

[22 May 2006, AM, Item 4b, # 164, presented by Famark Hlawncing]

United Nations Permanent Forum on Indigenous Issues
United Nations Headquarters
New York
15-26 May, 2006

Joint Statement by
the Asian Indigenous Peoples Caucus

Chairperson, ladies & gentlemen,

Warm greetings to all. The Asian Indigenous Peoples Caucus submits before you a number of recommendations, suggestions and observations concerning major human rights issues of indigenous peoples in Asia.

A. RECOMMENDATIONS FOR THE 5TH SESSION

Firstly, we make four three recommendations:

Major Recommendation 1:

DRAFT DECLARATION

For the Permanent Forum to urge the Human Rights Council to adopt, at its first session, a resolution submitting the *Draft United Nations Declaration on the Rights of Indigenous Peoples* as contained in the proposals of the chairperson of the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples (Annexe 1 of UN Document E/CN.4/2006/79) to the forthcoming substantive session of the United Nations Economic and Social Council for its final adoption by the United Nations General Assembly at its 61st session. This will be fully consistent with the resolution of the United Nations General Assembly (A/RES/60/142) urging the adoption of a Draft United Nations Declaration on the Rights of Indigenous Peoples as soon as possible.

Major Recommendation 2:

NEW EXPERT BODY ON HUMAN RIGHTS ISSUES CONCERNING INDIGENOUS PEOPLES

For the Permanent Forum to urge for the establishment of an Expert Body, directly reporting to the Human Rights Council, and dealing with human rights issues of indigenous peoples. The body should be composed of an equal number of governmental and indigenous experts serving in their personal capacities. It could sit at the United Nations Office in Geneva, and meet for one week before the appropriate sessions of the Human Rights Council. This body would fill – to an extent – the gap created by the non-

continuation of the work done by the UN Working Group on Indigenous Populations and the former UN Sub-commission on Human Rights. Rules for participation at the meetings of the expert body should be on the same basis as in the Working Group of Indigenous Populations and in the Permanent Forum on Indigenous Issues. This proposal is in accordance with the General Assembly Resolution No. 60/251 dated 3 April, 2006 that concerns the establish of the Human Rights Council, which, provides, among others, that the [future] Council shall “assume, review, and where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advise, and a complaint procedure”.

Major Recommendation 3:

PARTICIPATION IN PERMANENT FORUM WITHOUT HARASSMENT

To urge governments to respect the proceedings of this Forum, and to refrain from harassing any indigenous people for participating in this Forum. We regret to inform you that six indigenous persons from Bangladesh, were threatened to be summoned by a parliamentary committee for statements they made in the 4th session of this Forum. It was only after several representations were made to the Government of Bangladesh by individuals and organizations from different parts of the world requesting the government to refrain from such conduct, that the summons and other harassment was avoided. This is a most unfortunate precedent for this Forum.

Chairperson, we also make the following specific suggestions on various other human rights-related matters. I shall only refer to the subject now, and details of the recommendations are contained in the written form of our intervention, which we will submit to the members and observers participating at this Forum.

B. OTHER SPECIFIC RECOMMENDATIONS

Secondly, we make some specific recommendations in other human rights-related matters. These are:

(i) Urgent Human Rights Situations; (ii) Removal of Reservation Clauses to Human Rights Treaties; (iii) A Possible Permanent Forum Working Group on Human Rights; (iv) Support for Indigenous Participation In the Human Rights Council; (v) Constitutional Recognition of Indigenous Peoples; (vi) Citizenship Rights; (vii) Demilitarization of Indigenous Territories; (viii) Enquiries into Human Rights Violations by Security Forces; (ix) Trafficking of Indigenous Women and Children; (x) Asian Participation in International Human Rights Processes; (xi) Emergency Laws and Policies in Indigenous

Areas; (xii) Recognition of Rights over Forest Lands and Resources; (xiii) a possible Asian Regional Human Rights Commission; and (xiv) protection of isolated and semi-isolated indigenous peoples in Asia.

Specific Recommendation No. 1:

URGENT SITUATIONS

We draw your attention to a number of urgent human rights situations in Asia.

(i) On 3 April, 2006, indigenous people at Maischari, in Chittagong Hill Tracts, Bangladesh were attacked by settlers with military backing. 100 houses and one orphanage were burned down, more than 60 people, including a Buddhist monk, injured, and two indigenous women gang raped. Until today, the victims have not been rehabilitated, nor the perpetrators punished. As in the case of the earlier Mahalchari attack by military and settlers in 2003, perpetrators continue to enjoy impunity. Independent and impartial enquiries under governmental auspices are yet to happen in both cases. (ii) The situation of the Akha people in Thailand, is another urgent situation, as they are threatened with eviction of loss of their shifting cultivation and other lands. (iii) Another situation is that of the isolated Jarawa people of the Andaman islands. Without urgent action, there will be no Jarawa left in the near future. (iv) 12 Adivasis demonstrating against the non-payment by the TATA company of compensation for lost Adivasi lands were killed on the orders of the district administration in Kalinagar, within Orissa State. The families of the killed to yet receive justice and compensation. (v) Another continuing concern is the denial of the basic constitutional rights and recognition of "scheduled tribe" status of 6 million Adivasi people living in Assam state of India. (VI) The Nepal Army killed 2 Newar and 10 Tamang men and women on 15 Dec 2005 while they were celebrating festival. A 22 years old mother Sapana Gurung of two children raped and killed by Army on 26 April 2006 and a couple of people killed and injured when people protested the case in false accusation of terrorists attack. This case was occurred after two days of declaration of victory by the 2006 People's Movement in Nepal. From the start of Maoist People's War on 13 February to 31 Dec. 2005, 12, 341 have been killed – 8283 by State and 4582 by Maoists. Out of them, 4751 are not identified of their name and ethnicity and 2635 are indigenous peoples, i.e., 33 % is Indigenous among the identified killed persons and 341 children are killed.

Specific Recommendation No. 2:

REMOVAL OF RESERVATION CLAUSES TO HUMAN RIGHTS TREATIES

To urge member states of the UN to remove reservation clauses to human rights treaties affecting indigenous peoples.

Specific Recommendation No. 3:

PERMANENT FORUM WORKING GROUP ON HUMAN RIGHTS

The Permanent Forum should establish a task-force or working group to monitor and follow-up human rights issues and concerns of indigenous peoples not adequately addressed by existing human rights mechanisms and processes. This body should

coordinate with the proposed Expert Body and other relevant human rights mechanisms and processes.

Specific Recommendation No. 4:

SUPPORT FOR INDIGENOUS PARTICIPATION IN HUMAN RIGHTS COUNCIL

For member states of the United Nations, UN agencies and funds, bilateral and multilateral development agencies, and others, to support the participation of indigenous peoples at the Human Rights Council and other human rights–related United Nations, international, regional and national processes.

Specific Recommendation No. 5:

CONSTITUTIONAL RECOGNITION OF INDIGENOUS PEOPLES

To urge member states of the United Nations to amend their national constitutions, where they have not already done so, to formally, unequivocally and respectfully acknowledge and recognize the indigenous peoples of their country, and provide measures to respect and promote their rights.

Specific Recommendation No. 6:

CITIZENSHIP RIGHTS

To urge member states of the United Nations to acknowledge, without discrimination, the full citizenship rights of their indigenous peoples, and to amend their national constitutions and all relevant laws and policies, where they have not already done so. Particular focus should be given to ensuring citizenship for all children at birth.

Specific Recommendation No. 7

DEMILITARIZATION

For the Permanent Forum to urge the demilitarization of the lands and territories of indigenous peoples.

Specific Recommendation No. 8

ENQUIRIES INTO HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

For the Permanent Forum to urge governments to conduct impartial and independent enquiries into allegations of human rights violations perpetrated against indigenous peoples by state military, para-military, police, para-police, and other armed groups.

Specific Recommendation No. 9

TRAFFICKING OF INDIGENOUS WOMEN AND CHILDREN

For the Permanent Forum to urge member states of the UN and UN agencies to facilitate the implementation of existing regional treaties and agreements on prevention of trafficking of indigenous women and children. The Permanent Forum should promote the establishment of a global agreement on prevention of trafficking of women and children, with particular emphasis on indigenous women and children.

Specific Recommendation No. 10

RECOGNITION OF RIGHTS OVER FOREST LANDS AND RESOURCES

For the Permanent Forum to urge member states of the UN to recognise the ownership and use rights of indigenous peoples over forests and grazing lands that have been declared as forest reserves, national parks or ecological sites without the prior informed consent of the indigenous peoples concerned.

Specific Recommendation No. 11

EMERGENCY LAWS AND POLICIES IN INDIGENOUS AREAS

To urge governments to ensure that in indigenous peoples' areas where emergency, martial law, special administration, security or other measures are declared, human rights, humanitarian law and customary legal systems must be respected. Free and full access to such areas for journalists, human rights and humanitarian workers and NGOs should be ensured. Training and sensitization on human rights standards should be integrated into the regular training of all security personnel.

Specific Recommendation No. 12

ASIAN REGIONAL HUMAN RIGHTS COMMISSION

To urge governments in the Asian region to support the establishment of a regional human rights commission with a clear mandate to monitor and assess the human rights situation in Asia, with a specific mandate to monitor the rights of indigenous peoples.

Specific Recommendation No. 13

ASIAN PARTICIPATION IN INTERNATIONAL HUMAN RIGHTS PROCESSES

The Permanent Forum should facilitate the capacity development of indigenous organizations to enable their effective participation in national, regional and international human rights mechanisms and processes, including by facilitating the ECOSOC accreditation of indigenous organizations from different regions of the world.

C. CHINESE TRANSLATION OF TERM "INDIGENOUS PEOPLES"

The official documents of this Forum translate the English term "indigenous peoples" as "Tu Zhu". This is not an accurate translation that is respectful towards the dignity and

status of indigenous peoples. This term denotes a local community and implicitly links such racist and outdated concepts as “backward”, “barbaric”. Therefore, this term should be replaced by a more accurate and respectful term, in consultation with the indigenous peoples in Chinese-speaking societies. We offer the term “Yuan Zhu Min”.

D. REITERATION OF 4TH SESSION RECOMMENDATIONS

Thirdly, we reiterate our support to recommendations made at this Forum at its fourth session, particularly those contained in paragraphs no. 62 (*Addressing Urgent Human Rights Violations*), no. 66 (*Indigenous Rights in Curricula*), no. 68 (*Review of National Institutions*), no. 69 (*FPIC*), no. 72 (*Durban Plan of Action*), no. 73 (*Indigenous Peoples in Remote & Isolated Localities*), no. 75 (*Peacekeeping*) and no. 78 (*Ombudsman*). With regard to recommendations in paragraph 62, we draw your attention to urgent deterioration of the situation for many peoples across, including the Akha in Thailand, Karen and Chin in Burma, and the Jummas in Bangladesh. With regard to paragraph 73, we draw your attention to the plight of the isolated Jarawa people of the Andaman islands.

62. The Forum recommends that Member States, United Nations bodies and mechanisms, the Office of the United Nations High Commissioner for Human Rights and other parts of the United Nations system, strengthen the machinery to address the urgent, gross and ongoing human rights violations, militarization of indigenous lands and systemic violence committed by Member States against indigenous peoples.

66. The Forum recommends that all member States, with the assistance of United Nations agencies, as necessary, develop capacity-building programmes, including curricula that have a strong human rights focus, including the collective rights of indigenous peoples, across the spectrum of national educational institutions.

68. The Forum recommends that Member States review their constitutions with respect to the recognition of the existence and rights of indigenous peoples, with the effective participation of indigenous peoples.

69. The Forum recommends that Member States, the intergovernmental system, international financial institutions and the private sector, respect and adhere to the principle of free, prior and informed consent in all matters affecting indigenous peoples.

72. The Forum invites the Office of the High Commissioner for Human Rights to present an evaluation of the implementation of the Durban Plan of Action at the sixth session of the Forum (2007) pertaining to indigenous peoples, especially on indigenous women.

73. The Forum recommends that States pay special attention to the situation of uncontacted indigenous peoples, peoples in voluntary isolation, and peoples in isolated and remote localities and displaced peoples from indigenous communities. The Forum recommends that the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples pay special attention in his annual reports to the situation of these peoples. The Forum also considers that the situation of these peoples should be the subject of a special international meeting during the Second International Decade of the World's Indigenous People.

75. The Forum recommends that the Department of Peacekeeping Operations of the United Nations Secretariat establish a policy on indigenous peoples, in consultation with indigenous peoples.

78. In order to protect the human rights of indigenous peoples, the Forum recommends that States create indigenous ombudsmen offices, especially for indigenous women, ensuring the full and effective participation of indigenous women.

E. SUGGESTIONS AND OBSERVATIONS ON RECOMMENDATIONS MADE IN THE 4TH SESSION

Fourthly, we have the following observations to make with regard to the recommendations made in paragraphs 63, 76, 77 and 78 of the report of the 4th session. With regard to paragraph 63, the need for ratification of the Rome Statute on the International Treaty on the International Criminal Court (ICC), should be mentioned. The amended paragraph would thus read: "The Forum calls upon all those Member States, which have not yet done so, to consider ratifying, without delay, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Labour Organization (ILO)'s Convention No. 169 and the Rome Statute.

For paragraph 76, clear mention should be made of the *actual use of violence*, rather than just the *threat of use of violence*, and further, to add the phrase "government security forces: or "military, para-military, police, etc. The amended paragraph would thus read: "The Forum recommends that courts and judicial bodies take urgent steps to ensure the protection of indigenous peoples from the use and the threat of use of physical violence by all armed groups, including government security forces, military, para-military, militia, and police."

For paragraph 77, mention should also be made of the need for establishing independent national human rights commissions in countries where they do not exist, along with the need to include indigenous people in such commissions. For paragraph 78, mention should be made of the need to establish ombudsman in countries where they do not exist. The amended paragraph would thus read: "The Forum recommends that States include independent indigenous experts in national human rights

commissions, where they exist, and establish such commissions where they do not exist.”

Thank you