

The Indigenous Peoples In ASEAN: Critical Analysis On Development Aggression

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Abstract

Indigenous peoples (IPs) constantly face challenges in terms of culture, land and human rights. The IPs are often the subjects of government and private corporations' resource extraction and development initiatives in their ancestral domains and territories, hence, development aggression. This paper aims to have a critical analysis of the existing development aggression experienced by the IPs within the ten (10) member-states of the Association of Southeast Asian Nations (ASEAN). The researchers contend that ASEAN and its member-states lack robust actions and efficiency in addressing development aggression. Employing a qualitative-descriptive approach, this study utilized the Key Informant Interview (KII) as the primary data, along with document review for secondary sources. This study argues that the development aggression continues to persist among the ASEAN member states as the majority of member states failed to recognize IPs, resulting in continued infringement of their rights. Moreover, the COVID-19 measures was utilized against IP communities and the constant advancement of extractive industries. Furthermore, it has been proven that both National policies and regional mechanisms confront considerable difficulties and need more legal frameworks in dealing with development aggression. The ASEAN member-states are not fully implementing customary rules and other international standards established by organizations such as the UN and the ILO. This study found that there are five (5) policies which may help protecting the IPs against development aggression. The development of Grievance Redress Mechanisms (GRMs) within the ASEAN Intergovernmental Commission on Human Rights (AICHR) specific for IPs and the inclusion of indigenous communities in income-generating projects developed in their ancestral lands and resources is the main one.

Keywords: Indigenous Peoples, Development Aggression, ASEAN, Southeast Asia, Concrete Policies

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Introduction

Approximately 93 to 124 million of Asia's 370 indigenous peoples (IP) are found in Southeast Asia (Tessier, 2015, p. 3). IPs in Southeast Asia include the Lumads and Igorots in the Philippines, the Chao Le and the Mani people in Thailand, and the Orang Asal communities in Malaysia. IPs in the ASEAN states have parallel histories of struggle attributed to different causes and come in many forms. The Indigenous communities continue to face struggles in terms of their culture, land, and human rights, as well as having access to basic necessities. In Myanmar, the illegal seizure of power by the Myanmar military in 2021 has violated the rights of the IPs to live in freedom, peace, and security, free from genocide and violence. Similarly in the Philippines, following the implementation of Executive Order No. 70 by President Duterte in 2018, the Department of Education declared the closure of fifty-five Lumad schools in Mindanao, depriving Lumad children of the right to education because of accusations that the four schools were in connection with the New People's Army (NPA) or for reasons that teachers were educating the students about rebellion (IWGIA, 2020).

In addition, the development projects, such as the construction of dams, highways, plantations, infrastructure programs, and large-scale extraction processes have regularly threatened the living conditions and rights of the IPs within their borders as these projects are often realized at the ancestral domains and territories of the IPs due to the rich terrain and abundance of natural resources. According to Tauli-Corpuz (2010), the impacts of the development projects, at most, have been negative to the point that it has come to be termed as "development aggression", and this process often leads to displacement, violence, destruction of ancestral domains, loss of natural resources that IPs had preserved for generations, derogation and disrespect of indigenous and ethnic identity, norms, and values among others (Tauli-Corpuz, 2010, p. 514).

The study on development aggression in the region is a vast subject, yet constantly expanding. Doyle and Gilbert (2011) indicated that the advancement of economic globalization stimulated by powerful and industrialized countries with the partnership of multinational corporations, although resulting in national economic growth, investment, and individual income levels has a cost. The IPs have often served as "sacrificial lambs" in order for states to meet their investment objectives, and such a notion is a common policy among developing countries (Doyle and Gilbert, 2011, p. 225). In Cambodia, there have been several reports of IPs being evicted due to Economic Land Concessions (ELCs). The number of mining concessions is also rising. Hydropower projects built and operated upstream on the Sesan, Srepok, and Sekong rivers in Vietnam and Lao PDR have had devastating social, economic, cultural, and environmental impacts on IPs in Ratanakiri, Mondulakiri, and Stung Treng provinces since 1996.

Furthermore, the Asia Indigenous Peoples Pact (AIPP) (2011) established that the majority of economic initiatives are carried out without the involvement and consent of the affected indigenous communities. IPs are not consulted and are denied access to relevant information on the agreements or contracts of infrastructures, and development projects, which directly violates the international human rights law on the IPs' rights to meaningful good faith consultations, and free prior informed consent (FPIC) (AIPP, 2011, p. 5) Thus, it is indeed apparent that violence against IPs' human rights for protecting their collective rights to lands, territories, and resources has increased dramatically in recent years. Their cultures are still in danger, and measures to promote and protect their rights are being challenged. Regardless of

the fact that all ASEAN member states voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the majority of countries continue to refuse to give respect and implement IPs' collective rights. Attacks against IPs generally go unreported and unacknowledged by the global media, leading to a lack of accountability and promoting a culture of impunity for human rights and environmental abuses. Hence, addressing this topic would be pivotal for the IPs in Southeast Asia, despite being one of the most culturally diverse regions in the world.

The primary objective of this study is to analyze development aggression as experienced by IPs in the Southeast Asian region and to address this objective, three specific objectives are determined; (a) to discuss the recent conditions of the IPs in the region in the context of development aggression; (b) to examine the responses of both the ASEAN and its member-states in addressing development aggression; and (c) to recommend concrete policies against the so called development aggression in order to protect the IPs.

Literature Review

Indigenous peoples have been the subject of numerous journal articles, and dissertations that have taken a regional outlook. Most scholarly materials involved the examination of the situation of IPs within each country in drawing conclusions at the regional level. In an analysis by Doyle and Gilbert (2011), the few sectors of society, the powerful political elites and industrial elites, have systematically arranged the creation of a regulatory framework that denies IPs their rights to their lands and resources to the point that legislators became "stenographers for the industry" hence the term "regulatory capture". They pointed out that in terms of natural resource exploitation, states are restricted from proactively addressing the consequences of mining legislation on the environment and human rights to their responsibility under international human rights law because of the international legal architecture that consists of bilateral and multilateral trade agreements and mechanisms maintained for the economic model Doyle and Gilbert (2011, p. 227).

Accordingly, Doyle and Gilbert (2011, p. 228) mentioned that many trade agreements have access to resources in the territories of IPs. However, IPs are not consulted and are denied for having access to relevant information of such agreements or contracts, which directly violates the international human rights law on the IPs' rights to "meaningful good faith consultations" and free prior informed consent (FPIC) under Article 32 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 19 that mandates the responsibility of states to uphold the FPIC of IPs related to proposed development projects on their ancestral lands. Furthermore, Doyle and Gilbert (2011, p. 228) discussed the role of political, industrial, and corporate entities in the prevalent absence of consent and the lack of proper engagement or communication with the affected indigenous communities, and in the context of development projects, IPs' rights are overridden by 'national interest', or the market-driven objectives directed at developing new economic activities and maximizing profits.

In recent years, globalization has become an increasingly prominent trend in the international community, characterized by the expanding interconnectedness and economic integration of regions and states. This trend has been driven by fast-paced modernization, liberalization, and technological advancements, facilitating the exchange of goods, services,

capital, and ideas across borders. However, while globalization has brought many benefits, such as increased economic growth and cultural exchange, it has also led to increased inequality and changing power dynamics. IPs may be particularly vulnerable to these dynamics, as they often face marginalization and discrimination in the context of social, political, and economic integration. Hennida et al. (2019, p. 97) argue that globalization disadvantages IPs with diverse traditions, as they are often excluded from agreements between governments, the private sector, international organizations, and investors. This can lead to wealthy individuals and corporations acquiring land, with government support, often to the detriment of indigenous communities. The resulting changes in land usage can have negative impacts on indigenous populations, including changes to their food supply and cultural practices.

In addition, McCaskill and Rutherford (2005) present a critical viewpoint on the influence of globalization and economic growth on IPs, emphasizing the negative implications of the process. According to the authors, Globalization, or the current period of imperialism, entails the abrupt penetration of market and state into traditionally marginal areas, resulting in significant change that brings marginalization. The growing economic integration of regions, e.g., chemical agriculture and ecotourism, has resulted in repercussions for indigenous populations, particularly, in the aspect of commodification (McCaskill and Rutherford, 2005, p. 138-139). While cultures and livelihood systems are fluid and subject to outside influences, they are essentially entrenched in the land. Thus, the loss of agricultural access poses a serious threat to the cultural and economic survival of highland communities. Natural concerns about resources are another major area of contact between the state and indigenous peoples in the highlands. Infrastructural development, notably dam construction and state forest enclosure, frequently emphasizes state claims on natural resources above local entitlements to land and livelihoods in the cause of national economic growth and the "public good." These large-scale projects usually result in landlessness, ecological scarcity, cultural relocation, and shortages, all of which have significant consequences for IPs' livelihoods and well-being (McCaskill and Rutherford, 2005, p. 132-133).

As economies grow and lowland areas become over-exploited, there is increasing pressure to exploit resources in indigenous lands, leading to conflict and developmental aggression. The indigenous communities inhabiting resource-rich areas become the target of resource extraction by the government and multinational corporations, resulting in relocation and loss of livelihood, culture, and identity. IPs and their territories are considered replaceable collateral damage for national development or economic strength.

Methods

This study is a qualitative-descriptive type of research on development aggression as experienced by the indigenous peoples (IPs) in the Southeast Asian region, specific to the ten (10) member-states of the Association of Southeast Asian Nations (ASEAN) — Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

The study employed two gathering data strategies; library research, particularly document review to gather data from library materials, including textbooks, articles, and published and unpublished academic documents such as journals, conference proceedings, dissertations, and theses, and field research, distinctly key informant interviews (KII) to gather primary data directly from key informants or experts having first-hand knowledge and

information about the research topic. The collected documents were arranged according to their file type, publication date, and the specific study objective they addressed for the document review. The key informants, on the other hand, involved in this study are six (6) professionals, experts, and individuals who have advocated, studied, and published extensively about IPs in the context of development aggression and the ASEAN framework. Ultimately in order to have an in-depth examination of the research topic, and identify the recurring themes among the gathered data, this study applies the thematic analysis method.

Results and Discussion

The findings of the study are comprehensively arranged to answer the statement of the problem and the general and specific objectives of the study. This section included the presentation of the data through the following primary themes; the recent conditions of the IPs in the context of development aggression; the responses of both the ASEAN and its member-states in addressing development aggression; and the concrete policies against development aggression, and their respective subthemes.

Table 1. Summary of Themes and Subthemes from Thematic Data Analysis

Themes	Subthemes
Recent conditions of the IPs in the context of development aggression	<ul style="list-style-type: none"> ● Legal Recognition of Indigenous Peoples ● Development Aggression during the COVID-19 Pandemic ● Economic Development and Extractive Industries
Responses of both the ASEAN and its member-states in addressing development aggression.	<ul style="list-style-type: none"> ● Response from ASEAN ● Response from ASEAN member-states
Concrete policies against development aggression.	<ul style="list-style-type: none"> ● Consult and cooperate in good faith with IP communities. ● Adopt Regional Guidelines on Developmental Project Governance. ● Include Indigenous Communities in Income-generating Projects to strengthen their Economies. ● IP leaders shall be closely monitored and penalized for corruption. ● Develop Grievance Redress Mechanisms (GRMs) within the ASEAN Intergovernmental Commission on Human Rights (AICHR) specific for Indigenous Peoples.

Data Source: International Work Group for Indigenous Affairs (2020) (2021) (2022), Erni (2008), International Fund for Agricultural Development (2012), Minority 18 Rights Group International (2020),

Salleh et. al (2021), Cambodia Indigenous Peoples Alliance et al. (2019), Asia Indigenous Peoples Pact (2012), (2019), (2020), and From Key Informant Interviews.

A. Recent Condition of the Indigenous Peoples in the Context of Development Aggression

In examining the status quo of IPs in the ASEAN states within the case of development aggression, IWGIA (2022) reported that the majority of the member states continue to struggle against aggression driven by activities that violate their rights. We then focus on the global health crisis, the COVID-19 Pandemic, in the context of development aggression that had a substantial impact on the most vulnerable members of society. Lastly, we look into the economic development and extractive industries which have adverse implications for the IPs in the region.

Table 2. Summary of the Recent Condition of the Indigenous Peoples in the Context of Development Aggression

Recent conditions of the Indigenous Peoples in the context of development aggression			
Country	Legal Recognition of Indigenous Peoples	Development Aggression during COVID-19 Pandemic	Economic Development & Extractive Industries
Philippines	The Indigenous Peoples Rights Act (IPRA) of 1997 guarantees the protection of the rights of IPs.	Pandemic measures worsened development aggression. Extractive activities continued.	The Philippine Mining Act of 1995, enables the government to approve hundreds of mining application for exploration and production that would involve thousands of hectares of ancestral grounds of indigenous communities.
Thailand	Thailand does not have laws recognizing and protecting the rights of IPs.		
Myanmar	The 2008 constitution recognized "ethnic minorities/nationalities" not specifically IPs.		
Brunei	The Brunei Nationality Act of 1961 only recognizes IP groups of the <i>Malay</i> race		
Indonesia	Article 18 of the 2001 State Constitution of the Republic of Indonesia recognizes IPs, however the government claims that all citizens are indigenous this IPs identity does not apply in Indonesia.	Attacks and criminalization of IPs to seize their lands continued.	Increasing disputes related to infrastructure and dams, as well as visible military aggression such as violence and criminalization.

Malaysia	Article 161(A) of the Federal Constitution of Malaysia 1957 recognized IPs as Natives of the States of <i>Sabah</i> and <i>Sarawak</i> . The Aboriginal People's Act 1954 governs <i>Orang Asli</i> administration.	Appropriation and logging in the indigenous lands continued.	
Cambodia	There are no laws that recognized specific to IPs, only to <i>khmer</i> citizens.	Increase in land grabbing and illegal logging which resulted in extensive deforestation and insecurity among indigenous communities.	IPS are subjected to discrimination and expropriation from their ancestral lands driven by State and transnational corporate ventures on resource extraction.
Vietnam	The 1992 Constitution affirms the rights of IPs.		
Singapore	Article 152 of the Constitution of the Republic of Singapore Minorities and Special Position of <i>Malays</i> .		
Laos	There are no laws that recognized specific to IPs.		

Data Source: International Work Group for Indigenous Affairs (2020) (2021) (2022), Erni (2008), International Fund for Agricultural Development (2012), Minority 18 Rights Group International (2020), Salleh et. al (2021), Cambodia Indigenous Peoples Alliance et al. (2019), Asia Indigenous Peoples Pact (2019).

Legal Recognition of Indigenous Peoples

In the context of Thailand, the IPs remain to be stigmatized and marginalized by land grabbing by its own government. Despite Thailand's support of the United Nations Declaration on the Rights of Indigenous Peoples, the government does not formally acknowledge the presence of IPs in their country. The IPs in Thailand have long endured significant prejudice from Thai society. The phrase "chao khao," or hill tribal people, also chao pha with pha – meaning "forest" which often invokes "wild" or "savage" (Erni, 2008, p.443). In the ethnically diverse country of Laos (Lao People's Democratic Republic (PDR), the government refers to IPs as ethnic groups, although the Lao-Tai language-speaking groups such as those belonging to the Sino-Tibetan, Mon-Khmer, and Hmong-Ew-Hmien clans and are considered to be IPs, and the country voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Laos does not currently have a clear regulatory framework or law governing IPs (IFAD, 2012, p.1). The draft of the "Decree on Ethnic Affairs" includes a provision that could exacerbate Indigenous communities' already precarious economic and social situation as it enables authorities to evict Indigenous communities from their lands forcibly as the Lao government has focused on land acquisition, and programs, large-scale infrastructure projects, and resource extraction that would attract foreign investment (IWGIA, 2020).

In the neighboring country of Myanmar, IPs aren't recognized distinctly by the government as they claim that all citizens in the country are "indigenous", and because of that,

the relevance of the UN Declaration of Human Rights of Indigenous Peoples (UNDRIP) in the country was rejected (IWGIA, 2022, p. 254), although voted in favor of the UNDRIP in 2007. On the other part of the region, IPs in Brunei account for 3.4 percent of the population in Brunei According to Minority 18 Rights Group International (2020), Brunei's government continues to prohibit numerous non-Muslim religious activities, including IPs, while allowing or helping those of Islamic authority. Consequently, there is a lot of pressure on IPs to convert from animism and ancestor worship to Islam, even though only a tiny percentage do so and are also encouraged to abandon several elements of their cultures and languages. In Indonesia, various phrases were used to refer to the IPs which often have negative connotations, and were used to accentuate IPs' inadequacies, which has culminated in discrimination, marginalization, and exclusion. According to Erni (2008, p. 378-379), Article 18 of the 2001 State Constitution of the Republic of Indonesia recognizes IPs' rights, however, the government has repeatedly asserted in international forums that the notion of IPs does not apply in Indonesia because practically all Indonesians (with the exception of ethnic Chinese) were indigenous and so entitled to the same rights.

In Malaysia, Orang Asli from Peninsular Malaysia, Orang Ulu from Sarawak, and Anak Negeri from Sabah are three indigenous communities that are composed of various Tribes. The number of Malaysia's indigenous peoples in 2019, was approximately 14% of the 33.45 million people in the country and even though the Malays are indigenous in the country, they are not considered Indigenous Peoples given they represent the majority and are political, economically and socially dominant. The Aboriginal Peoples Act 1954 governs Orang Asli administration (IWGIA, 2022, p. 244) but this Act doesn't apply to Sabah and Sarawak as Article 161(A) of the Federal Constitution provides IPs of Sabah and Sarawak as "natives" not "aborigines" but there is the lack of a proper or accurate definition of a native of Sabah (Salleh et. al, 2021, p. 560-561). In the country of Cambodia, there are no precise statistics on IPs, nevertheless, the 2015 Commune Database Statistic, presented that there are about 276, 878 IPs from 24 different indigenous communities in 15 Cambodian provinces (CIPA et al., 2019, p. 1). The absence of appropriate legal recognition of IPs in Cambodia is one of the reasons for the lack of credible statistics on IPs. Additionally, it has been demonstrated and established that the refusal to acknowledge IP's fundamental attachment to their lands, territories, and resources contributes to the slow disintegration of their indigenous communities.

The Malay Singaporeans are recognized as IPs in the country which constitute 15% of the population. Its viewpoints toward minorities have generally been much more favorable, with the country's constitution not only recognizing the Malays as indigenous and hence occupying a special position but also clearly stating in Article 152 that the Government must constantly value the best interest of Singapore's racial and religious minorities (Minority Rights Group International, n.d). The Philippines and Vietnam have existing laws that recognize the rights of their IPs. In the case of the Philippines, the Indigenous Peoples Rights Act (IPRA), also known as Republic Law 8371, was passed in 1997 (IWGIA, 2022, p. 280). It has been commended for its support of IPs' cultural integrity, the right to their territories, and the right to self-development in these areas. In Vietnam, IPs are referred to as ethnic minorities and thus are full citizens of the state and have constitutionally guaranteed rights. At the national level, the Council on Ethnic Minorities and the Committee for Ethnic Minority Affairs (CEMA) are mandated to oversee and supervise policies, programs, and activities related to IP communities (Ernie, 2008, p.452).

Development Aggression during the COVID-19 Pandemic

In the Philippines, in spite of the coronavirus threat in the country, the prevalence of development aggression has increased, as well as the attacks against indigenous human rights defenders and IP organizations (IWGIA, 2022, p. 281). Respondent No. 1 (personal communication, November 23, 2022), mentioned that although the pandemic has slowed down commercial economic activities for both the indigenous and non-indigenous communities, extractive activities continued, and development aggression has worsened because of strict lockdowns. Correspondingly, Respondent No. 5, (personal communication, December 12, 2022) asserted that the pandemic was used to push for mining projects and even more so when the moratorium for mining projects was lifted. Moreover, Respondent No. 6 stated that because of the pandemic the situation of indigenous communities in mining-affected areas has worsened and that it has made visible the disparities between indigenous communities.

In Malaysia, during the pandemic, the livelihoods of the Orang Asli communities have been greatly affected not only by the problem of food security but also by the destructive impact of unrestricted "essential activities" considered by the government, particularly appropriation and logging in indigenous lands. In 2021 the state government had already begun the degazetting process of the 2020 case of the Kuala Langat North Forest Reserve which is about the degazetting of 94% hectares of the 992 hectares of peat swamp forest part of Temuan-Orang Asli territorial domain for a mixed development project (IWGIA, 2022, p. 245).

Correspondingly, within Cambodia, although government aid has reached the indigenous communities, many of them have been severely impacted by the pandemic due to their limited access to COVID-19 testing facilities in the highlands of Cambodia. IP communities have been unable to protect themselves from the virus because they cannot afford masks and sanitizer, let alone hospital treatment. The period experienced an increase in land grabbing and illegal logging which resulted in extensive deforestation and insecurity among indigenous communities (IWGIA, 2021, p. 186). In Indonesia, amid the pandemic, the government and the private sector in Indonesia continue to attack and criminalize IPs to seize their lands. Some Indonesian companies continued to operate and criminalize IPs which prevented them from expanding their businesses (IWGIA, 2021, p. 220) Five Laman Kinipan IPs were imprisoned for defending their customary forest, and months later, the chief of the Laman Kinipan Indigenous community was imprisoned because of a dispute with a palm oil company, PT Sawit Mandiri Lestari (SML) (IWGIA, 2021, p. 220). In a similar case, indigenous villages in North Sumatra Province had an encounter with state security agents and private security officers employed by a state-owned agribusiness company, PT Perkebunan Nusantara II (PTPN II), when the latter intends to demolish the community's ancestral domain of 966 hectares and convert it into a sugarcane plantation (IWGIA, 2021, p. 221).

Economic Development & Extractive Industries

In Cambodia, IPs are still subjected to discrimination and expropriation from their ancestral lands driven by State and transnational corporate ventures on resource extraction. According to the International Work Group for Indigenous Affairs (2022), throughout 2021, land disputes have posed a significant challenge to the country's human rights issues of mining, economic

land concessions (ELC), dams, hydropower, land encroachments, deforestation, and illegal logging persisted to have a detrimental effect on Cambodian IPs (IWGIA, 2022, p. 177). Meanwhile, in Indonesia, IPs are increasingly facing criminalization and violence are becoming more prominent, usually due to developments in indigenous domains. Many of these plantations have been constructed on territory utilized by IPs in the past (AIPP, 2019, p.6). According to recent reports, land acquisition and the installation of oil palm plantations are linked to major violations of the rights of local populations, many of whom are IPs. In the Philippines, according to a handbook published by Asia Indigenous Peoples Pact (2019), the Philippine Mining Act of 1995, also known as the Republic Act 7942, liberalized the mining fifty-one sector and made it easier for international investors to enter the industry. The law enables the granting of exploration permits, which give the authority to carry out mineral exploration in particular areas, including those of the indigenous communities in the country, and the government approved hundreds of mining applications for exploration and production that would involve thousands of hectares of ancestral grounds is of great concern to IPs (AIPP, 2019, p. 9).

B. Responses of both the ASEAN and its member-states in addressing development aggression.

In order to further examine development aggression within ASEAN states, it is necessary to look into the responses or working mechanisms from the ASEAN and its member-states that address development aggression. The scrutiny of the responses will help us review and evaluate the existing regional and national responses with the gathered data.

Table 3. Summary of the responses of both the ASEAN and its member-states in addressing development aggression

Responses of both the ASEAN and its member-states in addressing development aggression.		
Country	Response from ASEAN member-states (and other policies & mechanisms relating to IPs)	Response from ASEAN
Philippines	The Philippine Indigenous Peoples Rights Act (IPRA) of 1997. National Commission on Indigenous Peoples (NCIP).	ASEAN Intergovernmental Commission on Human Rights (AICHR)
Indonesia	Act No. 39/1999 on Human Rights Ministerial Regulation of the Agrarian Minister and the Head of the National Land Agency	

	number 5/1999 on the Guidelines on Dispute Resolution of the Communal Title of the Indigenous peoples	
Cambodia	The Land Law of 2001 The Forest Law of 2002	
Vietnam	Council on Ethnic Minorities Committee for Ethnic Minority Affairs (CEMA) UN-REDD	
Malaysia	The Native Court Enactment 1992 The Aboriginal Peoples Act of 1974.	
Brunei	Brunei does not have specific mechanisms against or related to development aggression.	
Thailand	Thailand does not have specific mechanisms against or related to development aggression.	
Laos	Laos does not have specific mechanisms against or related to development aggression.	
Singapore	People's Association Community Centers Residents' Committees Members of Parliament Constituent Advisory Group	
Myanmar	Myanmar does not have specific mechanisms against or related to development aggression	

Data source: From Asia Indigenous Peoples Pact (AIPP) (2012) (2020).

Response from ASEAN

Under Article 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was instituted as the ASEAN regional human rights body. The AICHR's primary objective is to promote and protect human rights and fundamental freedoms in the region. As an integral part of the organization, the AICHR acts as a consultative body mandated to give advisory and technical services to ASEAN sectoral bodies on human rights issues and to develop ways to strengthen and safeguard human rights and necessary freedoms in the ASEAN Community (The ASEAN Secretariat, 2009, p. 3). The AICHR was significantly improved with the ASEAN Human Rights Declaration (AHRD) promulgated in 2012, which reaffirms the commitment of ASEAN to the Universal Declaration of Human Rights and the UN Charter, and other international human rights mechanisms.

Asia Indigenous Peoples Pact (AIPP) (2012), published a comprehensive report which argued that ASEAN's commitment to economic growth is contingent upon investment in large infrastructure projects and manufacturing and resource exploitation and extraction that serve the multinational corporations and the global market (AIPP, 2012, p. 76). They recorded that the economic targets of ASEAN, specifically extractive projects, will exacerbate the impoverishment and marginalization of the affected IPs. The ASEAN Economic Community has negative consequences for the IPs. From the report, several ASEAN-led initiatives incited the plight of IPs, the infrastructure development in the transport sector that covers maritime, land, and air transport, and transport facilitation has been established such as the ASEAN Transport Action Plan (ATAP) of 2005-2010, ASEAN-Mekong Basin Development Cooperation and the ASEAN Highway Network (AHN) Project (AIPP, 2012, p. 77).

Response from ASEAN Member-states

In 2020, the Asia Indigenous Peoples Pact (AIPP) (2020) reported that because of the COVID-19 pandemic, there is a decline in the enforcement of land rights law, as well as higher reports of land-grabbing and criminalization of IPs and Local Communities (LCs) who are fighting for their rights (AIPP, 2020, p. 12). In Indonesia, the national government has consistently argued in international forums that the concept of IPs does not apply in Indonesia because most Indonesians are indigenous and, hence entitled to the same rights. The Workplace Creation Law or the Omnibus law was passed regardless of the opposition from the IP, environmental organizations, and labor unions as the Omnibus law deregulates mining operations, reduces consequences for environmental violations, eradicates EIA requirements, fosters corruption, and completely excludes IPs and LCs from decision-making processes. Moreover, the Omnibus law, the Presidential Regulation (Perpres) No. 66 of 2020 was enacted and reestablishes some provisions of a Land Bill that will magnify "land-grabbing in IPLC territories and put vast tracts of intact forest landscapes and territories inhabited by IPs and LCs at risk". Multiple compensatory provisions were enacted, with long-term consequences for the IPs and LCs that live in forests. Article 47 of the Mineral and Coal Law (Minerba Law) ensures that mining companies will have a 10-year extension, twice, thus, it automatically extends Coal Mining concessions (AIPP, 2020, p. 6-9).

Concurrently, in the Philippines, the Republic Act 8371, or the Indigenous People Rights Act (IPRA) was enacted in 1997 and enabled the country to address several issues regarding the IPs, however, during the pandemic, funds were allocated from other branches of

government to advance infrastructure projects aimed at ancestral lands (AIPP, 2020, p. 10). House Bill No. 6815, Accelerated Recovery and Investments Stimulus for the Economy of the Philippines or the ARISE Philippines Bill was passed wherein the multiple infrastructure projects funded are in the ancestral lands of the IPs and LCs. AIPP (2020) stated that within the BBB, about 100 projects targeted the ancestral territories of IPs and LCs and alongside the 230 approved mining infringing on at least 542,245 hectares of ancestral lands, the five proposed dam projects can indeed affect over than 110,000 IPs from at least 106 villages. Additionally, in order to deal with the issues that the pandemic has posed to local food systems, the “Plant Plant Plant” program (PPP) was launched in 2020. The PPP targets portions of vast ancestral lands nationwide which the former Agriculture Secretary William Dar called “idle” ancestral lands although such lands are not “idle” lands but are productively utilized and preserved by the IPs (AIPP, 2020, p. 11-12).

C. Concrete Policies against development aggression

The third major theme focused on the concrete policies that protect IPs against development aggression, recommended by the researchers based on the gathered data. Furthermore, the researchers listed a number of international mechanisms from which ASEAN might use or draw inspiration in developing regionalized policies against development aggression. The following are the five recommended concrete policies:

A. Consult and cooperate in good faith with IP communities. At the national level, the ASEAN member-states and private companies must cooperate and conduct consultations with IPs in order to obtain their free prior and informed consent (FPIC) and gain their approval before adopting policies and implementing projects that affect them and their territories.

B. Adopt Regional Guidelines on Developmental Project Governance. ASEAN must set its own standards for economic operations and activities involving indigenous lands, territories, and resources (LTR), thus, at the regional level, ASEAN must adopt regional guidelines solely for development projects. Such initiatives will encourage and pressure all member-states and private corporations, particularly those in the extractive industries, to ratify such guidelines.

C. Include Indigenous Communities in Income-generating Projects to Strengthen their Economies. Support the empowerment of indigenous communities to create revenue and opportunities with development projects developed in their ancestral lands and resources. Government should cooperate with the IPs so that their policies and programs will also benefit the IPs. With this, IPs will be able to afford things like health care, and other vital services for a living.

D. IP leaders shall be closely monitored and penalized for corruption. Indigenous leaders must be legally held responsible for swindling and exploiting their own communities. Member-states should develop a policy or a working mechanism that would monitor and apprehend indigenous leaders and hold them accountable for any acts of deception and fraud that may jeopardize the well-being of the affected communities.

E. Develop Grievance Redress Mechanisms (GRMs) within the ASEAN Intergovernmental Commission on Human Rights (AICHR) specific for Indigenous Peoples.

The AICHR as the human rights body of ASEAN should establish a channel within its framework in which IPs can directly report cases of development aggression. Redressing the grievances of the affected IP communities should be an integral part of developmental projects and policies, as well as access to remedy or restitution should also be made available at the regional level as it is increasingly vital to establish appropriate mechanisms to address the concerns raised directly by the IPs, avert damaging consequences and threats, and bring about significant improvements in the indigenous livelihood.

To provide insights into the findings that encompassed themes and subthemes, under the first theme, three sub-themes were established: Development Aggression during the COVID-19 Pandemic, Legal Recognition of Indigenous Peoples, and Economic Development and Extractive Industries. The first theme focused on the recent situations of IPs in the context of development aggression. The second theme gave rise to two subthemes: Response from ASEAN and Response from ASEAN member-states. The third theme focused on the presentation of the researchers' recommended concrete policies and the global mechanisms that ASEAN could use as frameworks when creating regionalized policies against development aggression.

Primarily, the findings of the present study indicated that the majority of member states of the ASEAN are confronted with a shared challenge of combating development aggression within their borders. This is primarily due to the fact that a significant proportion of these states failed to acknowledge legal recognition of IPs within their land which consequently lead to persistent violations of their fundamental rights. These rights include the right to their ancestral lands and the right to free, prior, and informed consent (FPIC). Moreover, the utilization of pandemic measures that dispossess indigenous populations of their lands and resources in favor of multinational extractive corporations has further exacerbated the already dire living conditions of these communities amidst the COVID-19 pandemic. Correspondingly, the ASEAN development plans and national government policies frequently involve the implementation of large-scale mining, extraction, planting, and resource exploitation projects, which invariably had posed significant threats to the traditional lands and territories of IPs. In addition, multinational corporations, aided by national governments and international organizations, have exploited the natural resources- rich lands of indigenous communities through development projects, perpetuating marginalization, cultural loss, displacement, and human rights violations.

The second theme of the study highlighted the inadequacy of ASEAN and its member nations in addressing the challenges faced by IPs, leaving them vulnerable to development aggression. The absence of IPs in the ASEAN framework and agreements, particularly, the lack of explicit references to their rights by the ASEAN Intergovernmental Commission on Human Rights (AICHR), and other regional-level pronouncements. Although some ASEAN members have national policies recognizing the rights of IPs, they are often ineffective and susceptible to being overridden by other policies that prioritize economic development, resulting in worsening conditions for the IPs.

Having said that, the researchers provided as the third theme five policy recommendations for both ASEAN and its member-states to take into consideration, (a) the cooperation and conduct of consultations with IPs in good faith); (b) the adoption of regional

guidelines on developmental project governance at the ASEAN level; (c) the empowerment of indigenous communities to create revenue and opportunities with development projects developed in their ancestral lands and resources; (d) the legal recognition of ASEAN and member-states of the existence of IPs; (e) the development a Grievance Redress Mechanisms (GRMs) within the ASEAN Intergovernmental Commission on Human Rights (AICHR) specific for IPs.

Conclusion

The primary objective of this research was to examine the phenomenon of development aggression and its impact on the indigenous peoples (IPs) across the ten (10) ASEAN member states, and substantially, development aggression in the region continues to persist among the ASEAN member states. The advancement of COVID-19 pandemic measures against indigenous communities, along with the rapidly expanding activities of multinational extractive industries and the majority of member states' failure to recognize constitutionally the rights of the IPs, which led to widespread violations of their rights, has exacerbated the already dire living conditions of the IPs in the region in the context of development aggression. Moreover, neither the ASEAN nor its member states' responses to development aggression were able to effectively manage and alleviate the conditions of indigenous communities as such national responses often face significant barriers and the ASEAN is yet to produce explicit reference in their official documents and framework. As a result, IPs in the region continue their plight against development aggression resulting in severe reprisal and risks including attacks, displacement, harassment, and forced relocations. IPs have endured assimilation, oppression, and exploitation across generations at the hands of governments or individuals in positions of authority in their countries. Based on this study, it is, therefore, recommended that the ASEAN Intergovernmental Commission on Human Rights (AICHR) must create Grievance Redress Mechanisms (GRMs) specifically for IPs to effectively address the issues that have been plaguing the IPs throughout the region.

References

- Asia Indigenous Peoples Pact (AIPP). (2011). "Victims of development aggression: Indigenous Peoples in ASEAN." Asia Indigenous Peoples Pact (AIPP). 5.
- Asia Indigenous Peoples Pact (AIPP). (2012). "Development Aggression as Economic Growth: A Report by the Asia Indigenous Peoples Pact." Asia Indigenous Peoples Pact Foundation. 76-77.
- Asia Indigenous Peoples Pact (AIPP). (2014). "Overview of the State of Indigenous Peoples in Asia". Asia Indigenous Peoples Pact. 1
- Asia Indigenous Peoples Pact (AIPP). (2019). "Extractive Industries and Free Prior and Informed Consent of Indigenous Peoples". Asia Indigenous Peoples Pact Handbook. 6-9.
- Asia Indigenous Peoples Pact (AIPP) (2020). "Under the Cover of COVID: New Laws in Asia Favor Business at the Cost of Indigenous Peoples' and Local Communities' Land and Territorial Rights". Asia Indigenous Peoples Pact Foundation. 6-9, 10-12.
- Cambodia Indigenous Peoples Alliance (CIPA) et al. (2019). "Situation of Indigenous Peoples in Cambodia". The 3rd Cycle of Universal Periodic Review of Cambodia 32nd Session of the Human Rights Council. 1-6.
- Chakma, N. D. (2019). Extractive Industries and Free, Prior and Informed Consent of Indigenous Peoples. Asia Indigenous Peoples Pact. Retrieved from https://aippnet.org/wpcontent/uploads/2020/05/AIPP-Handbook-on-Extractive-Industries-and-FPIC-of-Indigenous-Peoples_web.pdf
- Doyle C. & Gilbert J. (2011). Indigenous Peoples and Globalization: From "Development Aggression" to "Self-Determined Development. European Yearbook of Minority Issues Online. 225-230.
- Erni C. (2008), "The Concept of Indigenous Peoples in Asia. A Resource Book", The Concept of Indigenous Peoples in Asia. A Resource Book and Asia Indigenous Peoples Pact Foundation. 378-379, 443, 452.
- Hennida C. et al. (2019). "Globalization and Indigenous People Adaptation". Sasi as Social Institution in Maluku. 96-100.
- International Fund for Agricultural Development (IFAD), (2012) "Country Technical Notes on Indigenous Peoples' Issues", Retrieved from 24089e12-d0e8- 43db-9fb8-978b48526499 (ifad.org)
- International Work Group for Indigenous Affairs. (2020). "Indigenous World 2020: Laos" Retrieved from <https://www.iwgia.org/en/laos/3604-iw-2020-laos.html>
- International Work Group for Indigenous Affairs. (2020). "Indigenous World 2020: Philippines". Retrieved from <https://www.iwgia.org/en/philippines/3608-iw-2020-ph>
- International Work Group for Indigenous Affairs (IWGIA), (2021) "Region and country reports". The Indigenous World 2021: 35th Edition. 186-221.
- International Work Group for Indigenous Affairs (IWGIA), (2022) "Region and country reports". The Indigenous World 2022: 36th Edition.177, 244-245, 254, 280-281.
- McCaskill, D., & Rutherford, J. (2005). "Indigenous peoples of South-East Asia: poverty, identity and resistance." In Indigenous Peoples and Poverty.138-148.
- Minority Rights Group International. (n.d). "Singapore" Retrieved from <https://minorityrights.org/country/singapore/>.
- Minority Rights Group International (2020)," Brunei Darussalam". Retrieved from <https://minorityrights.org/country/brunei-darussalam/>

- Salleh R. et. al (2021) "Who is the Native of Sabah? A Legal Analysis". Malaysian Journal of Social Sciences and Humanities (MJSSH), Volume 6, Issue 10. 558-566.
- Tessier J. (2015). "Indigenous Peoples and ASEAN Integration". Asia Indigenous Peoples Pact (AIPP) Foundation. 3.
- Tauli-Corpuz V. (2010). "Indigenous Peoples and the Millennium Development Goals". Towards an Alternative Development Paradigm: Indigenous Peoples' Self-Determined Development. 514.
- The ASEAN Secretariat. (2009) "Terms of Reference of ASEAN Intergovernmental Commission on Human Rights". Retrieved from <https://asean.org/wp-content/uploads/images/archive/TOR-of-AICHR.pdf>.