

10TH Session of the United Nations Permanent Forum on Indigenous Issues
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Item 3(c): Follow-up to the recommendations of the Permanent Forum - Free, Prior and Informed Consent:

Madame Chair, I am Jiten Yumnam of Manipur, North East India presenting the Asia Caucus Statement on Agenda 3©. Let me begin by recalling previous UNPFII recommendations urging all UN member States, UN Agencies, International Financial Institutions and private actors to fully uphold the right to Free Prior and Informed Consent of indigenous peoples with regard to policies, programmes and projects affecting them. These recommendations are premised on indigenous peoples' right to ownership, control and management of their communal lands, natural resources, and underlining respect for their right to FPIC as crucial for their survival and inherently linked to the exercise of right to self determination over their land and natural resources.

Madame Chair, I would like to inform you that many of the member states of the UN in Asia, the International Financial Institutions, more particularly World Bank and Asian Development Bank and private actors involved in the development processes in indigenous peoples land and territories did not recognize and implement the right to FPIC of indigenous peoples despite the UNPFII recommendations. For instance, the World Bank's Board of Executive Directors rejected Free Prior and Informed Consent in relation to the recommendations of both the WCD and the EIR and, instead decided to adopt the lower standard of '*free, prior, and informed consultation resulting in broad community support*' in its updated operational policy 4.10 on Indigenous Peoples which was approved in 2005. Also limiting FPIC requirements, the 2009 ADB Safeguard policy provides that indigenous peoples' 'consent' will be obtained only in the case of projects that involve: (i) commercial development of the cultural resources or knowledge; (ii) physical displacement; and (iii) commercial development of natural resources within customary lands provided that this may impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity or community of indigenous peoples (ADB, 2009).

Many countries in Asia continues to deny the existence of indigenous peoples in their territories, such as in India and Bangladesh and as such the recognition of fundamental rights - right to self determination and right to free prior and informed consent remains a major challenge. Developmental processes detrimental to the enjoyment and advancement of indigenous peoples rights and which cause destruction of indigenous peoples land and resources, such as mining, mega dams constructions are being pursued without their free prior and informed consent, leading to their widespread displacement and dispossession from their territories.

In armed conflict afflicted regions in Asia, States adopt military responses to subdue indigenous peoples' movement for right to self-determination over their own land and resources, such as in India's North East, Kalimantan, West Papua in Indonesia and in Cordillera and Mindanao in the Philippines and Myanmar among others. In many of these places, development policies and projects are being pursued forcefully with direct support of the State military. Defenders of indigenous peoples' rights are subjected to human rights violations, arbitrary arrest and detention, torture and even extra-judicial executions such as the case of Marcos Bangit in the Cordillera in 2007. Development aggression which disregards FPIC prevails in a climate of violations and impunity and pursued with misinformation campaigns.

There is also a challenge in the implementation of FPIC, even for those countries accepting FPIC such as in Philippines, where extractive industries, mining, mega dams, agribusiness projects are introduced without indigenous peoples consent as against recommendations of the PFII sessions. Madame Chair, many private parties, corporations, financial institutions etc wantonly intrudes in indigenous peoples territories for profit without clear cut policies and commitments on FPIC, leading to more violations such as in the case of ADB and IFC financed Lafarge Mining Project in Meghalaya, North East India, amongst others.

RECOMMENDATIONS:

The Asian Caucus would like to urge upon the Permanent forum to take the following measures:

- The Permanent Forum – or one or more of its members - should conduct a study on the practice Free, Prior and Informed Consent to be submitted prior to the 11th session of PFII and included within the agenda of the 11th session.
 - Ensure that Asian States establish full transparency and accountability concerning development processes affecting indigenous peoples territories by States and corporations with full implementation of free, prior and informed consent, in accordance with the customary laws and practices of the respective indigenous peoples and UNDRIP.
 - States and State owned corporations to consult and cooperate with indigenous peoples concerned in order to obtain their consent before the approval of any policies, plans and projects affecting their lands or territories and other resources.
 - Review all development projects introduced in indigenous peoples' land without their FPIC and to establish moratorium on all mega development projects till outstanding issues over implementation of FPIC is fully resolved with.
 - States which has accepted FPIC in principle should implement the recommendations by PFII session and also the recommendations by UN HR bodies and remove all exemption legislations or notification that limit implementation of such rights.
 - All International Financial Institutions to review its safeguard policies and projects to conform with the principle of free, prior and informed consent in all matters affecting indigenous peoples and adhere to provisions of the UNDRIP and to ensure participation of indigenous peoples in such processes.
 - The private sector to adhere to and uphold the principles of free, prior and informed consent and promote indigenous peoples self determined development process
- Khurumjari, Thank you, Madame Chair