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HUMAN RIGHTS BODIES AND MECHANISMS

Written statement* submitted by Asian Indigenous and Tribal Peoples Network (AITPN), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2008]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

National Institutions on Indigenous Peoples: NHRIs of a lesser God

Asian Indigenous and Tribal Peoples Network (AITPN), having used mechanisms of the National Human Rights Institutions of India, is aware of the critical role the National Institutions play in the protection and promotion of human rights and fundamental freedoms. AITPN under its programme on the National Institutions on Indigenous Peoples (NIIPs) in Asia conducted the *National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples* in Kathmandu on 1-2 May 2007.

As the representative of the Office of the High Commissioner for Human Rights, Ms Lena Sundh summarized the mood of the seminar, "the experts (two Sub-Commission experts who visited Nepal in May 2007) suggested that it would be useful for leaders of indigenous peoples to look beyond the upcoming electoral process and consider more broadly possible strategies to ensure that the rights of indigenous peoples - not only civil and political rights - recognized and respected in the future Nepal. One such strategy is a national institution on indigenous peoples, which you are discussing here". Because of the failure of the National Foundation for Development of Nationalities of Nepal, the National Seminar came up with a model law for the establishment of a "National Commission for the Adivasi Janjatis"

Since the United Nations adopted the Paris Principles on National Human Rights Institutions (NHRIs) in 1991, a large number of national institutions, more popularly known as National Human Rights Commissions, have been established across the world. International Coordination Committee of the NHRIs, regional organizations like the Asia Pacific Forum of NHRIs or Sub-regional organization of the NHRIs like ASEAN-Four indicate the number of such institutions created for increased cooperation for protection and promotion of human rights and fundamental freedoms.

Though there is less awareness, many governments have created National Institutions on Indigenous Peoples (NIIPs) like the National Commission for Scheduled Tribes of India and National Commission for Indigenous Peoples of the Philippines. Other sectoral national institutions on women and children or the Dalits have also been established by the governments.

These sectoral institutions suffer from a number of shortcomings.

First, there are no internationally accepted guidelines for the establishment of National Institutions on Indigenous Peoples or other sectoral institutions. Therefore, governments like Nepal created semi-academic institution like the National Foundation for Development of Indigenous Nationalities. Most governments also prefer to create government department like the Bureau of Indian Affairs of the United States and the Committee for Ethnic Minorities and Mountainous Areas of Vietnam. Some governments like Bangladesh created separate Ministries like the Chittagong Hill Tracts Affairs Ministry - a Ministry for a particular region where both indigenous and non-indigenous people live.

Second, the National Institutions on Indigenous Peoples in particular have been subsumed by the National Human Rights Institutions. For example, the Aboriginal and Torres Island Commission functions under the Human Rights and Equal Opportunities Commission of Australia.

Third, because of the lack of awareness, organisations like the International Coordinating Committee, Asia Pacific Forum of National Human Rights Institutions or ASEAN-Four completely overlooked/excluded sectoral national institutions such as National Institutions on IPs, National Institutions on the Dalits (National Commission for Scheduled Castes of India or National Commission for Dalits of Nepal) or National Commissions for Women. Consequently, these sectoral national institutions which have a critical role to play for protection of human rights and fundamental freedoms of the most vulnerable groups have been denied the opportunity to learn from best practices or increase their capacity.

Fourth, the Office of the United Nations High Commissioner for Human Rights also only focused on the NHRIs and not on the sectoral NHRIs. In many areas, these sectoral institutions are critical and as important as the NHRIs. For example, while the National Human Rights Commission of India is barred from directly investigating the human rights violations by the armed forces under section 19 of the Human Rights Protection Act of 1993, the National Commission for the Scheduled Tribes (NCST) is vested with powers of a civil court having authority to "summon and enforce attendance of any person and examine on oath". What is more important is the fact that while the NHRC of India was created by a parliamentary Act, the NCST has been created through an amendment of the Constitution.

Fifth, even United Nations bodies like the Permanent Forum on Indigenous Issues have completely ignored the National Institutions on Indigenous Peoples. Not a single recommendation out of 922 recommendations made by PFII between 2002-2006 made any reference to NIIPs.

Human rights are implemented at national level, and despite their shortcomings, National Institutions do play a critical role for implementation and realization of rights. Strengthening the National Institutions on Indigenous Peoples (NIIPs) or other sectoral national institutions requires attention of the United Nations expert bodies like the Permanent Forum on Indigenous Issues, United Nations agencies like Office of the High Commissioner for Human Rights (OHCHR), International Coordination Committee of the NHRIs or the Asia Pacific Forum of National Institutions or ASEAN-Four of the NHRIs. The inclusion of the NIIPs or other sectoral national institutions can only enrich the National Institutions to strengthen the efforts for protection and promotion of human rights and fundamental freedoms of the most vulnerable groups.

There is a need for an inclusive approach from the United Nations bodies to develop these institutions.
