



GOP-UNDP Democratic Governance Programme
Strengthening the Human Rights Infrastructure in the Philippines

GO-NGO Forum on the CERD

July 6, 2010

Manila, Philippines

A project of the Indigenous Peoples Rights Monitor
and the Cordillera Peoples' Alliance in partnership with the Commission on
Human Rights of the Philippines and the United Nations Development Programme.

NARRATIVE REPORT

**Narrative Report on the GO-NGO Forum held at Quezon City, Philippines
on July 6, 2010 relative to the 2009 CERD Concluding Observations**

INTRODUCTION

The United Nations Committee on the Elimination of Racial Discrimination (UN-CERD) in its Seventy Fifth Session held last August 3 to August 28, 2009 in Geneva, Switzerland came up with its concluding observations relative to the

reports submitted by states parties under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The Philippines' 15th to 20th periodic reports as well as the Shadow Report submitted by concerned non government organizations is one of the subject of the 2009 CERD concluding observations.

As a measure to strengthen the Human Rights Infrastructure in the Philippines, the Indigenous Peoples Rights Monitor (IPRM) and the Cordillera People's Alliance (CPA) in partnership with the Commission on Human Rights of the Philippines (CHRP) and the United Nations Development Programme (UNDP) scheduled a forum on July 6, 2010 in Quezon City, Philippines to assess the 2009 CERD observations and recommendations. This was the first ever NGO-GO Forum relative to International Human Rights Instruments.

The activity was conducted for the purpose of:

- ✍ getting updates from the government on what they have done so far or what plans they have for the implementation of the 2009 CERD observations and recommendations ; as well as
- ✍ for the civil society and NGO to also make updates on whether the government has responded on the ground to the CERD observations and recommendations and if they can also make recommendations to the government for its full respect and implementation.



The activity was very essential and timely since the government is expected to submit its follow up report on August 2, 2010 relative to paragraphs 18, 23 and 25 of the CERD recommendations.

Invited participants were representatives from the CHRP, PHRC, NCIP, Supreme Court, and non-governmental organizations who participated in the drafting of the Shadow Report.



PRESENTATIONS:

The overview and welcome remarks were given by Voltaire Tupaz of EED-Philippine Partners Task Force on Indigenous Peoples Rights (EED-TFIP) and Atty. Mary Ann Bayang, the National Coordinator/Spokesperson of the Indigenous Peoples Rights Monitor (IPRM), respectively. Atty. Bayang accentuated on the objectives of the forum. This was followed by the introduction of all the participants.



Voltaire Tupaz of EED-TFIP and Atty. Mary Ann Bayang during the preliminaries

After the preliminaries, Mr. Peter Duyapat of Nueva Vizcaya, Atty. Cecilia Quisumbing, Commissioner of the Commission on Human Rights (CHR) and Atty. Homero Rusiana, Secretary of the CHR shared their experiences in Geneva, Switzerland, when they attended the CERD sessions relative to the consideration of the 15th -20th Philippine periodic reports and the shadow report.

As part of the sharing, Mr. Peter Duyapat from Didipio, Nueva Vizcaya shared his experience in bringing and presenting to various offices and agencies, the situation of his community especially the entry of Oceana Mining Company. Accordingly, the entry of the Mining Company started the community's environmental destruction coupled with Human Rights abuses (demolition of houses, use of tear gas in barricades and violation of FPIC process) committed by the company with the aid of the military and the PNP .



Mr. Duyapat commiserated however that despite all the efforts in bringing his community's problems to the UN and the despite the 2009 CERD observations and recommendations against mining activities in indigenous peoples (IPs) communities without the Free Prior and Informed Consent (FPIC) of the people, the abuses failed to cease. The people's rights as Indigenous People's are not recognized allegedly on grounds that they are migrants. This is especially true in the conduct of FPIC processes. Mr. Duyapat recommended that their rights as IP's should be respected wherever they are located in the Philippines especially their right to their ancestral domain.



For her part, Commissioner Quisumbing shared that racial discrimination is high in Geneva. The Swiss people according to her, have become racists and they look at foreigners as trouble makers and petty thieves, and to note that the issue of racial discrimination all over the world is being discussed in their own country.

Atty. Quisumbing explained that the CHRP submits report to the CERD independent from the government report. Accordingly, CHRP tries to be balanced or fair. They report both the good accomplishments and bad practices of the government.

Atty. Homero Mathew P. Rusiana, said that the CERD expressed their concern that the Philippines lacks laws on racial discrimination. Commenting on the claim of the Philippine government that there is no racial discrimination in the Philippines, the CERD cited the Subanon case and the rights



of the cultural minorities. Accordingly, the government cited a Presidential Decree and the Indigenous Peoples' Rights Act (IPRA) claiming that they are anti-discrimination laws which will address the situation. The CERD replied that these are not anti-discrimination laws because it does not address the rights of the indigenous peoples. He added that the IPRA is not complete as far as anti-discrimination is concerned and contains merely statement of rights. He said that the Internally Displaced Bill and other similar bills are not the laws which would absolutely protect IP rights against racial discrimination. He contemplated that the CERD need not force the creation or passing of a law against racial discrimination as it should come from the government itself.

Director Karen Dumpit added that CHR is a body independent from the government in terms of its programs and policies. She is equally alarmed by the government's statement that discrimination does not exist in the Philippines. She further said that the government should admit the problems and report on the same, so that it can be properly addressed.

The CERD Observations and Recommendations

A brief review of the recommendations by the Committee on the Elimination of Racial Discrimination to the Philippine Government was presented by Ms. Maria Teresa Padilla, the Executive Director of AnthroWatch. She clustered the recommendations into referring to (1) **national legislation** (paragraphs¹ 14, 15 and 16), indigenous peoples (paragraphs 17,18 and 19), (2) **national monitoring and regulation** (paragraphs 20 and 21), (3) **International Agreements** (paragraphs 26,27, 29 and 30) and (4) **reporting to the ICERD and about CERD** (paragraphs 31, 32, 33, 34 and 36).

¹ 2009 CERD recommendations.

On national legislation, she gave emphasis to the observation that the CERD does not see in the Philippine Laws the conventions and recommendations



Ms. Miks Guia-Padilla of AnthroWatch during the review of the recommendations by the UN Committee on the Elimination of Racial Discrimination to the Philippine Government

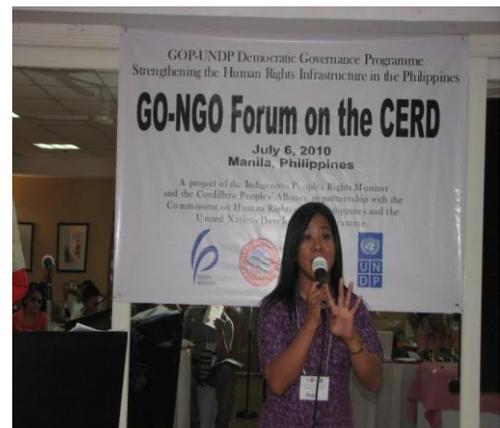
relative to racial discrimination. Likewise, the Philippines has toothless laws since they don't have penal provisions. The CERD recommendations also identified specific provisions of the CERD and other international conventions that the Philippines need to ratify. On International Agreements, specifically Director Dumpit added to Ms. Padilla's presentation by explaining that under the optional declaration provided for in Article 14 of the convention, the Philippines has the option to ratify the optional protocol looking at individual communications. It is optional as it would

depend whether it accepts the jurisdiction of the Committee to be able to get complaints from individuals. But there must be exhaustion of domestic remedies. In this particular treaty, the optional declaration recognizes the jurisdiction of the committee against all forms of racial discrimination to take all cases from state parties and individuals but there must be finality of the cases at the national level before the UN can have jurisdiction. Recognizing the competence of the committee to take cognizance of the case is a mechanism called communications. Whatever decisions they make is called the Committees view. It seems it has a nuance because it is not a court but it looks at the compliance of the government with respect to the provision. There must be a declaration in the instrument of ratification that the state party is accepting the jurisdiction of the Committee before the Committee considers individual complaints against a particular State.

NCIP and the CERD

Ms. Dahlia Dait Cawed of the National Commission on Indigenous Peoples (NCIP) gave a brief background of ICERD saying it has 25 articles which was ratified and adopted by the United Nations in 1969. The Philippines ratified this as a state party to the convention and is obligated under the Convention, to submit State reports every four (4) years. As a state party, it submitted its last report in 1996 when NCIP was not yet created.

In 2006, Executive Order #56 was issued stating that the lead agency concerned relative to the submission of the reports to the ICERD/CERD will be the NCIP and no longer the Department of Foreign Affairs (DFA). NCIP, pursuant to the Executive Order had to comply with the reporting which was long overdue which was the reason why the concluding observations of the CERD lumped the 15th, 16th, 17th, 18th, 19th and 20th periodic reports which was considered in August 2009. This was the first time that NCIP handled the CERD reporting. The observation and concern as reported by the state and criticized by the CERD that there is no racial discrimination was actually the content of the 1996 report which was prepared by the DFA. Cawed opines that the Philippine government in declaring there is no racial discrimination viewed that its people are not discriminated in terms of age, origin and was comparing the situation with the apartheid in Africa. As to the statement that NCIP was controlled by DFA in making the report, Cawed explained that it might be because of the fact that their reports, though passionate, are sometimes edited by the DFA to make it appear more diplomatic. This is despite the fact that they stated therein the findings during consultations with concerned government agencies, NGO's and leaders on the ground. NCIP clarified this to the DFA and their justification is the need to use "diplomatic language".



Ms. Dahlia Dait-Cawed of NCIP

When asked about what NCIP is doing on the cases mentioned by the CERD, Mt. Canaturan and Didipio, Ms. Cawed promised that NCIP will look into these cases. On the Canatuan case, she claimed that NCIP sent communications to their Regional Office and has issued a directive for the assessment of the report. The technical people have already been identified and they are just awaiting any report for their appropriate action. This is accordingly in preparation for the August 2, 2010 periodic report to address the observations of CERD.

Regarding the CERD recommendations # 18, 23 and 25, specifically in obtaining Ancestral Domain Titles, she said that this is the concern of the Ancestral Domain Office of the NCIP and if ever there are verification and validation activities relative to this prior to August 2010, the NCIP Office will actively participate. She added that the NCIP has already disseminated information regarding the CERD observations. The dilemma of NCIP according to Ms. Cawed is that the people might think that if it concerns human rights treaties, it is only CERD that is being disseminated. Indigenous Peoples concerns cuts across all human rights treaties. Accordingly, NCIP conducted capacity building activities especially in non conflict areas that entailed the participation of NCIP, tribal elders especially in Sibugay, Zamboanga Del Norte and Zamboanga del Sur. They informed them about human rights treaties in relation to IPRA.

Cawed quipped that NCIP is constrained by the insufficiency of budget from the national government. She claims that NCIP could provide more accurate information relative to the situation of Indigenous Peoples in the international arena with more budget allocation. At present, they have asked the concerned people in the NCIP to allocate a portion of the budget purposely for the compliance reporting. Now, they are not only faced with the task of making the periodic reports but are also busy following up and ensuring that this endeavour will be allocated a budget.

Cawed said that the NCIP is open to working with NGO's. Here are some excerpts of her statements.

“In as much as we are different, we take our differences friendly. We are all representatives of the state. We have to work it out in order that we could arrive with a more accurate and truthful report. In the case of the last report, the shadow report was only received by NCIP three days prior to the submission of the state report to the UN so we could no longer incorporate the findings of the NGO as the Philippine delegation had no time to convene to clarify the issues and concerns as contained in the shadow report. In as much as you have issues against the NCIP because of its shortcomings, we urge you not to be dismayed. We should learn from the Didipio case and PVI where the people concerned went directly to the UN. The UN referred the case to the DFA which in turn referred it to the NCIP. In such cases we encourage that we should go straight to the proper channel. We are always open with talks. As a background of the Didipio Case, the FTAA awarded was in 1994 when IPRA was not yet passed. I attended the public hearings and as an Ifugao myself, I bleed for them. The Didipio case has become so complexed having started in the absence of IPRA and there was a problem between the Local Government and the National Government (iringan) plus the complaints regarding unpaid claims. There can be no better way to deal with these than to sit down and talk. We have to make more recommendations and less criticisms”.

Open Forum

An open forum followed with the following queries and answers.(N.B. Some redundant statements have been rephrased. Lengthy but substantial discussions were taken as it is for record purposes).



Rhoda Rivera of Dinteg

a) Rhoda Rivera of DINTEG: Is NCIP open to incorporate the reports of the civil society in their periodic reports?

NCIP: Yes, in fact the first report contained all the reports of everybody.

b) Peter Duyapat: What is now the position of CHR regarding the issues we raised to then Commissioner De Lima during her visit in Didipio?

CHR: Since we lost Atty. De Lima to the DOJ and we are not field personnel, we will just contact you regarding the progress of your case once we get the reports from our regional offices. We assure you that your case will be included in the CERD report. There is no stopping us from looking into the three articles that we need to follow on.



Joan of KAMP Philippines

c) Joan: To the NCIP and CHR, if ever you had read the shadow report, what are now your plans and/or accomplishment regarding the issues raised considering that a year after the submission of the report, there are still problems on militarizations, bombings and other issues earlier raised?

CHR: We have different roles in treaty monitoring. Part of our job is to monitor government compliance with the international treaty and in this case, CERD. Part of our job is to remind them to report. That has been incessantly done by our office but despite that, they are eleven (11) years delayed. Another role is to bridge civil society to government. This we believe can be achieved through this forum. That is why we had an NGO- GO platform for all the treaties that we have already reported on. We must remember that there are three parallel processes. A lot of government people find it an affront to submit a separate report other than that of the government. We find this unhealthy as civil societies have the right to present their perspective. It is also the right of National Human Rights Institutions (NHRI) particularly the CHR to present their own perspective because the government is the major player in treaty reporting. Given that, even if we have separate reporting avenues to the UN, it does not mean that we don't have to talk. Constructive dialogue begins in the community. In future reports, we should know that there are three strings. Government is there to report as it is their primary obligation. I think that civil society even if NCIP is open to their report, would not want to subzone their report with that of the government as the final report would be different especially if it's political. Even NCIP's report is not final until DFA says it's final. This is why it's good to use these three strings. We've done it and we've harnessed this system in relation to the reporting for the convention against torture.

Remember that there is no anti torture legislation since 1989. We used so many events that happened to harness pressure to government to pass the law. One of them is the reporting process. Before we went to Geneva, the NGO and the CHR talked to each other so that issues that can be amplified can be taken cared of by both. Most of the time when it comes to government, we are always the simple technical level people. It just so happens that in the political arena we have different decision makings and perspectives. Although we have our own separate role, this does not mean that we cannot talk to each other and strategize and see what we can do to have more positive aspects in the concluding observations. We are looking at the concluding observations and recommendations as a common agenda for all.

NCIP: I have read the 180 pages shadow report. When Karapatan reported the 56, I asked them about the data so we could help but none so far. I admit that there are so many unrecorded cases and since we are in the bureaucracy, we need records. In other cases we coordinated with the local NCIP, they have no records. We request that you provide us with a copy of your findings and reports regarding these cases. I don't know how you handle the data but there were instances when we were not given such reports for fear that those concerned might be killed. That is our dilemma. I assure you that the shadow report and the CERD concluding observations were disseminated in all regional offices. For more details regarding the CERD report, it will be reflected in our next periodic report.

d) Participant from Zamboanga del Sur- There are 12 mining companies in our place. We have submitted a lot of petitions but until now, there are no actions from the LGU and NCIP.

NCIP: We will look into your case. (Bayog, Zamboanga del Sur). I will get the details and the National Office will study your case. Furnish us with your petitions and we will contact Director Puengan.



Joseph Torafing Jr of DINTEG

e) Joseph Torafing of DINTEG- What are updates and plans relative to paragraph 13 and 22 of the CERD recommendations? In the absence of the updated report, what are the updates on recognition and acknowledgement?

NCIP-There is racial discrimination, the mere fact that there is IPRA. On independent review, paragraph 22, I don't know if you are aware with the contradictions of IPRA and Mining Act. We have submitted an inventory of priority bills for the next congress. With the help of CHR, this was included as one of the talking points. It was to review IPRA vis a vis other policies which are contradictory.

f) Rhoda Rivera of DINTEG- In as much as we respect the rule and procedures that all administrative, local and national remedies should be exhausted before we resort to international tribunals, human rights cases are urgent matters which need immediate action. This is the reason why we resort to UN Tribunals to fast tract the process.

NCIP: We respect your framework but you have to note also that bringing the case to the UN would be time consuming as the UN Tribunal will refer the matter to the DFA who in turn will refer it to us.

g) NCIP's response on the query regarding NCIP's procedures - In reporting cases, you go to the provincial officer or the nearest NCIP Office and if not acted upon, you go to the Regional Director. If your complaint is addressed to the Provincial Officer, always make sure that a copy is furnished to the Regional Director and the NCIP Chairman. The purpose is for record purposes so that if the concerned persons did not act on it, it can be easily monitored. Usually, if there are cases not acted upon by the Provincial and Regional Offices, it will always be the National Office who will act on it and investigate why the case was not acted upon. Such persons responsible for the in action can be held liable.

Additional Inputs during the Open Forum (N.B. Some statements were rephrased)

CHR: Relative to independent review on IPRA, we have to really define this so as not to be bias. Who will conduct the independent review? What is the best institution that will conduct the review? The composition must not be bias. Can we recommend to the President the Committee that will undertake the review represented by all the NGO, civil societies, Indigenous Peoples, NCIP and even the CHR, etc.? In the workshop we can already recommend the proper action that will respond to the concluding recommendations. One of the most concrete is to conduct an independent review but we have to be able to put elements on what we mean by independent review. We cannot give it to somebody who is bias.

Giovanna Reyes to NCIP- Please remind your policy makers that the FPIC of 2006 is one of the roots of human rights violations which you are facing as bureau

director. It does not matter who will investigate the NCIP for whatever weaknesses or imperfections in the implementation of the IPRA but I think that the IPRA review should be based on the footsteps of NCIP over the last 15 years because the Commissioners keep on telling us that the IPRA Law is very young. The IPRA Law dates back from one hundred one years ago when the Carino Doctrine was enunciated and 22 years after the 1987 Constitution and 27 years after Macliing Dulag and you are still telling us that the IPRA Law is new and they still have to understand what the law is all about. The conflicts on the ground are traced on the policy guidelines with particular reference to the FPIC process. They have reversed the protectionist provisions. They have captured the regulatory powers of the NCIP and reversed the FPIC and now its Chamber of Commerce ruling over the IPRA Law.

NCIP: I hope it is one of your resolutions today and please furnish us with the resolutions. If you really want to push for the amendment of the FPIC, I would also use it as my basis to push it on technically.

Post comments from Director Dumpit:

“What we formally do after every government report is to contribute to the process. We also have an NGO partner. Thanks to the UNDP who gave us the



Karen Dumpit of the CHR

funding to capacitate the Human Rights Infrastructure in the country. Based on our roles, we also want to engage civil societies in the treaty reporting process. The following are list of our partners (EFPR- SL RIGHT, Committee against torture-PARA and MAG (Medical Action Group), ICERD- IPRM and CPA. This is why I always emphasize that we always harness all the three avenues. It should not only be the government reporting. That is why there are three strings which we should use. We can have joint reporting or not but that does not mean that we should not see each other eye

to eye. By all means, the government needs pressure points too in order to listen. Whatever shortcomings may not have been done on purpose and since not all government offices or employees know exactly what is happening especially with the so many pressing concerns and the changing administrations. We are like children hungry for attention. Whoever is the noisiest, will be the first one to be attended to. We need to come up with our concerns and we will be better heard if we are not

controversial but creative in reaching the powers that be. Every time there's that reporting side which is finished, we do a mapping of responsible government agencies as well as concerned civil society group. We will always use the GO-NGO forum as a venue to ask civil society to be counted and put their names in the issues raised in the concluding observations.. These particular mapping will be sent to all government agencies concerned. After these exercise when you have indicated the civil societies who handle the particular recommendation, we will send the civil society with the same letter that we sent to government. This time around they don't have no excuse that they did not know the concluding observations or we did not follow it through because part of the role of the CHR is to be able to disseminate the outcome of the process of reporting. It is the same with the government especially with the PHRC by virtue of EO163 as they are coordinative bodies within the executive that holds the primary coordinative responsibility to respond and engage in the treaty reporting process.

Dennis Lipatan was the one who said that there is no discrimination as we belong to a single race, the Malay race. This view is a little bit tweaked but the Committee said that what he might be referring to is the formal discrimination but there are a lot of indirect discrimination. Recommendation # 13 was disseminated to different agencies (DOJ,DOH, BILGU,DOLE,DILG). CERD is not only the treaty that responds to indigenous communities. In the same way as we look at the Migrant workers convention, we also look at foreigners' discrimination in this country and we have to attack this problem and examine it well. We have to emphasize if ever they are also transgressing our laws. I just wanted to emphasize this just to drive off the point that the convention on the elimination of all forms of racial discrimination involves more than just the IP's. We also wrote to the BJMP,NCIP,DENR,DFA, OMA. In the Legislation, the Committee on Human Rights in the House, the Senate Committee on Human Rights and Justice and the NCIP. When it comes to recommending comprehensive law on the elimination of all forms of racial discrimination, we wrote the Presidential Legislative Liaison Officer explaining to them this particular portion. Usually, if it concerns a law, we write the legislative branch and the PLLO. In gathering up to date data, NSO is there and NSTB as policy makers for census, NEDA and NCIP. In CHR, we look at our metagora project and it involves statistical data on the socio economic situations of IP's. This is where we can look at the indirect discrimination of IP's. What I would recommend is a follow through in the form of a project.

In peace process, we have the DILG, etc. In recommendation # 20, it is obvious that it is referring to the Ombudsman. We have written them but up to date there is no

reply. In the protection from the AFRC mandate of the Commission, of course the Commission is there and we are lobbying for the legislature to give us the CHR Charter.

With regards the Regalian Doctrine and Mining Act Independent review, we will take that in the workshop, concretize it and say that maybe the President should form this Committee and we will suggest who the members of the committee will be.

On recommendation # 23, NCIP, DENR, DAR should look into this. It has to be an inter agency. We are getting negative comments from the UN. This is because we failed to respond. The latest is the Pestano case (Navy Officer), who allegedly killed himself. There was no meaningful, prompt, impartial and thorough investigation relative to the case. That was the UN findings because we did not properly respond to it. We should be able to map out and identify the responsible agencies to respond to these concluding recommendations and find out who among the civil societies are taking care of it.

On recommendation #24. One of the roots of Human Rights violations against IP's is the use of FPIC to facilitate things other than for Ancestral Domains. There are a lot of recorded cases and studies that show that our IP brothers think of FPIC only for purposes of mining claims and not for the attainment of their rights to their ancestral domain claims. This is a perception that maybe mistake but must be addressed by the government.

On recommendation #26, this is the role of the Office of the Executive Secretary, PLLO, NCIP, DFA and PHRC. The CHR has a role here because we always recommend. We do studies whether the instrument should be ratified or not and what aspect of it should be considered by the government before they actually sign or ratify.

Part of the plan is to have PHRC do the National Human Rights Action Plan. The first was in 1995 to 2000. This was spearheaded by CHR. Based on studies and international documents that relate to national human rights action plan , it should be the Executive who should spearhead this. There were ownership problems then as well as budgetary problems. This time around, we want to integrate the concluding observations to address our reporting compliance not for the sake of reporting but for the sake of actually having a plan that would implement the provisions of the convention and keep it alive at the national level. We said to PHRC and the government that this should also be treaty based. The several concluding observations and recommendations have been included in the draft of the National Human Rights Action Plan. With the change of administration, we should revisit the

plan and ask the new administration to adopt it because it is a good plan. Though it is not perfect, at least we are starting from somewhere so it is important to support it. If we think that it is not substantial especially with regards to racial discrimination and IP concerns and other vulnerable groups, then we should talk now. Given that, one of our roles is to recommend effective measures to promote and protect human rights and basically the first level of obligations that you will find a state party doing is the harmonization of laws with the provisions of the convention or covenant. Part of our role is to help the legislature to have human rights based laws that translate these provisions into local law. We always influence and encourage the legislature to pass such laws relevant to human rights.

In the recent workshop that we had last April 7, (2010), there were insights for comments on the ways of categorizing whether laws passed by the legislature were human rights relevant. There was a comment that it is also important to look at legislations so that these will address the roots of human rights violations. This is very important especially so that Mr Reyes has validated that FPIC guidelines is one of the roots of human rights violations. The workshop concentrated on the CERD, IPRA vis a vis mining, FPIC process in accordance with the letter and spirit of IPRA, protection of children from the effect of IPRA, alternative dispute resolution on racial discrimination violations issue. We raised all these. As Human Rights advocates we should also consider that we cannot NOT criminalize all human rights violations. Although there are non negotiable cases where the ADR is not applicable, let us try to look at this. Even if you analyze the Comprehensive National Legislation Against Racial Discrimination, I was given this bill that looks at that and it only criminalizes it. I asked them if there can be other solutions other than criminalizing and penalizing it. Can't there be human rights education type or building of human rights culture in the community? We are trying to invite that kind of tolerance and understanding of culture.

We also talked about strengthening the right to vote of indigenous people as well as detainees. For persons deprived of their liberty, we already had a report to monitor the enjoyment of the right to vote of detainees. I suppose that we could do this too for indigenous peoples. Maybe we can have this NGO who would like to survey how it was this past election, how the electorates felt when it was automated. This is the result of the workshop that we did last April 7. After the workshop, we wrote all the participants plus other organizations to look at all related laws (treaties) and identify which ones are good. We asked them to give at least three priorities and among those three, we asked them to at least give three to five elements of that bill so that we can fairly say that it is a human rights based legislative proposal. Whatever

your priorities are, the non negotiable elements of each legislative proposal that will be collated will be sent to congress for appropriate action. It's talking about all the things we have in common and by all means we will propose it. Some are saying we have a lot of laws and the implementation is the one lacking but we also believe that there are a lot of laws which are not in harmony with the provisions of human rights standards. We need to cure that. FPIC could be one of them. It's high time that we review the 13 year old IPRA Law. These are our plans. We are a bridge between government and civil society and it can work both ways. Since we are in a unique position, we have access to government, we are state funded, and you can utilize us. But we are independent of the three branches of the government and by all means let us work together. Independence does not mean that we have to work separate of each other. We can always talk and fight about issues and at the end of the day we can agree to disagree but what is important is we are all together talking about the issues and how to solve them."

The PHRC, and its human rights action plans:

Mr. Severo Catura and Mr. Vaux Fajardo of PHRC shared the updates and plans of PHRC. They distributed a paper containing their accomplishment report for 2009 and the Proposed National Human Rights Action Plan (PNHRAP) for 2010 to 2014. They are hoping that the new administration will approve this plan and its. Accordingly, part of the PNHRAP are the issues and concerns raised during consultations as well as the CERD concluding observations and the Shadow Report.



Mr. Severo Catura of PHRC



Mr. Vaux Fajardo of PHRC

Mr. Catura shared that PHRC has already conducted 10 human rights forum. Administrative Order 163 mandates the PHRC to ensure the government's compliance with and strict adherence to all its obligations

under international human rights instruments including the timely submission of treaty implementation reports/replies and comments of cases filed with the UN. According to him, this distinguishes the PHRC's mandate from that of the CHRP. Mr. Catura went on to state that *"PHRC is only mandated with the compliance within the executive department unlike the CHRP where they monitor the entire government compliance. In the last 2 ½ years the PHRC took active roles in the compliance of putting on five core international human rights instruments. Relative*



to laggard reporting, this was included in the Universal periodic review which was undertaken before the five periodic reports which of course included the compliance reporting on the CERD. The role of the PHRC is to coordinate, facilitate and to monitor. We don't implement programs but

we do everything to ensure that these programs are implemented by the executive department and we have to do that because we also have to report to the CHR. A major change in the structure of the PHRC was when it was decided that it be placed under the direct supervision of the executive secretary. It was the lead compliance monitoring agency for each of the 8 core international human rights treaties which the Philippines is a signatory. Former Chairman Insigne of NCIP co headed the country's delegation during the consideration of the 15th to 20th periodic reports of the Philippines compliance to the CERD. Other agencies represented in the Philippine delegation were the Office of the Executive Secretary, Office of the Presidential Adviser on the Peace Process, Office of Muslim Affairs.

So what exactly is the government doing to address these concluding observations? The NCIP took the lead in the crafting of several action areas that are now contained in what is now become known to be the National Human Rights Action Plan (NHRAP) which precisely address the recommendations under the concluding observations. The NHRAP extends from the commitment made by the Philippines when it agreed to the Vienna Declaration of 1993 in which they had the measures introduced national human rights planning as essential to effective human rights advocacies by state. Two years later, the Philippines launched the first human rights action plan for 1995 to 2000. The plan however was sectoral in approach.

Under AO 163, the formulation of the second human rights action plan was once again laid on the table and after a series of trainings for lead agencies and local focal institutions conducted by no less than the CHRP. We are hoping that the new administration will approve this for implementation.”

WORKSHOP GUIDELINES and INPUTS

The workshop was anticipated for the government and non-government organizations but since the representatives from the government were not able to join the forum in the afternoon session, the workshop was only completed by the non-government organizations. The objective of the workshop is mainly to provide updates, comments and suggestions on each of the CERD recommendations.



After the workshop, the following updates and recommendations relative to the 2009 CERD recommendations were reached, to wit:

1. On paragraph 13

➤ Demand from the government to issue a categorical statement that there is discrimination in the Philippines taking into account the statement from NCIP that the enactment of IPRA is evidence that there is discrimination. Moreover, the *Regalian Doctrine*, the National Unity and Development principle as well as Section 78 of the IPRA Law excluding Baguio in its coverage is clearly unjust and discriminatory.

➤ Since the report is formal, there must also be a formal declaration that there is racial discrimination in the Philippines, as a step necessary in addressing this problem of discrimination.

➤ A meeting is set on August 09, 2010 with the newly elected President to submit the IP agenda for the new administration.



2. **On National Legislation** (Par. 14, 15, and 16)

➤ Since this is not a priority concern of civil society but the priority legislative agenda of CHRP, the practical thing to do is to support and push for the passage of the specific legislative agenda of CHRP.

➤ Recommendations should not be limited to legislative actions but should include administrative action on executive orders which could be integrated in existing processes without going into lengthy legislative proceedings.

➤ Relative to the penal provisions and alternative dispute resolutions mechanisms, it was suggested that this should focus more on land issues.

➤ Since there exist a chauvinist attitude of Non-IP's against IP's , the general public especially the IP's should be educated so that in the process the chauvinist attitude will collapse. We should avoid the clash of IP's with non IP's as it will dissuade the critical problems of IP's. We will just support the initiative of CHRP and in the process come up with our stand.



3. **On Indigenous Peoples** (Par. 17, 18, 19, 22, 23, 24, and 25)

➤ According to AnthroWatch, ethnicity variable is already included in the 2010 Census. Under the ethnicity variable, the determination of who is an IP is by blood. This has implications in terms of human rights and it is against self ascription. This was discussed with NCIP and was made clear to them that the civil



society is uncomfortable with the way they defined ethnicity variable especially with the way they identify who is an IP and who is not. This is especially true in intermarriages. These objections had been documented during consultations with the NCIP and in the ENDP-IP



program. Looking at the CERD recommendation, it is not good as it states that the basis for ethnicity is on voluntary self identification, in a way there is sense of deception. According to Anthrowatch, these objections and recommendations will be included in a report.

➤ The full report of the census will probably be available by 2012. It is recommended that IP leaders should participate in the conduct of the census to ensure the integrity of data gathered and after the census, an assessment activity will be scheduled to consider the questions raised about the census specifically in the determination of who is an IP and who is not.

➤ As claimed, the NCIP and NSO are closely working with each other relative to this ethnicity variable. However, there were contentions that the procurement of data for the census being conducted by the National Statistics Office (NSO) is tainted with irregularity like in Zamboanga where the data are not being collected directly from the community concerned. The alleged irregularities call for a verification.

➤ It is recommended that civil society should study and focus on how the data will be processed, analyzed and utilized. It should prepare and continue its advocacy relative to the definition of ethnicity variable so that it

will not be repeated. It should also gather information and documentations on any untoward events relative to the census.

➤ In so far as the IPRA is concerned, an independent body should be created for a thorough review of its provisions.

4. As to recommendation #18, it is recommended that **all paramilitary groups should be dismantled and made to answer for their wrongdoings**. It was also suggested that the implementors of IPRA be castigated. Allegedly, if the IPRA is in conflict with other laws, the NCIP is being confused as to its jurisdiction resulting to human rights violations; hence, it is recommended that the NCIP be totally revamped by calling for their courtesy resignations and asking the President for a corresponding moratorium on the appointment of Commissioners until a screening process of appointment shall have been established with the participation and planning of IP groups.

5. **Scrap and/or expunge the Oplan Bantay Laya (OBL)** before formulating any government policies on National Internal Security Plan (NISP) and Medium Term Philippines Development Plans. Earlier cases in relation to OBL should be resolved first in order to be able to surface the victims of enforced disappearance during the time of the past administration. In addition, the IPRA should be strictly enforced as an instrument to stop the involvement of children in armed conflict as well as members of IP's being organized by the military as paramilitary groups. Likewise, the Barangay Defense System should be stopped as it is within the OBL 2 Framework.

6. The CERD urged the Philippine government to ensure that independent and impartial investigations are conducted into all allegations of human rights violations. To date, there were no independent investigations yet and the perpetrators are yet to be made accountable. It is recommended that the **Truth Commission should look into these human rights violations**.

7. The government should provide information on the follow up reports to the report of the UN Special Rapporteur on Extra judicial, Summary or Arbitrary Executions as contained in the CERD recommendation, paragraph 18. Relative to

this, it is requested that the government should expunge their Order of Battle lists/records and punish the perpetrators of extrajudicial killings..

8. On peace process, it is recommended that the government should **prioritize the resumption of peace talks**. The National Internal Security Plan provides that the PNP and the PA are investment defense forces. The implementation therefore of the NISP is concentrated in areas where there exist development issues. These areas are militarized and more often than not, HRV's are committed. It is therefore recommended that the deployment of these defense forces should be re studied.

9. On internally displaced persons, it is recommended that the government should look into the issue on how to distinguish internally displaced persons. In Mindanao, displaced persons not found in evacuation centers are not recognized as displaced persons. The government should also consider and respect the community's decision to evacuate in a place preferably of their own choice.

10. Relative to Paragraph 22 on independent review, it is recommended that a committee be created purposely to conduct specific review with representations from both the GO, NGO and civil society communities. It is also requested that one of the UN experts be invited to head or sit in the independent review. As to the review of legislative agenda, it is recommended that the review of the *regalian doctrine* be possibly explored especially its application to indigenous peoples' ancestral domain.

11. **Abolish and scrap the Mining Act of 1995** instead of waiting for the creation of an independent body. As such, an executive order setting moratorium on all mining applications and non environmental friendly projects should be passed and that the existing mining companies should not be allowed to expand their operations and this should be included in the 100 days of the new administration.

12. As to CERD recommendation number 23, the NCIP should not only **streamline the process for obtaining land rights certificates but shall also conduct investigations relative to false claims**. NCIP personnel who shall acquiesce to such false claims should be punished.

13. As to CERD recommendation # 24, it is recommended that the **FPIC Guidelines be reviewed**. The NCIP should acknowledge, respect and consider the recommendations of IP's in the FPIC Guidelines of 2006.

14. On CERD recommendation #25, in so far as the Mt. Canatuan case is concerned, the TVI Pacific, a Canadian mining company has been found guilty of numerous crimes by the traditional justice authority of the Subanon People - the "Gukom." The priority of the Subanons at present is for **the NCIP to take cognizance of the previous violations of TVI Pacific and to make it accountable for its numerous human rights abuses and violations of Subanon customary law as reflected in the Gukom's verdict**. As for the verdict, PipLinks says the "Gokum" found that TVI is guilty of a number of crimes against the recognized traditional leader of the Subanon in that area, Timuay (or Chieftain) Jose "Boy" Anoy, his people and the lands within his Ancestral Domain. These include violence against certain individuals, violation of the Subanon's customary laws, abuse of the dignity of Subanon leaders and damage to personal

property and the local environment. Many of these are grave violations of Subanon law. Various penalties were stipulated, including financial restitution through the payment of a



specified number of 'bolos' and a call for restitution in order to restore natural balance and most importantly in this case, that TVI leave the Ancestral Domain of Timuay Anoy. The past violations were not yet resolved to date. In fact, in their attempt to confuse and divide the community, the State used the media by making it appear that the Subanon tribal leader Timuay Boy acceded to the mining operations and endorsed responsible mining.

15. It was agreed that a separate report on the Subanon case will be submitted by Piplinks. Additional recommendations raised are for the government to act on the cancellation of the MPSA issued to TVI and for the company to seriously check on the urgent rehabilitation after the operation. As for the 400 hectares already awarded to the company, it is recommended that the community should not allow the mining operation since there was a violation in the conduct of the FPIC process. The community should hold the company accountable for the violation of their rights and should not allow them to expand their operation.



16. The participants agreed to adopt the CERD recommendations #s 20, 21, 26, 27, 28, 29, 30, 31, 32 and 33 as it is, and monitor the government on how it will address these recommendations.

17. For the follow up report relative to recommendations #s 18, 23 and 25 of the 2009 CERD recommendations, the following groups were tasked to submit their reports.

- a) Recommendation no. 18 - KAMP
- b) Recommendation no. 23 - AnthroWatch
- c) Recommendation no. 25 - PipLinks

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