

**Expert Mechanism on the Rights of Indigenous Peoples  
Sixth Session, 8 - 12 July 2013  
United Nations Office, Geneva, Switzerland**

*Delivered by: Patricia Miranda Wattimena*

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

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

I deliver this statement on behalf of Aliansi Masyarakat Adat Nusantara (AMAN) from Indonesia, an indigenous organization that consists of 2240 indigenous communities as members with the population of 15-17 million peoples.

AMAN welcomes the draft study on access to justice in the promotion and protection of the rights of indigenous peoples. We especially appreciate and endorse the Expert Mechanism advice No. 10 to the member states regarding the implementation of court decision on the recognition of the right of indigenous peoples over their land, territories, and resources.

In Indonesia, for more than ten years Law on Forestry has been used as an instrument by the government in the country to deprive the right of indigenous peoples over their land, territories, and resources. Customary forest has been taken away and transferred as State forest. Moreover, in the name of the State, the forest is further given to private sectors through various concession schemes without considering or respecting the right of the respective peoples in the region. It is clear that the non-recognition of indigenous peoples rights, in particular their right over land, territories, and resources along with their customary justice system and institution directly leads to the lack of access to justice faced by the peoples.

On 16<sup>th</sup> May 2013, the Constitutional Court of Indonesia through its Ruling clearly recognized the ownership of indigenous peoples over their customary forest. The ruling changes the status of customary forest area to stand as different category from State forest area. Looking at the progress, we would like to express our appreciation to the Government of Indonesia regarding this matter. However, we are still deeply concerned about the escalation of agrarian conflicts as a result of the lack of access to justice faced by the respective indigenous peoples in the country.

We believe, as one of the UN member states that adopted the UNDRIP in 2007 it is strongly important for Indonesia to respect, protect, and fulfill the rights of indigenous peoples in the country. Therefore national legislation that legally recognizes the rights of indigenous peoples is urgently needed, as the non-recognition of indigenous peoples in Indonesia is one of the direct causes of the discrimination against and violation of their right in access to justice. Therefore, we appreciate the effort of Indonesian Government in formulating the Draft Act

on Recognition and Protection on the Rights of Indigenous Peoples. Regrettably, in the recent draft there is still no recognition of customary justice system and institution. Customary institution still designed as to be formed and controlled by the government.

We urge the Government of Indonesia to improve the content of the Draft Act on Recognition and Protection on the Rights of Indigenous Peoples in full cooperation with the representatives of the indigenous peoples so that it appropriately and comprehensively addresses the needs and concerns of the affected population. Furthermore, we urge the Government of Indonesia to immediately improve and enact the Draft Act to legally and effectively protect indigenous peoples' rights in full accordance with the UNDRIP.

Further, We urge the Government of Indonesia to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the intent or effect of discrimination against and violating indigenous peoples rights, especially their right in access to justice.

Finally, we urge the Government of Indonesia to establish a mechanism, based on the full recognition of the ownership of indigenous peoples over their customary forest as decided by the Constitutional Court Ruling on the judicial review of Law on Forestry and to monitor the implementation of the Ruling, further to protect and promote the rights of indigenous peoples, especially ensuring the fulfillment of their right in access to justice.

Thank you.

**ANNEX**