

6th Session of the UN Expert Mechanism on the Rights of Indigenous Peoples

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

Closing Statement by Jannie Lasimbang, Expert Member

Mr. Chairman,

I would like to take this opportunity to share about the SEA Regional Consultation on Development, Access to Justice and the Human Rights of Indigenous women referred to by the Asia Caucus in their statement, and where I participated on behalf of the EM. The Regional Consultation, organised by the Asia Indigenous Peoples Pact, was intended to facilitate a dialogue between indigenous women facing human rights and access to justice issues due to state and corporate activities, and human rights mechanisms at the national and regional levels. The meeting received serious response from the UN Women, the ASEAN Commission on the promotion and protection of the rights of women and children, the National Women Commission of Indonesia (KOMNAS Perempuan), and National Human Rights Institutions in the region.

Among the issues that arose were the denial of the rights of indigenous women to determine their own path to political, social, economic and cultural development. This is seen in the lack of efforts to undertake meaningful and substantive consultation with IPs and obtain their free prior and informed consent on all projects and activities that are implemented in their territories. The lack of, or limited access to justice remedies on violations arising from development projects are exacerbated by their non-recognition as rights-holders with collective rights. Women complained that their access to justice are often denied, inaccessible or they face discrimination. Even frontline justice services like police assistance is denied, and complaints are not accepted, nor acted upon. Often, village officials

are scared to act on requests for assistance to resolve problems involving concessionaires.

Mechanisms at the national level where indigenous peoples can refer their complaints before, during and after the implementation of projects are still absent. Lack of culturally-sensitive justice remedies hamper the enjoyment of indigenous women and their communities of the full enjoyment of all their human rights. It was asserted that development projects have caused the destruction of indigenous women's traditional and cultural practices, and their means of subsistence which, in turn, has led to their further impoverishment, loss of status and marginalization.

The meeting also reported on an interesting project entitled "*Empowering Indigenous Women in Traditional Customary Institutions*" that involves five case studies with action-oriented approaches.

Preliminary results of the studies showed common issues, in that customary governance institutions are dominated by men; that there are male biases in customary law on inheritance; and that domestic violence is among the most prevalent forms of violence in the communities covered by the project.

Among the remedies being taken are by ensuring women's participation in decision-making bodies and changes in customary institution; women's active engagement with traditional decision-making processes to address customary laws and practices that discriminate and perpetuate violence against women; and to develop and strengthen indigenous women's involvement in local governance.

Mr Chairman, while I heard many expressing satisfaction to the report of the study, many also pointed the limitations in which some of the topics have been dealt with. I have taken notes of the additional point and recommendations made and my colleagues and I will be looking at these in the process of finalising the report. I am pleased to note that States are no longer talking about customary or

indigenous legal system not being well-understood and therefore they unable to recognise such a system. In reality however, there is still insufficient confidence and support for such legal systems and therefore indigenous legal system lags far behind other justice systems or constant attempts are being made towards integrating this with state system rather than upholding, revitalising and strengthening indigenous legal system.

Panel Discussion

I want to thank the presenters, particularly for sharing specific examples. The example referring to TRC and thank Chief Willie for sharing this.

I would also like to highlight the conduct of a National Inquiry on Land Rights of IPs which the Malaysian Human Rights Commission (SUHAKAM) conducted.

TRC and other transitional justice processes allow IPs to come forward, and even if some of recommendations may not be accepted by states or other actors, such processes will help unpack complicated issues such as historical and ongoing allegations of human rights violation such as the dispossession of land through communal titles and converting such lands into plantations as raised by Andrew from Malaysia.

Such processes can also pave towards other redress mechanisms and future violation of indigenous rights.

One of the challenges for such transitional justice process that was identified is the difficulty for IPs to come forward to give formal submissions. Support from IPOs is thus very important for the preparation of evidences.