

Natural Resource Management Country Studies

Regional Synthesis Paper



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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 will draw some key conclusions and recommendations and also make a comparison between the situations found in these studies.

In the country studies, there are various terms use to refer to indigenous peoples. For example in Thailand, the term used is "indigenous hill peoples", while in Malaysia, they are referred as indigenous peoples or specifically *Orang Asli* for the indigenous groups in Peninsular Malaysia. With the exception of Bangladesh, the papers dedicated a chapter on the term(s) used in each country and the background and history of indigenous peoples. In this synthesis paper, the term "indigenous people(s)" will be used.

2. Indigenous Peoples and Natural Resource Management

2.1 Indigenous Peoples' Status

Except for Malaysia, a common feature mentioned in all studies is the non-recognition by the state of indigenous peoples as distinct groups of peoples 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 on indigenous peoples in the Constitution/Laws

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

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

In a landmark court case by the *Orang Asli* in Peninsular Malaysia, the judges decided that the government has failed in it 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 have been living in Thailand for hundreds of years. In Bangladesh, the government's population transfer programme of the 1980s on plain lands and gently sloping lands that were already occupied and owned by indigenous peoples on the basis of formal private titles or customary law resulted in violent land-grabbling, in which state security forces have been directly implicated. Large numbers of indigenous peoples were forced to seek shelter in the remoter hill and forest areas, themselves causing pressure on existing inhabitants of those areas and depleting the available resources.

2.2 Indigenous Resource Management System

The studies noted that natural resources to 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, encourages sustainable innovation, and place the long-term well being of the community as the focus of all activities. Natural resource management involves both 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 will determine the condition of the universe and 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 and punishment such as that of the *Brao* community in Cambodia and the indigenous peoples of Sabah, Malaysia. Customary management of natural resources has been established for generations and unwritten laws are transmitted by parents or elders in the community. Institutional control over resources are 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.

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 recognition official of traditional administration;
- iii. conservation ideas which do not recognize other systems of resource management; particularly those which are considered 'non-scientific';
- iv. the pursuit by states of profits, modernisation 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 mentioned only a limited recognition of customary resource rights within the laws, and these will be discussed in more details in Chapter 4.

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-division of land into several individually managed plots - Rotating farm plots and maintaining evenly dispersed populations - Festivals, ceremonies are tied into agricultural cycles 	<ul style="list-style-type: none"> -Traditional ownership of a plot of land -confirmed by a headman and identifiable by the presence of certain signs for landownership - A practice of leaving the last fruits 	<ul style="list-style-type: none"> - chose their farming site carefully depending on the kind of cultivation - Use traditional knowledge on soil identification suitable for specific crops - Prevents exploitation of land beyond what it can sustain - leaving the land fallow for seven to ten years - Communal ownership of land - Clearing of land only done during dry season - Practice swidden cultivation 	<ul style="list-style-type: none"> - Able to retain their 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 protector -only old or knowledgeable herbalists, mostly women, are allowed to collect medicinal plants. - Many plants species are also protected based on similar belief to that of wild animals. 	<ul style="list-style-type: none"> - Ensure forest resources are not taken freely without permission of the owner - Ensure that forests are healthy and productive - Unnecessary cleaning and cutting of trees are prohibited 	<ul style="list-style-type: none"> - Identifying forest areas which are cultivable - Forests are categorized and differentiated depending 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 exist - 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 the forest environment are interdependent and related to each other - Conducts 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 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"> - Marking of 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"> - Belief and taboos against disturbing any watershed area or springs. 	<ul style="list-style-type: none"> - Streams and other aquifers situated within the community-managed <i>mauza</i> reserve forests 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 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 		

3. Laws and Policies on Natural Resource Management

All the studies did an extensive elaboration of natural resource management laws and policies that relate to indigenous peoples and identified gaps with respect to their provisions. Natural resource management laws in Bangladesh and Malaysia appear to have common provisions and underlying concepts, perhaps derived from laws of British India. For example, forest laws and policies tend to reject community management of forests in favour of management through government bodies - namely, the Forest Department – which integrates policing and administrative functions. Land Laws incorporated customary laws but these are limited and often have inaccurate concepts of land ownership and management underpinning the relimited recognition provided.

3.1 Institutional Framework on Natural Resource Management

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

i. Government Departments or Agencies

Natural resources are compartmentalized and are under the jurisdiction of specific government departments. Malaysia, as a federation of 13 states, has placed land and forest matters under states control, where 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 the state. In the other countries, these departments are centralised 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 are decentralised to Councils/bodies at the district or provincial level, and subsequently to the sub-district level. For the CHT, the Hill District Council administration is rather pluralistic in that it includes traditional, bureaucratic and elective 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.

Illustration 1 – *Tambon* (sub-district) Administration

In Thailand, the Constitution of 1997 heralded a significant benchmark towards a more inclusive participatory approach. Along with this, the Tambon Council, Tambon Authority Act and Decentralization Act, if implemented effectively and sincerely, has 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 initiative 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.

However at the time of publication the Constitution of 1997 has been overturned by the coup of 2006 and the new Constitution is being drafted. It is not clear what provisions for local participation will be retained in the new Constitution.

3.23.2 Summary of Laws and Policies on Natural Resource Management

The laws and policies on natural resource management identified in the country studies are summarised in Table 3 with a brief indication of the gaps with respect to the provisions related to indigenous peoples. Other gaps not related to the implementation of the laws and policies follows 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 these resources. While this may provide focus to the specific department or unit charged with a certain resource, it could also prove to be a setback. As pointed out by these studies, the lack of inter-departmental coordination has only exacerbated problems and defeats the purpose of managing resources effectively.

Illustration 2 – Sabah Wildlife and Sabah Foundation

The Sabah Wildlife Department Pilot Project (Malaysia Country Report p:28 & 32) highlighted inter-departmental coordination as one of the major constraints in making the 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, as the Sabah Foundation plans to allow logging there. Community Hunting Areas are recognised under the Sabah Wildlife Conservation Enactment 1997. There is an 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 involvement of local communities in natural resource management.

- ***Non-conformity with National Constitutions***

In some cases, there appears to be non-conformity of some laws with the national constitution. In Thailand for example, although Article 46 states that "*Individuals who form into 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 would be in accord with the enacted law*", the laws on natural resource management that have been enacted do not have provisions 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. In Malaysia, the judge in a landmark case 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 noted 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 is 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 continuing 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 Cambodia government to keep the people in the lowlands.

Illustration 3: Thailand National Forestry Policy (TNFP), 1985

This Policy contains discriminatory attitudes towards indigenous peoples. Among the key aims of the aims of the Policy are"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."

- **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 mainly to structural prejudices deeply ingrained in the society and reflected through all sorts of bad governance, vested interests, existing power structure, corruption etc.

- **Contentions over Sub-surface Resources**

Although not discuss in the country reports, contentions over sub-surface resources found in indigenous territories continue to be an issue. According to the laws of these countries, minerals 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 resource, contention on resources above ground such as timber is also 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. Citizen of Khmer nationality shall have the right to own lands.	No specific recognition to indigenous identity for land ownership.
Constitution of Cambodia 1993	State property	Article 58 stipulates 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 determined as a state property	No provision on 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 is essential for livelihood subsistence. Lack of definition 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
Land Law 2001	Self-Identification	Article 24 "An individual who meets the criterion of art.23 of being 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 by the member of community.	No recognition of customary law for procedure
Land Law 2001	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 includes reserve necessary for the shifting of cultivation	provision that such lands should be those "recognized by the administrative authorities" weakens the Article immensely
Land Law 2001	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
Land Law 2001	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 doors to indigenous peoples to sell lands and resources

Title of Law/ Policy	Subject	Provision	Gap
Land Law 2001	Transfer	Article 27 mentions the possibility to transfer land rights to individuals within the community	No guarantee for collective ownership
Land Law 2001	Rights of indigenous peoples	Article 28 "No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community"	
Land Law 2001	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
Land Law 2001	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	Article 11(ii), Art. 37(i) Identification of local communities	
Forestry Law 2003	Rights of traditional users	Article 2 ensures traditional user rights of timber products and Non timber Forest Products for local communities	No specifically mentioned about indigenous peoples
Forestry Law 2003	Full public participation	Article 4 " all government decisions that have the 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 and clear distinction between indigenous and non indigenous minority
Environmental Protection and Natural Resources Management 1996	Environmental Plan	Article 2 and 3 ""	
Environmental Protection and Natural Resources Management 1996	Protection and Sustainable resources Management	Article 3 "....."	
Environmental Protection and Natural Resources Management 1996	EIA	Article 6 requires Environmental Impact Assessment to be conducted for any projects	
Environmental Protection and Natural Resources Management 1996	Participation of the public	Article 16 provides for participation of the public in protecting managing natural resources	No clear procedural provision
Commune Administrative law 2001	Opportunity to have a say	Art? The recognition of Commune Council provides indigenous communities the opportunity to have 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 the rights of Traditional Local Communities participation	Article 46 Person who is 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 quality, healthy and consistent survival	Article 56 The rights 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 and reasoned	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 and issue as well as have the right of public hearing.	No specific mention of indigenous communities
Constitution of Kingdom of Thailand 1997	State obligation to encourage, promote peoples participation on 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 accordance with the persistence development principles as well as control and eradicate pollution	
Constitution of Kingdom of Thailand 1997	Conservation natural resources in accordance with law	Article 69 Every people shall have a duty to protect and pass on to conserve and conserve natural resources and the environment, conserve natural resources and 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 in local level

Title of Law/ Policy	Subject	Provision	Gap
Thailand National Forestry Policy (TNFP) 1985	Key Aims	Among others ... 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; incentive for reforestation by private sector..	Many negative perceptions and effects on resources of indigenous peoples
Forest Act 1941	Definition of the Forest	Sec. 4(1) Land not acquired or possessed under the land law considered as Forest	Control Swidden Farming
Forest Act 1941	Prohibited Activities	Sec. 54 prohibits the clearing, burning, occupying or possession or and Forest land, breaching the provision shall be fined from B50,000 to B100,000.	Prohibits traditional way of indigenous farming and alienates from their traditional territories
National Reserved Forest Act 1964	Forest domain	Sec. 4 "Forest includes mountain, creek, swamp, canal, marsh, basin, waterway, lake, island and seashore that not acquired by a person in accordance with the law	Lawful acquisition does not include customary ownership
National Reserved Forest Act 1964	Prohibited activities	Sec. 14 " No person shall occupy, possess exploit and inhabit the land, develop, clear, burn the forest, collect the forest products nor cause by any other means whatsoever any damage to the nature of the National Reserved Forest	Affect to indigenous way of life
National Reserved Forest Act 1964	Logging or collection of forest products	Sec. 15 & 16. Logging or collection of forest products and logging of reserved timber species may be done after obtaining permission from the Director General	No consideration for indigenous peoples' opinion
National Reserved Forest Act 1964	Possibility for inhabitation	Se. 16(1) A person can apply to inhabit and exploit the deteriorated lands.	
National Reserved Forest Act 1964	Punishment on offence	Sec. .. Person involved in any activities against the provision of the Act shall be fined B500 to 15 years imprisonment.	
National Part Act 1961	Prohibited activities	Sec. 16" No person shall : (1)occupy or possess land including build up, or clear or burn the forest; (2) collect, take out ore 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. that affect to National park	Directly affects to indigenous people who has inalienable livelihood relation to forest
Wild life Preservation and Protection Act 1992	Prohibited activities	Secs. 16-21 prohibit various activities such as propagating , or breeding, possessing, trading, collecting, endangering or possessing nests or any protected and preserved wildlife	Affect hunter gatherer indigenous peoples

Title of Law/ Policy	Subject	Provision	Gap
Land Code 1954 & Land Code Promulgation Act, 1954	Application for land certificate	Sec. 5 Any one occupying forest land as of November 30, 1954 can receive a land using claim certificate provided if he can prove his claim within 180 days.	Most indigenous peoples' lands were encroached because there is no proper mechanism to follow right to notice, also not aware of this provision.
Land Code 1954 & Land Code Promulgation Act, 1954	Land and State ownership of land	Sec. 1 identifies land surface everywhere, including mountains, hills streams, ponds, canals, swamps, marshes, waterways, lakes, islands and sea coast as land. Sec. 2 declares the land identified in Sec 1 shall be vested in state ownership.	Disregard indigenous land ownership system
Land Code 1954 & Land Code Promulgation Act, 1954	Issuance of land title documents	Chapter 4 has various provisions for applying for different land title.	Complicated procedures disregard indigenous situation and alienate them from their traditional lands
Enhancement and Conservation of national Environmental Quality Act, 1992	Participation of NGO	Secs 6-7-8 articulates participation of the public in the management of matters affecting the environment and lay down framework for collaboration between government and NGO's. A private individual can lodge a petition against a person who violates laws on conservation of natural resources	
Enhancement and Conservation of national Environmental Quality Act, 1992	EIA in protected areas	Sec. 32-51 stipulates environmental quality standard and management planning, conservation, conducting Environmental Impact Assessment in protected areas, mandated for specified project area.	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	Empower 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 comprises provisions of Native Lands		
Land Ordinance, 1930	Native Customary Rights to lands	Sec. 15 states land included under NCR are land possessed by customary tenure; Land planted 20 or more fruit trees per acre; Fruit trees, sago, rattan and other plants of economic value that are planted, up kept 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 archaic, do not recognise land under fallow period, and places importance on plants of economic value
Land Ordinance, 1930	Attempt of Incorporating Indigenous customary law	Sec.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 such as fallow in rotational agriculture cycle.
Land Ordinance, 1930	Contradictory provision	Sec. 28 provides authority to the Governor to alienate land for "public purpose" which is seen to supersede Section 15.	Used as a tool to alienate indigenous peoples' lands.
Land Ordinance, 1930	Notice	Sec. 13 of the Ordinance stipulates for the posting of a notice and validation on the ground in any application	No access of information to indigenous peoples due as notices are put up in the district Lands and Survey Department in English
Land Ordinance, 1930	Special provision for Protection of indigenous ownership over native lands	Sec. 17 "except with the written permission of the Minister all dealings in land between non-natives on the one hand and natives on the other hand are hereby 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	Sec. 23 and 24 give right on sub-surface and surface resources such as minerals, timber or	Affects forest dwellers and indigenous peoples

	subsurface resources	other forest produce or any earth, gravel, stones, coral, shell, guano, sand, loam or clay, or any bricks, lime cement or other commodities manufactured from these materials to the state	
Land Acquisition Ordinance	Subject to compulsory acquisition	Sec. 2(h) states any land may be subject to compulsory acquisition by the State deemed for "Public Purpose" includes resettlement, conservation and exploitation of natural resources.	Ventilation for land alienation
Title of Law/ Policy	Subject	Provision	Gap
Land Acquisition Ordinance	Limitation for Complain/allegation	Sec. 9 allows only 3 months for the owner to register their interest and serve a notice to the authorized officer	Most of indigenous peoples have already lost lands due to lack of right to notice
Inland Fisheries and Aquaculture Enactment 2003	Recognition of Indigenous resource management	Sec. 35 allows for the declaration and recognition of indigenous system of resource management	
Inland Fisheries and Aquaculture Enactment 2003	Creating committee	Sec. 36-37 states to create Community Fishery Management Committee	Do not recognise traditional authority
Wildlife Conservation Enactment 1997 and the Wildlife Regulation 1998	Recognition of Community hunting area.	Sec. 7 and 32 recognize community hunting areas and honorary wildlife wardens from the community	
Wildlife Conservation Enactment 1997	Native or Traditional rights are perpetuated	Sec. 9(2) (c) provide for explanation on "Native and Traditional rights that will continue to be exercisable	
Wildlife Conservation Enactment 1997	Community summarized representation	Sec. 9(2) (d) requires a summary of representations made by communities likely to be affected.	Inadequate time (90 days) boundary for notice
Parks Ordinance, 1984	Park Management	Controls, manages and maintains all Parks, which includes both inland and marine ecosystems	Restrict access of indigenous peoples living within Parks
Parks Ordinance, 1984	bio-prospecting, tree plantations, commercial enterprises	Sec 20 of the Parks (Amendment) Enactment 2002 empowers Parks Board of Trustees to also carry out bio-prospecting, tree plantations as well as develop commercial and industrial enterprises	Impacts indigenous knowledge and livelihood of indigenous peoples living within Parks
Conservation of Environment Enactment 1996 & Environment Protection Enactment, 2002	Use of Land and activities	Use of land (Section 28) and activities affecting vegetation (Section 33)	No provision on indigenous peoples' rights and impose restrictions on swidden cultivation
SAFODA Enactment, 1981	Compulsory Acquisition of Land	Sec 39(1) of the SAFODA Enactment provides for compulsory acquisition of land	Results in loss of NCR land
SAFODA Enactment, 1981	Status of SAFODA	Sec 47, SAFODA is deemed a Native entity for the purpose of any law relating to land	Results in loss of NCR land
SAFODA Enactment, 1981	Appeals	Sec ??	No mechanism to notify owners on the ground and to record and settle

			land disputes in an organised manner
Biodiversity Enactment, 2000	Implementation	Require accompanying Rules	Cannot be implemented until Rules are adopted
(National) Land Conservation Act 1960	Planting and clearing 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
Title of Law/ Policy	Subject	Provision	Gap
(National) Land (Group Settlement Areas) Act 1960	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 them for the purpose of land settlement which culminates in the issue of titles to the settlers	Orang Asli traditional areas have been converted to such land schemes with them not enjoying both the fruits of the programme nor being entitled to such titles for the land
(National) Protection of Wildlife Act 1972 (Act 76)	Wildlife Reserves and Sanctuaries	Wildlife Reserves and Sanctuaries may be declared by the state	Does not allow Orang Asli to sell wildlife, only for family needs
National Forestry Act 1984	administration, management and conservation of forests	Forest produce is property of the state and that harvesting requires a license	treats the Orang Asli harvesters of such forest produce as labourers of traders with licences
National Parks Act (Act 226) 1980	Establishment and control of National Parks	Provides for the establishment and control of National Parks	No ownership and control over OA traditional territories
Aboriginal Peoples Act (1954, revised 1974) – Peninsular Malaysia only	Orang Asli Areas and Orang Asli Reserves	Provides for the establishment of Orang Asli Areas and Orang Asli Reserves, it 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’ and state not obliged to pay any compensation or allocate alternative site
Aboriginal Peoples Act (1954, revised 1974) – Peninsular Malaysia only	Power of Minister and Department of Orang Asli Affairs (JHEOA)	Accord 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	give the Federal and State Governments a tremendous amount of leverage <i>against</i> 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	Needs of preservation and 'scientific managements' of forests and the optimal extraction of forest produce for economic development and ecological balance	No attention given to "people's participation in augmenting forest resources in the country
Forestry Master Plan (1994-2013)	Optimising Forestry Sector	Optimize the forestry sector's ability to stabilize environmental conditions and assist economic and social development	No recognition of community management of forests
Forest Act, 1927	Reserved Forest	Section 28 (1) empowers the government assign to any village community the right of Government to or over and any land, which has been constituted into a reserved forest	Indigenous people living within reserved forest have no formally recognized right over the lands in which they live
Forest (Amendment) Act, 2000	Social Forestry	formally introduced the concept of social forestry	limited scope for recognition of common user rights of the forest dwelling communities erosion of traditional rights of the people and the 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
CHT Regulation, 1900	Land Acquisition by non-residents	Amendment to Rule 34 - Allow non-residents to acquire land rights within the 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	Devolution of land administration to the hill district councils Resolution of land related disputes by a Commission on Land	dysfunctionalities within the CHT administrative system, including the 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***

Except in 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 the laws. However, these attempts to incorporate customary processes into legal provisions have shown either a sad lack of understanding by government staff or, in enforcing the laws, the stark difference between indigenous and non-indigenous insights has become apparent. The study in Sabah, Malaysia, noted the attempt to incorporate indigenous peoples' customary law on land ownership into Section 15 on Native Customary Rights (NCR) Land of the Sabah Land Ordinance 1930 showed lack of understanding of indigenous peoples' concepts of land and natural resource management, and 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 recognise indigenous resource management such as fallow periods in swidden agriculture cycle has delegitimised customary land ownership.

In all the country studies, use rights in many cases may be granted but this right is not consistent and is often complicated by gaps in the laws. 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 do 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.

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 right 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 its borders, which has resulted in relocation of indigenous peoples, tourism is widely promoted and infrastructure and private construction for tourism is allowed in national parks. Use-rights of resources within national reserve areas and wildlife sanctuaries are ambiguous and not clarified and give vast leverage to authorities to use the law at their convenience. Only where there is strong collective community initiative will this ambiguity allow indigenous communities to negotiate use rights with the local authorities.

- ***Traditional Administrative System***

The recognition by the Cambodia Land Law of 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 the tendencies by most governments to recognise 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 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 to finance 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 of indigenous peoples, or loss of cultures 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 livelihood deteriorates due to natural resources exploitation and insecure land tenure.

Indigenous peoples are increasingly joining, or are 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 activities of indigenous communities which they have traditionally carried out for their sustenance. Though there are thousands of communities managing and protecting their local forests, their activities are deemed illegal. Current laws and regulations prioritize the private sector and/or state activities in these lands.

In Bangladesh and Cambodia, partnership between the government and foreign companies to exploit mineral and gas resources in indigenous lands occur with obtaining the free, prior and informed consent of affected communities and raise 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 is being done by incorporating aspects of the traditional management system into state/national laws. However, such a strategy may not necessarily capture indigenous resource management concepts adequately. This will also not recognise customary law *per se*. In Cambodia, the Land Law 2001 recognises customary law but how this will be achieved in practice, remains to be seen.

Since customary law in general, and on natural resource management in particular, is not well-understood or documented, there is often fear of recognizing it from the side of governments. Unfortunately, past efforts by the government 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 disempower 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 showed varying experiences in engaging institutions are seen in the different countries. Generally NGOs that have good relations with government have facilitated engagement between communities and the relevant government departments, while the capacities of communities to engage directly with governments and donors are growing.

Most positive is the case of Sabah, Malaysia where indigenous organisations have been able to directly contribute to the implementation of laws or enact new laws at the local level 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 governments, local and international NGOs and UN agencies. Due to the unique political history of Cambodia over the past two decades, donors and UN agencies to a large extent played a very important role in shaping the laws and policies on natural resource management in Cambodia.

NGOs in Thailand have been instrumental in positively or negatively shaping policies on natural resource management, depending on their perspective as seen in the development of Light Green and Dark Green NGOs (see also chapter 6.d). 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 toward 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, and vocational skill improvements, accelerating women's access to education and training opportunities, etc. are still very limited in the CHT. The study viewed the strong role NGOs play in natural resource management positively but stressed that it is important to maintain 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, the talks of indigenous participation are mere lip service and often made to pacify communities and sadly, input on natural resource management is often ignored. The participation process through institutional reforms and capacity-raising initiatives noted in the Bangladesh study are similar to the other countries. This involves firstly the representation of indigenous peoples - both men and women - in decision-making, policy reviews and reforms and in legal and programme implementation. Secondly, is an adaptive approach to take 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 would be yet another mechanism for participation. Participation would of course be enriched if decision making with free, prior informed consent is recognized throughout the process.

5. Gender and Natural Resource Management

In most countries, and noted particularly in the Bangladesh study, laws and constitutions in all countries prohibit discrimination on the basis of sex but this is not reflected in the government's 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 labour responsibilities in cultivation, the ability of women in plant and seed conservation and experimentation means they have a crucial 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 making handicrafts. 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, economic well-being and health of the family and society but also but 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.

Illustration 5: Indigenous Women in Bangladesh

Indigenous women of 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 and in other spheres. One of the most acute problems faced by indigenous women is the denial of their 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 be discriminatory against women. The notable exceptions are in the case of the Khasi in greater Sylhet and the Mandi or Garo in the plains, and to a lesser extent, the Marma in the southern Chittagong Hill Tracts. Apart from the above exceptions, the common trend of the indigenous communities is that only sons 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 cited very specific challenges and drawbacks related to the promotion and recognition of indigenous peoples' rights and participation in natural resource management. A list of these challenges and drawbacks are made below, with some brief explanation on some points. Details can be garnered from the individual studies.

a. Citizenship Rights

The denial of citizenship to a high number of indigenous peoples in Thailand has compounded land tenure insecurity and has directly affected natural resource management. The 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, the donor adheres to their policy on indigenous peoples that is based on accepted international human rights standards, and to 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 NGO's working with indigenous peoples should be 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 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 towards natural resource management but also power relations, class equations and social structuring. These needs to be taken into account while addressing this challenge.

e. Misused/Misinterpreted Community consultations

Hiring of consultants, especially those dealing with communities, should take careful consideration to ensure that the person 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 study in Cambodia 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 the legal statutes that exist 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 will deal mostly with the recommendations made in the country studies but will also include 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 recommended for a comprehensive review of laws and policies regarding lands and other natural resource management and identify the reforms needed. Although the research and the consultations identified the laws and policies that relates to indigenous peoples and pointed out gaps, they could not delve in 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 such a comprehensive review. In any such reforms, the importance of indigenous resource management processes need 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 Natural Resource Management Laws and Policies to be brought into conformity with the Constitution

Where provisions for the recognition of and protecting indigenous rights are specified 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 would be needed. These laws should be in line with existing and emerging international instruments that recognises the rights of indigenous peoples.

7.1.1.4 Implementing Policies

The Bangladesh study provided some clear recommendations on implementation of policies that can cover other countries and are also mentioned in other recommendations. It recommends the development of detailed administrative guidelines, particularly in situations where government officials lack of 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 bureaucratic positions;
- b. Disseminating information to indigenous peoples regarding their rights;
- c. Providing greater access to information on indigenous peoples, their language, culture, economic systems and cultivation patterns, etc. to educational institutions, training academics of government functionaries and NGOs;

- 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 interest of the indigenous peoples themselves that these differences are understood prior to designing and implementing major development interventions;
- f. Following the principle of Free, Prior and Informed Consent (FPIC) before any major decision-making involving the rights and welfare of the 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 parctiable manner;
- j. Taking effective measures for the practice of autonomy or self-government to 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, where gaps exists, have to include provisions on the recognition of customary rights to land, and in particular the settlement of claims by getting the consent of prior or existing settlers. As illustrated in the Sabah Land Ordinance however, the interpretation of rightful occupation does not coincide with indigenous peoples' concept and customary law on land ownership.

This also implies the recognition of collective customary resource rights for indigenous peoples that could preserve collective identity. Collective customary resource rights would include a community's access to, and control over, lands and resources, and also 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 towards indigenous communities, and far more likely to result in successful promoting 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 that these are implemented. In other countries like Sabah, Malaysia and Bangladesh, though this is not provided for in the law, it has been a practice to involve traditional headmen in validating land claims. Newer village administrative institutions like the Commune Councils in Cambodia, 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 a collective resource, creating competition that leads to unsustainable resource utilization. The challenge of re-establishing communal responsibility and to revitalize indigenous resource management system so that resources could be utilised in a sustainable manner for the wellbeing of the community first need to be realised and efforts towards this end by the community themselves be given support by donors, government and NGOs. Recognition and revitalisation of traditional governance and administrative system, 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 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 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 create synergy.

A management plan that outlines benefits and responsibilities for both government and indigenous peoples to 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, etc. Traditional resource management systems and the traditional legal systems of indigenous peoples or *vice-versa*, can also be integrated with other resource management systems. And in remote areas, this traditional legal system could continue to be used to resolve their conflicts. Active engagement of communities themselves in these efforts needs to be taken and not merely lip service on the side of authorities.

7.1.3 Participation of Indigenous Peoples in Legal and Policy Formulation

Participation of indigenous peoples in legal and policy formulation maybe accepted and oft-mentioned by policy makers themselves, but perceptions on the process may differ. Effective participation would imply not only accepting opinions of indigenous peoples, but also involvement in decision-making in the whole processes 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 the studies as a prerequisite for sustainable and acceptable natural resource management. As such, legal and policy provisions for FPIC need to

be ensured, as well as the mechanism for obtaining such consent, developed. At the international level, guidelines and principles for FPIC already exist and this can be used to develop such provisions and mechanism.

7.1.5 Removing Discriminatory Attitudes

Discrimination against indigenous peoples is noted in all the studies. Recommendations made to remove these include acknowledging the indigenous peoples' contributions towards the country's political, social, economic and cultural integrity and its development process. This includes in the official versions of the national histories and in other national discourses and public information systems; providing exposure on indigenous culture, history, life style, etc to government functionaries having major responsibilities on indigenous issues; and to use state-sponsored media and encouraging the 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 for ensuring long term sustainability of natural resource management.

The recommendations elaborated by the Bangladesh report are also relevant for the other countries in that bringing about gender equity in natural resource management would need committed support from other actors, including political, social and community leaders, local NGOs and national NGOs due to longstanding gender-insensitive practices based on customary beliefs, religious and social conservatism, or otherwise, but it is a matter that requires consistent and urgent attention. Policies on women that are generally aimed at the addressing discrimination faced by other women may not be appropriate, so it is important to ensure that laws and policies are made appropriate for preventing discrimination against indigenous women. Other important interventions would include addressing the human rights issues of indigenous women who are under-represented in political bodies and local government units; the lack of funds necessary for mobilization women; and need to raise awareness about the negatively discriminatory inheritance laws towards women.

7.1.7 Enhancing Capacities of Indigenous Peoples, Traditional Leaders , NGOs

Support for indigenous initiatives on community organising and leaders training programmes where indigenous organisations and traditional leaders themselves raise their capacities are crucial in this respect. However, where NGOs are willing to assist in the enhancement of capacities of indigenous communities, resources and support to NGOs and support groups in a manner that is sensitive to communities should be provided. Capacity enhancement through building of community organizations should also recognise that these take much effort, resources and long-term partnerships.

7.1.8 Research and Information Dissemination

There are also many institutions that involve government, local and international NGO's and UN agencies that have developed tools and models of participatory action research on natural resource management. Several good examples exist in Cambodia of research work with indigenous communities that can be used as models elsewhere in the region.

The challenge of inaccessibility and remoteness of some indigenous villages need to be taken into account in the dissemination of information. Producing information that is easily understood also pose a challenge. In Cambodia, there are many indigenous peoples who did not have access to formal schooling, thus creative and popular ways of conveying information are important such as radio programmes, audio-visuals need to be developed.

7.1.9 Advocacy at National and International Level

Where serious conflicts on land and natural resource management exist, the studies recommended the development of effective strategies and tools for advocacy both at 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 and the recommendations made in the Poverty Reduction Strategy Papers (PRSPs) and other relevant strategy documents. Strengthening the capacity of both informal (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 intergovernmental 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 of existing national, regional and international networks, and creation of further networks would further enhance progress in this regard. 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, the national consultation on the research recommended the formation of an Inter-Ministerial Committee, or a body that has sufficient authority, at the state and national level to review the various policies and laws on natural resource management and indigenous peoples, with a view of streamlining such laws and policies to protect indigenous rights. The Committee is also expected to identify sections 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 of 1998 obliges the government to consult the CHT Regional Council prior to the passage of any new laws on the hill region.

d. Democratization and Decentralization (Thailand)

Democratization and decentralization, emphasizing on indigenous participation are identified as key processes in Thailand. The study noted that lack of indigenous participation in natural resources management in Thailand stymied most of the policies and laws before they were even implemented. Involvement of indigenous peoples as the right holders would therefore ensure a sense of ownership and the 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 are noted in the box below:

Cambodia: Considerations on Land Demarcation

There are some serious issues of sequencing and policy process to be considered.

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