

Statement at the Asia Regional Consultation with the UN Special Rapporteur on the Rights of Indigenous Peoples on the Situation of Indigenous Peoples in Asia on the key concerns of Indigenous Peoples in Asia

12<sup>th</sup> – 13<sup>th</sup> March 2013, Kuala Lumpur, Malaysia

**Free, Prior and Informed Consent as an expression of right to self-determination of indigenous peoples**

**Free, Prior and Informed Consent in the palm oil sector in Southeast Asia**

Presented by: Sophie Chao (Forest Peoples Programme)

I deliver this statement on behalf of Indonesian NGO SawitWatch and international human rights organisation Forest Peoples Programme. In relation to the theme of self-determination of today's session, we respectfully raise the issue of Free, Prior and Informed Consent in the palm oil sector in Indonesia.

The expansion of oil palm plantations across Indonesia is relentless. There are currently 9.4 million hectares of the crop, a figure which is growing at a rate of 0.5 to 1 million hectares a year, to an expected further 10 to 20 million hectares within the next ten years. Most of these plantations are in the form of large-scale mono-crop concessions, often located on former forestland and in the territories of indigenous peoples.

Even in plantations where companies are members of voluntary private sector certification schemes such as the Roundtable on Sustainable Palm Oil (RSPO), the expansion of oil palm plantations continues to be carried out with little or no consideration for the rights of indigenous peoples, particularly the right to give or to withhold their consent to projected developments on their customary lands. SawitWatch and Forest Peoples Programme, in line with statements from the United Nations Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Permanent Forum on Indigenous Issues, see Free, Prior and Informed Consent as a 'principle' that needs to be observed to 'safeguard' other fundamental rights such as self-determination. In this light, we wish to bring to the attention of the Special Rapporteur the findings of a series of investigations carried out by SawitWatch and Forest Peoples Programme in oil palm plantations in Indonesia, but also in Malaysia, Thailand and the Philippines, to assess the extent to which Free, Prior and Informed Consent is being respected, and with what outcomes. We will send the relevant documentation to the Special Rapporteur.

In many ways echoing the findings of the studies described by Jill Cariño in relation to the extractive sector, we found that many companies are running highly abbreviated processes to secure consent, which are far from being 'free', 'prior' or 'informed'. Insufficient information is being provided to local communities regarding the social and environmental impacts of oil palm development on their livelihoods and their future access and use of land and natural resources therein. Local communities are not provided with sufficient legal information on their rights under provincial, national and particularly international law. Compensation, where given is rarely in the form of land restitution, which most indigenous peoples tend to demand of companies. And even where companies seek to acquire lands in

fair ways, current statutory laws and administrative procedures with respect to land rights, land acquisition, legal personality and representation, sometimes make it hard or even impossible for companies to comply. The proliferation of conflicts over land in numerous oil palm plantations across Southeast Asia is a vivid manifestation and outcome of the violations of local communities' rights.

To date, Sawit Watch and Forest Peoples Programme have sought to support indigenous peoples affected by the palm oil sector through various strategies. First, by dialoguing with the private sector through voluntary certification platforms in order to improve existing standards to give further emphasis on Free, Prior and Informed Consent and other rights of indigenous peoples. Second, by urging International Financing Institutions to improve and enforce their standards in relation to indigenous peoples, and to suspend funding where these are not being respected by the companies they fund. Third, by making use of UN human rights mechanisms to raise complaints, such as through the CERD in relation to the Merauke Integrated Food and Energy Estate (MIFEE) project in Papua and in relation to the Kalimantan Border Oil Palm Mega-project, and reports to the Working Group on the issue of human rights and transnational corporations and other business enterprises.

Fourth, by engaging with the National Human Rights Commissions of the ASEAN region as well as the ASEAN Intergovernmental Commission on Human Rights, such as through the development of the *Bali Declaration on Human Rights and Agribusiness*. We are now working with the Human Rights Commissioners to explore avenues for them to encourage their States to formally endorse this Declaration. Finally, by providing legal training to indigenous peoples on their rights in national and international human rights law, as well as supporting them in submitting complaints to United Nations bodies, voluntary complaints mechanisms and International Financing Institutions.

While each has had relative success to date, our experience shows that it is the plurality of strategies and stakeholders that makes for more effective advocacy, where each avenue acts as a tool towards better protections for indigenous peoples' rights. While working through voluntary private standards can help raise the ceiling in terms of requirements for respect for Free, Prior and Informed Consent, working towards legal reform is essential to help to raise the floor as well. But these two are not separate processes: we are also working *with* private sector voluntary standards to engage with the government and identify areas for legal reform so that companies are better able to abide by voluntary requirements and respect indigenous peoples' rights.

In the light of the above, we wish to make the following recommendations:

First, that the Special Rapporteur engage with the government of Indonesia to push for legal reform and better recognition of the right to Free, Prior and Informed Consent in national legislation, including by identifying existing principles in Indonesian law that could be interpreted as similar or tantamount to Free, Prior and Informed Consent.

Second, to urge the Indonesian government to respond immediately to the numerous recommendations of the Committee on the Elimination of all forms of racial discrimination in relation to the CERD complaint submitted in 2011 by the Malind indigenous peoples and a coalition of NGOs in relation to the MIFEE project in Papua.

Third, that the Special Rapporteur continue to engage with companies and governments to highlight not only obligations to respect Free, Prior and Informed Consent, but also the benefits for them in doing so. As our findings show, failing to respect Free, Prior and Informed Consent inevitably leads to conflict which presents not only serious risks and rights

violations of communities, but also risks to plantation companies, investors and to the government itself, particularly where investors choose to invest elsewhere as a result of protracted conflict, threatening the national development and economic growth that many of these States seek.

Fourth, we respectfully request of the Special Rapporteur to carry out a regional study on the palm oil sector and human rights in Southeast Asia in collaboration with United Nations Special Rapporteur on the Right to Food for submission to the Human Rights Council. A broad coalition of NGOs and IPOs are prepared to support the Special Rapporteurs' study with background materials and case studies.

Fifth, we request that the Special Rapporteur remind the World Bank that as a specialized agency of the United Nations, it is bound by Article 41 of the United Nations Declaration on the Rights of Indigenous Peoples, which requires it to "contribute to the full realisation of the Declaration". Yet its safeguards on indigenous peoples are inadequate and fall short of requiring respect for Free, Prior and Informed Consent. These require immediate revision to be aligned with the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. Pending this revision and the revision of national laws and regulations, the World Bank and other International Financing Institutions need to be encouraged to delay finance, investments and guarantees to the palm oil sector in Indonesia.

Sixth and lastly, we respectfully request of the Special Rapporteur to push for formal recognition of the UN Framework by the palm oil sector among other sectors, and to work with the National Human Rights Commissioners of Southeast Asia and the ASEAN Intergovernmental Commission on Human Rights (AICHR) to push for the recognition by Southeast Asian governments of the Bali Declaration on Human Rights and Agribusiness, adopted by acclamation by the National Human Rights Commissions of the Philippines, Thailand, Malaysia and Indonesia in 2011, and which reiterates principles of international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples, with particular mention of the collective nature of indigenous peoples' rights. Thank you.