



ASIA INDIGENOUS PEOPLES PACT FOUNDATION

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UN Special Rapporteur on Human Rights and the Environment

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Inputs for your report to the Human Rights Council on the effective implementation of human rights obligations relating to the environment

Esteemed Special Rapporteur,

The Asia Indigenous Peoples Pact (AIPP) welcomes this opportunity to submit our inputs for your report to the Human Rights Council on the effective implementation of human rights obligations relating to the environment. We are submitting the views of indigenous peoples, of Asia in particular, on ongoing challenges and ways forward to the range of possible methods of operationalizing the obligations.

According to the United Nations, there are 370 million indigenous peoples in 90 countries worldwide;ⁱ two-thirds of them are in Asia. The dynamic and intricate relationships of indigenous peoples with the environment are the basis of their distinct identities, spirituality and worldviews to sustainable resource management for the wellbeing of human beings and all living things. Indigenous peoples have been nurturing their natural environment through integrated, resilient and holistic resource management system. This is evident in the fact that indigenous territories constitute 20% of the earth's landmass that harbors 80% of the world's remaining biodiversity.ⁱⁱ

Indigenous peoples' cultures, identities and life-ways are strongly interlinked with their environment, their historical protection and conservation of the environment through their sustainable resource management systems, including traditional occupations and livelihoods. These form the basis of their rights to their lands, territories and resources. Thus, indigenous peoples cannot be regarded as separate to their lands, territories and resources that form their "environment". It also means that whatever happens to their environment affects indigenous peoples' wellbeing in all its dimensions – social, cultural, economic and political.

Human rights challenges in relation to the environment

There are two critical areas that seriously impact on the rights of indigenous peoples in relation to environment.

1. One is the narrow approach of environmental conservation that sees the environment's protection without any interaction or intervention of human beings. Such approach outrightly denies the historical role and contribution of indigenous peoples' sustainable practices in protecting and conserving the environment. Scientific evidence shows that the areas managed by



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indigenous peoples such as forests, rangelands and watersheds, among others, have better biodiversity protection and enhancement than those protected by States and some conservation organizations.

The narrow conservation approach has also led to forced evictions of indigenous peoples from their lands and resources, as well as the criminalization of their traditional occupations such as hunting, gathering, and fishing. In a recent case in Thailand, 39 indigenous Karen men and women were arrested and 37 of them sentenced to 1-5 years in jail or ordered to pay hefty fines (after two died before the verdict) for encroachment and illegal logging, when they were actually using the wood for maintaining their homes.ⁱⁱⁱ The eviction of indigenous peoples for environment conservation and protection is tantamount to ethnocide as it directly undermines their social cohesion, customary systems and governance, cultural practices and heritage, as well as their indigenous identities as defined by their territories.

2. Another critical area is the conversion and exploitation of indigenous peoples' lands and resources resulting to serious environmental problems and consequently aggravating the violation of indigenous peoples' rights. In addition to the violation of their rights to their lands, territories and resources and to free, prior and informed consent (FPIC), it also results to serious health problems, conflicts and ethnocide. Royal Belum State Park in Perak, Malaysia is a case in point. While a luxury resort just outside the Park promotes tourism with invitation to experience life in indigenous Jahai remote villages, the Jahai people living nearby have been dying in large numbers due to a mystery illness. This has particularly affected Jahai children and child mortality has shot up to as high as 50%. Doctors have traced the disease to the weakening of the immune system. The Jahai population has reportedly been reduced to 400 from 600 within a short time.^{iv}

Further, when indigenous peoples defend their lands, territories and resources through legitimate protest actions, many are often harassed, intimidated, arrested, jailed, tortured and even killed. According to Global Witness, at least 116 environmental activists were murdered in 2014 – almost double the number of journalists killed in the same period. A shocking 40 % of victims were indigenous, with most people dying amid disputes over hydropower, mining and agribusiness.^v

Lack of meaningful participation

As resources become scarce, the competition over indigenous lands, territories and resources intensifies resulting to grave violations of human rights of indigenous peoples, and depletion of the planet's resources, causing irreversible adverse impacts to ecosystems and the global climate system. Though indigenous peoples significantly contribute to sustainable environmental protection with their traditional knowledge, they have minimal participation in developing and implementing environment-related legislations, policies and programs or projects. Their rights to their lands, territories and resources, including their sustainable resource management systems and governance, are thus not recognized and respected in those policies and programs.



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There is likewise lack of meaningful participation of indigenous peoples in the formulation of National Action Plans of Governments to address the issue of climate change. Researches show that indigenous peoples, who own, occupy or manage up to 65 percent of the earth's land surface, have been largely excluded from these national plans.^{vi} Moreover, there are hardly any programs addressing the particular problems and situations faced by indigenous peoples, who bear the greater disproportionate brunt of climate change though they have the smallest carbon footprint.^{vii}

Meanwhile, measures aimed at mitigating climate change, such as biofuel, dams and other renewable energy projects under the Clean Development Mechanism (CDM), have had severe adverse impacts on indigenous peoples. Purported solutions that States or business/corporate agencies offer in response to climate change are turning out to be false solutions that harm the environment, violate indigenous peoples' rights and undermine the welfare of communities.^{viii}

India's National Action Plan on Climate Change, for example, includes construction of so-called clean energy such as large hydro dams, in Northeast India where indigenous peoples are the majority population. Various companies have already cleared several dams in Northeast India to receive carbon credits as CDM of UNFCCC and twenty more large dams are planned in several states. Large dams have been found to contribute to climate change instead of mitigating it. Indigenous peoples in India, Malaysia, Philippines, and Cambodia have continuously opposed such large dams that are forced on them. Nonetheless, even international financial institutions, such as the World Bank and the Asian Development Bank have a proactive role in promoting market-based solutions to climate change.

Thus, certain environmental policies and programs related to climate change have clearly violated the rights of indigenous peoples to participate in decision-making in matters, which affect their rights.^{ix} The States have failed in their responsibility to consult and cooperate in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that affect them.^x

The Ways Forward

Based on the above backdrop, the ways forward are to effectively incorporate human rights, including the rights of indigenous peoples, as one of the core principles for environmental policies and actions at the national and international levels and to effectively enforce human rights obligations relating to the environment. Thus, in line with the possible methods that you have listed in your communication, we suggest the following ways forward:

1. On the adoption of instruments at the global and/or regional level, we support a declaration adopted by the UN General Assembly (such as the UN Declaration on the Rights of Indigenous Peoples) or the guiding principles presented to the Human Rights Council (such as the Guiding Principles on Business and Human Rights). Such declaration/guiding principles might enjoy broader support of States and other stakeholders, which can later be developed into a treaty. Also a possible method is the adoption of regional instrument(s) on human rights and environment.



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These should make explicit reference to existing international human rights instrument, including the UN Declaration on the Rights of Indigenous Peoples, to form those standards as the basis of the new instrument.

Further, any such global and/or regional level instruments should include State responsibility formulated as National Action Plans on Human Rights and Environment. The Plan should include clear and time-bound proposals from Governments to modify their existing environmental legislations, policies and actions and to formulate necessary legislations and undertake actions to ensure respect of human rights, including those of indigenous peoples, in those legislations and actions. A review mechanism, which can be a peer-review process such as the Universal Periodic Review or an independent expert body, should also be a part of such instrument to advise States on necessary actions. Non-implementation of recommendations from such review mechanism should be considered grounds for sanctions for support under the Clean Development Mechanism and other climate change mitigation measures.

2. On mainstreaming a human rights perspective in international agencies, actions of UN bodies and specialized agencies, multilateral environmental agreements, international financial institutions and regional development agencies, a possible method is the development of a UN system-wide or broader guidelines on human rights and environment with explicit measures for the bodies, agreements and agencies to adhere to in the course of their actions or those supported by them.

A multi-agency initiative (including OHCHR, UNEP, UNDP, UN Women and other relevant institutions such as World Bank financing climate change mitigation) can also possibly support implementation of human rights obligations relating to the environment, and likewise support civil society and indigenous and local community actions and/or governmental actions to monitor those human rights obligations.

3. On efforts to provide technical assistance, especially at the national level, we particularly support the idea of model legislation and educational courses offered by international agencies. These model legislation and educational courses should include the respect, protection and enhancement and the traditional knowledge of indigenous peoples regarding protection and conservation of the environment as well as their sustainable resource management systems and practices.

Further, technical assistance at the national level should aim to build capacities and cohesion of relevant government agencies, such as the Ministries of Environment, Forest and Development and other related ministries and departments, to develop common and coordinated programs within the framework of respect and recognition of human rights, including the rights of indigenous peoples, and environment protection in the pursuit of sustainable development. Such technical assistance should also be provided to non-governmental stakeholders, including environmental groups, human rights and other civil society organizations and academics. Assistance is also required for indigenous peoples to enable them to defend and promote their



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rights in relation to environment, including application of innovative methods such as community mapping for recognition and protection of indigenous lands and resources.

4. The establishment of a national multi-stakeholder mechanism to conduct assessment on the state of human rights and environment is another possible method. This can build a common understanding on the human rights obligations of States and the roles and contribution of indigenous peoples and other stakeholders to the environment and further include sharing of knowledge on good and bad practices as well as information on emerging issues.

We also support the possibility of an annual global forum (such as forum on business and human rights) of all relevant stakeholders in relation to human rights and environment (Government agencies, environmental groups, human rights and other civil society organizations, indigenous peoples, academics, etc.). Establishing above national mechanisms can make such global forum more effective.

5. Finally, the establishment of an effective grievance mechanism at the national and regional levels can also be a possible method to redress human rights violations in relation to the environment. Such mechanisms should be accessible to indigenous peoples and other marginalized groups. The regional grievance mechanism shall address inter-country concerns such as cross border forest and resources.

Indigenous peoples are rights-holders and key actors in the protection of the environment. Hence, their meaningful participation in any method you suggest to the Human Rights Council needs to be emphasized with recognition and respect for their rights as per the UN Declaration on the Rights of Indigenous Peoples.

We hope that the challenges and suggestions we presented above will be duly considered in your report.

We remain at your disposal if you need any further information.

Sincerely,

Joan Carling
Secretary General
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ⁱ <http://www.firstpeoples.org/who-are-indigenous-peoples>

ⁱⁱ Ibid

ⁱⁱⁱ In Thailand, when the Government passed in 2014 a New Forestry Master Plan to resolve problems of deforestation, state land encroachment and sustainable natural resource management, land tenure rights, which is of great importance for indigenous peoples, was not taken into account. The main goal of the plan is to increase forest cover from the current 33% to 40% within a 10-year timeframe. The implementation of this master plan has caused grave concerns for indigenous peoples in Thailand as the plan has given the Government a tool to take back the lands traditionally owned by indigenous peoples and evict the people out of the forests. In a recent case in Thung Pha kha village in Mae Hong Son province, the implementation of the master plan led to the arrest of 39 Karen villagers in that village on 4 May 2014. They were convicted for encroachment and illegal logging in October and now face imprisonment or fines. Of them, three are currently serving their jail terms of 4-7 years. Other twenty were sentenced for 1-3 years in jail but now are out on bail amounting between 150,000-350,000 Baht. Ten were fined between 10,000-20,000 Baht depending on the volume of timber in their possession. Two died before the verdict. The Department claimed the Karen villagers were cutting down the wood in protected areas for commercial reason. *For more related information, see joint submission on the rights of indigenous peoples for Thailand's UPR at the link <http://goo.gl/EFrMOU>*

^{iv} Forced to live in designated areas by the Park, indigenous (Orang Asli) Jahai people, who are traditionally nomadic, the mystery illness is just one of their many problems. They have already exhausted a lot of natural resources in the areas designated for them. So, they currently live on limited food rations provided by a government, which clearly not a balanced diet, and not nearly enough to feed an entire family for two months. On top of that, the State Park does not allow the Orang Asli to clear land for farming, fish with nets or sell forest produce. This has compelled them to change their nomadic, hunter-gatherer way of life. In order to survive, many of them ignore the State Park's rules and clear small plots of land to plant tapioca and bananas. However, the estimated 70 elephants living in the park – another attraction touted to tourists – often ruin the crops that the Jahai people tend to for months merely to lose in one night. The elephants cannot be harmed as they are a protected species and thus enjoy greater protection than the Jahai people. *For more information, see <http://rage.com.my/dead-and-forgotten/>*

^v <https://www.globalwitness.org/campaigns/environmental-activists/how-many-more/>

^{vi} <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/11/11/indigenous-people-take-steps-to-have-a-voice-in-cop21.html>

^{vii} <http://aippnet.org/index.php/publication-sp-2697/environment/reports/1572-asia-report-on-climate-change-and-indigenous-peoples-for-cop21>

^{viii} Ibid

^{ix} UNDRIP, Art. 18

^x UNDRIP, Art. 20