**Indigenous Governance Systems in Asia**

Submission by the Asia Indigenous Peoples’ Pact (AIPP) Foundation to the study by the Expert Mechanism on the Rights of Indigenous Peoples entitled “Indigenous Peoples and Right to Participate in Decision-Making”

In 2007, AIPP organised a conference on Indigenous Governance in Asia in Pokhara, Nepal as part of a platform for indigenous peoples to elaborate on the concepts, principles and practices of indigenous development or development with culture and identity, as well as the challenges and measures related to each aspect. The conference was attended by representatives from a number of Asian countries namely: Bangladesh, Burma, Cambodia, India, Indonesia, Laos, Malaysia, Nepal, Philippines, Timor Leste, Thailand, and Vietnam.

The overall objectives of the Conference were to restore the integrity and cohesiveness of indigenous communities in the region; to empower and affirm self-determination of communities in terms of the type of development based on indigenous concepts; to provide a venue for indigenous peoples in Asia to come to a common understanding about the concepts, issues and to identify different aspects and needs on indigenous development; and to come up with strategies to revitalise the different aspects of indigenous systems. In short, the focus of the process is for indigenous representatives themselves to reflect on their own internal systems and the type of development that they want.

With the decision of the UN Expert Mechanism to conduct a study in 2009 – 2011 on *Indigenous Peoples and the Right to Participate in Decision-Making*, AIPP decided to put together this submission based on the results of the Conference on *Indigenous Governance* which is relevant to this thematic study. The following recommendations on Indigenous Governance (indigenous institutional and juridical systems) are:

*For Indigenous Peoples:*

1. To develop means to resolve conflicts in areas where traditional political system is affected by impositions of modern or state structures, or where hybrid institutions exist. The values of honesty, accountability, transparency and upholding community interest/common good over personal interest must be strengthened.
2. To find means to increase gender equity, sustain orally-transmitted customary laws, and enhance the capacity of traditional leaders for quality judgments and decisions especially in broader decision making mechanisms.

*For States and UN agencies*

1. To respect and recognize the political institutions of indigenous peoples, any initiative to establish other organizations must be based on the full participation and consent of indigenous communities, and such organizations must not be designed to replace indigenous political institutions.
2. To allow indigenous communities to select their traditional leaders based on their own system, and to freely exercise their juridical rights and pursue their juridical developments within their communities.
3. To refrain from codifying customary law, but to formalize it through documentation efforts.
4. To assist in maintaining and promoting traditional juridical systems if more than one legal system exists in the interface between the state and indigenous peoples.
5. **POLITICAL AND INSTITUTIONAL SYSTEMS**

***Thakali sytem of governance***

Thak Saat, the traditional homeland of Thakali has 15 villages. Those villages are divided into 11, 8 and 6 regions in order to make administrative work easier. Territory of Thak Saat has been recognized during the time of *Malla* dynasty. Among 13 villages, Cobang is the centre/capital of Thakali community. 13 Chief system or *Mukhiya* system was established around 1750-1760 AD. Custom of *Khambek* was established before the formation of this state. The *Mukhiya* used to collect revenue from the people and pay to the government. The *Mukhiya* are powerful as they regulate economic, social and justice system. People usually try to resolve disputes on their own but when the conflicting parties are not satisfied, then they can go to *Mukhiya* with an offer of 4 pennies. If the *Mukhiya* of that village could not resolve the dispute then the parties can go to the main *Mukhiya* who is called *Mir Mukhiya*. Among 13 *Mukhiya*, *Mir-Mukhiya* is like the president, *Upamir-Mukhiya*, the vice-president and Tabil-Mukhiya, the secretary. *Tabil-Mukhiya* documents the trial. 10 other Mukhiya are like members. All the documents are put in a copper box with three lockers, and the keys to the lockers are kept by *Mir-Mukhiya*, *Upamir-Mukhiya* and *Tabil*-*Mukhiya*. All trials were documented in *Tamrapatra* (copper-tooling), *Silapatra* (stone graving) and *Bhojipatra* (writing on Bhoj tree leaf/bark). *Mukhiya* has to be chosen by consensus.

At first, a complaint is put in front of the village *Mukhiya* and he has to resolve the dispute. If he could not resolve the dispute then parties could appeal to *Mir-Mukhiya*. Appeal has to be made in the written form. During the dispute resolution process, conflicting parties and *Mukhiya* has to touch the holy water from Kali-Gandaki river and swear. If the dispute is serious, then they have to touch the holy book of Thakali called *Dhorchecho*. This kind of dispute settlement process is called *Dharamasava* or holy assembly, not the dispute resolving assembly. Even to this day, people in Mustang are using it and they have not used the state court or police. In Mustang, only two cases were filed in court and they do not belong to the Thakali community. There was news few days ago that Mustang district's jail does not have a single person in custody. Last year we resolve two serious cases in *Dharmasava* and 13 *Mukhiya* has also resolved the case of murder.

***Imparted by Purna Prasad Tulachan, Nepal***

*Concept and Principles*

Traditional political institutions embody democratic principles and are manifested in power-sharing and co-responsibility among its members. Personal integrity, reliability, honesty and far-sightedness are principles applied in selecting representatives from the community, apart from their legal knowledge, wisdom and sense of justice. Traditional institutions are made up of a council of elders or elders who administer all matters as the highest arbiter in order to maintain peace, harmony and well-being in a community.

Traditionally, indigenous political institutions were generally localized, usually restricted at the village level. However, modern communication systems have allowed its administrative sphere to expand to clusters of villages or even to the whole of a community of a particular indigenous group.

Selection of members of traditional institution or council takes different forms, but it is guided by the criteria of who is considered to be a good and a wise leader. The position of some members of the traditional council may be hereditary but upholds democratic principles by means of having adequate representation and consultations in governing a community. Thus the ills of money-oriented electioneering may be averted, while providing nuanced custom-based pressure on the hereditary or quasi-hereditary leaders to adhere to and respect community wishes.

*Roles and Functions*

The village chief or elder is often tasked with the overall administration of the village. He/she presides over community meetings and hearings and ensures that customary laws and rituals are followed. He/she also ensures security, peace and stability in the community.

The role of other council members is to advise the village chief or elders in important matters concerning the administration of the village. They take co-responsibility in the administration of the village, and help in other matters such as social relations and settlement of conflicts.

Some communities have priests/priestesses whose role is to advice the council on spiritual matters. This involves all aspects of life such as birth, marriage, death as well as farming, war, hunting and fishing. The influence of the priest/priestess depends on his/her integrity, knowledge, wisdom and skill.

*Decision-making process*

Decision-making process is generally by consensus and is inclusive and participatory in character. Even in hierarchical societies, the decisions by the leader (villagehead, chief or king) are made after seeking advice from counsellors. This applies to setting standards for the community, including guidelines for the management of resources and judicial matters. In major issues that dramatically affect the survival of the community, such as in the case of war or dispute over important resources, a unanimous decision is required from all council members and the community as a whole.

Many traditional institutions have evolved over time, but the decision-making process is basically maintained and in some cases, has involved wider sections and alsodifferent sectors of the community, especially women and youth. Improved communication technologies within indigenous societies have also made information sharing easier.

*Challenges and measures*

The interface between indigenous political institutions with the State has brought about numerous problems. One of the key issues is the appointment of traditional leaders by the government, such as the case in Sabah, Malaysia. Another issue is, in the changing times and situations, there is a requirement of resolving system conflicts caused by modern or state impositions over the traditional, or as is often the case, where a hybrid system exists. In such situations, the traditional institutions are often undermined by the state or hybrid systems. Therefore, there is a need for a re-definition of the relationship between indigenous peoples and the State through effective negotiation processes.

At the same time, customary law is also seen as being dominated by men and therefore seen to be reluctant to support changes to norms that are unfair to women. Thus, this clearly represents another area of challenge requiring reforms.

The other major challenge to the indigenous political systems is the building of the capacity of these institutions to address more effectively the more complex present-day realities and situations of indigenous peoples. For example, indigenous institutions are increasingly confronted by outside entities such as corporations, International Financial Institutions promoting "development projects" that entails the extraction or expropriation of indigenous lands and resources. Likewise, the changing patterns of land tenure, including selling of lands to outsiders, the emergence of new types of leaders that are not accountable to the indigenous communities, the influx of non-indigenous migrants among others are complex issues that indigenous political systems have to address. These developments are directly impacting on the capacity of traditional political systems to maintain cohesion, unity and cooperation of the members of indigenous communities, while at the same time ensuring and upholding the interest of the community members and the recognition of their rights and welfare.

**On Development and Hybrid institutions of the state**

*Hybrid institutions are different from the traditional institutions and they have strong support from the state. Often they bring conflict. We have to be careful about the hybrid institutions as they could play the role of 'divide and rule'. Thus when we talk of development initiatives, consultation should start from the indigenous system as well as hybrid institutions but the indigenous system should be given more power in the decision making. This includes making more resources available to the indigenous leadership, supporting our indigenous system of governance and leadership.*

*There is no sufficient training given to village heads and village elders so that the judicial and administrative decision-making process results in quality judgments and decisions. Some village leaders will need help and support to organize their assembly. We also face the problem of representation. We need to ensure that our leadership is recognised. We need to come up with criteria and inform governments about these criteria so that they can easily determine who the real leaders are.*

*Our people also do not trust our own indigenous institutions because our mindsets are influenced by our modern education. The transfer of indigenous knowledge has also not been carried out to the new generations for the same reason. There is thus a need for awareness-raising campaigns to revitalize and to regain the respect of our customary institutions. There should also be collective reflection to take on the responsibility (as indigenous individual and leader) to implement the indigenous institutions. To revitalise traditional institutions is an anomous task, and we need to work with indigenous peoples in order to build the capacity of indigenous peoples. We also need to promote the UN Declaration by translating it, and producing posters, calendars, and other means of dissemination. We should also advocate for recognition of indigenous/customary institutions in international laws.*

*Some lessons learned from the Conference and suggested recommendations for leaders in contemporary indigenous institutions:*

* *Need for capacity-building for traditional leaders to ensure that quality decisions and understanding of emerging issues in indigenous societies;*
* *More research on leadership and selection-election process to ensure traditional values and principles are maintained when selecting leaders.*
* *Formation of the Association of Village Heads to strengthen the role traditional leaders, and Peoples' Organisations to encourage the participation of all sectors in the community, particular women and youth.(Malaysia).*
* *Women in leadership positions, particularly to encourage women to be in key decision-making positions in areas that are dominated by men.(Cambodia, Thailand).*
* *Participation in party politics and elections via indigenous-based parties, particularly if there are positive areas of involvement such as proportional representation (Burma, Philippines, Nepal).*
* *Participation through Indigenous Advisory Bodies, particularly in countries where the government recognises the advise from such bodies, and they are in position to make make decisions on matters that are important to indigenous peoples such as land, resources and cultural integrity*
* *Constitutional reform to recognise indigenous peoples, and to ensure policies and laws are in place to establish indigenous political institutions (Nepal, Malaysia).*

**Excerpts from ID Conference Report, 2007**

In 1991, an Expert meeting organized in Nuuk, Greenland, outlined the following as characterization indigenous self-government in an attempt to establish measures to recognize indigenous governance/institutions:

* The exercise of adequate powers and self-government within the traditional territories of indigenous peoples as a prerequisite for the development and maintenance of traditional indigenous cultures and for the survival of indigenous peoples;
* A redefinition of the relationship between indigenous peoples and the States in which they now live, in particular through the negotiation process;
* Self-government as a means of promoting better knowledge about indigenous peoples vis-a-vis the wider society;
* The assumption that the exercise of self-government presupposes indigenous jurisdiction, that is, the right of indigenous peoples to establish their own institutions and determine their functions in fields such as lands, resources, economic, cultural and spiritual affairs;
* The possibility to establish relations with other ethnically similar peoples living in a different region or State;
* The establishment of mechanisms for joint control by an indigenous autonomous institution and the central government;
* The necessity to delimit clearly areas of competence in order to avoid conflict; and
* The establishment of conflict resolution mechanisms.

*References to the UNDRIP*

Preambular Paragraph 16 and Article 4 of the UNDRIP provides for indigenous peoples’ right to establish autonomous areas or self-government as a mean of self-determination, among others, while Articles 5 and 20 (1) affirm the right to maintain and revitalize political institutions. These are further elaborated in Articles 34 and 36 which recognises indigenous peoples’ right to promote, develop and maintain their institutional structures, networks and their distinctive customs.

**Experiences on interface of indigenous institutions with state institutions**

**Malaysia:** Hybrid organisations i.e. Village Security and Development Committees (JKKK) in Malaysia are also seen as tools of the government to dominate and control the indigenous peoples or for them to be used as the ears and eyes of the government. They are also given a lot of resources compared to traditional leaders. People are concerned that the government is appointing traditional leaders (village heads) even if the people don't want it. In Sarawak, traditional associations and tiers - clan headman and territorial headman exist but political interference also gave rise to ethnic-based associations that have become platforms for political mileage. Traditional institutions are no longer institutions governed and managed by communities as a collective responsibility, but left on the shoulder of one person, the village headman. If we look at the responsibilities of the headmen and the leaders, these responsibilities have become too heavy.

**II. JURIDICAL SYSTEM**

**Experiences on interface of indigenous institutions with state institutions**

**Thailand**: Equality between women and men involves an equation of 50:50 participation. There is a need to know the rights of women as enshrined in CEDAW and CBD, and to lobby with village headmen and get every community to support the effort. Women's role in indigenous societies needs to be improved and stop thinking that men is better than women or that men should be before women. This condition must change and instil gender equality through seminars or conferences where the women leaders can exchange views.

**Indonesia**: It is a common thing to see two types of leadership in each community – *kepala adat* (indigenous leader) and *kepala desa* (administrative leader). For indigenous peoples’ rights, it must be the indigenous leader who decides but often that right is transferred to the *kepala* *desa*. An academic paper is being prepared together with the government on the process whereby the village leader will be selected by the community but the government can appoint a leader for administrative duties. If the government is only interested about the administrative matters why not just employ someone to do the job and leave the matter of *custom and adat* to the community leaders.

**Burma**: There has been only one free election since the 1960s. There is a general tendency to focus only on customary laws and traditional institutions, but to avoid exploitation by the state systems, there is a need to expand our own scope and participate in the state processes and institutions. IPs can be represented through their own political party drawing from their traditional system that will be accountable to the community.

**Philippines**: Based on population, and on the representative system, calculation that we can get indigenous peoples can get their own congressman elected within the existing state system.

**Cambodia**: There is a concern with the leadership in the community where two systems are recognised. At the community level, it is only the traditional leadership that is actually recognised. However, there is also the leadership who is elected through the state election. The elected representative is often more powerful politically in many instances being backed by the state. Nontheless, in situations of conflicts in the community, the two systems have worked together. In terms of promoting women leadership, the state is encouraging women to participate in the elections of the community. We are also demanding to the government to ratify the ILO Convention 169.

***Excerpts from ID Conference Report, 2007***

*Concept and Principles*

Indigenous juridical systems include judicial, legislative and procedural aspects. The judicial aspects would include rulings of courts by indigenous chiefs, headmen, elders, councilors etc when administering customary law and resolving disputes. The concept of indigenous juridical system is to maintain harmony among members of the community, and is based on the principles of collective indemnity and communal solidarity. Fines and compensations are meted out to provide wrongdoers an opportunity to ask forgiveness from the aggrieved party and the whole community and to redress part of the injury suffered by the aggrieved party.

Indigenous justice systems are seldom adversarial, unlike some mainstream systems, wherein the adjudicators are meant to act as neutral umpires in a dispute between two protagonists and decide which of the two is at fault. In contrast, indigenous systems seek not so much to identify the defaulter and punish him or her (unless where deemed necessary), but to reconcile the disputing parties with each other and with the rest of society. Various elements of indigenous justice resolution mechanisms may be found in mainstream practices of arbitration and alternative dispute resolution mechanisms.

*The Ho community from Jharkhand, India has its own age-old administrative system, although the British and India governments have forced many changes onto the traditional system of governance. However, the system is still in practice somehow. Each village has a headman designated as Munda and five to six or more villages are headed by a person called Manki. The post of Munda and Manki system is hereditary. These Mundas and Mankis are responsible for maintaining peace, law and order in their respective jurisdictions. The system has been very effective during British reign but after independence of India, the Panchayatiraj system was imposed in Jharkhand area and the Munda Manki system faced a big setback. The Jharkhand state government however has initiated some efforts to revive the age old system of Munda Manki by paying honorarium etc to the Mundas and Mankis.*

*Customary laws relating to landed property, marriage, succession, etc. are protected by the Indian constitution. The church and missionary schools have played an important role in imparting education among indigenous people along with their efforts to convert them into Christianity. Of late, the national and international industrial companies have been trying their level best to acquire or usurp the lands of the indigenous people of Jharkhand. Jharkhand is the richest state of India so far as mineral wealth is concerned though the indigenous people of this area are one of the poorest people of India.*

*Most of the minor civil matters are tackled and disposed of by the village panchayat headed by Munda. Serious criminal cases are referred to the criminal courts of the districts through police stations. However, the Government of India has enacted an new law ­– Panchayat Provisions (Extension to the Scheduled Areas) Act, 1996 (PESA) which provides that the villages in Scheduled Areas can have their own self governance system for their development and for resolving minor disputes among them. People are quite enthusiastic to constitute their village councils or gram-sabha, which is still in the nascent stage, but excessive interference by the government, is creating problems for the villagers. The right is given to the village traditional head but the government interferes with this right.*

*Ramesh Jerai, Jarkhandis Organization of Human Rights (JOHAR), India*

*Juridical Aspect and Customary Law*

Customary law has two components: personal law and territorial law. Personal law includes aspects related to the social, cultural, language, spiritual, traditional economy, property etc. Territorial law refers to land, natural resources, soil, and sub-soil. However, territorial law has a social dimension as well. Customary law applies to persons as individuals, as well as to persons in a community. The nature of a case determines the law that will be used, as well as the body that has jurisdiction. The identity of the institution that has authority to implement and resolve the problems regarding territory and community depends on the nature of the cases. If the case relates to customary personal laws, then the customary institutions generally resolve the disputes whether or not they are formally recognized by law. However, in the case of territorial law, there is often tension between indigenous customary law and state laws, including those on lands, forests, minerals, etc. In some cases, indigenous and indigenous-state hybrid courts exercise formal judicial authority (such as in Northeast India, Sabah-Sarawak, Malaysia, Pakistan and Bangladesh).

*Leadership and Decision-making*

Indigenous juridical systems are also linked to indigenous political administrative structures that are based on leadership and decision-making by consensus. The preferred model for decision-making is one that is effective and participatory, and allowing equal opportunity through two modes: firstly, through a general meeting that includes all level of the community, and secondly, through a process involving just the leaders. Fully indigenous courts were generally preferred over state courts, such as in Northeast India, Chittagong Hill Tracts, Bangladesh and Jharkhand, India. Hybrid organizations between community leaders and the government were found to be unfavorable in some places (e.g., Sabah, Malaysia and Jharkhand, India), as they are deemed to be government tools to dominate indigenous peoples.

*Codification versus Documentation*

An important issue regarding indigenous juridical systems is whether customary law should be codified or documented. Documentation is most favored as it promotes flexibility and relevance over time. This could be a listing of indigenous principles to keep customary laws that would allow communities to easily access information on the contents of the laws and to accommodate progressive change through direct democratic methods of consultation and consensus. This way, customary law could be written and preserved without formal codification. Formal codification has the risk of *freezing* dynamic development of law, and promoting uniform modes that do not fit different socio-cultural contexts (which oral customs can generally accommodate). Codification normally also involves endorsement by a formal legislative body in which indigenous representation is all too often absent or marginal.

*Challenges*

Often, more than one legal system exists in the interface between the state and indigenous institutions (e.g. syariah and statutes of the state). In all cases, indigenous peoples face enormous problems in the maintenance of traditional juridical systems. Some of the challenges include the non-acceptance of legal pluralism, and lack of administrative and financial support by states; the increasing lack of opportunities for, and customary knowledge of, traditional leaders to enable them to update customary laws; as well as the lack of respect for indigenous juridical systems by other legal systems. If access to customary justice systems continues to be denied to indigenous societies, more and more community members may turn to, and in many cases have already turned to, state institutions for justice. However, here too they face difficulties as litigation in mainstream systems is expensive, time-consuming and complicated. In other words, indigenous communities may effectively end up with having little or no access to justice, either from their own leaders or from the state.

Indigenous people also face significant challenges in freely exercising their juridical rights and pursuing juridical developments within their communities. A high degree of juridical autonomy is recognized by state legislations in a few countries only, such as in Northeast India, Sabah-Sarawak, Malaysia, Northwest Pakistan and Southeast Bangladesh. Here too, the major challenge is in implementing these constitutionally protected rights. In most countries of Asia, indigenous communities face problems in obtaining formal state recognition of their customary laws and justice systems. In special contexts, such as the autonomous district councils in Northeast India, the councils too may pass laws, including on customary laws of the indigenous (“tribal”) peoples. Indigenous peoples – whether councils, assemblies, chiefs, traditional courts – also amend existing customary law principles or introduce new ones. In our context, we would include such exercises within legislation. In the same vein, the rulings of indigenous chiefs, headmen, elders, councils etc in administering customary law and other disputes would also be considered as the exercise of judicial authority.

**Customary legal systems: advocacy of indigenous peoples**

 In ***Indonesia***, there are too many cases not heard in the Supreme Court. The option is for the Supreme Court to integrate the indigenous juridical systems but there was no consensus. From an indigenous perspective, it is not only about justice but to maintain the cosmic balance and to re-harmonise kinship system, and to have justice. It is not about winning or losing, or even getting a win-win situation. This is the reason why the proposal to incorporate customary law into the state judicial system was rejected.

 Among the Kachin in **Burma**, they rarely go to the national court. Conflicts are resolved in traditional or customary courts. However, customary law is not fair to women in some cases e.g. in cases of adultery and inheritance. If a husband dies, the woman has to marry the younger brother. In the case of rape, if the boy or man is prepared to marry the woman, the case is over. If not, there will be a process in which decision on the amount and kind of compensation for the victim is taken. In the case of divorce, the children will go to the father because the mother is assumed to be incapable of raising the children. Also in the case of inheritance, the man gets everything. Advocacy to strenthen customary legal systems will need to change such deficiencies towards women.

In ***Timor Leste***, the main traditional social structures that continue to profoundly shape the Timorese identity and culture, and effects their communal relations are the concept of *Uma Lulik* (sacred house pertaining to powers and relations), the structures of traditional leadership (political, spiritual and judicial), and the practice of having sacred objects (*sasan lulik*). Leadership roles concentrate on 3 individuals, each representing a particular element of power. The *Liurai*-king (political power) associated with sacred houses in different kingdoms and political authority. His role revolves around external relations, making peace or war between kingdoms, and managing diplomatic relations with external entities. The King is a hereditary king selected by the *Dato* (Visible Lord) who is the ritual authority. The *Dato* is connected to the spiritual world and therefore is able to make decision based on ancestral order and values. Their communication with the spiritual world gives them the legitimacy to dictate *bandu* and other social norms that community members must follow to achieve spiritual harmony and physical stability. The third functionary is the *Lia Nain,* the judicial authority or the conflict arbitrator. *Lia Nain* are considered as owner of words (Lia=words, nain=owner) because only they have the knowledge of traditional rules and can therefore determine compensation and interpret laws for the community once decisions are reached. They solidify the agreement through a *juramentu* that binds parties to the terms of the agreements.

In ***Cambodia***, customary law still exists, and customary land laws are incorporated in the national law; but the problem is that the communities do not obey customary laws.

**Customary legal systems: advocacy of indigenous peoples**

In ***Northeast India***, village heads are comfortable in their positions and do not see the problems that arise as a result of the conflict between state policy and the customary law e.g. in the management of forests. Nevertheless, the Autonomous District Councils in some Northeast Indian states can establish their own courts, including chiefs and headmen. Judges and village authorities are all men. If awareness is there, the system can be changed.

In the **Chittagong Hill Tracts** region of **Bangladesh**, the courts of the traditional chiefs and headmen are recognized, and the civil courts are barred from exercising jurisdiction over customary personal and other law matters that are tried in the courts of the chiefs and headmen. At the higher levels, the state courts have revisional and appellate authority over the traditional leaders’ courts. The major challenges here include sensitization of the traditional leaders on women’s rights and child rights, obtaining state support for the traditional courts, and documentation of customary law (as opposed to formal codification), among others. The three traditional Circle Chiefs are recognized but their powers are limited.

 In ***Nepal***, much of the customary legal system is destroyed by the national or Hindu legal system and it is hard to revitalise because it was not well documented. Many indigenous systems have also been assimilated into the state legal system. Except those far in the interior where they still practice their own code system, or have no faith on the modern system which discriminates them, the practice of indigenous system hardly exists. The challenge is greater in situations where the inhabitants are of mixed population. In such a situation, most indigenous peoples in Nepal don't have a choice but to go to the state court. Different communities are attempting to get traditional legal system recognised by the state. The effort to move towards ethnic autonomy (especially the Limbus) has received some extra boost after the ratification of ILO Convention 169 by the government of Nepal. This also at the same time opens up opportunity for re-establishing a working customary law.

In ***Thailand***, the issue is the non-recognition of customary laws, and indigenous peoples have no option but to follow the national laws e.g. marriages still have to be registered with the official registrar. Customary laws also have no jurisdiction with respect to forest. Customary laws are still respected only in villages andseen as better than national laws with easy steps to clear a conflict.

In ***Sabah and Sarawak, Malaysia***, native courts are recognized by the state but there are still many problems. Very little money or human resources are allocated to native courts and their role is now limited to family law matters. We also need to have a dialogue in Sabah with the state and the syariah system. The jurisdiction of our native court does not include natural resource management. We need to widen the jurisdiction again. This is a case of where the state gives recognition to customary law and yet enacts laws to undermine indigenous systems at the same time. There are also too many cases in our native courts, so an association of village leaders to give more voice and bring up issues was set up. We want to get support to hold meetings to review the *adat* and expand the scope of their jurisdiction to cover natural resource management. In Sarawak, there are currently about 141 cases being filed in court by the indigenous peoples in Sarawak to challenge the encroachment on our native customary rights land by companies and government. So far there are few judgments that has been made in favour of indigenous peoples.

***On the acceptance of customary law, the challenge to indigenous peoples is to demonstrate that traditional courts and customary laws are still relevant to their society. There are difficult questions on the application of customary law in a mixed society. Similar question arises on its applicability on indigenous persons who has changed his/her religion and where religious practices are in conflict with customary law.***

***Excerpts from ID Conference Report, 2007***