

ASIA CAUCUS STATEMENT

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES
FIFTH SESSION, 9-13 JULY 2012
UNITED NATIONS OFFICE, GENEVA, SWITZERLAND

AGENDA ITEM 7:

Proposals to be submitted to the Human Rights Council for its consideration and approval

Delivered by:

Gina Shangkam in behalf of the Asia Caucus

In most of the countries in Asia, indigenous peoples live in remote locations, which make it very difficult to access mainstream justice. Many countries do not have National Human Rights Institutions or ombudsman. Indigenous customary law and judiciary systems are often not recognized by the state. Indigenous peoples' access to justice and their participation in different legal systems relates to such important issues as livelihood, personal security and liberty, and issues related to development projects in indigenous territories and subsequently it has severe consequences on the promotion and protection of rights if this access is denied or not properly implemented.

Access to justice is often influenced by a degree of legal pluralism where formal state systems of justice exist side by side with indigenous systems also known as customary practices. Customary practices are not static but dynamic and can be divided into different categories including laws that govern family and kinship for example related to marriage and child custody (also known as Family Law), laws governing territories and ownership, relations between and among peoples and nations, as well as conflict resolution. They also relate to collective rights that are of fundamental importance to indigenous peoples. Used appropriately, customary practices can create harmony within a community. However, certain practices can also lead to unfair treatment of different sections of indigenous communities and clash with basic human rights standards. In particular, women's rights can be put under pressure due to a lack of recognition, participation, representation and awareness of women's rights within customary institutions.

The often marginalized position of indigenous peoples also complicate and limit their access to justice within formal legal systems. This is often caused by discrimination or a lack of knowledge on indigenous peoples' issues from state officials, language barriers, non-recognition of traditional livelihoods and other complications. In some cases indigenous peoples even face impunity especially in areas under conflict and militarization.

Development-induced violence, especially those due to development projects funded by international financial institutions (IFIs), have been documented and

brought to the attention of these bodies. The fact that these are happening despite the presence of so-called safeguard policies is indicative of ineffective mechanisms for addressing issues that arise when the presence of indigenous peoples is established in such projects. The minimal engagement of indigenous peoples in grievance mechanisms of IFIs is also indicative of the problematic access of indigenous peoples to such remedies.

We call upon the Expert Mechanism and the Human Rights Council to take on access to justice for its next study due to its importance and in relation to the escalation of serious human rights violations happening in Asia and in other parts of the world where indigenous peoples are. In Asia, access to justice is an issue that has been continually raised in the yearly Asia preparatory meeting of indigenous peoples to discuss indigenous peoples' participation in UN mechanisms and procedures.

We echo the view of the Global Indigenous Caucus of the disappointing practice of the Human Rights Council in not taking into consideration the recommendations for studies from the EMRIP. We believe this ignores the spirit of the resolution that created the EMRIP which states, "The Expert Mechanism may also suggest proposals to the Council for its consideration and approval."

Lastly, we take note of the weak participation in this session of governments from Asia. This demonstrates the lack of sincere interest from our governments to hear the voices of its indigenous peoples. We therefore implore these governments to start engaging indigenous peoples at this level by listening to our voices here, even as we engage them at the homefront.