlife out or alter any act whatsoever things or endanger the wildlife, take in any domestic animal or beasts or burden without permission of competent officer; hunting, cause fire etc in a way that affects the National Park	Direct affect on indigenous people who have an inalienable livelihood relation with the forest
<i>Wild life Preservation and Protection Act 1992</i>	Prohibited activities	Sections 16–21 prohibit various activities such as propagating or breeding, possessing, trading, collecting, or endangering nests or any protected and preserved wildlife	Affects hunter-gatherer indigenous peoples
<i>Land Code 1954 and Land Code Promulgation Act 1954</i>	Application for land certificate	Section 5: Anyone occupying forest land as of November 30, 1954 can apply for land title using a claim certificate provided they prove their claim within 180 days	Most indigenous peoples' lands have been encroached on because there is no proper mechanism to provide notice; also limited awareness of this provision

<i>Land Code 1954 and Land Code Promulgation Act 1954</i>	Land and state ownership of land	Section 1 identifies land surface everywhere, including mountains, hills, streams, ponds, canals, swamps, marshes, waterways, lakes, islands and sea coast as land; section 2 declares that land identified in section 1 shall be vested in state ownership	Disregards indigenous land ownership systems
<i>Land Code 1954 and Land Code Promulgation Act 1954</i>	Issuance of land title documents	Chapter 4 has various provisions for applying for different land title	Complicated procedures disregard indigenous peoples' situations and alienate them from their traditional lands
<i>Enhancement and Conservation of National Environmental Quality Act 1992</i>	Participation of NGOs	Sections 6–8 articulate ways the public may participate in the management of matters affecting the environment, and lay down a framework for collaboration between government and NGOs. A private individual can lodge a petition against a person who violates laws on the conservation of natural resources	
<i>Enhancement and Conservation of National Environmental Quality Act 1992</i>	Environmental Impact Assessments in protected areas	Sections 32–51 stipulate that environmental quality standards, management, planning, conservation and Environmental Impact Assessments are mandatory for specified projects in protected areas	Management standards do not coincide with indigenous peoples' standards

Malaysia			
Title of Law/ Policy	Subject	Provision	Gap
Article 153 of the Federal Constitution	Recognition of rights of Sabah's indigenous peoples	Indigenous peoples or "natives" of Sabah are accorded special rights and privileges	
Article 73(b) of the Federal Constitution	Decentralization	Empowers the states of Sabah and Sarawak to enact their own laws through their State Legislative Assemblies	
Article 161A(5) of the Federal Constitution	Land rights of indigenous peoples	State laws in Sabah and Sarawak may provide for the reservation of land for indigenous peoples or for giving preferential treatment in regards to the appropriation of land by the state	

Land Ordinance 1930	Ordinance provides for Native Lands		
Land Ordinance 1930	Native Customary Rights (NCR) to lands	Section 15 states that land included under NCR is land possessed pursuant to customary tenure; land planted with 20 or more fruit trees per acre; fruit trees, sago, rattan and other plants of economic value that are planted, maintained and regularly enjoyed as personal property; grazing land stocked with cattle or horses; land that has been cultivated or built on within 3 years; burial grounds and shrines; and right of way for people and animals	Some provisions are archaic, do not recognise land under fallow period, and place importance on plants of economic value
Land Ordinance 1930	Attempts to incorporate indigenous customary law	Section 15 attempts to incorporate indigenous peoples' customary law on land ownership into the land law	Gaps in existing process of land delineation; not completely able to incorporate indigenous natural resource management systems such as fallow in rotational agriculture cycle
Land Ordinance 1930	Contradictory provision	Section 28 provides authority to the Governor to alienate land for "public purpose", seen to supersede section 15	Used as a tool to alienate indigenous peoples' lands
Land Ordinance 1930	Notice	Section 13 provides for the posting of a notice and validation on the ground in any application	No access to information for indigenous peoples because notices are put up in English in the district Lands and Survey Department
Land Ordinance 1930	Special provision for protection of indigenous ownership over native lands	Section 17: Except with the written permission of the Minister, all dealings in land between non-natives and natives are expressly forbidden and no such dealings shall be valid or recognized in any court of law	Many indigenous peoples have lost their traditional lands by circumventing this section

Land Ordinance 1930	State rights over surface and sub-surface resources	Sections 23 and 24 give ownership rights over sub-surface and surface resources to the state, including minerals, timber or other forest produce, any earth, gravel, stones, coral, shell, guano, sand, loam or clay, or any bricks, lime cement or other commodities manufactured from these materials	Affects forest dwellers and indigenous peoples
Land Acquisition Ordinance	Land subject to compulsory acquisition	Section 2(h) states that any land may be subject to compulsory acquisition by the state if it is deemed to be for a "public purpose"; includes resettlement, conservation and exploitation of natural resources	Avenue for indigenous peoples' land to be alienated
Land Acquisition Ordinance	Limitation on complaint mechanism	Section 9 allows only 3 months for the owner to register their interest and provide notice to the authorized officer	Most indigenous peoples have already lost lands due to lack of notice
Inland Fisheries and Aquaculture Enactment 2003	Recognition of indigenous resource management	Section 35 allows for the declaration and recognition of indigenous system of resource management	
Inland Fisheries and Aquaculture Enactment 2003	Creation of a Committee	Sections 36 and 37 create a Community Fishery Management Committee	Does not recognize traditional authority
Wildlife Conservation Enactment 1997 and Wildlife Regulation 1998	Recognition of community hunting area	Sections 7 and 32 recognize community hunting areas and honorary wildlife wardens from the community	
Wildlife Conservation Enactment 1997	Native or traditional rights perpetuated	Section 9(2)(c) provides an explanation on "Native and Traditional rights" that will continue to be exercisable	
Wildlife Conservation Enactment 1997	Community summarized representation	Section 9(2)(d) requires a summary of representations to be made by communities likely to be affected	Inadequate time-frame to give notice (90 days)
Parks Ordinance 1984	Park Management	Park Management controls, manages and maintains all Parks, including both inland and marine ecosystems	Restricts access of indigenous peoples living within Parks
Parks Ordinance 1984	Bio-prospecting, tree plantations and commercial enterprises	Section 20 of the Parks (Amendment) Enactment 2002 empowers a Park Board of Trustees to carry out bio-prospecting, develop tree plantations as well as commercial and industrial enterprises	Impacts indigenous knowledge and livelihood of indigenous peoples living within Parks

Conservation of Environment Enactment 1996 and Environment Protection Enactment 2002	Use of land and activities	Use of land (section 28); activities affecting vegetation (section 33)	No provision on indigenous peoples' rights; sections impose restrictions on swidden cultivation
SAFODA Enactment 1981	Compulsory acquisition of land	Section 39(1) provides for compulsory acquisition of land	Results in loss of NCR land
SAFODA Enactment 1981	Status of SAFODA	Section 47: SAFODA deemed a "native" entity for any law relating to land	Results in loss of NCR land
SAFODA Enactment 1981	Appeals		No mechanism to notify owners or to record and settle land disputes in an organized manner
Biodiversity Enactment 2000		Require accompanying Rules	Cannot be implemented until Rules are adopted
(National) Land Conservation Act 1960	Planting and clearing of hill land	Section 5 provides that no person shall plant any hill land with short term crops without an annual permit from the Collector of Land Revenue; section 6 goes on to prohibit the clearing of hill land	Detrimental to Orang Asli communities who live in forest and forest fringe areas and who still depend on the traditional swiddens for their subsistence
<i>(National) Land (Group Settlement Areas) Act 1960</i>	Alienation of land to government agencies	Enables land agencies such as the Federal Land Development Authority (FELDA), the Federal Land Consolidation and Rehabilitation Authority (FELCRA) and other agencies such as the Pahang Tenggara Development Authority (DARA) to take over state land and to develop it for the purpose of land settlement, which culminates in the issue of land titles to the settlers	Orang Asli traditional areas have been converted to such land schemes without enjoying either the fruits of the programme or entitlement to land titles
<i>(National) Protection of Wildlife Act 1972 (Act 76)</i>	Wildlife reserves and sanctuaries	Wildlife reserves and sanctuaries may be declared by the state	Does not allow Orang Asli to sell wildlife; may only be use for family needs

<i>National Forestry Act 1984</i>	Administration, management and conservation of forests	Forest produce is the property of the state; harvesting requires a license	Treats Orang Asli harvesters of such forest produce as labourers subservient to traders who possess licences
<i>National Parks Act 1980 (Act 226)</i>	Establishment and control of National Parks	Provides for the establishment and control of National Parks	No ownership and control over Orang Asli traditional territories
<i>Aboriginal Peoples Act 1954 (amended 1974) Peninsular Malaysia only</i>	Orang Asli Areas and Orang Asli Reserves	Provides for the establishment of Orang Asli Areas and Orang Asli Reserves; also grants the state authority the right to order any Orang Asli community to leave – and stay out of – an area	Orang Asli are “tenant-at-will”; the state is not obliged to pay any compensation or allocate alternative land
<i>Aboriginal Peoples Act 1954 (amended 1974) Peninsular Malaysia only</i>	Power of Minister and Department of Orang Asli Affairs (JHEOA)	Accords the Minister concerned – or his representative, the Director-General of the Department of Orang Asli Affairs (JHEOA) – the final say in all matters concerning the administration of the Orang Asli, and in matters concerning land, to the state authority	Gives the Federal and State Governments a tremendous amount of leverage against the Orang Asli

Bangladesh

(Note: Country Research did not provide details of the law)

Title of Law/ Policy	Subject	Provision	Gap
National Forestry Policy (1979 and 1994)	Preservation and management of forest	Highlights the need for preservation and “scientific management” of forests and optimal extraction of forest produce for economic development and ecological balance	No attention given to indigenous peoples’ participation in augmenting forest resources in the country
Forestry Master Plan (1994-2013)	Optimizing the forestry sector	Optimizes the forestry sector’s ability to stabilize environmental conditions and assist economic and social development	No recognition of community management of forests

<i>Forest Act 1927</i>	Reserved Forest	Section 28(1) empowers the government to assign to any village community the right to govern land that has been designated a reserved forest	Indigenous people living within reserved forests have no formally recognized right over the lands in which they live
<i>Forest (Amendment) Act 2000</i>	Social forestry	Formally introduces the concept of social forestry	<ul style="list-style-type: none"> - Limited scope for recognition of common user rights of forest dwelling communities - Erosion of indigenous peoples' traditional rights; erosion of the rich tradition of forest conservation - No focus on extension services to village communities or homestead foresters
Land Reform Policy (1972 and 1984)	Land reform	Many progressive articles on redistribution of land	Non-implementation of the law
<i>CHT Regulation 1900</i>	Land acquisition by non-residents	Amendment to Rule 34: Allows non-residents to acquire land rights within the Chittagong Hill Tracts (CHT) for homesteads, commercial plantations and industrial plants	Loss of traditional land by indigenous peoples in the CHT
CHT Accord of 1997	Administration of the CHT	<ul style="list-style-type: none"> - Devolution of land administration to the hill district councils - Resolution of land related disputes by a Commission on Land 	Dysfunctional CHT administrative system, including lack of cooperation between the CHT councils and line ministries in Dhaka

4. Interface between Indigenous & State Processes in Natural Resource Management

4.1 Indigenous Peoples and State Legal and Policy Framework on Natural Resource Management

- **State Natural Resource Management Framework**

With the exception of Thailand, legal provisions recognizing the ownership rights of indigenous peoples over their natural resources do exist, and there are many instances where customary processes are incorporated into national and state laws. However, attempts to incorporate customary processes into legal provisions have shown a sad lack of understanding by government staff. In law enforcement, it has also become apparent that there is a stark difference between indigenous and non-indigenous insights. The study in Sabah, Malaysia notes the attempt to incorporate indigenous peoples' customary law on land ownership into section 15 of the Native Customary Rights (NCR) Land of the Sabah Land Ordinance 1930. The attempt shows a lack of understanding of indigenous peoples' concept of land and natural resource management, and has resulted in misrepresentation of customary law. This has in turn resulted in gaps within the process of land delineation. Experiences in the titling of indigenous peoples' lands have also shown that the failure of the authorities to recognize indigenous resource management such as fallow periods in swidden agriculture cycle has delegitimized customary land ownership.

In all country studies, it was found that use rights in many cases may be granted but the right is not consistent and is often complicated by gaps in the law. Communities candidly refer to this as the "close one eye" policy, indicating the fact that it is not an official policy of the government. The examples from Sabah, Malaysia, Bangladesh and Cambodia also acknowledge the limited legal recognition of use rights of natural resources for indigenous peoples. In Thailand, indigenous peoples' rights over natural resources have a long way to go.

- **Traditional Administrative System**

Recognition by the Cambodian *Land Law* 2001 of traditional indigenous authority and customary law as a legal process in the determination of legal claims is very important. However, with the introduction of the commune councils and the Commune Council Law, coupled with tendencies by most governments to recognize leaders who are literate or support regulations that are in line with state laws and policies, it can be very easy to replace traditional authorities and customary laws. If this happens, it would pave the way for illegal land acquisition, land concentration and over-exploitation of resources that

Illustration 4 : Land Tenure and Use Rights in Thailand

Much of the insecurity over land tenure, and the consequent impact this has on natural resource management, is centered on the manner in which the government has approached and viewed natural resources as the legitimate domain and subject of state policy-making, without considering other rights holders. The Thai government has been extremely inconsistent vis-à-vis its policies for natural resource management. Policies have been modified or changed radically to suit economic or political interests, especially when such policies intersect with indigenous peoples. For instance, while laws and policies on National Parks and Wildlife Sanctuaries do not allow settlements or use of resources within their borders—which has resulted in relocation of indigenous peoples—tourism is widely promoted and infrastructure and private construction for tourism allowed. Use-rights of resources within national reserve areas and wildlife sanctuaries are ambiguous, and give authorities vast leverage to use the law at their convenience. Only when there is a strong collective community initiative are indigenous communities able to negotiate use rights with the local authorities.

could result in serious conflicts within the community and with authorities. In Bangladesh, areas outside the reserved forests (“*mauza-circle*” lands) are administered by “circle chiefs” or *rajas*, and below them, the mauza headmen (*mauza* chiefs or heads). The headmen are responsible for resource management, land and revenue administration, maintenance of law and order, and administration of “tribal” justice.

- **Conflict in Development Paradigms**

As far as the state is concerned, natural resources seem to be mainly for acquisition and exploitation for infrastructure development and other expenditures of the state. There is no regard for indigenous peoples’ own concepts of development, which are often considered unproductive, and therefore indigenous peoples’ customary use of natural resources is not encouraged or developed. Policies on large-scale development through exploitation of natural resource management have resulted in either social exclusion or discrimination against indigenous peoples, or loss of culture and way of life. The majority of indigenous peoples still live in rural areas, but increasingly they are migrating – either temporarily or permanently – to urban areas as livelihoods deteriorate due to natural resource exploitation and insecure land tenure.

Indigenous peoples are increasingly joining, or being forced to accept, mainstream development and commercialization. This poses a challenge to natural resource management especially in and around sensitive areas. Parks and other protected areas have also become important factors that have led to unresolved conflicts between the state and indigenous communities, due to loss of access to or restricted use of resources within these areas.

In Thailand, the study concluded that laws drafted before the last decade expressly exclude the utilization of resources within national forest reserves and other protected areas. They criminalize the activities of indigenous communities which they have traditionally carried out for their sustenance. Although there are thousands of communities managing and protecting their local forests successfully, their activities are deemed illegal. Current laws and regulations prioritize the private sector and/or state activities in these lands.

In Bangladesh and Cambodia, partnerships between government and foreign companies to exploit mineral and gas resources in indigenous lands occur without obtaining the free, prior and informed consent of affected communities, and raises serious questions about environment destruction and threats to people's health..

4.2 Harnessing Indigenous Natural Resource Management

- Incorporation vs Recognition of Customary Law and Processes

The Bangladesh and Malaysia country studies note that recognition of indigenous resource management combines aspects of the traditional management system with state/national laws. However, such a strategy may not necessarily capture indigenous resource management concepts adequately. It also does not recognise customary *law per se*. In Cambodia, while the *Land Law 2001* recognises customary law, it remains unclear how this will be put into practice.

Since customary law in general, and on natural resource management in particular, is not well-understood or documented, there is often a fear of recognizing it on the part of government. Unfortunately, past efforts by governments to recognize customary law has often meant codification, which goes against the diverse customary laws of communities. The other weakness is the tendency to form committees to manage resources, taking away the control that was traditionally held by the community. Although such committees may in fact allow more participation, particularly from women and youth, it nevertheless means that already weakened traditional structures are further sidelined. In the long run, it will further dis-empower indigenous communities in their aspirations for self-determination and a pluralistic society. Perhaps rather than adapting indigenous institutions to a rigid

structure with codified rules and regulations, statutory provisions should be flexible enough to accommodate the malleable nature of indigenous institutions.

4.3 Engaging Institutions - Cooperation between Donors, Government, NGOs and Community Organisations

The studies show varying experiences and degrees of success in engaging institutions in the different countries. Generally, NGOs that have good relations with government have facilitated engagement between communities and the relevant government departments, while the capacity of communities to engage directly with governments and donors is growing.

The most positive example is the case of Sabah, Malaysia, where indigenous organizations have been able to directly contribute to the implementation of laws or introduction of new laws through close cooperation between donors, government, NGOs and the media.

In Cambodia, donors and NGOs have been especially crucial in supporting indigenous peoples not only to link with government but also in the process of building community organizations, since indigenous peoples are still unable to effectively engage with government, local and international NGOs and UN agencies alone. Due to the unique political history of Cambodia over the past two decades, donors and UN agencies have played a very important role in shaping the laws and policies on natural resource management in that country.



Chewong harvesting the oily *perah* fruit, Teris River, Pahang

Photo: Colin Nicholas

NGOs in Thailand have been instrumental in positively or negatively shaping policies on natural resource management, depending on their perspective as illustrated in the development of “Light Green” and “Dark Green” NGOs (see chapter 6). Donors have been instrumental in influencing the government to undertake programs and projects for highland development, with most projects having a strong component focus on a decentralized natural resource management model that seeks to ensure livelihood and socio-economic needs of affected groups. Community organizations have been active in negotiating with different players within the natural resource management setting in developing a people-centric approach to natural resource management. They have been able to create cultural spaces to express indigenous traditional knowledge, concepts, and beliefs in the use and management of natural resources. Most importantly, they have been able to put into place self-governing rules on natural resource management within communities.

In the CHT, Bangladesh, pro-people NGO interventions are especially pertinent because of the disadvantaged situation of the region’s population with regard to access to social extension services of the government. Organizations working to facilitate the spread of formal education, functional literacy, vocational skills improvement, accelerating women’s access to education and training opportunities, among other initiatives, are still very limited in the CHT. The Bangladesh study viewed the strong role NGOs play in natural resource management positively but stresses the importance of maintaining the requisite balance between inaction and overly active interventions that weaken local self-dependent efforts. However, national NGOs—as in the case of government agencies—need to be sensitized prior to starting operations in indigenous-inhabited areas.

4.4 Mechanisms and Issues on Participation of Indigenous Peoples in Natural Resource Management

In many instances, talk of indigenous participation pays mere-lip service to the concept to pacify communities, with input on natural resource management often ignored. Participation processes through institutional reforms and capacity-raising initiatives noted in the Bangladesh study are similar to the processes in other countries. The process often first involves the representation of indigenous peoples—both men and women—in decision-making, policy reviews and reforms, and in legal and programme implementation. An adaptive approach is then taken to incorporate the positive aspects of indigenous knowledge systems related to natural resource management.

Another important mechanism is information dissemination, which has to address

language and cultural barriers. A major challenge is encouraging government staff to spend more time in villages, to learn from local people and increase interactions with key elders in the communities. Submission of written comments on natural resource management by communities is yet another mechanism for participation. Participation would of course be enriched if decision-making occurred with the free, prior and informed consent of indigenous peoples throughout the process.

5. Gender and Natural Resource Management

In most countries, and particularly in Bangladesh, laws and constitutions prohibit discrimination on the basis of sex, although this is not reflected in governments' natural resource management policies.

Women's primary responsibilities, such as cooking, fetching water and gathering firewood, are directly related to the use and management of natural resources. Although generally women are part of the work allocation and labor responsibilities in cultivation, the ability of women in plant and seed conservation and experimentation means they play a crucial role in preserving the diversity of traditional medicines and food sources and natural resource management in general.

Women suffer numerous hardships when ecological degradation occurs in forests and other common pool resources, making it difficult for them to go about their traditional activities, such as the preparation of food, medicines and handcrafts. Women also feel more burdened with the responsibility of looking for scarce income-generating alternatives, especially if they are denied access to natural resources for food, water and firewood. The degradation of natural forests results not only in the extinction of many plants—adversely impacting the economic well-being and health of the family and society—but also negatively affects indigenous women's knowledge systems.

Gender roles within indigenous communities are changing continually as a result of state policies. Thus, it is necessary that any policy formulation on natural resource management takes gender equations into account. There is a need to acknowledge the specific needs, perspectives, and roles of women in natural resource management.

Box 5: Indigenous Women in Bangladesh

Indigenous women in Bangladesh are traditionally regarded as occupying a lower social standing than men. The indigenous women's status is low in terms of the right to inheritance, legal and political rights, decision-making powers, as well as other spheres. One of the most acute problems faced by indigenous women is the denial of access to customary owned land. This is added to the gender-based discrimination faced by them in other ways. Land scarcity among indigenous communities generally affects women more adversely than indigenous men. The inheritance laws of most indigenous peoples, including the most numerous groups such as the Chakma and the Santal, tend to discriminate against women. The notable exceptions are the Khasi in greater Sylhet, the Mandi or Garo in the plains, and to a lesser extent the Marma in the southern Chittagong Hill Tracts. Apart from these exceptions, the common trend in indigenous communities is for sons to inherit landed property.

The denial of indigenous women's substantive participation in the political spheres further reinforces their low status in society and they remain substantively invisible in the eyes of the policy makers.

6. Challenges and Drawbacks

The country studies cite very specific challenges and drawbacks relating to the promotion and recognition of indigenous peoples' rights and participation in natural resource management. A summary of these challenges and drawbacks is set out below, with a brief explanation on some points.

a. Citizenship Rights

Denial of citizenship to a high number of indigenous peoples in Thailand has compounded land tenure insecurity and has directly affected natural resource management. Possession of citizenship documents is essential to accessing any facilities or services and to prove rights over land and natural resources.

b. Donors' Policy on Indigenous Peoples

It is important to ensure that in bilateral aid, donors adhere to their policy on

indigenous peoples based on accepted international human rights standards, and apply this policy to help raise awareness of the departments being aided.

c. Obtaining Free, Prior Informed Consent

Sufficient time must be set aside to ensure indigenous communities understand the issues at hand and that NGOs working with indigenous peoples are able to provide sufficient information for the communities to make informed decisions. Free, prior and informed consent also means that communities have the right to say no to a proposed development initiative.

d. Competing Discourse on Natural Resource Management

In Thailand, the conflict in ideological discourse between different NGO camps—the Dark Green and Light Green camps—also impacts on indigenous peoples and natural resource management. Dark Green NGOs, whose concept of nature is associated with an idealistic but self-contradictory notion of “undisturbed” nature, have been quite successful in blocking promising initiatives, such as the Community Forest Bill, because of middle class support and elite representation. The opposing discourses are not as simple as a disagreement in approach to natural resource management: it also involves power relations, class equations and social structuring. These need to be taken into account while addressing this challenge.

e. Misused/Misinterpreted Community Consultations

When hiring consultants, especially those dealing with communities, careful consideration should be given to ensure that the consultant is willing to listen to other perspectives, especially community perspectives. Consultation and meaningful participation are often viewed as interchangeable by governments and donors, yet they are two very different processes. This needs to be clearly acknowledged, and meaningful participation should be the goal for all communities in an area of influence of a given development initiative.

f. Enhancing Capacity of Indigenous Communities

The Cambodia study explicitly mentions the need to enhance the capacity of indigenous institutions and other support institutions for indigenous peoples. It seems that many groups of indigenous peoples are not aware of legislation that exists to protect their rights. Further, they do not find institutional channels to actualise their demand for the enforcement of those rights.

g. Non-Recognition of Indigenous Natural Resource Management System

h. Illegal Land Sales and Land Grabbing

- i. Land Alienation for Logging and Plantations
- j. Ambiguous Policies on Reserved Areas
- k. Large-Scale Development Projects
- l. Use of Criminal Laws and Police in Land Conflicts
- m. Participation of Indigenous Peoples in Policy Formulation
- n. Customary Land Rights: Gender Based Discrimination
- o. Ensuring Inter-Departmental Coordination
- p. Use of Criminal Laws and Police in Conflicts on Natural Resource Management
- q. Settlement Policy of Landless Bengalis in the Chittagong Hill Tracts of Bangladesh and its Impact on Natural Resource Management
- r. Research Processes and Selection of Consultants
- s. National Implementation of International Instruments

7. Conclusions and Recommendations

7.1 General Recommendations

This chapter deals mostly with the recommendations made in the country studies. It also includes recommendations from the author with the aim of making these recommendations more coherent.

7.1.1 Comprehensive Legal or Policy Review

7.1.1.1 Legal and Policy Review and Reforms

The studies recommend a *comprehensive review of laws and policies regarding lands and other natural resource management*. They also identify the reforms needed. Although the research and consultations identified the laws and policies that relate to indigenous peoples and pointed out gaps, they could not delve into the necessary level of detail. This would have to be conducted in each country in a manner where indigenous peoples and other actors, including human right workers, development planners and social scientists, can contribute effectively.

Legal and policy reforms should then follow a comprehensive review. In any such reforms, the importance of indigenous resource management processes needs to be acknowledged

as far they are appropriate to the socio-economic and cultural needs of indigenous peoples today. Policy reforms also need to be cautious to incorporate representation on the basis of ethnicity, class and gender.

7.1.1.2 Natural Resource Management Laws and Policies to be brought into conformity with the Constitution

Where recognition and protection of indigenous peoples' rights are provided in the Constitution, the highest authority in any country, natural resource management *laws and policies that are contrary should be brought into conformity with the Constitution.*

7.1.1.3 Enactment of Laws on Natural Resource Management

Where necessary laws on natural resource management do not yet exist, but where the needs are expressed by indigenous peoples, *enactment of new laws is needed.* These laws should be in line with existing and emerging international instruments that recognise the rights of indigenous peoples.

7.1.1.4 Implementing Policies

The Bangladesh study provides some clear recommendations on implementation of policies that may be applied to other countries. Recommendations include the development of detailed administrative guidelines, particularly in situations where government officials lack knowledge on indigenous culture, and where discriminatory attitudes exist among non-indigenous officials in government positions. These could include:

- a. Increasing indigenous representation in key decision-making positions;
 - b. Disseminating information to indigenous peoples regarding their rights;
 - c. Providing educational institutions, government training programmes and NGOs with greater access to information on indigenous peoples, their language, culture, economic systems and cultivation patterns;
 - d. Supplementing existing policies with indigenous-focused administrative guidelines and express references to customary laws and practices;
 - e. Accepting the plurality of indigenous peoples' situations. It is vital for the interests
-

of indigenous peoples that these differences are understood prior to the design and implementation of major development interventions;

- f. Following the principle of free, prior and informed consent (FPIC) before any major decision is made that involves the rights and welfare of indigenous peoples;
- g. Acknowledging indigenous technology and innovations as rational and scientific (such as practiced in agriculture, forestry, watershed management, etc) in line with Agenda 21 (Chapter 26) and the Convention on Biological Diversity and related processes;
- h. Developing policies to redistribute state-appropriated common forest lands to indigenous communities, conditional upon their sustainable use;
- i. Involving indigenous peoples and other forest-dependent communities in collaborative management of state-managed forests and to share the resources of such forests in an equitable and practical manner;
- j. Taking effective measures for the practice of autonomy or self-government of indigenous peoples, especially in relation to development issues, policies and programmes.

7.1.2 Recognition of Indigenous Peoples

7.1.2.1 Acknowledgement of Customary Resource Rights

Existing laws on natural resource management have *to include provisions on the recognition of customary rights to land, and in particular the settlement of claims by obtaining the consent of prior or existing settlers*. As illustrated in the Sabah Land Ordinance, however, the interpretation of rightful occupation does not necessarily coincide with indigenous peoples' concept and customary law on land ownership.

This also implies the *recognition of collective customary resource rights* for indigenous peoples to preserve collective identity. *Collective customary resource rights would include a community's access to, and control over, lands and resources, and also ensure participation in, and control over, decision-making*. The study in Bangladesh, in recommending acknowledgement of customary resource rights, noted that this provision could be far more equitable to indigenous communities—and far more likely to result in successful promotion of state-indigenous forestry—than the over-centralized and bureaucratized system currently practiced by the Forest Department.

7.1.2.2 Recognition of Traditional Administration

In Cambodia, where *traditional authority is recognized in land claims*, measures should be taken to ensure they are implemented. In other countries, like Sabah, Malaysia and Bangladesh, even though this is not provided for in the law, it has been conventional practice to involve traditional headmen in validating land claims. Newer village administrative institutions, like the Commune Councils in Cambodia and the JKKK in Malaysia, should not replace the traditional authority. In fact, efforts to *assist traditional authorities such as keeping ethnographic records and resource maps* should be provided by the state. Traditional authorities can also be given *training to help resolve natural resource conflicts*.

7.1.2.3 Revitalisation of Indigenous Resource Management System

Natural resources are viewed by some indigenous communities as individual property rather than collective resources, creating competition that leads to unsustainable resource utilization. The challenge of re-establishing communal responsibility, and to revitalize indigenous resource management systems so that resources can be utilised in a sustainable manner for the wellbeing of the community, first need to be realized. Moreover, *efforts towards this end by the communities themselves need to be supported by donors, governments and NGOs. Recognition and revitalisation of traditional governance and administrative systems, and indigenous development concepts will go hand-in-hand with these efforts*. In many communities, and at the regional level through regional organisation such as the Asia Indigenous Peoples Pact Foundation, ongoing community reflections and exchanges to revitalise indigenous resource management and an indigenous development concept have already started.

7.1.2.4 Harnessing Indigenous Natural Resource Management

If poverty reduction is to be effective, indigenous peoples' customary use of natural resources in their territories needs to be harnessed along with conservation strategies. The challenge is to *use a combination of effective joint management strategies and recognition of the rights of communities over their resources*. Strengthening indigenous management systems is also the best way to reduce tension between state and customary systems, and to create synergy.

A management plan that outlines benefits and responsibilities for both government and indigenous peoples will help ensure indigenous culture is protected, sustainable incomes from

the natural resources is assured, and wildlife and biodiversity is conserved. *Collaborative management efforts in protected areas* need to be supported and appropriate legislation amended to ensure participation is legally recognized within collaborative management structures.

Indigenous peoples' detailed knowledge can be used in community mapping to identify important cultural sites, terrestrial habitats and place names in their traditional territories, and so on. Traditional resource management systems and the traditional legal systems of indigenous peoples can also be integrated with other resource management systems. And in remote areas, traditional legal systems may continue to be used to resolve local conflicts. Active engagement with communities themselves in these efforts needs to be taken.

7.1.3 Participation of Indigenous Peoples in Legal and Policy Formulation

Participation of indigenous peoples in legal and policy formulation may already be accepted practice, and is often mentioned by policy makers themselves, but perceptions on the process may differ. *Effective participation implies not only accepting opinions of indigenous peoples, but also involving them in decision-making throughout the whole process of legal and policy formulation. This also implies empowerment of indigenous organizations and communities.*

7.1.4 Provisions and Mechanism for Obtaining Consent

Free, prior and informed consent (FPIC) was quoted by all of the studies as a prerequisite for sustainable and acceptable natural resource management. *As such, legal and policy provisions for FPIC need to be ensured, and the mechanism for obtaining such consent needs to be developed.* At the international level, guidelines and principles for FPIC already exist: these can be used to develop such provisions and mechanism.

7.1.5 Removing Discriminatory Attitudes

Discrimination against indigenous peoples is noted in all of the studies. Recommendations to eliminate discrimination include acknowledging indigenous peoples' contributions to the country's political, social, economic and cultural integrity, as well as its development process. This includes acknowledgment in the official versions of the national histories and in other national discourses and public information systems; providing exposure

to indigenous culture, history, life style, etc, especially for government functionaries with major responsibilities for indigenous issues; and to use state-sponsored media and encourage private media to help dispel these attitudes.

7.1.6 Promoting Gender and Equity in Natural Resource Management

As pointed out earlier, there is a need to acknowledge the specific needs, perspectives, and roles of women in natural resource management. Women's active participation in decision-making, and the equitable sharing of benefits between men and women is crucial to ensure the long term sustainability of natural resource management.

The recommendations elaborated in the Bangladesh report are also relevant for the other countries. Bringing about gender equity in natural resource management requires committed support from all actors in all countries—including political, social and community leaders, and local and international NGOs. Due to longstanding gender-insensitive practices ingrained in customary beliefs, religious and social conservatism, etc, this is a matter that requires consistent and urgent attention. Policies that are generally aimed at addressing discrimination faced by non-indigenous women may not be appropriate: it is important to ensure that laws and policies are relevant to preventing discrimination against indigenous women. Other important interventions include addressing the human rights issues of indigenous women who are under-represented in political bodies and local government units; the lack of funds available to mobilize women; and the need to raise awareness about the negatively discriminatory inheritance laws.

7.1.7 Enhancing Capacities of Indigenous Peoples, Traditional Leaders , NGOs

There is a crucial need to support indigenous initiatives—such as those aimed at organizing communities or implementing leader training programmes—in which indigenous organizations and traditional leaders engage in their own capacity building exercises. However, where NGOs are willing to assist in building the capacity of indigenous communities, there is a need to provide resources and support in a manner that is sensitive to the communities. Capacity enhancement aimed at building community organizations should also recognise that for such an initiative to be effective it requires much effort, resources and long-term partnership.

7.1.8 Research and Information Dissemination

There are also many institutions that involve government, local and international NGOs and UN agencies in developing tools and models for participatory action on natural resource management. There are several good examples in Cambodia of research conducted with indigenous communities that can be used as models elsewhere in the region.

The challenge of inaccessibility and remoteness of some indigenous communities needs to be taken into account in the dissemination of information. A further challenge is producing information that is easily understood. In Cambodia, there are many indigenous peoples who have not had access to formal education, thus using creative and adaptable ways to convey information is important. Use of popular media such as radio and audio-visuals are good examples.

7.1.9 Advocacy at National and International Level

Where serious conflicts over land and natural resource management exist, the studies recommend the development of effective strategies and tools for advocacy at both the national and international levels.

National level advocacy programmes would focus on the implementation of agreements (the CHT Accord in the case of Bangladesh), constitutional provisions, as well as recommendations made in relevant strategy documents, such as the Poverty Reduction Strategy Papers (PRSPs). Strengthening the capacity of both informal institutions (traditional leaders and other community level organizations) and formal institutions on customary laws and practices would enhance advocacy goals.

International advocacy should aim to make effective use of the international inter-governmental processes, including the mechanisms of the UN human rights treaty bodies, the Human Rights Council, and the offices of Special UN Rapporteurs. In particular, these should refer to international customary laws and international treaties ratified by governments.

Strengthening existing national, regional and international networks, while creating further networks, would further enhance progress in this area. Given the situation of extreme political, social and economic disadvantage suffered by most indigenous peoples, this needs to be an integral strategy perspective for quite some time in the foreseeable future.

7.2 Specific Recommendations

Some specific recommendations made in each country studies are:

a. Inter-Ministerial Committee (Malaysia)

In Malaysia, a national consultation process recommended the formation of an Inter-Ministerial Committee: a body with sufficient authority at the state and national level to review the various policies and laws on natural resource management and indigenous peoples, with the view to streamline such laws and policies to protect indigenous peoples' rights. Such a Committee would also be expected to identify laws and policies that should be amended, and the obstacles to the implementation of such laws and policies.

b. Policy for Highland Peoples' Development (Cambodia)

In Cambodia, the adoption of the Policy for Highland Peoples' Development was specifically mentioned.

c. Implementation of the CHT Accord of 1997 (Bangladesh)

In Bangladesh the CHT Regional Council Act 1998 obliges the government to consult the CHT Regional Council prior to the passage of any new laws on the CHT region.

d. Democratization and Decentralization (Thailand)

Democratization and decentralization, with emphasis on indigenous peoples' participation, are identified as key processes in Thailand. The Thailand study notes that a lack of indigenous participation in natural resource management in the country has stymied most of the policies and laws before they were implemented. Involvement of indigenous peoples as rights holders would therefore ensure a sense of ownership and successful implementation of laws and policies.

e. Land Demarcation (Cambodia)

The lands of indigenous peoples, as a vital part of their lives and cultures, must be clearly demarcated. Some specific issues on the process in Cambodia are noted in the box below.

Cambodia: Considerations on Land Demarcation

There are some serious issues in the policy process and sequencing that need to be considered.

1. Definition, identification and agreement on what constitutes state public property: this requires a set of subsidiary processes to clarify what can sit within this overall category.
2. Definition and identification of lands of indigenous communities.
3. Definition and identification of core forest areas that should be retained under a protected area system and areas of high environmental service function (such as watersheds).
4. Definition and identification of those areas of forest that could be managed under some form of production. Actual institutional arrangements would need to be determined, but may involve groups such as communities or communes, small-scale “industrial” forests, concessions, direct management by the public sector, etc.
5. Definition and identification of those areas that are available for agriculture. Actual institutional arrangements would need to be determined, but may involve family farms, small scale “industrial” farms, large-scale concession agriculture, etc.