

## New Challenges and Increasing Pressures on Customary Land Rights in Southeast Asia

18-22 October 2009

Khmer Surin Restaurant Southgate, Phnom Penh, Cambodia

### **Keynote Address**

#### **Victoria Tauli-Corpuz**

Good morning to everyone! I open this keynote statement by acknowledging the traditional owners of this territory where we are holding this activity. *Gawis ay agew ken datako am-in. Palalo ng gasing ko ay mang-ila ken dakayo.*

I apologize that I cannot be with you today due to a prior engagement. My duties as Chairperson of the United Nations Permanent Forum on Indigenous Peoples have made me very busy, especially now that the Forum has the main responsibility to ensure that the UN Declaration on the Rights of Indigenous Peoples gets implemented as broadly as possible.

I would like to congratulate the Asian NGO Coalition and OXFAM-NOVIB for organizing a workshop that is very timely, given the increasing pressure on indigenous peoples' lands from extractive industries, expansion of plantations, carbon sinks, and protected areas, and pressures from landless migrants. This is not the first, nor will it be the last meeting on land rights given the centrality of the right to land for indigenous peoples. This is the right from which all our other rights spring. As often expressed by indigenous elders when we gather together in the Philippines, the land is our pharmacy, our grocery, our church, our source of life and identity. Indeed, for indigenous peoples, land is life.

In the following days we will be focusing not just on land rights, but customary land rights, which our country's legal frameworks, inadequate as they may be, have rightly recognized to be the source from which our land rights spring. This is confirmed by the United Nations Declaration on the Rights of Indigenous Peoples, or the UNDRIP, which turned two years old in September this year.

### **Overview of the Situation of Indigenous Peoples in the Region**

Southeast Asia, a region that is very ethnically diverse, is home to about 20% of the world's estimated 370 million indigenous people. We comprise as much as 30% of the population in Lao PDR and Burma to as little as 1% in Cambodia and Thailand. Our numbers range from a high of about 30 to 40 million in Indonesia to a low of about 200 thousand here in Cambodia. By conventional measurements of poverty, we are very poor. For instance, estimates put poverty incidence of indigenous peoples in Vietnam at about 66 to 100%, far exceeding the national average of 51%. By our own measures of poverty, we are still very poor because our rights to land and culture are not recognized or implemented, we do not have access to justice, and we are prevented from practicing our traditional livelihoods. This lack of accurate figures is, in itself, an

indictment of the failure of our national systems to give us due importance, a situation that we seek to correct with demands for data that is disaggregated according to ethnicity.

In Southeast Asia, with the exception of the Philippines, indigenous peoples are not explicitly recognized as such in the laws and constitutions of the countries where we are found. We are called by many names: ethnic minorities, hill tribes, hill people, uplanders, orang asal, masyarakat adat, natives, national minorities, minority nationalities. Though all Southeast Asian States voted in favor of the UNDRIP, the statement of Indonesia during the adoption of the Declaration is instructive. The representative of the Government of Indonesia said that the Declaration does not contain a clear definition of who indigenous peoples are and “given the fact that Indonesia’s entire population at the time of colonization remained unchanged, the rights in the Declaration accorded exclusively to indigenous peoples and did not apply in the context of Indonesia.”

Notwithstanding assertions by many Southeast Asian States that there are no indigenous peoples within their territory or that all peoples within their territory are indigenous, there do exist provisions in Constitutions and laws that, to different extents, do recognize indigenous peoples’ land, and other, rights. However, even in countries where there are laws providing protection for indigenous land ownership, implementation has been problematic. In the Philippines, for example, ancestral domain titling has been made into an extremely bureaucratic process that does not respect indigenous culture at all. I am sure we will be hearing all about these legal frameworks in detail in the following days.

### **Key Challenges faced by Indigenous Peoples**

The main challenge for indigenous peoples in Southeast Asia is non-recognition by our governments of our existence and status as indigenous peoples, as such. From this springs other key challenges, which I will enumerate briefly, but not elaborate on, because these are things we will be discussing further in the next few days.

- · Non-recognition or non-implementation of indigenous peoples’ customary land rights
- · Lack of access to justice
- · Mining
- · Construction of large dams, and consequent displacement
- · Ill-regulated logging
- · Non-support, prohibition and criminalization of traditional livelihoods (such as swidden agriculture)
- · Land conversion to agro-industrial plantations for food and biofuels
- · Expansion of agricultural frontier in order to meet food demands of a growing population
- · Exclusion from our forests and territories
- · Pressures from landless migrants and forced transmigration policies that aim to minoritize indigenous peoples’ in our own territories

### **Opportunities to advance land rights**

Wherever there are challenges, there are always opportunities, and indigenous peoples have proved very imaginative, resourceful and tenacious in finding, creating, and enlarging spaces for advancing our issues. The 25-year process of drafting and adopting the UN Declaration on the Rights of Indigenous Peoples is a testament to this creativity. This Declaration has the distinction of being the only Declaration in the UN, which was drafted with the rights-holders themselves, the Indigenous Peoples. The UN Permanent Forum on the rights of indigenous peoples is also the only high-level UN body that is composed of not only government-nominated members but also indigenous-nominated members. In fact, as my second and last term as member of the Forum expires, we, indigenous peoples of Asia, are now in the process of choosing our new Permanent Forum representative.

Indigenous peoples' creativity and tenacity again needs to be called upon as Asia, the only region in the world without a regional human rights mechanism, exerts efforts to establish such a mechanism. On October 23 in Hua Hin, Thailand, the ASEAN will be making a political declaration formally establishing the ASEAN Inter-governmental Commission on Human Rights, or AICHR. Though criticized as toothless because it lacks adequate human rights protection mechanisms in its mandate, such as periodic review, visitorial powers, a complaints mechanism, and a human rights court, this is a beginning and certainly an opportunity for indigenous peoples to again work for recognition of our rights in the Region. In the next few months, as the AICHR drafts a work programme for its initial five years of existence, we have the chance to strongly assert the inclusion of indigenous peoples' issues in capacity building activities, thematic studies and advice, among others.

Almost all Southeast Asian States with indigenous peoples, except of Burma and Malaysia, have ratified important UN Human Rights Treaties that provide protection for indigenous peoples' rights. These treaties are the Convention on the Elimination of Racial Discrimination (CERD), the International Covenant on Civil and political Rights (ICCPR), the International Covenant on Civil and Political Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The last two have been ratified by all Southeast Asian States, and the last, the CRC, presents an important opportunity because the Committee on the Rights of the Child, which oversees implementation of the CRC, has recently adopted an 11-page General Comment on Indigenous Children. It is not surprising that this General Comment is very strong on indigenous peoples' rights because it was adopted in response to active lobbying of, and with advice from, indigenous peoples themselves.

The periodic reporting mechanism of these human rights bodies provides us with an opportunity to ventilate and gain support for indigenous peoples' issues. Cambodia is scheduled for review by the CERD and the CRC in 2010. Likewise, Lao PDR and Vietnam are also due for review by the CRC in 2010.

At the level of the United Nations System, the Permanent Forum has successfully convened an Inter-Agency Support Group that has drafted guidelines for mainstreaming of indigenous peoples' issues in the programming of indigenous peoples' issues (called the UNDG Guidelines). The training for the Nepal, Philippine and Colombia UN Country Teams have already been concluded, and the Forum is looking forward to holding trainings with more UNCTs in Southeast Asia. Of course, this will only happen if there is a demand at the country-level, so our

job now is to create a demand. For this, we can enlist the aid of the UNDP Regional Indigenous Peoples' Programme (UNDP-RIPP), based at the UN Regional Center in Bangkok, the only regional indigenous peoples' programme of the UN in existence.

The UN Human Rights System also has what it calls special procedures that are devoted specifically to indigenous peoples. There is a Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, to whom human rights complaints can be submitted. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has five independent experts, three of whom are indigenous persons, who have the mandate to conduct thematic studies on indigenous peoples' rights. At their last annual session, they discussed indigenous education.

International financial institutions (IFIs), such as the Asian Development Bank, the World Bank and the International Finance Corporation (IFC), country donor agencies such as DANIDA, the EC, and SIDA, and UN agencies, such as the UNDP and IFAD, have drafted good indigenous peoples' policies. These policies are meant to guide operations of the respective agencies when funding projects that would affect indigenous peoples. Although voluntary, these policies provide important opportunities for us to assert our rights and raise the profile of indigenous peoples' rights nationally and internationally. Currently, the IFC is revising its performance standards, which includes its standards on indigenous peoples. This will be an important opportunity for indigenous peoples' to again assert our rights.

Finally, the proverbial "glue" that will tie together all the opportunities at the international and regional level will be the strength of indigenous peoples' organizations and our support civil society organizations at the community level. Recommendations from the treaty bodies, policies of donor, UN and international financial institutions, and programmes of UN Agencies, no matter how good, will have no effect if we do not make the effort ourselves to bring these recommendations, policies and programmes to life.

A case study that shows how all these mechanisms synergize and spring into life is how the Indonesian indigenous peoples successfully achieved a moratorium on oil palm operations on indigenous peoples' lands. Their journey began with local organizing, which led them to ask for, and get, a strong recommendation from the Permanent Forum on oil palm plantations. They then filed an Urgent Action Procedure with the CERD and a communication with the Special Rapporteur. All these led the IFC to suspend investments in the oil palm sector in Indonesia, because of possible violations of its performance standards. I look forward to hearing more about this in detail in the coming days from those who tirelessly campaigned and organized on this case.

With this I would like to wish us success in our exchanges of ideas in the next few days. May we be blessed with open and creative minds as we make plans to claim the rights that are rightfully ours and that have been long due to us. *Matago-tago tako am-in!*