

10th Session of the Expert Mechanism on the Rights of Indigenous Peoples
10 – 14 July 2017

Agenda Item 6: Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned

Statement of Asia Indigenous Peoples Pact and Asia Caucus

Thank you, Ms. Chairperson.

It's been a decade since the adoption of the UNDRIP in 2007. In the global arena, the awareness and discussion regarding indigenous peoples' rights and issues have increased. International and regional human rights mechanisms and other bodies have made significant progress in applying the UNDRIP as reflected in the draft report of the Expert Mechanism. However, comprehensive realisation of our rights as indigenous peoples continues to be a challenge at the national levels. In Asia, the struggle for legal recognition and respect to self-determination, which are related to our collective rights to lands and territories and, in turn, inextricably bound to our traditions, cultures, languages, beliefs, social structures, judicial systems and identities, remain to be the main points of contention. It should be noted, however, that some Asian States have taken positive measures to realise the rights of indigenous peoples.

In 2008, Japan has reexamined its perception of homogeneity and voted to recognise Ainus as indigenous peoples. However, Japan still keeps declining to recognize Ryukuan / Okinawan as indigenous peoples despite of the UN's recommendation.

In Cambodia, the *2009 Policy on Registration and Right to Use of Land of Indigenous Communities* bolstered the *2001 Cambodian Land Law* that laid the ground for community land titling among indigenous communities. Nonetheless, community land titles have been slow to come. Though Indonesian State representatives assert that about UNDRIP is not applicable to Indonesia as heard in a statement yesterday, its Ministry of Home Affairs in 2014 has adopted guidelines to recognise the identification of masyarakat adat (customary societies) based on history, indigenous territory, customary law, and indigenous objects in line with international standards.

In Myanmar, through the passage of the *Ethnic Rights Protection Law 2015* and the establishment of an Ethnic Affairs Ministry with an indigenous person at its head, some progress has been done towards the acknowledgement of the country's indigenous peoples as 'indigenous'. However, challenges remain in the full conceptualization and

operationalization of indigenous peoples' rights within the framework of UNDRIP, and the spirit of the Panglong Agreement of 1947, still remain unfulfilled.

In Bangladesh, in 2016, the Chittagong Hill Tracts Land Disputes Resolution Commission Act 2001 was amended based upon the advice of the CHT Regional Council to recognize traditional land systems, although the rules are yet to be framed and lack of resources for the commission is yet to be addressed. Also, in 2016, indigenous peoples in Taiwan received an apology from the government for being forced to give up their land rights. But this has remained a lip service as the private lands were excluded in the delineation of traditional indigenous territories.

Thus, though there have been some good progress on recognition of indigenous peoples and realization of their rights in Asia, there is still a long way to go to fully realise the ends of the UNDRIP. States, such as Bangladesh, India, Lao PDR, Thailand and Vietnam continue to refer to indigenous peoples as 'ethnic minorities', 'adivasi', 'hill tribes', and 'tribes', among others. That reflects the weak political support of the States to the rights of their indigenous peoples as they provide limited to no recognition of indigenous rights.

At the same time, legal recognition is not a panacea to address indigenous peoples issues, as observed in the case of the Philippines, Nepal or Malaysia, particularly when seen from the point of implementation. Legal recognition nevertheless provides a formal status and a firm political and legal basis at the national level, to operationalize international human rights instruments and other documents on indigenous rights.

A decade has passed since the adoption of the Declaration but indigenous peoples remain among the most marginalised in every sphere of life. We continue to be disregarded in decisions that affect our lives and our lands. The clamor for respect of our right to self-determination and to our right to free prior and informed consent (FPIC) continues, as States have been equally persistent, and often hostile, in denying these rights to us.

We thus recommend the Expert Mechanism to

- Urge States, which recognize indigenous peoples, to seek assistance from the Expert Mechanism in the implementation of their laws and policies for indigenous peoples, including other laws and policies that relate to them; and advise States, which do not recognize indigenous peoples, to provide them legal recognition with rights as per the UNDRIP, including for understanding the specific needs and concerns of indigenous peoples from their non-indigenous counterparts;

- Further reiterate the Expert Mechanism proposal in 2013 to explicitly include UNDRIP in the list of standards on which the Universal Periodic Review of States is based, as echoed in the draft report of Expert Mechanism
- Analyse good practices and lessons learned with clear consideration of the factors and conditions, which make these practices work in these specific contexts. This is also in line with the recommendations made under Agenda Item 3, including of the Asia Caucus, regarding comparable trends and regional and sub-regional analysis, which, at least, for the analysis per region, was pointed out just recently, will be taken on by the Expert Mechanism—and that's highly appreciated

Having said these, we also strongly urge Asian states to:

- Provide formal legal recognition of indigenous peoples in the manner of their choice, where they have not yet done so;
- Respect our rights in line with the Declaration, including to free prior and informed consent (FPIC) and to participate and constructively engage in processes that may affect our identity, lives, livelihood and culture, especially those related to our lands;
- Provide immediate remedies and justice to the disregard and violations of our collective and individual fundamental human rights.

Presented by: joyce godio