

Distr.
RESTRICTED

E/C.19/2007/CRP.11

15 May 2007

Original: ENGLISH

Permanent Forum on Indigenous Issues

Sixth session

New York, 14-25 May, 2007

Item 6 of the provisional agenda

Half day discussion on Asia

**General considerations on the situation of human rights and
fundamental freedoms of indigenous peoples in Asia**

**Presented by the United Nations Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen**

Summary

This report presents a general overview of the situation of the rights of indigenous peoples in Asia, based on the information gathered by the Special Rapporteur from various sources during recent activities in the region, including activities organized by the Office of the High Commissioner for Human Rights in Cambodia and Nepal, a follow-up visit to the Philippines, and the First Asian Regional Consultation with the Special Rapporteur.

Indigenous peoples in Asian countries face similar patterns of discrimination and human rights violations as in other parts of the world. Drawing from specific examples in various Asian countries, the report focuses on issues of particular concern in the region, including the steady loss of indigenous lands, territories and natural resources; situations of internal conflict, violence and repression faced by these peoples, the implementation of peace accords and autonomy regimes, and the special abuses faced by indigenous women.

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Introduction

1. The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was established by the Commission on Human Rights in resolution 2001/57, extended for a further period of three years in 2004 (resolution 2004/62) and renewed by the Human Rights Council in 2006 (decision 1/102). According to his mandate, the Special Rapporteur is expected to “gather, request, receive and exchange information from all relevant sources [...] on violations of [indigenous peoples’] human rights and fundamental freedoms, and to “formulate recommendations and proposals on appropriate measures and activities to prevent” these violations. The present report is submitted in accordance with the decision taken by the Permanent Forum on Indigenous Issues at its fifth session to devote half a day to the discussion during its next session to discuss the issues of indigenous peoples in Asia.

2. The situation of the human rights of indigenous peoples in Asia raises concerns at different levels. They are discriminated and victimized for their origin and identities, specially in the case of women. They are excluded from full participation in the political life in the countries in which they live. They remain at the margin of national development efforts, and they score low in all indicators in relation to their enjoyment of basic rights such as education and health. They are impoverished as a result of the loss of their traditional lands, territories and lifestyles. They suffer from violence as a result of the defence of their human rights, often by the authorities of their own countries. While these processes are experienced by most indigenous peoples around the world, the situation of indigenous peoples in Asia presents a number of specificities.

3. These initial considerations on the human rights of indigenous people in Asia, based on the recent activities of the Special Rapporteur, do not attempt to provide a full picture of the situation. These activities include the National Consultation with the Special Rapporteur organized by local indigenous organizations and NGOs, which took place in Quezon City, Philippines, on 2-3 February 2007; the Seminar on Indigenous Peoples and Access to Land in Cambodia, organized by the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Office (ILO), and the United Nations Development Programme (UNDP);

and the NGO Forum on Cambodia, and the NGO Forum on Cambodia, and the First Asian Regional Consultation with the Special Rapporteur, organized by Tebtebba and the Asia Indigenous Peoples Pact Foundation, which took place in Phnom Penh, Cambodia, on 7-8 and 9-11 February 2007, respectively; and the various meetings and on-site visits to communities organized by OHCHR in Nepal, on 23-27 April 2007.

I. INDIGENOUS PEOPLES IN ASIA

4. Indigenous peoples in Asia are among the most discriminated against, socially and economically marginalized, and politically subordinated parts of the society in the countries where they live. Time and again disregarded in State's law and policy, they number an estimated 100 million people distributed in virtually all Asian countries, often across State borders. Their traditional territories are frequently found in remote areas where they have historically resisted the drive of colonization and nation-building, including some of the most bio-diversity rich areas of the world. The push of globalization and the State development policies in recent decades have however endangered the continuation of their traditional lifestyles, and they are victims of serious human rights violations as a consequence of the dispossession of their lands and natural resources, widespread violence and repression, and assimilation

5. Asian States differ in the legal recognition and status granted to indigenous peoples in their own countries, and also in the terminology applied to refer to these different groups in their domestic policies and legislation. Thus, depending on the specific country, they are sometimes referred as "tribals" or "tribal people," "hill tribes," "scheduled tribes", "natives", "ethnic minorities," "minority nationalities" and other similar denominations. Specific terms are also used in national languages, like *Adivasis* (original inhabitants) in India and Bangladesh, *Orang Asli* (original peoples) in Malaysia, or *Janajata* in Nepal.

6. In colonial times, some indigenous peoples were given special legal status, like in Bangladesh, India, Indonesia, Malaysia and Myanmar. After independence, however, many Asian countries asserted the principle of "national unity" to suppress any specific recognition of indigenous peoples as such, but this approach has begun to change in recent years. In a number of countries, indigenous peoples are granted constitutional recognition or are the object of

special laws, as in the Constitution of India (1950) (referring to indigenous peoples or *adivasis* as “scheduled tribes”); the Constitution of Malaysia (1957) (including special provisions in relation to the “natives” of Sabah and Sarawak); the Indigenous Peoples’ Rights Act (IPRA) of the Philippines (1997); and the Cambodian Land Law (2001). Nepal passed in 2002 the National Foundation for the Development of Indigenous Nationalities Act (NFDIN Act), and indigenous peoples are recognized in the 2006 interim Constitution. The Constitution of Pakistan (1973) recognizes federally and provincially administered Tribal Areas, and involves tribal authorities in decision-making in these areas. In other countries, indigenous peoples are referred to as ethnic minorities and given a legal treatment similar to that of other minority groups, like in the cases of China, Viet Nam, or Laos. In other countries, while not explicitly recognized as different collectivities, indigenous peoples may have a distinct legal status. In Indonesia, most peoples who fall under customary law (*Adat*) self-identify as indigenous peoples. In Japan, the Ainu are not officially considered as indigenous peoples in the 1997 Ainu Cultural Promotion Law, but a number of court decisions have affirmed their rights based on international indigenous rights standards. This is also the case of Malaysia, where the courts have affirmed the aboriginal title of the *Orang Asli* over their traditional lands.

7. In addition to the recognition in domestic legislation, three Asian countries, India, Bangladesh and Pakistan, are parties of the 1957 ILO Convention on Indigenous and Tribal Populations in Independent Countries (No. 107), and they report regularly on the implementation of the convention to the ILO Committee of Experts. Nepal has recently started the procedure to ratify the successor instrument, the 1989 ILO Convention on Indigenous and Tribal Peoples in Independent Countries (No. 169), and will thus become the first Asian country to have ratified this important instrument. Moreover, the situation of indigenous peoples in Asian countries is now routinely examined by United Nations treaty bodies in relation to the implementation of the State’s general international human rights obligations.

8. Despite these varied denominations and legal treatment, some States still oppose the relevance of the discussion on the rights of indigenous peoples in the Asian context. Regardless of the controversy around issues of definition, there is an overarching consensus among Asian legal and political actors on the need to address the human rights issues faced by these groups as a result of their distinct identities, lifestyles, and histories. These issues are very similar to those

faced by indigenous peoples in other parts of the world, and fall entirely within the sphere of the current international concern on the rights of these peoples, as reflected, inter alia, in the United Nations Declaration on the Rights of Indigenous Peoples. As pointed out by the Committee on the Elimination of Racial Discrimination (CERD), the Governments concerned should provide for the protection of indigenous peoples' rights as recognized by international law, "regardless of the name given to such groups in domestic law" (CERD/C/LAO/CO/15, paras. 17). From this perspective, this report will analyze the main trends regarding the situation of the rights of indigenous peoples of Asia, putting a special emphasis on the issues of most immediate concern.

II. ISSUES OF SPECIAL CONCERN REGARDING THE RIGHTS OF INDIGENOUS PEOPLES IN ASIA

A. The loss of indigenous peoples' lands and territories

9. Some of the most serious forms of human rights violations that indigenous peoples' experience all over Asia are directly related to the rapid loss of indigenous lands and territories, a process that, while affecting indigenous peoples all over the world, is particularly marked in the Asian context. Development projects, plantation leases, logging concessions, and the establishment of protected areas have been major forces in the increasing loss of indigenous lands, leading to the massive displacement of indigenous peoples from their traditional territories, the degradation of their traditional environment, and rising poverty and migration. This trend is fostered by the absence in many Asian countries of precise legal regulations affirming indigenous peoples' customary rights over their traditional lands, territories and resources, as well as by the lack of adequate consultation procedures in relation to development projects taking place in indigenous territories .

10. In Thailand, despite the recognition of customary natural resource management by local communities, legal instruments adopted in recent years, such as the Land Act, the National Reserve Forests Act or the National Parks Act, have failed to recognize indigenous and tribal peoples' traditional land tenure and use patterns. The enforcement of these laws have resulted in the expulsion of many indigenous and tribal peoples, considered to be illegal encroachers on their ancestral lands, as well as in a number of unresolved disputes between state lands

(including national parks, watershed areas and forestry preservation areas) and community lands. Corruption by law enforcement officers related to the forest industry is said to be rampant.

11. The development of single-crop, export-oriented plantations has involved the destruction of the natural habitat in both highlands and lowlands where indigenous peoples live, severely limiting the amount of land available for their livelihood and depleting water sources. Only in Sarawak (Malaysia), an estimate of 2.4 million hectares have been given under plantation licenses for the monoculture of palm oil and pulp. Many of these concessions are given over indigenous traditional lands declared “development areas” and leased for prolonged periods. Indonesia has announced its intention to become the world’s largest producer of oil palm, seen as a blooming alternative source of energy, and the official target is to plant 4.6 million hectares throughout the archipelago. This has justifies the transformation of the remaining forest areas into large plantations, with devastating effects on the local indigenous communities.

12. Land grabbing in Cambodia has become a dramatic example of a trend that is also discernable in other Asian countries. Even though the 2001 Land Law incorporates a number of advanced provisions concerning indigenous communal lands, indigenous communities are losing their lands at an alarming rate as a result of economic concessions, illegal land transfer, and widespread Government corruption. This dynamic is mounting in the densely indigenous-populated provinces of Ratanakiri and Mondulakiri, where the dispossession of indigenous lands has resulted in increased rates of poverty and forced migration. Only in the last decade, an estimated 6.5 million hectares of forest have been expropriated through concessions to timber companies, and another 3.3 million hectares were declared protected areas (see the Special Rapporteur’s last thematic report, A/HRC/4/32, para. 15). This critical situation is fostered by the insufficient legal development of the indigenous land provisions of the Land Law, including the lack of a procedural framework for land demarcation and titling; many observers claim that there will be little land left to title by the time the sub-decree on titling is really implemented. The Special Representative of the Secretary-General for Human Rights in Cambodia has repeatedly called attention to the seriousness of the situation, and has recommended that until the adoption of the sub-decree on collective ownership of indigenous lands, a moratorium on land sales

affecting indigenous peoples should be considered by relevant authorities (E/CN.4/2006/110, para. 82 (h)).

13. In the Philippines, the Indigenous Peoples Rights Act (1997), recognizes indigenous peoples' rights over their ancestral lands and territories, and incorporates a process of demarcation and titling through the granting of Certificates of Ancestral Domain Titles (CADT). In the last six years, more than 670 CADT applications have been submitted. With an average of 4.5 titles issued per year, it has been estimated that the National Commission on Indigenous Peoples will take almost 25 years to issue titles over the existing applications. Among the reasons of the slowness of the titling process, the existence of overlap between ancestral domain areas and existing leases for mining, agro-forest, logging and pasture have been noted.

14. The loss of access to natural resources is similarly experienced by coastal peoples. For instance, the Palawan and the Molbog tribes in Bugsuk, Southern Palawan, are still struggling to regain access to their ancestral marine territory after a pearl farm was established. Fishermen who are caught in the perimeter of the farm complain about harassment, ill treatment and illegal detention by company guards. Confronted with these vested interests, the National Commission has been accused of a weak commitment towards fully implementing its mandate. In the report on his visit to Japan, the Special Rapporteur on contemporary forms of racism described how the Ainu are still greatly limited in their capacity to fish salmon, their traditional food. This situation is "humiliating, since it puts them in a position of dependence on the public authorities in the access to their ancestral alimentary resources" (E/CN.4/2006/16/Add.2, paras. 45-47).

B. The situation of forest peoples

15. Commercial logging, both illegal and Government-sponsored, is a major source of indigenous land loss in practically all countries of the region. For instance, in Bangladesh, India, Indonesia, the Philippines and Thailand, forests are considered State-owned lands, and indigenous communities lack any legal venue to counter Government policies in these areas or seek compensation in cases in which their traditional lands are lost.

16. The *Andhra Pradesh Community Forest Management Project* (APCFMP), launched in 2002 in India with the support of the World Bank, has been opposed by Adivasi organizations, who claim that the procedural safeguards incorporated by the World Bank (including the establishment of forest protection committees or Vana Samrakshana Samithi) have not been adequately implemented.

17. In Malaysia, indigenous communities have denounced that the national forestry certification system run by the Malaysian Timber Certification Council (MTCC) fails to recognize and protect indigenous customary rights over the forest they have traditionally occupied or used for their subsistence. Several cases have been brought to the national courts as a result of the granting of timber certification to private companies operating in communal lands, without prior consultation of the communities concerned and with no compensation paid to the people. In some cases, indigenous communities have mobilized against logging in their ancestral territories, like the Dusun community of Terian, Sabah, which recently stopped an illegal logging road that threatened its traditional forest near Crocker Range National Park. Similarly, the Penan people in the Middle Baram region of Sarawak, who have led several peaceful blockades and have endured violence by loggers and security forces.

18. As in other parts of the world, indigenous peoples in Asia have suffered the direct consequences of the establishment of national parks. This is for instance the case of the Modhupur National Park Development, in Modhupur, Tangail District (Bangladesh). The Eco-Park project, initiated in 1999, involved the erection of walls that cut across the Modhupur forest, ancestral land of the Garo and Koch peoples, without previously consulting them. Suspended in 2004, the Eco-Park project was resumed after the declaration of the state of emergency in January 2007, and there have been serious allegations of the detention of indigenous leaders, torture and even killings.

19. Despite international praise for its international conservation efforts, Nepal's community forests have forced many indigenous communities, like the Chepangs and the Rautes, from their traditional lands. In Sri Lanka, the Wanniyala-Aetto indigenous people were evicted in 1983 from the lands which they have occupied for centuries to give way to the Maduru Ova National Park; since then, their number has fallen to only 2,500 members, half of the original population,

and they are on the verge of virtual extinction. More than 1,000 Adivasis have been expelled from the Muthanga Wildlife Sanctuary in Wayanad, State of Kerala, India. In Indonesia, the Moronene people of Southeast Sulawesi have been evicted several times since their traditional territory was declared a conservation forest in 1997. A similar case is that of the Wana people after the government announced the creation of the Morowali conservation area in their traditional territory. The Semi tribe, in Malaysia, is opposing the establishment of a National Botanical Garden in the Perak State, a project that aims at becoming a major tourist attraction but that would expel the community from the ancient rainforest in which they lived for generations, and over which they do not possess a formal title.

20. In recent years, a number of countries have started to address the legal vacuum concerning indigenous peoples' communal land rights with the adoption of new legislation. Following the example of countries like Cambodia or the Philippines, the 2003 Land Law in Viet Nam includes the category of "communal land", which has opened the possibility for indigenous people to apply for titles over their ancestral land and forest rights; some difficulties still need to be clarified concerning the interpretation of various provisions of the law. In 2006, after many massive protests by Adivasis and forest dwellers, India adopted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Bill. The bill grants extensive rights to indigenous forest dwellers, including the right to possess forest land for habitation and self-cultivation purposes, as well as the right of access to forest resources and to participate in conservation efforts. The Bill further incorporates a special procedure for the establishment of "critical wildlife areas", as well as for the informed relocation and rehabilitation of the affected communities.

21. In the absence of specific legislation, national courts have played a major role in affirming indigenous peoples' rights over their traditional forest. For instance, in Malaysia, a number of decisions by the Supreme Court, including the path-breaking *Sagong Tasi v. Negeri Kerajaan Selangor* (2002), have recognize the existence of Orang Asli's native title over their traditional lands even in the absence of a formal title deed, despite the lack of statutory recognition of their rights in Malaysian law.

C. Forced relocation and international resettlement

22. One of the most serious threats to indigenous peoples' survival in Asia relates to the construction of megaprojects and other forms of forced relocation or resettlement in the name of "national development", which take place in several Asian countries at a particularly alarming rate. The Special Rapporteur has expressed his concern in relation to some of these projects

23. In India, according to the Five-Year Plan (2002-7) of the National Commission on Scheduled Castes and Scheduled Tribes, 8.54 million tribals have been displaced from their traditional lands as a result of development projects in the states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa, of which less than a quarter have been resettled. According to the Commission, this massive displacement has led to "loss of assets, unemployment, debt bondage and destitution." The Special Rapporteur, as well as other human rights mechanisms have repeatedly expressed their major concern about the Sardar Sarovar Dam and Power Project, a multiyear, multipurpose project affecting areas in the states of Gujarat, Rajasthan, Madhya Pradesh and Maharashtra, involving the relocation of 320,000 people and affecting the livelihood of thousands of others. There is concern about the lack of adequate compensation or resettlement schemes of the tribal communities affected. In addition, 168 new dams are scheduled for construction in north-eastern India, without the meaningful participation by and the consent of the Bodos, Hmars, Nagas and other indigenous communities that have traditionally owned the land. These dams, it is argued, that will provide electric power to other parts of India, will create irreparable harm to indigenous peoples' traditional subsistence communities. Concern has also been expressed that these proposed dams are located in a highly seismic area.

24. Similar large scale displacement has resulted from mining. The Government of Jharkhand has open lands to 41 steel and mining companies for large scale resource extraction, which will result in the destruction of 57,000 hectares of forest and in the displacement of 9,615 families, 80 per cent of whom belong to scheduled tribes. Similarly, State-sponsored mining projects in Orissa have resulted since 2004 in the displacement of hundreds of Jarene families, and 300 other families are still under threat as a result of new projects. The Khasi people of Eastern

Meghalaya now face the proposed resumption of uranium mining in its traditional territory, involving the displacement of an estimate of 30,000 people, the massive influx of non-indigenous settlers, and possible health risks.

25. The 13 dam cascade project on the Chinese portion of the Nu river would have a considerable effect on the Nu, Lissu, Yi, Pumi and other ethnic minorities in the area, and its impact of the biodiversity-rich Three Parallel Rivers World Heritage Site has raised the concern of UNESCO's World Heritage Committee. Viet Nam is currently embarked in the construction of the Son Lam Dam, the largest such project in the region, involving the submersion of 24,000 hectares of land and the forced removal of 100,000 people, mostly ethnic minorities. The Bakun Dam in Malaysia is reported to cause the forced displacement of 5,000 to 8,000 indigenous persons from 15 communities by clear-cutting 80,000 hectares of rainforest. In Laos, the construction of the Nam Theun 2 dam, in Khammouane province, involves the displacement of as many as 6,200 indigenous people. The Special Rapporteur, along with other special procedures, is currently engaged in a constructive dialogue with the Government of the Lao People's Democratic Republic, the World Bank and other donors, promoting the effective implementation of the relocation and compensation program.

26. Laos and Thailand have undertaken the resettlement of many tribal people as part of their program of eradication of drug plantations. The Government of Thailand launched in 2003 a "Master Plan for Community Development, Environment, and Narcotic Plant Control on the Highland", leading to the displacement of indigenous communities. Due to the relocation schemes, many of these communities have broken up, and they often lack alternative ways to provide for their subsistence. The Lao Government's campaign of eradication of opium poppy has been internationally praised as a success, but it has led the displacement of an estimated 65,000 hill tribe people into new villages where they are said to experience severe food shortages, disease, and mortality rates as high as 4per cent.

27. The Vietnamese Government has adopted a "Fixed Field/Fixed Residence" policy that involves the resettlement of ethnic minorities, including many indigenous and tribal communities, from remote areas into other more easily accessible locations. The purpose of this resettlement is to make social services more easily available to these communities, but also to

replace their traditional slash-and-burn agriculture, viewed as inefficient by the Government, by other methods of sedentary agriculture. The resettlement has generated the social and cultural disintegration of many of these communities, as well as increased ethnic tension as a result of a state-sponsored migration program to bring non-indigenous settlers into the indigenous highlands. A similar stand has been taken in Laos, where numerous Hmong communities have been forcibly relocated by the Government from their traditional lands in the highlands and resettled in so-called “focal sites”, together with other ethnic minority group or Hmong from different clans. Reports indicate that these resettlement sites are often not arable lands, and that their traditional life has been eroded. In its last concluding observations on Laos, CERD recommended the Government to avoid displacement, and if necessary, to “ensure that the persons concerned are made fully aware of the reasons for and modalities of their displacement and of the measures taken for compensation and resettlement” (CERD/C/LAO/CO/15, para. 18).

28. The Dukha (Tsaatan) people, a reindeer-herder community living in Mongolia’s Darhat Valley, endured similar attempts of forceful relocation during the 1950s. Now they are striving to retain their traditional culture against the depletion of their herds and the loss of their traditional lands. The establishment of the Lake Baikal and Sayan Mountains Peace Park, in the border between Russia and Mongolia, home of the Dukha and other peoples like the Soyot and Buryat, or the 2002 adoption of the Charter Agreement on the Protection of the Transboundary Reindeer Herding Cultures of Russia and Mongolia, constitute important initiatives to promote the respect for indigenous peoples’ seminomadic lifestyles with the protection of the environment in their traditional territories.

D. Conflict and repression

29. Historically, the denial of equal enjoyment of political and other rights has led to an increase in violence that, in many cases, has involved indigenous peoples directly. Internal conflict has posed an enormous burden on indigenous communities and other parties involved, and has sometimes led to massive human rights violations. Countless cases are also reported concerning abuses suffered by indigenous peoples by military and paramilitary forces in the name of public security, anti-insurgency, and counter-terrorism. Examples of these dynamics in

the past decades include the armed insurgencies in north-eastern in India, in Aceh and West Papua, in Indonesia, and in Mindanao, in the Philippines, as well as the protracted conflicts in Myanmar and Nepal. In Laos and Viet Nam, some indigenous peoples still face retaliation for their involvement in armed conflicts during the American War a generation ago, and they are reportedly denied full citizen rights and persecuted as criminals.

30. Indigenous peoples (or “ethnic minorities”) in Myanmar, like the Kachin, Karen, Karenni, Mon, or Shan, represent one third of the country’s total population. They have endured the worst consequences of the civil war that has stricken the country for half a century, and which involved indigenous groups fighting against the military government. They experience all sorts of human rights violations in the context of counter-insurgency operations against indigenous groups, including extrajudicial killings, massacres, torture and sexual violence, and large movements refugees and internally displaced persons as a result. The ILO has also denounced the practice of forced labour, particularly in indigenous areas.

31. Different sources have documented the countless deaths of civilians, including children and elders, as a result of the continuous struggle of the Hmong with the Lao Government since 1975. It has been estimated that 20 rebel groups are surrounded by Lao military and reduced to starvation and disease in the forest where they have sought refuge. Many of them have fled to Cambodia and Thailand, where there have been reports of hundreds of deportations. Following the upsurge of military activity reported in recent years, several hundred Hmong have reportedly “surrendered” to Lao authorities, and episodes of human rights abuses have been reported, like the killing and gang rape of five girls by armed forces in 2004 (CERD/C/LAO/CO/15, para. 22).

32. The Special Rapporteur has received reports documenting hundreds of human rights violations of individual Degar (*Montagnard*) people in Viet Nam. These allegations refer to cases of arbitrary arrest, ill treatment, torture and extrajudicial killing by security forces. In addition, it has been alleged that 350 Degar prisoners remain in Vietnamese prisons for human rights activism, for spreading Christianity or for attempting to flee to neighboring countries. Following the February 2001 and April 2004 protests in the Central Highland Region of Viet Nam, when numerous killings and other human rights abuses by security forces were reported,

many hundreds of indigenous asylum seekers fled the country into neighboring Cambodia in fear of Government repression.

33. The massive scale of political killing of indigenous leaders and human rights defenders in the Philippines has been object of increased international concern in recent years. Leaders and member of indigenous organizations are tagged as “legal fronts” of the Communists because of their human rights related activities, and also because of their opposition to mining operations and other megaprojects that threaten indigenous communities. The Melo Commission, established in 2006 by the Parliament to investigate the situation, concluded that the majority of the killings could be attributed to members of the Philippine military. According to a report of Indigenous Peoples Watch-Philippines, 119 such killings took place in the period April 2001-January 2007. Recent examples of such acts are the killing of Rafael Markus Nagit, in June 2006, and the attempted assassination of Dr. Constancio “Chandu” Claver on July 2006, leading to his wife’s death. The situation has been reported on by the Special Rapporteur during his official visit to the country in 2002 (see E/CN.4/2003/90/Add.3, para. 46); since his visit the murder of another 84 indigenous leaders has been reported.

34. Indigenous peoples of north-eastern India have repeatedly denounced the human rights violations committed by security forces under the *Armed Forces (Special Powers) Act* (AFSPA) (1958), adopted in the context of an armed conflict in Assam, Nagaland, and Manipur. After a 1997 decision of the Indian Supreme Court that questioned the constitutionality of several of the AFSPA provisions, a review committee appointed by the Government in 2004 proposed the amendment of the Act, but its recommendations were never publicly released, and violations of human rights continue unabated. Following the declaration of the state of emergency by the President of Bangladesh in January 2007, the Special Rapporteur have received many allegations of suppressive actions against indigenous leaders and organizations that would have involved the Joint Forces, consisting of the military, the Rapid Action Battalion (RAB), the Bangladesh Rifles (BDR), the police and intelligence servicemen, which were given special powers to control corruption. Among the alleged abuses, there are reported cases of arbitrary arrest, detention and torture of members of Jumma leaders in the Chittagong Hill Tracts and other regions. Decades of conflict in Nepal and in several Indonesian provinces, including Aceh (Nanggröe Aceh

Darussalam) and West Papua (Irian Jaya), have left behind a tragic record of killings, forced displacement and other serious human rights abuses among local indigenous groups. Indigenous peoples now demand full participation in the post-conflict political arrangements, and plead for transitional justice schemes to repair past human rights violations.

35. Local conflicts resulting from the lack of recognition of the rights of indigenous peoples to their communal lands is another permanent source of repression and abuse and often lead to violations of human rights violations of indigenous peoples. The Special Rapporteur has received many reports from countries such as India, Indonesia, Laos, Malaysia and Thailand, of arbitrary arrest or fake criminal charges made against members of indigenous and tribal peoples, as well as other forms of threats and intimidations, as a result of their mobilization to defend their rights against State authorities. Cases of ill-treatment and torture during detention, as well as extrajudicial killings have also been widely reported. In India, for instance, 15 Adivasis were killed in 2003 as a result of the use of excessive police force in the demonstrations to protest against the establishment of the Muthanga Wildlife Sanctuary. In Laos, 10 Degar people were killed as a result of the 2004 protests in the Central Highlands. In the Philippines, the lethal conjunction of militarization and large scale mining and dam projects have led indigenous peoples to coin the expression “development aggression”, which is to blame for a wide range of human rights violations, including murders, massacres, and illegal detention. The critical situation faced by the various Lumad in Mindanao or the Tumandok on Panay Island, are cases in point.

E. Citizenship rights, refugees and asylum seekers

36. The lack of citizen rights has been a long-standing cause of human rights violations against members of the hill tribes in Thailand since the enactment of the Citizenship/Nationality Act in 1965. According to 2004 estimates, 90,700 original hill people are not given Thai citizenship or any enjoy other legal status, remaining stateless in their own countries. The lack of access to citizenship rights make them subject to many abuses, like charges of illegal entrance in the country and denial of freedom of movement, threats, intimidation, and bribery. They are also denied access to basic social services, including health care and education as well as income

generating activities. A mix of discriminatory laws and procedures, deeply-rooted prejudices, and corruption are among the main causes of this situation, which has been repeatedly denounced by human rights bodies, including the Committee of the Rights of the Child (CRC/C/THA/CO/2, para.24), the Committee for the Elimination of Discrimination Against Women (CEDAW/C/THA/CO/5, para. 78), and the Human Rights Committee (CCPR/CO/84/THA, paras. 22-24).

37. Indigenous and tribal peoples in Myanmar face the worst consequences of the civil war that has stricken the country for decades. For instance, as a result of the large-scale offensive that took place in Karen state during 2006, 27,000 civilians were displaced, and some 232 villages destroyed. According to one independent source, between 2004 and 2006, some 470,000 Mon, Karen, Shan and Karenni were internally displaced as a consequence of violence, military operations and human rights abuses. Others have been able to flee the country, and survival in extremely difficult conditions in formal or informal refugee camps in neighboring countries.

38. Special mention must be made of the plight of the Khmer Krom people in southern Viet Nam who complain about serious human rights violations, especially concerning citizenship, religious freedom, land rights and gender issues, as a result of complex historical and geopolitical factors.

F. Autonomy rights and implementation of peace accords

39. In a number of Asian countries, constructive arrangements, including autonomy regimes, have sought to accommodate the ethnic diversity of some regions, or to put an end to decades of armed conflict. Inasmuch many of these arrangements provide for limited autonomy in local affairs, political participation, and land and cultural protection, they represent positive steps towards the promotion of the rights of indigenous peoples. However, comparative experience suggests that these arrangements have a mixed record in terms of implementation, and that much remains to be done by the Governments concerned, and by the international actors committed to

the monitoring of these arrangements, to ensure that indigenous communities are actively involved and their human rights concerns taken into account.

40. Similar dynamics are found in the Chittagong Hill Tracts (CHT), in Bangladesh, where an autonomy regime was instituted in 1997 following the Peace Accord between the Government and the Parbatya Chattagram Jana Samhati Samiti, a party representing 11 different indigenous communities of the Jumma people. Indigenous people claim that many vital provisions of the Accord have not yet been put in place, including the setting up of a functioning Land Commission (constituted in 1999 but still not fully operative); the rehabilitation of Jumma refugees and internally displaced persons, and the formation of a CHT-based police force. The policy of Government-sponsored transmigration has dramatically changed the ethnic composition of the region, and Bengalese settlers represent now more than 60 per cent of the region's population, compared to only two per cent in 1947. This influx has facilitated cultural assimilation, while creating increased ethnic animosity over diminishing land and resources. Instead of demilitarizing the area, it has been claimed that the Government has continued sending armed forces to the region under the umbrella of the Uttoran (upliftment) and Shantakaran (pacification) programs, allowing for the military intervention in civilian administration and in the establishment of settler villages.

41. In 2001, Indonesia adopted the Special Autonomy Law No. 21, aiming at finding a solution to West Papua's political status and to bring peace to the province. Similarly, a Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement was signed in 2005, providing for a limited autonomy to Aceh within basic sectors of public affairs, as well as for the right to consultation concerning international agreements for special interest to Aceh. While constructive arrangements have been seen as positive steps, the experience of West Papua after more than five years of the entry into force of the autonomy regime is disquieting. The Government has continued promoting the massive arrival of settlers on the island, the region is still heavily militarized, and episodes of repression and abuse in Puncak Jaya and other parts of the highlands have recently been reported.

42. Since a cease-fire was reached in Nagaland in 1997, the Government of India and several Naga insurgent groups are involved in a peace process seeking to find the political accommodation of the Naga people under the Indian Constitution. The peace process, which follows decades of violent insurgency in various north-eastern states, is subject to ongoing tensions due to the resumption of violence, internal rivalries among the Nagas and the animosity of neighboring communities and state governments at the attempt to extend the ceasefire agreement to areas beyond Nagaland. Despite the many difficulties, the Nagas favour a peaceful settlement of the conflict and demand full implementation of the 1997 agreement as a precondition to achieve this goal.

43. A deeply entrenched system of ethnic and caste-based hierarchy, along with decades of internal conflict, has led to a disproportionate part of indigenous peoples among Nepal's poor. Nepal's indigenous peoples, who represent 37 per cent of the national population, have denounced that the recently endorsed Interim Constitution fails to provide them with an equal representation in the Constituent Assembly, and they are now demanding a federal republic based on ethnic and regional autonomy.

H. The rights of indigenous women and girls

44. Gender-based violence has been recurrently used in the armed conflict in Myanmar, where numerous cases of gang-rape, sexual enslavement and killing of tribal women by members of the military have been reported. Although some of these cases have been well documented, the Military has routinely failed to investigate these abuses. In the CHT in Bangladesh, many cases of rape of Jumma girls and women by settlers backed by the military have been denounced, but in many cases the investigation of these cases is hampered by inaction on the part of the military and even of health professionals. In the Philippines, the militarization of many indigenous areas has also resulted in the sexual abuse of women of local indigenous communities. In India, the AFSFA has justified impunity of sexual violence by members of the military against tribal women, sometimes with the argument that they support insurgent groups.

45. The increasing numbers of indigenous women who have become victims of sexual trafficking and prostitution is of special concern. While systematic data is still lacking, in countries such as Mongolia, Thailand, Myanmar, Nepal, Laos, Cambodia and Viet Nam, indigenous women and girls are prime targets for trafficking and exploitation as beggars, sex workers, domestic workers, and even child soldiers. In areas such as Chiang Mai, in Thailand, where there are thousands of indigenous women working as sex workers, 70-80 per cent of these women are reportedly HIV positive. In other cases, like in Nepal, Indonesia, Bangladesh or the Philippines, indigenous women and girls are forced to leave their communities and search for jobs in other countries.

III. CONCLUSIONS

46. In recent years the plight of indigenous peoples in Asia has started to become a specific issue of concern in the international human rights agenda, as well as in domestic legislation and policies. Indigenous issues are increasingly the object of specific attention by several Asian States in key areas such as land rights, cultural protection, autonomy and self-government and development policies, thus signaling an important change of mentality regarding the recognition of cultural difference and its human rights implications. However, there is still an important implementation gap with regard to existing constitutional and legal provisions, and much remains to be done in order to mainstream indigenous rights in policies and the institutional machinery at the national level. These developments are overshadowed by the human rights violations still suffered by indigenous peoples in some countries of the region as a result of internal conflicts and insensitive official policies.

47. Indigenous peoples in Asian countries face patterns of discrimination and human right abuses similar to indigenous peoples in other parts of the world. Some of the most serious violations are related to the lack of effective protection in domestic laws and policies regarding indigenous rights over their traditional territories, lands and natural resources, as well as to their right to participate in decisions affecting these lands and resources. This has led to widespread violations in practically all countries of the region as result of land-grabbing and

corruption, forced displacement associated with the extension of plantation economies, the construction of megaprojects, and particularly dam construction and mining; and other State development policies.

48. Forest peoples are particularly affected by these dynamics of dispossession and removal, as the forests are quickly disappearing as a result of Government-promoted and illegal logging, and other State policies often with disastrous environmental effects. Pastoralist communities similarly confront the loss of their distinct livelihoods and cultures, essential to nomadic herding, which is frequently deemed “backward” and “unecological” in official discourse and policy.

49. While militarization and State repression are frequently the source of indigenous peoples’ human rights violations in many parts of the world, the recurrent and widespread character of these abuses in Asian countries gives rise to special concern. Decades-long civil conflicts, insurgency movements, political crimes, and other abuses committed in the name of the struggle against terrorism or secessionism have taken a deadly toll in indigenous and tribal communities. Massacres, killings of social activists and human rights defenders, torture, sexual violence, and displacement are still daily realities for many such communities. While the Special Rapporteur acknowledges the complexity of the various contexts in which these violations occur, the seriousness of these violations leads to the conclusion that the indigenous peoples are widely regarded in many countries as “backward,” second-class citizens.

50. A number of constructive arrangements have been put in place in order to accommodate ethnic diversity or to find a peaceful solution to decades-long conflicts. While these initiatives provide important examples of ways in which the principles of State integrity and autonomy can be combined in the Asian context, a common denominator of ongoing experiences is the lack of implementation of existing legal and political arrangements. Militarization, induced migration, unequal development policies, and resulting human rights abuses are questioning the spirit of such arrangements, while fueling the conflicts they seek to prevent.

51. As elsewhere in the world, the indigenous women of Asia experience accumulated layers of discrimination and marginalization. They are subject to human rights violations as a result of longstanding conflicts and the impoverishment of their communities. Sexual violence, trafficking and labor exploitation are daily realities for many Asian indigenous women in Asia, a problem that is just beginning to be fully understood.

IV. RECOMMENDATIONS

52. The protection of the rights of indigenous peoples is a human rights imperative that cannot be subordinated, nor is it contradictory, to the objectives of national unity or development. The Special Rapporteur calls upon Asian States to give priority attention to indigenous issues, regardless of the constitutional and legal status afforded to these groups in their domestic systems, taking into consideration international norms as well as the positive examples found in comparative legislation in Asia and other parts of the world.

53. Asian States should continue their efforts to enter into dialogue with indigenous peoples in order to work out constructive legal and political arrangements, within a spirit of mutual respect, autonomy, and self-determination. These demands should not be repressed or criminalized, and their basic human rights should be fully respected at all times, including in situations of conflict.

54. National legislation in Asian countries should incorporate indigenous peoples' property and use rights over communal lands, forest areas, pastures, and other natural resources, with due regard to indigenous customary laws, traditional lifestyles, and cultural values. Where such legislation exists, renewed efforts should be made in order to make indigenous rights effective, and special emphasis should be put on the demarcation and titling of indigenous lands. The systematic removal of indigenous peoples from their traditional lands as a public policy should be halted, and such removal of indigenous peoples from their traditional lands should be regarded as a last alternative and in cases of utmost necessity, and under condition that they be fully compensated.

55. Indigenous peoples should be involved in decision-making at all levels in the countries in which they live. They should participate in the design and implementation of all policies that may affect them directly, particularly with regard to development projects taking place in their lands and territories.

56. Asian countries should be actively and constructively involved in international discussions concerning the rights of indigenous peoples, particularly regarding the United Nations Declaration on the Rights of Indigenous Peoples and the future role of the Human Rights Council in the promotion and protection of indigenous rights. Asian states should consider the prompt ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples, particularly those that are already party of the previous ILO Convention No. 107.

57. International organizations and agencies, as well as international financial institutions, should mainstream indigenous rights into their programs and activities in Asian countries, on the basis of international norms and their own policy guidelines in this area, irrespective of the level of recognition of these rights in domestic legislation and policies. OHCHR country and regional offices in Asia should further strengthen their programs of work the rights of indigenous peoples, particularly of indigenous women. UNDP and ILO should continue their efforts to promote their policies on indigenous peoples. The World Bank, the Asian Development Bank, and bilateral donors should ensure that their safeguards and guidelines in relation to indigenous peoples are fully respected in their Asian projects.
