



**Nationally Determined  
Contributions in Asia:  
Are Governments recognizing  
the rights, roles and contributions  
of Indigenous Peoples?**



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**Cover photo:** : Indigenous Woman is carrying the harvested firewood from the forests in Tram Tau District of Yen Bai Province, Vietnam. **Photo Credit:** Thuy Hoang, Centre for Sustainable Development in Mountainous Areas (CSDM)

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# Abbreviations

<b>AIPP</b>	Asia Indigenous Peoples Pact
<b>CSA</b>	Climate-Smart Agriculture
<b>CSO</b>	Civil Society Organization
<b>FCPF</b>	Forest Carbon Partnership Facility of the World Bank
<b>FLEGT</b>	Forest law enforcement, governance and trade
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GCF</b>	Green Climate Fund
<b>GDP</b>	Gross Domestic Product
<b>GHG</b>	Greenhouse Gas
<b>IMPECT</b>	Inter Mountain Peoples Education and Culture in Thailand Association
<b>INDC</b>	Intended Nationally Determined Contribution
<b>INGO</b>	International Non-Governmental Organization
<b>IPF</b>	Indigenous Peoples' Foundation for Education and Environment
<b>IWGIA</b>	International Work Group for Indigenous Affairs
<b>NAPA</b>	National Adaptation Program of Action
<b>NAP</b>	National Adaptation Plan
<b>NCPO</b>	National Council for Peace and Order
<b>NDC</b>	Nationally Determined Contribution
<b>NGO</b>	Non-Governmental Organization
<b>NHRC</b>	National Human Rights Commission
<b>ONREPP</b>	Office of Natural Resources and Environmental Policy and Planning
<b>PFES</b>	Payment for Forest Environmental Services
<b>POINT</b>	Promotion of Indigenous and Nature Together
<b>PO</b>	People's Organization
<b>R-PP</b>	REDD+ Readiness Preparation Proposal
<b>REDD+</b>	Reducing Emissions from Deforestation and Forest Degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>VFV</b>	Vacant, Fallow and Virgin (land classification)



Bunong indigenous men and women engage in their traditional rice harvesting in the Monduliri Province of Cambodia.

Photo Credit: CIPO Archive

# Cambodia

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# **Purpose of this report**

This report presents the results of an analysis of how the rights and knowledge of Indigenous Peoples are addressed by the policies, laws and plans related to climate change in Cambodia. The report presents specific recommendations and is a baseline of the current situation in Cambodia for use by the Asia Indigenous Peoples Pact, its member organizations, and Indigenous Peoples working on climate change and the rights of Indigenous Peoples.

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# Summary of Findings

- In Cambodia, the government identifies Indigenous Peoples by their native language or ‘mother tongue’. The country has 22 indigenous ethnic groups located in 15 provinces, with a population of 183,831, representing 1.25 per cent of the total population. The government recognizes the term “Indigenous Peoples” as stipulated in various laws, policies and regulations, such as the Land Law, the Forestry Law, the Protected Area Law, and national policy on the development of Indigenous Peoples.
- Cambodia is ranked as one of the most climate-vulnerable countries, not only in Southeast Asia, but in the world. Cambodia ranked thirteenth of 181 countries on the Climate Risk Index, which ranks the countries most affected by climate change in the period 1996–2015 based on extreme weather events.<sup>1</sup> Indigenous Peoples are more vulnerable than other people because the climate change impacts are exacerbated by rapid changes in land use and rapid degradation of habitat caused by the extraction of natural resources, especially forest, within their territories. This has heavily affected indigenous men, women, youth, and persons with disabilities.
- The government has developed various policies, strategies and action plans to work towards socioeconomic and sustainable development in the context of climate change. Cross-sectoral policies relevant to climate change include the Nationally Determined Contribution (updated 2020); the national REDD+ Strategy 2017–2026; the Cambodia Sustainable Development Goals (2016–2030) and Voluntary National Review; the National Strategic Development Plan 2019–2023; the Cambodia Climate Change Strategic Plan 2014–2023; the Green Growth Policy 2013–2030; and the National Adaptation Plan of Action on Climate Change (2006). However, these laws, policies and regulations do not yet appreciate and integrate indigenous customary land and natural resource management; indigenous knowledge on environment protection; and the principle of free, prior and informed consent (FPIC) for indigenous communities; even though Indigenous Peoples’ ways of living and managing natural resources contribute significantly to both climate change adaptation and mitigation.

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<sup>1</sup> Germanwatch 2016. <https://germanwatch.org/sites/germanwatch.org/files/publication/13503.pdf>. Accessed 20 July 2017.

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- The key concerns of Indigenous Peoples on this matter are: the limited inclusion of Indigenous Peoples in policy development; the lack of full recognition of indigenous customary land use; the lack of law enforcement on illegal logging; the lack of understanding of Indigenous Peoples' rights at local and national levels; the fact that the localization of Cambodia Sustainable Development Goals does not yet include strong commitment or indicators to support Indigenous Peoples; and, especially, the lack of recognition of the principle of FPIC in all of Cambodia's laws, policies and regulations.
  - Indigenous customary practices and ways of living, particularly Indigenous Peoples' sustainable use and management of land and natural resources, can greatly contribute to climate mitigation and adaptation and to achieving the SDGs. Indigenous customary lands and natural resources are sources of food security, livelihoods, decent work, and wellbeing, and contribute to several SDGs (such as SDG4, SDG8, SDG10, SDG13, SDG16 and SDG17). It is, therefore, important to recognize the values, roles, and contributions of Indigenous Peoples and put them at the centre of the planning and implementation of the SDGs and of climate policies and actions. By working together with Indigenous Peoples, inclusive sustainable development and prosperity can be achieved in Cambodia.

# Recommendations

- Partner with Indigenous Peoples to achieve the Cambodia Sustainable Development Goals, beginning by allocating more resources to support conservation and development. Also, raise more awareness of, and enforce, favourable laws and policies relating to Indigenous Peoples. It is with Indigenous Peoples' effective participation and decision-making, and by upholding FPIC, that these goals can be accomplished. Leaving no one behind in the processes of national development and working to strengthen and preserve the rights of all peoples will build an even more thriving Cambodia.
- Promote understanding of the uniqueness of the customary land and natural resources of Indigenous Peoples to relevant government agencies, especially decision-makers at the policy level, so that Indigenous Peoples' customary practices and FPIC are considered more in policies, especially those related to the environment and climate change.
- Revitalize the customary land and natural resource practices of Indigenous Peoples because they contribute a lot not only to the ways of life, cultural integrity, and livelihoods of the Indigenous Peoples, but also to a better environment and to the Earth itself. These practices need to be fully recognized, supported and scaled up.
- Ensure the full and effective participation of Indigenous Peoples in the development and implementation processes of all environment- and climate-related laws/policies/regulations to avoid negative impacts on Indigenous Peoples while capitalizing on their indigenous knowledge and roles in protecting the environment.
- Develop specific indicators and actions, include them in environment- and climate-related policies, and enforce them to really promote the rights of Indigenous Peoples, specifically concerning land ownership and respect for the traditional knowledge held by Indigenous Peoples.

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# 01

## **General status of Indigenous Peoples in Cambodia**

In Cambodia, the government identifies Indigenous Peoples by their native language, or ‘mother tongue’. According to this identification method, there are 22 indigenous ethnic groups<sup>2</sup> located in 15 provinces<sup>3</sup>, with a population of 183,831 or equal to 1.25 per cent of the total population of Cambodia<sup>4</sup>. Of the 22 indigenous ethnic groups, only six groups have an indigenous population of more than 10,000; the Tampuan, Bunong, Kroeung, Kui, Jarai and Brou, combined, make up 88 per cent of the total indigenous population in Cambodia. Even though Indigenous Peoples live in 15 provinces, most of them (92.4 per cent) live in the six provinces of Ratanakiri, Mondulakiri, Kratie, Stung Treng, Kampongthom and Preah Vihear<sup>5</sup>.

Cambodia has national laws and policies that, to some extent, protect indigenous communities’ land,<sup>6</sup> natural resources and rights, especially their customary land use. These national laws and policies include:

- a. The Cambodian Constitution (Article 31; guarantees all Cambodians the same rights regardless of race, colour, language and religious belief)
- b. The National Policy for the Development of Indigenous Peoples 2009
- c. The Land Law 2001, which is the most important because it establishes citizens’ rights to land, including the recognition of the right of indigenous communities to collective ownership of their lands. It also includes a right to access interim measures for the protection of indigenous lands until formal land titling can occur, and it explicitly recognizes the practice of shifting cultivation. All these rights are well stipulated in articles 23–28.

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2 The 24 Indigenous Peoples groups are Tampuan, Jarai, Kreung, Pao, Kavet, Pnong, Kouy, Steang, Kraol, Mil, Kachak, Por, Khaonh, Chong, Sui, Thmol, Lun, Sa-och, Rode, Khe, Ro-ong, Spung, Laern, and Samre.

3 Ratanakiri, Mondulakiri, Kratie, Preah Vihear, Kampong Thom, Stung Treng, Oddor Meanchey, Kampong Cham, Pursat, Kampong Speu, Koh Kong, Kampong Saom, Battambang, Banteay Meanchey and Siem Reap provinces

4 National report on demography, socio-economic status of indigenous peoples in Cambodia.

5 Ibid.

6 Land territory is fundamental for Indigenous Peoples.

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- d. The Forestry Law 2002, which was adopted just one year after the Land Law, yet the two laws contradict each other. While the Land Law provides collective ownership to the indigenous communities, the Forestry Law provides only the traditional rights to use the forests within the boundaries of the community forest. This law tries to take control of all forest management rights from the indigenous communities whose lands are mainly within the forest. There seems to be a lack of understanding of the concept of Indigenous Peoples' collective ownership.
  - e. The provisional measure of Information Note/Circular #001 (issued on 31 May 2011 by the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction), which allows a provincial governor to issue a circular (Deika) to protect all indigenous lands that are under the process of collective land title registration. Called an 'interim protected measure', it includes the prohibition of sale, purchase, lease or transfer of lands under application for registration.<sup>7</sup>
  - f. The Sub-decree on the Procedure for the Registration of the Communal Lands does not fully recognize Indigenous Peoples' rights to their territories. The state recognizes only some types of land within their traditional boundary as communal land ownership, but not the whole land. The result is often that the communal land of the Indigenous Peoples is only recognized as many fragmented plots of lands that are separated by other state lands such as forest, schools and other public-purpose lands.

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<sup>7</sup> According to the circular #001, the authorities have to stop any authentication process related to transaction of lands already under application for registration.

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## 02

# **Indigenous Peoples and climate change in Cambodia**

In addition, Cambodia has ratified key international human rights treaties such as the United Nations Declaration on the Rights of Indigenous Peoples<sup>8</sup>; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all Forms of Racial Discrimination; and the Convention on Biological Diversity. These treaties provide rights to practice and develop peoples' cultures and livelihoods. The government has also ratified International Labour Organization Convention (No. 111) on Employment and Occupation, which provides protection for the traditional occupations of Indigenous Peoples.

However, these laws and legal instruments require stronger commitment from the government and all relevant stakeholders to enable adequate implementation. The poor management of land concessions, modernization of agriculture, construction of hydro-dams, intrusion of extractive industries, and the settling of non-indigenous migrants on Indigenous Peoples' lands have had a serious effect on the lands, territories and security/safety of indigenous communities. The creation of the triangle zone (Cambodia, Laos and Vietnam) for economic growth, and the establishment of cross-border economic processing zones is causing serious concern among the community, including the loss of Prey Preah Rokha forestry (situated on the border between Thailand and Lao) and the destruction of part of Vireakchey National Park (in Ratanakiri province, at the border of Cambodia, Lao and Vietnam).

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<sup>8</sup> The Royal Cambodian Government voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

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Cambodia is highly vulnerable to climate change due to the large population living on the flood plains of the Mekong Delta, which is expected to experience higher risk of severe and prolonged flooding and drier conditions, and the people's dependence on climate-vulnerable agriculture. Most of the Indigenous Peoples living in upland areas are also vulnerable to increased risks of heavy rains, landslides and droughts. Agriculture, infrastructure, forestry, human health and coastal zones are the most affected sectors, according to Cambodia's Intended Nationally Determined Contribution (INDC).<sup>9</sup>

Cambodia is ranked as one of the most climate-vulnerable countries, not only in Southeast Asia, but the world. The Climate Risk Index ranks countries most affected by climate change in the period 1996–2015 based on extreme weather events—Cambodia ranked thirteenth of 181 countries.<sup>10</sup>

For Indigenous Peoples, the level of vulnerability to climate change impacts is exacerbated by rapid land-use and habitat change, and degradation due to extraction of natural resources, especially forest within their territories. This has heavily affected indigenous men, women, youth, and persons with disabilities.

Cambodia's high growth rate in the last decade has been fuelled by the extraction of its natural resources with almost no consideration for the more long-term effects on indigenous livelihoods, poverty, food security or prospects for sustainable growth, and with low levels of reinvestment in development activities.<sup>11</sup> This rapid growth has significantly impacted areas where Indigenous Peoples live, due to the richness of forest and natural resources.

Soil erosion due to natural phenomena and human activities, especially in the indigenous territories in the lowlands, has been leading to lower yields from the traditional seeds/crops, forcing some of the Indigenous Peoples to give up their traditional seeds and instead use new seeds that require the use of chemical substances/fertilizers. These chemicals have started to severely affect Indigenous Peoples' health and many incidents of strange diseases.

Natural disasters have been frequent, especially floods, drought and natural lightning, which not only damages Indigenous Peoples' infrastructure but can also cost them their lives.

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9 Cambodia's Intended Nationally Determined Contribution (2016): [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Cambodia%20First/20201231\\_NDC\\_Update\\_Cambodia.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Cambodia%20First/20201231_NDC_Update_Cambodia.pdf)

10 Germanwatch 2016. <https://germanwatch.org/sites/germanwatch.org/files/publication/13503.pdf>. Accessed 20 July 2017.

11 Göran Ek (2013) Cambodia environmental and climate change policy brief.

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## 03

# Climate policies

The government of Cambodia has developed various policies, strategies and action plans to work towards socioeconomic and sustainable development in the context of climate change. Cross-sectoral policies relevant to climate change in Cambodia include:

- Nationally Determined Contribution (updated 2020)
- REDD+ Strategy 2017–2026
- Cambodia Sustainable Development Goals (2016–2030) and the Voluntary National Review
- National Strategic Development Plan 2019–2023
- Cambodia Climate Change Strategic Plan 2014–2023
- Green Growth Policy 2013–2030
- National Adaptation Plan of Action on Climate Change (2006).

### 3.1 Recognition of Indigenous Peoples' rights in climate policies

#### **Cambodia's Nationally Determined Contribution and its recent update (2020)**

The Nationally Determined Contribution (NDC)<sup>12</sup> focuses strongly on the national Climate Change Strategic Plan 2014–2023 (2013) and the related sectoral action plans for its implementation. It also refers to the Cambodia Sustainable Development Goals 2016–2030 (2018); the National Strategic Plan on Green Growth 2013–2030 (2013); the Rectangular Strategy IV (2018); and the National Strategic Development Plan 2019–2023.

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<sup>12</sup> NDC: [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Cambodia%20First/20201231\\_NDC\\_Update\\_Cambodia.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Cambodia%20First/20201231_NDC_Update_Cambodia.pdf)

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The INDC, submitted in 2016, includes both adaptation and mitigation actions based on national circumstances, and is laid out in five sections:

1. National context
2. Adaptation, covering Cambodia's vulnerability to climate change and prioritized adaptation actions
3. Mitigation, including Cambodia's intended contribution to reduce greenhouse gas emissions, with information to ensure clarity, transparency and understanding, and consideration of fairness and ambition
4. Planning and implementation processes, with indications of the institutions, policies, strategies, and plans that will support the implementation of the INDC
5. Means of implementation, with information on the support needed for the implementation of the INDC.

It is important to note that Indigenous Peoples were not included in the process to develop the INDC and, more importantly, there is no mention of Indigenous Peoples in the document. Therefore, over the course of the implementation, there was little intervention and support for Indigenous Peoples.

This has been addressed with the updated NDC (2020) which flags Indigenous Peoples in its cross-cutting section where the government commits to promote the rights of Indigenous Peoples, specifically concerning land ownership and respect for their traditional knowledge; however, there is still no recognition of Indigenous Peoples' roles in contributing to environmental sustainability, despite their contributions on the matter, especially through their customary land use, forest protection, traditional knowledge and use of traditional seeds. On a positive note, the updated NDC also recognizes and articulates that the Indigenous Peoples are also protected by the Land Law 2001, the Forest Law 2002, the Protected Areas Law 2008, and the National REDD+ Strategy, among others. However, it does not yet include enough specific indicators and concrete actions to support and respect Indigenous Peoples' rights.

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### **National REDD+ Strategy 2017–2026**

The government of Cambodia developed and is implementing the National REDD+ Strategy 2017–2026<sup>13</sup> as one tool to mitigate impacts of climate change and reduce greenhouse gas emissions from the forestry sector. The outcomes of effective implementation of REDD+ policies and measures would contribute to socioeconomic development and promote the shift towards sustainable development. Cambodia has incorporated REDD+ into several of its key climate change development policies, strategies and programs. It is important to note that through the UN- REDD Programme and processes, Indigenous Peoples were included in the consultation process for the REDD+ strategy development and some safeguards were included in the document to ensure the full and effective participation of Indigenous Peoples. However, there are still some gaps in the implementation of the REDD+ strategy and projects, resulting in the restriction of the customary practices of Indigenous Peoples and hindering the process of collective land titling due to overlaps between the REDD+ area / Protected Area and the customary collective land that is being claimed by the Indigenous Peoples.

### **Cambodia Sustainable Development Goals 2016–2030 and the voluntary national review**

The Cambodia Sustainable Development Goals (CSDGs)<sup>14</sup> is the national framework that Cambodia will use to contribute to achieving the global SDGs—a universal call to action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity. However, localization processes of the SDGs in Cambodia, including the voluntary national review, do not yet include the voices of Indigenous Peoples in the documents, and do not respond to Indigenous Peoples’ specific needs and situations due to the absence of any formal consultation with the Indigenous Peoples in the process. There are no clear and disaggregated targets and indicators relating to Indigenous Peoples. So far, only two of the 88 targets mention Indigenous Peoples. Therefore, further locally accessible mechanisms and information systems should be put into place to enable the effective participation of Indigenous Peoples and other marginalized groups.

The government should allocate more resources to support conservation and development based on the actual needs of the Indigenous Peoples. There should also be more awareness raising and enforcement of favourable laws and policies relating to Indigenous Peoples. It is with Indigenous Peoples’ effective participation and decision-making, and the upholding of FPIC, that the CSDGs goals can be accomplished. Leaving no one behind in the processes of national development and working to strengthen and preserve the rights of all peoples will build an even more thriving Cambodia.

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<sup>13</sup> National REDD+ Strategy 2017–2026: <https://cambodia-redd.org/wp-content/uploads/2017/10/1.-NRS-Final-Eng.pdf>

<sup>14</sup> <https://csdgs.org/en/>

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### **Cambodia Climate Change Strategic Plan 2014–2023**

The Cambodia Climate Change Strategic Plan 2014–2023 was developed under the overall coordination of the Ministry of Environment, with the active participation of the Climate Change Technical Team and guidance from the National Climate Change Committee. The vision of this plan is for Cambodia to develop towards a green, low-carbon, climate-resilient, equitable, sustainable and knowledge-based society. The plan has eight key objectives:

1. Promote climate resilience through improving food, water, energy and security.
2. Reduce sectoral, regional, gender vulnerability and health risks to climate change impacts.
3. Ensure climate resilience of critical ecosystems (Tonle Sap Lake, Mekong River, coastal ecosystems, highlands, etc.), biodiversity, protected areas and cultural heritage sites.
4. Promote low-carbon planning and technologies to support sustainable development.
5. Improve capacities, knowledge and awareness for climate change responses.
6. Promote adaptive social protection and participatory approaches in reducing loss and damage due to climate change.
7. Strengthen institutions and coordination frameworks for national climate change responses.
8. Strengthen collaboration and active participation in regional and global climate change processes.

The plan mentions Indigenous Peoples only in objective #6: *“Promote the adaptive social protection and participatory approaches in reducing loss and damage due to climate change for ensuring the public engagement, participation and consultations on the adaptation planning and public participation.”* However, the plan does not yet acknowledge indigenous customary land or uphold the FPIC, despite Indigenous Peoples’ way of living and managing natural resources significantly contributing to both climate change adaptation and mitigation. In summary, the plan does little to integrate and include unique interventions to respond to the unique needs of Indigenous Peoples; rather, the focus is more generally on climate change in Cambodia. Furthermore, the key government agencies have not allocated enough funds to support indigenous communities in this climate change strategic plan.

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## 3.2 Issues and concerns for Indigenous Peoples in national climate policies

In ASEAN (the Association of Southeast Asian Nations), Cambodia is considered to have relatively good laws, policies and frameworks to recognize and protect Indigenous Peoples' rights (see section 1), even if they do not fully align with indigenous customary land and natural resources management. However, the implementation of those laws, policies and frameworks is weak and the rights of the Indigenous Peoples, especially their rights to land, territories and resources, are frequently violated in practice. Below are the key concerns of the Indigenous Peoples in Cambodia.

- **Limited inclusiveness of Indigenous Peoples:** While Indigenous Peoples customarily own the biggest part of the natural forests in Cambodia, efforts to obtain their free, prior and informed consent on matters related to environment are limited. Their exclusion from decision-making processes is compounded by the limited capacity of indigenous institutions, organizations and networks. This lack of consultation and participation is a root cause of social, economic and environmental vulnerabilities, as well as discrimination and exploitation.
- **Customary land use of Indigenous Peoples not fully recognized:** Indigenous Peoples' customary land use has been practised for generations and it is critical to ensure ecological, environmental, economic and social harmony for indigenous communities, nearby communities, the country and the world. Although the government partially recognizes the customary land use of Indigenous Peoples on paper, as stipulated in the collective land registration sub-decree, most of the land of Indigenous Peoples is overlapping with state land or protected areas; this is because the collective land title intervention and process were late but the implementation of protected areas was fast, and the forest zoning, mapping and demarcation of protected areas occurred without Indigenous Peoples' free, prior and informed consent. The Ministry of Environment does not allow communities to claim protected area land and the land they do give is not suitable for the customary uses of the Indigenous Peoples. For instance, most indigenous communities in Mondulkiri province have areas of land and forest ranging from 5,000 to 15,000 hectares, but most of it overlaps with protected area land, and the government never recognizes land over 1,500 hectares, which it justifies by pointing out the small population sizes of indigenous communities.
- The lack of law enforcement on illegal logging leads to the continued destruction of forests on the ground.
- Local authorities lack understanding about their obligations to respect and protect Indigenous Peoples, as stipulated in existing laws and policies.
- The processes for localizing the global SDGs to CSDGs in Cambodia, including the voluntary national review, do not include Indigenous Peoples' voices.

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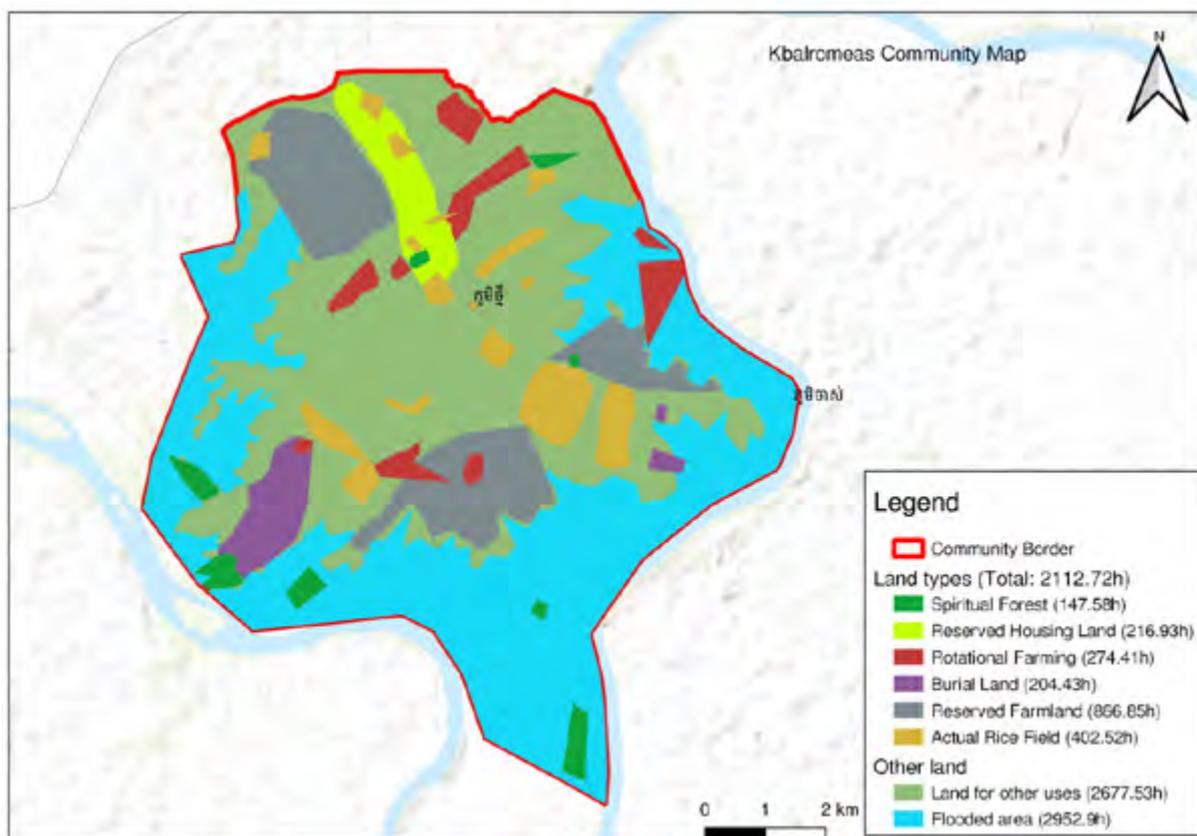
### **3.3 Participation of Indigenous Peoples in climate change policies**

The development of the national REDD+ Strategy is considered a good example of involvement of Indigenous Peoples in policymaking because Indigenous Peoples were involved from the outset. However, their participation in the REDD+ strategy development and implementation was still limited due to the limited spaces for participation, the lack of appropriate information, and the lack of capacity of the Indigenous Peoples on the matter. It was good that Indigenous Peoples were included in the strategic development process; for instance, through the REDD+ Strategy development, the national dialogues that aim to collect Indigenous Peoples' input have been established. UN-REDD discussed with non-governmental organizations and stakeholders the process for selecting a national indigenous representative to engage with the REDD+ Consultation Group and Programme Executive Board. The UN-REDD Secretariat coordinated the meeting to select one indigenous representative from each of the 15 provinces, so the Consultation Group had 16 indigenous representatives, including the national indigenous representative. Mostly, indigenous representatives participated in consultation meetings conducted by UN-REDD related to the national REDD+ Strategy and the safeguard information system.

## 04

# The impact of current climate interventions on Indigenous Peoples

No research or accurate data exists on the impact of current climate interventions on Indigenous Peoples in Cambodia.



**Figure 1.** Kbal Romeas community map (Courtesy: Cambodia Indigenous Peoples Organization (CIPO))

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## 05

# **Indigenous Peoples’ contributions to addressing climate change**

Indigenous Peoples’ customary practices and way of living, particularly their sustainable use and management of land and natural resources, can greatly contribute to climate mitigation and adaptation and to achieving the SDGs. Indigenous customary lands and natural resources are the sources of food security, livelihoods, decent work, and wellbeing, and contribute to several SDGs, including SDG4, SDG8, SDG10, SDG13, SDG16 and SDG17. It is, therefore, important to recognize the values, roles, and contributions of Indigenous Peoples and put them at the centre of the planning and implementation of the SDGs and other climate policies and actions. Working together, we will have inclusive sustainable development and prosperity in Cambodia.

### **Box 1. The Bunong community of Kbal Romeas**

The indigenous Bunong community in Kbal Romeas have been practising their customary land and natural resource use and management for many generations. They control access to their land and natural resources with a closed border (see Figure 1). With their customary land-use practices and their indigenous knowledge, they greatly contribute not only to the community but also to improving the environment as a whole because their ways are sustainable and ecologically balanced.

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# Author profile

## Hean Bunhieng

Hean Bunhieng is a Kui indigenous person from the northern part of Cambodia, Preah Vihear province. Currently, he is a Technical Advisor to Cambodia Indigenous Peoples Organization (CIPO). He speaks three languages fluently namely, Kui, Khmer and English with basic Thai. He has Master degree in General Management, Bachelor of Art in Geography and BBA in Accounting. His experience covers over fifteen years working with local, national, regional and international NGOs from grass-root, national and regional levels. Mr. Bunhieng had actively involved lots on the Cambodia Sustainable Development Goals process, VNR, and other climate changes framework in Cambodia. He is a key indigenous expert on Indigenous Peoples matters in Cambodia, especially on indigenous rights, indigenous knowledge and indigenous customary land uses.



Asho Chin Indigenous Peoples are celebrating their traditional new house opening ceremony in Magway Region, Myanmar. **Photo Credit:** Promotion of Indigenous and Nature Together (POINT)

# Myanmar

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# **Purpose of this report**

Myanmar, a country rich in natural resources and indigenous culture, is prone to climate change impacts and natural disasters. Of all developing countries, it is one of the least developed. Experiencing recent changes in its transition to democracy, the Myanmar government engaged with the UNFCCC (United Nations Framework Convention on Climate Change) and developed laws and policies related to climate change to overcome the challenges faced. Indigenous Peoples in Myanmar, whose homeland is the forests, mountains and rivers, are vulnerable to both the climate change impacts and the climate-related interventions. In this report, we present the current status of Indigenous Peoples' rights as part of Myanmar's response to climate change, we highlight the role of Indigenous Peoples in addressing climate change, and we make recommendations for improving the recognition of Indigenous Peoples' rights and roles in the country's climate change policies and interventions.

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# Summary of Findings

- Indigenous Peoples in Myanmar are identified under broad categories which do not reflect the internationally recognized concept of Indigenous Peoples, and gaps remain in law and policies for recognizing and respecting Indigenous Peoples' rights in Myanmar.
- Indigenous Peoples are suffering from the impacts of climate change which is affecting their daily lives socially, economically and politically.
- Recent changes in climate-change-related laws and policies mention Indigenous Peoples, but the political willingness and space for recognizing Indigenous Peoples and their rights are not yet in place.
- Indigenous representatives are concerned about the potential and ongoing impacts of climate interventions on Indigenous Peoples, and more study is needed on the positive and negative benefits of these interventions.
- Indigenous Peoples of all ages in Myanmar, regardless of gender, can make an important contribution to addressing climate change when their rights are fully recognized.

# Recommendations

## **For the Myanmar Government**

- Fully recognize the internationally recognized concept of Indigenous Peoples and implement UNDRIP at the national level.
- Open space for and commit to the meaningful participation of Indigenous Peoples in the development of climate-change-related laws and policies.
- Update the Nationally Determined Contribution of Myanmar to include Indigenous Peoples' rights and roles.
- Comply with the Cancun safeguards and set up a grievance mechanism for climate interventions.

## **For the United Nations, international NGOs and donors**

- Support the development and implementation of safeguards and grievance mechanisms for climate interventions in Myanmar.
- Study the positive and negative benefits of the country's climate interventions.
- Respect Indigenous Peoples' rights and support the promotion and protection of their rights in Myanmar.
- Provide technical and financial resources for Indigenous Peoples to engage in the country's climate change responses.

## **For the private sector and investors**

- Respect Indigenous Peoples' rights, as stated in UNDRIP.
- Conduct accountable and transparent business practices, including seeking the free, prior and informed consent of Indigenous Peoples.

## **For Indigenous Peoples' Organizations**

- Build up the capacity of indigenous communities to engage in climate change responses.
- Conduct research for evidence-based advocacy.

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# 01

## **General status of Indigenous Peoples in Myanmar**

With a population of about 54 million, Burma/Myanmar<sup>1</sup> is one of the largest (676,578 square kilometres) and most ethnically diverse countries in Southeast Asia. To date, there is no accurate information and data about Indigenous Peoples in Myanmar, partly due to lack of understanding about the internationally recognized concept of ‘Indigenous Peoples’ and restriction on self-identification in the national census. It is estimated that Indigenous Peoples account for around 40 per cent of the population and occupy 60 per cent of the land in the country.

The government recognizes eight broad ethnic categories known as ‘national races’: Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan and Shan. Indigenous Peoples are sub-groups under these eight categories, which undermines their rights to self-identification. The broad categories do not reflect the rich diversity of the country’s Indigenous Peoples; for instance, Naga, Danu and Tavoy (Dawei) Indigenous Peoples do not identify themselves as belonging to any of the eight categories. The national census of 2014 included 135 sub-groups under the main ethnic categories. This was highly controversial and heavily criticized for being not just inaccurate but divisive. To date, no ethnic composition data has been revealed.

Since Burma’s independence from British colonial rule in 1948, the non-Burman ethnic groups in Myanmar have strongly asserted their distinct identities as ‘ethnic nationalities’, fighting for self-determination. Although Burma/Myanmar voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the 2008 Constitution of Myanmar does not recognize the existence of Indigenous Peoples and instead refers to the national races.

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<sup>1</sup> In 1989, the military government officially changed the English translations of many names dating back to Burma’s colonial period or earlier, including that of the country itself: Burma became Myanmar. The renaming remains a contested issue such that the United States still refers to the country as Burma. Internationally, both names are recognized. In this report, we use the name Myanmar from here on for consistency of usage with the United Nations.

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According to the Citizenship Law 1982, those ‘ethnic groups’ who were present in the current geographical area of Myanmar/Burma before 1823 (the beginning of the first British annexation) are considered ‘*taing yin tha*’, which is usually translated as ‘indigenous’ people. The government claims that all full citizens of Myanmar/Burma are *taing yin tha* (‘indigenous’), and on that basis dismisses the applicability of UNDRIP to Myanmar/Burma. Indigenous rights activists use the Myanmar term ‘*htanay taing yin tha*’ for Indigenous Peoples, based on the international concept, using the criteria of non-dominance in the national context, historical continuity, ancestral territories, and self-identification.<sup>2</sup>

Myanmar/Burma’s 2008 Constitution makes no mention of Indigenous Peoples, their collective rights, or customary land-use practices in Indigenous Peoples’ territories. When it comes to ownership of land and natural resources, the Constitution stipulates that, “*the Union [of Myanmar] is the ultimate owner of all lands and natural resources*”. The lack of recognition of the people’s rights to own land directly contradicts the basic principle in the Constitution that the state’s power is derived from its citizens.

A review of existing laws on land, forests and environmental conservation in Myanmar has shown that there have been some improvements in recent amendments with regards to the rights of Indigenous Peoples, but that there are many gaps. Overall, they all fail to fully recognize and protect the rights of Indigenous Peoples to their land, forests and natural resources. For the economic and cultural survival of indigenous communities and poor farmers in the country, the revision of existing laws and the enactment of new laws that recognize customary tenure and, in particular, communal land rights, is critical. Some of the laws discussed here need to be amended, but one of them, the Vacant, Fallow and Virgin (VFFV) Land Management Law 2012 (amended 2018), is far too problematic and should simply be abolished. Most important, a comprehensive national land law needs to be passed, followed by the harmonization of all other laws dealing with land, forest, environmental conservation, and related matters such as surveying based on the national land law.

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<sup>2</sup> Self-identification as defined under UNDRIP Article 33 is that Indigenous Peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live... Indigenous Peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

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The development of a comprehensive national land law is mandated by the National Land Use Policy of 2016. However, five years after the adoption of the policy, the national land law is still in the drafting process while, as the review shows, several other laws related to land and natural resources have already been drafted, passed or amended. Some of them, including the amended VFF Law, are highly problematic for indigenous and other communities living in upland and forested areas.

Given the extent and speed of land grabbing in Myanmar, legislating a new national land law that recognizes and protects the customary land rights of Indigenous Peoples and other vulnerable groups in the country is urgent. By doing so, Myanmar would also fulfil the obligations it has accepted by ratifying the UN Convention on Economic, Social and Cultural Rights and, with regard to Indigenous Peoples, by voting in support of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

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## 02

# **Indigenous Peoples and climate change in Myanmar**

Myanmar is one of the most affected countries in the world by the negative effects of climate change. Events such as Cyclone Nargis in 2008, which killed more than 130,000 people, heatwaves in 2010, and large floods in 2015 have had disastrous impacts on people's lives and the economy of the country. Climate change increases the intensity and likelihood of such events. But there is also an invisible, treacherous side to climate change, which is transforming society. The sea level is rising, salinizing water sources and farmlands; and increased temperatures are affecting agriculture, pushing many people to migrate. From the Delta area to the mountains in the north, climate change threatens the way of life of Myanmar, and its development.

Myanmar has received support from the UNFCCC for developing a National Adaptation Program of Actions (NAPA), which was finalized and published in 2012<sup>3</sup>. A 2018 report by POINT<sup>4</sup> summarizes the observed changes in the climate over the past six decades, as follows:

- A general increase in temperatures across the whole country (~0.08 °C per decade), most notably in the northern and central regions
- A general increase in total rainfall over most regions; however, with notable decreases in certain areas (e.g. Bago Region)
- A decrease in the duration of the south-west monsoon season due to late onset and early end of the monsoon
- An increase in the occurrence and severity of extreme weather events, including cyclones, strong winds, flood/storm surges, intense rains, extreme high temperatures, and drought.

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3 Myanmar's National Adaptation Program of Action (NAPA) to Climate Change 2012: <https://unfccc.int/resource/docs/napa/mmr01.pdf>

4 'How can REDD+ support climate change adaptation of Indigenous Peoples? Lessons learned from community forestry in Myanmar', (2018) POINT (Promotion of Indigenous and Nature Together),

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The predictions for changes by the end of the century are basically an intensification of the already observed changes:

- Further temperature increases across the country, particularly from December to May, and especially in Central and Northern regions; by the end of the century, an increase of as much as 3.5°C is expected for the Rakhine coastal region and the Yangon deltaic region.
- Increased rainfall, in general, but also increased geographic variability, with some areas (e.g. Arakan in the west) likely to experience a much greater increase than others, as well as temporal variability, i.e. periods of extreme rainfall and periods of long, dry spells during the rainy season.
- As a consequence of the above, an increase in the frequency and intensity of extreme weather events such as floods, cyclones, heavy storms, strong winds, extreme temperatures, and droughts.

It is stated in the NAPA that the most vulnerable communities in Myanmar are located in all three agroecological zones, namely the hilly, dry and coastal zones. These communities generally have vulnerable livelihoods e.g. they are farmers, woodcutters, fishers, grocery merchants, casual workers, homemakers, and collectors and retailers of non-timber forest products. Women and children living in these high impact areas—hilly, coastal, river/lakeside areas—as well as those living in urban areas, will also be negatively affected.<sup>5</sup>

Indigenous Peoples in Myanmar are among the most vulnerable to climate change because they are among the poorest of the poor and they live close to nature, in relatively natural environments, rather than in cities. They simply lack the financial and material resources to prepare for, cope with or recover from additional stress caused by climate change. For several reasons, climate change is impacting their traditional livelihoods, access to health care, and their application of traditional knowledge. Firstly, they often live in remote areas where access to health services is difficult, but which they will need more as climate change, in various ways, directly and indirectly affects their health. Secondly, most indigenous communities depend on land and natural resources for their livelihood, growing and making most of their food and other products that they need to survive. The various observed and predicted impacts of climate change on ecosystems and, therefore, on agriculture, fishing, hunting and gathering, now pose a threat to their economic survival. Thirdly, Indigenous Peoples have extraordinarily intimate knowledge of local weather patterns and plant and animal life. Traditional wisdom on matters such as when to plant crops or where to hunt for food accumulates over many generations, and now that the climate is shifting, some of those understandings are proving to be no longer valid.

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5 'How can REDD+ support climate change adaptation of Indigenous Peoples? Lessons learned from community forestry in Myanmar' (2018) POINT (Promotion of Indigenous and Nature Together).

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On the one hand, the impact of climate change is similar for indigenous men, women, youth, and persons with disabilities in Myanmar. Yet, over the past few decades, forest-dependent people, particularly indigenous women, have faced emerging challenges due to the adverse impacts of climate change. Climate change has already been posing a serious challenge to indigenous communities by threatening their livelihoods and food security. But for women, the situation is even more dire—they are inherently more vulnerable to the impacts of climate change due to the absence of clear rights to the natural resources they use and manage. Climate change is, thus, perpetuating gender inequalities and increasing women’s vulnerability. In the context of REDD+, the lack of women’s rights also poses challenges, not only to the empowerment of women, but also to the overall achievement of the objectives of REDD+ and sustainable forest management initiatives, both of which seek to safeguard the rights of all marginalized groups.

Moreover, in many cases women are more closely connected than men to their natural resources, and so they have a deeper knowledge of their surrounding environments, including knowledge of certain plants and herbs. This underpins women’s major role in environmental conservation. Indigenous women play a vital role in conserving and protecting their forests and resources such as water, fish, herbal medicines, watershed areas, vegetable forests and umbilical cord forests (where parents bury the umbilical cord of their newborn child in a traditional ceremony believed to bring good health). Therefore, the impact of climate change upon the natural environment also impacts the important roles played by indigenous women.

Indirect impacts of climate change, such as mitigation measures taken by the government and by multilateral and non-governmental organizations, are likely to undermine the livelihood security of Indigenous Peoples in Myanmar. For Indigenous Peoples, the forest is their home, their supermarket and part of their identity, whereas other stakeholders see forests as a central part of the solution to climate change. For instance, plantations with fast-growing trees or forest-regeneration projects for offsetting carbon emissions by private and public companies, and, above all, large-scale biofuel plantations as part of climate change mitigation, have led to grabbing of Indigenous Peoples’ land.

In short, Indigenous Peoples in Myanmar are suffering from climate change effects caused by human activities as well as from changes happening in nature that, in turn, impact their daily lives socially, economically and politically.

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## 03

# Climate policies

### 3.1 Recognition of rights in climate policies

Along with the democratic changes in Myanmar, many laws and policies related to climate change response have been enacted or amended to align with international standards. As a result, in some of those laws and policies Indigenous Peoples who are the custodians of natural environments and forests have been able to promote their rights, in order to protect their rights to land, territories and natural resources. However, there are still gaps in the implementation and enforcement of the rule of law.

#### 3.1.1 Nationally Determined Contribution

The government of Myanmar submitted its Intended Nationally Determined Contribution (INDC) in August 2015 and signed the Paris Agreement on 22 April 2016. The country submitted its first NDC (Nationally Determined Contribution) in 2017 and submitted an updated version in August 2021.<sup>6</sup>

The current NDC sets conditional and unconditional mitigation targets for two sectors: 1) energy and 2) agriculture, forestry and other land use. It includes the adaptation needs of the country based on the climate scenarios, trends, vulnerability and risks faced by Myanmar. Because Myanmar is vulnerable to climate change, the government plans to prioritize adaptation actions. Moreover, in the energy sector, the target for the share of new renewable energy (solar, wind) will be increased from 2,000 to 3,070 megawatts, whereas the target for the share of coal will be decreased by a substantial 73 per cent from the business-as-usual plan.

As for recognition of indigenous rights, free, prior and informed consent (FPIC) is included in the NDC in the section on policy initiatives, and the NDC promises to ensure the integration of FPIC in all initiatives to promote and protect the rights of Myanmar citizens.

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<sup>6</sup> Republic of the Union of Myanmar, Nationally Determined Contributions, July 2021: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Myanmar%20First/Myanmar%20Updated%20%20NDC%20July%202021.pdf>

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In addition, the NDC states that Myanmar has registered an independent conservation trust fund, the Myanmar Biodiversity Fund, which includes the following objectives:

- a. To support the conservation of Myanmar’s biodiversity, the protection of critical terrestrial and marine ecosystems, habitats and species, within and outside of protected areas and **community conservation areas**;
- b. To support local communities **and indigenous people** as stewards of biodiversity, critical ecosystems and species, through environmentally sound land and resource-use practices and the management of local community conservation areas; applying to forest conservation and REDD+.<sup>7</sup>
- c. Moreover, the NDC states that the lessons learned from the traditional and indigenous knowledge and technologies that are developed in Myanmar will be shared internationally through, for example, the Local Communities and Indigenous Peoples Platform<sup>8</sup>. Floating-garden technology and stilt-housing technology are examples of unique indigenous technologies, and have been used by the Inntharr (locally known as *Insaar*) community at Inle Lake in southern Shan State since the early 1960s (Seielstad and Phillips 2015). The Inntharr people, a Shan ethnic minority, have developed floating gardens by gathering water hyacinth (minimum thickness of one metre), knitting clumps together, and securing the clumps with bamboo poles. As well as growing food crops—mostly tomatoes, onions and beans—the floating farms provide many ecological services such as trapping sediment, preserving water quality, and controlling the rate of evaporation.<sup>9</sup>

Lastly, the NDC states that the government has consulted with local stakeholders<sup>10</sup> to identify and prioritize opportunities to enhance adaptation actions in the natural resources sector, in the development of numerous recently elaborated policy documents—these include the Myanmar Climate Change Strategy 2019 (MCCS); the Myanmar Climate Change Master Plan 2019 (MCCMP); the Conservation of Biodiversity and Protected Areas Law (2018); the National Biodiversity Strategy and Action Plan (2015-2020) (NBSAP); the Technical Needs Assessment for Adaptation; the National REDD+ Strategy; and the NDC—and that it is in the process of drafting new forestry rules. Myanmar will also develop a natural resource management strategy with support from the Green Climate Fund.

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7 See NDC section 7.1.1. National Vehicles for Disbursement of Climate Finance.

8 See NDC section 7.2.2. Technology Gaps and Needs in Adaptation, of the NDC

9 See NDC section 9: Technology Transfer.

10 See NDC section 4.2.2.1 Prioritization of Adaptation Actions: Natural Resources.

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The Forest Department and the Dry Zone Greening Department, in close coordination with the Environment Conservation Department, will seek opportunities to promote and implement nature-based solutions for climate-change risk reduction and adaptation. In this, with international support, the Myanmar government would like to engage with local governments, civil society organizations (CSOs), international NGOs (INGOs), the private sector, community-based organizations, women’s group, youth groups, national races, **indigenous/ethnic groups**, national and international experts, and academics. Among the issues listed for engagement are three areas of community conservation:

- Establish community-conserved watershed areas.
- Establish community-based small reservoirs.
- Promote community-based afforestation and reforestation ensuring these activities.

Overall, Myanmar’s updated NDC acknowledges the existence of the Local Communities and Indigenous Peoples Platform, it includes indigenous-related rights that integrate FPIC, and it promotes community-conserved areas and collaboration with Indigenous Peoples.

### **3.1.2 Climate change policy, strategy and master plan in Myanmar**

The government of Myanmar endorsed the Myanmar Climate Change Policy, the Myanmar Climate Change Strategy (2018–2030) and the Myanmar Climate Change Master Plan (2018–2030) in June 2019. These are the key guiding documents in developing and implementing Myanmar’s revised NDC, focusing on both adaptation and mitigation, and informing its future amendments and implementation.

The guiding principles in the climate change policy<sup>11</sup> provide for the rights of all ethnic groups, local communities and Indigenous Peoples for climate justice and equity. The guiding principles for climate justice and equity (section h) state:

*“promote and protect the rights of the people of Myanmar, in particular the poorest, most vulnerable and marginalised segments of society, including indigenous peoples, all ethnic groups, local communities, women, children, the elderly, and persons with disabilities to live in a healthy environment and a fair, equitable and sustainable society.”*

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<sup>11</sup> Myanmar Climate Change Policy, 2019: [https://unhabitat.org.mm/wp-content/uploads/2019/06/MCCP\\_2019.pdf](https://unhabitat.org.mm/wp-content/uploads/2019/06/MCCP_2019.pdf)

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Moreover, the guiding principles on gender equality and women’s empowerment (section i) state:

*“promote and protect gender equality and women’s equal rights through strengthening gender-responsive climate change policy concerning adaptation, mitigation, finance, technology development and transfer and capacity- building, and ensuring full and equal participation of women in decision-making.”*

Under the policy approach (section k), it states:

*“recognizing that women and girls in Myanmar are disproportionately affected by climate change impacts due to their roles and responsibilities and their unequal access to resources, opportunities and rights, and that their knowledge, experience, participation and leadership at all levels are vital for developing effective climate change adaptation and mitigation responses.”*

In addition, as part of its policy recommendations, the climate policy states that there is a need to ensure the strengthening of local knowledge and capacities under resilient and rural settlement.

In the Myanmar Climate Change Master Plan and the Myanmar Climate Change Strategy, women, youth, children, the elderly, persons with disabilities, and local and marginalized communities are described as climate change partners in preparing and building capacities for addressing climate change. However, under the section on current policies and practices, apart from mentioning that farmers in Myanmar practise adaptation and mitigation measures by using their indigenous knowledge, there is nothing specific about the inclusion of Indigenous Peoples’ rights in the Myanmar Climate Change Strategy and Climate Change Master Plan.<sup>12</sup>

### **3.1.3 Myanmar REDD+ strategy**

One of today’s biggest mitigation initiatives is the UN-REDD+ Programme. It aims to slow down and eventually reverse the loss of forest cover and thereby reduce carbon emissions in developing countries. Myanmar became a partner country of the UN-REDD Programme in December 2011 and the national REDD+ program has since been developed with the technical support of the UN-REDD Programme. The readiness roadmap was approved by the government in 2013. The Forest Department is the focal department for REDD+ and the Forest Research Institute leads the REDD+ activities. The components of the roadmap have been carried out by various technical working groups and task forces for: drivers and strategies; measurement, reporting and verification; stakeholder engagement; and safeguards. Particularly with the REDD+ safeguards, the government has committed to indigenous customary land rights and FPIC.

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<sup>12</sup> Myanmar Climate Change Master Plan (2018–2030): <https://unhabitat.org/myanmar-climate-change-master-plan-2018-%E2%80%93-2030>

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However, without changes in the country's main laws, such as the Land Law, these safeguards related to Indigenous Peoples are ineffective. Therefore, the need for these changes to existing laws is highlighted in the national REDD+ strategy.<sup>13</sup> In terms of gender, Myanmar's working group on the safeguards information system includes a seat for the Ministry of Social Welfare, Relief and Resettlement and has set a target of at least 30 per cent female representation within REDD+ working groups. However, there has not yet been any effort to engage with indigenous women, in particular, within these working groups.

The government has submitted its National Forest Reference Level to the UNFCCC, which, together with the Summary of REDD+ Safeguards, form the key guiding documents for the NDC. Through REDD+, the country hopes to achieve a 50 per cent reduction in net emissions by 2030 if adequate international assistance is received.<sup>14</sup>

In addition, Myanmar has drafted FPIC guidelines for the implementation of the national REDD+ strategy and other initiatives affecting forests. A call for comments on the initial draft guidelines was issued on 15 May 2020, facilitated by the UN-REDD Programme in Myanmar. The guidelines integrate a gender perspective, noting the need to ensure that women and men have access to information and are able to provide feedback; guidance for this process is also given in the operational framework. Finalization of the draft guidelines is currently on hold due to the recent change in government.<sup>15</sup>

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13 Myanmar REDD+ Strategy: <http://www.myanmar-redd.org/warsaw-framework/nsap>

14 Republic of the Union of Myanmar, Nationally Determined Contributions, July 2021: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Myanmar%20First/Myanmar%20Updated%20%20NDC%20July%202021.pdf>

15 Open call for comments for Draft FPIC Guidelines for Myanmar REDD+ Strategy Implementation and Other Initiatives Affecting Forests: <http://www.myanmar-redd.org/open-call-for-comments.html>

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### 3.1.4 Myanmar National Adaptation Program of Actions

The Myanmar government submitted its National Adaptation Program of Actions (NAPA)<sup>16</sup> to the UNFCCC in 2012.

To address the climate-change-related risks and vulnerabilities the country is facing, the NAPA identifies 32 priority activities for climate change adaptation, called Priority Adaptation Projects, for eight main sectors or themes, prioritized by urgency:

**Priority 1:** Agriculture; Early Warning Systems; Forest

**Priority 2:** Public Health; Water Resources

**Priority 3:** Coastal Zones

**Priority 4:** Energy and Industry; Biodiversity.

Two of the top-priority sectors/themes—agriculture and forest—are critical for the livelihood of most of Myanmar’s rural people, and especially for Indigenous Peoples. Despite the international recognition of the particular vulnerability of Indigenous Peoples, Myanmar’s NAPA contains no mention of Indigenous Peoples’ rights related to climate adaptation.

Only women and children are mentioned as vulnerable groups, for being more susceptible to the economic/livelihood losses as well as to the risk of abuse/violence/exploitation after extreme weather events; and because poor households will struggle to send their children to school.

Overall, Myanmar still faces challenges in fully scaling up adaptation across all sectors because it is not sufficiently integrated into the country’s policies and legal frameworks. The technical capacity for mainstream adaptation is limited among policymakers and community members, and there is limited knowledge on projected climate impacts and adaptation measures available to address them. Vulnerability assessments have not been conducted throughout the country. Adaptation is not integrated into the national budget nor does the country have a funding mechanism for adaptation.

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<sup>16</sup> Myanmar’s National Adaptation Program of Action (NAPA) to Climate Change 2012: <https://unfccc.int/resource/docs/napa/mmr01.pdf>

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### **3.1.5 National Land Law**

One of the objectives in the Forest Policy of 1995 provided for the establishment of “a land use advisory board with responsibilities to oversee and coordinate overall land utilization in the country.” The National Land Use Policy was finally adopted in 2016. This policy sets out a commitment for the development of a national land law which will serve as the umbrella law to govern all types of land use in Myanmar. Currently, there is a committee responsible for the development of the national land law. Depending on the content of this law, it could have both positive and negative consequences for Indigenous Peoples in Myanmar, so it is important for the relevant rightsholders and their allies to follow its development and monitor the progress. However, this whole process has stopped since the military coup in Myanmar on 1 February 2021.

### **3.1.6 The Farm Land Law**

The Farm Land Law was enacted in 2020. This law contains provisions for the types of land use allowed, which include ‘shifting cultivation’ practised by Indigenous Peoples. This is the first time that Indigenous Peoples’ land rights have been acknowledged, so it is important to monitor the implementation of rules and procedures on the ground, to protect the land rights of Indigenous Peoples and local communities. However, this whole process has stopped since the military coup in Myanmar on 1 February 2021.

### **3.1.7 Environment-related laws and policies**

Myanmar’s National Environmental Policy (2019), the Environmental Conservation Law 2012 and the Environmental Impact Assessment Procedure contain provisions for the role and rights of Indigenous Peoples and local communities. These provisions are important ‘hooks’ in the legal and policy framework for Indigenous Peoples and local communities to use in the defence of their rights.

### **3.1.8 The Forest Law/Rule**

The 2018 amendment of the 1992 Forest Law recognizes the rights and role of Indigenous Peoples in a way that gives them permission to co-manage the country’s forests with government, community conserved areas, and forest management, according to their indigenous and traditional ways. Then, in 2019, the Forest Department consulted stakeholders (including CSOs, NGOs and Indigenous leaders) on the Forest Rule. Because Indigenous Peoples and forests are inseparable, engaging with the legal framework governing forests is key to indigenous advocacy.

### **3.1.9 The Conservation of Biodiversity and Protected Areas Law/Rule**

The Conservation of Biodiversity and Protected Areas Law 2018 has been adopted and in 2019 the Forest Department began to consult with stakeholders on the rules for implementation, which was still ongoing up to the time of the coup. The law has provisions for the rights of Indigenous Peoples and local communities in relation to protected areas. One of the most important provisions is the inclusion of “Community Conserved Areas”. It is critical that the upcoming rule includes clear provisions for the rights mentioned in this new law.

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### **3.1.10 Green Climate Fund**

The Myanmar government is carrying out activities supported by the Green Climate Fund (GCF). There are five readiness activities with an approved budget of USD 5 million for readiness support, of which USD 2.5 million has been disbursed. The National Designated Authority is the Director General from the Environmental Conservation Department under the Ministry of Natural Resources and Environmental Conservation of Myanmar. Internationally, the GCF Board has adopted an Indigenous Peoples Policy which seeks to ensure that GCF-funded activities are not impacting the rights of Indigenous Peoples and local communities. Therefore, it is important that the Myanmar government implements GCF projects in compliance with this Indigenous Peoples' Policy and that there is a role for Indigenous Peoples in Myanmar to monitor this.

## **3.2 Issues and concerns for Indigenous Peoples in national climate policies**

The preamble to the Paris Agreement states that parties should “respect, promote and consider” the rights of, among other groups, Indigenous Peoples and local communities. Indigenous Peoples are the best guardians of the rainforest and 1,000 gigatonnes of carbon dioxide is stored in their collectively managed lands globally. It is therefore important that Myanmar's NDC continues to recognize and promote the role they play in domestic climate policies and respect their right to free, prior and informed consent before any mitigation action is taken on their land.

In Myanmar, the government engages with the UNFCCC at the international level and has initiated a national REDD+ readiness process. However, current national climate policies and the related law and policies are underdeveloped with respect to the rights and wellbeing of Indigenous Peoples' and local communities. The government needs to clarify how it will respect and promote these rights when implementing their NDC, especially how the right to free, prior and informed consent will be respected, and how secure land tenure rights is part of their strategy to reduce emissions from forests.

Nevertheless, in Myanmar, the use of the term 'Indigenous Peoples' is controversial. In climate changes policies, it is stated as “indigenous people/ethnic groups”. According to UNDRIP, the use of the plural term 'peoples' represents their collective rights as peoples. Myanmar's climate change policies use only the singular “indigenous people”, revealing that there is not full recognition of Indigenous Peoples' collective rights.

In addition, examining the way indigenous rights are included in climate policies, we can conclude that Indigenous Peoples are regarded as a vulnerable group, or the poorest of the poor. However, their role as custodians of the forest is not recognized or included in these policies.

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Moreover, indigenous women do not have the right to a land ownership certificate. If, say, a woman's husband dies, the family inheritance, including land tenure rights, are passed to the eldest son. Often, indigenous women are prevented from entering forests and, at times, are even arrested if they are caught visiting restricted forest areas. However, they do not have a good understanding of their legal access rights to the forest and they lack information on the permission required from forest authorities to enter the forest and sell forest products. Without land ownership rights, Kachin women have limited access to credit facilities, training and appropriate technology, among other opportunities. Gaining rights to land tenure has, therefore, been of great concern to indigenous women and many of them are now expressing a desire to hold joint tenure with their spouses, or have separate land tenure rights.

### **3.3 Participation of Indigenous Peoples in climate change policies**

Because much, if not most, of the forests in countries where climate change mitigation measures and REDD+ are being implemented grow on Indigenous Peoples' land, and because the rights of Indigenous Peoples over their land, territories and resources are generally not sufficiently recognized and protected, it is feared that REDD+ will have serious negative impacts on Indigenous Peoples. Thus, representatives of Indigenous Peoples' organizations and communities have very actively engaged in the negotiations within the UNFCCC on NDCs and the REDD+ mechanism, and, in particular, in drawing up the social and environmental safeguards in the response to climate change.

During the democratic transition in Myanmar, Indigenous Peoples' organizations and indigenous leaders were key stakeholders of the national REDD+ program. REDD+ is the first program in Myanmar to promote public participation, with international support. The UN-REDD Programme in Myanmar gave technical support for the REDD+ readiness process, with space for Indigenous Peoples and CSO representatives to become members of the task force, the technical working groups and the project executive board. This allowed these national representatives to advocate for the inclusion, integration and respect for the rights of Indigenous Peoples. Following on from this, rightsholders and allied organizations have had further chances to engage with policy and law processes related to climate change and other issues.

Indigenous Peoples have been engaging with the REDD+ process of Myanmar since 2013. Their advocacy has taken many forms over the years, such as policy briefs and recommendations letters, and participation in national and international events and meetings. The national government invited CSOs, non-governmental organizations (NGOs), and INGOs within the country to a workshop for information sharing and consultation on the REDD+ readiness program, asking for the feedback and comments.

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After a time of engagement and trust building, other policy and law development processes, including climate change policies, also opened space for public participation. This was the first time the government invited comments from Indigenous Peoples, although the process of developing the NDC had already been running for a long time within government ministries and departments. That said, more space should be provided in the NDC process, setting out how meaningful participation by Indigenous Peoples in Myanmar will take place going forward.

As for the Indigenous Peoples' movement, in addition to the national advocacy process, international processes are used to highlight Indigenous Peoples' roles and rights related to natural resource management, environmental protection and climate changes responses—they include the universal periodic review of human rights records, the UN Forum on Business and Human Rights and, last but not least, the ASEAN Peoples' Forum.

In all the above, generally, patriarchy is one of the main reasons for the limited participation of women. Moreover, ancestral traditions and inherited culture were the main reasons why women were historically excluded from participation. Nowadays, however, though mainstream society is less patriarchal, long-term practices and habits have become the main barriers to empowering and encouraging participation of young indigenous women. In-depth and consistent awareness-raising programs on women's participation are essential, although it may take some time to overcome deeply embedded cultural practices and habits.

Overall, in Myanmar the general trend over the past seven years is that government and multi-stakeholder initiatives have been increasingly transparent and inclusive, which has led to more easily available information and consultations that focus on the concerns of Indigenous Peoples. However, with the military coup, all these engagements have stopped and their future is uncertain.

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## 04

# **The impact of current climate interventions on Indigenous Peoples**

In Myanmar, and other countries, the provisions for Indigenous Peoples' rights in the country's NDC and REDD+ strategy have yet to be implemented, so it is hard to predict how they will improve or disadvantage Indigenous Peoples.

For the purposes of environmental protection and forest protection as part of climate change mitigation, the Forest Department is trying to establish more 'public protected forests'. This results in 'green grabbing'<sup>17</sup> because almost all of the targeted areas are inhabited by indigenous communities. During the enforcement of public protected forests, public consultation is limited, so the principle of FPIC is often ignored. In addition, the Forest Department has established neither a proper monitoring program nor a grievance mechanism. Therefore, there is no way for Indigenous Peoples to achieve remedy for the grievances that they face. Conversely, there is an increasing threat to the communities' environmental human-rights defenders, who respond actively to protect their lands, territories and natural resources. All in all, indigenous communities need support to guard their territorial governance systems.

Under the Myanmar Forest Law and Rules, 'community forestry' provides local communities, including Indigenous Peoples, rights to use and manage forest land for 30 years, but this is not long enough to allow for long-term livelihood security, adaptation to climate change, or forest conservation. The 30-year Forestry Master Plan of 2001–02 to 2030–31 set a target of 2.27 million acres (0.919 million ha) of community forestry by 2030. The communities appreciate the tenure security this gives them over limited parts of their customary lands. Community forestry is primarily for forest use and management, including reforestation, tree (teak) plantations and agroforestry. In some areas, the plots are strategically located along the highway, which provides some protection from encroachment by outsiders, but the lack of rights over most of their customary land makes it difficult, if not impossible, for these communities to enforce forest conservation. Generally, the community land is too small for people to derive long-term sustainable livelihoods. Furthermore, villagers are aware and are worried that these rights

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<sup>17</sup> 'Green grabbing' is the foreign appropriation of land and resources for environmental purposes, resulting in a pattern of unjust development. Green grabs can result in indigenous residents' being displaced from the land where they live or make their livelihoods.

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are not permanent. Above all, their rights over their shifting cultivation lands, some of which have already been occupied by companies, are recognized. People fear that more of their land will be alienated in the future. Insecure and limited land rights is, therefore, the most critical factor undermining the communities' long-term adaptive capacity and livelihood security.

In Myanmar, a number of REDD+ projects involving indigenous communities have been conducted over the past few years. Due to the short duration of these pilot projects and incomplete implementation, including a lack of benefit sharing for communities, a comprehensive assessment of the positive and negative benefits for communities, including adaptation benefits, is difficult.

In terms of indigenous women, limited and poor networking among stakeholders at various levels has resulted in weak coordination of efforts to address gender-related issues in climate change, forestry and REDD+ readiness at the national level. The Environment and Gender Working Group, under the umbrella of the Gender Equity Network, was created to help advocate for gender equality and environmental justice. But in the absence of gender-related information, adequate women's capacity and effective networking among relevant stakeholders, as well as unclear and conflicting mandates between responsible agencies, establishing a gender-sensitive legal and institutional framework in forestry remains time-challenging and complex.

The limited evidence-based research focused on social and gender equity, and limited documentation of gender-disaggregated data in climate change impacts and interventions, makes it hard to get a clear understanding of women's rights, roles and contributions to climate change responses, and limits the interventions targeted at addressing gender inequality. For instance, a gender issues survey report published in 2009 (Khen 2009) revealed that Kachin women, as the beneficiaries of community forestry projects, do more than half of the community forestry work in their communities, and want to continue to do so because they have directly experienced how it can generate income for their families' immediate practical needs. The report also substantiates findings that Kachin women are keen to have legal land ownership. The conclusions drawn in these studies are rather tentative or speculative. In addition, due to the military coup, the extent to which Indigenous Peoples' rights will be implemented through climate change policies, laws, strategies and plans, is unclear at the moment.

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## 05

# **Indigenous Peoples’ contributions to addressing climate change**

Indigenous Peoples of all ages, from the elders to the youth, including women and children, are the genuine stewards of the environment and the forest they live in and depend on. Though they may not be visible at international-level negotiations, they are there on the ground, living close to nature and biodiversity. Thus, their contribution towards the implementation of the Paris Agreement should be highlighted and they should be given the means to raise their voices at all levels.

To highlight here the contributions of Indigenous Peoples to addressing climate change in Myanmar, we discuss the Karen indigenous communities who have a long history of conserving their lands and territories. The interconnectedness of culture with the forest has meant that Karen people have developed deep indigenous knowledge of environmental protection techniques which are embedded in their cultural practices. Their knowledge, beliefs, survival, health and cultures are deeply interconnected with the conservation of forests and biodiversity. They follow ancestral practices to ensure the sustainable management of their forests and biodiversity, and to ensure that trees, fish and other flora and fauna are carefully managed and protected. They manage consumption and the extraction of resources, avoiding situations where resources are over-exploited so that they are conserved for future generations.<sup>18</sup>

For example, Karen communities hold traditional ceremonies in the forest to drink herbal medicine, which binds together their culture and the protection of the environment. Not only do these ceremonies take place in the forest and benefit people’s health, they also strengthen the relationship between the communities and nature. The herbal teas need a rich diversity of herbs and roots, which requires that village practices to protect and preserve the biodiversity in the forest to continue their traditions.

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<sup>18</sup> Knapman C. (2020) Strong roots, IWGIA: <https://www.iwgia.org/en/myanmar/3999-iwgia-strong-roots.html>

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Furthermore, local beliefs require respect for herbs, as they are seen as giving power to people, and this creates a reciprocal relationship between the people and the forest products.<sup>19</sup>

Moreover, according to the traditional practice of Karen Indigenous People, there are rules and restrictions on how shifting cultivation can be practised. In their territories, old trees have great value. In areas where animals live or pass through when they migrate, Karen people do not sleep or clear the forest for shifting cultivation. Doing so, they believe, would cause their health to deteriorate. If they sleep in these areas, they believe they will have nightmares. In this way, the lives and spirits of people and the forest are entwined and interconnected. These traditional practices help to maintain this equilibrium between people and nature.<sup>20</sup>

Karen people do not cut trees along the banks of rivers and streams because they understand that without shade the rivers and streams will start to dry up, they will no longer be able to find fish, and without fish, the water source will become dirty and undrinkable.<sup>21</sup>

In addition, Karen women play an important role in climate change response. For example, among the Karen communities in the Tanintharyi region, women take a leading role in supporting their families for health care, education, business, agriculture and running the home. Furthermore, women are active in village politics, religious groups and social activities in their communities. In Ban Chaung, Karen women play a vital role in the administration and governance of their villages, including ensuring the sustainable use and protection of the forest and biodiversity.<sup>22</sup>

In Myanmar, Indigenous women are highly reliant on natural resources, although their rights are not recognized by government laws and they are vulnerable to land grabs and forest destruction. For many years, indigenous women have been engaged in forest activities such as establishing nurseries for plantations; selecting seedlings and tree species; replanting timber trees; practising controlled burning for assisting regeneration; protecting germinating seedlings and new saplings. They have, thus, contributed to the prevention of forest degradation. However, although most of the women from indigenous groups are the primary users and managers of the forests, they have no control over the forest resources because their rights have not been recognized in the statutory forestry related regulations.

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19 Ibid.

20 Ibid.

21 Ibid.

22 Knapman C. (2020) Strong roots, IWGIA: <https://www.iwgia.org/en/myanmar/3999-iwgia-strong-roots.html>

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Their views are represented mostly by their spouses, and their representation is almost non-existent in forestry planning and management meetings and decision-making processes.

In fact, in the case of Tanintharyi, it is the Karen women who are leading the way in protecting and conserving forests and biodiversity. Recognizing the central role that women play in the management of natural resources and biodiversity is key to addressing climate change and the loss of biodiversity. Their role must be recognized.<sup>23</sup>

At present, indigenous women lack the capacity to participate in decision-making processes and to articulate their rights and interests because they are poorly educated and their status is less powerful than that of men. Moreover, inadequate institutional capacity and technical expertise on gender analysis and participatory research methods in government departments and national-level CSOs precludes effective gender mainstreaming.

In terms of the contribution of youth in addressing climate change, the youth of Kha Paung and Shwe Taung Ngwe Taung prefer to stay in their villages and make a living from shifting cultivation and agroforestry. Unlike other indigenous communities in Myanmar and neighbouring countries who want to leave their communities, these young people have even left jobs in towns, cities, even abroad. They want to stay and continue living off the land, just like their ancestors have done for hundreds of years. They are ready to work hard in their fields and forests, practising shifting cultivation, but also trying out and further developing new kinds of agroforestry, which they have learned and heard about. With such a strong attachment to their communities, these young people are ready to take responsibility for caring for their land and their forests. Together with their elders, they are ready to meet the challenges of the changing climate. But to be able to meet these challenges, they need the security and support of an enabling legal and policy framework that, above all, recognizes their communities' rights to their land and resources. This would give them the chance to tackle the challenges of an uncertain future and adapt to a rapidly changing world, while honouring and caring for the legacy of their ancestors that is so dear to them.<sup>24</sup>

In short, although their roles are not fully recognized in climate change laws and policies, Indigenous Peoples have been living with nature and taking care of it very well, which is an important contribution to climate change mitigation.

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<sup>23</sup> Ibid.

<sup>24</sup> 'How can REDD+ support climate change adaptation of Indigenous Peoples? Lessons learned from community forestry in Myanmar' (2018) POINT (Promotion of Indigenous and Nature Together): <https://www.pointmyanmar.org/en/publication/how-can-redd-support-climate-change-adaptation-indigenous-peoplesmyanmar-language>

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# Author profile

## Naw Ei Ei Min

Naw Ei Ei Min received the U.S. Embassy's Women of Change award on March 16 (2017). She is the Director of the Promotion of Indigenous and Nature Together (POINT), Myanmar and Executive Council Member of Asia Indigenous Peoples Pact (AIPP). She advocates for sustainable environmental and economic policies for all Myanmar people, regardless of gender or ethnicity. She has been a long-time advocate for Indigenous Peoples roles and rights in climate change response under the UNFCCC. Since COP 20, she has continued her engagement in climate change issues related to Indigenous Peoples at local, national, regional and international level. In addition she actively works on indigenous women issues, biodiversity protection, promotion of indigenous knowledge of Indigenous Peoples.



Karen Indigenous Women of Huay  
Ee-khang village in Northern Thailand  
transplanting rice seedling.

**Photo Credit:** Phanom Thano, Indigenous  
Media Network (IMN)

# Thailand

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Indigenous Peoples' Foundation for Education and Environment (IPF)  
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## **Purpose of this report**

The main purpose of this report is to study, analyze and present the results on how the rights and knowledge of Indigenous Peoples are addressed by national policies, laws and plans related to climate change mitigation and adaptation in Thailand. The report will serve as a baseline document for the Asia Indigenous Peoples Pact (AIPP) and its member organizations working on climate change and the rights of Indigenous Peoples, and inform their strategies for effective monitoring and for engaging with the United Nations Framework Convention on Climate Change (UNFCCC) and other related bodies.

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# Summary of Findings

## Key findings

- Thailand has adopted the UN Declaration on the Rights of Indigenous Peoples but has yet to formally recognize the existence of Indigenous Peoples. The recent Constitution (2017) refers only to ethnic groups.
- Indigenous Peoples and communities have already experienced the impact of climate change on, for example, agriculture, health, forests, water sources and natural food sources. The degree of impact ranges from moderate to high.
- Indigenous Peoples have knowledge on weather forecasting and an ability to adapt to climate change impacts through their sustainable traditional livelihood practices and natural resource management.
- Thailand has adopted several policies and plans on climate change mitigation and adaptation. These include the Climate Change Master Plan (2015–2050), the National Adaptation Plan (2018–2037), the national REDD+ strategy, and the Nationally Determined Contribution (NDC). These policies and plans were developed without full and effective participation of local communities and Indigenous Peoples. Further policies and plans are in the process of being developed.
- The inclusion of the forest sector as one of the main means to tackle climate change impacts—especially, to increase the country’s forest cover to 40 per cent—is of grave concern to Indigenous Peoples who depend on forests and natural resources for their living. Their lands could be taken for forest conservation purposes and their traditional livelihood practices would be limited.
- Thailand’s NDC focuses on reducing greenhouse-gas emissions from the energy and transport sectors. The forest sector is being studied and considered, including in government action plans.

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- Indigenous Peoples are concerned about land insecurity and access to natural resources. Current forestry laws and climate policies risk exacerbating the threats already faced by Indigenous Peoples due to a lack of land tenure security and control over natural resources.
  - The Constitution recognizes community rights on land and natural resource management. But the translation from recognition into action is very poor. There is no sub-law to elaborate or guide people on how this concept should be realized.
  - In 2010, the Thai Cabinet passed two resolutions to restore the traditional livelihoods of the Chaoley and Karen peoples. These resolutions were considered very progressive in terms of trying to resolve long-standing problems faced by the Karen and Chaoley. The implementation on the ground, however, has progressed little due to a lack of funding and political will on the part of the government agencies concerned.
  - The climate interventions impacting Indigenous Peoples are primarily those related to natural resource conservation and management. Land and resource management rights in forest areas remain unresolved. The situation has been getting worse since the government passed several forestry policies and laws to limit and control the use of natural resources by Indigenous communities. This has led to arrests and the criminalization of Indigenous Peoples.

# Recommendations

- The State must recognize the existence and role of Indigenous Peoples in climate change policy development and action.
- Indigenous Peoples' knowledge on mitigation and adaptation practices should be strengthened and promoted. This will enhance community resiliency.
- The State should adopt a human-rights-based approach as a framework for reviewing, developing and implementing its climate change policies and laws. The implementation of the Cabinet resolutions to restore the traditional livelihoods of the Karen and Chaoley peoples should be expanded and scaled up to cover other indigenous groups and the passage of a draft law on the establishment of the Council of Indigenous Peoples in Thailand should be supported.
- Indigenous Peoples' land tenure rights and access to natural resources must be secured—this is critical for maintaining their identity and for their very survival.

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# 01

## **General status of Indigenous Peoples in Thailand**

The Indigenous Peoples of Thailand live in various geographical regions of the country. These include Indigenous fisher communities (the Chaoley)<sup>1</sup> and small populations of hunter-gatherers (Mani people) in the south; small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country. The latter group is known as Chao-Khao or ‘hill tribe’. Nine so-called hill tribes are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.<sup>2</sup>

The estimated Indigenous population in Thailand is around 6,100,000 people, covering 63 ethnic groups, and accounts for 9.68 per cent of the total population.<sup>3</sup> According to the Department of Social Development and Welfare (2002), the total officially recognized ‘hill tribe’ population is 925,825, distributed across 20 provinces in the north and west of the country. There are approximately 12,000 people of Chaoley descent. For the other groups, no figures are available, particularly for Indigenous People in the north-east and eastern parts of the country.

Thailand has not yet formally recognized the existence of Indigenous Peoples. In 2015 the term ‘Indigenous Peoples’ was mentioned for the first time in a draft version of the Constitution (then under revision). In that draft, Chapter II: Directive Principles of fundamental state policies section 82 stated that “the state shall provide support to strengthen local communities in all aspects in particular the following areas... (5) to protect indigenous peoples and ethnic groups”.<sup>4</sup> Unfortunately, this draft was rejected by the National Reform Council on 6 September 2015.

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1 Chaoley is a generic name for Moken, Moklan and Urak-rawoy people living in the south of Thailand.

2 Ten groups are sometimes mentioned, with the Palaung also included in some official documents. The Department of Social Development and Welfare’s 2002 Directory of Ethnic Communities in 20 northern and western provinces also includes the Mlabri and Padong.

3 <https://www.sac.or.th/databases/ethnic-groups/ethnicGroups>

4 Draft constitution submitted to the National Reform Council for adoption on 6 September 2015.

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A new Constitution was finally passed in a national referendum on 8 August 2016. That Constitution used the term ‘ethnic groups’ rather than the term ‘Indigenous Peoples’. Chapter VI: Policies of the state section 70 states that: “The State shall promote and protect the rights of Thai people of different ethnic groups to live voluntarily and peacefully without disturbances in the society according to their culture, custom and traditional ways of life...”. In this section, while the state makes the commitment to promote and protect “the rights of various ethnic groups,” it does not define any of the groups. This issue is the subject of further interpretation and deliberation by the Constitutional Court.

Thailand voted in support of the United Nations Declaration on the Rights of Indigenous Peoples but does not, as noted above, officially recognize the existence of Indigenous Peoples in the country. In 2010, the Thai government passed two Cabinet resolutions to restore the traditional livelihoods of the Chaoley and Karen. These two Cabinet resolutions have not been fully implemented due to the lack of budget and political will of the concerned government agencies. They have, however, laid a foundation for drafting a new law on the protection and promotion of ethnic groups’ livelihoods. This process was started by the Sirinthorn Anthropology Centre and the Parliament Standing Committee in 2020.

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## 02

# **Indigenous Peoples and climate change in Thailand**

Most Indigenous Peoples live in the most biodiverse and fragile ecosystems in the north, west and the south of Thailand. They are vulnerable to the impacts of climate change—both direct and indirect impacts—because they depend heavily on the natural resources surrounding them for their survival and livelihoods.

Changes to the climate, such as increasing temperatures, will induce migration of plants and animal species and cause drought. Additionally, less precipitation will result in more wildfires and water shortages, which will affect agricultural production of villages, including the collection of non-timber forest products and food sources from the surrounding community forests.

An initial assessment of the impacts of climate change on Indigenous communities now and over the past 10 years was shared by indigenous leaders during a workshop in April 2021 at the IMPECT (Inter Mountain Peoples Education and Culture in Thailand Association) training centre. It shows that the impacts of climate change on communities fall within the moderate- and high-level categories, depending on the area and specific time. Some impacts happen once every two or three years, such as drought and excess rainfall. This is shown in the below table.

Impact	Level of impact		
	Low	Moderate	High
Agriculture		<p>Agricultural crops such as coffee trees did not bloom seasonally or produced less fruit.</p> <p>Original seeds which were planted produced smaller fruit.</p> <p>There were more insects and pests.</p>	<p>Lower production</p> <p>More disease and pests</p> <p>Slower-growing crops</p> <p>Less fruit</p> <p>More forest fires</p> <p>Fires were intense and lasted longer than before.</p>
Health		<p>Young people got sick more often.</p> <p>Body health was unable to adapt to changing weather and it caused frequent illness and a need to see a doctor more often.</p>	<p>More diseases for both people and animals</p> <p>Respiratory disease</p> <p>More diseases caused by tropical animal carriers</p> <p>Many diseases caused stress and affected mental health.</p>
Forest	<p>Forest areas decreased.</p> <p>Some trees died.</p>	<p>Drought / unpredictable rainy season</p> <p>Forest areas decreased.</p>	<p>Fewer forest fruits</p> <p>Longer period of forest fires</p>
Water source		<p>Decreased water sources</p>	<p>Unpredictable rainy season</p> <p>Drought for longer periods than normal</p> <p>No water in ponds</p> <p>Some communities did not have enough water.</p>
Natural food source		<p>Fewer forest products</p> <p>Some trees and plants disappeared.</p>	<p>Fewer food sources</p> <p>Fewer medicinal plants</p> <p>Lower food security</p> <p>Wildlife, such as fishes in the creeks, decreased or disappeared.</p>

**Table 1.** Initial assessment of the impacts of climate change faced by Indigenous Peoples in Thailand (2021)

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Before this 2021 assessment, a study on the impacts of climate change on Hin Lek Fai village in Chiang Mai province was jointly conducted by the village leaders and the Indigenous Peoples' Foundation for Education and Environment (IPF) in 2011<sup>5</sup>. In this study it was found that the community was already experiencing impacts of climate change, albeit not to same degree as was noted by Indigenous leaders above. The 2011 study made the following observations:

1. The temperature was unusually hot and delayed rainfall caused Na Lom (a type of paddy field in a swamp area which usually contain a lot of water) to dry up and become Na Don (normal paddy fields). The change was evident across approximately 40 per cent of the area. At the same time, normal paddy fields started to dry up as there was no water.
2. The farming cycles of both paddy fields and dry-rice fields were changing. Planting season, which normally starts in mid-April every year, was delayed one-and-a-half months because of lack of water for farming. Half of the community members had to prepare rice seedlings twice. That meant that villagers had to double their labour and time invested in the farm. The harvesting, however, was one month early in comparison to the year before. It was obvious that the warmer temperature made the rice grow faster.
3. Villagers observed that the water levels in some creeks were lower. Some were drying up. This could cause problems for the community, particularly for agricultural production.
4. Some plants were increasing in numbers, such as the banana flowers, *Boh Blee Daw*, *Paw Sa*, *Ser Kaw Mue Kha*, *Ta Kha La*, *Pa Ah Daw*, *Ki Law Sah* and *Se Ler Jae Ah Paw*<sup>6</sup>. Some wild plants, however, were decreasing in numbers, including certain types of mushrooms.
5. Some insects and animals drastically increased in numbers, including mosquitos, mice, caterpillars, cicadas and sparrows. This brought concerns about diseases and other impacts to the community's health.

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5 <https://www.ipfinfo.org/what-we-do/ip-and-climate-change>

6 These are Karen words for important plants.

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Although this is a summary of a survey in one community, these impacts are commonly faced by Indigenous communities in highland areas. The level of impact on each group in the community is not equal, especially for women, children and the elderly. For example, in a time of drought or extreme weather, women—who play a major role in caring for food for the family and raising children—have to ensure that there is enough food to feed their family. Women sometimes had to search for food in the farther forests, where they are at more risk and danger from animals and poisonous insects. In some families, men have left their community to find work in town as day labourers to earn money to educate their children. The women stay behind, alone in the community, looking after the animals, caring for the young children and working in the fields. When children do not have enough food to eat, their health suffers, their growth slows, and they face malnutrition. The elderly are already very sensitive to the weather, and when the weather changes often, it can cause sickness among the elderly.

Apart from suffering these direct impacts of climate change, Indigenous communities were also significantly negatively affected by government policies, as discussed in Section 4.

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## 03

# Climate policies

Thailand became a party to the UNFCCC on 28 December 1994 and ratified the Paris Agreement on 21 September 2016. Due to the climate risk the country is facing, it has also taken urgent steps nationally to address climate change. These include, but are not limited to, adopting the long-term Climate Change Master Plan (2015–2050) in 2015 and the National Adaptation Plan in 2018, and submitting the Intended Nationally Determined Contribution in 2015. Thailand has also been preparing its readiness for REDD+ since 2009.

### 3.1 Climate Change Master Plan (2015–2050)

The first national climate change master plan was prepared by the Office of Natural Resources and Environmental Policy and Planning (ONREPP) under the Ministry of Natural Resources and Environment. It was a 10-year workplan for the period 2010–2019. This master plan consisted of three strategies. The forest sector is one of the main issues highlighted in this master plan, particularly in Strategy 2 ‘Promotion involvement of all sectors in reducing greenhouse gas emissions and increasing carbon sinks based on sustainable development’. A specific project under Strategy 2 makes direct reference to the promotion of REDD+ activities (workplan 2.2.2(5)). This first national climate change master plan was strongly criticized by civil society organizations (CSOs) and Indigenous Peoples Organizations for the lack of participation and consultations, and they demanded it be repealed and redrafted. As a result of this, in 2012 the ONREPP started to prepare the second national climate change master plan.

The second national master plan on climate change was adopted in 2015. It is a long-term framework and plan to deal with climate change. It lays out a vision to achieve climate-resilient and low-carbon growth in line with a sustainable development path by 2050. Relevant government agencies in various sectors are now in the process of formulating specific sectoral plans to address climate change, based on this framework. This master plan, which includes the forest sector as one of its targets, aims to increase to 40 per cent the land area of the country with forest cover, and to review and amend the existing forestry laws. The plan recognizes the roles of stakeholders such as businesses and civil society groups but does not specifically mention the role of Indigenous communities in implementing the plan.

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## 3.2 National Adaptation Plan

The Thailand National Adaptation Plan (NAP) was adopted by the Cabinet on 19 November 2018. Its vision is that “Thailand is resilient with adaptive capacity to climate change impacts and moves towards sustainable development”. The plan focuses on six sectors—water management, agriculture and food security, tourism, public health, natural resources, and human settlement and security. It recognizes traditional and local knowledge of adaptation. The implementation is in three phases:

**2018–2021:** preparation period; foundation laying and policy-level action

**2022–2026:** implementation period; developing mechanisms and building capacity

**2027–2037:** achieving goals period; action to achieve outcome and goals.

The issues most relevant to Indigenous Peoples are about water and natural resource management because most Indigenous communities live in forest and watershed areas.

## 3.3 Nationally Determined Contribution<sup>7</sup>

Thailand prepared and submitted its Intended Nationally Determined Contribution<sup>8</sup> to the UNFCCC Secretariat in 2015. This later became the Nationally Determined Contribution (NDC). The NDC intends to reduce greenhouse-gas emissions by 20 per cent from the projected business-as-usual level by 2030. It further states that the level of contribution could increase up to 25 per cent, subject to adequate and enhanced access to technology development and transfer, financial resources, and capacity-building support through a balanced and ambitious global agreement under the UNFCCC.

The primary target sector for mitigation under the NDC is energy which, together with transport, is responsible for more than 70 per cent of Thailand’s greenhouse-gas emissions. Waste management is also one of the areas targeted for reducing emissions. The Thai government, under the Ministry of Natural Resources and Environment, is also examining the potential to reduce carbon emissions in the forest sector through the REDD+ programme.

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<sup>7</sup> <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx>

<sup>8</sup> The INDC changed to the Nationally Determined Contribution (NDC) after the Paris Agreement was adopted.

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The NDC refers to adaptation as its top priority in Thailand's national response to climate change. Prioritized adaptation efforts include the following examples:

- Increase national forest cover to 40% through local community participation, including in particular headwater and mangrove forests to enhance adaptive capacities of related ecosystem.
- Safeguard biodiversity and restore ecological integrity in protected areas and important landscapes from the adverse impacts of climate change, with the emphasis on vulnerable ecosystems and red list species.

From this, it is possible that the forest sector will be included in Thailand's future NDC plan of action for both mitigation and adaptation.

In 2020, Thailand submitted an updated NDC<sup>9</sup> to the UNFCCC Secretariat. The mitigation component remains the same, but added on is the issue of formulating a 'long-term low greenhouse gas emission development strategy' to be used for guiding Thailand towards climate-resilient and low-emissions development, and to serve as a basis for enhancing its subsequent NDCs.

### **3.4 REDD+**

Thailand is one of the countries selected by the World Bank's Forest Carbon Partnership Facility (FCPF) as a REDD country participant since its Readiness Project Idea Note was accepted in March 2009. The Department of National Park, Wildlife and Plant Conservation is currently developing a national REDD+ strategy. The process has been slow because all bilateral activities/programs, according to the Constitution, require approval from the Cabinet before they can proceed. The internal political situation has also caused delays.

Thailand is currently speeding up its REDD+ readiness phase since the grant agreement with the FCPF is due to end in November 2021. The main components remaining, particularly for the national REDD+ strategy, are to:

- study the underlying causes of deforestation and forest degradation
- establish a Strategic Environmental and Social Assessment and an Environmental and Social Management Framework
- set up benefit-sharing mechanisms
- develop safeguards and a safeguards information system
- establish redress and grievance mechanisms.

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<sup>9</sup> <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Thailand%20First/Thailand%20Updated%20NDC.pdf>

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### 3.5 Recognition of rights in climate policies

Over the past 30 years, the Constitution of Thailand has been re-drafted and re-adopted several times, and has officially recognized ‘community rights’ on land and natural resource management at a number of points in time, including in the constitutions of 1997, 2007 and 2017. The 1997 Constitution in section 46, for example, stated that “persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced fashion and persistently as provided by law”.

The 2007 Constitution further upheld and strengthened community rights by inserting a specific section and by removing language that had qualified these rights with the clause, “subject to existing laws or as provided by laws”. For example, section 66 holds that: “Persons assembling as a community, local community or traditional local community shall have the right to preserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”

The 2017 Constitution continues to uphold community rights, but with less specificity in the way they are referred to. For example, section 43 states that “a person and community shall have the right to: (1) conserve, revive or promote wisdom, arts, culture, tradition and good customs at both local and national levels; (2) manage, maintain and utilize natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law.”

However, these community rights have yet to be translated into implementation, as there has been no sub-law to elaborate or guide people on how this concept should be implemented. This has become a major gap, because all of Thailand’s climate policies propose to include forest and natural resources as a means to mitigate and adapt to the impacts of climate change. These policies tend to refer generally to the role of local communities and traditional knowledge in mitigating and adapting to climate change, not to management and ownership rights, and without practice application. For example, the NAP specifically considers issues of local wisdom, community-based adaptation, public participation, human rights, and gender responsiveness in its policy formulation but does not specify or allocate specific programs or activities to accommodate such issues.

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The Thai REDD+ Readiness Preparation Proposal (R-PP) also refers to forest-dependent communities and highland ethnic groups as key stakeholders in project implementation, though it does not recognize their rights to land and natural resources as required under the Cancun safeguards.<sup>10</sup>

In addition to this, in 2010, the Thai Cabinet passed two resolutions to restore the traditional livelihoods of the Chaoley and Karen people, respectively.<sup>11</sup> One of the proposed solutions under these Cabinet resolutions, which is critical for the Indigenous Peoples concerned, is the recognition and designation of special cultural zones for those peoples. This represents a holistic approach to tackling the long-standing problems that Indigenous Peoples are facing as it will cover all issues—land, livelihoods and spiritual values. This is considered a new concept by the government.

A few places have thus far been chosen to pilot this concept among the Karen. These include Mawwakee school in Maewang district, Chiang Mai province; the Hin Laad Nai village in Chiang Rai; Lay Tong Ku village in Tak province; and Rai Wo sub-district in Sangklaburi district, Kanchanaburi province. However, implementation of workplans and activities on the ground has progressed little due to a lack of funding and political will on the part of the government agencies concerned. Moreover, the pilot projects have to align with existing protected area laws, which is very challenging.

Overall, while Thailand's national climate policies have so far recognized rights to participation, other substantive rights—such as free, prior and informed consent, and rights to land and natural resources management—remain unclear.

### **3.6 Issues and concerns for Indigenous Peoples in national climate policies**

In general, Indigenous Peoples in Thailand are concerned about land security and access to natural resources. As described below, national conservation, natural resource management and climate policies pose risks of exacerbating the threats already faced by Indigenous Peoples due to their lack of land tenure security and control over natural resources.

#### **3.6.1 Natural resource management and conservation policies and laws**

Thailand's centralized policy on natural resource management focuses mainly on wilderness conservation. The government continues to apply a view that conservation can only be achieved by keeping people away from the forests and

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<sup>10</sup> 'Cancun safeguards' refers to seven safeguards that were agreed for REDD+ at the 16th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP16) in 2010, and which include 'respect for the knowledge and rights of Indigenous Peoples and members of local communities'. See: <https://www.unredd.net/knowledge/redd-plus-technical-issues/safeguards.html>

<sup>11</sup> Indigenous World 2011, International Workgroup for Indigenous Affairs, p. 290–291

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caring only for the trees and land. This can be clearly seen in the forestry laws.<sup>12</sup> None of them refer to land rights or communities' customary land tenure rights, or, where reference is made to community rights (as in the Community Forestry Law 2019 and the National Park Law 2019), it is limited to use rights. This has become problematic and led to conflict over natural resource management between communities and the state. Forestry laws mainly aim to preserve natural areas for education and recreational activities; to conserve habitat in which wildlife can breed and expand in a natural setting; to stop illegal hunting and capture of animals; to conserve specific wildlife species; and to collect and plant native and exotic rare plant species that are economically valuable. The social aspect of forests is totally lacking, with little attention to the relationships between human beings and nature in terms of food, medicine, shelter and spirituality. Further, the interdependence between Indigenous Peoples and forest-dependent people and their forests is not acknowledged. Conflicts over natural resource management between the state and communities, including direct criminalization of community members who carry out traditional activities (see Section 4), have increased in number over the years, with no concrete solution in sight.

In 2019, the Thai government passed or amended four laws all related to forest management: the National Land Policy Committee Law on 12 April 2019; the Community Forestry Law on 24 May 2019; the Amendment to the National Park Law on 29 May 2019; and the Amendment to the Wildlife Preservation and Protection Act on 24 May 2019. These recently amended forestry laws, though they have provisions to address this problem, still fail to address the root causes.

The new laws are both positive developments and threats to communities. On the positive side, they show that the government under the Ministry of Natural Resources and Environment has tried to resolve the long-standing land conflict between communities and the state in protected areas by documenting and demarcating community land use and traditional livelihood practices outside the forest areas.<sup>13</sup> The laws also allow basic infrastructure development—such as road building, installation of electricity, water supply—to be legally undertaken in the communities within protected areas once the registration process is complete. This will improve the quality of life of community members.

On the negative side, the National Park Law<sup>14</sup>, in particular, will impose stricter penalties and further limit the rights of farmers and Indigenous Peoples.<sup>15</sup> The process and time frame to document and conduct community land-use surveys are, moreover, very challenging. Park authorities must complete the documentation

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<sup>12</sup> These include the National Forest Reserve Act, Forestry Act, Wildlife Sanctuary Act and National Parks Act.

<sup>13</sup> For more detail on the laws, see: <https://www.nationthailand.com/national/30365412>

<sup>14</sup> The new amended law came into effect on 25 November 2019.

<sup>15</sup> For example, those who are convicted of encroachment and other offences could face up to 20 years in prison and 2 million Baht (approx. US\$66,666) in fines.

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of community land-use and livelihood practice surveys under articles 64 and 65 within 240 days, or eight months. They must officially inform communities living in protected areas about the surveys. Community members then decide whether they want to participate in the survey or not. For those who decide to participate, once the survey is completed, a community land-use map is produced and verified by the committee before being sent to the Department of National Parks for approval. No further survey is conducted after this deadline.

The main concerns of communities relate to the limited time frame and the survey process. It is unlikely that all communities living in forest areas (about 3,973 communities) can be surveyed within the identified time frame. Most communities are still not aware of the new law; and the process for ensuring the full, effective participation of villagers remains unclear. Further, registered communities are allowed to temporarily live and use their land for a maximum of 20 years, regardless of how long they have been in existence, although there is an option for renewal if the community is not violating the agreed rules and regulations.

### **3.6.2 REDD+ activities**

Due to technical problems and delays in the preparation of the REDD+ strategic plan, no activities have yet been implemented in the pilot areas, although some REDD+ preparation has been done by select government agencies.<sup>16</sup> Though the REDD+ development is still in an initial stage, concerns about the potential impacts of REDD+ have been expressed by Indigenous communities, particularly on access to information and participation in REDD+ project activities, possible human rights violation, and other social conflicts.

#### **Lack of information and participation**

Thailand's Readiness Project Idea Note was developed and submitted to the World Bank FCPF without any involvement of Indigenous communities. Also, villagers mentioned in the pilot areas have neither been consulted nor informed about any such initiative. Villagers were made aware of this project after the drafting of the concept note was already completed; furthermore, they were made aware not through government consultation but through the community consultation on REDD+ in 2009 which was supported by the International Work Group for Indigenous Affairs (IWGIA). Additionally, villagers fear that they may not have enough capacity to effectively participate in REDD+ projects as they often lack reading and writing skills, negotiation skills and decision-making power.

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<sup>16</sup> These include a study on the underlying causes of deforestation and reference emission levels, which was initiated and supported by the Thailand Research Fund.

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### **Further human rights violations**

Villagers fear that REDD+ projects will strictly and/or further limit or control their access to natural resources, such as collecting non-timber products and collecting fuel woods and timber for household construction and maintenance. In addition, these projects will impact their traditional farming system, such as rotational farming, which will affect their lives and livelihoods.

### **Communities in forest areas are considered drivers of deforestation and forest degradation**

The R-PP defines unauthorized land occupation and/or illegal forest-land occupation and illegal logging and harvesting of non-timber forest products as important drivers of deforestation and forest degradation.<sup>17</sup> As a result, Indigenous People and communities, who use their forests sustainably, are seen as contributing to these drivers. To avoid this misperception, before the legal declaration of protected forest areas, a process is needed for distinguishing resident communities, and communities that live sustainably without destroying ecosystems. It should not be assumed that all communities residing in forest areas are significant drivers of deforestation and forest degradation.<sup>18</sup>

### **Division among indigenous communities**

Villagers are also concerned that REDD+ projects may create a division among villagers in their community, and between villages, because some may see REDD+ projects as bringing benefits to them— such as cash from selling carbon credits, and other forms of support from governments and other stakeholders— while others are worried about possible negative consequences (described above).

### **3.6.3 The National Climate Change Master Plan (2015–2050)**

The main concern of Indigenous Peoples with the national climate change master plan relates to integrated water management and natural resources management. The master plan encourages active participation of all stakeholders in river-basin policy, planning and management; it supports forest restoration efforts and the increase of forest areas by emphasizing the creation of forest corridors and buffers to bolster the resilience of ecology and biodiversity; and it supports the role of local communities in the conservation of forests and ecosystems via mechanisms such as the Payment for Ecosystem Services scheme, forest bonds<sup>19</sup> and REDD+. In practice, community participation in natural resource management is minimal, and limited according to the existing protected area laws (as discussed earlier).

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<sup>17</sup> The R-PP further indicates that addressing the drivers will require the enforcement of existing laws and policies.

<sup>18</sup> Readiness Preparation Proposal (R-PP), Annex 1b-10 (1) Analysis on Readiness Preparation Proposal draft dated 23 November 2011, revised on 24 February 2013 by the Thai Climate Justice, page 216–219.

<sup>19</sup> Forest bonds are a tool to mobilize resources to invest in economic forests. They are similar to the concept of Payment for Ecosystem Services.

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### 3.7 Participation of Indigenous Peoples in climate change policies

Most of the Thailand's climate change policies refer to the participation of various stakeholders including local communities and vulnerable groups. However, in practice, there has been no such participation, or very limited participation as was the case, for example, with CSOs and communities in formulating the first draft climate change master plan. As a result, the Climate Justice Group and networks of various people organizations (POs) protested, including the Network of Indigenous Peoples in Thailand. Even though the master plan was passed and adopted by the Cabinet, CSOs and POs demanded that Prime Minister Abhisit Vejjachavea, as Chair of the National Climate Change Policy Committee, suspend it and establish a new drafting process, with full and effective participation from all sectors. There was no further progress on this issue.

With the REDD+ design and deliberation, however, Indigenous Peoples have had more chances to participate than with other climate policies. For example:

- Two Indigenous representatives sit on the National REDD+ Taskforce.
- Indigenous representative(s) can be nominated to thematic working groups, such as the Reference Emission Level Working Group.
- A Civil Sector Coordination Centre has been established. This had been proposed by CSOs, local communities and Indigenous Peoples for coordinating operations at the local level and for coordinating with the REDD+ Taskforce. The CSOs have already proposed its primary responsibility, which is detailed in Annex b-2 of the R-PP.

During the recent preparation of the draft national REDD+ strategy, some Indigenous representatives were invited to participate in thematic working group discussions on topics such as a safeguard information system and a benefit-sharing mechanism.

The reason why the government has been more open to Indigenous Peoples and local communities taking part in formulating the REDD+ policy and strategy is that it must do so to comply with the Cancun Agreement on REDD+ implementation.

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## 04

# **The impact of current climate interventions on Indigenous Peoples**

The current climate interventions impacting Indigenous Peoples are primarily those related to natural resources conservation and management, which are one of the measures proposed under the national climate policies to address the impact of climate change. While the issue of land and resource management rights in forest areas in Thailand remain unresolved, the situation is getting worse, particularly since 2014 when the government passed a master plan for resolving problems of deforestation, encroachment of state-owned lands and sustainable forest management<sup>20</sup>. The main aim of the master plan is to increase forest cover by 40 per cent or 128 million rai<sup>21</sup> [20.48 million hectares] over a 10-year period by stopping deforestation, reclaiming encroached forest lands, revamping forest resource management systems, and rehabilitating forest areas. This was in line with the policy of the National Council for Peace and Order [NCPO] on protection of natural resources, which was presented to the Lower House on 12 September 2014 and NCPO Order No. 64/2557.

To achieve the goals of this master plan, the government must increase forest cover by 26 million rai, or 31.60 per cent, given that the current forest cover is 102 million rai (data from Forestry Department 2015).<sup>22</sup> To implement the master plan and NCPO Order 64/2557, the Internal Security Operational Command and the Department of National Parks, together with relevant government agencies, have joined forces in suppressing and carrying out arrests of persons encroaching on and destroying forest lands. Such operations pose grave concerns to many communities, including Indigenous Peoples, as no explicit distinction is made between illegal encroachers and Indigenous communities who have long been living in these areas. Thus, many poor people (both Indigenous and non-Indigenous) have been arrested on charges of forest encroachment, which has seriously affected their lives and families.

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<sup>20</sup> <http://www.dnp.go.th/petchburi/paper/plan.pdf>

<sup>21</sup> 1 hectare = 6.25 rai

<sup>22</sup> <http://forestinfo.forest.go.th/Content.aspx?id=10384>

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To address this concern, the NCPO issued another order, Order No. 66/2557,<sup>23</sup> to ensure that the implementation of the master plan will not have negative impacts on the poor and Indigenous communities. It states (still failing to recognize that many indigenous communities have long-standing customary claims to the lands): “...carrying out all aspects [of Order No. 64/2557] must ensure that the poor and landless people residing in the designated areas prior to NCPO Order No. 66/2557 are not negatively impacted, excepting those who relocated there after the order”. However, in practice, officials in the field do not differentiate. The poor and Indigenous Peoples are still being arrested and taken to court. The case of the Karen people in Kaengkrachan National Park, Nongyaplong district, Petchaburi province, is an illustrative example.<sup>24</sup>

*“On that day, the Forest Rangers [special task force of the National Parks Department] seized a nearby resort, and some border control officers witnessed me planting mango trees here. They said nothing, but today I was arrested on the grounds of encroaching on 5.75 rai [0.92 hectare] of land; the local police station is now preparing the documentation . . . the land I was working was passed down to me from my parents and I have farmed it for many years. How can this be considered new encroachment? I don’t even know where my 5.75 rai of land is officially located.”*

— Interview with Karen woman on 25 May 2017

Another example of the serious effects of the implementation of the master plan and the associated land reclaim policy is the case of the Karen community of Mung Poy village in Chiang Mai province.

#### **4.1 The case of the Karen people of Mung Poy village**

Mung Poy is a satellite village of Phapoondong.<sup>25</sup> Located at Moo 16, Omkoi sub-district, Omkoi district, Chiang Mai province, the village is in the National Forest Reserve which was declared a reserve on 24 December 1975<sup>26</sup>. This area also falls within the category of watershed class 1 and 2 according to the Thai government watershed classification and management policy. Karen people have lived in this area (Phapoon mountain range) for many generations. Villagers used to practice rotational farming and stopped around 25 years ago due to the government sedentary and conservation policy. Today, most villagers have shifted to permanent farming and grow some cash crops, such as tomatoes and pumpkins.

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<sup>23</sup> It was issued on 17 June 2014.

<sup>24</sup> See Indigenous World 2017 p.365

<sup>25</sup> Phapoondong village is made up of four hamlets: Phapoondong, Mung Poy, Denkratai and Doi Mee.

<sup>26</sup> The area covers three sub-districts, namely Omkoi, Maetuen and Yangpiang in Omkoi district, Chiang Mai province.

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On 12 June 2016, community farmland totaling 250 rai (about 39 ha) was confiscated by National Forest Reserve officers for reforestation. The operation, according to the forestry officers, was carried out in accordance with the land reclaim policy of NCPO Order No. 64/2557. Villagers claim that the land was confiscated without the free, prior and informed consent of the community members.

The confiscation has impacted 20 families, including 35 women and 38 men. They have lost their farmlands where they used to grow rice and cash crops to support their families. Some of them (both men and women) have had to take up wage labour in and outside their community.

The villagers affected have tried to resolve the problem by entrusting the Chair of Omkoi Ethnic Network to submit a petition to the National Human Rights Commission (NHRC) on 23 August 2018 to investigate and find possible solutions. The NHRC then conducted an investigation and visited the village. Its report on 11 December 2019 concluded that the action of Forest Resource Management Office 1 (Chiang Mai) was undertaken in accordance with the existing laws and regulations. It was, therefore, not considered a violation of the rights of the Karen people, and the report proposed the case be terminated. However, the NHRC acknowledged that the policy and law enforcement on land and resource management in Omkoi district has negatively impacted the Mung Poy community, particularly on their farmlands. The NHRC, therefore, recommended that the director general of the Royal Forestry Department, the Chiang Mai governor and the director of Forest Resource Management Office 1 collaborate with the relevant agencies to resolve the problem, conducting community land-use mapping and promoting appropriate agriculture and occupations for the community.

These recommendations did not satisfy the affected villagers, who then decided to submit the case to the Chiang Mai governor on 22 August 2018, demanding that the concerned government agency help resolve their problems. No progress has been made on the case and the affected villagers continue to suffer without land for farming.

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## 05

# **Indigenous Peoples’ contributions to addressing climate change**

Most Indigenous Peoples depend on natural resources for their living. Their way of life is inextricably linked with the natural resources surrounding them, such as the land, forest, water and sea, depending on the geography where they live. For millennia, they have sustainably managed and used these resources for their food, shelter, medicine and spiritual life. Moreover, their natural surroundings are learning spaces where for hundreds of years communities have practised, adjusted and passed down knowledge from one generation to the next. The knowledge and practices are crucial for their survival and wellbeing. Below are some examples of how such knowledge and practices—and the revival and sustainable adaptations of these—contribute to addressing climate change and its impacts.

### **5.1 Rotational farming**

Rotational farming, or shifting cultivation, is primarily a production pattern that has been integrated and adapted to a particular ecology and culture. Fields where shifting cultivation is practiced produce a variety of indigenous food crops for local consumption. Normally, a farmland is cultivated for only one year, after which the land is left fallow to naturally restore the forest and the fertility of the soil, and is cultivated again only after 6–10 years.

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According to international forestry expert Dr Jurgen Blaser,<sup>27</sup> typically, during the period of restoration, forests require huge amounts of carbon to reproduce stems and new leaves. It is for this reason that rehabilitating forests has a high capacity to sequester carbon dioxide. As they grow, plants transform carbon dioxide into atomic carbon, which is one of the main building blocks of plant tissue. When the plant is burned or decomposed, the carbon is again released as carbon dioxide.

A 2010 study conducted at Hin Laad Nai village by the Northern Development Foundation and village volunteers showed that shifting-cultivation farms, including active and rehabilitating farms aged 1–10 years, stored 17,643 tonnes of carbon dioxide, while the burning by farmers produced only about 476 tonnes of carbon (which is equivalent to 1,745.33 tonnes of carbon dioxide). Furthermore, the longer the fallow the more carbon is stored. For example, a one-year-old fallow area could store 12 tonnes of carbon per hectare, while a 10-year-old fallow area of the same size could store 152 tonnes of carbon per hectare.

In addition, shifting cultivation is vital to the preservation of traditional seeds, both to increase biodiversity and to ensure food security. Many edible plants have grown well in rotational farming. Indigenous farmers know that the nutrients from burning trees and weeds will enrich the soil, which promotes the growth of vegetables and other crops in the rice field, and allows for more diverse crops.

Rotational farming is still practised in many areas by Indigenous communities, although its prevalence has been declining due to the government's conservation policy which does not favour—and, as shown above, in some cases criminalizes—such agricultural practices.

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<sup>27</sup> Cited in *Climate change, trees and livelihood: A case study on the carbon footprint of a Karen community in Northern Thailand*, Northern Development Foundation, page 20

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## 5.2 Agroforestry in Baan Mae Sa Mai

Baan Mae Sa Mai is a Hmong community in Mae Sa sub-district, Mae Rim district, Chiang Mai province, where, for over 20 years, most of the agricultural areas have been used for planting economic crops which have been promoted by outside agencies. Therefore, most community members have adopted commercial monocultural farming.

Despite this trend, former deputy village headman Mr Yua Thanomrungruang, now an old man, continues to practise a unique type of mixed farming, planting a variety of plants, such as bamboo, coffee, teas and avocado. He also grows various medicinal plants in his garden to preserve them and to make it a place for the living transfer of knowledge to the younger generation.<sup>28</sup> Since this kind of farming differed from what is now mainstream practice, many people did not believe that he would be successful, calling his garden *Suan Kee Joo*, meaning 'Garden of a liar'. Nonetheless, Mr Yau's garden has during the past 30 years become a study area for agroforestry. It is also a place where knowledge of the music, folk tales and culture of Hmong people of Mae Sa Mai village is shared.

## 5.3 The 'Women's Forest' in Baan Huai Ei Kang

Baan Huai Ei Kang is located in Mae Win sub-district, Mae Wang district, Chiang Mai province. The community allocated 60 *rai* of community forest for a women's group to grow herbs, produce natural dyes and collect wild food. The main goal is to use this area as a natural classroom for passing women's knowledge of natural resource management, medicinal plants and natural dye techniques to young people. A secondary goal is to generate additional income for the community.

The women's group established a natural resource management fund. Members are requested to annually contribute 38 Baht each to this fund, which is used for looking after the community forest through, among others, patrolling and extinguishing forest fires and buying food for village volunteers who maintain forest fire breaks. This initiative has been well received and supported by local government officials and by the forestry department on management of community forest resources.

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<sup>28</sup> It is a combination of traditional and modern knowledge that is being shared.

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## 5.4 Baan Mae Chok – a special cultural area

Baan Mae Chok is a Karen community in Pa Pae sub-district, Mae Taeng district, Chiang Mai province. It is a member of the natural resource management network of the Mae Chok – Mae Lao river basin. The community was declared a special cultural zone in 2014 according to the Cabinet resolution of 3 August 2010 on policy guidelines for restoring the Karen traditional way of life.<sup>29</sup>

A small village surrounded by dense forest, with the Mae Chok creek flowing through it, Mae Chok feeds more than 300 villagers who practice rice farming. When the COVID-19 pandemic broke out in early 2020, Baan Mae Chok was one of the communities that completely locked down, prohibiting people from entering and exiting. Under lock down for about three months from March to May 2020, the villagers completely sustained themselves without any problem. This example shows the importance of maintaining strong and resilient local food systems, especially with the expected challenges that will arise as the climate continues to change.

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<sup>29</sup> See Section 3.5

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# Author profile

## **Kittisak Rattanakrajangsri**

Kittisak Rattanakrajangsri is an indigenous person. He belongs to the Iu Mien indigenous group from the north of Thailand. He is the current chairperson of the Asia Indigenous Peoples Pact (AIPP), chairperson of the Council of Indigenous Peoples in Thailand (CIPT) and director of the Indigenous Peoples' Foundation for Education and Environment (IPF). He has worked to promote and protect the rights of Indigenous Peoples since 1989 particularly on land and natural resource issues. He also has knowledge and experiences on several issues. These include database development and management for the most vulnerable indigenous groups in Thailand; documentation of human rights violation; study and development of community climate change adaptation plan and drafting a law and policy to promote and safeguard the rights of Indigenous Peoples.



La Chi Indigenous Women are harvesting their rice in Hoang Su Phi district of Ha Giang province, Vietnam.

**Photo Credit:** Thuy Hoang, Centre for Sustainable Development in Mountainous Areas (CSDM)

# Vietnam

**Hoang Xuan Thuy**

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# **Purpose of this report**

This report is an assessment of the extent to which the Vietnamese Government is considering the rights and knowledge of ethnic minorities in its climate-related policies and strategies, including the Nationally Determined Contribution, REDD+ strategies, the National Adaptation Plan and other relevant environmental laws. We also make recommendations, based on our the findings, for actions to address the major gaps identified.

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# Summary of Findings

Our analysis revealed three major gaps.

## **Land access**

Although the Vietnamese Government over the past few decades has implemented a number of programs and policies aimed at addressing land access for ethnic minorities, their access to production and forest lands remains very limited.

## **Lack of concrete mechanisms for engaging local communities in policy processes**

Although the expectation that local communities and ethnic minorities will be engaged in state management is strongly embedded in legislation in Vietnam, the effective participation of these rightsholder groups in developing, implementing and monitoring policies is limited and mainly focuses on information sharing and superficial consultation.

## **Risks to livelihoods, wellbeing and rights of Indigenous Peoples in national climate policies**

The rapid development of renewable energy projects without good planning and monitoring may pose risks to the environment and biodiversity, and to the wellbeing and rights of ethnic minorities.

# Recommendations

There are several entry points for filling the above gaps:

- Strengthen the institutional and organizational capacity of government agencies (specifically, the Committee for Ethnic Minority and Mountainous Area Affairs) and representative bodies of ethnic minorities (civil society organizations and networks).
- Strengthen the human capacity and increase financial resources for development of ethnic minority areas.
- Legalize and mainstream the obligation of external parties (state and private sector) to obtain the free, prior and informed consent of ethnic minorities for policies, plans, programs and projects that potentially affect ethnic minority areas.
- For schemes offering payment for forest environmental services (PFES), which have generated good revenue to support the poor (mainly, ethnic minorities) in Vietnam over the past decade, improve the payment policy to ensure this revenue is distributed equitably and to avoid deforestation being displaced from paid areas to non-paid areas.
- Last but not least, showcase ethnic minorities' good practices in forest management which can contribute to enhancing carbon sinks and to the implementation of Paris Agreement in Vietnam.

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# 01

# General status of Indigenous Peoples in Vietnam

## Recognition of Indigenous Peoples in Vietnam

The term ‘Indigenous Peoples’ is defined in the United Nations Declaration on the Rights of Indigenous Peoples as “the peoples who have long lived in a territory before the arrival of others”. In Vietnam, during the French colonial period, the French used the term ‘indigenous people’ to refer to all Vietnamese, regardless of whether they were Kinh or another ethnic people. Since independence and the foundation of the Democratic Republic of Vietnam, the term ‘indigenous people’ has not been formally recognized. Instead, the term ‘ethnic minorities’ is used, justified by the reasoning that all ethnic groups have thousands of years of history in the country.<sup>1</sup> The term ‘ethnic minority group’ refers to those who have a smaller population than the ethnic majority group.<sup>2</sup> And the term ‘citizenship’ has replaced the term ‘indigenous people’s rights’, referring to the rights of all Vietnamese people, regardless of whether they belong to an ethnic minority.<sup>3</sup> For these reasons, in this report we use the term ‘ethnic minorities’ rather than ‘Indigenous Peoples’.

Today, 54 ethnic groups are officially recognized in Vietnam. Of them, the Kinh ethnic group is considered the majority, accounting for over 85.3 per cent (82,085,729 persons) of the national population of about 96.2 million; the other 53 groups account for approximately 14.7 per cent (14,123,255 people).<sup>4</sup> Each ethnic minority has different cultural practices and their own unique traditional knowledge, customs and languages.<sup>5</sup>

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1 GEF-SGP (2018). Report on Legal Analysis to assess the impact of national laws, policies and institutional frameworks on ethnic minorities & local communities in the conservation and development of natural resources in Vietnam. The Global Environment Facility Small Grants Programme/UNDP (Hanoi, Vietnam).

2 Government of Vietnam Decree 05/2011/ND-CP dated 14 January 2011 relating to the work of ethnic peoples.

3 Constitution 1946, 2013.

4 General Statistics Office, ‘Completed results of the 2019 Vietnam population and housing census’, downloaded on 15 May 2021 at: <https://www.gso.gov.vn/wp-content/uploads/2019/12/Ket-qua-toan-bo-Tong-dieu-tra-dan-so-va-nha-o-2019.pdf>

5 IWGIA (2019). ‘Indigenous World 2019: Vietnam’: <https://www.iwgia.org/en/vietnam/3439-iw2019-vietnam.html>

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Recent Constitutions of Vietnam have consistently recognized the human rights of all citizens. The most recent Constitution, adopted in 2013, contains 35 articles relating to social, cultural, political and economic rights, gender equity, child rights and tenure rights of all Vietnamese citizens. In 1982, Vietnam proactively ratified several important international treaties and conventions on human rights, including the Convention on Civil and Political Rights (1966); the Convention on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Discrimination against Women (1979); and the Convention on the Elimination of All Forms of Racial Discrimination (1969).

The Constitution of Vietnam states that all citizens are equal, and that this must be ensured and protected by the State. When it comes to land and natural resources, all Vietnamese citizens, ethnic minorities, including individual household and communities, have land-use rights for residential and agricultural land (including forest land, aquacultural land, and arable land). Natural resources (land, forest, water, fisheries) are considered to belong to the entire people of Vietnam; the State, as the representative of this ownership, retains the management and allocates usage rights (but not ownership) to various owners including individuals, communities, state management boards and enterprises, private enterprises, armed agencies, religious organizations and scientific organizations.<sup>6</sup> As a result, ethnic minority communities often have limited access to land and other related natural resources. Most of the ethnic minorities live in mountainous areas, and their livelihoods depend heavily on agriculture, fishing and aquaculture.<sup>7</sup> The number of households granted land-use right certificates is still very low, especially in the villages and hamlets in the northern, central, and Central Highlands mountainous regions.<sup>8</sup>

In terms of collective rights, since 2003 the government has recognized the collective right of communities over their traditional lands and forests. Since 2017, under the Forestry Law, which replaced the Law on Forest Protection and Development 2003, a community is recognized as one of seven formal categories of forest owners. Under this law, communities can be granted a land-use title ('red book') over religious forests and community watershed-protection forests, which can be considered an expansion of the land-use rights provided by the Constitution. However, a community only has the right to access, use, and exclude—it does not have alienation rights, which presents a challenge in implementing the Forestry Law.

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6 Constitution 2013, Land Law 2013, Forestry Law 2017, Fisheries Law 2017, Water Resource Law 2012.

7 <https://vietnam.opendevelopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/#ref-3252299-8>

8 Tô Xuân Phúc và Trần Hữu Nghị. 2014. Báo cáo Giao đất giao rừng trong bối cảnh tái cơ cấu ngành lâm nghiệp: Cơ hội phát triển rừng và cải thiện sinh kế vùng cao. Tropenbos International Vietnam, Huế, Việt Nam.

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In 2018, the Ethnic Minority Committee of the National Assembly reported that communities are managing over 1.2 million hectares of both traditional and contemporary forest lands, but only 450,000 hectares (accounting for 37.5 per cent of community forests) were granted as land-use titles.<sup>9</sup> Under the Fishery Law 2017, communities also have rights to utilize fishery resources but, again, this does not include the full bundle of rights. Instead, communities are recognized as a partner with other actors on fishery management and harvesting.

The right of Indigenous Peoples to participate in the development, implementation and monitoring of policies, development programs and projects is also contained in laws. The Ordinance on the Exercise of Democracy in Communes, Wards and Townships (20/04/2007) was developed to promote the principle: “people know, people discuss, people do and people monitor”. This is considered the important legislative foundation for engagement of all civil citizens (including Indigenous Peoples, women, youths and disabled persons) in the processes of public policies and development projects. The participation and consultation rights of ethnic minorities (as well as being part of the principle of free, prior and informed consent (FPIC)) are integrated in several related sectoral and environmental laws, including the Law on Planning 2017, the Land Law 2013, the Environmental Protection Law 2014 (revised 2020), the Water Resource Law 2012, the Fishery Law 2017, and the Forestry Law 2017. In providing for ethnic minorities’ rights, these policies are consistent with the Constitution of Vietnam.

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<sup>9</sup> Hội đồng dân tộc Quốc hội. 2017. Báo cáo giám sát rừng giao cho đồng bào dân tộc thiểu số. Quốc hội nước Cộng hoà xã hội chủ nghĩa Việt Nam

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## 02

# Indigenous Peoples and climate change in Vietnam

According to the National Strategy on Climate Change (2016), Vietnam is considered one of the most vulnerable countries in the world when it comes to impacts of climate change.<sup>10</sup> According to the Intergovernmental Panel on Climate Change, over the past 50 years the average temperature in Vietnam has increased by 0.5–0.7°C and sea level has risen by 20 cm. El Niño and La Niña phenomena have also occurred more frequently. Natural disasters, especially storms, floods, landslides and droughts, are becoming fiercer. Over the past 10 years, natural disasters have caused significant losses of both lives and properties. According to statistical data, 9,500 people lost their lives due to natural disasters. Total damage was estimated to be about 1.5 per cent of gross domestic product (GDP) per year.<sup>11</sup>

According to the summary of climate-change and sea-level-rise scenarios for Vietnam, for a business-as-usual scenario (where high emissions of greenhouse gases continue in the absence of climate change policies)<sup>12</sup> at the end of the 21st century, average temperatures in Vietnam will increase by 3–4°C, sea levels will rise by 0.49–1.03 metres, and total annual rainfall will increase but rainfall in the dry season will decrease. Calculations based on this scenario show that 38.9 per cent of the Mekong Delta, 16.8 per cent of the Red River Delta and 1.47 per cent of the coast between Thanh Hoa and Binh Thuan provinces could become permanently inundated.<sup>13</sup>

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10 <http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&articleId=10051283>

11 Decision 2139/QĐ-TTg (dated 05/12/2016) Approving the National Strategy on Climate Change <http://www.asemconnectvietnam.gov.vn/default.aspx?ZID1=14&ID8=53449&ID1=2>

12 By late 21st century, trends in sea level rise for different RCP scenarios are clear. By 2100, average sea level rise for the coastal areas of Vietnam would be about 44 cm (27÷66 cm) for the RCP2.6 scenarios, about 53 cm (32÷76 cm) for the RCP4.5 scenarios, about 56 cm (37÷81 cm) for the RCP6.0 scenarios, and about 73 cm (49÷103 cm) for the RCP8.5 scenarios. According to the RCP4.5 scenario, by the end of the 21st century, temperatures will likely increase by 1.9–2.4°C in the north, and by 1.7–1.9°C in the south. According to the RCP8.5 scenario, at the end of the century, temperatures will likely increase by 3.3–4.0°C in the north and by 3.0–3.5°C in the south.

13 Trần Thục, Nguyễn Văn Thắng, Huỳnh Thị Lan Hương, Mai Văn Khiêm, Nguyễn Xuân Hiển, Doãn Hà Phong (2016). Summary of scenarios of climate change and sea level rise for Vietnam, Ministry of Natural Resources and Environment: [https://vihema.gov.vn/wp-content/uploads/2015/12/03.-Tom-tat-Kich-ban-BDKH-va-NBD-cho-VN\\_2016\\_Tieng-Viet.pdf](https://vihema.gov.vn/wp-content/uploads/2015/12/03.-Tom-tat-Kich-ban-BDKH-va-NBD-cho-VN_2016_Tieng-Viet.pdf)

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Direct economic losses due to climate change are roughly estimated to be 10.9 per cent of GDP.<sup>14</sup>

Climate change is substantially threatening food security and agricultural production of ethnic minorities in Vietnam. Sea-level rise not only reduces agricultural land area but also increases saline intrusion, which adversely affects agricultural production, especially in the Mekong and Red river deltas. In addition, more frequent floods, droughts, landslides and abnormal rainfall are considered big threats for agricultural production and survival across the entire country.<sup>15</sup> In 2016, during the most severe drought in 90 years, about 275,263 hectares of rice paddies and 189,878 hectares of perennial crops were severely affected.

The World Bank has reported that the ethnic minorities, comprising 15 per cent of the total population in Vietnam, are more likely to live in poverty than the rest of the population; in 2016, these groups constituted 73 per cent of those living below the poverty line nationwide.<sup>16</sup> In terms of schooling, the poor and the ethnic minorities also face challenges in attaining lower tertiary education, indicating that they may have less access to economic opportunities, which further strengthens the cycles of poverty and vulnerability, including their vulnerability in the face of climate change impacts.<sup>17</sup>

It is important to note that, even within the overall vulnerable ethnic minority groups, the impacts of climate change might be felt differently by men, women, youth and children.

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14 UNU-WIDER (2013) The cost of climate change in Vietnam. Research Brief. Helsinki: UNU-WIDER: <https://www.wider.unu.edu/publication/cost-climate-change-vietnam>

15 As an example of impacts of natural disasters already felt, in the first 11 months of 2020, 372 people were killed or left missing; 1,144 people were injured; 4,132 houses collapsed and were swept away; 613,300 houses were damaged; 267,000 hectares of rice and 132,500 hectares of crops were damaged; and the total value of property damage was estimated at VND 38,400 billion (~USD 1.7 billion): <https://www.vietnamplus.vn/nhin-lai-nam-2020-mot-nam-thien-tai-khoc-liet-va-di-thuong/683097.vnp>; <http://thoibaotaichinhvietnam.vn/pages/xa-hoi/2020-11-30/thiet-hai-do-thien-tai-11-thang-qua-uoc-khoang-38400-ty-dong-96038.aspx>

16 World Bank (2018). Climbing the Ladder: Vietnam poverty reduction and shared prosperity. Update report.

17 United Nations (2009). Vietnam and climate change: A discussion paper on policies for sustainable human development.

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## Climate change impacts on men

The loss and degradation of agricultural land as a result of salt infiltration, severe droughts, floods, and landslides reduce the income of poor farmers, putting pressure particularly on ethnic minority men because men are traditionally in charge of farming. In addition, the increase in temperature affects the health of the manual labour force. Studies suggest that labour productivity during peak months has already dropped by 10 per cent because of warming, and that a decline of up to 20 per cent might be expected by 2050 under the highest emissions pathway.<sup>18</sup>

## Climate change impacts on women

Women are identified as the most vulnerable group to the impacts of climate change in Vietnam.<sup>19</sup> ISPONRE 2021<sup>20</sup> has summarized the impacts of climate change on women in Vietnam as follows:

Firstly, due to loss of agricultural land and high fluctuations in agricultural production caused by extreme weather events and environmental pollution, men tend to migrate to urban areas to pursue other income opportunities, and women's workloads often increase as they remain in the countryside to take responsibility for both household work and farming, as well as taking care of children and the elderly.

Secondly, women's health could be threatened due to a lack of clean water, which they have a special need for during menstruation, pregnancy and caregiving. During disasters, women are susceptible to waterborne diseases such as diarrhoea, eye infections, cholera, dysentery and typhoid.<sup>21</sup> Furthermore, women and girls in remote areas are often assigned as primary water collectors. Carrying water on their shoulders for long distances puts women at risk of spinal injuries.

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<sup>18</sup> The World Bank Group and the Asian Development Bank (2020). Climate risk country profile: Vietnam.

<sup>19</sup> UNDP Vietnam Office. Gender and climate change impacts in Vietnam: Results of a desk review: [http://portal.unesco.org/en/files/44957/12385110459Climate\\_change\\_and\\_Gender.pdf](http://portal.unesco.org/en/files/44957/12385110459Climate_change_and_Gender.pdf)  
Climate+change+and+Gender.pdf

<sup>20</sup> ISPONRE (2021), citing from Josephine Ylipaa, Sara Gabrielsson, and A. Jerneck 2019; Kayser, L. et al. 2019; Ashok K, M. and V. O. Pete 2017; FAO 2012; Thuy- Hien 2020; UN Women 2016, WB Vietnam 2019 and Sommer, M. et al. 2015

<sup>21</sup> United Nations Office for Disaster Risk Reduction (2020). Disaster risk reduction in Vietnam: Status report 2020. Bangkok, Thailand, UNDRR, Regional Office for Asia and the Pacific.

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Thirdly, living with insecure water, sanitation and hygiene conditions, women and girls are at greater risk of violence and sexual abuse, as they have to travel far from home to fetch water. Spending large amounts of time collecting water could restrict them in their social and educational opportunities. As a result, they may have relatively limited knowledge and technical skills for adapting to and mitigating the negative impacts of climate change, as well as diminished mental and physical wellbeing.

## **Climate change impacts on youth**

Climate change may impact education and health care services for youth. Due to the negative climate change effects on the livelihoods of families and the limited access to education and jobs, many young people are forced to leave their communities, migrating to towns, cities and industrial zones in search of jobs. To save money to share with their families back home, young workers often choose to live in cheap and poor condition rental housing. In addition, rural young workers face risks of drug addiction, prostitution, HIV infection and human trafficking.

## **Climate change impacts on children**

Statistical data shows that, together with women, children are the most vulnerable group when it comes to impacts of climate change. Climate change and related extreme weather events and disasters have a direct impact on children's survivability, physical health and mental wellbeing: floods cause the death of children<sup>22</sup> and the temperature rise increases the incidence of malaria, dengue fever and diarrhoeal diseases.<sup>23</sup> In addition, poverty—worsened by climate-change-related impacts—can force children to leave school and partake in economic activities to relieve the financial burden on their families.

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<sup>22</sup> United Nations (2009). Vietnam and climate Change: A discussion paper on policies for sustainable human development

<sup>23</sup> The World Bank Group and the Asian Development Bank (2020). Climate risk country profile: Vietnam

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## 03

# Climate policies

To actively respond to climate change, the government of Vietnam has signed many international agreements and developed its own policy frameworks and other mechanisms. The country signed the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and ratified it in 1994; signed the Kyoto Protocol in 1998 and ratified it in 2002; set up a national steering committee to implement the UNFCCC and the Kyoto Protocol; submitted its Intended Nationally Determined Contribution to the UNFCCC Secretariat in September 2015; signed and approved the Paris Agreement in April and October 2016; issued the Plan for Implementation of the Paris Agreement in October 2016; and updated its Nationally Determined Contribution (NDC) in 2020.

To fulfil its commitments to international initiatives and its legally binding obligations, Vietnam has developed and adopted hundreds of legal instruments, including the resolutions of the Politburo and Central Communist Party and laws of the National Assembly, decrees of the government, decisions of the prime ministers, and decisions and circulars of ministerial bodies.<sup>24</sup> Policies and decisions directly related to climate change response include:

- the national plan to adapt to climate change for the period 2021–2030, with a vision to 2050<sup>25</sup>
- the National Action Program on “reduction of GHG emissions through efforts to limit forest loss and forest degradation, sustainable management of forest resources and forest resources” for the period 2011–2020<sup>26</sup>
- the National Program on reducing GHG emissions through efforts to reduce deforestation and forest degradation; conservation and enhancement of carbon stocks; and sustainable management of forest resources to 2030<sup>27</sup>
- the promulgation of the National Action Plan on REDD+<sup>28</sup>.

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<sup>24</sup> Although too numerous to mention in full, examples include: the Law on Energy Efficiency (2011), the Land Law (2013), the Law on Environmental Protection (2014), the Law on Hydro-Meteorology (2015), the Law on Irrigation (2017), the Forestry Law (2017), the Law on Fisheries (2017), the Law on Crop Production (2018), the Law on Animal Husbandry (2018), the Biodiversity Law (2018), the Law on Water Resources (2014) and the Law on Marine and Island Resources and Environment No.82/2015/QH13 (2018), the Law on Environmental Protection (2020), the Law on Natural Disaster Prevention and Control (2013, amended 2020), and the Law on Dikes (2006 amended 2020).

<sup>25</sup> Approved under Decision No. 1055/QĐ-TTg dated 20 July 2020, issued by the Prime Minister.

<sup>26</sup> Approved under Decision No. 799/QĐ-TTg on 27 June 2012.

<sup>27</sup> Decision No. 419/QĐ-TTg on 05 April 2017.

<sup>28</sup> Ibid.

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The government has also proactively signed (2018) a voluntary partnership agreement with the European Union on forest law enforcement, governance and trade (FLEGT) and developed a Payment for Forest Environmental Services (PFES) scheme.

### **3.1 Recognition of rights in climate policies**

#### **The recognition of ethnic minorities' rights**

Although the above-mentioned national policies provide direction and priority activities to respond to climate change in Vietnam, and are considered a platform for climate action at the provincial level, the rights of ethnic minorities are not clearly integrated into these climate change policies. The updated NDC from 2020 does refer to “*the synergies and co-benefits between adaptation, mitigation and the achievement of the sustainable development goals; gender equality, and risk reduction for vulnerable groups such as poor and ethnic minority groups, the elderly, women, children, people with chronic diseases, people with disability*”, but does not clearly state how to ensure the rights of these groups should be protected and implemented in practice. The recognition of tenure and participation rights of vulnerable groups is important for the implementation of the country’s commitments under international climate policy, but is absent from the NDC, the National Strategy on Climate Change (appearing in the strategy orientation, but not in the measures) and the National Strategy on Green Growth.

Notably, the legal recognition of certain rights of ethnic minorities in Vietnam has been significantly influenced by international treaties and initiatives ratified and joined by Vietnam, including REDD+, the voluntary partnership agreement on FLEGT and, recently, the EU–Vietnam Free Trade Agreement. These treaties and initiatives require the participation of non-state actors, including vulnerable groups. In addition, sustainability, transparency, accountability and equity, especially ensuring the rights and interests of these groups, are core principles. These treaties and initiatives have boosted policy reform processes in Vietnam, opening more room for participation of non-state actors; as result, local communities, including ethnic minorities, have opportunities to convey their interests to policymakers.

Under the REDD+ process, the principle of FPIC has been piloted and has provided lessons and experience in facilitating the FPIC process and integrating it into the formulation, implementation and monitoring of laws.

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## **Risks to the livelihoods, wellbeing and rights of Indigenous Peoples in national climate policies**

In recent decades, Vietnam has strongly emphasized the development of its energy sector, while also focusing on reducing greenhouse-gas (GHG) emissions in the energy sector. Both climate and energy policies in the country set out the mission to develop and promote renewable energy, including wind energy, solar energy, tidal energy, geothermal energy, biofuel, and universal energy.<sup>29</sup> However, without solid planning and monitoring of the policies and laws by governance agencies, and particularly without the proper participation of non-state actors and communities (including ethnic minorities), the rapid development of renewable energy sources has introduced risks to the environment and biodiversity, and to the wellbeing and rights of ethnic minorities. The impacts of the development of hydropower; solar and wind power; and biofuel are described below.

### **Hydropower development**

Hydropower contributes about 30 per cent of national energy production.<sup>30</sup> But the large-scale development of hydropower plants has increased environmental and social problems, including deforestation.

### **Wind and solar power development**

Solar energy is considered a clean and environmentally friendly energy source. Over the past 10 years, with policies to encourage the development of this energy source, there has been a wave of investment in solar power projects in Vietnam. The 7th Electricity Master Plan 2011 (revised 2016), the Incentive Mechanisms for Solar Power Development (2017), and the Incentive Mechanisms for Wind Power Development have boosted rapid development of wind and solar power projects in many provinces in the Central Highlands, and the central and south-coast regions in Vietnam. In only three years, from 2018 to 2020, around 100 solar-power building projects have been permitted across 11 provinces, and 48 wind projects have been registered throughout the country.<sup>31</sup> The development of solar and wind-power projects has negatively impacted on the environment, and on the livelihoods and cultures of local people and communities, especially on the ethnic minorities in the mountainous areas. Without the free, prior and informed consent of the potentially affected ethnic minorities, government agencies have permitted the conversion of large areas of forest lands to solar power plants, for example in Binh Dinh, Quang Ngai, Ninh Thuan, Binh Thuan, and Long An (see Section 4 for more details).<sup>32</sup>

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29 See, for instance, the National Strategy on Climate Change (2011), Law of electricity 2018 (29/06/2018); Orientation of energy development strategy of Vietnam national 2030 vision to the year 2045 (Resolution 55/NQ-TW of the Politburo, dated 11 February 2020)

30 <https://www.pecc1.com.vn/d4/news/Quy-hoach-nguon-dien-Viet-Nam-va-kinh-nghiem-quoc-te-ve-ty-trong-nang-luong-tai-tao-8-1679.aspx>

31 Phan, T. T., Vu, C. M. và Wasilke A. (2012) Tình hình phát triển điện gió và khả năng cung ứng tài chính cho các dự án ở Việt Nam. Bản nghiên cứu của dự án.

32 <https://baodauthau.vn/lo-ngai-ve-moi-truong-doi-voi-du-an-dien-mat-troi-post98403.html>

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## Biofuel development

The development of biofuel is also identified as a priority in Vietnam's energy policy and is expected to reduce the use of fossil fuel, aiming at contributing to reducing carbon dioxide emissions. Ethanol and butanol fuel is produced mainly from sugar cane, corn and cassava. The production of cassava, particularly, is known to negatively impact natural forests and the livelihoods of ethnic minorities in the remote areas of Vietnam because it contributes to the loss of their forests and cultivation lands. Due to a lack of monitoring, by 2015 the national cassava production area reached about 560,000 ha—much larger than the planned 110,000 ha. The fastest expansion of cassava production is usually seen in areas where forests are being managed by forestry companies or forest management boards and where poverty rates are high.<sup>33</sup>

## 3.2 Issues and concerns for Indigenous Peoples in national climate policies

### Land issues for ethnic minorities

Although the Vietnamese government over the past few decades has implemented a number of programs and policies aimed at addressing land access for ethnic minorities, these peoples' access to production and forest lands remains very limited. A total of 206,454 ethnic minority households indicated that they did not possess the minimum area required for household agricultural production and/or housing in their respective provinces.<sup>34</sup> A recent report showed that there were still more than 58,000 ethnic minority households lacking residential land and 330,000 households lacking production land.<sup>35</sup> The statistical data shows that the land plots possessed by households are small in size and far from the quotas set by the Land Law 2013 (see Box 1).

With regards to forest land, as of 2020, households and communities were allocated 3,193,169 ha and 1,166,470 ha of forest, respectively, accounting for about 29.7 per cent of all national forest areas. The remaining forest areas are managed by the management board of protected areas, economic agencies, the Armed Forces, scientific organizations, foreign investment companies and communal people committees.<sup>36</sup>

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33 To Xuan Phuc (2015). Phát triển sản và bảo vệ rừng ở Việt Nam: Chính sách quốc gia, thị trường quốc tế và sinh kế của người dân. Forest Trends: <https://data.opendatacommons.org/dataset/2305584d-31ad-4dda-a8e2-9508d03a2e13/resource/6af9fc14-6241-4843-b0f4-558f328c0aa1/download/072015bao-cao-phan-tien-san-va-bv-rungforestrend.pdf> on 25/5/2021

34 Nhu Truong et al. (2018) cited data from the National Assembly Supervision report 2014: Ingalls, M.L., Diepart, J.-C., Truong, N., Hayward, D., Neil, T., Phomphakdy, C., Bernhard, R., Fogarizzu, S., Epprecht, M., Nanthavong, V., Vo, D.H., Nguyen, D., Nguyen, P.A., Saphangthong, T., Inthavong, C., Hett, C. and Tagliarino, N. (2018). State of Land in the Mekong Region. Centre for Development and Environment, University of Bern and Mekong Region Land Governance. Bern, Switzerland and Vientiane, Lao PDR, with Bern Open Publishing.

35 <https://cisdoma.org.vn/dat-dai-cho-dong-bao-dan-toc-thieu-so-can-chinh-sach-toan-dien-va-giai-phap-thuc-thi-hieu-qua/>

36 MARD 2021. Decision No. 1558/QĐ-BNN-TCLN dated on 13/4/2021 Disclosure of National Forest status of year 2020

### Box 1: Land allocation quota for household and individual

Article 129 of the Land Law 2013 states:

Land allocation quotas for each household or individual “directly engaged” in agricultural production: (i) Annual crop land (such as paddy land): less than 3 hectares for each type of land in the Southeast and the Mekong Delta regions and 2 hectares for each type of land in the other regions; (ii) Perennial crop land, including fruit trees, coffee, tea, rubber and so on: less than 10 hectares in delta areas and 30 hectares in midland or mountainous areas.

The fact that the State still prioritizes forest land allocation to state organizations, including forestry enterprises and management boards, limits the economic development in households.<sup>37</sup> Statistical data shows that only 11.5 per cent of ethnic minority households have been allocated land and/or forest, and that the average household allocation is 2.13 ha.<sup>38</sup>

Under the current land governance regime, the tenure rights of ethnic minorities are not strong enough, making them vulnerable to land acquisition mechanisms used by the State, which compensate for land lost according to the land price set by relevant administrative agencies, not according to the actual market price<sup>39</sup>. Expansion of land for producing commodities also creates strong pressure for land grabs in ethnic minority areas. This has led to the fact that “*people’s complaints on land have accounted for 70 to 80 percent of the total complaints received throughout the country*”.<sup>40</sup> In addition, overlapping land-use rights between protected areas and households is very common, with Special Use Forests management boards and households possessing overlapping land-use right certificates in 47.47 per cent of Special Use Forests<sup>41</sup>.

37 Tô Xuân Phúc và Trần Hữu Nghị. 2014. Báo cáo Giao đất giao rừng trong bối cảnh tái cơ cấu ngành lâm nghiệp: Cơ hội phát triển rừng và cải thiện sinh kế vùng cao. Tropenbos International Vietnam, Huế, Việt Nam.

38 <https://www.qdnd.vn/chinh-tri/tin-tuc-su-kien/ket-qua-giam-ngheo-vung-dan-toc-thieu-so-mien-nui-chua-thuc-su-ben-vung-590767>

39 Quote of former vice minister in Vietnam in Ingalls, M.L., Diepart, J.-C., Truong, N., Hayward, D., Neil, T., Phomphakdy, C., Bernhard, R., Fogarizzu, S., Epprecht, M., Nanhthavong, V., Vo, D.H., Nguyen, D., Nguyen, P.A., Saphangthong, T., Inthavong, C., Hett, C. and Tagliarino, N. (2018). State of Land in the Mekong Region. Centre for Development and Environment, University of Bern and Mekong Region Land Governance. Bern, Switzerland and Vientiane, Lao PDR, with Bern Open Publishing.

40 Quote of Professor Dang Hung Vo, Hanoi University, former vice minister of the Ministry of Natural Resources and Environment in Ingalls, M.L. et al. (2018). State of Land in the Mekong Region.

41 Nguyễn Việt Dũng và Nguyễn Hải Vân (2014). Chồng lấn quyền sử dụng đất: Thách thức cho quy hoạch và quản lý rừng đặc dụng ở Việt Nam. PanNature/FORLAND. Nhà xuất Bản Hồng Đức.

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The report of the Central Highlands Commission in 2014 noted that over 320,000 hectares of forest lands are in dispute between ethnic minorities, companies and/or state forest owners in the Central Highlands of Vietnam.

Of all the forest land allocated to households, individuals and communities, more than 55 per cent is natural forest, but the management regime for this type of forest is quite limited for the forest owners. Unlike tenure rights to plantation forest and agriculture land, use rights to natural forest prohibit the transfer of rights, including prohibiting using them for loans.<sup>42</sup>

In addition to the issue of limited land access and weak tenure rights, allocated land is often low quality. Over 70 per cent of natural forest area allocated to households is poor quality forest, limiting the economic potential that forests can bring to households.<sup>43</sup> The incomes from contracted forest production are low, just 400,000 Vietnamese Dong (VND) per ha/year), and people cannot live by forestry alone. In 2018, the area under contracted production was about 6 million hectares and the amount of money collected was VND 2,930 billion; 90 per cent of this directly supports forest owners and the remaining 10 per cent is management costs. This data is for all areas where forest areas are under contract, not just ethnic minority areas.<sup>44</sup>

### **Lack of concrete mechanisms for engaging ethnic minorities in policy processes**

Although the engagement of the local communities and ethnic minorities in state management is strongly embedded in legislation in Vietnam, the effective participation of these rightsholder groups in the development, implementation and monitoring of policies is still limited and mainly focuses on information sharing and superficial consultation<sup>45</sup> (as opposed to actual joint decision-making and empowerment).

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42 To Xuan Phuc cited in Vu Long and Do Dinh Sam (2009).

43 To Xuan Phuc and Tran Huu Nghi cited in Vu Long and Do Dinh Sam (2009).

44 Deputy Minister of MARD report to the Ethnic Minority Council of National Assembly: <https://quochoi.vn/hoidongdantoc/giamsat/Pages/home.aspx?ItemID=369>

45 <https://www.quanlynhanuoc.vn/2021/04/15/nhung-bat-cap-ve-su-tham-gia-cua-cong-dong-trong-lap-quy-hoach-do-thi/>

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The barriers for effective public engagement are as follows:

- Supporting channels for effectively engaging ethnic minorities are limited.
- There is no incentive mechanism for mobilizing financial support from The Fatherland Front for public consultation activities.
- Civil society organizations that are members of associations such as the Vietnam Union of Science and Technology Association and the Vietnam Association of Marine Science and Technology are not formally assigned as representatives of ethnic minorities, and depend largely on limited external funding.
- Access to information is limited and the complaint mechanism is weak.
- Ethnic minorities have little capacity for fully participating in policy processes.
- The FPIC principle has not yet been legalized; it has only been piloted in limited areas and internationally funded projects and initiatives.

### **Potential entry points to address gaps and strengthen rights**

The pattern of Vietnamese policymaking over the past decade has been one of a gradual opening of the policy process to become more inclusive (though remaining within strict boundaries defined by the Party's leadership).<sup>46</sup> The following recommendations are potential entry points for addressing the above-mentioned gaps and strengthening ethnic minorities' rights:

- Develop guidelines on translating national-level policies on development of ethnic minority areas, including the recognition of their rights, into practice at the sub-national and local levels. This could be done through supporting the Committee for Ethnic Minority and Mountainous Area Affairs in developing guidelines and instructions and monitoring the implementation of policy. As the committee is a ministerial-level government body in charge of management functions for ethnic minorities and mountainous areas, it has its own representative agency down to the district level.<sup>47</sup>
- Strengthen institutional and organizational capacities of community-based organizations and representative bodies of ethnic minorities, such as the Vietnam Indigenous Knowledge Network (initiated by the Centre for Sustainable Development in Mountainous Areas); the Climate Change Network; and the Sub-Technical Working Group on REDD+ Safeguards.

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46 <https://tcnn.vn/news/detail/47354/Bao-dam-su-tham-gia-cua-nguoi-dan-trong-xay-dung-chinh-sach-cong-o-Viet-Nam.html>

47 Hai-Anh H. Dang (2010). 'Chapter 8: Vietnam – A Widening Poverty Gap for Ethnic Minorities' in Hall and Patrinos (eds.) *Indigenous Peoples, Poverty and Development*, Cambridge University Press.

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- Strengthen the human capacity and increase financial resources for the development of ethnic minority areas.
  - Legalize and mainstream the obligation of external parties (state and private sector) to obtain FPIC in relation to policies, planning, programs and projects potentially affecting ethnic minority areas.
  - Payment for Forest Environmental Services (PFES) schemes have generated substantial revenue to support the poor (mainly ethnic minorities) in Vietnam over the past decade. However, there is a still need to improve the payment policy for ensuring this revenue is distributed equitably and avoiding the displacement of deforestation from paid areas to non-paid areas.

### **3.3 Participation of Indigenous Peoples in climate change policies**

As mentioned, Vietnam's NDC has identified four focus areas for climate change mitigation: energy; industrial processes; waste; and land use, land-use change and forestry. Of these, the mitigation potential of the forestry sector is larger than that of any other sector, with the possibility of preventing 3,221.6 million tonnes of carbon dioxide equivalent from being emitted, accounting for about 88.37 per cent of total reduced emissions.<sup>48</sup> In the forestry sector, the participation of local communities and ethnic minorities has been clearly seen in the processes of REDD+, payment for forest environmental services (PFES) and the FLEGT agreement.

#### **Engagement of ethnic minorities in REDD+**

Reducing emissions from deforestation and forest degradation, including the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD+) is a UNFCCC policy initiative which aims to incentivize developing countries to reduce land-based GHG emissions by providing finance for emission reductions achieved. Vietnam is one of the developing countries that has expressed interest in participating in the initiative.

Following several years of readiness activities, Vietnam has now developed the four pillars of the Warsaw Framework for REDD+ ('The REDD+ rulebook' under the UNFCCC) as agreed at the 19th Conference of the Parties to the UNFCCC in Poland in 2013: (i) A national REDD+ strategy/action plan (NS/AP); (ii) a forest reference emission level; (iii) a National forest monitoring system, including measurement, reporting and verification system; and (iv) a national safeguards mechanism and information system.<sup>49</sup>

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48 Pham TT, Hoang TL, Nguyen DT, Dao TLC, Ngo HC and Pham VH (2019). The context of REDD+ in Vietnam: Drivers, agents and institutions 2nd edition. Occasional Paper 196. Bogor, Indonesia: CIFOR.

49 SNV (2020). Operational guidance for sub-national implementation, monitoring and reporting of REDD+ safeguards in Vietnam

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‘Effective participation of relevant stakeholders’ in the implementation of REDD+, particularly of the ethnic minorities, is one of seven required safeguard principles for all parties to the UNFCCC.<sup>50</sup> In order to fulfil this commitment, the government established the Sub-Technical Working Group on Safeguards (STWG-SG) under the National REDD+ Network in 2012. This group provides a consultative, multi-stakeholder platform for sharing information, and providing technical assistance and recommendations on safeguards to the government and other stakeholders. A number of non-governmental organizations (NGOs) were invited to join the network and the working group, especially the Centre for Sustainable Development in Mountainous Areas—a leading organization working for ethnic minorities’ rights, culture and development in Vietnam, and founder of the Vietnam Indigenous Knowledge Network (also a member of the Asia Indigenous Peoples Pact). Through the support of international donors, members of the network and the working group have actively facilitated the engagement of ethnic minorities and local communities in the REDD+ processes, including in the organization of awareness raising, consultation and capacity building for local communities and ethnic minorities. It is also worth noting that the REDD+ initiative supported the first proper pilot of FPIC in Vietnam.

### **Engagement of ethnic minorities in PFES**

PFES is considered as one of the biggest achievements of the forest sector in Vietnam in the last two decades, not only generating a large amount of money for forest protection and development, and reducing the pressure on the government’s budget, but also incentivizing local communities to engage in forest management.<sup>51</sup> In particular, the PFES scheme has boosted collaboration between 508 state-forest owners (including 88 state-forest enterprises, 164 special use forests and 256 protected forests) with 250,000 ethnic households and 10,000 communities in the protection and development of over 6,576,508 hectares of forest. PFES also contributes 15 per cent of the total income of poor people. The relationship between the communities and forestry units in these areas is improving all the time, and conflicts of interest about forests are decreasing, contributing to better forest protection and development.

### **Engagement of ethnic minorities in the FLEGT agreement**

Vietnam and the European Union signed a voluntary partnership agreement on forest law enforcement, governance and trade (FLEGT) on 19 October 2018. The European Parliament officially voted for approval of the agreement on 12 March 2019 and the government issued Resolution No. 25/NQ-CP on 23 April 2019, approving the FLEGT agreement between Vietnam and the European Union. The agreement came into effect on 1 June 2019.

In the agreement, Vietnam commits to engaging stakeholders in negotiating, preparing and implementing the agreement, and to the disclosure of information.

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<sup>50</sup> As set out at the 16th Conference of the Parties (CoP) in 2010 in Cancun, Mexico, also known as the Cancun safeguards

<sup>51</sup> MARD (2020). Báo cáo chiến lược phát triển lâm nghiệp việt nam giai đoạn 2021-2030, tầm nhìn đến năm 2050

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As a result, the FLEGT Network and Implementation Multi-Stakeholder Core Group was established as an NGO with members representing government and academic agencies, private companies and associations, and NGOs. In addition to providing technical support for the negotiation and implementation of the agreement, the network members commit to correctly disseminating information on the agreement and to engaging local communities and ethnic minorities in the processes.

Furthermore, local communities were the subject of capacity building and consultation for policy reform during the voluntary partnership agreement negotiations, including contributing to the development of the Forestry Law adopted in 2017 in which NGOs, local communities and ethnic minorities successfully advocated for local community to be recognized as formal forest owners.

#### **Box 2: The EU–Vietnam voluntary partnership agreement**

The voluntary partnership agreement is a legally-binding bilateral trade agreement that aims to improve forest governance and promote trade in legal timber from Vietnam to the EU. Under the agreement, Vietnam will develop ‘timber legality assurance systems’ (TLAS) to verify that its timber exports are legal, and the EU has agreed to accept only licensed imports from Vietnam once the agreement is signed and the FLEGT licensing system is in place.

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## 04

# **The impact of current climate interventions on Indigenous Peoples**

### 4.1. Positive impacts

In general, the efforts of state and non-state actors at all levels (national, provincial and local) in addressing climate change in Vietnam over the past two decades have had a positive impact on Indigenous Peoples (including indigenous women, youth, and persons with disabilities) in diverse ways, including tenure rights; gender equity; knowledge, awareness and capacity (including organizational capacity); livelihood improvement; and poverty reduction.

#### **Tenure rights**

The tenure rights of ethnic minorities over land, forest, water and associated natural resources have become more secure. As mentioned, local communities are now considered as one category of official forest owner (Land Law 2013 and Forestry Law 2017) and they are recognized to have use rights over traditional lands and forests, including sacred forest and community watershed protection forest. There is also now a principle for other forest owners that, in the development of sustainable forest management, forest owners should respect the rights of local people and communities.<sup>52</sup> Under this principle, forest owners should:

- i. guarantee the right to use land and forests legally or according to the customs and traditions of the local community and people
- ii. be responsible for addressing disputes over ownership and use of forests and forest land
- iii. provide job opportunities and improve livelihoods for communities and local people
- iv. meet the basic cultural, religious and recreational needs of communities and local people related to land and forest management in managing forest lands

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<sup>52</sup> Annex 1, Circular #28/2018/TT-BNNPTNT dated 16 November 2018 regulation on sustainable forest management

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- v. enforce the provisions of the law on complaints and settlement of compensation when forestry activities adversely affect assets (land, forest and other assets), livelihoods and health of local communities and people.

### **Gender equity**

For programs and projects funded by international donors, particularly for those related to climate change, it is common for engagement of vulnerable groups—including ethnic minorities, the poor, those with disabilities, and women—to be a requirement. Under this requirement, women are empowered to meaningfully engage with the policy processes and planning, implementation and monitoring of the programs and projects. The Land Law 2013 requires that land-use titles name both husband and wife, and that any transfer of land and forest use rights should have the agreement of both husband and wife and other members of the family (including sons and daughters). These requirements help to ensure that women can meaningfully participate in decision-making processes and investment in agricultural production, which, in the past, were often undertaken by men, as head of household.<sup>53</sup>

### **Awareness raising and capacity building**

The government and both international and national organizations have made great efforts in implementing adaptation and mitigation activities, minimizing harms and risks from climate change. Local communities and ethnic minorities have been identified not only as enforcers in adaptation and responses to natural disaster risks, but as agents for change. Through activities to raise awareness of the risks of climate change—such as training, contests on climate change, campaigns and outreach dissemination of risk-reduction solutions—the concept of climate change is becoming very familiar to local communities and ethnic minorities.

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53 Nông nghiệp thông minh thích ứng với biến đổi khí hậu ở Việt Nam: [https://cgspace.cgiar.org/bitstream/handle/10568/96227/CSA\\_Viet\\_Version.pdf?sequence=5&isAllowed=y](https://cgspace.cgiar.org/bitstream/handle/10568/96227/CSA_Viet_Version.pdf?sequence=5&isAllowed=y)

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### **Livelihood improvement and poverty reduction**

Adapting traditional agricultural production practices to climate change and environmental sustainability has been promoted and is being practised in many rural areas, including the Mekong Delta, the Central Highlands, and the Central and Northern regions. The concept of climate-smart agriculture (CSA), aimed at improving the harmony between agricultural development and climate change response through increasing resilience and reducing GHG emissions, has been introduced and applied in many regions in Vietnam. The CSA practices applied comprise:

- smart irrigation and water management (used in most crop production systems, such as coffee, tea, oranges, cashews, maize, rice and pepper)
- selection of crop varieties that are resistant to drought, flood and pest conditions (used in rubber, cashew, cereal and pepper production)
- development of agroforestry systems by planting perennial crops (oranges, rubber, coffee or cashews) with other crops (avocados, corn, guavas, rice or sesame)
- sustainable land management to reduce soil erosion in mountainous areas
- integration of biogas technology in animal husbandry (pigs, cows and chickens)
- application of combination models of shrimp–rice or shrimp–tilapia in rice fields, or shrimp–forests in the mangrove system, to increase production efficiency.

Improvements in agriculture practices in the past decade, particularly CSA practices, have diversified and improved the livelihoods, food security and health condition of poor communities and ethnic minorities. Local communities are benefiting from the REDD+ and PFES initiatives. Recently, the Vietnam government has also promoted economic development in rural areas through the ‘One Commune One Product’ initiative, which aims to develop local resources to add value to local products, increasing the income of farmers and villages, and contributing to the construction of new rural areas.

All these initiatives contribute to poverty reduction and economic development for ethnic minorities. The poverty rate has been reduced from 9.88 per cent in 2015 to 3.75 per cent in 2019, making Vietnam the first country to reach the United Nations Millennium Development Goal on poverty reduction.

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## 4.2. Negative impacts

In addition to the positive impacts described above, negative impacts of climate-change-related policies on ethnic minorities and local communities have also been observed, notably related to the energy sector.

In the development of hydropower, analysis shows that, on average, every hydropower project has caused the loss of 125 ha of forest, and for every megawatt of electricity generated, 10 hectares of forest are lost, affecting 5.5 households, of which 1.5 households have been forced to relocate to other places. In the Central Highlands, 25 large hydropower projects have been built occupying more than 68,000 ha of land and affecting nearly 26,000 households. The rate of reforestation is not enough compared to the forest area lost for hydropower. According to incomplete statistics, across the whole Central Highlands, only about 3.3 per cent of the forest area lost to hydropower has been replanted.<sup>54</sup>

In addition, the development and operation of hydropower plants and the associated destruction of forests are creating conflicts over water use; destroying livelihoods; and causing migration of many communities, who have long histories of traditional life in mountainous areas. People downstream also face many water-related problems and transboundary impacts including flooding, water shortages and water pollution. More frequent and devastating floods are also caused by the water discharged from hydropower plants to avert risks of dam failure during the rainy season. As well as affecting the livelihood, health and living conditions of ethnic minorities, hydropower projects have been contributing to the fading of the cultural identity of ethnic minorities as they are forced to leave their ancestral areas for places without forest and cropping land. Losing their culture also means that communities become less able to mitigate and adapt to climate change.<sup>55</sup>

In Ninh Thuan province, the development of a solar power project has reduced the availability of water for daily use and local small-scale agriculture. Many families cannot get enough water for their food production, so they abandon their fields and gardens. With no source of drinking water, households raising cows and sheep must sell their livestock. The same impacts are seen from other solar power projects, many of which are built on semi-inundated land in and around lakes.<sup>56</sup>

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54 <http://tapchimattran.vn/thuc-tien/tac-dong-cua-thuy-dien-toi-moi-truong-o-tay-nguyen-hien-nay-11567.html>

55 <http://mattran.org.vn/hoat-dong-mat-tran-dia-phuong/tac-dong-cua-thuy-dien-toi-moi-truong-o-tay-nguyen-hien-nay-11567.html>

56 For instance: Bau Zon lake solar power project has a capacity of 50 MW, a total land area of more than 78 ha, of which more than 66 ha is semi-inundated; Thien Tan 1.2 solar power project has a total capacity of 100 MW, with a total area of more than 105 hectares in the semi-inundated area of Song Bieu lake; Thien Tan 1.3 solar power project has a total capacity of 50 MW, with 50 ha in the semi-submerged area of Lanh Ra lake; The Thien Tan 1.4 solar project has a capacity of 100 MW, with 120 ha in the semi-inundated area of Song Trau lake; Bau Ngu lake solar power project has a capacity of 50 MW and total land use area of 73 ha of which 24 ha are in a semi-inundated area; Suoi Lon Lake solar project has a capacity of 450 MW and total land use area of 553 ha, of which more than 38 ha are in a semi-inundated area: <https://nongnghiep.vn/ky-5-chan-dung-xam-pham-cua-dien-mat-troi-anh-huong-den-ho-thuy-loi-d287698.html>

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## 05

# **Indigenous Peoples' contributions to addressing climate change**

Hoc village belongs to the Dien Lam commune, Quy Chau district, located in the west of Nghe An province. It has 65 households and its entire population is of the Thai ethnic group. Their livelihood is mainly based on agriculture and forest resource extraction, for example cultivating rice and honey, and collecting mushrooms.

Hoc village manages and utilizes 391 ha of natural forest, of which 171 ha have been granted under a land-use certificate by the government. The villagers have committed to voluntarily manage the remaining 220 ha, though it is not covered by a land-use certificate and they receive no financial support for managing it.

The village has a long history of sustainable management and utilization of forest and forest products. More than 300 years ago, two men named Luong and Quang brought their families to settle in this land. The elders in the village say that their ancestors had a convention that restricts logging from the forests. And this has been in place ever since.

After many generations of oral regulations, Hoc villagers realized that some villagers had begun to harvest timber for giving and selling to relatives in other villages, leading to the depletion of the village forest. Therefore, in 2005, all villagers decided to make a written village regulation, which stipulates each prohibition as well as the associated form of punishment. The village regulation is kept by the head of the village and is signed by each household in the village.

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The village regulation clearly states that only Hoc villagers may enter their forest to cut wood, and that timber should be used only to build houses locally, and is not to be exchanged or traded. Before building a house, the household must submit an application to the village management board for consideration of how many trees to cut, depending on the size of the house. According to their own rules, all animals in the forest are prohibited from being hunted. To avoid excessive use, people are only allowed to exploit non-timber forest products such as bamboo shoots, firewood, and medicinal plants under the forest canopy, the amount of which is regulated at the time of extraction.

The regulation also stipulates that the 65 households in the village are divided into six forest-patrol groups. Each group is responsible for patrolling and monitoring the forest for a month at a time and are penalized for any loss of timber if they do not patrol.

The villagers do not believe in a forest god or that the forest is the home of supernatural beings. However, due to the custom of building stilt houses, local people are aware of the need to exploit forests in a sustainable way to ensure that future generations will have timber to use. Moreover, the forest in Hoc village is also a watershed forest providing water for the village's agricultural production and people's daily use. The Hoc community considers the forest their greatest common asset. In terms of institutional arrangements in forest management, the customary norm is still practised today. The village elder has the greatest authority over the village's forest management decisions while heads of villages and heads of some social organizations (women, farmers and youth) are officially recognized as the forest owners (holding the forest use and land-use certificates).

The most prominent aspect of the Hoc community forest management model is the consensus of local people in maintaining collective rights over the forest. In 2016, in order to receive money from the PFES scheme, the villagers were told that since the community was not recognized as the forest owner it would be necessary to divide and allocate the village forest to each household. When the authorities came to the village, all villagers disagreed with the plan to divide the forest and agreed to consider the forest as the village's common asset and continuously manage it according to their traditional practice. Consequently, representatives of the village were selected to be named in the forest use certificate for more than 220 ha, though the certificate is kept by the village management board. The money received under the PFES scheme is also managed by the village management board and elders.

Together with other good practices in community forest management, Hoc village is an inspiring example and evidence for policymakers in recognizing communities as collective formal forest owners under the Forestry Law 2017. It also shows that promoting and strengthening ethnic minorities' good forest management practices can contribute to enhancing carbon sinks and to the implementation of the Paris Agreement in Vietnam.

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# Author profile

## Hoang Xuan Thuy

Hoang Xuan Thuy is currently a freelance consultant on capacity development and forest governance. He obtained a master degree in Human Ecology in the Vrije Universiteit Brussel, Belgium. He has approximately 20 year working experience in promoting good forest governance and capacity development. He has been working to promote and protect the rights of ethnic minorities over forest lands and associated natural resources, particularly promoting collaborative management of protected area and fair benefit sharing, equity and good governance of protected area, application of FPIC and safeguard policies, and recognition of community conserved area (ICCA) in the Vietnam. He also has experience in facilitating the engagement of multi-stakeholders in the processes of VPA FLEGT between EU and Vietnamese government, and development of forest governance monitoring for use of non-state actors.

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