

## **9th Conference: on Renewable Energy, Gender and the Rights of Indigenous Peoples**

October, 2019 in Bata'an, Philippines

### ***Bata'an Statement***

1. Between 27-30 October 2019, 63 participants from 9 countries gathered in Subic Bay, Bata'an Province, the Philippines, to discuss and review human rights issues related to the expansion of business investments and activities in Southeast Asia. The *9th Conference on Business and Human Rights* was convened in the Subic Bay area, previously a US military base operating for 99 years until the end of their presence in 1992. Participants in the conference represented National Human Rights Institutions (NHRIs), indigenous peoples' organisations and civil society organisations.
2. The conference was convened by the Commission on Human Rights in the Philippines (CHRP), the Forest Peoples Programme, the Philippines Association for Intercultural Development, and the Indigenous Peoples' International Centre for Policy Research and Education (Tebtebba), with the support of the Stockholm Environment Institute, the Rights and Resources Initiative and the Samdhana Institute.
3. We acknowledge the hospitality of the Pastolan and Kanawan communities who opened their homes and their communities to us. We respect the many years of hard work that resulted in the Ancestral Domain titles achieved by both communities.
4. The Conference reviewed and discussed national situations in countries in Southeast Asia, hearing from NHRIs in Myanmar, Thailand, the Philippines, Timor Leste, Malaysia, Indonesia, and Nepal, and indigenous peoples and civil society organisations from Indonesia, Thailand, Malaysia, Myanmar, Lao PDR and the Philippines. The Conference participants also shared experiences from indigenous peoples, civil society organisations and NHRIs on issues including the impacts of Special Economic Zones (SEZs), the risks and opportunities of renewable energy transitions, and the gendered impacts of land rights struggles. Common themes were heard, summarised here.
5. Active engagement by NHRIs in Southeast Asia with business and human rights was noted. The first ever National Inquiry launched by the National Commission on Human Rights in Indonesia (KomnasHAM) was on 'Indigenous Peoples' Rights on their Territories in the Forest Zone', the Malaysian Human Rights Commission (SUHAKAM) similarly conducted a National Inquiry into the Rights of Indigenous Peoples which recommended, among others, the establishment of a National Commission on Indigenous Peoples. NHRI representatives noted the investigation and research mandates could be used to good effect (Timor Leste, Thailand, Philippines). Engagement on business and human rights issues was noted by all presenting NHRIs, through investigations and interventions on specific cases, and on awareness raising.
6. However, implementation of the recommendations of NHRIs to governments remain slow in many countries. NHRIs also remain in a limited number in the region, with Cambodia, Vietnam and Lao PDR still not having established these bodies. Funding independent from political interference continues to be a challenge, and most NHRIs lack a clear mandate to investigate and address trans-boundary issues.

7. Experience of direct negotiation between indigenous peoples and businesses continues to be relatively limited, and businesses operating in Southeast Asia continue, largely, to misunderstand and disrespect the human rights of different rights holders, including the rights of indigenous peoples. This includes the right to give or withhold free, prior and informed consent to proposed activities affecting their rights and interests. Business-established grievance mechanisms need to be established where there are none and made more effective and accessible to affected peoples.

8. The conference heard about increasing momentum behind efforts to make human rights due diligence a requirement of companies operating in Southeast Asia, reflecting an academic assessment of the activities of Southeast Asian businesses against the requirements of the UN Guiding Principles on Business and Human Rights which showed clear weaknesses in implementing due diligence.

9. The establishment of SEZs to promote business investment is seen across the region, including in Timor Leste where resettled communities were promised compensation and construction materials. Experiences from the host country, the Philippines, were widespread and mixed, from the development of the Aurora Pacific Economic Zone and Freeport (APECO), where there was no free, prior and informed consent in the declaration of the Zone and persistent problems, to the SBMA where negotiation relationships exist and Ancestral Domain is recognised. The selective waiving of certain standard regulations and laws in SEZ's to promote investment was noted.

10. Concerns with the status of land laws were raised. Participants from Indonesia noted the stalled negotiations on the draft law on the Recognition and Protection of the Rights of Indigenous Peoples in Indonesia. While land is a State matter in Malaysia, the Federal Court in 2016 held that the Dayak indigenous peoples of Sarawak cannot rely on their native customary rights to claim title over virgin forests as their territorial domains and communal forest reserves. They can now only claim lands limited to farmed land cleared before 1958. At the same time the Federal Malaysian government is suing the State government in Kelantan to force recognition of native customary title. In Myanmar the legal situation has taken a backwards step, with the Vacant, Fallow and Virgin Land Law being amended in September 2018, effectively turning all unregistered land into 'vacant' land and denying unregistered land rights.

11. Land ownership also remains, in too many places, opaque or confused. Overlapping jurisdictions, even where indigenous lands are recognised (Philippines) and where they are not (Thailand, Myanmar, Indonesia), exist in many countries. Participants from Thailand, Indonesia and the Philippines noted overlaps with conservation and/or forest areas, in Myanmar overlaps between national and regional land governance systems remain. In a rush for resources, such confusion undermines communities' ability to resist incursions.

12. Specific cases were raised where indigenous peoples and communities have experienced human rights-related challenges, including the Omkoi mine in Karen areas in Thailand impacting thousands of Karen living in affected communities, and Philippine cases – from the proposed Kaliwa dam where the Dumagat are challenging the outcome of a distorted FPIC process, an open-pit gold mine on Masbate Island affecting local communities, and the contested extension of the OceanaGold mine in Didipio affecting the Ikalahan indigenous people.

13. Serious issues were raised and shared regarding the targeting of individuals and communities defending their rights. Specific targeting of those involved in defending lands and resources through labelling them as 'terrorists', 'anti-State' and/or 'anti-development' was cited in the Philippines, Indonesia and other parts of Asia. In Indonesia, stories of criminalisation, intimidation, threats and violence were shared. In Palawan, Philippines, indigenous representatives spoke of the division in their community and destruction of their forests caused by the massive coconut plantation of the Lionheart Farms Philippines. Militarisation of project zones in Myanmar and the Philippines was linked directly to increased threats and violence. Criminalisation of traditional livelihoods was noted in Thailand and other countries. In too many cases, such intimidation, criminalisation and violence lead to killings of community leaders and individuals, including extra-judicial killings.

14. Specific impacts on women in situations of such violence were raised, as were the strong roles that women have played in defending themselves and their communities against violence. Action to address threats against individuals, communities and peoples were also noted, in particular the United Nations Environment Programme's 'Environmental Rights Initiative' which was welcomed by the conference. The innovative investigatory role of the newly declared Indigenous Peoples Observatory established in partnership with the CHRP was also noted as an example for potential replication in the region.

15. Renewable energy was a key theme in the conference discussions, which addressed both the opportunities and risks of the rising investment levels into these forms of energy production. All ASEAN nations have endorsed the Paris Agreement which states that all climate actions must protect uphold and protect human rights, and such commitments support a move towards more renewable forms of energy. Global initiatives by indigenous peoples were also noted, specifically the Right Energies Partnership initiated by the Indigenous Peoples Major Group on the SDGs, which promotes partnerships to support indigenous peoples own initiatives for renewable energy projects.

16. The promotion of biofuels as a form of green energy raises risks for indigenous peoples, with increased pressure on land for expanding fuel production. Government subsidies in Indonesia only heighten demand, where available land resources are scarce. Large renewable energy projects such as solar, hydropower and geothermal can, when implemented without FPIC, increase development aggression in indigenous lands as illustrated by the rush for resources in the Cordillera, Philippines. Where indigenous peoples enter into agreements to host renewable energy projects, often limited information on long-term impacts and equitable benefit sharing arrangements is provided.

17. Renewable energy was also noted as including a very broad range of possible projects and actions, from hydropower and geothermal projects, to biofuel production, wind and solar energy, among others. Potential impacts of these different forms of renewable energy differ. Indigenous organisations from the Philippines and Malaysia shared significant work done in developing community-based or led renewable energy projects, while noting the importance of linking such projects with wider self-determined development priorities and livelihood projects. The high need for technical and financial support to sustain and expand such initiatives was noted, while also noting the importance of community management of such initiatives.

18. In a panel on gender and land rights, gender was understood as addressing unequal power relations within human societies, with a focus on women's rights and empowerment stemming from relative marginalisation from power in many cases. For indigenous women, multiple forms of discrimination and marginalisation are experienced, from socio-economic to racial and identity based. Women also face specific forms of vulnerability in situations of militarisation and conflict. The strong roles and leadership shown by indigenous women was also noted and celebrated. Challenges noted included the lack of disaggregated data about impacts on women, a general invisibility women and women's voices in research, and lower participation of women in key processes.

19. On the basis of these discussions, the conference formulated recommendations for action:

## Recommendations

1. We support the calls of the Aeta in Kanawan and Pastolan for the SBMA and the Department of Environment and Natural Resources to recognise their governance over their ancestral domains. We support equitable benefit sharing as mandated by law between SBMA and the Pastolan community.

### *For Governments*

2. We continue to call on governments to take urgent steps to **recognise indigenous peoples in Southeast Asia**, and to recognise their associated collective rights to their lands, waters, territories and resources. This includes free, prior and informed consent as an element of the right to self-determination

3. We call on governments to prioritise the **effective implementation of positive laws and policies related to the rights of indigenous peoples** and other land-dependent communities with customary rights to resources, and repeat our call on Southeast Asian governments to advance reforms in national and state laws and policies to align with international standards on the rights of indigenous peoples and local communities. This includes trans-boundary cooperation where indigenous peoples are found across national borders, and cooperation within the Asia region.

4. We encourage all **governments in Southeast Asia to continue to support and widen the work of NHRIs** in the region, including through work to establish NHRIs where they do not yet exist, and where they do, promote the strengthening of existing mandates. This may include also collaboration with NHRIs throughout Asia and beyond.

### *On National Human Rights Institutions:*

5. We further call for **sufficient and secure funding to be allocated to NHRIs** to allow them to carry out their work effectively.

6. We take note of, **encourage and support collaborative action between NHRIs**, particularly in cases where companies registered in one country are active in another. We take particular note of the regional haze problems linked to burning and recommend a role for NHRIs in Malaysia and Indonesia in joint research and recommendations highlighting ownership, investment in, and responsibilities of the companies linked to these activities.

7. We commit to, and call for, further strengthening of **collaborative work between civil society, indigenous peoples and NHRIs**. We note the potential of trans-boundary collaboration in this regard.

### *On Businesses:*

8. We call on **businesses to fulfil their independent responsibilities to respect human rights**, as outlined in the UN Guiding Principles on Business and Human Rights (UNGPs), including by recognising the status and associated rights of indigenous peoples and promoting gender inclusion as provided for in the formal guidelines to UNGPs.

9. We continue to urge all businesses to align their business activities to international standards, including the UNGPs, and provide affected communities **access to effective remedy in** cases where rights violations are alleged. This is particularly critical in countries and areas with weak governance and rule of law, where local administrative and judicial channels are effectively closed.

10. We note the responsibility of businesses to respect the **right of access to information**, and call for improved transparency and sharing of information to support accountability of the business sector and state-owned enterprises.

11. Business should **not proceed with projects without the free, prior and informed consent** of affected indigenous peoples, noting that the integrity of the FPIC process must be ensured. FPIC includes the right to say no, must be based on respect for indigenous peoples' own decision-making processes and must ensure representation of all members of the community, including women and youth.
12. We call on businesses to ensure **the effective and meaningful participation of indigenous peoples and local communities** in all stages of development planning, including in SEZs where certain standard regulations and legal requirements are often waived.
13. We call on businesses in the region to **incorporate human rights protections** and comprehensive assessment of social and environmental impacts – often called 'due diligence' – at all stages of project conception, planning, development and realisation.
14. We encourage business to **adopt and implement zero tolerance approaches** to end violence, criminalisation, intimidation and killings linked to business activities.
15. We recognise the **potential for collaboration with private sector actors** and call on business to collaborate with all rights-holders and stakeholders in the region to advance positive outcomes for communities and peoples.

*On human rights defenders:*

16. We note the **increasing use of litigation, intimidation and the threat of violence** as a chilling strategy impacting indigenous peoples, and with distinct impacts on women as human rights defenders, and call on all parties to adopt zero tolerance for such tactics
17. We recognise the need for, and call on State agencies to provide, **tailored mechanisms to protect and support human rights defenders**, particularly for indigenous communities and women defenders
18. We recognise the work of the CHRP in its current National Inquiry on Human Rights Defenders, and call on **NHRIs to cooperate at regional level to develop guidelines for the effective protection of human rights defenders**

*On renewable energy:*

19. We recommend the **strengthening and expansion of existing platforms of knowledge sharing** within the region on renewable energy policy and practice
20. We recommend that **indigenous-led initiatives on renewable energy projects are fully supported**, both financially and technically.
21. We call for ASEAN governments to review **ASEAN investment priorities to reduce the focus on mega-infrastructure projects** and invest instead on community-based smaller scale renewable energy systems, linked to sustained livelihoods.
22. We note the **expanding market for biofuels is, in some cases, driving further expansion of palm oil and related crops**, at times with renewable energy subsidies. We recommend a moratorium on new oil palm permits on forest, peat and livelihood areas until land rights concerns have been fully addressed.

23. In accordance with one of the key commitments of the 'Beijing Platform for Action' to develop **gender-sensitive data collection** in collaboration with academics and local women researchers, we recommend governments institutionalise tools such as Feminist Participatory Action Research as a legitimate source of knowledge among women and the communities.
24. We further recommend government (and other) funding be dedicated to **providing platforms for women, indigenous peoples and local communities**, developing and implementing gender programmes, along with support for capacity building and knowledge sharing among and between indigenous communities including women
25. We call on all parties to adopt the **deliberate and conscious participation of women** in all decision-making processes with regards to the utilisation of land and waters and to conduct gender impact assessments for their business activities.
26. The **development priorities in SEZs** (present and future) should be aligned with and incorporate the self-determined priorities of indigenous peoples
27. Indigenous peoples should **meaningfully and effectively in participate the governance of SEZs**, where their rights and interests are affected
28. We commit to continued collaboration and support for these recommendations and to working together, across borders and throughout Asia, to advance our common interests in securing respect for human rights in Southeast Asia.

Adopted by consensus

30 October 2019