

**United Nations Permanent Forum on Indigenous Issues
13 Session, New York, 12-23 May, 2014**

**Agenda Item: 5 Half-day Discussion on Asia Region
Statement of Indigenous Peoples Situation in South ^{East} Asia**

Indigenous Peoples in the Southeast Asia, are estimated to be more than 100 million people. They are present in nine (9) countries, belong to over 1000 different groups, and sometimes referred to as ethnic nationalities, ethnic minorities, Orang Asli/Orang Asal, Hilltribes, and MasyarakatAdat and others. They are the embodiment of the cultural and ethnic diversity of the region which is celebrated in the promotional brochures of the Association of Southeast Asian Nations (ASEAN) member-states. However, indigenous peoples in the region disproportionately suffer from multiple forms of discrimination and oppression based on their ethnicity, race, location and economic status, rendering them part of the poorest of the poor, most politically disempowered, and culturally and socially discriminated.

In Southeast Asia, indigenous peoples still face the challenge of recognition of their identity as indigenous peoples with collective rights. While indigenous peoples in a number of countries in Southeast Asia have formal legal recognition, indigenous peoples in other countries remain invisible in the fundamental law of the land or the use and applicability of the term "indigenous peoples" remain contentious. But even for those who are legally recognized, indigenous peoples are not always guaranteed the full range and enjoyment of their individual and collective rights. In some countries, it is limited, conditional or is not properly implemented. It also does not extend to all indigenous peoples within the country, and is often glossed over when states or private business interests prevail.

At the ASEAN level, while all of the member states voted in favour of the UN Declaration on the Rights of Indigenous Peoples, indigenous peoples remain invisible in the ASEAN Human Rights Declaration and in the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR).

In Indonesia, the Constitution (Article 18 B-2) recognises and respects traditional communities and their customary rights where these exist and as long as these are in accordance with the societal development and principles of the state and (Article 28i paragraph 3) recognizes their cultural identity. Some laws/decrees such as People's Consultative Assembly Decree on agrarian reform and Natural Resources Management (MPR's Decree 9/2001), agrarian regulations (Act 5/1960) and human rights law (Act no. 39/1999) give implicit, though conditional, recognition of some rights of "*masyarakat adat*" or custom law-based communities.

Malaysia's Federal Constitution recognises the notion of indigenous peoples to an extent (Articles 160(2) and 161(A)). However these articles are contentious (as in the case of Sabah natives), incomplete (as in the case of a number of Sarawak natives being left out in the detailed list), and non-inclusive (as in the case of the Orang Asli being completely omitted). The recognition in the Constitution however, does not go hand-in-hand with the measures to ensure they are given the necessary support and respect related to other recognised rights, including lands and territories, traditional ways of life or papers as proof of citizenship. Many indigenous peoples, especially from remote areas, have great difficulty getting their citizenship papers due to late registration of birth or to poor access to the registration department.

In the Philippines, the rights of “indigenous cultural communities/ indigenous peoples ” are constitutionally guaranteed (Article 2, section 22) and enabled through Republic Act 8371 or the Indigenous Peoples’ Rights Act [IPRA]. The IPRA protects and promotes indigenous peoples’ cultural integrity, the right to own and develop their ancestral lands/domains, and the right to free and prior informed consent (FPIC). However, the implementation of FPIC and land rights has been very problematic and manipulated resulting to conflicts and gross violations of their land rights.

In Cambodia, the 2009 National Policy on Development of Indigenous Peoples uses the term “*chuncheat daoem pheak tech*” which literally means “minority original ethnicity” in its documents to refer to peoples who are not Khmers, Chams, Chinese, Laos, Thais, or Kinh (Vietnamese). This term is also used in the 2001 Land Law and in the 2002 Forestry Law. In Vietnam’s Constitution (Article 5), indigenous peoples are referred to as “ethnic minorities” who “have the right to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures.” Myanmar has not conferred formal legal recognition to indigenous peoples in the manner of their choice.

In some countries the term indigenous peoples is not used or recognised, making self-identification and self-determination a major problem. The government in Laos does not use the terminology, and under its Constitution Laos is defined as a multi-ethnic society where all « ethnic groups » have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation (Article 8).

In Thailand, which recognizes “traditional communities” under the new Constitution but not the term “indigenous peoples,” many of the over half a million stateless population are indigenous peoples (UNHCR report 2014), as almost half of them are not citizens. Its 2007 Constitution is silent on citizenship rights, and the country is not part of any international convention regarding statelessness. Due to the lack of citizenship rights, the indigenous peoples are considered “illegal aliens” and have been subjected to arbitrary arrest, discrimination, denial of basic rights and social services, such as education and healthcare, freedom of movement, and land ownership.

The non-recognition of Indigenous Peoples as distinct peoples with collective rights, including citizenship, remains the biggest obstacle as the ASEAN moves towards an ASEAN Community in 2015. Furthermore, the lack of space for political participation, the failure to recognise customary laws and enable self governance, lack of indigenous women in decision making systems in both the state system and traditional institutions, persisting stigma and discrimination (both institutionalised and indirect), non-recognition of the educational institutions and traditional health-care systems, lack of citizenship and the economic and social marginalisation of Indigenous Peoples contribute to the deprivation of the rights of indigenous peoples.

With the drive for sustainable development, ASEAN is exerting all efforts to achieve a single market economic community by 2015. It aims to achieve this through increased investments in the mineral, energy and transport infrastructure sectors, with physical connectivity of ASEAN countries to be done through a multi-modal transportation system through land, water and air, and the so-called “green economy.” Among the planned infrastructure are the ASEAN power grid, Trans-ASEAN Gas Pipeline, ASEAN Highway Network, Singapore-Kunming Rail Link and regional telecommunications networks. In the Mekong region, construction of two of 11 long planned hydroelectric power projects in the Lower Mekong River, nine in Laos and two in Cambodia, has started to displace indigenous and local communities. Many of these development projects and the resources to build them are in indigenous territories

For indigenous peoples in Southeast Asia, the avowed rhetoric of sustainable development as people-centered and for environment protection is merely lip service. There are no specific policies and measures for legal and environmental protection of indigenous peoples' rights over their lands, territories and resources. The development approach of ASEAN is based on a failed model of economic growth that puts emphasis on capital-intensive, large infrastructure projects such as energy, transportation and mining that largely benefit big business corporations and those in power. Sustainable agricultural production for food sufficiency is sacrificed for biofuel plantations and production for export. The grand plan of ASEAN in the name of sustainable development is likely to cause further exploitation of resource-rich indigenous territories, human rights violations and conflicts, widespread disasters, as well as the further marginalization of indigenous peoples who remain invisible in ASEAN.

With this situation, Indigenous Peoples in Southeast Asia reiterate our recommendations:

For ASEAN member-states:

1. To initiate dialogues at the local, national and regional levels with Indigenous Peoples' representatives to address their legal recognition as distinct peoples with collective rights under international human rights law.
2. To review their own national legal framework with a view of incorporating provisions of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), especially to the right to lands, territories and resources, to self-governance, and cultural integrity, in their national instruments while at the same time repealing/ revising laws and policies that are not consistent with the UNDRIP.
3. To immediately implement the requirement for the Free Prior and Informed Consent (FPIC) of indigenous communities in relation to any developments in their territories.
4. To establish effective mechanisms at the local, national and ASEAN level to ensure the full and effective participation of Indigenous Peoples on matters that concerns them, as well as in addressing their urgent concerns relating to their rights and welfare.
5. To adhere to their obligations to UN Charter, international human rights treaties and standards, which respect and protect the rights of indigenous peoples, women and children.
6. To review laws and policies which specifically include the establishment of mechanisms of accountability and access to justice.

For the ASEAN Intergovernmental Commission on Human Rights (AICHR):

7. To conduct dialogues and meetings with indigenous leaders and representatives at the national and regional levels for the inclusion of the human rights concerns of Indigenous Peoples in the work of the AICHR.
8. To designate a focal person for indigenous issues amongst the members of the AICHR towards the formation of a Working Group that would look into the issues and concerns of Indigenous Peoples.