

Executive summary



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# The rights of indigenous peoples in Asia

Human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction

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Gender,  
Equality  
and Diversity  
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## Achieving global commitments in Asia requires a focus on indigenous and tribal peoples

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Two thirds of the world's indigenous peoples are estimated to live in Asia, in other words approximately 260 million people representing 2,000 distinct civilizations and languages. The different terms used to refer to them at the national level, ranges from “hill tribes” and “indigenous nationalities”, to “tribal peoples”, “ethnic minorities”, and “natives”, and testify to the variety of their experiences in the region. Yet, such diversity notwithstanding, the situation of these people shows important commonalities and consequent similar challenges concerning their persisting marginalization, which has cultural, social, economic and political dimensions. The fact that indigenous peoples continue to be among the poorest of the poor, even though sustained growth and poverty reductions efforts of the region have significantly contributed to declining poverty rates, is a stark reminder of the unique challenges faced by indigenous women and men.

It has become clear that important socio-economic gaps are found between indigenous and non-indigenous segments of the populations in the region, which need to be addressed for ensuring sustainable development where no one is left behind. This is all the more critical as indigenous peoples' contributions are increasingly being recognized as fundamental for combatting climate change and enhancing environmental sustainability, particularly through their traditional knowledge and occupations, and ways of life. Making progress in implementing the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change thus requires renewed efforts in addressing the rights of indigenous and tribal peoples. To underpin these efforts, the present study takes stock of and provides an overview on national legal and policy frameworks relevant for the promotion and protection of these peoples in Asia, a region where comprehensive information on these issues has been scarce.

Building on existing research and reports through a desk review, and guided by the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the present study seeks to provide a human rights-based overview of national laws and policies regarding indigenous peoples in Asia in four main thematic areas, namely, *the identification and recognition of indigenous peoples; consultation and participation; land and natural resources; and public policies on cultural, social and economic rights*. The geographical scope of the study covers a selection of countries in South Asia and South-East Asia, namely: *Bangladesh, Cambodia, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Nepal, the Philippines, Thailand, and Viet Nam*. The study thus covers two sub-regions within each of which situations regarding indigenous peoples share certain commonalities.

Although it has as its overall reference framework Convention No. 169 and UNDRIP, the study does not attempt to assess or draw conclusions about the conformity of the national legal and policy frameworks with these or other international instruments. Rather, it aims to identify broader gaps and challenges and related policy recommendations towards enhancing the promotion and realization of indigenous peoples' rights as an integral part of fostering inclusive and sustainable development in Asia.

Accordingly, the study aims to inform national efforts mounted for the implementation of the Sustainable Development Goals (SDGs), and to highlight the key relevance for right-based approaches in this regard. It also seeks to seize the opportunity for enhancing the cooperation and coherence that the SDGs offer to the international community and development partners in their efforts to support country level actions.

## Identification of indigenous peoples and recognition of their rights

In Asia, the concept of indigenous peoples is often subject to debate and questions. A significant number of groups in Asia identify themselves today as indigenous peoples and an indigenous peoples' movement has emerged. However, the main challenges in Asia with regard to the identification and recognition of certain groups as indigenous peoples in public policies seem thus far to have consisted, in a narrow understanding of the term, which is confined within the experience of European colonization (in other words indigenous peoples as the non-European population of European colonies), to which States have opposed the argument that their entire population is indigenous to the country.

**Table 1: Criteria for the identification of indigenous and tribal peoples under the Indigenous and Tribal Peoples Convention, 1989 (No. 169)**

	Subjective criteria	Objective criteria
<b>Indigenous peoples</b>	<b>Self-identification as belonging to an indigenous people.</b>	<b>Descent from populations who inhabited the country or geographical region at the time of conquest, colonization or establishment of present State boundaries.</b>  <b>They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.</b>
<b>Tribal peoples</b>	<b>Self-identification as belonging to a tribal people.</b>	<b>Their social, cultural and economic conditions distinguish them from other sections of the national community.</b>  <b>Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.</b>

Nevertheless, while a broader acceptance and shared understanding of the concept of indigenous peoples across the Asian region are yet to emerge, many countries have in fact moved ahead towards identifying and recognizing indigenous peoples among their national populations. This action has often been motivated by their respect for and positive appraisal of ethnic diversity, their desire to remedy historical injustices, and concerns for social cohesion and inclusiveness. The overall picture, however, remains varied.

Nepal, the Philippines and, to some extent, Cambodia stand out in the region, pursuing approaches reflective of a contemporary understanding of the concept of indigenous peoples that is based on respect for cultural integrity and recognition of their collective identity and attachment to a territory. India has put in place an extensive legal and policy framework targeting its scheduled tribes, while Bangladesh has also put in place a number of important legal measures seeking to improve the situation and rights of the groups concerned. In other countries, the courts and national human rights commissions have started to play a proactive role in recognizing and protecting the rights of indigenous peoples, as is the case in Indonesia and Malaysia.

It is nevertheless important to note that numerous policy and protection gaps remain in all the countries examined and the effective implementation of existing measures is a common challenge. Addressing these gaps and challenges will be essential for ensuring that indigenous peoples – which are among the most marginalized and disadvantaged segments of national populations in Asia – do not fall further behind and that they benefit from development processes that are respectful of their rights, cultures and aspirations. While the provisions guiding the identification of the concerned peoples set out in Convention

No. 169 are formulated in a flexible way, accommodating local designations and terminology, shortcomings in identifying and recognizing indigenous peoples place serious limitations on the full promotion and protection of their rights through appropriate coherent and coordinated legal and policy frameworks.

**Table 2: Overview of concerned groups in the countries under review**

Country	Common external designation	Number of ethnic groups	Percentage of total national population
Bangladesh	Tribal peoples, Pahari, Jumma, Adivasi, ethnic groups and minorities	45	1.2–2.5 %
Cambodia	Indigenous minorities	19–21	0.9–1.4 %
India	Scheduled tribes, Adivasi	622–635	8.3 %
Indonesia	Masyarakat Adat	> 700	20–29 %
Lao PDR	Ethnic minorities	ca 200 (49 officially recognized “ethnic minorities”)	35–70 %
Malaysia	Natives, Orang Asli, Orang Asal	97	12 %
Myanmar	Ethnic minorities	135	30–40 %
Nepal	Indigenous nationalities, Adivasi, Janajati	> 80 (59 recognized “indigenous nationalities”)	37.1 %
Philippines	Indigenous peoples, indigenous cultural communities	110 officially recognized indigenous peoples	10–15 %
Thailand	Ethnic minorities, Hill tribes, Hill/Mountain people	> 50 (10 officially recognized “hill tribes”)	1.5 %
Viet Nam	Ethnic minorities	> 90 (43 officially recognized “ethnic minorities”)	13.8 %

Adapted from Asia Indigenous Peoples Pact; International Work Group for Indigenous Affairs (AIPP, IWGIA). 2010. *Who we are, Indigenous peoples in Asia* (Chang Mai, Thailand).

## Consultation and participation

The rights of indigenous peoples to participate in decision-making and to be consulted on matters that may affect them are the cornerstones of Convention No. 169 and are also central to UNDRIP. The countries examined in this study display a varying degree of recognition and practical realization of these rights. This clearly mirrors the diverse forms of legal recognition of indigenous peoples.

Most countries reviewed in the study have tackled the issue of local governance institutions relating to indigenous peoples, although the scope and approach of existing arrangements vary considerably. In some countries, the traditional institutions of indigenous peoples are recognized by law and given



specific roles or responsibilities within the state structure, at the local level. Sometimes these responsibilities are specific to certain matters, such as managing communal lands (as for example in Cambodia), while in other cases indigenous villages as such are recognized as local government units (for example in Indonesia).

In addition, a number of countries have broader self-governing or autonomy arrangements at the local or regional level (such as in Bangladesh, India, Malaysia or the Philippines). In some countries traditional indigenous institutions and local state institutions, such as local or municipal councils, coexist (for example in Cambodia and India). Attention has been drawn to contradictions that exist between traditional institutions and formal structures which end up weakening, in practice, existing self-government arrangements.

Another type of measure used in the region to promote the participation of indigenous peoples in public affairs is the use of quotas for indigenous members in elective bodies, such as national parliaments or elective bodies at the provincial or local levels, which is the case, for example, in India, Malaysia and Nepal. In addition, several countries have established dedicated national commissions responsible for indigenous peoples' affairs, the membership of which includes indigenous peoples themselves (India and the Philippines). In Nepal, the establishment of such a commission is envisaged by the country's new Constitution of 2015, although it has not yet been set up. The representativeness of indigenous members in State-established bodies at national or local levels has sometimes been questioned, because of the selection procedures or owing to conflicts of interest with political agendas.

While measures to ensure the participation of indigenous peoples through representation in elective bodies and in commissions responsible for indigenous peoples' affairs constitutes a significant measure, they cannot, however, take the place of dedicated procedures for consultations between the State and indigenous peoples on matters that may directly affect these peoples, through their own representative institutions. Such matters may be legislative or administrative measures, including decisions concerning development projects with impacts on indigenous peoples.

Some of the countries covered by the study have legal provisions for public consultation (for example Cambodia, Thailand and Viet Nam), which are unlikely to provide sufficient attention and guarantees relating to the rights and interests of indigenous peoples. Others have provisions for dedicated consultations with indigenous peoples regarding specific issues, for example the consultation requirement contained in India's Forest Rights Act. In the Philippines, the Indigenous Peoples Rights Act provides that

the Government may not issue licences or permits for the exploitation of natural resources unless a consultation process in line with the Act has taken place, and the National Commission on Indigenous peoples issues a certification in this regard. While such examples stand out positively, the overall picture in the region is characterized largely by a lack, in most countries, of dedicated mechanisms and procedures for consultations with indigenous peoples as envisaged in international standards.

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At the same time, there is a growing realization that, when poverty reduction efforts lack the participation of the concerned people, this has led to ill-suited solutions, and this realization may open spaces for adjusting current approaches and practices. The recent attention to indigenous peoples embodied in global policy agendas and policies of major development stakeholders (including safeguards policies of multilateral development banks) could further contribute to this trend. Addressing lack of participation also has a key role to play in preventing conflict and promoting social cohesion, dialogue and consensus.

## Land and natural resources

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The vast majority of indigenous peoples in Asia depend on access to land and natural resources for their livelihood. As articulated in Convention No. 169, the territories that indigenous peoples occupy and otherwise use have a special importance for their cultures and spiritual values. At the same time, their traditional activities, including shifting cultivation, hunting, gathering and fishing, are important factors in the maintenance of their cultures and their economies and development. However, a lack of recognition and protection of indigenous peoples' rights to land and natural resources causes land insecurity and vulnerability for indigenous communities but is also a major root cause of violence and conflict. Though violence experienced by indigenous women within and outside their communities is multi-faceted and has various root causes, lack of access to land and natural resources and land-related conflict and displacement are factors contributing to indigenous women's exposure to violence.

The experiences and practices with regard to the rights to land and natural resources vary from country to country in Asia. Nevertheless, it is significant that in all the countries reviewed, the issue of indigenous communities' access to land for local livelihood activities has been raised as an important policy issue which offers entry points for future policy debates and needed improvements. A number of examples involve interesting and noteworthy features. For instance, Cambodia and the Philippines have clearly recognized the collective attachment of indigenous peoples with the land and territories that have traditionally occupied or used and provide for the issuing of collective land titles. In both countries, however, the land titling procedures have been assessed as long and cumbersome, partially for the indigenous communities concerned and the overall implementation of the relevant laws and regulations is lagging behind. Unique in the region is India's Forest Rights Act, which, aiming at addressing historic injustice experienced by forest dwelling scheduled tribes and other traditional forest dwellers, protects both individual and collective rights to forest land. In several countries, including Indonesia and Malaysia, indigenous peoples enjoy customary rights to land and natural resources, as also recognized by the courts.

Overall, however, considerable challenges and obstacles remain affecting the Asia's indigenous peoples' enjoyment of their rights to land and natural resources. Laws and regulations on the matter remain patchy and in most cases do not sufficiently recognize the collective nature of these rights. Even where these rights are legally recognized, their application is often defective, sometimes owing to a lack of coherence and coordination across applicable regulations and relevant sector policies or weak capacity of the responsible state institutions. As a result of insufficient recognition and application of land and natural resource rights, indigenous peoples in the region continue to be exposed to land tenure insecurity with all its consequences for their livelihoods. A major challenge that several countries face is the need to ensure the proper coordination between customary and state law governing land.



## Public policies on cultural, social and economic rights

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In most of the countries under review, national development and poverty reduction strategies acknowledge the disadvantageous social and economic conditions of indigenous peoples. Few of them, however, expressly envisage specific and targeted action or strategies to address the needs of these peoples. Among them feature, for example, Bangladesh, India, Nepal and Viet Nam. Their national strategies include measures addressing a wide range of issues, including health, education, land tenure security and income-generating activities. Cambodia and the Philippines have also explicitly emphasized in their policies the right of indigenous peoples freely to pursue their economic, social and cultural development and decide their related priorities, inspired by Convention No. 169 and UNDRIP.

Nevertheless, the overall legal and policy context related to the recognition of indigenous peoples as distinct collectivities, their participation in decision-making and the recognition and protection of their rights, including the right to define their priorities for development, affects the way these strategies are designed and implemented, how problems are identified, understood and approached, the relevance of the 'solutions' provided, the full assessment of their impacts and opportunity costs, and, eventually, their success and sustainability. At the same time, challenges to designing appropriate strategies and actions also emerge from the fact that disaggregated data on the social and economic situation of indigenous peoples are extremely limited. Consequently, the statistical invisibility of indigenous peoples, together with their exclusion from decision-making processes affecting them, clearly influences the understanding of the issues at stake and the development of appropriate responses.

While such challenges persist, all the countries reviewed in this study have taken some dedicated measures in the field of **education and culture** targeting indigenous peoples. Such measures could be further strengthened as they are crucial for promoting respect for indigenous cultures, identities and ways of life, for combatting negative stereotypes that underpin and nurture assimilationist attitudes and approaches, and for ensuring the access of indigenous girls and boys to quality education.

Regarding more specifically the education system, many States have considered the provision of mother-tongue-based bilingual education, the teaching of indigenous languages and the adoption of special measures to ensure equal opportunities to access education for indigenous girls and boys. Some progress has indeed been made towards improving indigenous children's enrolment in school. Illiteracy and drop-out rates, however, particularly after primary education level, for indigenous girls and boys remain higher than national averages owing to a range of different factors, including, among others, discrimination, language barriers, lack of facilities and teachers, the content of school curricula, distances and costs. Only in a few countries, such as Nepal and the Philippines, does the national legislation recognize the right of indigenous peoples to establish and manage educational institutions.

Ensuring access to **decent work and social protection** for indigenous women and men is another key policy area for ensuring inclusive and sustainable development in Asia. Given that a vast majority live in rural areas, policies for rural development are a key entry point for addressing the rights and needs of indigenous peoples. Most of the countries reviewed have policies that emphasize support to communities through access to training and skills development, entrepreneurship and enterprise development and access to markets and credit. Prejudices and negative attitudes towards indigenous peoples and their traditional livelihood activities and practice, however, such as shifting cultivation, continue to inform decision-making processes and public policies on these issues.

Only in some countries do public policies embody a specific focus on **health and social protection** for indigenous women, men and children, despite the fact that available data suggest that they are dispro-

portionally represented among the poor. For instance, Cambodia's National Social Protection Strategy identifies indigenous peoples as a group requiring targeted approaches. In Viet Nam, special health programmes targeting ethnic minorities have been devised. In many countries, indigenous peoples lack official birth certificates or identification documents, which significantly impedes access by indigenous peoples to social services in Asia.

Nevertheless, all countries examined for this study have adopted some special measures targeting indigenous peoples with regard to their social, economic and cultural rights, including in relation to health, education, employment and occupation. This provides many entry points for efforts to further review and strengthen these measures in the context of the SDGs. Raising awareness of indigenous cultures and traditions, taking into account indigenous peoples' rights, ensuring their participation and the inclusion of both indigenous women and men in processes that lead to decisions on public policies and development plans and priorities will be critical in this context. Likewise, addressing the prevailing invisibility in many countries of indigenous peoples in official data will be essential for the identification of their needs and the formulation of appropriate policy responses.

## Looking ahead: recommendations as to the way forward

Asia is an extremely diverse region and host to two thirds of the world's indigenous peoples. Ensuring inclusive development is the major challenge currently facing the region. Despite the sustained growth and the efforts deployed to reduce poverty among its population, considerable social and economic gaps persist between indigenous and non-indigenous groups which derive from historical processes of their marginalization and domination.

In most of the countries reviewed for this study, national development and poverty reduction strategies specifically acknowledge the disadvantageous social and economic conditions of indigenous peoples. Some of them expressly envisage specific and targeted actions to address the needs of these peoples. Unless mindful of and informed by the human rights of indigenous peoples, however, these strategies risk failing to address their situation and may even aggravate it further.

The review of national experiences has illustrated that numerous countries in the region have moved ahead in promoting the rights and development of indigenous peoples, although many policy and protection gaps and challenges remain. While the nature of the study does not allow for specific recommendations to individual countries, several broader recommendations guiding future action in the region are set out below.



### **Recommendation 1: Promoting ownership of the concept of indigenous peoples and valuing their cultures and contributions**

A key recommendation to relevant policymakers and decision-makers is to take greater national and regional ownership of the concept of indigenous peoples across the Asian region, relying on the guidance available from Convention No. 169 and UNDRIP. Such initiatives could involve national and regional multi-stakeholder dialogues. In this connection, governmental and non-governmental stakeholders should carry out educational programmes and awareness-raising measures to combat prejudices and negative stereotypes against indigenous peoples, which often are at the root of their non-recognition and exclusion from public policies. Accordingly, valuing indigenous peoples' culture, practices and knowledge as contributions to the country's sustainable development and acknowledging the need for differentiated and participatory approaches to address the underlying causes of their marginalization and effective inequalities is particularly important.

Such action will be important for laying the ground for progress in addressing the rights and development needs of indigenous peoples in national laws, policies and programmes. In turn, this will be pivotal for the success of countries' overall development strategies and poverty reduction efforts, as they strive to tackle the underpinning causes of indigenous peoples' marginalization.

It is relevant in this context that most countries in the region have ratified UN human rights treaties or ILO Conventions that are particularly relevant to addressing the current marginalization of indigenous peoples, and hence have obligations under international law in this regard. As called for by the 2030 Agenda for Sustainable Development, development strategies designed to implement the Agenda should be coherent and consistent with countries' international human rights obligations.

### **Recommendation 2: Seizing the momentum of the 2030 Agenda and the Paris Agreement on climate change: indigenous peoples as partners and agents of change**

The 2030 Agenda for Sustainable Development and the Paris Agreement on climate change offer unique opportunities for countries in the region to launch new forms of dialogue and cooperation among national stakeholders for development and climate change action, including indigenous peoples' networks and organizations. Dialogue between indigenous peoples and State institutions in this context could involve community-based participatory assessments of needs, priorities and strategic interventions to enhance indigenous peoples' occupations and to strengthen their livelihoods and economic activities, which would play a crucial role in informing local and national development strategies.

There is an urgent need to enhance the availability of knowledge and data on the social and economic situation of indigenous communities. Targeted research on the employment and working conditions of indigenous peoples could be envisaged, given the relatively scarce information available; furthermore, participatory assessments of indigenous peoples' vulnerabilities to climate change and comprehensive impact assessments of mitigation and adaptation strategies should be undertaken. Documentation of indigenous peoples' experiences based on their traditional knowledge and practices relevant to the design of climate change responses could also be envisaged, with the participation of the peoples concerned.

### **Recommendation 3: Taking action to ensure indigenous peoples' consultation and participation through appropriate mechanisms and procedures**

The realization of indigenous peoples' rights to consultation and participation and the effective recognition and protection of their rights to lands and natural resources are fundamental to enabling inclusive development that takes into account indigenous peoples' own priorities and aspirations. Across the

region, there is a need for policymakers and decision-makers to review the current situation, engage with indigenous peoples, and to devise specific actions to enhance the participation of indigenous peoples in public affairs, including the development, implementation and monitoring of development plans.

This also calls for renewed attention in the countries in the region to establishing dedicated mechanisms and procedures for consultation with indigenous peoples on measures that may directly affect them, including development projects. Engaging in country-based participatory assessments of existing consultation and participation arrangements can provide a first step in this regard.

#### **Recommendation 4: Securing indigenous peoples' rights to land and natural resources**

Action to secure the effective recognition and protection of indigenous peoples' rights to land and natural resources will be crucial for ensuring livelihoods, food security, and safeguarding the cultural integrity and traditional knowledge of indigenous peoples in the region. It would be advisable to consider incorporating in the legislation the recognition of indigenous peoples' customary rights to lands and natural resources, and undertaking assessments of the legislation in force, in collaboration with indigenous peoples, to identify the measures needed to address current implementation gaps and bottlenecks, including simplification of land-titling procedures and strengthening of government agencies' implementing capacity. Reviews of legislative frameworks to ensure coherence across sectoral legislation should also be envisaged.

#### **Recommendation 5: Improving availability, accessibility and appropriateness of public services**

Most countries in the region have taken some special measures to ensure the enjoyment of economic, social and cultural rights by indigenous women and men. Future policy assessments and improvements should seek to strengthen these measures by extending their reach, accessibility and cultural appropriateness, and by increasing cooperation by the State with indigenous communities in the design and delivery of support schemes. This undertaking could be facilitated through the participatory documentation of self-managed programmes, with a view to identifying lessons learned.

Furthermore, community-based surveys could be envisaged in order to collect background information for the formulation of appropriate public policies, including the design of affirmative action measures, in collaboration with indigenous peoples. The holistic and participatory design of social protection measures that respect the livelihood framework of indigenous peoples could also be promoted.

#### **Recommendation 6: Focus on indigenous women**

Renewed action in Asia to promote the rights and development of indigenous peoples should include a specific focus on indigenous women. Supporting empowerment, including the economic empowerment of indigenous women within and beyond their communities, is needed not only to ensure respect for their rights and gender equality, but also because their contributions are vital for achieving more general development and climate-action goals.

Specific attention should be paid to ensuring the equal participation of indigenous women in dialogue and consultations with State institutions at all levels, their access to land and natural resources, and the accessibility to them of public services. National efforts to combat violence against women should address the situation of indigenous women, with their full involvement. Initiatives to increase knowledge and data on the social and economic situation of indigenous peoples should specifically address the situation of indigenous women.



### Recommendation 7: Promoting ratification of Convention No. 169

Although UNDRIP enjoys wide support in the region, only one country, Nepal, has so far taken the step of ratifying Convention No. 169. At the same time, at the 2014 World Conference on Indigenous Peoples, all UN Member States were urged to consider ratifying the Convention. Exploring the ratification of Convention No. 169 can facilitate both the identification of indigenous and tribal peoples within the meaning of the Convention and also the development of legislative and policy frameworks that address persisting social and economic disparities in diverse national societies in a rights-based and balanced manner.

Countries that wish to consider ratification could engage in preliminary assessments to study the implications and added value of that step, through processes involving ILO constituents (namely, government, workers and employers organizations), indigenous peoples and other relevant stakeholders, as appropriate. The ILO has encouraged countries that have already ratified the Indigenous and Tribal Populations Convention, 1957 (No. 107) to consider ratification of Convention No. 169, the ILO's most recent instrument on indigenous and tribal peoples.

### Recommendation 8: Building national capacities

Tackling the remaining gaps and challenges will require renewed efforts to build the capacities of a wide range of national stakeholders, including governments, indigenous peoples' organizations and institutions, employers' and workers' organizations, national human rights institutions, parliamentarians, the judiciary, non-governmental organizations, educationalists and the media.

In addition to strengthening the capacity of individuals, capacity needs to be sustainably entrenched in institutions in order to ensure that policy, legal and institutional reforms can be followed through. On government side, more attention is needed to ensure effective coordination and cooperation across line ministries responsible for matters relating to indigenous peoples' rights and development. Documenting and sharing experiences across the region can support and reinforce national processes.



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