

Asia Indigenous Peoples Pact and Indigenous Peoples Task Force on ASEAN's

Submission for the Drafting of the

ASEAN HUMAN RIGHTS DECLARATION

Under Article 4.2 of its Terms of Reference (ToR), the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been mandated “to develop an ASEAN Human Rights Declaration (AHRD) with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights”.¹

In addition, the ToR of the AICHR obliges it, including when drafting the AHRD, “to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties” (Article 1.6)

The Asia Indigenous Peoples Pact, a regional organization of indigenous peoples movements in Asia and the Indigenous Peoples Task Force on ASEAN, a network of indigenous peoples organizations in Southeast Asia welcome the drafting of the ASEAN Human Rights Declaration as a step in the right direction. We are committed in providing assistance to the AICHR and the Drafting Team especially in incorporating our rights as indigenous peoples in the declaration. We are therefore, submitting this lobby paper for the consideration of the AICHR and the Drafting Team.

This submission presents our recommendations as to the rights of indigenous peoples that we deem, should be considered and enshrined in the ASEAN Human Rights Declaration.

As a guiding principle, the ASEAN Human Rights Declaration should not fall short of the Universal Declaration of Human Rights. As members of the United Nations (UN), it should likewise take into account the obligations of the ASEAN member states to promote universal respect for, and observance of, human rights and fundamental freedoms as stated in the UN Charter. Further, it should enshrine universal human rights principles and rules as provided in the International Bill of Human Rights² and other universal human rights treaties, declarations and standards. The AHRD should adhere and aspire to set higher standards of human rights beyond what has been set by these universal human rights instruments.

More importantly for indigenous peoples, the AHRD should take into account the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of which all the ASEAN member states have voted in favor of. It sets the minimum standard for the protection of the collective rights of indigenous peoples. These collective rights are not new rights but are our inherent rights which are also contained in various other

¹ Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (“ToR”), Article 4.2.

² The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol, and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.

Asia Indigenous Peoples Pact and Indigenous Peoples Task Force on ASEAN's

international instruments such as among others, the UDHR, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of all Forms of Racial Discrimination.

The collective rights we are putting forward in this submission for the ASEAN Human Rights Declaration constitute the key elements for indigenous peoples in Southeast Asia to take an active role in ASEAN's goal of building an ASEAN Community by 2015. Thus, the promotion and protection of the rights of indigenous peoples and their contributions to the culturally diverse ASEAN is of utmost importance.

Unless indigenous peoples are fully recognized as integral part of a culturally diverse ASEAN, and unless indigenous peoples' collective rights and identity are respected, ASEAN's goal of development with equity, democracy and respect for human rights will never be achieved.

Indigenous Peoples in Southeast Asia

Indigenous Peoples is a term that is now well established in international law. Today's meaning differs considerably from how it was used at the time it was coined in the late 19th century. Especially over the past decades, the concept of Indigenous Peoples has evolved beyond the original meaning still found in dictionaries and how it is understood by many Asian governments.

In Asia, governments use various names to refer to Indigenous Peoples collectively - like "ethnic minorities", "hill tribes", "native people", "national cultural communities". Many of the names given to Indigenous Peoples by outsiders imply notions of cultural inferiority, of being primitive or backward. Indigenous Peoples though prefer to use the names of their tribes passed on to them by their ancestors.

An estimated 2/3 of the total 300 million population of Indigenous Peoples worldwide live in Southeast Asia. Few states in Southeast Asia however recognize Indigenous Peoples, and even if they do, their identity has not been taken into account during preparations of national censuses. It is therefore very difficult to give accurate or even approximate figures for the populations of Indigenous Peoples in Southeast Asia.

While the debate is ongoing in academic circles and international avenues such as the UN and the ASEAN about which groups qualify as Indigenous Peoples, the reality on the ground for the peoples concerned is one of constant struggle for cultural and often even physical survival. The dire reality faced by Indigenous Peoples has been recognized by some ASEAN member governments, even though most may not use the term "Indigenous Peoples".

While national legislations in some ASEAN countries provide some protection for the rights of Indigenous Peoples, they are either insufficient or only weakly implemented. As particularly vulnerable sectors of society that not only face poverty but also the threatened loss of culture and identity, it is urgent to recognize the collective – and not

Asia Indigenous Peoples Pact and Indigenous Peoples Task Force on ASEAN's

just the individual – rights of Indigenous Peoples. Thus, the recognition as Indigenous Peoples is indispensable.

RECOMMENDATIONS OF INDIGENOUS PEOPLES FOR THE DRAFTING OF THE ASEAN HUMAN RIGHTS DECLARATION (copied from asean publication)

We therefore call on the AICHR to address the issues and integrate the rights of indigenous peoples as embodied in the UN Declaration on the Rights of Indigenous Peoples when it drafts the ASEAN Human Rights Declaration.

A. Legal Recognition as Distinct Peoples with Collective Rights

Several Asian governments including those in the ASEAN still express their reservation in the application of the concept of indigenous peoples in their countries as enshrined in the UNDRIP. They posit that the lack of a clear definition of indigenous peoples prevents a clear understanding of who the Declaration applies to. As a result, indigenous peoples are denied the protection from the UNDRIP which governments have jointly developed with indigenous peoples to address the continuing discrimination and injustices against indigenous peoples. Their non-recognition as distinct peoples with collective rights marginalizes them as they are most often not counted in the social services provided by governments.

B. The right to self-determination and self-government as embodied in Articles 3, 4 and 46 of the UNDRIP

Article 3 of the UNDRIP particularly states that, “Indigenous Peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” And article 4 elaborates that “in exercising their right to self determination, have the right to self-government in matters relating to their internal and local affairs”. In article 46, the Declaration however stresses that nothing in the Declaration may be interpreted as implying for anybody the right to engage in activities which threaten the territorial integrity or political unity of States. By far most Indigenous Peoples are therefore in agreement that their self-determination is to be realized within the context of existing Nation States.

C. Free, Prior, Informed Consent as embodied in Articles 10,11,19,28,29,32 of the UNDRIP

FPIC means that Indigenous Peoples have the right to accept or reject a project or any other form of intervention in their communities and territories, or that they define the conditions for the intervention based on their collective decision making processes. This decision must be a consensus arrived at without coercion, intimidation or manipulation, in a time period that respects the pace of their decision-making processes and with full

Asia Indigenous Peoples Pact and Indigenous Peoples Task Force on ASEAN's

disclosure of information on the environmental, human rights, socio-cultural, economic and otherwise, comprehensive impacts of such an intervention.

The FPIC is an instrument which enables the indigenous peoples to exercise their right to self-determination since they practice their right to participate in decision-making. Of particular importance is Article 10 which states that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return". The right to FPIC should be recognized and implemented especially in relation to the planning and implementation of development projects that affect indigenous peoples.

D. Right to Land, Territory and Resources as embodied in Articles 25 and 26 of the UNDRIP

This right is stipulated in Articles 25 and 26 of the Declaration according to which "Indigenous peoples have the right to lands, territories and resources. States shall give legal recognition and protection to these lands, territories and resources with due respect to customs and traditions of Indigenous Peoples to land tenure systems".

E. Cultural Rights as embodied in Articles 8, 11, 12, 13, 14, 15, 16 of the UNDRIP

This right is stipulated in Article 8 of the Declaration which states that, "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and States shall provide effective mechanisms to prevent and provide redress to forced assimilation."

F. Right to Development as embodied in Articles 3,20,21,23,29,32 of the UNDRIP

Several articles in the Declaration refer to development. In sum, these articles provide that Indigenous Peoples have the right to maintain and develop their political, economic and social systems and institutions and to secure their own means of subsistence and development, including the freedom to engage in traditional and other economic activities. Those deprived of such means are entitled to just and fair redress. They have the right to determine and develop priorities and strategies for their own development and to be actively involved in health, housing and other economic and social programs which, to the extent possible, they will administer through their own institutions.

G. Right to Education as embodied in Articles 13, 14, 15, 16, and 31 of the UNDRIP

The indigenous people have the right to establish and control their own educational and learning systems with the use of their own language, and through teaching and learning methods appropriate for them. They should be allowed to establish their own media as a means to propagate their diverse cultural traditions and knowledge, their science and

Asia Indigenous Peoples Pact and Indigenous Peoples Task Force on ASEAN's

technology and all other indigenous aspects and dimensions. In this, they have intellectual property rights over their heritage and traditional knowledge and practices.

H. Right to Health as embodied in Article 24 of the UNDRIP

Indigenous people have the right to maintain their traditional health and medical practices through the use of medicinal plants and animals. They shall not be discriminated against in their access to health services provided by the state for them to enjoy physical and mental health.

I. Right to peace and security as contained in Arts. 6 and 30 of the UNDRIP

Militarisation of indigenous territories are rife where mines, dams, plantations and other economic projects are being implemented or are planned to be implemented in several areas in the ASEAN Member States. Often, paramilitary forces are organized, condoned to protect these economic projects. This puts the lives of indigenous peoples at risk. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and the individual rights to life, physical and mental integrity, liberty and security of person. The UNDRIP requires that military activities can be undertaken in indigenous lands or territories only with the free prior and informed consent of the concerned indigenous peoples. This consent should have been arrived at through effective consultations, appropriate procedures and through their own representative institutions.

J. Right to a nationality

Many indigenous peoples face issues of citizenship and statelessness, including denial of citizenship, which place them in very vulnerable positions, especially women and children. Right to a nationality is fundamental to the full enjoyment of all human rights by all persons and allows them to live with dignity and imperative to their well-being and personal development. Procedures and requirements should be accessible and sensitive to the conditions of exclusion and marginalization of indigenous peoples.

K. Rights of indigenous women

Indigenous women suffer from multiple forms of discrimination both within their societies and from the wider society – due to their gender, ethnicity or race, economic status, sexual orientation or gender identity, national origin, lack of citizenship, and other such features. On the other hand, their being culturally different is used for tourism purposes leading to commercialization and manipulation of their cultures. This increases their vulnerability and hampers their full enjoyment of their human rights.