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United Nations Permanent Forum on Indigenous Issues

United Nations Headquarters

New York

21 April to 2 May, 2008

Joint Statement by

The Asian Indigenous Peoples Caucus

Agenda item 5: Human Rights

Mr - FAR MARK HUA WACHING

Chairperson, ladies & gentlemen,

Warm greetings to all. The Asian Indigenous Peoples Caucus reaffirms recommendations, suggestions and observations that the caucus made in previous sessions, particularly in the 6th session of this Forum, concerning major human rights issues of indigenous peoples in Asia, to the extent that they are still relevant.

We would like to open the statement with welcoming the development of human rights field in last one year that particularly relates to Indigenous Peoples:

- a) The adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),
- b) The Bolivian government's enacting UNDRIP as rights of Indigenous Peoples in their national law,
- c) The establishment of the Expert Mechanism on the Rights of Indigenous Peoples,
- d) The appointment of Prof Jim Anaya as a Special Rapporteur on the situation of human rights and fundamental freedom of the Indigenous Peoples,
- e) The report by Prof Rodolfo Stavenhagen, the former Special Rapporteur on the situation of human rights and fundamental freedom of the Indigenous Peoples, on the situation of Indigenous Peoples in Asia in 2007 as it contains in UN document no. A/HRC/6/15/Add.3, which appropriately and fully reflect and well-ground real situation,
- f) Trainings on Human Rights-based Approach to Development and Indigenous Peoples by UNDP-RIPP in Nepal and Philippines
- f) Adoption of United Nations Development Groups Guidelines on Indigenous Issues which was finalized in February 2008,
- g) Ratification of ILO convention no 169 by the Government of Nepal,
- h) The adoption of the ASEAN Charter, in particular the commitment to establish an ASEAN

human rights body as stated in article 14 of the Charter which would provide for a stronger regional framework to address the human rights situation in the Member States,

Madame Chairperson,

We note that the following recommendations of the 6th session of the PFII contained in United Nations Document no. E/2007/43; E/C.19/2007/12 have not been implemented effectively: particularly

Para 76, " The Permanent Forum recommends that the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism undertake a study on the implications of national security and anti-terrorist laws, policies and programmes for indigenous peoples and make recommendations on the human rights of indigenous peoples."

Para 92, " The Permanent Forum recommends that the Human Rights Council update and complete the United Nations study on treaties, agreements and other constructive arrangements between States and indigenous populations,¹³ including the possible appointment of a rapporteur to carry out this task and to provide regular reports to the Human Rights Council, the Permanent Forum and other appropriate bodies.

Para 98 (b), (c), (d), (e), (f), and (g), " The Permanent Forum recommends that Asian States:

- (b) Recognize indigenous peoples constitutionally and legally as peoples, promote legal reform, in particular with regard to the recognition of indigenous peoples' collective land rights and their customary laws and institutions, which promote diversity and pluralism;
- (c) Adopt laws regulating the activities of investors and mitigating the negative impact of economic liberalization on the territories of indigenous peoples;
- (d) Have national laws in conformity with relevant international norms and standards;
- (e) Establish land commissions or mechanisms that address violations of indigenous peoples' land rights, facilitate the restitution of alienated land and settle disputes;
- (f) Establish full transparency regarding projects on indigenous territories by States and corporations, through the implementation of the principles of free, prior and informed consent, in accordance with customary laws and practices of the respective indigenous peoples;
- (g) Abandon transmigration policies and programmes and prevent illegal migration to indigenous territories.

Para 100 "The Permanent Forum recommends that national human rights institutions and commissions address indigenous peoples' issues and include indigenous experts as members of such bodies."

Para 101 "The Permanent Forum recommends that United Nations country teams in Asian

countries with indigenous populations, in cooperation with indigenous peoples, formulate a matrix of indicators, benchmarks and milestones to assess the outcomes and results of their policies and programmes relevant to indigenous peoples. Furthermore, the Permanent Forum recommends that United Nations agencies and donor agencies expand their funding and technical assistance to support capacity-building of Asian indigenous peoples' organizations."

Para 102 "The Permanent Forum calls upon the member States of the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) to recognize the collective rights of indigenous peoples, and calls on ASEAN to ensure that the rights of indigenous peoples are integrated into the development process of the ASEAN charter."

Para 103 "The Permanent Forum denounces the extrajudicial killings of indigenous leaders and activists in several Asian States, as reported by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on extrajudicial, summary or arbitrary executions, and urges the concerned countries to investigate these reported cases and to provide redress to the relatives of the victims."

Para 106 " The Permanent Forum fully supports plans by indigenous peoples' organizations and networks in Asia to undertake assessments of how peace agreements that affect them are being implemented in specific countries, and calls on donor agencies to support those initiatives" and among others.

Furthermore, we would like to express our concern on usage of the term "indigenous peoples" that is discriminatory connotation by one of UN official languages which the Caucus urged to review it in the 5th session of this Forum in 2006.

Madame,

We would like to draw the attention of the Forum on the ongoing violations of indigenous peoples' rights which need to address urgently;

- a) Non-recognition of existence of indigenous peoples by the Governments as well as partial recognition which connotes racial discrimination (i.e. Nepal).
- b) Non-recognition of rights to land, resources and territories of Indigenous Peoples remain major issues in Asia, i. e. the deprivation of land and forests by force or forced displacement from their own territories in various countries.
- c) Non-implementation of laws protecting Indigenous Peoples' rights to land and resources,
- d) Transmigration of members of dominant society in the indigenous territories is also still rampant.
- e) Displacement by development projects initiated by governments, international financial

institutions and multinational companies are putting much pressure on the already scarce land and resources of Indigenous Peoples. Such projects include plantations and mining concessions, without Free, Prior and Informed Consent (FPIC).

f) Militarization on indigenous territories and sexual harassments against indigenous women and children by military personnel are critical issues which should be seriously addressed by the Forum. These cases often occur in Burma, Northeast India, Okinawa (Japan).

g) Threats and killing of human rights defenders are rampaging. Many indigenous activists have been arrested while trying to address their grievance through national and international human rights systems.

We strongly condemn the recent human rights violations against the Indigenous Peoples such as: extra-judicial killing in Bangladesh, Burma and Philippines; land grabbing, attacks and burning down their houses by the settlers in Chittagong Hill Tracts, Bangladesh; sexual assaults by the military personnel in Okinawa (Japan), Burma, Northeast India; and displacement by large-scale development projects initiated by the governments, international financial institutions and multinational corporations.

Madame Chairperson,

Having say the above mentioned so, the Asia Indigenous Caucus wish to put forward our recommendations;

RECOMMENDATIONS FOR THE 7TH SESSION

1. Implementation of the UNDRIP

We strongly support the report by Mr. Wilton LittleChild and Ms. Ida Nicolaisen (E/C.19/2008/2) particularly on Para 37 (a) and (b) Para 39 of the creation of a FORUM Committee on UNDRIP. This is in conformity with the Article 42 of the UNDRIP. We request the Forum to extend extra 3 days in its 8th session for elaboration of mechanism of the implementation on UNDRIP and keeps implementation of the UNDRIP as one of permanent agendas in the future session of the Forum.

(Alternative) We request the Forum to organize workshop on mechanism of implementation of UNDRIP and invite at least 10 indigenous experts from each region. The Forum shall open further elaboration on the outcome of the workshop in its agenda item for one day at the 8th session of the forum.

We urge the Permanent Forum to recommend the translation of UNDRIP text as a part of the measures for implementation. In this process, we urge the governments to translate it into

national/official languages, whereas Indigenous Peoples are to translate it into their own languages. The caucus requests that the Forum recommends the UN agencies to make resource available for Indigenous Peoples organizations for the purpose of translation in consistent with the Article 41 of the UNDRIP.

In addition, other measures such as awareness raising among Indigenous Peoples and civil societies and series of campaign is necessary. This should be done through/towards different actors such as the governments, Indigenous Peoples, Civil societies and media. Particularly, we would like to call the attention for the importance of raising awareness among the media. These measures should be fundamental steps towards the mainstreaming of the UNDRIP by all international and state institutions.

We would like to encourage governments to take necessary action as the Bolivian government has done. At the same time, we also urge that the government would take necessary steps for the screening and amendment of existing laws to be in conformity with the UNDRIP

2. Recommendation to Human Rights Council (HRC)

a) Expert Mechanism on Rights of Indigenous Peoples

We request the Forum to recommend that the HRC respects the recommendations made by Indigenous Peoples in selection of the experts, and ensure that experts are of indigenous origins.

b) Universal Periodic Review

Regarding Universal Periodic Review, we strongly urge that the governments include the Indigenous Peoples in the national consultation process for drafting of the national report. We request the Forum recommends that the HRC adds the UNDRIP as normative basis for UPR. We request that Office of the High Commissioner for the Human Rights(OHCHR), United Nations Institution for Training And Research (UNITAR) and other relevant organizations to sustain training for and with indigenous peoples in order to equip UPR mechanism. We endorse in advance, the statement from Cordillera Peoples Alliance in this regard.

3. Recommendation on United Nations Development Group Guidelines on Indigenous Peoples' Issues

We urge the UN country team to establish the inclusive and transparent consultative mechanism with Indigenous Peoples for enforcing the principle of human rights based approach to development and UN Development Group Guidelines on Indigenous Peoples' Issues.

4. Recommendation on the adoption of ILO Convention 169 and implementation

We urge the governments in Asia to ratify ILO convention 169 and other conventions and treaties relevant to Indigenous Peoples. We also encourage the governments who already ratified ILO convention 169 and other international conventions which is relevant to Indigenous Peoples to implement them, and to seriously consider recommendations made by treaty bodies as well.

5. Recommendation to ASEAN human rights body

We request the Forum recommends that ASEAN shall fully integrate UNDRIP in the works of an ASEAN human rights body which is to be established in the near future.

6. Appointment of country human rights officer by OHCHR

We urge OHCHR to appoint country human rights officer where serious human rights violations consistently occur.

7. Climate Change Adaptation Fund for Indigenous Peoples

We urge the UN organs, Agencies, Programmes and Funds to establish "Climate Change Adaptation Fund" to directly support indigenous peoples who have been and are likely to be negatively affected.

8. Recommendation to the Special Rapporteur on Human Rights Defenders

We request the Forum recommends that the Special Rapporteur on Human Rights Defenders conducts a specific study on situation of Indigenous Human Rights Defenders and submit the report to the 8th session of the UNPFII .

9. Recommendation to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous Peoples

We request Prof Jim Anaya, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous Peoples, to investigate into serious human rights violations against Indigenous Peoples in Asia.

10. Recommendation to UNDP-RIPP

We request UNDP-RIPP to organize training on Human Rights-Based Approach to Development and Indigenous Peoples in national level.

Lastly, noting that this Forum is aimed for the advancement of the rights of indigenous peoples, we express that participation of indigenous peoples should not be impeded by anything including question of nationality. Thank you, madam chair.