



Unrepresented Nations and Peoples Organization (UNPO) Individual Stakeholder Submission to the Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of the Republic of the Philippines during the 13th Session, May–June 2012

Background

Cordillera: The Cordillera region of the Philippines is the ancestral domain of the Igorots and is divided into five provinces and seven ethno-linguistic groups. As an indigenous people, the Cordillera people differ from the Philippine majority in their perception of land ownership. The Igorots view land as the source of life, an integral part of cultural identity that traces its origins from the land. The land is considered sacred and can neither be owned nor sold, but it should be nurtured to produce life for the communities. For the Cordillera people, the loss of their land, or their alienation from it, is the same as taking their lives. Because of frequent resource exploitation on their rich lands, the Indigenous Peoples Rights Act (IPRA) was passed in 1997 to grant the Cordillera peoples influence of the establishment of foreign mining companies. However, recent mining and dam projects continue to pose grave environmental threats to the lands and rivers on which the Cordillera peoples rely on for sustenance.

Moro: The Southern Philippines area of Mindanao and the surrounding islands constitute the Autonomous Region of Muslim Mindanao (ARMM) where large concentrations of indigenous Moro people reside. The Islamized Moros who predated and have successfully resisted Spanish colonists have had their lands forcibly annexed after the independence of the Philippines. The Memorandum of Agreement on Ancestral Domain (MOA-AD) was drafted and agreed upon by the government of the Philippines and the Moro Islamic Liberation Front (MILF) and would have addressed issues such as territory boundaries, resource management and the governance of the ancestral domain of the Moro people. Its signing was prevented in 2008 by the Philippine Supreme Court and is representative of the continuing legal obstacles to the Moro practicing their right to self-determination.

Main Issues of Concern

1. Resource Exploitation

The Cordillera region and Mindanao contain vast natural resources that are a large source of income for the Philippines generated from mining, timber, fishing and agriculture. Despite the UN Declaration on the Rights of Indigenous Peoples and the passage of the Philippine Indigenous Peoples Rights Act (IPRA), the collective rights of indigenous peoples continue to be violated in the interests of foreign and national natural extraction corporations. Laws such as the Mining Act of 1995, the Forestry Code and Fisheries Code conflict with the IPRA and have created opportunities to challenge the constitutionality of the IPRA that would effectively undermine the principle of Free, Prior and Informed Consent.¹ Furthermore, indigenous communities have criticized the burdensome and expensive bureaucratic process of engaging in the IPRA mechanisms. Indigenous peoples are under an unfair burden of proof to register their lands, accompanied with high fees that intimidate and discourage participation.²

Large-scale logging is a major problem faced by the Moro people in Mindanao considering that as of 2011, the Philippine forest cover is now down to an estimated 6 percent of the original forest habitat, which is continually

¹ In 1998, the Philippine government challenged the IPRA before the Philippine Supreme Court arguing that the indigenous right to minerals and other natural resources on their ancestral domain should not supersede the State's claim. The Court upheld the constitutionality of the IPRA in 2001.

² Joint Submission (2009) "Submission to the Committee on the Elimination of all forms of Racial Discrimination – Philippines Indigenous Peoples ICERD Shadow Report for the consolidated fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth Philippines ICERD periodic reports"

threatened by a yearly average of 157,400 hectares lost to deforestation driven by large foreign extraction industries.³ While logging is extremely lucrative to these corporations, the people of Mindanao are faced with the devastating effects of deforestation, including strong winds, flash floods and landslides due to erosions and sinkholes. The Moro Islamic Liberation Front is also urging the Philippine government to freeze current plans to conduct oil and gas exploration in Mindanao, which would violate the terms of the 2001 Peace Agreement. Such plans have been addressed as unsatisfactory to the interests of the indigenous community as discussed during the 22nd GPH-MILF Exploratory Talks in August 2011.⁴

According to the Cordillera Peoples Alliance (CPA), nearly a million hectares or 51 percent of the Cordillera land is covered by licensed operations and pending applications of mining trans-national corporations. Mining in the Cordillera region has intensified after President Aquino approved the hiring Special CAFGU (Civilian Armed Force Geographical Units) Armed Auxiliary units by mining firms. These ‘mining militias’ violate indigenous peoples’ right to Free, Prior and Informed Consent to any policies and actions that would intrude in their lives and territories. Furthermore, these militias have a history of violence, including arbitrary detention, torture and extrajudicial killings that target activists and participants of peaceful and legal movements protesting the further exploitation on ancestral domain.⁵

2. Self-Determination

According to the Indigenous Peoples Rights Act,

“The State shall recognize and promote the rights of indigenous cultural communities and indigenous peoples (ICCs/IPs) within the framework of national unity and development,

“The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.” (Chapter 1, Section 2, a, b)

The National Commission on Indigenous Peoples (NCIP) was established by the IPRA that has among its tasks creating and implementing policies and programs for the recognition, promotion and protection of the rights and well-being of indigenous peoples. However, due to complicated and costly bureaucratic procedures to officially register ancestral lands, the NCIP is unable to meet its mandate. Additionally, the legal processes of IPRA are often perceived by communities to undermine traditional leadership and community institutions, which only further marginalize indigenous peoples and discourages them from asserting their legal rights.⁶

As an Administrative Region created by President Aquino in 1987, the Cordillera region is plagued by underdevelopment and marginalization. In addition to the lack of reinvestment in the areas where vast natural resources are removed, the practice is unsustainable and comes at great environmental cost to the Cordillera peoples. The indigenous people of the Cordillera region have peacefully advocated for the creation of an autonomous region based on their right to self-determination within a democratic and sovereign Philippine state. The spirit of this movement enshrines the indigenous Cordillera peoples’ desire for the genuine liberty to govern

³ National coordinator for the Kalikasan People’s Network for the Environment, Clemente Bautista has also noted the disproportionate effects of large-scale mining and logging concessions on communities in northern Luzon and southern Mindanao. See: Silverio, I.A. (2011). Green groups slam exemption of mining companies from log ban. *Bulatlat*. Accessed: <http://bulatlat.com/main/2011/11/15/green-groups-slam-exemption-of-mining-companies-from-log-ban/>

⁴ MILF Central Committee (2011). *Opposition to the Exploration of Oil and Gas in Bangsamoro Ancestral Domain and the Privatization of Agus and Pulangi Hydropower Complex*. Official Statement, Maguindanao.

⁵ Amnesty International (2011). *Philippines: Aquino should rescind plan to deploy militias in mining areas*. Retrieved from: <http://www.amnesty.org/en/library/info/ASA35/006/2011/en>

⁶ Opina, R. (2010). IP struggles for recognition continues. *Sun.Star Baguio*. Accessed: <http://www.sunstar.com.ph/baguio/feature/ip-struggles-recognition-continues-world-wide>

and safeguard their ancestral lands and resources for their benefit and to be shared with all Philippine citizens through genuine national development.⁷

The challenge of genuine self-determination is also faced by the Moro people in light of the tenuous Autonomous Region of Muslim Mindanao (ARMM). The Moro nation does not consider ARMM an expression of their self-determination after the acknowledgment by the Philippine government that it is a 'failed experiment'. As of November 2011, the Philippine Supreme Court concluded that ARMM is not autonomous, but rather an administrative unit of the national government and will additionally now allow the Aquino regime to appoint Officers-in-Charge to replace elected ARMM officials.⁸ Under the direction of the Philippine government, ARMM has so far been unable to provide public safety, competent and accountable legal and justice systems, fundamental economic support to its people and effective governance.⁹ The Moro strive for self-determination in accordance with their distinct culture and identity that they feel is not protected by the government of the Philippines, especially in light of a history that includes forced population transfer and natural resource exploitation. According to the International Covenant on Civil and Political Rights, ratified by the Philippines in 1986, "all peoples have the right to self-determination, by virtue of which, they freely determine their political status and freely pursue their economic, social and cultural development."

3. Human Rights

Discrimination against minorities and indigenous peoples in the Philippines leads to alarming rates of violence, especially against human rights defenders. In its publication "Minorities Under Threat 2011", Minority Rights Group listed the Philippines as the 18th most dangerous country in the world for minorities, noting that indigenous peoples and Moro Muslims were under particular threat.¹⁰ Many extrajudicial killings and enforced disappearances are found to have been carried out by the Philippine military and target indigenous leaders under the false accusation that they are a 'legal front' for communist or terrorist organizations.¹¹

The Muslim Moro people are largely ostracized and marginalized in a predominantly Catholic Philippines. In addition to facing racial discrimination in employment opportunities, the Moro people are often discriminatorily implicated during police campaigns against terrorist organizations under anti-terror laws (the 2007 Human Security Act) which are challenged by advocacy groups to be overly vague and unjustly intrusive to individual rights. Moro people are disproportionately at risk for unwarranted suspicion and detainment under false accusations of threatening state security. Numerous instances of Moro individuals, including children, being subjected to unfounded searches and arbitrary arrests that have often led to forced false confessions retrieved through torture. Bimbas Abubakar was detained at the age of 14 in 2001 and after receiving gunshot wounds while in custody, was refused prompt medical attention. He and other similar detainees were unable to provide evidence in their defense due to logistical and financial restrictions. He remains imprisoned at the time of this writing.^{12 13}

⁷ Solang, B. (2011). *On Defining Regional Autonomy for the Cordillera*. Cordillera Peoples Alliance. For the Academic Forum on Regional Autonomy Co-organized by the CPA and the University of the Cordilleras (UC) College of Teacher Education.

⁸ MILF Central Committee (2011) *Supreme Court rules with finality: ARMM is not Autonomous*. Retrieved from: http://www.luwaran.net/index.php?option=com_content&view=article&id=746:supreme-court-rules-with-finality-armm-is-not-autonomous&catid=78:gggg&Itemid=477

⁹ Lingga, A.S.M. (2011, October). *ARMM Reform and GPH-MILF Peace Talks – Twin Tracks to Sustainable Peace?* Speech. Ortigas, Manila.

¹⁰ Minority Rights Group (2011). *Peoples Under Threat 2011*. Retrieved from: <http://minorityrights.org/10744/peoples-under-threat/peoples-under-threat-2011.html>.

¹¹ Stavenhagen, R. (2007). *General considerations on the situation of human rights and fundamental freedoms in Asia*. (A/HRC/6/15/Add.3)

¹² Olea, R. (2011). *Tortured into admitting they're Abu Sayyaf, Moro detainees yearn for freedom*. Retrieved from: <http://bulatlat.com/main/2011/07/16/moro-detainees-yearn-for-freedom/>

¹³ MILF Central Committee (2011). *200 Moro prisoners languish in Taguig jail sans hearing*. Retrieved from: http://www.luwaran.net/index.php?option=com_content&view=article&id=582:200-moro-prisoners-languish-in-taguig-jail-sans-hearing&catid=78:gggg&Itemid=477

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The Philippine government has also been implicated in the enforced disappearances of human rights defenders. Amnesty International reported in early 2011 that in the past decade more than 200 people have reportedly been victims of enforced disappearance in the Philippines. AI further noted that investigations into allegations are rare, and cases in which perpetrators are brought to justice even rarer.¹⁴ In September 2008 Mr. James Balao, member of the Cordillera Peoples Alliance and President of the Oclupan Clan Association, disappeared on his way from his home in Baguio City, Northern Luzon, to visit his family residence in La Trinidad, Benguet. Reports from the Cordillera Peoples Alliance have indicated that Mr. Balao was abducted by the Military Intelligence Group and the Intelligence Security Unit of the Armed Forces of the Philippines. The organization FrontLine Defenders stated its belief that the disappearance of Mr. Balao “may be a result of his legitimate work in the defense of human rights, in particular his work to defend the rights of indigenous peoples in the Cordillera region of the Philippines.” FrontLine further noted its concern regarding what it termed an “ongoing trend” of harassment of human rights defenders in the Philippines.¹⁵ Numerous NGOs have called for his immediate surfacing, transparent investigations and the prosecution of his abductors in accordance with international rights standards.¹⁶ However, to date, no such investigations have occurred and Mr. Balao’s whereabouts and well-being remain unknown.

Extrajudicial killings at the hands of state security forces continue to be an issue in the Philippines. Human Rights Watch documented several extrajudicial killings of activists in the past year and noted “abuses persist in part because of the Philippine police’s failure to conduct thorough and impartial investigations, particularly when the evidence points to military involvement.”¹⁷

4. GRP-MILF Peace Process

In light of the unfortunate and unwarranted violent confrontations that took place in the Basilan province during October 2011, the dismissal of an ‘all-out war’ policy by President Aquino is noted as a positive step regarding the on-going peace process. The resolution of such incidents should continue through established ceasefire mechanisms, such as the GPH-MILF Coordinating Committees on the Cessation of Hostilities (CCCH), GPH-MILF Ad Hoc Joint Action Group (AHJAG), and through local and international monitoring teams.¹⁸

Recommendations

The Unrepresented Nations and Peoples Organization strongly urge Philippine authorities to consider the following recommendations:

Ratify International Labor Organization Convention No. 169 on Indigenous and Tribal peoples

Support House Resolution No. 887 that aims to review the FPIC guidelines for mining and other resource extraction projects within ancestral domains

Address FPIC irregularities and conflicts with other legislation that favors exploitative resource extraction to an FPIC that is consistent with the UN Declaration of Rights of Indigenous Peoples and other relevant UN Human Rights Treaty Bodies

¹⁴ Amnesty International (2011). *End enforced disappearances, torture and political killings in the Philippines*. 2 February 2011. Retrieved from: www.amnesty.org/en/appeals-for-action/end-enforced-disappearances-torture-and-political-killings-philippines

¹⁵ FrontLine Defenders (2008). *The Philippines: Alleged enforced disappearance of human rights defender, James M Balao*. 26 September 2009. Retrieved from: www.frontlinedefenders.org/node/1575.

¹⁶ Unrepresented Nations and Peoples Organization (2011) *Subject: Forced Disappearance of James Moy Balao*. Letter to Philippine President Aquino.

¹⁷ Human Rights Watch (2011). *Philippines; Extrajudicial Killings, Enforced Disappearances and Impunity*. 14 July 2011. Retrieved from: www.hrw.org/features/philippines-extrajudicial-killings-enforced-disappearances-and-impunity

¹⁸ MILF Central Committee (2011). *Reaffirmation of Commitment to the Peace Process and Ceasefire Between the Moro Islamic Liberation Front (MLF) and the Government of the Philippines (GPH)*. Retrieved from: <http://www.luwaran.com/home/images/stories/statement/pre-statement.pdf>

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Ensure that free, prior and informed consent from genuine representatives is a key principle during any discussions with indigenous peoples

Create an independent body with active participation of indigenous representatives to review the implementation of IPRA and evaluate NCIP performance

Invite civil society organizations, including those representing indigenous peoples, to participate in a reevaluation of the Human Security Act to ensure that such detainees are guaranteed their rights in accordance with the Philippines ratification of the International Covenant on Civil and Political Rights with regards to the prohibition of torture (Article 7), rights during arrest (Article 9), rights during detainment (Article 10), right to a fair trial (Article 14) and racial discrimination before the law (Article 26)

Immediately surface all disappeared individuals and reunite them with their families

Conduct a full investigation of all cases of enforced disappearance and extrajudicial killing and bring perpetrators before competent judicial authorities in accordance to international legal standards

Continue the GPH-MILF Peace Process along established mechanisms, which also invites the participation of civil society organizations and the international community, which ensure meaningful representation of the Moro people and their aspirations and peace in Mindanao.