Situation of the right to health of indigenous peoples in Asia

Submission by Asia Indigenous Peoples Pact (AIPP) for the "Study on the Right to Health and Indigenous Peoples with a Focus on Children and Youth" of the Expert Mechanism on the Rights of Indigenous Peoples

Introduction

As the most comprehensive international standard on the rights of indigenous peoples so far, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides that, among others, indigenous peoples have the right, without any discrimination, to the improvement of their economic and social condition, including sanitation and health. There are a number of articles in the UNDRIP stipulating the right to health of indigenous peoples. Article 24 of the Declaration states that:

(1) Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
(2) Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

As such, this Article recognizes the collective and individual rights of indigenous peoples to health, in particular to their traditional medicines and to maintain their health practices, access to relevant services as well as the States' obligation to take necessary measures to fully realize these rights.

Moreover, Article 17 emphasizes that States have the obligation to take necessary measures, in consultation and cooperation with indigenous peoples, to ensure the protection of the right of indigenous children from any exploitation that is likely to be harmful to the child's health. While Article 21 reaffirms the right of indigenous peoples to the improvement of economic and social conditions, without any discrimination, including in the area of health, Article 22 stresses that particular attention should be paid to certain members of indigenous peoples such as the youth and children in the implementation of the Declaration. Article 23 further acknowledges the right of indigenous peoples to be actively involved in the development and determination of health programmes affecting them, and, as far as possible, administration of such programmes through their own institutions.

The UN Member States have reaffirmed their commitments for the protection and promotion of the rights of indigenous peoples, including the ones related to health, in the Outcome Document of the World Conference on Indigenous Peoples, inter alia, in its Operational Paragraphs 11, 12, 13, 15, and 26. In the Operational Paragraph 12, the States recognize the importance of the health practices, traditional medicine and knowledge of indigenous peoples. The Operational Paragraph 13 specifies the commitment of the States to ensure the equal access of indigenous individuals to the highest attainable standard of physical and mental health. The Operational Paragraph 15 stipulates that the States support the empowerment, capacity building, as well as the full and effective participation of indigenous youth in decision-making processes

and commit to develop in consultation with indigenous peoples, policies, programmes and resources targeted at the well-being of indigenous youth in the area of health among others.

Further, in line with Article 24 of the UNDRIP and Article 12 of the Convention on Elimination of All forms of Discrimination against Women (CEDAW), States should take all appropriate measures to eliminate discrimination against indigenous women in the field of health care in order to ensure their equal access to health care services. States are also responsible to ensure to indigenous women appropriate services in connection with maternity, including use of their traditional medicines.

Under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), it is the duty of State Parties to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of, inter alia, the right to public health, medical care, social security and social services.

Despite number of provisions in relevant international human rights instruments and commitments made by the States for ensuring the realization of their right to health, indigenous peoples in Asia are still facing significant challenges in enjoying the right. This submission aims to highlight those challenges, inform on the situation of indigenous peoples in Asia and provide some key recommendations for actions to be taken by the UN Member States for protection and promotion of the right of indigenous peoples to health.

Challenges faced by Indigenous Peoples in Asia in enjoying their right to health

Disparities in health situation

Indigenous persons and groups in countries in Asia, like around the world, have lower standards of physical and mental health than their non-indigenous counterparts. According to the 2009 State of the World's Indigenous Peoples, "indigenous peoples are found to suffer from poorer health are more likely to experience disability and reduced quality of life, and ultimately die younger than their non-indigenous counterparts."[1]

Chittagong Hill Tracts (CHT) in Bangladesh, where great majority of population is indigenous, is one of the country's most deprived areas suffer particularly extreme rates of ill health. Immunization coverage in CHT is recorded to be considerably low with full immunization coverage by age 12 months is 51% compared to 71% overall in Bangladesh.[2] In Cambodia, more than 20% of indigenous children under five children suffer from malnutrition and 52% are classified as underweight and stunted

[1] UN-DESA, State of the World's Indigenous Peoples (2009), www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf

[2] UN-DESA, State of the World's Indigenous Peoples, 2nd volume, Indigenous Peoples' Access to Health Services, Advance Copy, 2015, p. 044 https://www.un.org/development/desa/indigenouspeoples/publications/2015/09/state-of-the-worlds-indigenous-peoples-2nd-volume-health/

in growth.[3] The gap in the life expectancy between indigenous and non-indigenous is as high as 20 years in Nepal.[4]

The UN Special Rapporteur on the Right to Health, in his May 2015 report on the visit to Malaysia, observed that both in peninsular Malaysia and in Sabah and Sarawak, the health situation of indigenous peoples is significantly worse than that of general population. Among others, indigenous peoples are much more vulnerable to disease, both for communicable and non-communicable ones, including tuberculosis, malaria and leprosy; infant and maternal mortality rates among indigenous peoples are higher than the national averages; and the lack of proper birth registration is limiting the access of indigenous communities living in remote areas to health care.[5]

Lack of birth registration and citizenship

One of the key issues faced by several countries in Asia in realizing the right of indigenous peoples to health is the lack of birth registration and citizenship or legal status that limits their access to basic public services, such as health and education. In Thailand, for example, over 100,000 indigenous persons are estimated to be without citizenship as in rural areas, even though it is believed that at least 50% of people have a legitimate claim for citizenship, proof is very hard to obtain, and many lack the needed paperwork.[6]

Lack of citizenship or legal status also increases the vulnerability of indigenous persons, especially women and children, to human trafficking. That in turn exacerbates the health risks of such persons, including to sexually transmitted diseases and HIV while their access to health services are further restricted. Hence, significant efforts are required to ensure right to nationality of indigenous persons in accordance with international standards and practices as well as based on the principle of self-identification in order to secure their right to health. Furthermore, full and effective participation of indigenous peoples in collection and use of relevant data as well as formulation, decision-making and implementation of policies that affect their right to health must be ensured.

Dispossession of Lands, Territories and Resources

A major issue threatening the right to health of indigenous peoples in Asia is the loss of their lands, territories and resources caused by large-scale development projects such as land concessions for plantations and logging operations, extractive industries and conservation areas. Such projects have led to forced evictions and massive displacements, which have had a direct impact on the physical and mental health of the indigenous peoples. At the same time, the loss of their lands and resources, which have been the main sources of their traditional livelihood, is directly affecting the food security of indigenous communities in the region.

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[3] Ibid.
[4] Supra note 2, p 042
[5] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, May 2015, A/HRC/29/33/Add.1, Para. 49
[6] Cultural Survival, AIPP and Network of Indigenous Peoples in Thailand (NIPT) joint submission for 2nd cycle of Universal Periodic Review of Thailand on "Observations on the State of Human Rights of Indigenous Peoples in Thailand in Light of the UN Declaration on the Rights of Indigenous Peoples", September 2015 https://www.culturalsurvival.org/sites/default/files/media/thailandupr-sep2015-final_0.pdf

In Indonesia, a massive land transfer currently threatens indigenous communities of Aru Island. PT. Menara Group, a sugarcane company recently obtained a concession covers 484,500 hectares out of total 626,900 hectares of Aru customary territory. Aside from losing the access to forest and natural resources – the sources of their food and livelihoods, it is clear that the massive land transfer will disrupt the ecological, social and cultural balance of indigenous communities in the Island. The project will clearly affect, among others, their health situation and, in particular that of the indigenous women and children. The Ministry of Environment, along with the National Human Rights Commission of Indonesia (KomnasHAM), have recommended that the decree regarding Environmental Feasibility of PT. Menara Group must be revoked and that the company shall re-preform the EIA process.[7] This case has been reported through the Early Warning/Urgent Alert Procedure under the Committee on the Elimination of Racial Discrimination (CERD) in July 2015.

In Royal Belum State Park in Perak, Malaysia, while a luxury resort just outside the Park promotes tourism with invitation to experience life in remote villages of indigenous Jahai people, the Jahais, who are traditionally nomadic but now forced to live in designated areas by the Park, have been dying in large numbers due to a mystery illness. This has particularly affected Jahai children and child mortality has shot up to as high as 50%. Doctors have traced the disease to the weakening of the immune system. The Jahai population has reportedly been reduced to 400 from 600 within a short time. Further, as the Jahai people have already exhausted a lot of natural resources in the areas, they currently live on limited food rations provided by the government, which is clearly not a balanced diet, and not nearly enough to feed an entire family for two months. On top of that, the State Park does not allow the Orang Asli to clear land for farming, fish with nets or sell forest produce. This has also compelled them to change their nomadic, hunter-gatherer way of life.[8]

Particular impacts on indigenous women and girls

Indigenous women and girls face particularly severe health problems due to development projects, including on their reproductive health. In 2015, a regional public hearing of the National Inquiry into indigenous land rights violations, conducted by Komnas HAM, concluded that natural resource exploitation in Papua had had serious consequences in various forms, including for the people's health status, particularly women's reproductive health as they are exposed to chemicals used in the operations of the gold mines and oil palm plantations.

Violation of rights to sexual and reproductive health of indigenous women and girls can be viewed within the context of the existing socio-economic, cultural and political conditions prevailing in the countries where they are found. The problems that indigenous women experience in relation to their sexual and reproductive health are closely linked to the violation of their basic rights resulting from extreme poverty, vulnerability and poor health conditions in indigenous communities.[9]

[7] Request for Consideration of the Situation of Indigenous Peoples of the Aru Islands, Indonesia, under the Committee on the Elimination of Racial Discrimination's Early Warning and Urgent Action Procedure, Aliansi Masyarakat Adat Nusantara (AMAN) and Forest Peoples Programme (FPP), July 2015.
[8] For more information, see http://rage.com.my/dead-and-forgotten/
[9] Situation of Indigenous Women's Reproductive Health and Rights in Asia by Asia Indigenous Peoples Pact (AIPP), 2011

In Nepal for example, 43% of indigenous women have reported that they are unable to receive the health care services due to lack of money while only 34% of mothers from indigenous nationalities receive antenatal care from a skilled birth attendants as compared to 44 percent for average population or 76% for dominant Brahmin caste group.[10] Human development levels among the Philippines indigenous groups in region of Cordillera and specifically Manabo households vary, showing that the Manabo households had a much higher rate of under five mortality at 96 per 1000 live births which is higher than national average of 42 deaths.[11]

Traditional Knowledge and Health Practices

A distinct challenge that indigenous peoples face in exercising the right to health is related to their traditional knowledge and health practices. Indigenous peoples in Asia exhibit similar characteristics in their traditional knowledge and practices related to health. Indigenous communities, particularly women as primary holder of such knowledge, continue to hold on their traditional practices on health that inherited from their ancestors. Indigenous women play critical role in ensuring the health situation of the indigenous children in their communities. They share and continue to practice similar traditional healing knowledge, including in relation to pregnancy, post-natal care, child rearing and healing, including for childbirth methods such as the use of traditional midwives.

For example, Kouy people in Cambodia have been practicing a sustainable traditional medicine and healing system for generations under the leadership of the indigenous women. Non-timber forest products are collected from the forest as traditional medicine to cure various diseases. These plant medicines are particularly valuable for Kouy women to increase their breast milk production after giving birth. Further, Kouy women also still collect a certain type of spider from their customary forest to be used as local food as well as a traditional medicine in combination with modern medicines.

However, the continued practice of such knowledge is threatened, if not lost, due to violation of rights of indigenous peoples over their lands and territories, in particular customary forests, including plants and animals therein. This situation is exacerbated by the lack of recognition of indigenous health systems and practices by the national laws and policies.

Indigenous youth and children

Increasing rate of drug and alcohol addiction as well as growing rate of HIV infection among indigenous youth in Asia is a matter of great concern in many Asian countries. Disintegration of indigenous culture and values and the lack of support to indigenous youth initiatives, quality and affordable education, better employment and programs for their positive development forced the youth to engage in drugs, alcohol and prostitution which are detrimental to their physical, mental and spiritual health.[12]

[10] Supra note 2, p. 055
[11] Supra note 2, p. 044
[12] DECLARATION from the Asia Pacific Indigenous Youth Preparatory Meeting on the World Conference on Indigenous Peoples, April 18 – 22, 2013, Baguio City, Philippines

In Myanmar's Kachin state, for example, heroin addiction is rife among gem scavengers or "handpickers", mostly Kachin and Shan youth, who flock there, in hopes of finding lumps of the precious jade stone overlooked by big miners.[13] Based on experiences of indigenous communities and various documented findings, extractive projects such as mining greatly contribute to the increasing rate of drugs and alcohol addiction and prostitution in the indigenous communities living near the project areas. The silts and fumes of these extractive industries also cause various illnesses such as lung and skin diseases, coughing and loose bowel movement, especially among indigenous children.[14]

Further, indigenous children are more vulnerable to health challenges arising from violation of the rights of indigenous peoples. This is clear in concerns expressed by the UN Committee on the Rights of the Child (CRC) on the various forms of de jure and de facto discrimination against indigenous children in Indonesia, including insufficient access to health care.[15] The Committee points out poverty, militarization, extraction of natural resources on their lands and the lack of appropriate practice of obtaining prior informed consent from the affected communities as well as poor access to education and health care as major issues faced by indigenous children in Indonesia, in particular Papuans.[16]

Access to health services

While having the aforementioned challenges, limited access to basic health services remains a big problem among indigenous peoples in Asia. Majority of indigenous communities lack good access to hospitals or medical clinics and there is a lack of medicines, facilities, doctors and health workers. Further, quality health services come with as high price, which indigenous peoples often cannot afford.

Additionally, lack of awareness among the indigenous communities limits their accessibility to the minimum available health services. According to a study conducted in Vietnam, the majority of the indigenous peoples, especially women and poor households in the remote parts the village, are not fully aware of health regulations and support services. Local people holding medical insurance cards do not know how to maximize the national medical insurance such as free diagnosis, check-ups, examinations, medicines and healthcare treatment.[17]

Lack of access to health services is exacerbated by other factors: the remote locations of indigenous communities and lack of government access; language barriers: security problems in these areas; and social discrimination. This is also evident in the concluding observation of the Committee on the Elimination of Racial Discrimination to Thailand whereby it has expressed concerns about the inadequate access to social

[13] Instead of jade, Myanmar's gem scavengers find heroin and destitution, Reuters, December 15, 2015, http://www.reuters.com/article/us-myanmar-china-jade-heroin-idUSKBN0TY1M420151215
[14] Supra note 12
[15] Concluding observation on the combined third and fourth periodic reports of Indonesia, Committee on the Rights of The Child, July 2014, CRC/C/IDN/CO/3-4 Para. 20
[16] Ibid. Para. 69-70
[17] Submission of AIPP to UNPFII, International Expert Group Meeting on sexual health and reproductive rights of Indigenous Women in Asia, January 13, 2014 http://www.aippnet.org/index.php/about-us/secretariat/92-aipp/indigenous-women/1399-submission-of-aipp-to-the-united-nations-permanent-forum-on-indigenous-issues-international-expert-group-meeting-on-sexual-health-and-reproductive-rights-of-indigenous-women-in-asia

welfare and public services by certain ethnic groups because of language barriers and the limited availability of such services where these groups live. [18] Social discrimination against indigenous peoples can include rejection by the hospitals and inadequate treatment by the health professions.[19]

Further, community health workers, mostly young professionals, who are trying to deliver health services to the indigenous peoples in the communities, suffer from harassment and intimidation due to adverse political conditions such as the case in the Cordillera, Philippines at the hands of military forces. This dire situation of health workers also eliminates the alternative opportunities for indigenous peoples, especially the women and children, to have access to basic health services.[20]

Impacts of Climate Change

Indigenous peoples have little contribution to climate change but they bear disproportionate impacts of it. In Asia, indigenous peoples are experiencing increasing incidences of diseases associated with increasing temperatures and vector-borne and water-borne diseases like cholera, malaria and dengue fever; extreme and unprecedented cold spells resulting in health problems such as hypothermia, bronchitis, and pneumonia, especially for the old and young; and loss in biodiversity including indigenous species of seeds and plants due to worsening drought and more forest fires, which limits their traditional medicine and health practices. Indigenous peoples are also less prepared for the disaster related health problems such as the devastating typhoon experienced recently in Philippines[21] while such disasters are only increasing as impacts of climate change.

Climate change also adversely affects the traditional livelihoods of indigenous peoples such as subsistence agriculture, shifting cultivation, hunting and gathering, eventually affecting their food security and health. In 2015, Shan state in Myanmar experienced a shortage of its annual orange and potatoes production by 50% despite the use of chemical fertilizers. Varieties and numbers of vegetables and fishes have also been reduced and local residents sometimes cannot afford to buy some fish in the local market. In Rakhine state, jelly and platu fishes are extremely reduced and kyuat-pann (stone flower) can no longer be found in the area because of climate change.[22]

Besides climate change impacts, indigenous peoples are seriously affected by the plans and policies devised to combat climate change. Indigenous peoples lands and forests are being expropriated without their free, prior and informed consent for forest conservation; for large-scale biofuel plantations such as sugar cane, palm oil, jatropha, and corn as well as for the construction of mega-dams and geothermal plants for renewable energy.

The classification of large dams as clean energy under the climate change mitigation has been taken as a new license to build more than 200 large damns across Asia. In North East India alone, particularly within the territories of indigenous peoples, there

[18] Supra note 2, p 051
[19] Supra note 9
[20] Supra note 12
[21] Supra note 2, p 048
[22] Joan Carling, Jill Carino and Lakpa Nuri Sherpa, Asia Report on Climate Change and Indigenous Peoples, Asia Indigenous Peoples Pact, 2015, p 7

are in total twenty large dams in the states of Arunachal, Assam, Manipur, Meghalaya, Sikkim and Tripura under the National Action Plan of Indian Government on Climate Change.[23] These false solutions are engendering the adverse environmental, economic, social and cultural impacts to indigenous peoples livelihoods and traditional occupations that are ultimately affecting the food security and health of indigenous peoples.

Recommendations

It is evident that in spite of international human rights obligations and commitments of the UN Member States on the full realization of the right to health of indigenous peoples, violations of the right to health of indigenous peoples continue unabated. In this context, Asia Indigenous Peoples Pact (AIPP) recommends UN member States to:

- Recognize and ensure the full enjoyment of the right to health of indigenous peoples, including equal access of indigenous individuals to the highest attainable standard of physical and mental health at par with their non-indigenous counterparts;
- Guarantee and implement right to nationality of indigenous peoples with provision of citizenship or determination of other legal status for them, in consultation with them, in order to enable their access to health and other social services;
- Take necessary actions to implement rights of indigenous peoples over their lands, territories and resources by ending dispossession of their lands and resources and obtaining their free, prior and informed consent before undertaking development and conservation projects so as to ensure their ownership, access, use and control over their lands and resources for their livelihoods, food security and overall well-being;
- Recognize particular health impacts on indigenous women and girls, including their rights to sexual and reproductive health, resulting from violation of indigenous rights, in particular over their lands and resources and further conduct targeted culturally appropriate campaigns to improve their sexual and reproductive health;
- Guarantee the rights of indigenous peoples to use, promote and develop their traditional medicines and health practices, including conservation of their vital medicinal plants, animals and minerals through the review and amendment of discriminatory laws and policies against indigenous peoples both at all levels;
- Take necessary measures to enhance good practices as well as knowledge and values of traditional healing systems of indigenous peoples with modern health approaches and knowledge and to integrate indigenous and State health systems through an intercultural approach in order to fulfill the needs of indigenous peoples, particularly those of indigenous women, youth and children;
- Devise necessary culturally appropriate programs for indigenous youth and children to exhaust their potentials, including promotion of culturally sensitive health practices designed as per their needs;
- Establish a mechanism to assess and monitor the situation of the protection of the right to health of indigenous peoples, with particular attention to indigenous children and youth, women, elders, and indigenous persons with disabilities in

[23] Ibid. p 12

accordance with relevant international human rights standards, in particular the UN Declaration on the Rights of Indigenous Peoples;

- Ensure full and effective participation of indigenous peoples, in particular indigenous women and youth, in decision-making processes related to their right to health, provide them with health-related information through culturally appropriate methods and further ensure their have access to information and health services which are affordable, adequate and of good quality; and
- Recognize disproportionate impacts of climate change on indigenous peoples and their contribution for mitigating those impacts through their sustainable resource management systems and guarantee their right to effective and meaningful consultation to obtain their free, prior and informed consent in devising climate change solutions that may affect them.