

**8<sup>th</sup> Session on the Expert Mechanism on the Rights of Indigenous People (EMRIP)**

**20-24 July 2015, Geneva**

**Submission to the Study of the Expert Mechanism on the Rights of Indigenous Peoples - Promotion and Protection of the rights of Indigenous Peoples with respect to their Cultural Heritage**

**Submitted by the Asia Indigenous Peoples Pact (AIPP)  
February 2015**

## Introduction

### Cultural Heritage – definition in International Human Rights Instruments

UNESCO preamble of the Universal Declaration on Cultural Diversity stated that *culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together [emphasis added], value systems, traditions*

UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage Article 2.1 defines states that *the intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.* And Article 2.2 of the same convention further asserts that *(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.*<sup>1</sup>

*United Nations Declaration on the Rights of the Indigenous People Article 3 states that Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. The Article 8.1 states that Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. Article 8.2a,b, c, d, e specifically outlined the State's responsibility regarding effective provisions/mechanisms to prevent the infringement of the rights of indigenous peoples through State's actions*<sup>2</sup>.

The Expert Mechanism has provided the following non-exhaustive definition of indigenous culture as *Indigenous peoples' cultures include tangible and intangible manifestations of their ways of life, achievements and creativity, are an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources. Indigenous cultures is a holistic concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games,*

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<sup>1</sup> <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00006>

<sup>2</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

*behavior, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovisions, laws, and activities such as hunting, fishing, trapping and gathering*<sup>3</sup>

## **Cultural Heritage from the perspective of Indigenous Peoples in Asia**

Indigenous peoples in Asia regard cultural heritage in a holistic manner that embodies their relationship to each other and with nature. These are manifested in their traditional knowledge, livelihoods, cultural practices, languages, and socio-political institutions among others that make them distinct from the majority. It also characterizes diversity in their ways of life as well as in their identity and spirituality. Further, the Cultural Heritage of Indigenous People is both tangible and intangible. While the loss of tangible heritage is evidentially visible and immediate, the loss of intangible cultural heritage leads to a slow and deliberate loss of their collective identity, spirituality and undermines their collective wellbeing. Further, the loss of the tangible cultural heritage of indigenous peoples also weakens the continuous practice of their intangible cultural practices. For example, the destruction of their sacred grounds will eventually lead to the loss of their spiritual connection and practices in the use and value of such sacred grounds.

### **Continuing Threats to the Cultural Heritage of indigenous Peoples in Asia**

#### **a) Destruction of the lands, territories and resources of Indigenous Peoples**

The protection of the lands, territories and resources of indigenous peoples is central to the preservation and enjoyment of their cultural heritage, wellbeing and development. These provide the material base of their distinct cultural practices, spirituality and identity. Thus, any measure and action that adversely affects their rights to lands, territories and resources consequently undermines and weakens their cultural heritage as indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples state that “(Article 26.3 States *shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned* and UNDRIP Article 29.1 stating that *indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.*

In the Mekong river countries, i.e., Thailand, Lao, Cambodia, Viet Nam and Myanmar, the rights of the indigenous peoples are not being considered while carrying out the developmental activities, e.g., construction of more than 10 large dams in Mekong River. This is not only the issue of environmental degradation, but also the displacement of the indigenous peoples<sup>4</sup> whose lives are closely intertwined with the Mekong River and its

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<sup>3</sup> A/HRC/EMRIP/2012/3, paras 51-52. See also Human Rights Committee, general comment No.23 (1993) on article 27 (the rights of minorities), para 7; and Committee on Economic, Social and Cultural Rights, general comment No.21 (2009) on the right to culture, para 10.

<sup>4</sup> the indigenous world 2009, page 348

watershed, which is an international river. The process to secure the Free, prior and informed consent (FPIC) of indigenous peoples (national minorities, ethnic minorities and hill tribes as called by their governments) has not been implemented and a number have been forcibly displaced from their lands. This disastrous situation will have massive adverse impacts on both the intangible and tangible cultural heritage of the affected indigenous peoples including their traditional livelihoods, food systems and spiritual and cultural practices.

Similarly in Nepal, under the context of developing new infrastructure, a mega business complex is being built on the land holding sacred value for the indigenous Pradhan Newars<sup>5</sup>. Construction of this 76,000 sq. ft. building in a communal land of the Pradhans has already destroyed the holy pond where festivals, death rites used to be held. Likewise, the cultural tradition of nearby Newar Buddhist monastery using the lotus from the pond has discontinued. This seriously affected the Pradhans whose way of life is strongly linked with their sacred sites.

In the Philippines, mining has been a very big concern for more than a million of indigenous communities in the Philippine. There are more than one hundred mining applications in indigenous territories across the country with potential impacts of massive displacements, destructions of cultural heritage sites, livelihoods, among others. The Congressional Report on Mining and Indigenous Peoples of the National Cultural Communities Committee of the 15th Congress reports that the "liberalization of the mining industry led to the increased displacement of indigenous communities and various human rights violations against indigenous peoples. This includes the manipulation of the requirement for Free Prior and Informed Consent (FPIC) in favor of mining companies. Resistance from indigenous peoples against mining and other destructive projects was countered with militarization, harassment and threats." Further to this, a number of mining operations led to the destruction of sacred sites of indigenous communities. A case in point is the desecration of Mt. Canatuan, sacred mountain for the Subanons in Siocon, Zamboanga del Norte, by the mining operations of the TVI Resources Development Philippines, Inc. (TVIRD). In May 17, 2011, TVIRD publicly admitted its fault and performed the mandatory cleansing ritual for bypassing the traditional governance system of the community and for desecrating the sacred Mt. Canatuan.

On a positive note, the 2012 FPIC Guidelines of the National Commission on Indigenous Peoples (NCIP) in the Philippines mentions sacred grounds, burial sites and cultural and heritage sites as areas excluded for any activity except for exclusive purposes where they are identified. However, its implementation remains a huge challenge due to the manipulation of FPIC by interested parties. The proposed mining bill currently pending in the Congress of the Philippines also mentions heritage and cultural sites as no go zones for mining.

**b) Conservation measures that restricts/prohibits traditional livelihoods and**

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<sup>5</sup> LAHURNIP and NCARD joint communication dated 9 February 2015 to Special Rapporteur on the rights of indigenous peoples, and Special Rapporteur on the cultural rights

## **cultural practices and violates the human rights of Indigenous Peoples**

In Thailand, the Government's decision to extend the existing national parks has resulted in conflict with the interest of indigenous communities, especially the Karen people of Thailand. For more than 200 years, the Karen people have been living in the mountains, now declared as National Parks by the Government. Their indigenous ways of life are being endangered due to the annexation of their lands as national parks coupled with the prohibition of their practice of shifting cultivation/rotational agriculture. With the sustained efforts of the hill tribes to promote shifting cultivation as integral to their identity, culture, and survival, the Department of Culture has adopted in August 2010 a cabinet resolution on the policy for the revival of Karen livelihood. Further to this, in 2014 the government issued an administrative order recognizing the practice of shifting cultivation/rotational agriculture as "Cultural Heritage" of the Karen people that needs recognition and protection. This however did not deter the national parks authorities to evict the Karen people practicing shifting cultivation exemplified by the eviction of the Karen community from the Kaeng Krachan national park in 2011-2012. The Government bodies under the Ministry of Natural Resources and Environment are alleged to have also been involved in the disappearance of an active Karen Member who was actively advocating for the indigenous land rights in the Kaeng Krachan National Park (KKNP)<sup>6</sup>. AIPP has also raised its concern on the murder in 2011 of Mr. Tatkamol Ob-om, a Karen Human Rights defender who actively campaigned for the right of the Karen people to live in Keang Krachan National Park and also filed a petition on this to the National Human Rights Commission of Thailand prior to his death.

The continuous<sup>7</sup> pattern of the Government's initiatives to displace the Karen community from their ancestral land within the 'National Park' territory will result in loss of their traditional knowledge of farming, loss of sacred places loss of religious practices, and loss of linguistics through the displaced younger generations in an attempt to homogenize themselves in the non-Karen settlements of Thailand. The scientific studies carried out by different technical agencies, i.e., United Nations Food and Agriculture Organization (UN-FAO) has reiterated from its initial position that indigenous shifting cultivation/ rotational farming actually protects and conserves the bio-diversity of the forest<sup>8</sup>.

The table below provides an overview of the legal and policy status of Shifting Cultivation in Asia<sup>9</sup>

<b>Country</b>	<b>Status</b>
Lao PDR	Prohibited
Thailand	Prohibited

<sup>6</sup> AIPP communication dated 21 April 2014 to Madame Gabriella Habtom, Secretary, UN Convention on the Elimination of Racial Discrimination, Human Rights Treaty Division.

<sup>7</sup> Mae La Kham village – a Karen settlement – is also being annexed to Ob Khan national park

<sup>8</sup> <http://www.aippnet.org/index.php/environment/1453-shifting-cultivation-the-cultural-heritage-of-indigenous-communities-and-the-source-of-livelihoods-and-food-security-for-many-indigenous-peoples-in-asia>

<sup>9</sup> AIPP, 2010. REDD+ Implementation and the Concerns of Indigenous Peoples. P.3

Vietnam	Prohibited
Bangladesh	Regulatory law and policy for phasing out
Indonesia	Regulatory law and policy for phasing out
India	Regulatory law and policy for phasing out; banned in some states
Malaysia	Regulatory law and policy for phasing out
Myanmar	Policy for phasing out shifting cultivation
Bhutan	Policy for phasing out shifting cultivation
Nepal	Policy for phasing out shifting cultivation

### **c) Prohibition of indigenous food systems as cultural heritage**

The indigenous peoples of South East and South Asian countries have diverse food systems as integral part of their cultural heritage. Their indigenous notions and beliefs about food and its preparation, consumption, etc. are related to each of their ceremonies or rituals, their natural environment and to their collective identity.

In Nepal, individuals from Tamang indigenous people are continuously being pressed with legal charges against cow slaughtering. Cow, though a revered animal for the Hindus living in Nepal, is not only the food for the Tamang and other indigenous peoples, but also used in their various religious and cultural activities such as an offering to their sacred deity. Few other indigenous communities along with Tamang people make an offering of beef meat to their sacred deity. Nepal was declared a secular country in 2007 and its interim constitution upholds this declaration, yet, the indigenous peoples whose food habit and sacred rituals demand the sacrifice of cow, the law enforcement officials in Nepal continuously prosecute them.

### **d) Impact of Heritage Sites Inscription and Commercial tourism on indigenous peoples' culture**

For tourism purposes, countries have been found to have been promoting cultural diversity, especially the cultural practices of indigenous peoples, however, the same States have been found to have been not upholding their obligations to protect the diversity that they are actively promoting, and address the impact that such promotion has had on its indigenous population.

The Ifugao rice terraces of the Cordilleras in the Philippines with a rich heritage history of being older than 2000 years are enlisted in the World Heritage Site. The Cordillera peoples regard these rice terraces *as a way of life and a source of livelihood and the people see themselves as a part of the ecosystem.....* And that *“the rice terraces don't stand alone, they are part of an ecosystem which has different land uses in the whole territory<sup>10</sup>”* However, the promotion of these terraces as a commercial tourist destination by the government predating the enlistment as World Heritage Site is also one of the reasons endangering the longevity of these terraces. Despite of the conservation-related monitoring missions and implementation for recommendations as part of World Heritage

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<sup>10</sup> [http://www.iwgia.org/publications/search-pubs?publication\\_id=610](http://www.iwgia.org/publications/search-pubs?publication_id=610)

Site, these terraces are continuously degrading. Additionally, there is conflict of perspectives on how these terraces should be managed by the Ifugao peoples and the Department of Natural Environment and Resources, which has imposed restrictions on the visits of villagers to the field and the use of watershed by the owners without obtaining the permit. This is clearly against the respect and recognition of the sustainable resource management practices of indigenous peoples.

In India, the inscription of Western Ghats as a Natural World Heritage Site in 2012 was a contentious issue among the adivasi (scheduled tribes) as it was implemented without their Free, Prior and Informed Consent and recognition of their rights to their ancestral lands under national and international law. Further, the nomination dossier for this heritage site failed to mention the 2006 Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act which acknowledges historical injustices to forest-dwelling Adivasi and recognizes individual, collective and community rights to ancestral lands in forests.

The inscription as heritage sites of the aforementioned areas has its advantage which includes the increased livelihood for local economies due to tourism but also has to be looked at in terms of the adverse impacts it has on the community and their way of life such as the commercialization of culture among others.

#### **e) Lack of access to a culturally appropriate education**

UNESCO's *Atlas of the World's Languages in Danger* 2010 has stated that out of 6000 endangered languages in the world, 2165 languages are from Asian region. In Bangladesh, Cambodia, India, Japan, Lao, Nepal, Malaysia, Thailand, Philippines, and Indonesia, these endangered or already extinct languages belong to the indigenous communities. The loss of these languages of indigenous peoples greatly contributes to the loss of identity and the loss of their rich culture, traditions and traditional knowledge which have been passed on by their ancestors and should be transmitted for the continuity of their ways of life as peoples.

Access to formal education has been very difficult for many indigenous communities especially those living in remote areas. For those with opportunity to attend such, a high dropout rate of many indigenous children taking formal education classes was noted mainly due to the lack of a mother tongue based education. It is thereby urgent to ensure that education of indigenous peoples include their mother tongue as the form of bilingual education. To be noted in this aspect, is the adoption of the Department of Education (DepEd) in the Philippines of the National Indigenous People's Education Policy Framework<sup>11</sup> in 2013. This framework provides for the hiring and deployment of qualified teachers in far flung indigenous communities and the harmonization and alignment of the teacher education and development policies of DepEd to support affirmative action to respond to the learning needs of indigenous school-age children.

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<sup>11</sup> See related department orders for the implementation of the framework:  
[http://www.deped.gov.ph/orders?f%5B0%5D=field\\_classification%3A548](http://www.deped.gov.ph/orders?f%5B0%5D=field_classification%3A548)

In Thailand, the Shadow report of Coalition on Racial Discrimination Watch submitted to CERD (Committee on the Elimination of Racial Discrimination) in 2012 pointed out that in the Thai context, the implementation of National Language Policy of 2010 should be ensured to guarantee effective mother tongue based education for indigenous Thai children. Their recommendation included a) adoption of an affirmative recruitment policy for local teachers who also speak the language of the communities fluently, and b) formulation and creation of a clear national language policy with clear budgetary allocation within the Ministry of Education to enable the implementation of the policy and Mother Tongue Based Multilingual Education (MTBMLE)<sup>12</sup>.

### **Recommendations:**

The continuing violations and serious threats to the cultural heritage of indigenous peoples warrant a more concerted action by states to comply with their international human rights obligations relating to indigenous peoples. These include their obligations under the International Convention on Economic, Social and Cultural Rights (ICESCR) the International Convention for the Elimination of Racial Discrimination (ICERD) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The rhetoric of states to respect, promote and protect cultural diversity shall be underpinned by the full recognition of the collective rights of indigenous peoples including their tangible and intangible cultural heritage. In this context, the Asia Indigenous Peoples Pact (AIPP) recommends the following to immediate action by states

- a) Review and amend/repeal discriminatory laws and policies against the indigenous peoples' distinct identities, cultures, traditions, languages and sustainable livelihoods such as the practice of shifting cultivation/ rotational agriculture as part of their cultural heritage;
- b) Ensure the implementation of the free prior and informed consent of indigenous peoples on plans, projects, programmes that affects their lands, territories, resources, including conservation measures such as national parks and conservation areas in indigenous territories; and the use of tangible and intangible cultural heritage of indigenous peoples;
- c) Legally recognize and protect the right of indigenous peoples to their lands, territories and resources through appropriate measures and policies including declaring cultural heritage sites, sacred sites and other areas of spiritual significance to indigenous peoples as **no go zones** for extractive industries, aggressive tourism projects, and other destructive projects.
- d) Provide measures for the revitalization and transmission of the indigenous knowledge of indigenous peoples in formal and informal education
- e) Promote and protect the indigenous peoples' languages through effective mother tongue education for indigenous children.
- f) Establishment of a mechanism to assess and monitor the extent to which World Heritage nominations and the evolving governance systems of World Heritage sites are in compliance with international instruments such as the UN Declaration

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<sup>12</sup> Shadow Report to CERD, Coalition on Racial Discrimination Watch, 2012

on the Rights of Indigenous Peoples or ILO Convention No. 169 (Indigenous and Tribal Peoples Convention, 1989)<sup>13</sup>

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<sup>13</sup> IWGIA, International Expert Workshop on the World Heritage Convention and Indigenous Peoples (2012), p. 33.