

**Human Rights Council  
Expert Mechanism on the Rights of Indigenous Peoples  
Sixth session, 8 – 12 July 2013  
United Nations Office, Geneva, Switzerland**

**Agenda Item 5: Study on the access to justice in the promotion and protection of the rights of indigenous peoples**

**Asia Indigenous Peoples Caucus Statement by Mrinal Kanti Tripura**

Mr. Chair, expert members, distinguished government delegates, indigenous sisters and brothers.

Asia Caucus welcomes the draft study on access to justice in the protection and promotion of the rights of indigenous peoples. In the current draft study, we appreciate the inclusion of the issues related to land and territories of indigenous peoples, and indigenous women and their links to access to justice. Further, we endorse the Expert Mechanism Advice No. 5 (2013) contained therein.

Access to justice of indigenous peoples is a grave concern in Asia especially in relation to the entry and operations of extractive industries in indigenous territories. In the recent past, Indigenous Peoples who are defending their lands, territories and resources have been subjected to various forms of human rights violations including extra-judicial killings, arbitrary arrests, detention, torture, disappearance, forced evacuation, and other forms of gross and systematic human rights violations. Perpetrators have not been arrested, prosecuted and punished at all. Rather, the roles of the law enforcement agencies and institutions have not been responsive to addressing issues related to indigenous peoples access to justice.

In the Regional Southeast Asia Regional Consultation on the Development, Access to Justice and the Human Rights of Indigenous Women held on October 30 – November 2, 2012, indigenous women identified the failure of governments to obtain their communities' free, prior and informed consent (FPIC) in relation to granting of concessions for mines, plantations, dams, infrastructures and other such projects, as the main barrier to their access to justice. Indigenous communities are often left with no knowledge of recourse for human rights violations arising from such projects because information on the project and recourse mechanisms is withheld, inadequate, biased, or not in place. Obtaining Indigenous Peoples FPIC on any development related to their land, territories and resources will contribute to the promotion of their access to justice.

Customary laws govern community affairs, and regulate and maintain social and cultural practices, economic, environmental and spiritual well-being. These laws allow indigenous peoples to maintain their integrity and deal with change. Relatedly, the customary justice system does not only deliver prompt and cost-free

justice but it is also the most dynamic since the community can change immediately their system if they feel so. Indigenous women support their traditional justice systems because the proceedings are carried out in their local languages in their own communities, they feel safer, and they are supported by their families. We believe that access to legal remedy for human rights violations calls for the recognition of these customary laws and justice systems that is already delivering justice to indigenous peoples. We recommend for the recognition of the independence of the customary legal and justice system which are in line with international human rights law as part of the state legal structure.

Generally, indigenous peoples have poor access to justice to the formal legal justice system due to issues related to costs, geographic/physical accessibility, language, legal literacy, time, cultural and gender sensitivity, and other barriers. This is compounded by discriminatory attitudes of legal service providers and internalization of racial prejudice among indigenous peoples. The nature of a justice system is dynamic and evolutionary and thus to make the national justice systems accessible to indigenous peoples, we recommend indigenous peoples participation in the course of reforming laws and the structure of justice systems. Concretely, the Member States must create an environment where the customary justice system can function as a separate official system that is integrated under the state legal system.

The international legal framework on indigenous peoples rights, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), provides the guidance for states on the respect, protection and fulfillment of indigenous peoples rights. The failure of the Member States who favored the adoption of the UNDRIP to adopt the provisions of the Declaration in their national laws, policies, programmes and plans, is a factor in the limited access of indigenous peoples to the state legal system without any discrimination. We urge to the member states to initiate activities for implementing the UNDRIP for the fulfillment of the access to justice of indigenous peoples.

We urge the member states to effectively address the barriers that limit indigenous peoples access to justice by providing legal recognition of customary justice systems by using the principles of equality before the law and non-discrimination to enhance the role of customary law.

We also urge the UN agencies, bodies, human rights mechanisms and institutions to underscore indigenous peoples right to access justice and support their activities in line with the UNDRIP.

Thank you.