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**Second Session of the Expert Mechanism on the Rights of Indigenous Peoples
United Nations
Geneva, Switzerland
August 10-14, 2009
Statement of Asia Indigenous Peoples' Caucus**

Agenda Item: 4 (b): Adjudication, Remedies, Repatriation, Redress and Compensation

Madame Chairperson,

Since this is the first time I take the floor, I would like to express my congratulation for your election as chairperson of this session. I have full confidence on your capacity to lead this session to be successful and fruitful.

Madame Chair,

We, the indigenous peoples particularly from Asia face many land disputes that are unresolved and our land rights are often not legally recognized. Therefore, it is urgent and imperative to implement our rights pertaining land and resources. Along this line, the Asia Caucus wishes to express our gratitude to the EMRIP for choosing to discuss the theme of adjudication, remedies, redress, repatriation and compensation in this session.

Nine articles namely article 8, 10, 11, 12, 20, 27, 28, 32 and 40 from UN Declaration on Rights of Indigenous Peoples relate to the theme of adjudication, remedies, redress, repatriation and compensation. Of the nine articles, seven refers directly to customary law and lands and natural resource management. All of these nine articles include the task of states to take effective measures and to establish mechanisms for the implementation of these provisions. In other words, these articles describe States' responsibilities for implementation of these rights in conjunction with the comprehensive participation of indigenous peoples concerned.

Therefore Madame Chairperson, the Asia Indigenous Peoples' Caucus would like to make the following recommendations;

At national level and regarding to;

1. Adjudication and remedies:

- Adjudication bodies should provide full consideration to common laws including customary law
- Establish a new mechanism such as special tribunal, commission or others where the existing mechanism is discriminatory against Indigenous Peoples. The mechanism should be inclusive, quick, accessible and transparent.
- Where there are court cases, legal aid should be provided.
- Prioritize and expedite hearing of cases of Indigenous Peoples
- Set up monitoring body to ensure that new laws do not erode the rights of the Indigenous peoples

- Where necessary, review and reform the national constitution and other national laws and policies

2. Compensation

FPIC and consensus at all levels ~~and~~ should be applied to the following:

- A continuous and equitable benefit sharing. For example, affected Indigenous Peoples could be given a share or equity in the current profit earning company.
- Process of compensation is done transparently
- Annuity based compensation (not a one off/lump sum payment)
- Set up trust funds
- If resettlement happens, land of the equal value and one that allows Indigenous Peoples to continue livelihood in similar manner to before

3. Repatriation

- The holder of the artifact should create a catalog to declare and share the information of the artifact with Indigenous Peoples and others concerned.
- Establish a process of dialogue to create pressure on the holder of the artifact to repatriate the artifact

Madame Chairperson,

We would also like to recommend the following:

- Organize expert meetings on the theme of adjudication, remedies, redress, repatriation and compensation within the Human Rights Council and sponsored by OHCHR, EMRIP, PFII
- Engage the Special Rapporteur on fundamental freedom and basic human rights of indigenous peoples in dialogues with governments for fulfillment of their obligation contain in the aforesaid provisions in UNDRIP
- Request the EMRIP to compile good practices and formulate/recommend guidelines for governments to come up with the appropriate mechanism or processes/procedures for adjudication, remedies, redress, repatriation and compensation. Asia Indigenous Peoples' caucus is ready to assist the EMRIP in providing the necessary support in compiling these tasks. The caucus proposes to take this task for two years, with EMRIP providing a preliminary report in the 3rd session

Thank you, madame chairperson