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Editorial

Being Indigenous

Land is an important part of the survival of the indigenous peoples, be it in Asia, Pacific or elsewhere. Land is not simply necessary for physical existence but for the spiritual, social, and cultural survival of indigenous peoples and the continuation of their historical memory.

Marginalization, displacement and other forms of oppression are experienced by indigenous peoples. Laws and development programs displace indigenous peoples from their land. Many indigenous peoples have died because of them. Discriminatory national security measures as well as unwise environmental programs equally displace them.

Modernization lures many young members of indigenous communities to change their indigenous existence; while traditional wisdom, skills and systems slowly lose their role as the elders of the indigenous communities quietly die.

Whether or not the indigenous peoples should adapt to modern ways, or assimilate to the mainstream society is a decision only the indigenous peoples themselves could make. But the continuing pressure from the dominant population, the business entities, and the government may ultimately decide what would become of the indigenous peoples.

The loss of the indigenous peoples is the gain of no one.

Indigenous Peoples of Thailand

Network of Indigenous Peoples in Thailand

The indigenous peoples of Thailand are commonly referred to as "hill tribes," and sometimes as "ethnic minorities." The ten officially recognized groups are usually called "*chao khao*" (meaning hill/mountain people or highlanders). These and other indigenous peoples live in the north and northwestern parts of the country, a few other groups live in the northeast, while indigenous fisher communities and a small population of hunter-gatherers inhabit southern Thailand. According to the Department of Social Development and Welfare (2002), the total of the officially recognized "hill-tribe" population is 925,8252[1] and they are distributed across twenty provinces in the north and west of the country. There are still no figures available for the indigenous groups in the south and northeast.

The indigenous peoples of Thailand belong to five linguistic families: Tai-Kadai (e.g., the various Tai groups in the North, the Saek, or Shan, also called Thai Yai,), Tibeto-Burman (e.g., the Akha, Karen, Lahu, Lisu), Mon-Khmer (e.g., Lua, Khmu, Kui, Mlabri), Hmong-Mien (Hmong, Mien), and Malayo-Polynesian (Moken).

The ten ethnic groups that are officially recognized as "hill people" living in the north and west of the country are: the Akha, Hmong, H'tin, Karen, Khmu, Lahu, Lisu, Lua, Mien and Mlabri.[2] There are however several other small groups that reside in the North: several so-called local Tai groups (Tai Lue, Tai Khuen, Tai Yong), Kachin and Shan.

With the drawing of national boundaries in Southeast Asia during the colonial era and in the wake of decolonization, many indigenous peoples living in remote highlands and forests were divided. On the Korat plateau of the northeast and especially along the border with Laos and Cambodia live various ethnic groups that bear characteristics common with others that are considered indigenous peoples in Thailand. They consist of several Tai speaking groups (Saek, Phuan, Phuthai and Tai song Dam), the Mon-Khmer speaking Kui (also called Kuoy or Suoi) and the So. Larger populations of these peoples live in the respective countries across the border. In Chaiyaphum province lives a group known as Nyahkur, Niakkuoll, Niakuolor or Chao Bon and are considered to speak the old Mon language.

In Trat Province and Chanthaburi Province of eastern Thailand (as well as the adjacent areas in Cambodia) live the Chong. They also call themselves Chong-Samré in the Trat Province, or Chong la and Chong heap in the Chanthaburi Province.

The Sa'och of Trat province and neighboring Cambodia speak the same language as the Chong but are physically very different (negroid features). Both groups used to live mainly from swidden farming, hunting and gathering.

In south Thailand, along the Thai-Malaysian border, live people who across the border in Malaysia are classified as belonging to the negrito group of the Orang Asli. They are sometimes called Ngo, Ngko, Ngok Pa or Sakai in Thailand. Sakai has a negative connotation in Malaysia, but not so in Thailand. In some records they are also called Manni, a generic term for the negrito groups of the Orang Asli in Malaysia.

Along the coast and the islands of the Andaman Sea, from Malaysia through Thailand and into the Mergui archipelago of Burma live the so-called "sea gypsies" or, in Thai, *chao le* (meaning sea people). In the southern part, between Puket island and the Malaysian border live the Urak Lawoi; in northern Puket and into the Mergui Archipelago of Burma live the Moklen and Moken.

Stereotyping and Discrimination

The official term *chao khao* has been used since the late 1950s, earlier called *chao pa* (forest people), to refer to non-Thai minority groups.

For the Thais, *pa* – meaning "forest" – has the connotation of

"wild," which is generally conceived as opposite to "civilized." The adoption of the term *chao khao* was part of a nation-building process in which national identity and definition of "Thai-ness" was linked to cultural traits, particularly Buddhism, Thai language and the monarchy. With the negative stereotyping of the hill tribes as forest destroyers, opium cultivators and communist sympathizers, the social category of the *chao khao* came to be defined as being "non-Thai," underdeveloped and environmentally destructive. Other terms applied in Thailand are more or less equivalent to terms commonly used in English like *klum chat tiphan* (ethnic groups) or *chon klum noy* (ethnic minorities). The (former) hunter-gatherer groups in the South are still often referred to by the derogatory term *sakai* (literally meaning slave).

These stereotyping and discrimination have been reinforced directly and indirectly in the national education curriculum from primary to university levels.

In opposition to these negative connotations of the official designation *chao khao* or other commonly used derogatory terms, indigenous organizations and indigenous peoples' rights advocacy groups began to promote over ten years ago the term *chon phao phuen mueang* (**ชนเผ่าพื้นเมือง**) as the translation of "indigenous peoples."

The government of Thailand has rejected the use of the term "indigenous peoples," and stated that these groups are as much Thais as the other Thai citizens, able to enjoy the fundamental rights, and are protected by the laws of the Kingdom.[3] However, until today the indigenous peoples of Thailand continue to suffer from the same historical stereotyping and discrimination like other indigenous peoples elsewhere in the world.

Underlying many current laws, policies and programs targeting indigenous peoples are the same prejudices and widespread misconceptions of indigenous peoples that have been prevalent over the past decades: indigenous peoples being drug producers and posing a threat to national security and to the environment. Although there have been some positive developments away from this approach in recent years, discriminatory attitudes and actions are still prevalent among government officials.

Laws and Indigenous Peoples

Thailand has ratified several international human rights and environmental conservation instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Convention on Civil and Political Rights (ICCPR), International Convention on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on Biological Diversity (CBD). Thailand also voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) at the United Nations General Assembly. These international legal commitments obligate the Thai Government to recognize, respect and protect the rights of indigenous peoples through laws, policies and programs. However, the reality on the ground has hardly changed.

Representatives of Indigenous Communities in Interactive Dialogue with Professor James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples (Photo - AIPP Archive)

The historical discrimination against the indigenous peoples of Thailand as "uncivilized", in opposition to the "civilized" majority Thais, and now also as a threat to national security, continue to shape the laws, policies and programs affecting them. Thailand does not have laws recognizing and protecting the rights of indigenous peoples and the new Constitution passed in 2007 does not explicitly recognize their identity. This constitutional gap arose despite the fact that indigenous peoples' representatives participated in different constitution-drafting discussion forums at the provincial as well as national levels.

The Citizenship Act of 1965 grants Thai citizenship to people belonging to indigenous peoples who were born in Thailand, provided their parents were Thai nationals. Many indigenous peoples with a legitimate claim to Thai citizenship are excluded, however, because of lack of birth registration or other means of proving birth. Approximately 296,000 indigenous individuals in Thailand still lack citizenship,[4] which restricts their freedom of movement, and the ability to access public services such as basic health care or admission to schools.[5]

Policies and programs specifically addressing the "hill tribes" have been implemented since the late 1950s after the creation of the Central Hill Tribe Committee and later the Hill Tribe Welfare Division within the Ministry of Interior. Until the 1980s, Thai policies toward indigenous peoples were dominated by concerns about opium cultivation and communist insurgency. By the 1980s, deforestation and control of resources in the uplands became important national issues and in 1982, the "Committee for the Solution of National Security Problems involving Hill Tribes and the Cultivation of Narcotic Crops" was established to implement and coordinate policies (including the Master Plans for the Development of Highland Populations, Environment and Control of Narcotic Crops, and the National Economic and Social Development Plans) aimed at indigenous peoples. The objectives of these policies, which are still effective at present, include the integration of the indigenous peoples into Thai society, the reorganization of their way of life, the elimination of opium cultivation and consumption, the reduction of population growth, and improvement of living standards.

Aside from these policies, the following laws and resolutions directly or indirectly affect indigenous peoples' livelihoods:

i. Forest Act (FA), 1941
ii. National Forests Reserve Act (NFRA), 1964
iii. Wildlife Sanctuary Act (WSA), 1964
iv. National Park Act (NPA), 1961
v. Cabinet Resolution, 30 June 1998
vi. Community Forest Act (CFA), 2007
vii. Cabinet Resolution, 29 April 2008.

These laws and resolutions have had severe impacts on indigenous peoples' rights to residence and land. Under these laws and resolutions millions of hectares of land have been declared as reserved and conservation forests, or protected areas. Today, 28.78% of Thailand is categorized as protected areas.[6]

As a result, thousands of farmers previously living in the forest or relying on the forest for their livelihood have been arrested and imprisoned and their lands seized. Cases have been filed against them for the so-called encroachment on government lands.

The Community Forest Act was passed on 21 December 2007 despite much opposition from the civil society organizations and indigenous peoples' rights advocates. This law deviated substantially from the original proposal of civil society organizations and resulted in de facto nullifying of the rights of numerous forest communities. Sections 25 and 34 of the law are considered similar to the conventional forest laws that curb peoples' rights to forests. According to indigenous peoples' rights advocates, the law makes the full participation of indigenous communities in community forestry and resource management impossible, and contradicts the provisions on community resource management rights in the 2007 Constitution.[7]

Topping it all is the passage of the new National Security Act, 2007 that has led to increased human rights abuses perpetrated mainly by government officials and security forces against indigenous and other minority peoples. Throughout 2008, while claiming to help combat the "drug epidemic" in the country, this law was used to control and suppress indigenous

peoples and other forest dependent communities from "encroaching" into the forests, to control cross-border labor migration, and for the "problem of terrorism" in the three southern provinces (i.e., Narathiwat, Yala and Pattani). Aside from the three southern provinces, this law is also frequently employed by government officials in addressing the "problem of terrorism" in the border areas of Chiang Rai, Chiang Mai, Mae Hong Son, Tak, Kanchaburi and Ratburi Provinces.[8]

The summary executions and disappearance of persons in Thailand carried out by the government officials since 2003 under the drug suppression policy include the cases of execution of six Mien people in Huay Chompu Tambon, Municipal District, Chiang Rai Province on 22 February 2003.[9] In addition, government officials accused twenty Lahu people in Mae Ai and Fang Districts of Chiang Mai Province of drug pushing. They suffered severe beatings and electrical shocks, were incarcerated in pits in the ground, and were either executed or disappeared between 2002 and 2004.[10]

Responses by the Government

The responses of the Government of Thailand to some of the key issues are the following:

1. Regarding summary executions related to drug suppression, the Thai government established the "Independent Commission to Investigate, Study and Analyze Thai Drug Suppression Policy and Practice and the Impacts on People's Life, Reputation and Property." However, the government has not yet taken any action on the findings in the report of this body and has not provided redress and justice to the victims.
2. Regarding the problems arising from conflict between indigenous peoples and the government over land and forests, there has not been much progress. This is evidenced by the lack of revision of the four forestry laws in order to make them comply with the Thai Constitution and international laws. The Office of the Prime Minister under the current government has however issued a regulation concerning community land titles. This has already passed the Cabinet and final approval is being awaited.
3. Regarding traditional occupation and livelihood systems and practices, particularly rotational farming, the government has not yet accepted them and deep-seated conflicts continue as a result.
4. Regarding citizenship and individual status, the government revised the Citizenship Act of 1965 (4th revision, 2008) that facilitated the faster processing of applications for, and granting of, Thai citizenship. The procedures for screening and preparation of evidence prior to approval by the Minister of Interior have improved. This has increased the opportunities for those whose citizenship has been revoked and have been limited by Revolutionary Decree 337. They are now permitted to request for the restoration of their citizenship. However, the process still gets stuck at the district level where the new law is not followed.

Overall, the government has not paid serious attention to the solution of the above issues and problems. Nevertheless, independent organizations established under the Constitutions of 1997 and 2007, such as the National Human Rights Commission and the Constitutional Court, have played an important role in addressing the violation of the rights of indigenous peoples. At present, the National Human Rights Commission takes cases to court on behalf of the victims, thereby assisting in protecting the rights of the indigenous peoples.

The Network of Indigenous Peoples in Thailand (NIPT) is an alliance of twenty-six indigenous organizations in Thailand. NIPT works for the promotion of indigenous peoples' rights and issues such as identity, citizenship and natural resources management.

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Indigenous Peoples in the Philippines: Continuing Struggle

Rey Ty

The Spanish and American colonialization of the Philippines institutionalized the distinction among peoples in the country into mainstream Christian/Muslim and peripheral tribal/minority/indigenous populations. Through laws, the tribal/minority/indigenous communities were deprived of the right to their ancestral domains. Through so-called "development" activities, they were dispossessed of the land they till for their livelihood. Their marginalization, dispossession and other forms of injustices continued long after colonial rule had gone.

This article briefly traces the historical development of the legal measures that led to the oppression of the indigenous peoples in the Philippines, as well as discuss the current measures that address the problem. To prepare for the article, the author reviewed the major laws as well as the political systems from the colonial period to the present, and analyzed materials related to the training programs at the Northern Illinois University that contain critical reflections that arose from the focused group discussions among representatives of indigenous peoples from Luzon, Visayas, and Mindanao who attended the programs.

Spanish Colonial Rule

Thriving communities existed (with political, economic, social and cultural systems) in the different parts of the archipelago (now called the Philippines) hundreds of years before Spanish colonization began. The Islamic influence that started in the south (Mindanao) in the 13th century had reached the north (Manila in particular) centuries later. But the arrival of the Spanish colonizers changed the course of history of the archipelago drastically. For the first time, a single political (and religious) authority ruled over major portions of the archipelago (including parts of Mindanao). Spanish settlements spread throughout the archipelago and merged with the major communities (Intramuros in Manila, Villa Fernandina in Vigan, Caceres in Naga for what is now Luzon area, and Santisimo Nombre in Cebu and Arevalo in Molo in the Visaya area).[1]

Communities were organized into towns (*pueblos*) under the rule of both Spanish colonial government and the Catholic Church. But the Spanish colonial government did not have enough personnel (or religious missionaries) to manage the communities, and thus it resorted to a system of land trust (*encomienda*) that gave lands to Spanish settlers. The system was first employed in "Spanish America in Columbus's time.. and [L]and, with its inhabitants, was entrusted – not granted as private property – to an *encomendero* or trustee as a reward for his services to the king and for his support."[2]

The *encomendero* had specific duties, despite not being a government official, to resettle the people – the original inhabitants of the islands – in permanent communities located in suitable places; establish a government for the people; and teach the people the Christian religion. In return, he was authorized to collect tributes, and recruit workers for public service (*polo*).[3]

The establishment of townships started the distinction between people who came under Spanish and Christian influence and those who refused to be so ruled. Eventually, those who remained outside the towns were driven further out into the forests and the mountains. With their traditional systems and practices intact, they were considered *remontados* (people who fled to the hills) and *infideles* (infidels).

Spanish laws were nevertheless imposed on those who refused to join the *pueblos*. All lands in the Philippine archipelago were treated as lands of the Spanish crown under the *jura regalia* doctrine (Regalian Doctrine). By the 19th century new Spanish land laws were governing lands

in the Philippines. Land titles became the basis of grant from the Spanish crown. Those without the land titles had no legal right over the land. Thus, the people who remained outside the *pueblos*, now the indigenous peoples, and who refused to be covered by Spanish land laws had virtually no right to their own land.

With the Spanish-American War that led to the surrender of the Spanish forces in Manila to a U.S. naval fleet, a new colonial ruler from North America entered the Philippines. By virtue of the Treaty of Paris of 1898 that ended the Spanish-American war, and with a twenty million dollar payment to Spain, the Philippines became a U.S. colony.[4]

U.S. Colonialism

The U.S. colonial government kept the Regalian Doctrine and implemented a series of land laws to govern the so-called "public lands" (previously lands of the Spanish crown). It wanted uncultivated and unoccupied public lands that could be classified as agricultural lands to be distributed to those who wanted to use them – U.S. citizens included. These "uncultivated, unoccupied public lands" covered the ancestral domains of indigenous peoples. The Public Land Act of 1902 governed the disposition of the lands of the "public domain." Claimants could apply for homestead, or buy or lease, or confirm titles (acquired during the Spanish era) to the land. A corporation or association could lease or buy up to 1,024 hectares of land. This law had a provision regarding designation of "any tract or tracts of the public domain for the exclusive use of non-Christian natives," by which each member could apply up to four hectares of land for his own use. The same provision declared null and void any conveyance or transfer of right to land by the non-Christian natives (including "sultans, datus, or other chiefs of the so-called non-Christians tribes") if they were not authorized by either the previous Spanish colonial government or the U.S. colonial government. The 1902 Land Registration Act No. 496 proclaimed that all lands were subject to a land title system and gave power to the government to issue proofs of title over a piece of land to legitimate claimants. The 1903 Philippine Commission Act No. 178 classified all unregistered land as belonging to the public domain and that the State alone had the power to classify and use it. The 1905 Mining Act gave the American colonialists the right to mine public lands.

Other laws allowed big American agricultural corporations to access the fertile lands of Mindanao, belonging to indigenous peoples, and to establish vast agricultural plantations.

Postcolonial Philippines

The effect of the U.S. land laws continued after the Philippines became an independent state in 1946. While many of these laws were subsequently amended by the Philippine legislature, they retained their basic objectives and features. It was in the 1987 Constitution that, while keeping the Regalian Doctrine, "the rights of indigenous cultural communities within the framework of national unity and development"[5] were recognized, and the autonomous regions of Muslim Mindanao and in the Cordilleras were created.[6] To implement these constitutional provisions, Republic Act 8371, also known as Indigenous Peoples Rights Act (IPRA), was enacted in 1997.

The law defines "ancestral domains" as

> all areas generally belonging to ICCs/IPs [indigenous cultural communities/indigenous peoples] comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be

> exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators. (Section 3a)

IPRA initiated the new era of settling land claims, this time by the indigenous peoples in relation to their ancestral domains. But the establishment of such claims did not always end their land problems. Another law was enacted two years before that affected the claims of indigenous communities to land where minerals exist. The Philippine Mining Act of 1995[7] was enacted with the full recognition that ancestral lands would be affected. It defines ancestral lands, provides that such lands would not be opened for mining operations "without the prior consent of the indigenous cultural community concerned," and in case the community gives its consent "royalty payment, upon utilization of the minerals shall be agreed upon by the parties." While these provisions recognized the right to land of the indigenous peoples, actual application of the law adversely affected their communities. Additionally, the 1992 National Integrated Protected Areas System (NIPAS) Act, meant to protect endangered plants and animals, challenges the social, political, and cultural systems of indigenous peoples.

Indigenous Peoples Today

Indigenous peoples in the Philippines belong to different ethnic groups and reside in different parts of the country. There are more than one hundred indigenous communities (NCIP, 2010), about 61% of whom are in Mindanao, 33% in Luzon, and 6% in the Visayas. The indigenous peoples in the Cordilleras in Northern Luzon are called Igorot. They belong to different ethnic groups, such as Bontoc, Ibaloi, Ifugao, Isneg, Kalinga, Kankanaey, and Tingguian. The Gadang, Ilongot, and Ivatan are found in the Cagayan Valley, Isabela, Nueva Vizcaya, and Quirino. The Negrito groups are found in North, Central, and Southern Luzon. They include the Aeta and Dumagat.

The Mindoro island has seven distinct Mangyan groups. Palawan islands have the Batak, Palawana, and Tagbanwa. The indigenous peoples in Mindanao, collectively called *Lumad*, do not consider the Bangsa Moro and the Christianized Filipinos as indigenous peoples in view of their adoption of non-indigenous religions. The major *Lumad* groups are (1) the Monobo, (2) the Bagobo, B'laan, T'boli, and Teduray groups, (3) the Mandaya and Mansaka groups, (4) the Subanen, and (5) the Mamanwa.

Human Rights Violations

The indigenous peoples, to a large extent "forgotten" by the government, are in the midst of problems. Physical isolation does not shield them from being caught in the crossfire in the on-going armed conflicts in the country, many suffered as internally displaced persons (IDPs) and some killed or detained and tortured as suspected members of the armed opposition groups. Lack of access to basic social services, education, sustainable livelihood, farm-to-market roads, and health services contribute to their continuing poverty. In many cases, the onslaught of commercialism and modern culture came at the expense of maintaining their own culture and tradition (and thus their identity).

The Copenhagen-based International Work Group for Indigenous Affairs[8] noted that the Philippine government approved the Certificates of Ancestral Domain Title (CADT), which "now help indigenous communities to assert control over their territories and they create the incentives to sustainably manage and protect their forest and other natural resources." Indeed, in some indigenous communities, such as the Subanen, indigenous leaders were able to participate "in local government" as well as "titling of ancestral domains" as "part of the overall goal of strengthening self-governance of ancestral domains."

However, there are other issues that have remained unresolved. Reports by various human rights organizations show human rights violations relating to mining operations in ancestral lands, while other human rights of indigenous peoples continue to be violated in general.[9]

***Lumads* in Mindanao**

Indigenous participants from Mindanao of the two batches of Northern Illinois University's Philippine Minorities Program

held in 2010 and the program titled "Cultural Citizens and the North-South Dialogue" held in 2008 reported several cases of violations of the rights of the *Lumads*. Common problems include non-representation at all levels of society, lack of education, poverty, and discrimination. Their struggles against development aggression, which lead to loss of ancestral domain and self-determination as well as to environmental destruction, are met with harassment and human rights violations, including political killings.

A Talaandig woman from Bukidnon reported that their ancestral domain was grabbed, despite their efforts to fight against it through legal means. In the process, a leader and other community members were killed. Many Talaandigs ended up working as laundry maids or domestic help in neighboring *barangays* (communities), sugarcane plantation workers, and laborers.

A Manobo teacher from Surigao del Sur reported on the existence of illegal logging and mining that caused loss of farmlands as well as flash floods. A Teduray community organizer from Maguindanao said that his tribe fell victim to internal displacement due to recurrent armed conflicts. In addition, illegal logging caused environmental destruction. Due to poverty, many go abroad, specifically to the Middle East, to work as domestic help.

A Tagacaulo from Sarangani said that his community was worried about the intrusion of settlers into their ancestral lands. Corrupt politicians aggravate their problems, as the politicians receive payoffs from parties having interest on the ancestral lands and support the latter's actions. A Blaan agriculturist said that the operations of a multinational pineapple company were destroying not only the environment of South Cotabato but also jeopardizing the health of the people who work and live in the plantation and its surrounding areas. Hazardous chemicals are extensively used as fertilizers, pesticides, and herbicides. Children and adults inhale these chemicals, and fall ill. As they lose their ancestral lands, they leave the highlands and seek economic opportunities in the lowlands.

Conclusion

Each indigenous community is different. But all indigenous communities struggle for the right to self-determination and to their ancestral domain. Pursuant to the stipulations of the 1987 Constitution, IPRA undertakes to improve the situation of indigenous peoples. But laws, such as IPRA, have to be effectively implemented in light of the existence of other laws that violate the rights of indigenous peoples. Finally, the resolution of the problems of the indigenous peoples relates to the elimination of the deep-seated discrimination against them, a task that remains difficult to achieve.

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Endnotes

1 Jose Arcilla, "Spanish Conquest," *Kasaysayan – The Story of the Filipino People* (Hong Kong: Asia Publishing Company Ltd., 1998), page 61.

2 Ibid.

3 Ibid.

4 For the terms of the treaty visit: http://avalon.law.yale.edu/19th_century/sp1898.asp

5 Article II, Section 22, 1997 Constitution

6 Article X, Sections 15 to 19, 1997 Constitution

7 An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation.

8 International Work Group for Indigenous Affairs, *Annual Report 2009*. (Copenhagen: International Work Group for Indigenous Affairs, 2009), pages 16 and 19.

9 See for example, Amnesty International, *Amnesty International Report 2009: State of the World's Human Rights* (London: Amnesty International, 2009). Retrieved 24 December 2010 from www.thereport.amnesty.org/en/regions/asia-pacific/philippines#indigenous-peoples-rsquo-rights, and Cultural Survival, *Philippines: Stop mine on indigenous lands*. Retrieved 23 December 2010 from www.culturalsurvival.org/take-action/philippines-stop-mine-indigenous-lands.

Marriage Brokerage and Human Rights Issues

Nobuki Fujimoto

Faced with decreasing population, the local government of Asahi town in Yamagata Prefecture launched in 1985 a project on finding non-Japanese wives for the local men. The local government encouraged their male residents, who had difficulty getting Japanese wives, to go to the Philippines to find their 'brides.'

In collaboration with a private matchmaking agency, the project facilitated meetings in the Philippines of groups of Japanese men and Filipino women. Subsequently, a number of Filipino women got married to the local Japanese men and settled in Asahi town.

These international marriages attracted much public attention and led many other local governments in the rural regions throughout Japan to follow suit. The practice had become known as "importation of brides."[1] Many more women from the Philippines and other countries in Asia[2] married Japanese men and settled in rural towns.

These marriages contributed to the steep rise in the number international marriages in Japan during the decades of 1980s till 1990s. A 2000 study on Yamagata prefecture, where one in fourteen marriages was an international marriage, showed that the rate of increase in the number of international marriages in the prefecture was much higher than the national average as shown in the table below.[3]

Criticisms

The initial Japanese mass media reports on these local government initiatives were positive, and projected the image of 'Cheerful Brides from the South.' The non-Japanese wives took the place of young Japanese women who shied away from living in agricultural households, where they were expected to produce the offspring who would succeed the household head and to perform the duty of working in the agricultural field.

However, questions and criticisms of these local government initiatives soon followed. Critics argued that it was improper for local governments to have an international matchmaking policy that involved short periods of interview through interpreters of prospective non-Japanese wives, selection by Japanese men of their respective brides from several candidates, and high service fees paid to private matchmaking agencies. Private matchmaking agencies reportedly received about two million Japanese Yen of commission per applicant. In response, the local governments gradually stopped intervening in the international marriage initiatives. The private matchmaking agencies, in turn, gradually took full control of the international marriage business.

Several years later, the problems regarding international marriages came to light. Some of the non-Japanese wives escaped from the rural communities to seek freedom. They reported having unbearable lives in a patriarchal rural environment, and experiencing discrimination.

Registered Foreigners in Japan and Yamagata Prefecture – 1989-2001

	1989	1991	1993	1995	1997	1999	2001
Japan	984, 455	1, 218, 891	1, 320, 748	1, 362, 371	1, 482, 707	1, 556, 113	1, 778, 462
% Increase		24%	8%	3%	9%	5%	14%
Yamagata	1, 381	2, 171	2, 726	3, 122	4, 080	5, 368	6, 853
% Increase		57%	26%	15%	31%	32%	28%

The Japanese husbands believed that that they had the right to control their non-Japanese wives since they were virtually "bought" after paying so much money to get them. But the non-Japanese wives and their families actually received very minimal amount as betrothal money. A major portion of the expense went to the matchmaking agencies.

The non-Japanese wives complained that they were not properly informed about Japan before leaving their country. They were sometimes told by matchmaking agencies that they were going to Tokyo, rather than to agricultural communities affected by heavy snow during winter.

Role of International Matchmaking Agencies

There is no data on the percentage of the international marriages that were arranged by international matchmaking agencies. It seems that many international marriages involving Chinese women were arranged by matchmaking agencies. At the same time, networks within the communities of non-Japanese wives helped introduce relatives and friends to Japanese males that led to international marriages.

Many Japanese matchmaking agencies have websites that advertise their business.[4] While some agencies introduce women from different countries, others deal with a particular country only. The matchmaking agencies exaggerate the advantages of getting wives from the countries they work on.

Regarding China, the advertisements state:

- There are many similarities between China and Japan, such as the appearance of the people, their use of chopsticks, Buddhism;
- Since they are willing to go to Japan, many of them would accept marriage to people with disabilities;
- Unlike modern Japanese women who are choosy because they have too much information, they (Chinese women) are broad-minded. Their character is similar to that of Japanese women before World War Two.

For the Philippines, they say

> Filipinas do not mind differences in age. They would devote themselves in taking care of elderly people, as they believe it is a duty of the 'bride'. If males are more than 50 years old, females at the age of 22 to 27 might be suitable.

The websites carry pictures of women along with their profiles - name and other personal information. Some websites indicate whether or not the women have an experience in caring for the elderly people. This information relates to the needs in an aging Japanese society and the shortage of care workers, and shows the 'real purpose' of accepting 'brides from Asian countries.' Such advertisements increase the demand for non-Japanese brides.

The matchmaking agencies charge fees, paid as commission, ranging from two to three million Japanese Yen (17,000 – 26,000 US dollars). Some charge additional expenses, amounting to five million Japanese Yen (43,000 US dollars). People who paid the high fees to unscrupulous agencies but failed to get their brides, created their own websites to warn possible victims.

No law exists to regulate the commercial activities of matchmaking agencies. They remained uncontrolled for decades, similar to that of matchmaking agencies exclusively for Japanese couples. In 2007, the National Consumer Affairs Center of Japan (NCAC) received a total of 3,000 complaints over marriage services.

Voluntary Certification System

Two reports (2006 and 2007) of the Ministry of Economy, Trade and Industry (METI) on the situation of the marriage industry in Japan revealed the existence of 3,700 to 3,900 firms (70% of them comprised of one-person or very small agencies) that provide services ranging from traditional meeting arrangement (*omiai*) to Internet-based matchmaking. The total annual sales in the matchmaking industry amounted to 50-60 billion Yen (500 to 600 million US dollars). 600,000 people (men and women) have availed of the services, but there is no breakdown of the data for international marriages.

The reports likewise included complaints from the customers regarding provision of false information (both on the prospective partners and the terms of their contract with the matchmaking agencies). Regarding international marriages, a client complained about the disappearance of his Chinese wife two months after arriving in Japan. Another complained of the non-arrival of Filipino wife though he paid two and a half million Japanese Yen to the matchmaking agency.

In response to this situation, the industry, academics and the government jointly established in May 2007 the Service Productivity & Innovation for Growth (SPRING), with the task of implementing a voluntary certification system. SPRING released the certification guidelines for matchmaking and marriage information services in July 2008. The guidelines aim to protect the 'consumers' by requesting the matchmaking agencies to provide proper information, such as service fee, and to refrain from making exaggerated advertisements.

Based on the guidelines, 'independent' organizations, mostly established jointly by the firms within the industry, such as the Japan Lifedesign Counselors' Association (JLCA), a non-profit organization, would certify applicant matchmaking agencies by issuing the 'Certified Matchmaking Service' (CMS) mark.

The system started on 1 January 2009. Each office engaged in matchmaking business could apply for the certification on condition that the office is located in Japan, and has been operating the business for more than a year by an owner who has not violated the business ethics and relevant laws and regulations within the past three years. An increasing number of matchmaking agencies applying for the certification has been reported.

Because this is just a voluntary certification system, there is no legal obligation to comply with the guidelines. The actual effect has not been evaluated yet. In addition, when it comes to international marriage, the clients (mostly Japanese men) pay service fees to matchmakers. This certification system aims to protect the interest of clients, or more explicitly 'consumers'. It might benefit Japanese men, but not the prospective wives from developing countries.

Human Rights Implications

The lack of legal support for the regulation of the Japanese marriage industry provides sufficient space for abusive matchmaking agencies to facilitate the entry of non-Japanese "wives" to Japan for exploitation purposes.

The Ministry of Foreign Affairs (MOFA) of Japan, in line with its action plan on combating trafficking in persons, warns visa applicants to avoid becoming a trafficking victim through marriage arrangement. As a "tip" to visa applicants, MOFA states:[5]

> [Has] anyone forced or [made arrangement for] you to marry a Japanese national so that you can work in Japan? Do you have to pay [some amount] monthly to your 'husband' after successfully entering ... Japan as his 'wife'? A FAKE or CONVENIENT MARRIAGE could [result into] human trafficking.

This statement reflects the recognition by the Japanese government of the possibility of human trafficking being done through the marriage-brokering route. It also raises the probability that the traffickers have already victimized some non-Japanese women brought to Japan as "wives."

As earlier mentioned, the non-Japanese wives are in vulnerable situation and face other human rights problems, such as discrimination. Japanese media report on these problems alongside stories of adjustment by non-Japanese wives to life in traditional rural households.[6]

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For further information, please contact HURIGHTS OSAKA.

Endnotes

[1] The "importation of brides" in Asahi town was quickly followed by the towns of "Okura in Yamagata, Azuka and Yuzawa in Niigata, Higashiyama in Tokushima, Masuda in Akita and Sawauchi in Iwate." See *Voice of Women* (Colombo), "Sri-Lankan Brides in Japan," December 1988 - May 1989, available in the

website of Women Living Under Muslim Laws, www.wluml.org/node/258.

[2] There were also brides from Taiwan, Korea, China, Indochina, South Pacific Islands, and Sri Lanka. See *Voice of Women*, ibid. See also Chris Burgess, "(Re)Constructing Boundaries: International Marriage Migrants in Yamagata as Agents of Multiculturalism" in Nelson H. H. Graburn, John Ertl, R. Kenji Tierney, editors, *Multiculturalism in the New Japan: Crossing the Boundaries Within* (New York: Berghahn Press, 2008).

[3] Burgess, page 66.

[4] In late 1980s, the *Voice of Women* reported that the "Private enterprise importing Asian brides as commodities has adopted three common strategies to cultivate new markets:

1) Agency through membership: This system follows the existing marriage agency system for Japanese. It offers arranged meetings with imported brides-to-be and men. The main targets are eldest sons of farmers, men supporting and living with their elderly parents, workers with little education, older men wanting to marry, multiple divorcees, mentally and physically disabled men, and socially handicapped men.
2) Explanation and exhibition: Slick pamphlets are sent to municipal offices, agricultural co-operatives, and community centres announcing an opportunity to meet potential brides. They emphasise the naivety and gentleness of Asian women, while also explaining the legal procedures necessary for an international marriage.
3) Media Advertising: Repeated adverts in the evening papers and sports and leisure papers, usually in the column for "soapland". An example from the Dec. 2, 1987 edition of the *Naigai Times* speaks shamelessly for itself. Both public and private sectors play on the fears and needs of Japanese Men. "You are over 35 so you cannot hope to marry a Japanese woman. You are choosing the personality, not the nationality". "Short, fat, and ugly" is an effective threat in this business."

[5] Japan's Visa Policy in Accordance with Measures to Combat Trafficking in Persons, August 2007(Updated in February 2009), www.mofa.go.jp/j_info/visit/visa/topics/traffick.html

[6] See for example, Leotes Marie T. Lugo, "Filipinas at home in rural Japan," *The Asahi Shimbun Asia Network*, www.asahi.com/international/aan/kisha/kisha_008.html

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Indigenous Peoples of Thailand

(Continued from page 5)

∗ This article is an excerpt from the *Report on the Situation of Human Rights and Fundamental Rights of Indigenous Peoples in Thailand*, submitted to Professor James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People on 19 January 2010 in Chiang Mai by the Network of Indigenous Peoples in Thailand (NIPT) in collaboration with the Asia Indigenous Peoples Pact (AIPP) and the International Work Group for Indigenous Affairs (IWGIA).

Endnotes

[1] See Department of Social Development and Welfare, *A Directory of Ethnic Highland Communities in Twenty Provinces, in Thailand, B.E. 2545 (2002)*.

[2] Sometimes only nine are mentioned, with the Palaung being excluded. The inclusion of the Palaung is considered problematic because of the community's comparably late arrival. Dr. Chayan Vadhanaputi, personal communication.

[3] United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. WGIP 10th session. E/CN.4/Sub.2/AC. 4/1992/4.

[4] Background document provided by the Office of National Security in the workshop on finding solutions for illegal immigrants, 18 June 2009 at Rimkok Resort, Chiang Rai.

[5] International Work Group for Indigenous Affairs, *The Indigenous World 2009 (Copenhagen: IWGIA, 2009)*, page 335.

[6] Christian Erni, editor, *The Concept of Indigenous Peoples in Asia: A Resouce Book* (Copenhagen/Chiangmai: International Work Groups for Indigenous Affairs (IWGIA) and Asia Indigenous Peoples Pact Foundation. 2008), page 445.

[7] Ibid., page 445.

[8] Ibid., page 446.

[9] Report of the Highland People's Taskforce (HPT).

[10] Data from the Lahu Association for Development of the Quality of Life.

Human Rights Events in the Asia-Pacific

Regional Training of Trainers on Disability Equality

The 2nd Regional Training of Trainers on Disability Equality Training (DET) was held on 3 - 11 November 2010 at the Institute of Training, National Council of Welfare and Social Development in Kuala Lumpur. The Japan International Cooperation Agency (JICA), and the Department of Social Welfare, Ministry of Women Family and Community Development, Malaysia jointly organized the training. There were sixteen participants from Thailand, India, Nepal, The Philippines, Papua New Guinea and Malaysia. Mr. Kenji Kuno, Senior Advisor on Social Welfare (Disability) of JICA, was the main resource person. The training had the following aims:

- To train participants to become effective DET trainers by gaining comprehensive understanding of the social model of disability
- To facilitate participatory learning approach
- To implement DET as a disability education for the public, and as an empowerment for other persons with disabilities (PWDs) in the respective countries.

For further information, please contact: Disabled Peoples' International Asia-Pacific (DPI/AP) Regional Office, 92 Phaholyothin 5 Road, Samsennai, Phayathai Bangkok 10400 Thailand; ph (662) 271-2123; fax (662) 271-2124; e-mail:saowalak@dpiap.org; www.dpiap.org

ASEAN Human Rights Workshop Series: Developing National Human Rights Action Plans

The Department of Foreign Affairs of the Republic of the Philippines and the Working Group for an ASEAN Human Rights Mechanism organized the "ASEAN Human Rights Workshop Series: Developing National Human Rights Action Plans" on 11-12 November 2010 in Manila. The workshop discussed the concept of National Human Rights Action Plans (NHRAPs); shared experiences in developing and implementing NHRAPs; discussed whether or not it was advantageous for countries to adopt their respective NHRAPs; discussed the challenges in coming up with NHRAPs; and had a dialogue among relevant stakeholders on how human rights could be better promoted and protected. Representatives of the Ministries of Foreign Affairs of all ASEAN Member States, ASEAN Intergovernmental Commission on Human Rights, government line agencies primarily handling human rights issues and concerns from all ASEAN Member States, National Human Rights Institutions in ASEAN (Indonesia, Malaysia, the Philippines, Thailand) and Selected Civil Society Organizations attended the workshop.

For further information please contact: Secretariat, The Working Group for an ASEAN Human Rights Mechanism, G/F Human Rights Center, School of Law, Ateneo de Manila University, Rockwell Drive, Rockwell Center, Makati City, Metro Manila, Philippines; ph: (632) 899-3633; 899-7691 loc. 2111; ph/fax: (632) 899-4342; e-mail: info@aseanhrmech.org; www.aseanhrmech.org

Applying Corporate Social Responsibility within an ASEAN Human Rights Framework

The Working Group for an ASEAN Human Rights Mechanism and the Singapore Working Group for an ASEAN Human Rights Mechanism (locally known as Maruah) held a two-day workshop entitled "Applying Corporate Social Responsibility within an ASEAN Human Rights Framework" on 30 November - 1 December 2010 in Singapore, with the support of the ASEAN CSR Network and Singapore Compact. The workshop aimed to raise awareness on the United Nations Framework on Business and Human Rights, particularly on Corporate Social Responsibility (CSR), in the context of the protection of and respect for human rights, and sought to provide opportunities to share best practices among the participants on CSR and human rights. The workshop was attended by representatives of the ASEAN Intergovernmental Commission on Human Rights, ASEAN Ministries of Foreign Affairs, the business community, civil society organizations, and other relevant government agencies in ASEAN.

For further information, please contact: The Secretariat, Working Group for an ASEAN Human Rights Mechanism, G/F Human Rights Center, School of Law,

Ateneo de Manila University, Rockwell Drive, Rockwell Center, Makati City, Metro Manila, Philippines; ph (632) 899-3633; 899-7691 loc. 2111; ph/fax (632) 899-4342; e-mail: rsantiago@aps.ateneo.edu; www.aseanhrmech.org.

South East Asia National Human Rights Institutions Forum (SEANF)

The South East Asia National Human Rights Institutions Forum (SEANF) consisting of the National Human Rights Commission of Indonesia [Komisi Nasional Hak Asasi Manusia (KOMNAS HAM)], the Human Rights Commission of Malaysia [Suruhanjaya Hak Asasi Manusia (SUHAKAM)], the Commission on Human Rights of the Philippines (CHRP), the National Human Rights Commission of Thailand (NHRCT) and the Provedor for Human Rights and Justice of Timor Leste (PDHJ), held the 7th Annual Meeting of SEANF in Kuala Lumpur on 15-16 November 2010. The SEANF member-institutions adopted the following five joint projects, namely, (i) the Joint Project on Preventive Legislation and Its Impact on Human Rights; (ii) the Joint Project on Human Rights Education; (iii) the Joint Project on Anti-Trafficking in Women and Children; (iv) the Joint Project on Migrant Workers and (v) the Joint Project on Economic, Social and Cultural Rights and the Right to Development. They also discussed (i) the role of SEANF in South East Asia; (ii) the role of SEANF vis-à-vis the ASEAN Intergovernmental Commission on Human Rights (AICHR); (iii) the role of SEANF in supporting the International Coordinating Council of National Human Rights Institutions (ICC) Strategic Plan 2010-2013 and the Asia-Pacific Forum of National Human Rights Institutions (APF) Operations Plan 2011; (iv) the role of SEANF in the review of the Human Rights Council and its mechanisms and (v) the role of SEANF in the drafting of the ASEAN Declaration on Human Rights. They agreed to actively engage with AICHR, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), the ASEAN Commission on the Rights of Women and Children (ACWC) on thematic issues of common concern such as migrant workers, trafficking in persons, women and children, statelessness as well as business and human rights.

For further information, please contact: ASEAN NHRI Forum, www.aseannhriforum.org

Strengthening Application of CEDAW in South Asia

The Partners for Law in Development (PLD) is organizing the South Asia Training of Trainers on CEDAW "Strengthening Application of CEDAW in South Asia" in April and August 2011 in New Delhi. The regional training of trainers (ToT) is open to all practitioners of the Convention for Elimination of All Forms of Discrimination against Women (CEDAW) from South Asia, and aims to strengthen the capacities of stakeholders in advancing the application of CEDAW in local and national contexts. It seeks to refresh and deepen the understanding of concepts, facilitate implementation in key contexts of gender inequality in South Asia, and familiarize with diverse applications of CEDAW, including the review processes.

The participants will be selected based on the following criteria:

a. Women's rights activists, lawyers, non-governmental organization (NGO) workers and government officials;
b. Three to seven years of experience in holding trainings on women's rights. Applicants with greater experience who have not had opportunity to participate in a regional ToT may also apply;
c. Demonstrated experience in applying CEDAW in their contexts, as trainers, advocates or programmers;
d. Strong commitment to work towards women's human rights at the local and national levels.

Both men and women may apply, though women with commensurate experience will be given preference. Twenty-five participants covering all eight SAARC countries are invited to apply for this regional training of trainers. Trainers and practitioners will be given preference, and selection will be equitably drawn from all the SAARC member states. Applicants must be fluent in English as that will be the medium of communication. This capacity building initiative is supported by UNIFEM SARO. Applications will be sent out in late January 2011.

Partners for Law in Development, F-18, First Floor, Jangpura Extension, New Delhi-110014 India; ph (9111) 24316832/33; ph/fax: (9111) 24316833; e-mail: pldindia@gmail.com; www.pldindia.org

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA has renewed its website – both Japanese and English sections - by the end of 2010. The English section is now designed to prominently present human rights issues in many countries in Asia and the Pacific, and other important human rights information relating to education, institutions and jurisprudence. It is hopefully more friendly to use. It contains more information than before, and will certainly continue to improve.

PRINTED MATTER **AIR MAIL**

May be opened for inspection by the postal service.

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia- Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

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