

Submission of
Asia Indigenous Peoples Pact (AIPP)
For
**Study on good practices and challenges, including discrimination, in business and in access
to financial services by indigenous peoples, in particular indigenous women and persons
with disabilities**
For
10th session of the Expert Mechanism on the Rights of Indigenous Peoples

A. Introduction

1. Indigenous peoples make up 5 percent of the world's population but accounts to 15 percent of the world's poor. Of the 370 million indigenous peoples around the world, two-thirds reside in Asia, and a vast majority of them remain poor, marginalized and discriminated. Further, very few states in Asia legally recognise indigenous peoples and even in these states, e.g. Philippines, Cambodia and Nepal to name a few, comprehensive and sincere actions to promote and protect their rights to economic development through business and access to financial services, among others, remain points for contention.

2. Indigenous peoples' economic development is tied to the ownership of their lands, territories and resources, along with their skills and knowledge on sustainable resource management. This further supports their overall development and self-governance. As such, the issue of business and access to financial services is inextricably linked to securing their rights to lands, territories and resources, which is further linked with their self-determination, including self-determined development. It is then imperative to examine and consider the issue of business and access to financial services with regards to the general situation of impoverishment and marginalisation of indigenous peoples, particularly women and peoples with disabilities. Also, the long-standing issues of lack of access to basic social services, including the general issue of political marginalisation and discrimination of indigenous peoples need to be reviewed and considered.

B. Relevant international human rights framework

3. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which establishes minimum standards for the survival, dignity and well-being of indigenous peoples, sets out particular rights of indigenous peoples to development, and economic development in particular. Those provide relevant framework for indigenous rights in relation to business and access to financial services.

4. The Declaration guarantees that indigenous peoples have the right to freely pursue their economic development within their right to self-determination¹. They have the right to maintain and strengthen their economic systems or institutions, be secure in their own means of subsistence, and engage freely in all their traditional and other economic activities while

¹ UNDRIP Art. 3

retaining their right to participate fully in the economic life of the State.² They also have the right, without discrimination, to improvement of their economic conditions while States are responsible to take effective and special measures for the purpose, with particular attention to indigenous women and persons with disabilities.³ Further, they have the right to determine and develop economic programmes affecting them and administering those through their own institutions within their right to development as per their own priorities.⁴

5. Moreover, States are required to obtain free and informed consent prior to approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources and provide effective redress for any such activities.⁵ This right is specifically relevant in relation to business projects impacting indigenous lands and resources. Finally, indigenous peoples divided by international borders are also guaranteed the right to maintain and develop contacts, relations and cooperation, including activities for economic purposes, with their own members as well as other peoples across borders, which States should facilitate.⁶

6. Other international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESR), including the common Article 1.2, whereby “all peoples may, for their own ends, freely dispose of their natural wealth and resources...In no case may a people be deprived of its own means of subsistence”, are also relevant in context of indigenous peoples and business and access to financial services. At the same time, the UN Guiding Principles on Business and Human Rights also provides a legal framework relevant for indigenous peoples’ rights in the context of business and access to financial services. The Guiding Principles set out States’ duty to protect indigenous rights in business operations, businesses’ responsibility to respect indigenous rights and the rights of indigenous peoples to access effective remedy when their rights are violated in business operations.

7. Despite such international legal protections, there are limited good practices and great number of challenges in relation to business and access to financial services.

C. Good Practices in business and access to financial services by indigenous peoples

8. Though limited, good practices by indigenous peoples in business and access to financial services stem from the exercise of their rights. Those rights include freely pursuing their economic development, strengthening their economic systems and institutions, engaging in their traditional livelihoods and determining their economic development priorities and programmes with the States promoting and protecting their rights.

9. Firstly, in relation to business, it should be noted at the outset that the business model promoted by State or third party business enterprises that still prevails in most places of the world is not one that is fully conducive to the fulfilment of indigenous peoples’ rights.

² UNDRIP Art. 5 and 20

³ UNDRIP Art. 21

⁴ UNDRIP Art. 23

⁵ UNDRIP Art. 32

⁶ UNDRIP Art. 36

However, as noted in a report⁷ on extractive industries and indigenous peoples by the former Special Rapporteur on the rights of indigenous peoples, there are several notable cases for indigenous peoples' own business initiatives and enterprises. For example in North America, in which indigenous nations or tribes own and operate companies at their own initiatives. Thereby, they have partnered with non-indigenous companies – in many cases to hold or eventually gain majority ownership, or the States have provided support for indigenous peoples' enterprises.

10. In another view, artisanal and small-scale mining is proposed to be more sustainable compared to large-scale mining and has potential for poverty alleviation.⁸ That is an alternative, which is posited to be more in line with indigenous peoples' self-determined development, particularly to indigenous groups where artisanal or small-scale mining are part of their culture.⁹ Though it has its potentials, its environmental and socio-cultural impacts, including health hazards, to indigenous peoples, need serious consideration and further study, particularly as their traditional practices of mining are mixed, if not slowly replaced with modern methods that relies more on harmful chemicals.

11. If such cases exist even in the context of extractive industries, which are largely at loggerheads with indigenous peoples for their human rights impacts, good practices in other areas of business should be more abundant. However, more intensive examination will be required to document such practices, which might often interestingly emerge against threats to the rights of indigenous peoples. A case in point is the installation and running of micro-hydroelectricity projects by Orang Asal communities in Sarawak, Malaysia where a 1,200-megawatt Baram dam planned by a State owned company threatened to displace the communities and disrupt their ecosystems.¹⁰ The dam was eventually cancelled after years of blockades of the communities. In Indonesia, even private companies and the Government have joined in communities' renewable energy initiatives.¹¹

12. On access to financial services, indigenous Thakali people in Nepal presents a unique noteworthy case. Thakalis have their homelands in remote Mustang district in western Nepal and make up less than 1% of national population.¹² However, they are one of the indigenous groups who are well advanced in business and commercial activities in Nepal, in which their economic system Dhikur has played a great part. Thakalis are also one of the rare indigenous groups in Nepal to retain full ownership and control over their ancestral land, and their own traditional political, judiciary, social and cultural systems.¹³

13. The maintenance and strengthening of the economic system of the group also had significant contribution in such rare occurrence. However, Dhikur, which is an informal, group

⁷ <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>

⁸ <http://pubs.iied.org/pdfs/9268IIED.pdf>

⁹ see for example: Hennessy. 2015. Where There Is No Company: Indigenous Peoples, Sustainability, and the Challenges of Mid-Stream Mining Reforms in Guyana's Small-Scale Gold Sector. *New Political Economy Journal*, pp 123-153, vol.2. and https://www.iss.nl/fileadmin/ASSETS/iss/Documents/Research_and_projects/Sustainable_Mining_in_the_Philippines.pdf

¹⁰ <https://news.mongabay.com/2016/03/protests-continue-amid-signs-that-controversial-borneo-dam-cancelled/>

¹¹ <http://www.eco-business.com/news/these-indonesian-villages-are-powered-by-locally-sourced-sustainable-energy/>

¹² <http://www.ncard.org.np/categorydetail/thakali.html>

¹³ See IFAD Country Technical Note on Indigenous Peoples' Issues – Federal Democratic Republic of Nepal, submitted by Krishna B. Bhattachan <https://www.ifad.org/documents/10180/332c2997-792b-4ff9-95f6-30a2db2a9ed4>

trust-based and voluntary credit association of Thakali practiced among relatives originating with the collection of food grains and later turned into mechanism to raise capital for business investments¹⁴, has not been that successful outside Thakalis or when adapted in modern financial system.¹⁵¹⁶

D. Challenges to indigenous peoples in business and access to financial services

14. Challenges to indigenous peoples by business are well documented in many reports¹⁷, particularly in relation the human rights impacts of businesses. However, challenges for indigenous peoples in business and access to financial services requires further examination, particularly in the context of their wider rights, including land and resources rights and rights to traditional livelihoods and development. Below are some challenges discussed in this context, which are not unique to the concerned countries but indigenous peoples in Asia, as in around the world, share similar challenges.

15. Indigenous peoples' culture and knowledge developed into products for profit, particularly in tourism industry, has been a significant livelihood prospect for them. For example, in Thailand, despite not being legally recognised, indigenous peoples' crafts and culture are a big part of its tourism, which, like other business projects such as mining, agribusiness, etc., are not without history of human rights violations. While the tourism-based enterprises and the State pocket big sum of money by attracting tourists to wildlife and nature in conservation areas and luxury resorts in sea beaches in Thailand, indigenous peoples are used to add cultural stroke to the attraction but at the same time, evicted of their lands and resources.¹⁸ This reality is not different in other parts of Asia and around the world where indigenous peoples reside.

16. However, indigenous peoples of Thailand still consider their products borne out of their culture and knowledge as potential alternative livelihoods.¹⁹ They recognise their need for more capacity building in developing products better, including effective marketing, and avoid mass production that devalues their culture and identities. More often than not, however, the stiff competition with mainstream businesses threatens their potential to flourish, as in the experience of AIPP with its social enterprise venture Indigenous Asia (INA) House²⁰ to support empowerment of indigenous women.

¹⁴ http://www.nepaldemocracy.org/institutions/traditional_local-governance.htm

¹⁵ <https://www.gdrc.org/icm/dhikuti.html>

¹⁶ <http://kathmandupost.ekantipur.com/printedition/news/2012-05-04/illegal-dhukuti-transactions-are-worth-rs-5-billion-central-bank-study-says.html>

¹⁷ See, for example, AIPP, 2014, No Rights, No Justice: Experiences of Indigenous Peoples affected by Corporate Activities, <http://aippnet.org/no-rights-no-justice-experiences-of-indigenous-peoples-affected-by-corporate-activities/>; AIPP, ALMACIGA, IWGIA, 2015, Business and Human Rights: Indigenous Peoples' Experiences with Access to Remedy http://iphndefenders.net/wp-content/uploads/2015/11/Access-to-Remedy_for-web.pdf; AIPP, FPP, IUCN, 2015, Mining, the Aluminium Industry, and Indigenous Peoples: Enhancing Corporate Respect for Indigenous Peoples' Rights, http://iphndefenders.net/wp-content/uploads/2015/11/Final_-_Mining-the-Aluminium-Industry_for-web.pdf

¹⁸ See for example: <http://iphndefenders.net/return-chao-ley-lands/> and <http://iphndefenders.net/thailand-respect-karens-rights-in-kaeng-krachan-national-park/>

¹⁹ Conversations with Joom Kanlaya, Coordinator of Indigenous Women Network of Thailand, 9 May 2017.

²⁰ A social enterprise initiative associated to AIPP that supports indigenous women. See: https://www.facebook.com/pg/Indigenous-Asia-INA-House-264579786999732/about/?ref=page_internal

17. The Government of Thailand is nonetheless aware of the value of local and traditional culture and have provided support to develop their products. But access to these initiatives, due to language barriers and distance from indigenous peoples villages to the town where supports are provided, remains to be challenges encountered. Moreover, government authorities responsible for giving the support lack the respect and ignore the connection and importance of the culture of indigenous peoples with regards to their handicrafts. Often, they are focused in merely producing products to be sold. As in the case of Karen women in Bang Huay E-khang, a local development officer handed out sewing machines and weaving machines without any consultation. Though the officer provided training to use the machines, the Karen women preferred and can relate more with manual loom weaving. The machines are left unused in their village.

18. At the same time, in countries such as India, traditional economy and livelihoods of indigenous peoples, which were dependent on natural resources, have undergone substantial changes due to depletion of resources. As noted in an official report, the rapid phase of urbanization and industrialization has alienated the tribes from their traditional natural resource base and forced them to search for newer livelihood options. Many of them left their homes and migrated to urban areas, in search of income and employment. As a result, the already vulnerable tribes were exposed to all kinds of exploitation and marginalization in the new, unfamiliar urban space.²¹

19. Inaccessibility of financial services also contributes to challenges in traditional or new economy and livelihoods of indigenous peoples. A study shows that, in Nepal²², access to cooperatives or banks for indigenous groups is significantly less. For example, while more than 71% of caste groups have access to a cooperative within half an hour, indigenous Magars have the lowest access (40%) due to remote locations and lack of development. Further, formal loan sources, particularly bank loans, are not accessible to indigenous peoples compared to other non-indigenous groups. Indigenous peoples rely more on informal sources, “including two-thirds from local moneylenders, which are assumed to come with higher interest rates than bank loans.” Their lack or inability to provide collateral required by banks directs them to rely on informal sources despite higher interest rates and risks.

20. Such inaccessibility is exacerbated by disasters as seen in the distribution of relief grants for those affected by Nepal’s earthquake in 2015 – majority of who were indigenous. As noted in an Amnesty International report²³, while the Government’s reconstruction efforts have ignored the historical informal relationships that the earthquake affected communities have with land, the people have to travel long distances to collect their money from bank distribution centers. The report has recommended to recognize eligibility for assistance to people regardless of the legal relationship with the land where their house once stood and conduct branchless banking and special cash grant camps for marginalized populations at the

²¹ See Ministry of Tribal Affairs, Government of India, 2014, Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India <http://www.kractivist.org/wp-content/uploads/2014/12/Tribal-Committee-Report-May-June-2014.pdf>

²² See LAHURNIP, IWGIA, 2014, A Study on the Socio-Economic Status of Indigenous Peoples in Nepal, http://www.iwgia.org/iwgia_files_publications_files/0712_social-economic-status-of-indigenous-peoples-of-nepal.pdf

²³ <https://www.amnesty.org/en/latest/news/2017/04/nepal-two-years-on-the-government-continues-to-fail-marginalised-earthquake-survivors/>

local levels. When indigenous peoples are caught in conflicts, they face similar added challenges.

E. Challenges in business and access to financial services for indigenous women and persons with disabilities

21. AIPP's *Tilting the Balance: Indigenous Women, Development and Access to Justice* (2012)²⁴ has emphasized the multiple discrimination that indigenous women on the basis of their gender, ethnicity and socio-economic status. It has also established that large-scale business projects such as mining, ecotourism, and agribusiness impact indigenous women's vulnerability to gender-based human rights violations, including their potential to manage their own lands and resources.²⁵ The general denial of indigenous peoples to their collective rights to lands further compromises indigenous women's essential roles in upholding traditional knowledge that is crucial to sustainable resource management and food sovereignty. These circumstances impact indigenous women's capacity to sustain their traditional livelihoods, which affects their socio-economic situation, and exacerbates their lack of capacity to engage in other self-determined economic endeavors. This situation is similar to persons with disabilities, if not worse, due to their specific condition and vulnerabilities.

22. Furthermore, traditional male-dominated patriarchal beliefs, norms, and value systems severely restrict indigenous women's livelihood opportunities, participation in decision-making processes, and political representation while increasing their vulnerability to all forms of violence.²⁶ As posited in the Expert paper from UN Women's Expert Group meeting regarding women's access to land, "[w]omen's access to and control over land is directly proportional to its potential to gender equality that can also address material deprivation."²⁷

23. Further, it has noted that land management systems in Asia are largely patriarchal, particularly in South Asia where lands are acquired mainly through inheritance down the male line. But it is more bilateral and matrilineal in South East Asia and acquired through customary inheritance systems.

24. Indigenous women also have limited access to basic social services, including education. Compared to indigenous men and their non-indigenous counterparts, they have lower literacy level limiting the awareness of their rights and affecting their ability to engage with relevant mechanisms and economic potential. Lower literacy level affects their overall potential for development and for inflicting change from their current situation.

25. These realities put emphasis on the issue of economic empowerment of indigenous women, which is not only deprivation from economic but also from political opportunity. It

²⁴ http://www.iwgia.org/iwgia_files_publications_files/0662_I-HR-Repor-May-17-ALL-BOOK-small-20130530160656.pdf

²⁵ see also: http://aippnet.org/wp-content/uploads/2015/07/iva.aippnet.org_wp-content_uploads_2015_07_ASEAN-Briefing-paper-for-web.pdf

²⁶ http://aippnet.org/wp-content/uploads/2015/05/www.ccm.in.aippnet.org_attachments_article_1316_For%20Web_Research%20on%20the%20Roles.pdf

²⁷ Rao. 2011. Women's Access to land: An Asian perspective. EGM/RW/2011/EP.3 see: <http://www.un.org/womenwatch/daw/csw/csw56/egm/Rao-EP-3-EGM-RW-30Sep-2011.pdf>

highlights the need to establish and secure an enabling environment to address the multi-layered discrimination they encounter and effectively facilitate self-determined economic empowerment.

26. Similar realities exist for indigenous persons with disabilities, as disabilities are directly or indirectly stigmatized in many indigenous communities. Targeted capacity building initiatives with particular attention to the specificities of indigenous persons with disabilities is required to maximize their skills and economic potential. However, those initiatives are largely absent in indigenous communities in Asia, which poses further challenges.

F. Conclusion and recommendations

27. The good practices and challenges indicated above remain to be tied with the outstanding issues of indigenous peoples in terms of legal recognition, including their individual and collective rights, particularly to their lands, territories and resources. For indigenous women and persons with disabilities, it requires a comprehensive approach to tackle the multiple discrimination against them and lack of access of even the basic social services, like health, education, etc., to facilitate the ability to have equal opportunity compared to non-indigenous counterparts in establishing and maintaining alternative livelihood that are more business/entrepreneurship in nature. Also, business and access financial services are often targeted to indigenous groups that are not necessarily the poorest of the poor.

28. As demonstrated, it is indispensable that indigenous peoples' own initiatives and enterprises based on their priorities are given the priority to promote their business potential, including through strengthening their own economic systems or institutions and protecting and promoting their traditional livelihoods. Those initiatives, enterprises and systems can result in enjoyment of overall rights of indigenous peoples contained in the Declaration, for which indigenous peoples have the "right to have access to financial and technical assistance from States and through international cooperation"²⁸. Thus, States should provide support for those initiatives through grants, loans, etc., which can be administered through indigenous peoples' own institutions to address their challenges in relation to business and access to financial services.

29. In addition, targeted capacity building in terms of business skills and financial literacy in consultation with organizations of indigenous women's and persons with disabilities to properly consider their specific conditions and context is necessary. Provision of means of secured financial services that are more accessible to all indigenous peoples is another recommendation that States should fulfill and for partner institutions should support.

²⁸ UNDRIP Art. 39