

Asia Indigenous Peoples Caucus Intervention to the 16th Session of the UN Permanent Forum on Indigenous Issues

24 April 2017

Agenda Item 8: Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: Measures taken to implement the Declaration.

Statement of Asia Indigenous Peoples Pact and the Asia Indigenous Peoples Caucus

Thank you, Ms. Chairperson.

I am Mai Thin Yu Mon of Chin Human Rights Organisation (CHRO). On behalf of the Asia Indigenous Peoples Caucus, I stand to address on agenda item 8: Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples.

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. But comprehensive realisation of our rights as indigenous peoples continues to be a challenge at the national level. In Asia, the struggle for legal recognition and respect to self-determination, which are related to our collective rights to lands and territories that are, 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 Indonesia, the Ministry of Home Affairs recognised the identification of indigenous peoples must be based on history, indigenous territory, customary law, and indigenous objects in its *Guidelines for Recognition and Protection of Indigenous Peoples* issued in 2014. 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. 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, although the Rules are yet to be framed and the logistical and manpower shortages of the commission are yet to be addressed. In Burma/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 towards the acknowledgement of the country's indigenous peoples as 'indigenous', although challenges 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.

Furthermore, in 2008, Japan has reexamined its perception of homogeneity and voted to recognise Ainu as indigenous peoples. However, Japan still keeps declining to recognize Ryukyu / Okinawan as indigenous peoples despite of the UN's recommendation. Also, in August 2016, a president in an Asian state apologised to the indigenous peoples on behalf of the previous governments for forcing them to give up their land rights and practices, which eroded their aboriginal culture. But this has remained a lip service as the private lands were excluded in the guidelines on the delineation of traditional indigenous territories, which would deprive indigenous peoples of the rights to participate in the development of traditional territories that have been privatized.

In contrast, Lao PDR continues to refer to indigenous peoples as 'ethnic minorities', with no direct legal recognition as indigenous peoples. Conversely, other states, such as Bangladesh, Malaysia, Vietnam and Thailand provide a certain level of recognition to indigenous peoples but refer to them in different terms, such as 'ethnic minorities', 'traditional communities,' 'hill tribes,' 'tribes,' 'small ethnic groups' and 'native'. Such use of alternative terms to refer to indigenous peoples reflects the weak political support of states to the rights of their indigenous peoples. This is not to say, however, that other states with stronger and more formal legal recognition of indigenous peoples have necessarily been better at fulfilling, protecting and promoting our rights as indigenous peoples.

Legal recognition is not a panacea to address indigenous peoples issues, as observed in the case of the Philippines, India or Nepal, particularly when seen from the point of implementation or operationalization. However, direct 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 peoples' rights and to combat discrimination, lack of access to justice, to protect and promote our rights and access to basic social services, among others.

A decade has passed since the adoption of the Declaration but indigenous peoples remain among the most marginalised in terms of social, cultural, political and economic opportunities. We continue to be disregarded in decisions that affect our lives and our lands. The clamour 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.

Having said these, we 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 right 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.

Correspondingly, we recommend to UN agencies, media and international development partners to:

- Continuously monitor with us the implementation by the states of the UNDRIP, including our fundamental human rights and freedoms;
- Sustain and strengthen the spaces for constructive and respectful engagement between states and indigenous peoples;
- Intensify support to indigenous peoples in their efforts to make their states more accountable to their citizens with regard to human rights violations, particularly through effective oversight mechanisms.