INDONESIA
Indigenous Peoples in ASEAN

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the year, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/nets and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Through our Indigenous Women (IW) programme, AIPP aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision
Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission
AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

AIPP Programmes
Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:
• Human Rights Campaign and Policy Advocacy
• Regional Capacity Building
• Environment
• Indigenous Women
• Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).

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A. Introduction

“If the state does not recognize us, we will not recognize the state.”

Following the collapse of the authoritarian Suharto regime in 1999, this refrain demanding recognition was heard from many indigenous peoples in Indonesia. In a new atmosphere of democracy and openness, the first Indigenous Peoples’ Congress was formed. From this, the first indigenous peoples organization, the Alliance of Indigenous Peoples of the Archipelago (Aliansi Masyarakat Adat Nusantara) was established. The organization’s acronym, AMAN, is also the Indonesian word that means “to be safe.”

With the establishment of AMAN, the indigenous peoples movement gained strength to amplify the call for recognition and protection. Policy advocacy was carried out side by side with national and international campaigns. In the second decade of 2000s, a new advocacy arena was found: the court. The establishment of the Indonesian Constitutional Court provides opportunities to push for revision of unconstitutional laws that cause harm to indigenous peoples.

Throughout this period, indigenous peoples have used a complex but complementary mix of cultural, political, and legal advocacy strategies. Changes in government and new administrations have created both opportunities and challenges. Overall, there has been progress in some aspects of this movement, but many challenges remain unresolved. These remaining challenges—the existing legal and empirical problems faced by indigenous peoples in Indonesia—is the main subject of this report. This report will provide a profile of indigenous peoples in Indonesia, their current legal status, and efforts to change and strengthen that status in accordance with international human rights standards. This will be accompanied by relevant information including laws, policies, and development programs that directly apply to, or impact, indigenous peoples. Finally, the conclusion highlights key challenges, and provides information on the ongoing work to tackle and resolve them.

B. Profiles of indigenous peoples

It is likely that Indonesia contains the most indigenous peoples in a single country. The following subsection provides an overview on how indigenous peoples are identified, the population and geographical distribution, socio-economic-cultural characteristics, as well as politico-judicial institutions. This section also includes examples of indigenous natural resource management.

B.1 Who are indigenous peoples?

Debates on how to identify indigenous peoples in Indonesia have persisted since colonial times. Many believe that all Indonesians are indigenous. Others, however, disagree and argue that the concept of indigenous peoples emphasizes the distinctiveness of certain
communities from dominant-majority groups, but that this distinctiveness is not necessarily an expression of indigeneity. Those who believe that all Indonesians are indigenous peoples, or indigenous to Indonesia, are inspired by the colonial concept of Natives (pribumi, bumi putera). Applying dualism in social, political and legal policy, the Dutch colonial government strictly divided the population of Netherlands East Indiës into three groups: Europeans, Natives (Indonesians) and Foreign Orientals (Chinese, Arabic and other Asians).

This policy used racial differences in identifying these groups.

Parallel to this, a concept called rechtsgemeenschappen or masyarakat hukum adat was also developed in colonial times that recognized certain groups of Indonesians as dissimilar to others. These groups derive their distinctiveness from having discrete representative authority and communal property (Holleman, 1981:43). The rechtsgemeenschappen covers different kinds of social ties, ranging from kinship to territorial ties, then to mixture of kinship and territorial and to functional basis of social organization. In the 19th century, van Vollenhoven studied the distribution of these groups and produced the map of 19 customary law circles (adat rechtskringen) in the Netherlands East Indiës. Within each circle, several masyarakat hukum adat could be found. The term masyarakat hukum adat was then adopted into legislation.

In the 1990s, Indonesia’s civil society groups agreed on the term masyarakat adat as the translation of the international term “indigenous peoples” used in ILO Convention 1989 (No. 169). Masyarakat adat are those with ancestral origin in certain geographic region with particular systems of values, ideology, economy, politics, culture, society and territories. Moniaga (2007: 281-2) explains that the reason for choosing the term masyarakat adat was to adopt a term already commonly used by indigenous peoples, and to use a more neutral term than the one derogatorily used by Suharto’s “New Order” authoritarian government.

Since its inception in 1999, AMAN has officially used the term, masyarakat adat. In its statute, masyarakat adat is defined as a group of people who live in accordance to their ancestral origin in a particular geographical area, have a system of social values, a unique culture, exercise sovereignty over their territories and natural resources, and regulate and manage a sustainable lifestyle through customary law.

The term masyarakat adat corresponds with the concept of indigenous peoples outlined in ILO Convention No. 169. The Convention similarly promotes socio-cultural, political uniqueness, and strong historical claim as common characteristics. This is clearly different with the term Native propagated by the Dutch colonial government.

In addition to the terms masyarakat hukum adat and masyarakat adat, another term and concept for indigenous peoples is komunitas adat terpencil (KAT). The Ministry of Social Affairs uses this term in their policy and program for the empowerment of indigenous peoples in remote areas. They define KAT as a group of people bound by geographical unity and shared economic and/or socio-cultural

1 For further reading see Fasseur (2007:64) and Wignjosebroto (2014).
2 This concept was firstly developed by Dutch legal professor, Cornelis van Vollenhoven. It was then translated by Indonesian legal scholars as masyarakat hukum adat and translated into English by Holleman as jural community.
3 In their official translation of the Convention No. 169, ILO uses the term masyarakat hukum adat for both tribal and indigenous peoples.
4 Art. 11 para 2 of AMAN Statue.
systems. More importantly, the KAT are distinct because they are poor, living in remote areas and/or socio-economically vulnerable. The KAT empowerment program originated from Suharto’s village development policy, where tribes living in remote areas were to be integrated into ‘modern’ socio-economic systems designed by the state, and imposed through the implementation of ‘traditional’ village structures.

Different historical roots and political considerations have led to the emergence of different terms for indigenous peoples in Indonesia. Whether they are considered masyarakat hukum adat, masyarakat adat or KAT, one aspect is clear: indigenous peoples of the archipelago are not solely natives, they are also closer to socio-culturally, politically, and legally autonomous societies.

B.2 Population and geographical location

Data describing indigenous peoples and their geographical distribution in Indonesia continues to be debated. This difference of opinion is underpinned by the lack of a national government census on indigenous peoples due to the current government’s assumption that all Indonesians are indigenous. Thus, since the map of adatrechtskringen by van Vollenhoven in the 19th century, there has not been any similar effort carried out by Indonesia’s government. More importantly, the government, particularly during Suharto’s administration, was distrustful of the indigenous peoples’ movement, and saw it as a threat to national unity.

Given this, the only data on indigenous peoples is collected by AMAN from their membership, and from the Ministry of Social Affairs’ programs for KAT. According to AMAN, their membership comprises 2,244 communities that self-identify as indigenous peoples. The highest number of communities is in Kalimantan and Sulawesi, with the lowest concentration in Java (see figure1). KAT data is far more limited, as reported by Ministry of Social Affairs, where only 229,497 families are identified, living in 2,037 villages in 22 of Indonesia’s 34 provinces.

B.3 Economic, social and cultural systems

Indigenous peoples have structured diverse economic systems. Some indigenous peoples, such as the Punans in Kalimantan and some groups in Papua, are hunters and gatherers. Others practice rotational agriculture, and still others practice sedentary agriculture such as agroforestry, dry land farms, or wetland paddy fields. Many indigenous peoples have also created marine-based economies. As an archipelagic state, Indonesia’s coastal areas are home to diverse groups including the famed Orang Bajo sea-voyagers (Dick-Reads, 2005; Kemkens, 2009).

The economic systems of indigenous peoples range from subsistence to those that resemble more closely the common features of a modern economy. The connections of indigenous communities from local to international markets have been in place since pre-colonial times (Peluso, 1983). Some groups, such as those in Papua, have interacted through a barter economy while many other groups have connected and utilized various dimensions of the evolving national and global cash economy. However, as the modern capitalist system became robust and dominant, the options for negotiation have increasingly narrowed. Today, many indigenous communities are trapped in transitional economies that increasingly render them victims of the modern market economy. With the growing presence of extractive
industries, industrial plantations, and large-scale exploitative systems supported by government policies, indigenous economies struggle not only to negotiate mixed economies, but also to protect their overall wellbeing.

The most fundamental changes in indigenous communities occurred during the New Order regime. In particular, the policy—on village administration and forced relocation—was primarily responsible for the destruction of the socio-cultural systems of indigenous peoples. Law 5/1979 on village government resulted in the abolition, then destruction, of many traditional villages, which were integrated, often in fragments, into a state-designated village structure. Many customary institutions disappeared under this onslaught, resulting in fractured community social structures. Parallel to this, through the Unity of the Nations policy and brutally efficient development programs, the New Order forced relocation of many indigenous peoples. The nomads or those who lived in remote areas were ‘settled’ in sedentary villages—often far from their ancestral lands—and forced to build new social structures in new villages.

While the Constitution recognizes the cultural identity of indigenous peoples, in practice many indigenous groups do not have this right. The government recognizes six religions only: Islam, Catholicism, Christian, Hindu, Buddha and Confucianism. Accordingly, those who practice traditional beliefs are not recognized by policy or law. For instance, marriages officiated according to traditional beliefs cannot be officially registered. As a result, children from these marriages cannot obtain birth certificates and are deprived access to school. In the past the government had forced indigenous peoples to convert to one of the six religions in order to obtain identity cards (ID). Indigenous peoples who refused were not issued identity cards, leaving these individuals unable to access government programs and basic services, including education and healthcare. Recently, the government has initiated changes to this discriminative policy, allowing a blank space in the religious information category of the Indonesian ID card. The extent to which this new policy can assist indigenous peoples for full recognition as citizens remains subject to further investigation.

B. 4 Political, governance and justice system

Indigenous political systems vary widely, from “big man” systems\(^5\) to more structured and stratified chieftaincies. In addition to indigenous peoples, kingdoms and sultanates have also survived in several regions. Debates continue as to whether these kingdoms can be considered indigenous peoples. Broadly, these kingdoms were pre-modern states that, to some extent, made political and economic contracts with the colonial government. Some of them retained or gained autonomy due to these contracts, but many, in fact, held indigenous peoples as the lowest rung of their societies. Given this, these kingdoms and sultanates are often perceived as unable to be considered, in their entirety, as indigenous peoples.

The 1945 Indonesian Constitution calls the governing structures, comprised of unique, locally named villages *volksgemeenschappen*, the lowest rung of traditional governments in colonial times. The colonial policy of indirect

rule left these entities largely autonomous. After independence, the national government attempted to integrate these organizations into the modern-state through the creation of village organizations. As outlined previously, the worst impact took place during Suharto’s administration through Law 5/1979 on Village Government. The government ceased to recognize customary institutions and their leaders, and instead recognized only the villages that were administratively formed and registered by the government. As a result, customary institutions were mandatorily integrated into village governments, indigenous territories were fragmented over several areas, while some territories combined to create one village territory.

The resulting destruction of customary institutions and traditional villages also led to the abolition of local judicial systems. In colonial times, two types of customary courts were recognized. The first one was the native court (inheemsche rechtspraak, translated into Bahasa Indonesia as peradilan adat), which was established to handle cases involving native Indonesians based on customary laws, but operated under colonial government control. The other was the village court (dorpjustitie, translated into Bahasa Indonesia as peradilan desa), which in contrast, was more independent. These courts were recognized to settle disputes among indigenous peoples (Hadikusuma in Sudantra, et al., 2013). In order to unify these systems, the national government abolished the native courts through Law 1/1951 and reinforced this with bylaws on judiciary power in 1964 and 1970. To some Indonesians, these Laws ended the existence of all peradilan adat, including the indigenous judiciary. A semantic problem exists here. As a result of Indonesian translation of inheemsche rechtspraak as peradilan adat, many believe that this abolition also includes indigenous judiciary systems that, according to colonial law, are more closely related to village courts or peradilan desa. Because of this, attempts to recognize peradilan adat as indigenous judiciaries have always failed, including its inclusion in the draft Indigenous Peoples’ Bill. The government refuses to recognize peradilan adat since it’s abolition in 1951. Interestingly, this strengthens the concept of village courts in the more recent Law 6/2014 on villages.

B. 5 Natural resource management

Indigenous peoples live in diverse ecological landscapes: from paddy fields or sawah to tropical forests, from savannahs to coastal areas and the sea. Those who live in Nusa Tenggara in eastern Indonesia, for example, are pastoralists. In Kalimantan and Papua some indigenous groups are hunter gatherers in tropical forests. In many other regions, indigenous peoples are paddy or sawah farmers and also smallholders planting rubber, coffee and other crops as part of their agroforestry practices. Some also live in small islands and coastal areas practicing traditional fishing. Some even engage in traditional mining.

For each of these many existing forms of natural resource management, indigenous peoples have and continue to face different forms of state intervention. Indonesia has laws on coastal and small islands management, forestry, mining, water management, plantations, to name a few. These laws generally legalize commercial use and exploitation of natural resources, and recognize—and fail to recognize—the rights of indigenous peoples in varying degrees. This is also paralleled with a conservation
law that shares a commonality in restricting the rights and access of indigenous peoples to conservation areas.

In general, indigenous peoples are in a weak legal position to protect their traditional systems of natural resource management. Recognition of the meager existing rights in existing laws cannot be fully implemented due to the broader absence of state recognition of their existence and claims to their territories. The basis of clarifying these issues is the recognition and protection of the legal status of indigenous peoples.

C. Legal status

Similar to many other legal systems, Indonesia primarily utilizes two types of legal status, recognizing its citizens as individuals or as legal entities. For decades, indigenous peoples had to conform to one or both in order to be recognized. However, indigenous peoples have strong communal attributes that generally make them ill-suited for categorization as individuals. Given their existence as autonomous, dynamic communities, classifying indigenous peoples as legal entities according to state law is also not particularly suitable. But the lack of legal option to recognize this uniqueness has forced indigenous peoples to identify themselves either as individuals or legal entities such as cooperatives and foundations, or as previously discussed, as villages.

In 2003, a significant change occurred. Ruling 24/2003 of Indonesia’s Constitutional Court recognized that the kesatuan masyarakat hukum adat (the Constitutional term used for indigenous peoples) are eligible petitioners and, thus, have legal standing in sessions of the Court. In line with this stipulation, the Constitutional Court accepted the petition of two indigenous peoples and their organization to review provisions in Forestry Law 41/1999. One of the provisions was an article that claimed customary forest (hutan adat) as part of state forests. This article legalized the land grabbing of indigenous territories located within state forests a territory that covers approximately 65% of Indonesia. Without the recognition of indigenous peoples, massive land appropriation has resulted in millions of indigenous peoples losing their territories. Those attempting to stand and protect their customary lands were often sentenced for illegally occupying state land. In light of this untenable situation unfolding for more than a decade, indigenous peoples petitioned the Constitutional Court in May 2012. They argued that the article of the Forestry Law that claims customary forest as part of state forest is unconstitutional. In Ruling 35/2012, the Court favored the indigenous peoples, affirming not only their legal personality, but also recognizing that this prior neglect in law was equivalent to applying a discriminative law.

Indigenous peoples now have discrete legal status as kesatuan masyarakat hukum adat, not only as an individual citizen. Ruling 35/2012 is a remarkable milestone for Indonesia’s indigenous peoples’ movement. Unfortunately, many laws need to be altered to comply with the Ruling. For now, in legal affairs at large, indigenous peoples continue to have to identify themselves mostly as individuals. For land titling, for example, they must accept individual titles. Regulation Number 5/1999 of the Ministry of Agrarian Affairs recognizes the communal land rights of indigenous peoples (known as hak ulayat). However, these rights cannot be expressed through collective land titles, and can only be registered as such in the land registration map. In addition to this, officials continue to refuse to apply the Ministerial Regulation in
forest areas, due to their misapprehension that only forestry regulations can be implemented in forest areas. This makes Ministerial Regulation number 5/1999 less effective in supporting the recognition of communal land rights, since most indigenous territories are located in the 65% of designated forest area.

Apart from some implementation and interpretive policy restrictions, state laws do generally recognize indigenous peoples’ rights. The Constitution, for instance, recognizes the self-governance, protection of cultural identities, and protection of the freedom to develop the local cultures of indigenous peoples. Several laws, described below, also recognize the rights of indigenous peoples to natural resources, and their rights to affirmative action in education and employment. In many cases, however, many of these rights cannot be enjoyed communally, and are far easier to claim as individual rights of ordinary citizens.

Without a doubt, the state is disintegrating indigenous social structures when it advances the recognition of individual instead of communal rights. This has led to a growing demand by indigenous peoples to counteract these actions through a special law on the recognition and protection of indigenous peoples rights (the IP Bill). In the last five years, AMAN and partners have intensified legal advocacy for the bill. Through targeted advocacy, Parliament agreed to enact the IP Bill. Unfortunately, they were unable to fulfill this promise by the end of their term, which means advocacy for inclusion into the current national legislative program has to begin again with the new parliament.

The suspension of the IP Bill renders the legal status of indigenous peoples, as a discrete legal personality with communal rights, unclear.

Interestingly, at the same time, Indonesia’s government enacted the Village Law (Law 6/2014). This law acknowledges customary villages (desa adat) as a legal personality. Indigenous peoples may now legally use customary villages to represent their legal status, yet many refuse on the grounds that customary villages only represent select, rather than all, attributes of indigenous peoples. For instance, customary villages are more representative of indigenous communities with strong territorial ties than those with genealogical ties. Furthermore, the existing customary village provisions are only applicable on governance and, more minimally the judicial systems of indigenous societies.

D. Laws, policies and programs


Other regulations provide affirmative action for indigenous peoples, such as Law 20/2003 on the National Educational System. The Law states that indigenous peoples are eligible to obtain special educational services from the state.

To respect the special status of Aceh, Papua, and West Papua provinces, Indonesia’s government promulgated special autonomy for these respective provinces. The new Law on Regional
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<td>* Recognition of IPs, local wisdom, and traditional knowledge related to environmental protection and management in cross districts areas. * Enhance IPs’ capacity, local wisdom, and traditional knowledge related to environmental protection and management across districts.</td>
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<td>Environmental protection and management</td>
<td>* Recognition of IPs, local wisdom, and traditional knowledge on environmental protection and management in territories covering more than one province.</td>
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<td>Land administration</td>
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Government No 23/2014 replaces Law No 32/2004, which divided governmental authority over indigenous peoples into cultural affairs, social empowerment, environmental protection and land administration (table 1).

National legislation reflects the international recognition of the rights of indigenous peoples as part of basic human rights. Law 39/1999 on Human Rights states that the cultural identities of indigenous peoples, including their rights over communal land, are protected in so far as these are in accordance with societal development.

The recognition of indigenous territories is a central issue in Indonesia’s laws and policies. Agrarian Minister Regulation 5/1999 guides the recognition of communal land rights, while the Minister of Home Affairs Regulation 52/2014 provides guidance for identifying and verifying the existence of indigenous peoples. This Regulation states that the legal evidence of the existence of indigenous peoples is a decree by the district head (Keputusan Bupati). Yet, this provision contradicts other regulations such as the Forestry Law and Village Law, which only recognize district regulations as an accepted legal basis for recognizing the existence of indigenous peoples.

Despite the continued confusion and lack of resolution between these differing interpretations, at the local level, several district governments have already moved to enact regulations related to indigenous peoples. Thus far 10 District Regulations (Perda Kabupaten) and six Decrees of District Heads (Keputusan Bupati) are recognizing indigenous peoples. NGOs and indigenous peoples’ organizations are working collaboratively to support legal drafting and community mapping.

At the end of President Susilo Bambang Yudhoyono’s administration, a comprehensive development program on indigenous peoples was initiated under the umbrella of the REDD+ (reducing emissions from deforestation and forest degradation) program. Then Vice-President Boediono launched the National Program for the Recognition and Protection of Indigenous Peoples through REDD+ (PPMHA) in September 2014. This program tied nine Ministries and State Agencies⁶ to develop a work plan to recognize and protect indigenous peoples’ rights when undertaking REDD+ activities. In effect, through REDD+, indigenous peoples’ rights would be mainstreamed into lawmaking, the provision of legal assistance for the development of District Regulation, legal reform, and revitalizing and strengthening customary institutions (Safitri and Andrian, 2014). The optimism surrounding this initiative has waned with the dismantling of the National REDD+ Agency by the new administration of President Joko “Jokowi” Widodo in January 2015. The future of PPMHA currently remains unclear.

Despite some setbacks and sizeable obstacles, overall, the future of the indigenous peoples’ movement in Indonesia is steadily growing strong. There are much needed improvements in legislation and policies, as well as in government programs. Overall, however, these remain to be more piecemeal, rather than comprehensive.

It is reasonably expected that this administration will rectify the existing gaps. President Jokowi and Vice President Jusuf Kalla committed to advance a pro-indigenous peoples’ rights agenda during their campaign. Their vision and

mission outline the following commitments:

- Review and adapt all laws and regulations related to the recognition, respect, protection, fulfillment and advancement of indigenous peoples rights, particularly those related to land and natural resources as mandated by the Decision of the Peoples’ Consultative Assembly (TAP MPR) number IX/2001 and Constitutional Court Ruling 35/2012;
- Continuing the legislative process of the Indigenous Peoples’ Bill;
- Ensure that legislation such as the Land Bill will be in accordance with Constitutional Court Ruling 35/2012;
- Initiate a bill on agrarian conflict resolution;
- Establish an independent committee on indigenous peoples;
- Commit to facilitate regional governments to properly implement Law 6/2014 particularly on the establishment of customary villages.

The new structure of the cabinet promises expanding recognition and protection of indigenous peoples and their rights. This can be seen through the merger of Ministry of Environment and Ministry of Forestry, the establishment of a Ministry of Agrarian Affairs and Spatial Planning (which incorporates the previous National Land Agency (BPN)), and the establishment of the Ministry of Village Affairs, Less Developed Regions and Transmigration. There will be a special unit handling customary forests within the Ministry of Environment and Forestry. There will be ministry advisers on land reform, community land rights, and on indigenous peoples and societal affairs in the Ministry of Agrarian Affairs and Spatial Planning. Also, the establishment of a special task force on indigenous peoples is likely to move forward.

As new opportunities emerge, old challenges persist, and new obstacles loom. One such challenge is the reluctance of the current parliament to restart conversations on the Indigenous Peoples Bill which is currently absent in the 2015 national legislative program. Another challenge is the longstanding struggle of indigenous peoples organizations to ensure community maps are recognized in national geospatial policy.

E. Government Projects for ASEAN Integration: Impacts on Indigenous Peoples

To realize the ASEAN Integration Plan, the Government of Indonesia, during the administration of President Susilo Bambang Yudhoyono, enacted relevant laws and regulations. Over the last decade, the government enacted new regulations to support large-scale agribusiness. Among those laws, the most prominent is Law 2/2012 on land acquisition for development in support of public interest, which makes land acquisition easier than before. Even though it states that all land acquisition plans must be in accordance with spatial planning and based on environmental and other feasibility studies, this Law does not clearly state how such study should be carried out, nor how it relates to the existing obligation for strategic environmental studies, as required by Law 32/2009.

Similarly, the Master Plan for the Acceleration and Expansion of Economic Development, more commonly known as MP3EI (Presidential Regulation 32 Tahun 2011), has also had significant impact on indigenous peoples. This
Plan has been implemented from 2011-2025, and became the cornerstone of President Susilo Bambang Yudhoyono’s developmental policy. MP3EI targeted food and energy security. It regulated the indigenous peoples’ communal land ownership in relation to accelerating large-scale investment. In the initial months of his tenure, President Jokowi implied that he would rescind MP3EI. If true, this will not be consistent with the existing mid-term development plan of the new administration. Covering the five years of his administration, the existing plan implicitly continues the MP3EI agenda.

To support MP3EI, the government promulgated a regulation on abandoned land (Government Regulation 11/2010). In concert with Investment Law 2007, this was seen as instrumental for expanding investment. President Yudhoyono then enacted Presidential Regulation No 39/2014 on closed and open lists for investment which allows for 95% foreign investment in plantations that are more than 25 hectares. In line with this policy, the new Plantation Law allows foreigners and foreign investment in plantations, including those on indigenous lands, provided the people agree to transfer their land with adequate compensation.

Overall, the Indonesian Government has responded effectively and efficiently to prepare for increased investment flows and the single market aspirations of ASEAN. As a natural resource-rich country, Indonesia has emphasized open land-based investments. Without a doubt, given the existing regulatory gaps and laws, this will be at the expense and continued misappropriation of indigenous peoples’ land.

In this current reality, where most customary lands are not fully registered and the existence of indigenous peoples not fully recognized, the ASEAN integration plan will translate into a misfortune rather than an opportunity for better life for millions of indigenous peoples.

F. Key issues and challenges

Undeniably, Indonesia has demonstrated progress in its efforts to recognize and protect indigenous peoples. Nevertheless, there have been some unresolved and recurring problems which this section attempts to identify.

The first challenge is a lack of effective legal recognition of indigenous peoples’ rights. Constitutional recognition of indigenous peoples is strong on paper, but has yet to translate to impact and recognition on the ground. The basic question about who constitutes indigenous peoples still has to be answered. Both national and local governments continue to argue over the complexity in verifying indigenous peoples rather than focus on seeking a solution.

Indigenous peoples in Indonesia are very diverse. As this report has shown, they vary widely in their historical origins, socio-economic systems, cultural practices, political governance, judiciary institutions, as well as their natural resource management. Therefore, there is no single criteria to identify and verify them. The government’s openness to respond differently to these diverse phenomena remains limited. The real challenge of Indonesia now is to develop a new consensus on the definition of indigenous peoples for this country.

The second challenge is the legal void and lack of protection currently faced by indigenous peoples. In the absence of real recognition, many indigenous peoples continue to be criminalized.
when using land without formal documentation of rights, or when entering their customary forest that is now claimed as state forest. There is a strong need for immediate and comprehensive security sector reform or, at the minimum, capacity building on equitable law enforcement with regard to indigenous peoples. Parallel to this, a process to decriminalize previous and current victims must also be initiated.

The third challenge is the lack of land allocation in rural areas or agricultural zones where indigenous peoples can continue to practice traditional resource management. Continuing conversions of agricultural land for housing, roads, plantations and mining concessions without garnering the input of indigenous peoples, or for indigenous peoples to halt the misappropriation of their territories are matters of grave concern.

The fourth challenge relates to traditional identities. In many respects, the state has and continues to fail in protecting indigenous peoples’ beliefs. Each new government and new parliament leads to new political circumstances. This means gains made are easily lost with each administration. For instance, as has been described, the current Parliament has not included the Indigenous People’s Bill in the current legislative program. The commitment of President Joko Widodo to enact the Law on the Recognition and Protection of the indigenous peoples will be difficult to meet given the President’s continuing failure to develop a working relationship with the parliament.

Finally, we cannot neglect the fact that there is also injustice within indigenous peoples’ systems. The protection of women and children in many communities remains weak. Abuse of power, lack of knowledge regarding human rights principles, and lack of gender justice is a reality found in many communities, and needs to be tackled through empowerment, rather than imposition.

References


INDIGENOUS PEOPLES HUMAN RIGHTS DEFENDERS NETWORK

The Indigenous Peoples Human Rights Defenders Network (IPHRD Net) is a platform for solidarity, coordination and support among indigenous human rights defenders and their organizations. Through the IPHRD Net, indigenous peoples human rights defenders can more effectively address human rights issues and violations wherever these occur by working with other indigenous peoples organisations, other human right organisations, and with regional and international human rights mechanisms and bodies.

THE FUNCTIONS OF THE IPHRDS NET ARE AS FOLLOWS:

1. Mechanism for exchange of information and updates relating to human rights of indigenous peoples
2. Facilitation of technical, logistics and other forms of support
3. Forum for planning, capacity building and skills enhancement of network members
4. Mechanism for strengthening solidarity and cooperation.

ACTIVITIES

1. Documentation of human rights violations against indigenous peoples for use in lobby and advocacy at all levels
2. Manage the database of human rights violations against indigenous peoples in Asia
3. Capacity-building on human rights documentation and advocacy
4. Awareness-raising on human rights, in particular the UN Declaration on the Rights of Indigenous Peoples
5. Advocacy on indigenous peoples issues at all levels
6. Networking with other civil society organisations to gather support on the issues and concerns of indigenous peoples
7. Facilitate direct support to indigenous peoples human rights defenders at risk.

www.iphrdefenders.net

Have you witnessed a human rights violation against indigenous peoples?

Are you an IPHRD at risk needing assistance?
Contact us at: www.iphrdefenders.net/index.php/request-for-assistance-form
AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations. It also specifically aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision
Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission
AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

AIPP Programmes
Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

• Human Rights Campaign and Policy Advocacy
• Regional Capacity Building
• Environment
• Indigenous Women
• Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).