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Agenda Item 3: Open dialogue (Governments, indigenous peoples' organizations, United Nations agencies)¹

Statement of Tebtebba and the Asian Indigenous Women's Network (AIWN)

Thank you Madam Chair for this opportunity to comment on the main theme of the 13th Session of the Forum.

Indigenous peoples worldwide have a long experience with poor governance, characterized by discriminatory, exclusionary and unjust power relationships and policy decisions. As a consequence, we have been subjected to land dispossession, forced evictions, environmental degradation, loss of livelihoods, cultural deterioration and poverty, and their traditional governance systems have been undermined.

Even today, despite an increasing trend to promote participatory governance, involving the meaningful participation of civil society in policy making and administration processes, indigenous peoples and their organizations keep finding themselves excluded from policy making, budget discussions, program design, implementation and evaluation processes.

The promotion and protection of indigenous peoples' fundamental human rights have made headway during the past three decades. We have the adoption of ILO Convention No. 169 (1989), the declaration of two International Decades for Indigenous Peoples, the creation of several UN bodies dedicated to indigenous peoples' issues, and the work of the UN treaty bodies, culminating with the 2007 adoption of the UN Declaration on the Rights of Indigenous peoples (UNDRIP). At the national and local levels, policy and legal developments have been more uneven. Several countries today have constitutions that recognize the rights of indigenous peoples and 22 countries have adopted ILO Convention No. 169; in a number of countries, comprehensive

¹ Intervention presented by Jing Corpuz, Legal Advisor, Tebtebba on 14 May 2014 during the 13th Session of the UNPFII in New York City.

land claims agreements, treaties or local government legislations have opened up for the possibility of self-government based on indigenous values and traditions. But many of these governments face great challenges when it comes to implementation of the rights and most indigenous peoples still face multiple forms of oppression, marginalization and exclusion.

For instance, the Forum's study on on best practices and examples in respect of resolving land disputes and land claims draws attention to the Philippine system for land dispute resolution administered by the National Commission on Indigenous Peoples (NCIP). The Indigenous Peoples' Rights Act of the Philippines (IPRA) is a comprehensive law for the protection of indigenous peoples' rights and is substantially based on the UN Declaration on the Rights of Indigenous Peoples; it is unique in the Asian region. It allows for the demarcation and titling of indigenous peoples' ancestral lands and territories and requires indigenous peoples' (FPIC) before any activity potentially affecting indigenous peoples' rights can take place in their territories. However, good laws do not automatically mean good implementation.

We agree with the observations in the study that NCIP's implementation of the IPRA, including the titling process, involve undue procedural complexities, requiring documentary and other evidential support, which is a heavy burden for remote communities. Further, the NCIP interprets the IPRA in a very bureaucratic manner, to the point that it is no longer consistent with indigenous peoples' customary laws and practices.

A study on the implementation by the NCIP of the FPIC regulations finds that the FPIC process is frequently manipulated in way that reflects the NCIP's self-perception as the "facilitator" of the entry of mining companies and other business interests into indigenous peoples' territories.

In addition, several government agencies that deal with land-titling issued a joint administrative order that suspends the issuance of ancestral domain titles where there are other overlapping claims. It is as though the NCIP is accepting that ancestral domain titles are a lesser form of title than others. Indigenous peoples' cannot agree to this.

Recommendations:

1. Governance practiced at the international, national and local levels must be consistent with the UNDRIP, ILO Convention No. 169, and other key human rights standards that recognize indigenous peoples as legal subjects and bearers of individual and collective rights, including the right to self-determination and self-government.
2. Indigenous peoples and their representatives must be ensured full and equal participation in all relevant global policy processes and knowledge platforms so their views and concerns can be taken into account and be reflected in declarations, policies, and other documents adopted by these forums
3. National legislations and constitutions must fully recognize indigenous peoples' collective rights, including their territorial rights, as well as their right to determine their own priorities for development.

4. States must be proactive in eliminating discrimination and promoting the recognition of indigenous cultures, including their languages, traditional knowledge and practices. States should identify specific measurable targets for the elimination of discrimination and the protection of human rights.
5. States and indigenous peoples must cooperate to facilitate the creation of spaces for communication, information and training with the aim of raising awareness and sensitizing public opinion on indigenous peoples and their situation.
6. Indigenous peoples must establish their relations with the state, society and the market in a free and self-determined manner
7. Indigenous communities must fully recognize the role women play by contributing to the well-being and resilience of their families and communities; by possessing specific cultural and ecological knowledge; and by being key to the inter-generational transfer of know-how. This recognition must be reflected in ensuring women's right to participate in decision-making.

Thank you very much, Madam Chair.