

Submission to the Committee on the Elimination of all forms of Racial
Discrimination

Philippines Indigenous Peoples ICERD Shadow Report
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1 Executive Summary

The Philippine Government last submitted a report to CERD in 1997. That same year the Philippines finally passed into law the Indigenous Peoples Rights Act R.A. 8371 (IPRA). This was heralded as the enacting legislation to fulfill the promise of the 1987 Constitutional recognition of Indigenous Peoples' ancestral land rights. The Government's current report focuses almost exclusively on this constitutional and legislative recognition of the rights of Indigenous Peoples. It fails to address how this is being implemented on the ground and the on-going discrimination against Indigenous Peoples as illustrated by the substantial gap between the de-jure recognition of Indigenous Peoples' rights and their de-facto realization.

The Indigenous Peoples of the Philippines are historically distinct from the majority of Filipinos in their success in resisting the Spanish colonial administration of the Philippines. As a result they maintained their indigenous belief systems, worldviews and ways of life while the Filipino majority was assimilated into the socio-cultural, economic and political system brought about by the Spanish conquistadores. It was during the American colonization, at the turn of the 20th century and following the transition to an independent Philippine State, that land laws were passed that legitimized the taking of Indigenous Peoples ancestral territories. Perpetuating Spanish and United States colonial thinking the State in the 20th Century has repeatedly claimed all unregistered lands as public land¹. For a wide range of reasons, including, among others, Indigenous Peoples' rejection of the State's rights over their ancestral lands, ignorance of and incapacity to engage with legal processes, State and corporate power, corruption and poverty, most indigenous land remains unregistered and therefore vulnerable. The State has enacted laws that provide for the distribution, use or disposition of these lands for control and exploitation by others without regard for indigenous prior rights. Indigenous Peoples' property rights were also treated as grants from the State rather than pre-existing inherent land rights making their lands alienable and disposable and thereby providing for the extinguishment of indigenous ownership rights. Despite these laws and policies many Indigenous Peoples are still in effective occupation of their ancestral territories throughout the archipelago, especially in interior mountainous areas.

Legal Framework and Indigenous Peoples Rights to Lands, Territories and Resources

In 1907, Mateo Cariño, an Indigenous Ibaloi, took a legal challenge to the action of the US Colonial Government to seize his pasture lands for use as a military base. He won the case. The landmark 1909 *Cariño vs. Insular Government*,² ruling of the US Supreme Court recognized native title and property rights of the Philippines Indigenous Peoples as 'vested through a traditional legal system different from what the colonizers prescribed'³. It acknowledged the fact that their lands were private property and had never been public property, inasmuch as they had not fallen under the effective rule of the Spanish Crown and their imposed Regalian Doctrine.⁴ However, even this exceptional and high profile case did not result in justice as the ruling was never enforced. The land was not returned nor was compensation paid. Both the US colonial and subsequent Republic of the Philippines Governments continued to illegally retain these and other Ibaloi lands in the area of Baguio City, using and disposing of them without regard for the needs or wishes of their indigenous owners.

The 1987 Constitution marked the first change in the State's official attitude towards Indigenous Peoples - from attempting to integrate and assimilate them to one of 'recognition' of their rights, including ancestral domain rights and their traditional indigenous institutions and practices. Furthermore, it called for legislation providing for the applicability of their customary laws.⁵ The Indigenous Peoples Rights Act (IPRA) was enacted in 1997 to give effect to this recognition. The IPRA recognizes Indigenous Peoples inherent rights, including their right to self determination; rights to ancestral domains (including 'mineral and other natural resources') and the applicability of their customary laws governing property rights; their right to a self determined development and the requirement that their Free Prior and Informed Consent be obtained in relation to any developments impacting on them. It also established mechanisms for ancestral domains to be delineated and formalized. However the manner in which the IPRA has been interpreted by

the courts and implemented by the National Commission on Indigenous Peoples (NCIP) and other Government agencies, combined with certain discriminatory provisions within the IPRA itself, have resulted in a failure to address past wrongs. They have resulted in the denial of adequate protection to indigenous rights and respect for indigenous law and culture and have contributed to providing the conditions for the on-going discrimination and extinguishment of native title.

Discriminatory concepts that pre-date both the IPRA and the 1987 Constitution continue to inform the decisions of the courts and actions of Government agencies. These concepts hold that Indigenous Peoples property rights are grants from the State as opposed to inherent pre existing property rights. As a result, the courts and government agencies continue to openly subordinate Indigenous Peoples' rights to national development policies and call for Indigenous Peoples to make sacrifices in the interest of development for others. The following three examples are illustrative of this discriminatory interpretation of the law.

The American Regime and Philippine State inherited the Regalian Doctrine from the Spanish Colonial system. This Doctrine is included in the 1987 Constitution and holds that "*All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State...*"⁶ A petition was filed in 1998 in the Supreme Court by those supportive of the mining sector to declare the IPRA unconstitutional on the premise that it violated the Regalian Doctrine.⁷ In its ruling in 2000 in the *Isagani Cruz and Cesar Europa v. Sec. of Environment and Natural Resources* case the Supreme Court upheld the constitutionality of the IPRA.⁸ However, the majority of those justices⁹ who voted to declare the IPRA constitutional concluded that: '*Examining the IPRA, there is nothing in the law that **grants** to the Indigenous peoples ownership over the natural resources within their ancestral domains...[t]he IPRA does not therefore violate the Regalian doctrine on the ownership, management and utilization of natural resources, as declared in s 2, art XII of the 1987 Constitution.*' This would appear to imply that the IPRA is only constitutional in so far as it is consistent with the Regalian Doctrine, despite the fact that by definition the doctrine is incompatible with the concept of Indigenous Peoples' ancestral domains. By subordinating the ancestral domain rights of Indigenous Peoples to the Regalian Doctrine, the Supreme Court interpreted the IPRA in a manner that is perverse, discriminatory and unjust and contrary to the inherent principle underlying the recognition of indigenous lands rights in the Constitution, namely the righting of an historic wrong.

Both the IPRA and the 1987 Constitution include the provision that the "*State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development.*" Instead of interpreting this as a requirement that national development be balanced with Indigenous Peoples' rights and interests and that development should only proceed in a manner that is consistent with the realization of Indigenous Peoples' rights, the courts and Government agencies have chosen to interpret it in a manner that subordinates Indigenous Peoples' rights to the national development plans and policies.

The Supreme Court ruling in *La Bugal-B'laan Tribal Association, Inc. v Ramos*¹ is illustrative of this. In January 2004 the Supreme Court upheld the claim of the B'laan people that the 1995 Mining Act was unconstitutional. However, 'a strong campaign to get the Supreme Court to reverse itself', involving legislators and the mining industry, was mounted. In December 2004 the Court reversed its decision and characterized the rights of the indigenous community as "parochial interests" stating: '*The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interests...To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens...This Court has therefore weighed carefully the rights and interests of all concerned, and decided for the greater good of the greatest number*'. The Supreme Court based its decision on the highly discriminatory argument that sacrificing B'laan Indigenous Peoples' rights, lands and welfare - all characterized as "parochial interests" - for

unsubstantiated claims of revenues to be received by the central Government and a mining corporation is acceptable and in the national interest.

The IPRA's provisions (Section 7 (g), 56 and 78) on 'Existing Property Rights Regimes'¹⁰, 'Right to Claim Parts of Reservations',¹¹ and its Special Provision on Baguio City are clearly discriminatory towards Indigenous Peoples.¹² They seriously undermine the laws potential for addressing prior extinguishment of Indigenous Peoples' land rights. Section 56 states that '*Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.*' Likewise Section 7(g), states that parts of existing reservations cannot be included in ancestral domains while Section 78 basically says that the IPRA does not apply to Baguio. The dominant interpretation of Section 56 by the Government agencies is that it supports the claims of mining and logging companies that permits / concessions granted prior to the IPRA are vested property rights which take precedence over the inherent property rights of indigenous communities. This interpretation legitimizes past encroachments into Indigenous Peoples' ancestral domains. It also acts as a justification for not obtaining FPIC in relation to ongoing projects, thereby facilitating the extinguishment of ancestral domain rights. The exclusion of Baguio City from major provisions of the IPRA is a continuation of the historical discrimination against the Ibaloi of that mountainous region.

The NCIP, the Government agency created under the IPRA with responsibility for implementing its provisions, has also adopted this discriminatory interpretation of Section 56. In its response to CERD in relation to the case of the Subanon of Mount Canatuan the NCIP attempted to justify the presence of TVI Resources' mining operation in Subanon ancestral domain in the face of strong community opposition. It quoted Section 56 stating that 'moreover the law [IPRA] itself provides for the recognition and respect of the property rights within the ancestral domain already existing and/ or vested upon its effectivity'.¹³ This position and interpretation of Section 56 by the NCIP is fundamentally flawed and strongly disputed. The prioritization of the protection of corporate rights discriminates against the Subanon and is at odds with the NICP's mandate to uphold Indigenous Peoples' rights and the IPRA's requirement that 'any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs [Indigenous Peoples]'.¹⁴

This discriminatory interpretation of the IPRA by the courts and Government agencies is compounded by a failure to implement its potentially protective provisions. Obstacles to realization of the rights recognized under the IPRA include bureaucratic, expensive and intimidating titling procedures that place an unfair burden of proof on Indigenous Peoples; the failure of the Government agencies and courts to ensure redress for past wrong through reconveyance and restitution; the subordination of the IPRA to conflicting laws and over lapping jurisdiction of other Government agencies; and the ineffectiveness of the titles issued under the IPRA to afford de facto protection to indigenous property rights. The Shadow report draws upon numerous examples of the experiences of indigenous communities that illustrate how all of these factors continue to deny Indigenous Peoples their inherent rights recognized under law.

Many ancestral domains remain unrecognized by the State. This in turn has created a division of Indigenous Peoples' ancestral territories into those that are formally recognized and those that are not. The effect has been to shift the burden of proof to Indigenous Peoples whose territories are without CADTs whenever external entities or the State wish to appropriate these lands, in many cases leaving them even more vulnerable to informal or Government sanctioned encroachment. This unwanted encroachment is primarily associated with development projects and is referred to as 'development aggression' by Indigenous Peoples. 11 years after the passage of the IPRA, and 21 years after the Constitution recognized Indigenous Peoples' land rights, the failure to uphold these rights in practice is indicative of cynical neglect. As of December 2008 only 96 CADTs had been issued, covering 2.7 million hectares. Of these only 19 have been fully registered, corresponding to less that 0.6 million hectares. In other words, after 11 years of the IPRA's implementation, less than 8% of the estimated 7.5 million area of ancestral domains has been registered. Yet, during the same period, the Government has moved

rapidly and aggressively to secure rights over indigenous lands for foreign mining companies and other business enterprises, issuing in the region of 175 Certificates for development projects in indigenous lands.¹⁵ Laws and regulations have been passed to speed up the process for securing mining licenses in these lands and to guarantee positive outcomes. The NCIP is required to issue Certifications within 107 days, while at the same time over six years to have CADT's awarded and registered. Thus a mining company can get the approval to extract the mineral resources from and operate in an ancestral domain in less than 4 months, while a community must wait 6 years or more for its rights over its own ancestral domain to be recognized. Communities that resist Government backed plans within their ancestral domains report that they are obstructed or blocked from progressing their title claims. There is a race for rights over indigenous lands and resources and Indigenous Peoples are consistently on the losing side. The NCIP is prioritizing the processing of required Free Prior Informed Consent for mining companies over processing ancestral land rights claims and self determined, culturally appropriate development plans which could empower indigenous communities to choose their own development path.

Right to Self Determined Development and Free Prior Informed Consent

To address this phenomena of development aggression the IPRA requires that the Free, Prior and Informed Consent (FPIC) of indigenous communities be obtained before *'issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement'* in their ancestral lands. The IPRA defines FPIC as *'the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community'*¹⁶.

The 2003 Philippines country report of the UN Special Rapporteur on the Fundamental Freedoms and Human Rights of Indigenous Peoples noted 'serious human rights issues related to the lack of [IPRA's] effective implementation'. It identified the fact that development activities in indigenous lands *'are often carried out without their prior, free and informed consent, as the law stipulates'* and this leads to *'serious human rights violations'* with *'the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment'* being *'of particular concern'*. UN Treaty bodies have raised similar concerns in relation to the impacts of mining on Indigenous Peoples.¹⁷ The Special Rapporteur's concerns were substantiated by a 2008 nationwide study involving the majority of the Certificate of Ancestral Domain Title (CADT) holders. It found that over 70% of the mining and logging operations on their lands were being conducted without their FPIC. In the majority of those cases where an FPIC process had been conducted *'not all the proper procedures were undertaken to ensure a fair and unbiased outcome'*.¹⁸

The NCIP is the Government agency responsible for facilitating the conduct of FPIC processes. Even the limited protections which its guidelines for the conduct of FPIC processes afford to communities are not respected in practice. The NCIP is widely viewed by Indigenous Peoples as compounding, contributing to and even causing their problems rather than assisting them in addressing them. Reports from all regions stress the NCIP is 'consistently inconsistent' in the application of its FPIC guidelines. They report that FPIC processes are tailored on a case-by-case basis towards the realization of company interests. It is also of concern that NCIP officials and those from other Government agencies work in close cooperation with company officials. The NCIP, together with its Consultative Bodies, is viewed as being neither representative of, nor accountable to, Indigenous Peoples.¹⁹ Compounding these fundamental structural issues is the fact that its budget is grossly inadequate for its mandate. Illustrative of the Government's lack of political will with regard to promoting or defending Indigenous Peoples' rights is the fact that since its creation in 1997 the NCIP has been transferred from the Office of the President to the Department of Agrarian Reform and from there to the Department of Environment and Natural Resources (DENR),²⁰ subjecting it to interference from agencies with directly conflicting interests and agendas. The DENR is the department responsible for the promotion of the mining industry and is viewed as being

strongly influenced by it.²¹ The European Commission alluded to this fact in its 2005 Philippine Environmental Country Profile where it stated that ‘[DENR] in-house corruption is another concern.²² There is a lack of internal controls to curb bribery, which has traditionally been notorious with respect to illegal logging and mining concessions’. Placing an agency responsible for the full range of needs and provisions of 10% of the poorest and most marginal people in the country under the management of the Department whose main concern is the exploitation and management of natural resources is grossly inappropriate and not conducive to the protection of their best interests.

The mining industry was instrumental in the drafting of the 1995 Mining Act. It also played an influential role in the formulation of the Government’s 2004 Mineral Action Plan (MAP).²³ The MAP, which targets up to 30% of the country’s landmass as ‘high potential’ for mining, is an integral component of the Government’s 2004 - 2010 Medium Term Philippines Development Plan (MTPDP), which is the basis of the Philippine’s MDG program. Much of this mineral rich land is located in the ancestral domains of Indigenous Peoples, with up to 60% of ancestral domains impacted by mining applications and 39 of the 63 Government priority mining projects directly overlapping ancestral domains.²⁴ Therefore, one of the requirements of MAP was that the IPRA be made more ‘current and responsive’, thereby ‘harmonizing’ it with the 1995 Mining Act²⁵. This required ‘amending existing procedures to simplify the grant of NCIP Certification/FPIC’ and reducing the associated timeframes.

The revised 2006 FPIC guidelines, issued as a result of the MAP requirement, provide a FPIC implementation framework that is amenable to the needs and interests of the mining sector, but incompatible with the rights recognized in the IPRA. The repeated revision²⁶ of the guidelines have seen them gradually evolve into a set of rules which impose restrictions on the timeframes and processes of FPIC that are not in conformity with the customs, laws and traditional practices of indigenous communities. For example, under the guidelines, the entire FPIC process must be conducted in 55 days with community decisions arrived at within 20 days. Such timeframes are unrealistic, discriminatory and incompatible with traditional practices and the right to self-determination. The guidelines represent a bureaucratic definition of indigenous processes and constitute discriminatory treatment of indigenous governance and land ownership systems vis-à-vis mainstream governance and licensing systems. At an international level the gap between the IPRA’s provisions and its bureaucratic and changeable Implementing Rules and Regulations (IRR) allow the Government to present itself as adhering to the provisions of the IPRA, while in reality implementing a framework that is systematizing violations of that law. The Shadow report outlines the experience of Indigenous Communities in relation to FPIC and the grounds for their strong and repeated objections to them and related Government practices.²⁷

Militarization and Civil and Political Rights

Militarization of indigenous lands is among the clearest manifestations of the direct circumvention and failure of the Philippine Government to uphold its duty to eliminate discrimination against Indigenous Peoples. Indigenous Peoples occupy territories that are rich in natural resources. The utilization and “development” of these resources have persistently been sources of heightened conflict between indigenous communities and the national Government. To secure what the latter deems as “national development”, military bases are increasingly embedded in indigenous territories, often within or in close proximity to the areas where Indigenous Peoples reside. Of utmost concern is the increasingly visible strategy of creating paramilitary forces that are distinctly of indigenous composition and are deployed within indigenous territories. This strategy is contributing to an erosion of social ethos and unity in indigenous communities and is often culminating in violent confrontations.

In his 2003 report, the Special Rapporteur on Indigenous Peoples also expressed serious concerns, which he subsequently reiterated in his follow up visit in 2007, in relation to ‘*militarization, intimidation and abuse by military and mine security*’.²⁸ Describing militarization of Indigenous Peoples’ lands as ‘a grave human rights problem’ that the Government needed to address, the report noted that ‘*Indigenous*

resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries.' These practices, together with forced evacuation and strafing of indigenous communities, continue as a result of on-going militarization of indigenous territories.²⁹ Militarization has also exacerbated the historical exclusion of Indigenous Peoples from the economic, social, cultural and political life of the State, and has created an atmosphere of impunity resulting in routine violations of human rights, both at the level of individual and collective rights. In light of the serious human rights violations resulting from militarization of indigenous lands the report recommended that irregular military units or paramilitary groups and CAFGUs '*be withdrawn from indigenous areas altogether, within the framework of a national programme to demilitarize Indigenous Peoples' territories.*'³⁰

Instead of acting on this recommendation to demilitarize indigenous territories, the Government of the Philippines is doing precisely the opposite by implementing a national strategy that consists of the deployment of military detachments in indigenous territories. The purpose of these military detachments, which are manned by paramilitary forces under the command of regular army officers, is to quell legitimate dissent. The increasing presence of the military in Indigenous Peoples' lands has been described by the Indigenous Peoples Rights Monitor organization as leading to the effective transformation of many indigenous territories into "military bases".

In 2006 the NCIP revised its FPIC guidelines so that they no longer require indigenous communities consent prior to the militarization of their lands. In 2008, the President established an Investment Defense Force, with the stated aim of protecting foreign investments in development projects, particularly in the mining sectors. As a result, military forces have been deployed in indigenous territories in areas targeted for logging, mining and biofuel investments. The Government's counter insurgency strategy is also resulting in increased military presence and bases in indigenous communities. The National Internal Security Plan (NISP), the nationwide anti-insurgency military campaign, of the Armed Forces of the Philippines (AFP) includes a component that is specifically targeted at Indigenous Peoples. It envisages the establishment of paramilitary units within indigenous communities, and includes recruitment of the members of these communities into the military and paramilitary units.

Human rights groups estimate that there have been 25 anti-mining, environmental activists and 137 Indigenous Peoples killed since 2001.³¹ Most of the 137 killed were victims of military counter-insurgency operations. Some were killed in incidents of massacre, including children and women. A number of the victims were farmer-hunters who were out in their fields and forests when killed. Also included are those who died in the course of evacuations and those killed during police/military operations such as in incidents of demolition. Extra-judicial killings have claimed the lives of 16 indigenous leaders/activists. The phenomenon of politically motivated assassinations is happening throughout the country. The Lumad of Mindanao and the Igorot of the Cordillera are among the most targeted groups with members of indigenous leadership structures especially targeted. The military is implicated in many of these. In addition to killings, the military is also implicated in the phenomenon of enforced disappearances, such as that of James Moy Balao, an Ibaloi Kankana-ey activist from the Cordillera. It is also implicated in the intimidation of indigenous activists working for legitimate and legal indigenous peoples organizations (such as Kerlan Fanagel, a B'laan activist from Mindanao), as well as community members and those working for indigenous support organizations, including a number of the organizations involved in the writing of this report.

Following his 2007 Philippine country visit, Professor Philip Alston, UN Special Rapporteur on extra judicial killings, summary or arbitrary executions, outlined the two underlying causes for these killings in the Philippines for which he stated 'an effective national response is required'. He explained that '*The*

first cause has been variously described as “vilification”, “labelling”, or guilt by association. It involves the characterization of most groups on the left of the political spectrum as “front organizations” for armed groups whose aim is to destroy democracy. The result is that...human rights advocates...indigenous organizations...and others – are classified as “fronts” and then as “enemies of the State” that are accordingly considered to be legitimate targets. The second cause is the extent to which aspects of the Government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other ‘enemies’ in certain circumstances.’ The military frequently engages in this labelling. In a context of extra judicial killings and armed conflict, such suspected or alleged association with rebel groups can lead to Indigenous Peoples facing harassment, intimidation, human rights violations and death.³²

Militarization of, and paramilitary buildup in, indigenous territories, and the consequent serious human rights violations, have resulted in a systematic narrowing of the space available for Indigenous Peoples’ political participation and have eliminated any possibility for justice and accountability. Military presence in communities has deprived Indigenous Peoples of the full and meaningful exercise of their human rights and fundamental freedoms, including their rights to self-determined development and to the practice of their own ways of life in accordance with their cultures.

Access to Justice

Rather than serving as a means through which Indigenous Peoples can demand respect for their rights, the legal system is more often than not used as a tool to perpetuate the denial of these rights. The clearest manifestation of this is the increasingly pervasive use of legal suits to intimidate and silence indigenous opposition and dissent. These suits have been taken by companies, and also by Government agencies. It is also particularly evident in the failure to uphold and act on decisions taken under customary law, despite the IPRA requirement that customary law have primacy in relation to land disputes involving Indigenous Peoples.

In his 2003 report the Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, encouraged the Philippine judiciary to *‘adequately address the issue of indigenous customary law in the application and interpretation of law, leading, hopefully, to a shift in the mindset of legal practitioners, including judges and lawyers, in such a way that they recognize indigenous customary law as part of the national legal system, as laid out in IPRA’*. The judiciary has yet to act on this recommendation. This underlying discriminatory perception of Indigenous Peoples in the jurisprudence of the courts is evident in the continuing reluctance of the courts to categorically uphold Indigenous Peoples’ rights and customary law, despite having ample opportunity to do so. It is also evident in the practice of Government agencies which refuse to act on rulings taken under customary law by recognized indigenous judicial authorities.

Obstacles to access to justice through the mainstream legal systems include costs, logistics, procedural complexity, language barriers and lack of legal aid, as well as the existence of discriminatory stereotypes in legal jurisprudence. Where communities have engaged with legal mechanisms justice has not been forthcoming. In those few cases where rulings uphold indigenous rights there has generally been a complete failure of enforcement. The issuance of inappropriate procedures on Rules on Pleadings, Practice and Procedure by the NCIP in 2003, which go against the IPRA’s spirit and intent have had the effect of transforming it from a rights recognizing act into yet another inaccessible piece of legislation that can be used to discriminate against Indigenous Peoples. Instead of guaranteeing access to justice for Indigenous Peoples, these Rules on Pleadings allow the Government agency to hide the growing clamor of protest. The complaint procedure is totally alien and unknown to most indigenous communities and engaging with it would be beyond their financial capacity. As indigenous communities have not formally engaged with the intricacies of this complex and rigid complaint procedure, the NCIP can report with technical accuracy that they have received no formal complaints. However, numerous surveys of

communities reveal widespread discontent manifested by the passage of resolutions, letters of protest, decisions taken under indigenous processes, petition writing, mounting of pickets and objections filed with the NCIP, the courts, the Department of the Environment and Natural Resources, the Human Rights Commission and the Ombudsman. Ignoring such clear protests and complaints on grounds of their failure to comply with unknown, bureaucratically defined, culturally inappropriate and obscure procedures is itself discriminatory.

Livelihoods and Economic, Social and Cultural Rights

The IPRA explicitly requires the State to ‘protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being’.³³ However commenting on the actual situation of Indigenous Peoples, the UN Special Rapporteur Professor Rodolfo Stavenhagen reported that ‘*Various surveys and studies also report that Indigenous Peoples’ human development indicators are lower and poverty indicators are higher than those of the rest of society*’.³⁴ The IPRA requires that the Government adopt special measures to uphold Indigenous Peoples’ rights in the areas of economic and social rights, including employment, housing, sanitation, health and social security and their right ‘to control, develop and protect their sciences, technologies and cultural manifestations’. In practice these special measures are not taken. A 2003 study by the ILO and the NCIP found that only three Government agencies had projects specifically targeted at Indigenous Peoples. A similar finding emerged from a 2007 study which found that of the 99 projects purportedly designated for Indigenous Peoples, conducted by various Government agencies, only 8% were in practice specifically targeted at Indigenous Peoples.³⁵ One such project, the FOURmula One for Health Program, cited in the Government report, is an on-going example of the failure to target Indigenous Peoples. The intent of the European Commission funding for this program was the empowerment of Indigenous Peoples. However the Department of Health has targeted its program at ‘indigent people’ and thereby avoided incorporation of specific special measures necessary to address the needs of indigenous communities. The programs goals and targets are in many cases inappropriate for the physical and cultural realities of indigenous communities.³⁶

There is a lack of disaggregated data pertaining to Indigenous Peoples, rendering Indigenous Peoples invisible in official data. Current Government proposals to address this in the upcoming census are inadequately designed. The 2008 budget indicates that regions with the highest concentrations of Indigenous Peoples have the smallest budgetary allocations,³⁷ with social service provision in indigenous territories far below that of the rest of the country despite the fact that these are areas which are highly in need of such services. As noted in the Government report ‘*In a rapid field assessment conducted by the UNICEF-Philippines together with the NCIP on the situation of IP children, youth and women in 17 provinces nationwide, it was found out that basic services do not normally reach the IP communities*’.³⁸ Studies also show that the general health indicators, such as life expectancy and infant mortality, in regions and provinces with a high concentration of Indigenous Peoples are worse than elsewhere in the country. Measures taken to address the education needs of Indigenous Peoples are also grossly inadequate with paltry budgets allocated to focus on the special education needs of indigenous children and adults who represent over 15% of the population. The manner in which the Millennium Development Goal project is being implemented in the Philippines is grossly inadequate in terms of its inclusion of, and appropriateness for, Indigenous Peoples. In addition, it is premised on the expansion of mining operations which are resulting in serious violations of Indigenous Peoples’ rights.

The imposition of large-scale development projects in indigenous territories is resulting in violations of Indigenous Peoples’ rights - their rights to food, livelihoods and health and having negative impacts on their traditional knowledge and practices. As pointed out by civil society, Indigenous Peoples and international environmental experts, the Government’s current plans for mining will have major impacts in this regard. Neither the Government nor its partners have conducted any studies to assess the potential impacts of its policies and plans on Indigenous Peoples’ rights. Armed conflict and militarization of indigenous lands have resulted in the displacement of indigenous communities in Mindanao which has

seriously impacted on their enjoyment of their rights, as without secure access to their lands they are denied their livelihoods.

The 1987 Constitution of the Philippines, with its recognition of Indigenous Peoples' inherent rights and its guarantee of the freedom to exercise and enjoy religious worship, marked a change in the official position of the State towards indigenous beliefs. The Indigenous Peoples Rights Act (IPRA) provided the legal provisions aimed at ensuring non-discrimination in the exercise of the Indigenous Peoples right to religion including their right to '*sustainability use, manage, protect and conserve*'³⁹ their sacred sites and areas of ceremonial value '*in accordance with their indigenous knowledge, beliefs, systems and practices*'. However, despite this legislative requirement, the attitude and practice of the Philippine Government and its agencies in relation to Indigenous Peoples' beliefs remains discriminatory. This fact is perhaps most evident in the failure of the Government to afford adequate protection to Indigenous Peoples' sacred sites. Eight of the 50 communities consulted and addressed in the Shadow report had already experienced or were facing serious threats to their sacred sites. Some like the Subanon of Mount Canatuan had seen these sites defiled and destroyed by mining operations despite their protests to the relevant Government agencies regarding their spiritual and cultural importance. These cases are representative of a widespread discriminatory practice that threatens to undermine the very fabric of many indigenous societies throughout the country.

Ultimately, violations of Indigenous Peoples' ancestral domain and self-determination rights emanate from clear discrimination against Indigenous Peoples. This discrimination is based to large degree on the presumption, by all branches of Government, that it is feasible and acceptable for national economic development and national security to be achieved at the cost of sacrificing the land rights and welfare of indigenous communities and the unrestrained exploitation of their natural resources.

The Philippine State has failed to provide adequate and appropriate basic social services such as education and health to indigenous communities. The Government agency charged with protecting and promoting indigenous rights has instead prioritized the securing of the necessary permissions for foreign companies to exploit natural resources within ancestral lands through its manipulation of legally required FPIC processes. There is a complete lack of political will on the part of the Government to accord due priority to the rights Indigenous Peoples have long struggled to obtain recognition for. The State by creating, maintaining and prioritizing laws that violate Indigenous Peoples' rights, is behaving in a manner that is discriminatory. The State is equally discriminatory and unjust by creating laws that are designed to protect Indigenous Peoples' rights and then failing to implement them, either by interpreting them in a discriminatory manner, imposing implementing rules and regulations that go against the very intent of these laws, or simply by violating the laws in practice. By failing to uphold and act on the rulings of Indigenous Peoples under the customary legal systems and by failing to ensure access to the mainstream judicial system the State is continuing to perpetuate a judicial system that discriminates against Indigenous Peoples. Finally by attempting to mask its lack of genuine interest in implementing and protecting Indigenous Peoples' rights by hiding behind a legal framework and complicated bureaucratic procedures, together with a claimed lack of budget and Government agency capacity, the State continues to legitimize unjust land acquisition and extinguishment of Indigenous Peoples' rights. As long as it continues to do so Indigenous Peoples will continue to perceive the State as discriminatory and unjust and will view its agencies with suspicion and disaffection.

2 Introduction

The Philippine Government last submitted a report to CERD in 1997. That same year the Philippines finally passed into law the Indigenous Peoples Rights Act (IPRA) (R.A. 8371). This was heralded as the enacting legislation to fulfill the promise of the 1987 Constitutional recognition of Indigenous Peoples' ancestral land rights. The Government's current report focuses almost exclusively on this constitutional and legislative recognition of the rights of indigenous communities. It fails to address how this is being implemented on the ground and the substantial gap between the de-jure recognition of Indigenous Peoples' rights and their de-facto realization.

This implementation gap was the subject of report by the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, Professor Rodolfo Stavenhagen, following his country visits in 2002 and again in 2007. Likewise the Human Rights Committee and the Committee on Economic Social and Cultural Rights, following their reviews of the country report in 2002 and 2008 respectively, raised their concern regarding it. Similar concerns in relation to the failure to respect Indigenous Peoples' rights had been raised by CERD in 1997. The issue has also been raised at national and international fora. Civil society, church representatives, academic and indigenous communities, together with their local and national organization and support groups, have repeatedly documented and continuously emphasized that unless this gap is bridged the enactment of the IPRA will serve as a screen behind which violations of their rights go unnoticed and unaddressed. The failure of the Government to ensure that rights recognized under the law are given effect in practice has also been brought to the attention of CERD in relation to the case of the Subanon of Mount Canatuan. The Committee is currently considering this case under its Early Warning Urgent Action procedure. The Government's Periodic Report remains silent on this case and the content and recommendations of all of the aforementioned reports - all of which point to its failure to ensure non discrimination against Indigenous Peoples in accordance with its obligations under ICERD.

The Government report fails to address serious breaches of Indigenous Peoples' rights resulting from the widespread unwanted imposition of development projects in their lands. It also makes no mention of the serious issue of militarization of indigenous territories and the attendant human rights violations including killings of Indigenous Peoples as documented by the UN Special Rapporteur on extra-judicial killings, Professor Philip Alston, following his country visit in 2007. Nor does it mention existing laws and policies, including certain provisions of the IPRA that serve to legitimize, reinforce and perpetuate discrimination. It also fails to acknowledge that, as a result of interpretations of the courts and the implementing rules of Government agencies, laws such as the IPRA, designed to uphold Indigenous Peoples' rights are instead being used to systemize discrimination against them and facilitate the continued extinguishment of their rights. Finally, it fails to address the continued discriminatory position of the courts and Government agencies toward indigenous customary law, and the major obstacles Indigenous Peoples face when seeking access to justice.

This Shadow report aims to address these deficiencies in the Government's report by outlining the historical process of the creation of the Philippine nation-state. This process consisted of the passage of laws, policies and programs that institutionalized and perpetuated the process of exclusion, distinction and discrimination against Indigenous Peoples. The Shadow report demonstrates how, despite the enactment of the IPRA, the existence of an inconsistent and discriminatory overarching legal and policy framework, together with its corresponding programs and governance structures, continues to undermine the realization of Indigenous Peoples' inherent rights. The report focuses on how Indigenous Peoples continue to be restricted and excluded from the full enjoyment of their rights to their lands, territories and resources and hence are denied the possibility to exercise their rights to practice and revitalize their culture and to the enjoyment of the highest attainable socio-economic development. It also illustrates how their right to self determination is violated, with decision-making processes of Indigenous Peoples

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over matters affecting their lives and futures undermined and manipulated and access to justice and any possibility for redress for past and on-going wrongs denied.

To highlight the extent and range of rights that are being violated, as a result of an implementation gap, for which there is no political will to bridge, the report draws on the lived experience, observations and recommendations of indigenous communities. Additional supporting documentation corroborating the summaries provided in this report is available for each of the concrete cases addressed. The report compliments the 2003 report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples which also raised similar cases, most of which continue to be of serious concern. Twelve years after the enactment of the IPRA, Indigenous Peoples in the Philippines remain deeply concerned about the failure to transform this apparent legal victory into a tangible improvement in the realization of their rights. Worse still, many feel that the law primarily serves to enhance the international perception of the Philippines, while the interpretations of the courts and implementing guidelines of Government agencies legitimize actions that negatively impact on Indigenous Peoples' rights and interests.

This submission does not address the issues of the Muslim Peoples of Mindanao, as it is hoped that these peoples, through their own representative institutions, will also provide information to the Committee. The groups submitting this Shadow report are however concerned at the existence of severe discrimination against the Muslim peoples of Mindanao. The 30 year armed conflict and military occupation of their homelands has resulted in serious human rights violations, the killing of 120,000 people and the displacement of some 2 million others. In addition, the region is impoverished and lacks basic services. A 2008 Amnesty International report noted that '*Government backed Civilian Armed Forces Geographical Units (CAFGU), Civil Volunteer Organizations (CVOs), police auxiliaries and other civilian militias, supported by local politicians, have also joined the conflict*'. It suggests that following the collapse of the peace talks between the Government and the MILF, '*Mindanao may find itself approaching a human rights crisis*'.⁴⁰ At the root of this conflict is the pervasive discrimination towards the Muslim populations. Illustrative of this are the observations of the United States Department of State in a report published in 2009 which noted the continuance of historic discrimination against Muslims when applying for employment or housing.⁴¹ A specific recommendation in relation to the inadequacy of the Government's reporting on the issues of the Muslim Peoples of Mindanao and a potential CERD follow-up action to address this is included at the end of Part III of this Shadow report.

3 Report Methodology, Structure and Submitting Organizations

3.1 Methodology

The Philippines Indigenous Peoples ICERD Shadow report was prepared by a broad alliance of Indigenous Peoples organizations and support groups, including the two major national networks of Indigenous Peoples, civil society groups, church organizations and academic and research institutions.⁴² The report preparation involved consultations with over 40 indigenous communities across the Philippines, as well as reports and written inputs provided by 10 other communities and their support organizations (see appendix 1 Table of Communities Consulted). These communities were consulted based on the following criteria: Geography / Ethnicity; Urgency of their situations; Documentation available (quality and collaboration of facts); Scope of violations (frequency and gravity); Actors involved (Government agencies, third parties); and the extent to which their issues were illustrative of trends in other areas.

Consultations with these indigenous communities were held in the three main regions of the Philippines - Luzon, the Visayas and Mindanao. In addition, information-gathering visits were also conducted to a number of the communities addressed in the report. The consultations, each of which were conducted over a period of at least two days, consisted of verification of facts and information regarding local situations, discussions on current trends and gathering of community recommendations and suggestions with regard to actions to address these. The consultations are complimented by studies and reports that support organizations and research institutions have conducted in relation to the realization of Indigenous Peoples' rights.

3.2 Structure

The Shadow report is divided into three parts:

Part I of the report tracks the paragraphs in the Philippine Government's report (regrouped where a similar topic is addressed in multiple paragraphs) to provide relevant information as counterpoint to those Government statements. It does this by referencing specific sections in Part II of the report or providing additional information where necessary.

Part II is divided into seven thematic sections. It provides extensive information on particular cases to substantiate statements made as well as references to additional sources should further verification or additional information be required. The seven thematic areas addressed are 1) Historical Context and Legal Framework 2) Land Rights 3) Self Determination and Free Prior Informed Consent 4) Militarization and Civil and Political Rights 5) Access to Justice 6) Livelihoods, Economic, Social and Cultural Rights and 7) Indigenous Beliefs and Sacred Sites.

Part III of the report contains its conclusions and recommendations.

3.3 Submitting Organizations

The following fourteen (14) organizations and networks are making this ICERD Shadow report submission. They represent a combination of local, national and international Indigenous Peoples organizations, communities and networks, as well as national and international NGOs and academic institutions.

Alternative Law Groups Inc (ALG) is an alliance of 20 Philippine legal organizations dedicated to defending the rights of marginalized sectors and groups. It offers distinct programs for developmental legal assistance that are premised on the pursuit of public interest, respect for human rights and promotion of social justice. Address: Rm. 216 Institute of Social Order, Social Development Complex, Ateneo de

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Manila University, Loyola Heights, Quezon City, Philippines, Tel. No. : +63 2 426 6001 loc 4865, Fax : +63 2 426 8569. Website: <http://www.alternativelawgroups.org/about.asp?sec=index> a

Anthropology Watch (AnthroWatch) is non-government organization (NGO) that is composed of anthropologists and other social scientists who work with and for indigenous peoples in the Philippines; assists in land titling, culturally-appropriate community development planning, capacity-building, and advocacy on indigenous peoples' issues. Address: 46-C Mahusay St., UP Village, Quezon City 1101, Philippines. Tel. No.: +63 2 4360992. Email: anthrowatch@yahoo.com; miksgp@anthrowatch.org

Cordillera Indigenous Peoples Legal Center (Dinteg) is a legal center advocating and working for the defense of Indigenous Peoples' rights with focus on the Cordillera Administrative Region and the rest of Northern Luzon. Its main programs are capacity building, legal services, campaigns, networking and advocacy, research and lobby work. Address: #55 Ferguson Road, Barangay Andres Bonifacio, Baguio City 2600 Philippines; Email: dInteg@yahoo.com.ph.

Cordillera Peoples Alliance (CPA) is an independent federation of progressive peoples' organizations, mostly grassroots-based organizations among indigenous communities in the Cordillera Region, Philippines. Founded in June 1984, CPA is committed to the promotion and defense of indigenous peoples' rights, human rights, social justice, and national freedom and democracy. Through the years, CPA has expanded to include 198 member-organizations and sustained information drives, advocacy activities, campaigns and direct actions and local struggles alongside organizing work of indigenous communities in the region and building their capacity through education seminars, trainings, advocacy and campaigns, and various types of assistance. Address: #55 Ferguson Road, Baguio City 2600, Philippines; Tel No. : +63 74 3044239. Email cpa@cpaphils.org, Website www.cpaphils.org

EED Philippine Partners' Task Force for Indigenous Peoples' Rights (EEDTFIP) is a network of nongovernmental organizations in the Philippines advancing Indigenous Peoples' rights with support from Evangelischer Entwicklungsdienst e.V. (EED) of Germany. The national network consists of 12 partner organizations that are committed to the advancement of Indigenous Peoples' rights through effective policy advocacy and capability-building. The TFIP envisions a society that promotes and defends Indigenous Peoples' rights enabling their self-determined development. Address: G/F Bp. Laverne Mercado Building, NCCP Compound, 879 EDSA West Triangle, Quezon City, Philippines 1104, Telefax No.: +63 2 4168068. Email: eedtfip@eedtfip.org. Website: <http://www.eedtfip.org>

Indigenous Peoples Rights Monitor (IPRM): IPRM is a nationwide network of indigenous peoples' organizations and support groups. Its primary objective is monitoring of and documenting Indigenous Peoples' human rights violations in the Philippines and filing complaints in relation to these before the proper forum. IPRM publishes a annual report on the situation of Indigenous Peoples in the Philippines. Address: Rm. 304, NCCP Bldg., No. 879 EDSA Quezon City, Philippines; Telefax No. : +63 2 4138543; Email: iphr_manila@yahoo.com.

Indigenous Peoples Links (PIPLinks) is a human rights organization based in the United Kingdom and in the Philippines. It was founded in response to a request from indigenous organizations in the Philippines for international support in addressing their issues. It is focused on providing support for Indigenous Peoples in the protection and promotion of their rights. PIPLinks Philippines Office Address: 72 Chute House, Stockwell Park Estate, London SW9 0HG, Tel No: +44 207 326 0363; PIPLinks Philippines Office Address: 41-B Mapagsanguni Street, Sikatuna Village, Quezon City 1101, Philippines Tel No. : +632 928 132; +63 2 4361101 Fax: +63 2 920 7172. Email: geoff@piplinks.org Website www.piplinks.org

Irish Centre for Human Rights (ICHR) is dedicated to the study and promotion of human rights and humanitarian law. Address: Irish Centre for Human Rights, National University of Ireland, Galway, Ireland. Tel No: +353 91 493948. Email: humanrights@nuigalway.ie Website: http://www.nuigalway.ie/human_rights/index.html

Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP) / National Federation of Indigenous Peoples Organizations in the Philippines is composed of 10 regional level IP organizations that covers provincial and community level grassroots organizations. It has 4 regional formations in Luzon, 1 in Visayas, and 5 in Mindanao that are united in the principle of upholding their basic rights to ancestral land and self determination. Address: 3rd floor NCCP Building, 879 EDSA, Quezon City, Philippines. Tel No: (02) 413-8543, Email: kamp_phils@yahoo.com

Koalisyon ng Katutubong Samahan ng Pilipinas (KASAPI) / National Coalition of Indigenous Organizations in the Philippines represents 64 ethno-linguistic groups from 127 indigenous cultural communities in the Philippines. It is a network of 16 regional and sub-regional federations comprising 250 community-based indigenous peoples organizations. Address: Unit 301, Eastside Bldg. 75 Malakas St., Diliman Quezon City, Philippines. Email isagada2002@yahoo.com

Philippines Association for Intercultural Development Inc (PAFID) is a social development organization based in the Philippines and focused on developing partnerships with indigenous communities to recover or secure ancestral territories. Address: 71 Malakas Street, Quezon City 1101 Philippines, Tel No. : +63 2 9274580. Email: pafid@zpdee.net

Tanggapang Panligal ng Katutubong Pilipino (PANLIPI) / Legal Assistance Center for Indigenous Filipinos is an organization of lawyers and indigenous peoples' advocates. It was established in 1985, and in 1995 participated in the legislative advocacy culminating in the enactment of the Indigenous Peoples Rights Act (IPRA). Its programs focus on indigenous communities self-determined development through the provision of legal expertise and assistance with institutional capacity development, ancestral domains delineation and resource management planning. Address: Unit 303 JGS Bldg. 30 Scout Tuazon cor Lascano Brgy. Laging Handa 1103 Quezon City, Philippines. Telefax No.: +63 2 372 3716 Website: <http://panlipi.org>

Legal Rights and Natural Resources Center /Kasama sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FOE Phils.) is a policy and legal research and advocacy institution. The Center's main advocacy has been that recognition and protection of the rights of indigenous peoples, rural communities and other long-term occupants of forests and uplands should be the main, if not the primary components of any program on sustainable development. Address 41-B Mapagsangguni Street, Sikatuna Village, Quezon City 1101, Philippines. Telefax: +63 2 434-4079; +63 2 926-4409. Website: www.lrcksk.org

Tebtebba Foundation Indigenous Peoples' International Centre for Policy Research and Education is an indigenous peoples' organization born out of the need for heightened advocacy to have the rights of indigenous peoples recognized, respected and protected worldwide. Address No. 1 Roman Ayson Rd., 2600, Baguio City, Philippines Tel No. +63 74 4447703 e-mail: tebtebba@tebtebba.org Website: www.tebtebba.org

4 Part I - Response to statements in Government Report

(Paragraph numbers in bold refer to those of the Government report.)

Paragraphs 6, 7 & 13: The Government definition of racial discrimination is not compatible with *'anything that has the effect of denying the equal enjoyment of human rights'*.

Paragraphs 9 & 20: This notion of 'small indigenous groups' is not mentioned in the IPRA. It undermines the right of Indigenous Peoples, such as the Subanon which number more than 300,000 to exercise their collective right to self determination in the manner in which they choose to.

Paragraphs 11 & 12: There are no court decisions that directly or indirectly apply ICERD or PD 1350 in relation to discriminatory or racist practices. Only one case is known of where there was an attempt to enforce penal sanctions for violation of the provisions of the IPRA. Also PD No 1350 only addresses ICERD Art. 4.

Paragraph 20: The 'peoples' listed by the Government are linguistic groups and not Indigenous Peoples as defined in the IPRA and under international law.⁴³ The Government's perception of the IPRA *'as an affirmative action'* indicates a lack of understanding of the distinction between Indigenous Peoples' rights and the special measures required to ensure their realization.

Paragraph 48: The statement that Indigenous Peoples *'are drawn within the protective mantle of the fundamental law of the land'* reflects the Government's approach toward them. This continues to be parental in nature based on a philosophy of assimilation, rather than the underlying tenants of the IPRA, namely self determination, empowerment and respect for difference.

A. General information about the reporting State: The land and its people

Paragraphs 16 & 25: Indigenous Peoples' territories are located in the areas most prone to these natural and man-made calamities and disasters. However, Indigenous Peoples are not informed of the associated risks of development projects such as large-scale open-pit mining in these areas and their right under the law to give or withhold their Free Prior Informed Consent is denied (See Part II Self Determination Section 5.3.4 Discriminatory FPIC Guidelines that conflict with the Law, Point d)

Paragraph 23: The Government currently has no method to collect disaggregated data in relation to Indigenous Peoples. It proposes to use language as the indicator for ethnicity in the census. However, as many Indigenous Peoples speak the dominant language as well as their own language a combination of indicators is necessary, mother tongue being one of these.

Paragraphs 24 – 31: There is no disaggregated data provided in relation to Indigenous Peoples. Studies conducted with Indigenous Peoples illustrate the inadequacy of the reported indicators for the determination of Indigenous Peoples well being. (See Part II Section 5.6.1 Failure to target and uphold Indigenous Peoples' economic, social and cultural rights and 5.6.2 Inadequate social services for Indigenous Peoples)

Paragraph 33: The principle of separation of powers has suffered in the context of the Government's promotion of an FDI led development agenda. (See Part II Section 5.3.1 Trends in development aggression.)

Paragraph 63: The statement that Indigenous Peoples *'freely exercise their rights to self-governance under the law'* is grossly misleading. It is a clear case of the divergence between the de-facto experience of Indigenous Peoples and their rights to self governance recognized by law. (See Part II Sections 5.3.5

Violations of the right to self determination - Impacts of development aggression and 5.3.6 Experiences of indigenous communities with flawed FPIC processes)

Paragraph 38: No reference is made to customary law and Indigenous Peoples' institutions as mechanisms for the exercise of judicial power. (See Part II Section 5.5.1 Inaccessible justice for Indigenous Peoples –Failure to respect customary law)

Legal framework for human rights protection

Paragraphs 42 & 80: The constitutional requirement that the highest priority be given to the enactment of *'measures to enhance the rights of all people...and remove cultural inequities by equitably diffusing wealth and political power for the common good'* stands in stark contrast to discriminatory and unjust Government development policies, associated administrative orders and guidelines and Supreme Court rulings in the context of development projects in Indigenous Peoples lands. (See Part II Sections 5.1 Philippine legal framework: Extinguishment of Indigenous Peoples' land rights, 5.2.5 Denial of rights as a result of jurisdictional issues and harmonization of policies, 5.3.1 Externally imposed development projects in indigenous lands, 5.3.2 Trends in development aggression and 5.5.4 Effectiveness of grievance mechanisms)

Paragraphs 46, 53, 54 & 62: Indigenous Peoples face major obstacles in relation to access to justice. The IPRA provides for primacy of customary law in relation to disputes involving Indigenous Peoples. However, in practice rulings under customary law are not enforced by Government agencies and it is not addressed by the mainstream courts. (See Part II Sections 5.5.1 Inaccessible justice for Indigenous Peoples –failure to respect customary law, 5.5.2 Lack of access to mainstream Justice 5.5.3 Inappropriate NCIP rules on pleadings, practice and procedure)

Paragraph 47: Plebiscites held to give effect to the Cordillera Administrative Region (CAR) have failed as they did not address the distinct historical and cultural dimensions of the CAR. The rights of Indigenous Communities within the CAR continue to be denied.

Paragraph 57: The Philippines has yet to ratify ILO Convention 169 (ILO 169) and has not provided any timeline for this process. A review of the compatibility of the IPRA with ILO 169 was completed in 2003 and no legal obstacles to the adoption of ILO 169 were identified.

Article 2: Eliminating racial discrimination (also points relevant to Article 5* and 6)**

Paragraph 84: A 2008 report card prepared by Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRRA) with the participation of a national alliance of Indigenous Peoples, KASAPI, found that despite the Government's asset reform program and the IPRA that there were *'pervasive threats to [Indigenous Peoples] ancestral domains'*.⁴⁴ 44% of the communities reported that there are conflicting claims in their ancestral domains. Over 20% of conflicts were with agrarian reform beneficiaries and 27% with Government line agencies, military and local Government units.⁴⁵ (see Part II 5.2.6 Conflicting claims over ancestral lands)

Paragraphs 85 & 86: The programs listed in the report are not targeted at Indigenous Peoples. During the August 2008 ICERD Shadow report consultations with Indigenous Peoples the Government report was presented to communities. None of the communities attending were even aware of these Government programs. (See Part II Section 5.6.1 Failure to target and uphold Indigenous Peoples' economic, social and cultural rights and 5.6.2 Inadequate social services for Indigenous Peoples)

Paragraphs 92, 93, 94, & 197:** The IPRA contains potentially beneficial provisions and was welcomed by many Indigenous Peoples on its enactment. However, its implementation to date has proved

to be disappointing. In many cases the law, particularly the manner in which it is interpreted and implemented by the courts and other Government agencies, has failed to address past wrongs and continues to provide for the extinguishment of native title. (Part II Sections 5.1 Philippine legal framework: Extinguishment of Indigenous Peoples' land rights, 5.2.5 Denial of rights as a result of jurisdictional issues and harmonization of policies, 5.2.4 Restitution and redress and 5.3.4 Discriminatory FPIC guidelines that conflict with the law)

Paragraph 97: A 2007 study conducted by Legal Assistance Center for Indigenous Peoples, PANLIPI, and the International Labour Organization on the implementation of the IPRA found that 'IPRA is directly implemented by NGOs and IPOs in greater extent than government'. The study also found that only three Government agencies had projects or programs addressing Indigenous Peoples and that 'most government agencies implement their programs, projects and activities in accordance with the development agenda of the national government'.⁴⁶ This development agenda is incompatible with the rights and interests of Indigenous Peoples and has resulted in encroachment of development operations and militarization into their ancestral domains. (See 5.3.3 Agency and regulatory capture– from legislators to corporate stenographers, 5.4.1 Militarization and development projects and 5.6.1 Failure to target and uphold Indigenous Peoples' economic, social and cultural rights)

Paragraphs 98 & 161*: Allegations have been made by some Indigenous Peoples that there was a lack of adequate consultations with them as part of the negotiations between the Government and the Moro Islamic Liberation Front (MILF) and also that there is general confusion with regard to the recognition afforded to their ancestral domain and self governance rights in the final agreement (MOA-AD) between the MILF and the Government. Following the Supreme Court rejection of the MOA-AD there has been an escalation in the conflict. The Government failed in its duty to protect indigenous and Muslim communities that were caught in the cross fire. (See Part II Section 5.6.3.5 Loss of Indigenous Peoples' livelihood due to armed conflict)

Article 3: Condemnation, prevention, prohibition & eradication of racial segregation & apartheid

Paragraphs 72, 112, 113 & 114: The statements denying reported violations of the right to FPIC, protests in relation to FPIC processes conducted and defects in the FPIC guidelines are patently untrue. A nationwide study found that 70% of the mining and logging operations on the lands of CADT holders were being conducted without the FPIC of the impacted indigenous communities. In those cases where an FPIC process had been conducted, it was found that in the majority of communities 'not all the proper procedures were undertaken to ensure a fair and unbiased outcome'. Illustrative of this is the fact that 18 of the 53 communities addressed in the ICERD Shadow report, reported issues relating to the failure to obtain their FPIC in the context of development projects (primarily mining) in their lands. The cases presented in the Shadow report are clear and undeniable examples of where there were major disagreements in relation to FPIC and yet Certifications of Precondition were issued. Indigenous communities and support organization have also made repeated objections to the current FPIC guidelines, including in the 2007 Subanon of Mount Canatuan Submission to the CERD which is being considered under its Early Warning Urgent Action Procedure. The Metagora Project (addressed in the Government report paragraph 72) stated that there was a need for '*strong political will to review existing government policies, programme measures and mechanisms to control undue and abusive private-sector exploitation of natural resources within the IPs' [Indigenous Peoples] ancestral domains and land, and to develop rights-based policies and measures for the welfare and benefit of IPs*'.⁴⁷ (See Part II 5.3.6 Experiences of indigenous communities with flawed FPIC processes)

Paragraph 115: The extent to which mining is impacting on Indigenous Peoples is clear from the fact that 70 out of the 90 (or 78%) of the Certifications issued by the NCIP for large-scale projects in indigenous territories were for mining. Out of the 49 Communities consulted and addressed in the

Shadow Report 19 had issues with mining applications in their lands. Of those the 17 communities who experienced flawed FPIC processes, 14 were in the context of mining applications. (See Part II Section 5.3.2 Trends in development aggression and 5.3.6 Experiences of indigenous communities with flawed FPIC processes)

Paragraphs 62, 108 – 115: Re NCIP's Free Prior Informed Consent (FPIC) Implementing guidelines: The FPIC guidelines have gradually evolved into a highly discriminatory set of rules which impose restrictions on the time, manner and process of FPIC which are not in conformity with the customs, laws and traditional practices of indigenous communities. They clearly work against the spirit and the letter of the IPRA on FPIC and instead reflect the Government's shift of policy with regard to indigenous communities in relation to extractive industries. (See Part II Section 5.3.4 Discriminatory FPIC guidelines that conflict with the law)

Re "Rules and Pleadings, Practice and Procedure before the NCIP", these rules impose strict, extremely bureaucratic, complex and alien procedures on indigenous communities and limit their ability to engage with the administrative mechanism. The absence of state provided legal aid renders the procedure unusable by the vast majority of communities. (See Part II Section 5.5.3 NCIP rules on pleadings, practice and procedure)

Articles 4: Measures to eradicate all incitement to acts of racial discrimination (also points relevant to Articles 5* and 6)**

Paragraphs 117, 160* & 198:** The IPRA affords primacy to indigenous communities' customary laws in disputes involving them and requires respect for their judicial authorities. Despite this fact the Government has not acted on rulings under customary law. The NCIP Regional Hearing Offices are appeals bodies which do not have the capacity or the political will to resolve cases. The Alliance is only aware of one criminal case that has been filed against an NCIP official. (See Part II Section 5.5 Access to justice)

Paragraph 121: The practice of declaring protected areas in ancestral domains under the National Integrated Protected Area System (NIPAS) Law without the consent of the impacted indigenous community as required under the IPRA is on-going (See Part II Section 5.3.6.1.1 De-facto denial of the existence of indigenous communities.)

Paragraph 122: The harmonization of the IPRA with other laws has become synonymous with the distortion and weakening of the IPRA. The harmonization agreement between the Land Registration Authority and the NCIP has added delays of up to 4 to 5 years on the titling of ancestral domains on top of the NCIP's already bureaucratic process. The draft agreement under the harmonization effort with the Department of Agrarian Reform (DAR) provides for jurisdiction over lands classified as agricultural within ancestral domains, to fall under the DAR rather than the NCIP. This is in clear violation of Section 66 of the IPRA. The harmonization with the 1995 Mining Act under the IPRA resulted in the NCIP issuing FPIC guidelines that impose restriction in terms of process and timeframe that are incompatible with the IPRA and customary law and practices. (See Part II Section 5.2.5 Denial of rights as a result of jurisdictional issues and harmonization of policies)

Article 5: Promotion and protection of political, civil, economic, social and cultural rights

Paragraphs 83. & 89, 128: The Millennium Development Goal (MDG) program does not specifically target Indigenous Peoples and has not ensured their participation in its design.⁴⁸ It is premised on the pursuit of mining projects in indigenous lands. Most of these projects are strongly opposed by the impacted Indigenous Peoples. The result is that Indigenous Peoples are in many cases forced to trade their

rights for services.⁴⁹ (See Part II 5.6.6 Discriminatory implementation of the Millennium Development Goals (MDG))

Paragraph 130: The FOURmula One for Health Program is an example of the Government's failure to target Indigenous Peoples for basic services. The program's goals and targets are in many cases inappropriate for the physical and cultural realities of indigenous communities.⁵⁰ The European Commission is funding this program with its funding premised on empowerment of Indigenous Peoples. Instead the Department of Health has targeted its program at 'indigent people' and avoided incorporation of specific special measures necessary to address the needs of indigenous communities. Other health programs addressed (paragraph 131-136) do not target Indigenous Peoples. (See Part II Section 5.6.1 Failure to target and uphold Indigenous Peoples' economic, social and cultural rights)

Paragraphs 71, 137 – 149: These paragraphs addressing Gender issues provide no disaggregated data on indigenous women or details of special measures taken to address their specific issues. Illustrative of this is UNICEF's rapid field assessment of the situation of Indigenous women, youth and children in seventeen provinces nationwide which highlighted issues with their access to basic services as well as Indigenous Peoples' participation in local governance. (See Part II Section 5.6.2 Inadequate social services for Indigenous Peoples)

Paragraphs 56, 150, 151 & 166: In 2003, following his Philippine Country visit, the UN Special Rapporteur on Fundamental Freedoms and Human Rights of Indigenous Peoples, Professor Rodolfo Stavenhagen, documented serious violation of indigenous communities' rights as a result of militarization of their lands for development projects and counter insurgency measures. He recommended that the Government demilitarize indigenous territories in the Philippines. Instead, the Government is doing precisely the opposite by implementing a national strategy that consists of the deployment of military and paramilitary detachments in indigenous territories. This strategy is resulting in serious violations of Indigenous Peoples' collective and individual rights. In 2007 the UN Special Rapporteur on extra-judicial killings arbitrary or summary executions, Professor Philip Alston, confirmed that the military were implicated in killings of Indigenous Peoples. He reported 'that extra-judicial executions were widespread, and included Government sanctioned killings of members of civil society groups' which have the effect of narrowing this political space and distorting the criminal justice system. (See Part II Section 5.4 Militarization: A direct circumvention of Indigenous Peoples' full enjoyment and exercise of their rights and fundamental freedoms)

Paragraph 152: The Philippines National Police (PNP) have been complicit in the violations of Indigenous Peoples' rights. The case of the Ifugao of Didipio is an example where the PNP assisted those demolishing the houses of Indigenous Peoples. (see Part II Section 5.4.1 Militarization and development projects)

Paragraphs 59 & 157: The National Anti-Poverty Commission lacks the political power and budget necessary to address the depth and breadth of issues faced by Indigenous Peoples

Paragraphs 60, 61, 162, 163 & 164: Re Indigenous Peoples Consultative Bodies (IPCB's): Indigenous Peoples do not view the existing provincial IPCB's as '*serv[ing] as the voice of the indigenous peoples at their respective areas of jurisdiction on matters relating to their problems, aspirations, and interests*'. A critique of the IPCB has laid down major changes that have to be made to IPCB's before a National IPCB could be established. (See Part II Section 5.1.5.1 The National Commission on Indigenous Peoples)

Re Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs): Many indigenous communities consider the process for preparation of ADSDPPs as culturally inappropriate and expensive. ADSDPPS are increasingly viewed as roadmaps that facilitate large scale investments in indigenous

territories, rather than plans that seek to uphold Indigenous Peoples' rights and providing them with culturally appropriate self determined development options. (See Part II Section 5.3.5 Violations of the right to self determination - Impacts of development aggression)

Paragraph 169: While theoretically protected under law there is a lack of respect for Indigenous Peoples beliefs in practice. Their sacred sites, sacred burial grounds and sources of medicinal plants are threatened and have been destroyed by development projects, despite the vocal opposition of these communities. (See Part II Section 5.7 Protection of indigenous cultures, beliefs and sacred sites)

Paragraphs 36, 37, 63, 64, 71 & 170: The Local Government Code of 1991 provides for increased autonomy of Local Government Units. However, its implementation in practice and its potential to contribute to the realization of Indigenous Peoples' rights has been seriously impaired. (See Part II Sections 5.3.6.2.5 National agencies overwriting local governance laws, 5.5.1 Inaccessible justice for Indigenous Peoples –Failure to respect customary law and 5.6.1 Failure to target and uphold Indigenous Peoples' economic, social and cultural rights)

Paragraph 172: IPRA Sections 23, 25 and 34 requires special measures in the area of employment, basic services and protection of cultural and intellectual rights. However, there has been no serious concerted effort on the part of the Government to address disparities in basic service provision, to afford adequate protection to indigenous livelihoods or to ensure that Indigenous Peoples sacred sites, culturally significant places and sources of traditional medicines are protected. (See Part II Sections 5.3.6 Experiences of indigenous communities with flawed FPIC processes, 5.6.1 Failure to target and uphold Indigenous Peoples economic, social and cultural rights, and 5.7 Protection of indigenous cultures, beliefs and sacred sites)

Paragraph 173: Indigenous Peoples ownership rights to the resources in their ancestral domains are not respected in practice. The potential for the exercise of their priority rights over these resources have been made subject to procedural restrictions under the FPIC guidelines. These restrictions require communities to pay and adhere to predetermined and limited timelines in order to exercise these rights. (See Part II Sections 5.1.4 The Regalian Doctrine, 5.2.2 Vested property rights and 5.2.3 Indigenous Peoples' priority and ownership rights)

Article 6: Effective protection and remedies

Paragraph 178: Indigenous Peoples face a series of obstacles to access to justice including, inter-alia, discrimination in the judicial system, lack of understanding of customary laws by judges, costs and lack of financial support, distance to courts and administrative bodies, lack of representation, language. (see Access to justice section)

Paragraph 49, 126, 180 & 181: The Philippines Commission on Human Rights lacks any enforcement power and its rulings on Indigenous Peoples issues are ignored. It also appears not to have the capacity to address complaints submitted by Indigenous Peoples and does not have a dedicated committee or desk to address Indigenous Peoples issues. (See Part II Section 5.5.2 Lack of access to mainstream justice)

Paragraphs 50, 126, 188 – 196: To date the Office of the Ombudsman has not dealt with any case pertaining to Indigenous Peoples' rights. A submission by the Subanen of Midsalip made to the office at the request of the Ombudsman in 2006 has not been addressed. (See Part II Section 5.5.4 Effectiveness of grievance mechanisms)

Article 7: Education and teaching

Paragraph 210: Measures taken to address the education needs of Indigenous Peoples are also grossly inadequate with paltry budgets allocated to focus on the special education needs of indigenous children and adults who represent over 15% of the population. Despite demands of Indigenous Peoples and recommendations of the UN Special Rapporteur on the situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples, Professor Rodolfo Stavenhagen, for the development of a curriculum that incorporates indigenous language, history and culture, the Department of Education has not done so. (See Part II 5.6.3.8 Denial of Indigenous Peoples' right to education)

5.1 Communities Addressed in Shadow Report



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5 Part II - Thematic Overview

The remainder of the report addresses the rights enumerated in the convention categorized in accordance with the following themes 1) Legal Framework 2) Land Rights 3) Self determination / FPIC / Development 4) Militarization and Civil and Political Rights 5) Access to Justice 6) Livelihoods, Economic Social and Cultural Rights and 7) Right to Beliefs and Sacred Sites. The report interprets the rights enumerated under the convention in line with the international normative framework on Indigenous Peoples' rights as reflected in the CERD's General Recommendations 23 (GR 23) on Indigenous Peoples and 21 (GR 21) on self determination and the UN Declaration on the Rights of Indigenous Peoples.

5.1 Philippine Legal Framework

Under ICERD (Article 2 c) the Government is obligated to 'take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'. Despite the Government's claim to the contrary, such an exercise has never been conducted in the Philippines. As a result, laws, doctrines and jurisprudence based on historically discriminatory precepts, continue to inform judicial thinking and the policies and program of Government agencies and facilitate the on-going extinguishment of Indigenous Peoples' rights.

The Indigenous Peoples of the Philippines are historically distinct from the majority of Filipinos in their success in resisting or avoiding incorporation into the Spanish colonial administration of the Philippines. Indigenous Peoples are still in effective occupation of their ancestral lands throughout the archipelago, especially in interior mountainous areas. The 20th Century saw an increased acceleration of dispossession of Indigenous Peoples and exploitation by outsiders of their land, forestry, mineral and hydro resources to fuel development for others.

This dispossession and exploitation was facilitated by a series of public land laws enacted under the American Administration (1898 – 1935) and subsequently by the Philippine State. These laws were premised on a discriminatory perception of Indigenous Peoples as Non Christian Tribes as reflected in 1919 *Rubi vs Provincial Board of Mindoro* Supreme Court decision, which described them as 'possessing a low degree of civilization and intelligence'.⁵¹ They were further justified by claims that indigenous communities had all but disappeared and therefore had no claims to lands, despite the fact that they represented some 12 to 15 percent of the country's population. The philosophy was evident in the speech of the then Commonwealth President, Manuel L. Quezon, to the National Assembly in 1935 where he asserted that:

'they, the national minorities, no longer exist to an extent sufficient to justify the continuation of the Bureau of Non Christian Tribes. Considering the marked advancement in the civilization and general progress of the special provinces the so called non Christian problem has been reduced to one of solidification and development and our present efforts are directed towards the simplification of government agencies so as to ensure efficiency'.⁵²

This philosophy provided the basis for the State to consider all unregistered land as public land⁵³ and enact land acts starting with the 1902 Land Registration Act (Philippines Bill), introducing the Torrens System and empowering the State to issue titles in indigenous lands. This was followed by a series of laws and decrees, which aimed to extinguish Indigenous Peoples' title to land. These included the Public Land Act of 1905 and Public Land Laws enacted in 1913, 1919 and 1929, the 1936 Commonwealth Act No. 141 (which vested the President with the power to classify and reclassify lands) and President Decrees 705⁵⁴ and 1529,⁵⁵ issued by Marcos in 1975 and 1978 declaring all lands eighteen per cent (18%) in slope or over part of the public domain and reinforcing the Torrens System.

These laws provided for the distribution, use or disposition of public agricultural lands and facilitated the extinguishment of indigenous title to land in a number of ways. First a prescriptive period was set for the filing of land claims. Failure to adhere to this timeframe meant ineligibility to claim ownership of lands. Indigenous Peoples were in the main unaware of the existence of these laws and generally did not have the capacity to adhere to the procedural requirements. Second, under these laws Indigenous Peoples' property titles were treated as a grant from the State rather than the recognition of the inherent land rights of Indigenous Peoples. These lands were therefore alienable and disposable, which provided for the extinguishment of indigenous ownership even if a title was acquired. Finally the titles did not provide for the traditional collective land ownership systems of Indigenous Peoples. They limited the area, mode and identity of ownership of lands for the indigenous tribes, communities, clans or individuals who chose to register their lands under these laws. In addition decrees such as PD 705 facilitated the unilateral extinguishment of indigenous title without even affording communities the opportunity to make claims to their lands. The result was that large tracts of ancestral domains were classified as public lands owned by the State. As public lands, they were further classified into mineral and forest lands, protected areas, reservations, and alienable and disposable agricultural lands.

5.1.1 The Cariño Doctrine

The landmark case of *Cariño vs. Insular Government*,⁵⁶ illustrates the discriminatory nature and illegitimacy of the aforementioned land laws and decrees. In the 1909 Cariño ruling the United States Supreme Court recognized the native title property rights of Indigenous Peoples, which were 'vested through a traditional legal system different from what the colonizers prescribed'.⁵⁷ It acknowledged the fact that their lands were private property under customary law and had never been public property inasmuch as they had not fallen under the control of the laws of the Spanish colonizer, which had defined all lands as public lands under the Regalian doctrine. The Court stated:

"when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land...Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will."⁵⁸

5.1.2 The 1987 Constitution

The 1987 Constitution marked a significant change in the State's attitude towards Indigenous Peoples from one of 'integration' to 'recognition' of their rights. The 1987 Constitution recognized Indigenous Peoples' ancestral domain rights requiring the State to 'protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being'.⁵⁹ The Constitution places an obligation on the State to ensure that national development be balanced with Indigenous Peoples' rights and interests, with the State required to recognize and promote 'the rights of indigenous cultural communities within the framework of national unity and development'.⁶⁰ Reference is made to the need for legislation providing for 'the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain'.⁶¹ Recognition is afforded to traditional indigenous institutions as 'The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions'.⁶²

5.1.3 The Indigenous Peoples Rights Act (IPRA)

The IPRA was enacted in 1997 to give effect to this Constitutional recognition of Indigenous Peoples' rights. The IPRA recognizes Indigenous Peoples' inherent rights, including their right to self-determination, ('the State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions' (SEC. 13. Self-Governance)); rights to ancestral domains and the applicability of their customary laws governing property rights, ('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;’ (General Provisions Section 2 b.); their right to a self determined development and the requirement that their free, prior and informed consent be obtained in relation to any developments impacting on them.

It also recognized ancestral domain ownership rights, acknowledging Indigenous Peoples’ time immemorial collective possession of their ancestral domains and establishing mechanisms for these to be delineated and formalized. It defines ancestral domains as:

‘all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial ... It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which their traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;’

The rights to ancestral domain contain 1) rights of ownership; 2) right to develop lands and natural resources, which include ‘the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share profits from allocation and utilization found therein’; 3) right to stay in territories and not be displaced therefrom; 4) right to regulate entry of migrants and other entities; 5) right to safe and clean air and water; 6) right to claim parts of reservations, and 7) right to resolve conflicts. The IPRA also contained the concept of ancestral lands (as opposed to ancestral domains). In contrast to the ancestral domains, which are considered the property of an indigenous people or community, ancestral land may be the property of indigenous individuals, families or clans who are members of indigenous communities. The rights to ancestral lands include 1) right to transfer land and property (among member of the same indigenous people); and 2) right to redemption. Ancestral lands, unlike ancestral domains, are not defined as including ‘bodies of water, mineral and other natural resources’.

5.1.4 The Regalian Doctrine

In addition to the enactment of the laws facilitating the expropriation of Indigenous Peoples lands the American Regime and Philippine State also inherited the Regalian Doctrine from the Spanish Colonial system. This Doctrine has appeared in the 1935, 1973 and 1987 Philippine Constitutions and holds that “All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State...”.⁶³

A petition was filed in 1998 in the Supreme Court to declare the IPRA unconstitutional on the premise that it violated the Regalian Doctrine.⁶⁴ In *Isagani Cruz and Cesar Europa v. Sec. of Environment and Natural Resources* the Supreme Court ruled (with seven justices voting in favor and seven against) that the IPRA was constitutional (see Paragraph 93 of Government Report). Commenting on the Cruz case and the underlying conflict between the ‘Regalian Doctrine’ and the concept of ‘Ancestral Domains’, the Legal Rights and Natural Resources Center (LRC-KsK / FoE Phils) pointed to the significance of the Cariño case noting that:

‘Cariño, therefore limits the State’s confiscatory power through the application of the due process clause. The declaration of ownership of all lands of the public domain and all natural resources, from 1935 to the 1987 Constitution, could not mean absolute ownership simply by operation of law,

as this would place State ownership in direct contradiction to the guarantee of due process as against actual owners, as interpreted in Cariño’.

However, despite the Supreme Court’s ruling upholding the constitutionality of the IPRA in the Cruz case, and the limitations placed by the Cariño case on the exercise of State powers, the practice of Government agencies has not changed. It continues to be premised on the pre-IPRA / 1987 Constitution conception of Indigenous Peoples’ property rights, which viewed Indigenous Peoples’ ancestral domain rights as grants from the State rather than inherent and pre-existing property rights. This manifests itself in the manner in which the courts and Government agencies continue to accord precedence to the Regalian doctrine and other tenurial instruments over Indigenous Peoples’ property rights. In doing so they are acting in violation of Indigenous Peoples’ due process and constitutional and legislatively recognized ancestral domain and inherent self determination rights.

In the case of *Isagani Cruz and Cesar Europa versus Secretary of Environment and Natural Resources* (paragraph 93 of the Shadow report) five of the seven justices⁶⁵ who voted to declare the IPRA constitutional concluded that:

The ‘existing rights’ that were intended to be protected must, per force, include the right of ownership by Indigenous peoples over their ancestral lands and domains. Moreover, Sec. 5, Art. XII of the Constitution expresses the sovereign intent to ‘protect the rights of Indigenous peoples to their ancestral lands’. That provision cannot, by any reasonable construction, be interpreted to exclude the protection of the right of ownership over such ancestral lands. For this reason, Congress cannot be said to have exceeded its constitutional mandate and power in enacting the provisions of IPRA, specifically sections 7(a) and 8, which recognize the right of ownership of the Indigenous peoples over ancestral lands.

Examining the IPRA, there is nothing in the law that grants to the Indigenous peoples ownership over the natural resources within their ancestral domains. The right of the Indigenous peoples in their ancestral domains includes ownership, but this ‘ownership’ is expressly defined and limited in s 7(a) and does not mention ownership to minerals, coals, wildlife, flora and fauna in traditional hunting grounds, fish in traditional fishing grounds, forest or timber in the sacred places, and all other natural resources found within the ancestral domains. The IPRA does not therefore violate the Regalian doctrine on the ownership, management and utilization of natural resources, as declared in s 2, art XII of the 1987 Constitution.

The legal implication of the ruling is that the Regalian Doctrine remains in effect in Ancestral Domains and that the IPRA is constitutional in so far as it is consistent with the Regalian Doctrine. By subordinating the rights of Indigenous Peoples to the Regalian Doctrine, the Supreme Court interpreted the IPRA in a manner that is discriminatory and unjust.

Another provision of the IPRA that has been interpreted in a discriminatory manner is Section 2(a) which upholds the principle of **national unity and development**. It states that “*The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development.*” A clear illustration of the discriminatory interpretation of the framework of national unity and development is found in the pronouncement of the Supreme Court in the case of *La Bugal-B’laan Tribal Association, Inc. v Ramos*,¹ where the Philippine Mining Act was declared constitutional. It said:

(T)he present leadership (has not) been remiss in addressing the concerns of sustainable mining operations. Recently, on January 16, 2004 and April 20, 2004, President Gloria Macapagal Arroyo issued Executive Orders Nos. 270 and 270-A, respectively, “to promote responsible mineral resources exploration, development and utilization, in order to enhance economic

growth, in a manner that adheres to the principles of sustainable development and with due regard for justice and equity, sensitivity to the culture of the Filipino people and respect for Philippine sovereignty.”

Elsewhere in its decision, it also said,

*The Constitution of the Philippines is the supreme law of the land. It is the repository of all the aspirations and hopes of **all** the people. We fully sympathize with the plight of Petitioner La Bugal B’laan and other tribal groups, and commend their efforts to uplift their communities. We must never forget that it is not only our less privileged brethren in tribal and cultural communities who deserve the attention of this Court; rather, all parties concerned -- including the State itself, the contractor (whether Filipino or foreign), and the vast majority of our citizens - - equally deserve the protection of the law and of this Court. **To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens.** They have as much right and interest in the proper and well-ordered development and utilization of the country’s mineral resources as the petitioners. (emphasis added)*

5.1.5 State structures for upholding Indigenous Peoples’ rights

The paternalistic approach of the American Regime and Philippine State towards Indigenous Peoples and their objective of assimilating Indigenous Peoples into mainstream society is evident in the mandates and structures of the bodies it established to deal with them. In 1901 the Bureau of Non-Christian Tribes was established to deal with ‘natives of a low grade of civilization’⁶⁶. President Quezon abolished the Bureau in 1938. Following a 19 year lapse the Commission on National Integration (CNI) was created in response to the demands of minorities to protect their lands against encroachment.⁶⁷ As its name indicates it was primarily focused on integration of minorities and the incorporation of their leaders into Government structures. In 1972 CNI was abolished and was replaced by the Presidential Assistant on National Minorities (PANAMIN). PANAMIN, founded in 1968 by President Marcos, included in its board the directors of companies responsible for expropriation of indigenous lands. It sought the ‘full integration’ of Indigenous Peoples into mainstream society and focused on charity operations. After 1972 PANAMIN’s primary focus shifted to recruiting Indigenous Peoples to fight those the Government regarded as ‘subversives’.⁶⁸ Under the Aquino regime PANAMIN was restructured to form the Offices for Northern and Southern Cultural Communities (ONCC and OSCC).

5.1.5.1 The National Commission on Indigenous Peoples

The IPRA provided for the creation of the National Commission on Indigenous Peoples (NCIP), a Government agency responsible for Indigenous Peoples’ issues. This body was effectively a reorganization of the existing ONCC and OSCC, consisting primarily of the same staff with its Commissioners appointed by the Office of the President. As a result it has inherited much of the ethos of these structures that preceded it and continues to exhibit a paternalistic approach toward Indigenous Peoples. This paternal attitude is reflected in the manner in which the NCIP attempts to exert its authority over other groups and organizations that having long standing engagements with Indigenous Peoples, assisting them in the realization of their rights.⁶⁹ This inherent lack of representation of and accountability to Indigenous Peoples is at the root of many of the issues it faces in relation to the implementation of the IPRA.

The NCIP has been the subject of much criticism from both indigenous organizations and other concerned bodies due to its lack of independence and autonomy.⁷⁰ Indicative of this lack of autonomy is that since its creation in 1997, the NCIP has been transferred from the Office of the President, to the Department of Agrarian Reform (DAR), and most recently, following another six months under the Office of the President, to the Department of Environment and Natural Resources (DENR).⁷¹ The transfer of the NCIP from one agency to another greatly undermines any credibility in its ability to independently execute its

mandate. By attaching the NCIP to, or placing it under, other agencies such as the DAR and the DENR, it is subject to the interference of these agencies which have directly conflicting interests and agendas. Shifting the body responsible for upholding Indigenous Peoples' rights from a framework of agrarian reform to one of environment and natural resources is illustrative of the ambiguous perception of the Government with regard to Indigenous Peoples' rights and its lack of political will to uphold these rights.

In addition to these structural issues the NCIP has acknowledged that it is hampered by a lack of budget and that it lacks the 'capability mechanism' for the implementation of the IPRA.⁷² It also acknowledged the lack of an advocacy program for Indigenous Peoples' rights for poverty alleviation and policy research required to enhance legislative action.

Section 50 of the IPRA envisaged the establishment of a Consultative Body. The Government refers to this body in its report (paragraph 163) which states that '*The IPCB serves as the voice of the ICCs/IPs at their respective areas of jurisdiction on matters relating to their problems, aspirations, and interests*'. As acknowledged, a National Indigenous Peoples Consultative Body has not yet been established. Indigenous Peoples do not view the existing Provincial Indigenous Peoples Consultative Bodies as being representative of them. An IWGIA commissioned study consisting of a post project evaluation of the Provincial Indigenous Peoples Consultative Bodies was conducted in April 2006. It was highly critical of the performance of the consultative bodies and reiterated the three original conditions that civil society had put forward in relation to their establishment: 1) the current Consultative Body structure is arbitrary and needs to be abolished; 2) the NCIP must stop organizing tribal councils; 3) the consultative body guidelines must be revised.

5.2 Land Rights Recognition and Implementation



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5.2 Land Rights Recognition and Implementation

CERD Article 5 (v) and (vi) imposes an obligation to ensure non discrimination in relation to the right to 'own property alone as well as in association with others' and to inherit property. Elaborating on this right in the context of Indigenous Peoples CERD's General Recommendation 23 on Indigenous Peoples paragraph 5 requires that the Government '*recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.*'. The Philippine Government, despite its obligations to do so, has failed to give effect to these non-discrimination requirements in relation to Indigenous Peoples property rights pertaining to their lands territories and resources.

The 1997 IPRA contains potentially beneficial provisions in relation to Indigenous Peoples property rights and was welcomed by many Indigenous Peoples on its enactment. Its implementation to date has proved to be disappointing. In many cases the law, particularly the manner in which it is interpreted and implemented by the courts and Government agencies, failed to address past wrongs and continues to provide for the extinguishment of native title by failing to cater for the varying circumstances and realities of indigenous communities. The underlying issues can be broadly grouped as follows. 1) Bureaucratic, expensive and intimidating titling procedures which places an unfair burden of proof on Indigenous Peoples; 2) Failure to address past wrongs through lack of restitution and provision recognizing prior vested rights; 3) Conflicting laws and over lapping Jurisdictions and lack of mechanisms for conversion of existing titles under the IPRA; 4) Ineffectiveness of the titles under the IPRA to afford protection to indigenous property rights and related disengagement with the process by Indigenous Peoples.

5.2.1 Titling of ancestral territories – placing the burden of proof on Indigenous Peoples

The IPRA imposes an obligation on Indigenous Peoples to obtain a Certificate of Ancestral Domain Titles (CADT) or Certificate of Ancestral Land Titles (CALT) as proof of their ownership of their lands. In practice, Indigenous Peoples cannot automatically assume full entitlement of their inherent rights recognized in the IPRA without adhering to the formal bureaucratically defined and controlled process established by the NCIP for the issuance of these CADTs / CALTs.

The CADT application process is by design rigorous and laden with tedious technicalities that tend to be alien, intimidating and incomprehensible to Indigenous Peoples. Application documents, many of which are technical in nature and are written in English, must pass through many stages and through many levels of the NCIP and other implementing Government offices. Government offices are located in city or urban centers, so conducting follow-ups is often very time-consuming and costly as applicants coming from remote rural areas have to spend for their travel and communication expenses. This bureaucratization and complication of process provides enhanced opportunities for corruption and for the manipulation of outcomes.

In 2005, rather than tackle these bureaucratic and financial obstacles the NCIP saw fit to exasperate them. The IPRA, and its Implementing Rules and Regulations (IRR) require CADT/CALT applicants to submit testimonies of the elders in the community, as well as submission of '**any one of**' the 10 enumerated ethnographic proofs. Under the IPRA, the NCIP could have requested additional ethnographic proofs if necessary. However, in the NCIP's *Resolution 119, Series of 2004*,⁷³ which became effective in April 2005, it has now made all 10 of the IPRA's optional ethnographic proofs mandatory. In doing so the NCIP has significantly increased the burden of proof on Indigenous Peoples. Meanwhile those third

parties who acquired Indigenous Peoples lands through prior legal or illegal means are not required to justify their questionable property rights.

The funding of the NCIP is not commensurate with its mandate and financial constraints are often pointed to by the NCIP as a major hindrance to the processing of CADT/CALT applications. They are a clear expression of the lack of Government commitment to effectively implement the requirements of the Constitution and the IPRA law. Due to its budgetary constraints, the NCIP only commits to processing one CADT per province per year. Generally prioritized are CADT applicants who are able to commit financial counterparts, thus automatically disenfranchising many applicant communities, particularly the most vulnerable. A study of the financial plans of 67 approved CADTs revealed an average budget of over P770 000, or US \$16 000, a sum difficult for any indigenous community in the Philippines to raise. Communities therefore have to turn to private resources to ensure faster CADT application processes.

In light of this situation, offers for funding of CADT titling process have been used as a manipulative means for entering indigenous lands by entities such as mining companies. This was the case of the 1999 agreement⁷⁴ between a subset of the Mangyan of the Municipality of Victoria, Province of Mindoro Oriental, Mindoro Island and Mindex (now Intex Resources). The boundaries of the proposed CADT which are being resurveyed with funding from the company only represent a portion of the Mangyan Peoples true ancestral domain and were created to match the mining companies needs and divide the Mangyan who were opposing the entry of the company. In 2008, a similar case of the company offering to pay for the CADT titling during negotiations to obtain community consent occurred with the Mangyan of the Municipalities of Abra de Ilog, Province of Mindoro Occidental, Mindoro Island. (see Self Determination section 5.3.5.1.1)

As a result of these bureaucratic and financial constraints CADT applications take painstakingly long periods of time to process. As of December 2008, only a total of ninety six (96) CADTs covering 2.7 million hectares have been issued since the passage of the IPRA. Under the Philippine laws, it is only upon registration that the landowner is protected from challenges on ownership rights. Of these ninety-six (96) CADTs, only nineteen (19), have been registered with the Registry of Deeds (ROD), corresponding to less than 0.6M hectares. In other words, after eleven (11) years of IPRA implementation, less than 8% of the estimated 7.5 million hectares of ancestral domains has been registered.

Prior to the IPRA, in the absence of legislation recognizing the inherent rights of indigenous communities to their lands, a number of indigenous communities opted to register their lands under the then existing titling regimes. Mechanisms pursued included Forest Stewardship Agreements and Certificates of Ancestral Domain Claims (CADC) under the Department of the Environment and Natural Resources (DENR).⁷⁵ Numerous cases exist of titling, registration and conversion processes running into decades.

The case of the Subanon of Mount Canautan, Municipality of Siocon, Province of Zamboanga typifies this reality. The Subanon pursued all available legal means, fulfilling the requirements of successive legislative acts, to secure recognition of their land. They applied for a Community Forestry Stewardship agreement (CFSA), a contract with the DENR, which they were granted in 1992. They converted this into a CADC in 1993 under the DENR as soon as the associated bureaucratic procedures made this possible. This was granted by the DENR in 1997. Immediately following the enactment of the IPRA, the Subanon applied to have their CADC converted into a Certificate of Ancestral Domain Title (CADT)⁷⁶. As a result of their efforts, some six years later, they were among the first indigenous communities in the Philippines to be awarded a CADT in 2003. Nevertheless it was not until May 2008 following CERD's Early Warning Urgent Action letter to the Government of the Philippines in relation to unwanted mining operations in the Subanon's ancestral domain that the Government finally registered and handed over the CADT to the Subanon.

The case of the Calamian Tagbanuas the Municipality of Coron, Province of Palawan is another example of the administrative processes and delays community face in order to get their CADT/CALT. In the 1980s, the Calamian Tagbanuas applied for a CFSA to extract logs within their ancestral domains. However, this instrument did not cover their ancestral waters; thus, the Calamian Tagbanua in 1992 took the opportunity presented by the Strategic Environmental Plan for Palawan Act or Republic Act No. 7611, which provided an expanded definition of ancestral domains in Palawan to include coastal zones and other submerged areas. In 1993, the community applied for a CADC which was issued five years later in 1998. It took another six years for the conversion from a CADC to a CADT under the IPRA, and it was only in 2004 that the community secured its title, which included its ancestral waters. The CADT however, is yet to be registered.

Another tenurial instrument that Indigenous Peoples were encouraged to make use of to protect their lands prior to the IPRA was the Certificate of Land Ownership Awards⁷⁷ (CLOA). CLOAs provided them with an option to secure communal land ownership under the States Comprehensive Agrarian Reform Program and Law (CARP / CARL). However, under this program land was classified as state-awarded and considered disposable and alienable in nature. The CARP also placed restrictions on the extent and usage of land, as well as the qualifications of the beneficiaries. Despite the fact that the IPRA and its implementing rules specifically provided for the conversion of CLOA's into CADTs / CALTs, the NCIP as of 2009 has yet to formulate the guidelines which would provide the mechanisms for this process. Many communities therefore still suffer from land insecurity inherent in CLOAs and are unable to benefit from the greater protections afforded under the IPRA. In addition the jurisdiction of Government agencies to deal with Indigenous Peoples, depends not on their identity as owners of the land, but instead on land classification created by law.

The B'laan community in the Municipality of Columbio, Province of Sultan Kudarat applied for a collective CLOA prior to the enactment of the IPRA. Upon the passage of the IPRA and with the heightened problems that the B'laans faced regarding land security, the community approached the NCIP for help. However, the NCIP informed them that, as the land classification was under CARP, the proper agency to approach was the Department of Agrarian Reform (DAR). The DAR in turn failed to provide the B'laans with any assistance. In the absence of any conversion mechanism the B'laans were told that they should first undergo the process of canceling their CLOA before applying for a CADT. This would open the land to acquisitions by others, as the land is already classified as alienable and disposable agricultural land. The introduction of agricultural land classification has also affected the cultural identity and practices of the B'laans and lead to inter-community conflicts. In addition due to the taxes and amortizations attached to CLOAs, the B'laans owe millions to the Government for their lands which under the IPRA are tax exempt.

Despite its recognition of ancestral domains as private lands of Indigenous Peoples, the IPRA (Section 12) provides the option to indigenous communities to apply for a Certificate of Title under the Public Land Act up to the year 2017.⁷⁸ If exercised this option would classify these lands into alienable and disposable and allow for extinguishment of indigenous title unbeknownst to the indigenous applicants. The very concept of public grants and awards being incorporated into a law which already recognized native titles is self contradictory and is reflective of past practices whereby executive and legislative acts were used to classify ancestral domains and lands as public lands.

5.2.2 *Vested property rights*

Certain provisions of the IPRA together with its implementing rules and regulations and its implementation have served to seriously undermine its potential for rectifying the past extinguishment of Indigenous Peoples land rights. Of particular note in this regard is Section 56 of the IPRA 'Existing Property Rights Regimes' (addressed in the Government report in paragraphs 43, 173 and 174). It states that 'Property rights within the ancestral domains already existing and/or vested upon effectivity of this

Act, shall be recognized and respected.’ This is equally true with regard to Section 7(g) of the IPRA, Right to Claim Parts of Reservations,⁷⁹ wherein the law states that parts of existing reservations, which are ‘reserved and intended for common and public welfare and service’, cannot be included in ancestral domains.

The Government’s interpretation of Section 56 is anchored on a misapplied legal premise that, as the IPRA was enacted after these land titles or awards were granted, these supposedly vested property rights should be respected. It ignores the basic legal principle that land titles issued contrary to law are to be given no effect as they are null and void. As outlined earlier, most tenurial instruments (for example establishment of civil reservations, classification of public agricultural lands as alienable and disposable) within ancestral domains were granted by the State, without the knowledge or consent of the indigenous land owners, through legislative and executive acts that failed to respect their inherent property rights, their rights to due process, and their very right to exist as a people.

Furthermore the dominant interpretation of Section 56 is that it supports the claims of mining and logging companies that permits / concessions granted prior to the IPRA are vested property rights which take precedence over the inherent property rights of indigenous communities as recognized under the 1987 Constitution. It therefore forms the basis for the denial of redress to indigenous communities for past encroachments on their lands and acts as a justification for the failure to obtain their FPIC in relation ongoing projects.

Several other mining firms applied for Mineral Production Sharing Agreement and Financial and Technical Assistance Agreement over large territories of Indigenous Peoples prior to 1997. Such applications are being invoked as ‘existing property rights’ by the mining firms. Cases include the Itogon Suyoc Mines in the Cordillera in the lands of the Ibaloi, Tampakan Copper-Gold Project in B’laan ancestral lands in Mindanao and Coral Bay in Palawan in the lands of the Palaw’an people.

This interpretation of property rights is in direct contradiction with *The Supreme Court ruling in Oposa et al. v. Fulgencio S. Factoran, Jr. et al.*⁸⁰ (citing in *Tan vs. Director of Forestry*,⁸¹) where it held in the context of timber licenses that:

‘A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right.’

Likewise a progressive ruling of the Mines and Geosciences Bureau Panel of Arbitrators in November 2008 in relation to mining permits in lands of the Balatoc community in Kalinga stated that

‘a permit is a mere concession and / or license granted by the State, which, does not give any vested property rights to the permit holder over the covered ancestral area...since the Indigenous Cultural Community concerned...through its authorized representative manifested its intention to exercise its priority right over the natural resource located within its ancestral domain, the right of [the mining company] under its exploration permit must yield.’

Addressing Section 56 and the claims of mining companies to prior vested property rights, the UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, argued that ‘the legislative intent of the IPRA regarding the rights of Indigenous Peoples to ancestral lands and natural resources found therein is surely of more substantial primacy than the concessions that private businesses obtained from previous governments without regard to indigenous rights’. He recommended to the Philippine Government in 2003 that,

‘resolving land rights issues should at all times take priority over commercial development. There needs to be recognition not only in law but also in practice of the prior right of traditional communities. The idea of prior right being granted to a mining or other business company rather than to a community that has held and cared for the land over generations must be stopped, as it brings the whole system of protection of human rights of Indigenous Peoples into disrepute. Bringing justice to indigenous communities in the area of land rights is the great historical responsibility of the present Government of the Philippines.’

However, the dominant discriminatory interpretation of Section 56, which facilitates the on-going extinguishment of Indigenous Peoples’ rights, has been adopted by the NCIP, despite the IPRA’s requirement that ‘any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs.’⁸² In its response to CERD in relation to the case of the Subanon of Mount Canatuan, the NCIP attempted to justify the presence of TVI Resources mining operation in Subanon ancestral domain by stating that ‘moreover the law [IPRA] itself provides for the recognition and respect of the property rights within the ancestral domain already existing and/ or vested upon its effectivity’.⁸³

5.2.3 Indigenous Peoples’ priority and ownership rights

In addition, the panel pointed out that in accordance with the IPRA’s Section 57, which recognizes indigenous communities’ priority rights to ‘harvesting, extraction, development or exploitation of any natural resources within their ancestral domains’, it is not necessary for an indigenous community have a mining exploration application accepted by the relevant Government authority to exercise their priority right ‘because such right was granted by law’.

However, under the current NCIP guidelines communities are required to undergo costly and bureaucratic procedures in relation to exercising priority rights. These guidelines also place time restrictions on the manner by which the priority rights may be exercised. In addition they do not require that communities be informed of these ownership and priority rights in advance of considering any applications and FPIC processes to exploit these on behalf of third parties.

The IPRA recognizes indigenous ownership as ‘*sustain[ing] the view that ancestral domains and **all resources found therein** shall serve as the material bases of their cultural integrity*’ with ‘ancestral domains’ being defined as including ‘mineral and other natural resources. As rights holders over the resources in their ancestral domains they should be free to decide if, when and how these resources are used. In practice Indigenous Peoples ownership of the natural resources in their lands has not been realized.

The position of the Government regarding the relationship between indigenous communities priority rights and their ownership rights over the natural resources in their lands remains ambiguous. For example there is no clarity with regard to what share of resources Indigenous Peoples are entitled to on the exercise of their priority rights (e.g. as owners of the ancestral domain and holders of priority rights are they entitle to a majority share in the exploitation of these resources?). Nor is there clarity as to how an Indigenous Peoples group can exercise its right to hold these priority rights for future generations.

5.2.4 Restitution and redress

The potential for the redress of past wrongs is highly reliant on the NCIP’s technical capacity, its budget and its political will. Under Section 64 of the IPRA ‘Remedial Measures’, the NCIP has the duty to

‘take the appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, that such procedure shall ensure that the rights of possessors in good faith shall be respected; Provided further, that the action for cancellation shall be initiated within two

(2) years from the effectivity of this Act; Provided finally, that the action for reconveyance shall be a period of ten (10) years in accordance with existing laws.’

The NCIP has neither the capacity nor the budget to address the number of contentious Government and privately owned titles overlapping ancestral domains. As a result, the inclusion of a prescriptive period for the filing of actions of cancellation results in the legitimization of the illegal acquisition of ancestral domains. It is in effect a measure to extinguish Indigenous Peoples’ rights to their lands. The lack of awareness of indigenous communities of their right to seek cancellation of such titles and the experience of Indigenous Peoples, communities and clans that have sought restitution and redress for past wrongs also indicates that the political will of the NCIP to address these problems and uphold Indigenous Peoples inherent land rights is severely deficient.

The lands of Barangay Kisanday, Municipality of Maramag, Province of Bukidnon have been the ancestral domain of the Manobo-Talaandig indigenous group since time immemorial. However, in 1958, then President Ramon Magsaysay classified them as an educational reservation and the Central Mindanao University (CMU), a state university, was established in the area. The community formed the Kibalagon, Kisanday, Narukdukan Manobo-Talaandig Tribes Association (KKINAMATTA). In the 1970s, the CMU filed a claim before the cadastral court, the Court of First Instance of Bukidnon to have lots 1 and 2 titled under its name. The indigenous leaders filed their opposition to the registration of the reservation. Despite the area being classified as a public land, the CMU managed to acquire a title over it, leading to the harassment and displacement of members of the tribe. As a result of persistent lobbying by the KKINAMATTA, the area was included as one of the priorities of Task Force 63 (TF 63) an inter-agency body established in 2002 to address urgent conflicts in indigenous areas, while the NCIP was still in the process of capacity-building. TF 63’s intervention led to the issuance of Presidential Proclamation 310 (PP 310) setting aside 362 hectares for all indigenous claimants in the CMU area. PP 310 only covers half of the area of the original ancestral domain, and was issued pursuant to the false premise that the land is public and not ancestral land. The CMU filed a case for injunction on the implementation of PP310 and to date it remains unimplemented. In 2006, the NCIP was enjoined by the indigenous group to file a case for reconveyance to return all of the wrongfully classified land to them. However, the NCIP decided not to file the case, and instead, has opted to work towards the implementation of the inadequate PP 310.

The case of the Aeta in the Municipality of Bamban, Province of Tarlac meanwhile involves a former Clark military reservation / base of the United States which had been established in the ancestral territories of the Aeta following the expropriation of their lands by the United States Government. In 1980, the Sacobia Development Authority (SDA) was created purportedly to ‘provide integrated basic economic and social services and facilities in all areas, particularly the underdeveloped or resettlement sites’ in the area. ⁸⁴ In 1992 the properties were converted from a United States military reservation by virtue of the Bases Conversion and Development Act ⁸⁵. The Act further established the conversion of the military reservations into a special economic zone, covering the Municipalities of Mabalacat and Porac, Province of Pampanga, and the Municipality of Capas, Province of Tarlac. In 1996, Executive Order No. 344⁸⁶ (EO 344) transferred the SDA to a government corporation, the Clark Development Corporation, which currently manages the Clark special economic zone. The EO 344 states that, “communities and permanent residents of Sacobia may be transferred and resettled by the (Clark Development Corporation)...to give way to development projects in the area”. In 1993 the Aeta community had applied for a Certificate of Ancestral Domain Claim from the DENR covering areas in the economic zone.⁸⁷ They subsequently applied for a conversion of this CADC to a CADT under the IPRA. The conversion process took another six years, finishing in November 2004, This CADT was only registered by the Land Registration Authority (LRA) in May 2009. However, the area awarded in no way corresponds to the lands taken and the conditions of the on-going arrangement with CDC are highly unfavorable for the Aeta. Thus, despite engaging with the available legal mechanisms, including the IPRA, the Aeta have so far not achieved even partial restitution of their lands or redress. Instead they are again faced with new

orders from the Government providing for their resettlement without being afforded due process protection of their rights to life and property, which have been deemed subservient to development interests.

The ancestral lands of the Cariño family were expropriated by the United States colonial Government in 1903 for the establishment of a military base known as Camp John Hay. Mateo Cariño, an Ibaloi herdsman from Baguio, filed suit against the Insular Government for this illegal taking of his family's pasturelands. The legal case, *Cariño vs. Insular Government*, went all the way to the US Supreme Court, which finally found in his favor after six long years. In 1909 the US Supreme Court, in a landmark decision penned by Oliver Wendell Holmes, decided that Mateo Cariño had prior rights to the lands under dispute and owned Camp John Hay by virtue of Native Title. This US Supreme Court ruling has since been referred to as the Cariño Doctrine of Native Title.

Mateo Cariño did not live to claim his victory, however, as he had died in 1908 before the decision came out. Furthermore, the United States colonial government did not enforce the ruling and the lands were never returned nor was a settlement reached with the Cariño family. When the US military base was reverted back to the Philippines in 1992, rather than address this historical injustice by enforcing the 1909 ruling, the Philippine State instead compounded it. As with the lands of the Aeta in Clark air base, the 1992 Bases Conversion and Development Act converted the Cariño lands in Camp John Hay into a special economic zone under control of a Government corporation notwithstanding the Cariño family already had a pending ancestral land claim to recover Camp John Hay with the Department of Environment and Natural Resources Special Task Force for the Recognition of Ancestral Land.

In addition, a discriminatory provision in the IPRA, Section 78, expressly states that the City of Baguio is exempted from the application of the IPRA, despite the fact that Baguio is an established ancestral territory of the Ibaloi. By exempting the application of Baguio from the IPRA, there is thus a clear discrimination against the Cariños and other Indigenous Peoples of Baguio whose lands were confiscated.

The Cariño case is emblematic of the Government's failure to enforce rulings upholding Indigenous Peoples' rights. This case and the situation of other indigenous clans in Baguio was specifically commented on by the UN Special Rapporteur Professor Rodolfo Stavenhagen in his 2003 report:

'The Cariño family of the Ibaloy tribe in Baguio-Benguet (Luzon) is still awaiting the restitution of its ancestral domain claim after almost a hundred years of legal action involving the Spanish and American colonial administrations as well as the Government of the Philippines, and despite a decision in their favor by the United States Supreme Court in 1909. In the same Baguio City area nine Ibaloy clans demand that 250 hectares of their ancestral domain be segregated from an area known as Happy Hollow, a part of the old John Hay American military camp, designed to become a tourist destination. They wish to keep full control of their traditional land rather than accept a government plan to subdivide it into individual home lots.'

5.2.5 Denial of rights as a result of jurisdictional issues and harmonization of policies

Section 66 of the IPRA states that the NCIP 'shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs'. However, in practice the NCIP's power to exercise this jurisdiction is seriously constrained as other more powerful Government agencies continue to exercise jurisdiction over Government projects and programs within ancestral domains. The NCIP's ability to act is therefore dependent on the agendas of these bodies and the political pressure exerted over it. The relative weakness of the NCIP vis-à-vis other Government agencies and its inability to uphold the rights and interests of Indigenous Peoples is evident in the context of efforts to harmonize laws that impact on Indigenous Peoples' rights. These harmonization efforts have led to the disempowerment of the NCIP and the effective transfer of jurisdiction over Indigenous Peoples' rights to other Government agencies.

An example of these efforts to harmonize laws relates to the registration of CADTs / CALTs. Section 52 (k) of the IPRA only requires that the NCIP ‘register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated’. However, in the name of harmonization of laws a Joint Memorandum of Agreement, No. 1 Series of 2007⁸⁸ was signed between the Land Registration Authority (LRA) and the NCIP. Under this Agreement, CADTs/CALTs issued by the NCIP cannot be registered without the clearance of the LRA. This LRA clearance process imposes additional delays on the processing of CADT applications, often in the order of 4 to 5 years, on top of the rigorous and complicated CADT/CALT application and approval process.

The difficult titling process is largely a question of the Government's political will. The Government has displayed how it can make land appropriation process easier once deemed important to ‘national development’. For example, in the midst of the Government campaign for mining revitalization in the country, the Department of Environment and Natural Resources (DENR) has created the so-called “One Stop Shops”⁸⁹ aimed to streamline and significantly hasten mining applications. This was part of the Mineral Action Plan (MAP) announced by the President herself that aimed to hasten the processing of mining permits and to harmonize conflicting policies related to mining and land.

This ‘harmonization’ effort consisted of the requirement under MAP for the NCIP to issue the certification of precondition required for mining in indigenous territories within 107 days. This requirement is reflected in the FPIC guidelines which limit to less than 55 days the entire conduct of FPIC processes and the authorization of mining companies to operate in indigenous territories. It is a clear violation of Indigenous Peoples’ rights to self-determination, self governance, due process according to indigenous law and practice, development and their ancestral domains ownership rights. Viewed in the context of the timeframes imposed on Indigenous Peoples for the recognition of their land rights, which can run into decades, the 107 and associated 55 day limitation is clearly discriminatory, placing the interests of mining companies far above the respect for Indigenous Peoples’ rights.

Currently, the Department of Agrarian Reform (DAR) and the NCIP are also involved in harmonization efforts through the formulation of a joint memorandum. The current draft provides for jurisdiction over all agricultural lands, even those lands classified as agricultural within ancestral domains, to fall under the DAR. This is in clear violation of Section 66 of the IPRA.

Conflicts over jurisdiction and between laws are not limited to national Government agencies. Local Government Units have also used laws such as the Local Government Code, the Strategic Environmental Plan for Palawan Act⁹⁰ and the National Fisheries Code⁹¹ to disempower Indigenous Peoples and promote the interests of private corporations.

The waters of the municipality of Balabac, Southern Palawan, are the traditional fishing grounds of the Molbog and Palaw’an Indigenous Peoples and a source for their livelihoods and those of other communities. In 2005 the Local Government Unit issued the “Balabac Protected Marine Eco-Region Ordinance” without consulting with the Indigenous Peoples or obtaining their free prior informed consent as mandated under the IPRA.⁹² This ordinance serves to protect the pearl farm of the Jewelmer International Corp. (Jewelmer), which is located in the Indigenous Peoples ancestral waters, by classifying it as a ‘core or strictly protected zone’, prohibiting all forms of gathering of aquatic resources within it. As a consequence the Indigenous Peoples’ livelihoods have been seriously impacted. They have been forced to find new fishing grounds further from where they live. This requires that they circumnavigate the protected area thereby doubling their costs. Otherwise they face allegations of fishing illegally in their own traditional waters and the constant threat of having their boats impounded. They complain that their ancestral waters are being heavily guarded and that they have suffered from attacks,

harassments and threats. In an attempt to protect their livelihoods and substance rights the communities filed a civil case⁹³ in 2005 against the Municipality of Balabac seeking temporary relief. The Indigenous Peoples together with local small fishermen filed a second civil case in 2006 against the municipality before the regional trial court questioning the legality of the Ordinance and seeking to prohibit it.⁹⁴ The case is still on-going.

5.2.6 *Conflicting claims over ancestral lands*

As a result of the unilateral classification of millions of hectares of ancestral lands into public land, long running conflicts have resulted between communities, Government agencies and companies, in many cases also leading to inter and intra community conflicts. The generation of these conflicts continues to the present day as a result of the ongoing misclassification of ancestral lands as public lands. A nationwide survey of indigenous CADT applicants and holders published in 2008 found that 45% of communities had conflicting claims over their lands. 30% of these were in conflict with local government units (LGUs), Government line agencies and the military in relation to lands they were claiming in ancestral domains, 20% were conflicts over ancestral lands classified for agrarian reform and 16% conflicts in relation to private land claims in ancestral domains.⁹⁵

An example of this continuing process of conversion of ancestral domain into public land is the attempted appropriation by the Department of Agrarian Reform (DAR) of a part of the indigenous Buhid Mangyan's ancestral domain in the Municipalities of Bansud and Bongabong, Province of Oriental Mindoro, for land reform to non-Buhid Mangyan tillers. The Buhid CADC which covers 94,022 hectares was awarded in 1998. One of the community's objectives in filing for the CADC was to ensure that the DAR did not ignore their rights to their ancestral lands. In 1981, Marcos rescheduled lands from the public domain for agricultural use under Presidential Proclamation 2282. This led to the creation of a Government program for agricultural livelihood development known as KKK.⁹⁶ Some of the surveyed areas as part of this program are within Buhid lands. From 1998 to 2004 the Buhid Mangyan consistently registered their refusal of the KKK Program and notified Government agencies (DAR and DENR) and the Philippine President of their ancestral land claim through petitions. Rather than act on these petitions the DAR chose to ignore them. Instead it made use of Presidential Proclamation 2282 in order to find areas where its Comprehensive Agrarian Reform Program (CARP) could be applied. In July, 2004 the DAR entered the Buhid CADC to survey, distribute and title parcels of land to award CLOAs (Certificate of Land Ownership Award) to non-Indigenous Peoples. It did so despite the existence of the CADC and without the free prior informed consent of the Buhid Mangyan. In the process of the survey, some Buhid leaders lost portions of their lands planted with banana due to land clearing. Sacred burial grounds were also cleared. On June 29, 2005 the Buhid Mangyan filed a case before the Commission on the Settlement of Land Area Problems (COSLAP) under the Department of Justice to stop DAR and the Department of Land Registration (DLR) from awarding and registering CLOAs that fall within the Buhid CADC. The Mangyan are currently attempting to have their CADC converted to a CADT. Several hearings have been held and the Mangyan have stated that the only title registration they will accept is the registration of their CADT. Nevertheless the DAR has identified parcels of land within their ancestral domain for CLOA issuance. The Mangyan are unaware if the DAR has managed to register or award these CLOAs to beneficiaries.

The case of the T'boli in Sitio Datal Bon Langon, Barangay Ned, Municipality of Lake Sebu, Province of South Cotabato is an example where misclassification of ancestral lands and ensuing conflicting claims continue to have serious ongoing impacts on the Indigenous People. On one hand, the DENR claims that the ancestral land is forest land, while on the other, the DAR insists that it is agricultural land. The T'boli in the meantime are left without recognition of the inherent land rights and at the mercy of the company whose entry into their lands has been sanctioned by the DENR. In 1991, by virtue of the Government's classification of T'boli's lands as forest land. The DENR issued Industrial Tree Plantation License Agreement (ITPLA) No. 238 to Silvicultural Industries, Inc. (SII). This was converted a year later into an

Industrial Forest Management Agreement (IFMA). In 1992 by virtue of Presidential Proclamation No. 550⁹⁷ and the Comprehensive Agrarian Reform Law (CARL), which treat these same lands as public lands, the members of the community were awarded three (3) Certificate of Land Ownership Awards (CLOAs) by the DAR. With the entry of the company and its coffee plantation under the IFMA, violence against community members ensued and the community fled the area in 1991, eventually returning in December 1997. The Government agencies involved have yet to resolve their conflicting claims to the T'boli's ancestral lands into which the coffee plantation continues to encroach without their FPIC.⁹⁸ The T'boli, meanwhile in an attempt to halt this encroachment, have initiated the processes to apply for a CADT.

5.2.7 Effectiveness of CADTs and the IPRA in protecting ancestral domains

Titles issued over indigenous lands prior to the IPRA failed to recognize the inherent rights of Indigenous Peoples to their lands. In 1997, the IPRA was enacted to address this failing through the issuance of CADTs/CALTs, which were premised on the recognition of these inherent land rights. A substantial body of Indigenous groups continue to assert that they should not need to apply for recognition of rights they have held and exercised continuously since long before the foundation of that state. They are deeply suspicious of the law and practices that seem aimed as much at extinguishing indigenous rights, and at asserting state authority as at the recognition of their inherent rights. Other indigenous communities did however place their hope in the protection afforded by these new titles. Some applied for a title to their lands for the first time ever and others sought the conversion of titles issued under prior Acts.

However, in the intervening years it has become apparent to indigenous communities that application for or position of CADTs/CALTs does not automatically ensure that their rights will be respected. The experience of the Subanon of Mount Canatuan in Siocon, Zamboanga del Norte is clearly illustrative of this as despite being one of the first communities to obtain a CADT, the last in a series of tenurial instruments that the community held, the DENR and the NCIP continued to authorize and legitimize the unwanted encroachment of private individuals and mining corporations into their ancestral domain. (See Subanon 2007 Submission to CERD)

The Talaandig of Talakag, Bukidnon share a similar fate. Their claim has a total land area of approximately 13,815 hectares. A CADT covering 11,105 hectares of this was awarded to the Talaandig Tribe on October 30, 2003 by the NCIP.⁹⁹ However, on January 17, 2004, without giving prior notice to or obtain the consent of the tribal elders, the workers of a landowner, allegedly led by a military officer, entered an area occupied and tilled by members of the Talaandig indigenous communities with a truckload of fencing and building materials to build structures and fences. The landowner filed a civil case for *Accion Reinvidicatoria* with Injunction. The Regional Trial Court¹⁰⁰ granted the injunction against the Talaandigs and totally disregarded the fact that the Talaandig already had a title to their land while the alleged landowner only had a tax declaration.

The costly, intimidating and bureaucratic CADT application procedures, the inability of the NCIP and other Government agencies to speedily and efficiently process them, the inherent weakness in the law¹⁰¹ and the ineffectiveness of CADTs/CALTs in protecting land rights in practice has discouraged many Indigenous Peoples from applying for them. As a consequence, many ancestral domains remaining are unrecognized by the State. This in turn has created a distinction of Indigenous Peoples ancestral territories into those that are formally recognized and those that are not. The effect has been to shift the burden of proof to Indigenous Peoples whose territories are without CADTs whenever external entities or the State wish to appropriate these lands, in many cases leaving them even more vulnerable to informal or Government sanctioned encroachment. The NCIP through its revised 2006 FPIC guidelines is now systemizing the practice of denying recognition to unregistered ancestral domains (see section 5.3.4 below).

5.3 Self-determination, Self-determined Development and Free Prior Informed Consent



MAP OF THE REPUBLIC OF THE PHILIPPINES

5.3 Self Determination, Self Determined Development and Free Prior Informed Consent

'The present report documents serious human rights violations regarding the human rights implications for indigenous communities of economic activities such as large-scale logging, open-pit mining, multi-purpose dams, agribusiness plantations and other development projects. Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment. These activities are often carried out without their prior, free and informed consent, as the law stipulates.'

2003 Philippine Country Report of UN Special Rapporteur on Indigenous Peoples Professor Rodolfo Stavenhagen

International human rights law, through the jurisprudence of Treaty bodies and the adoption of the UN Declaration on the Rights of Indigenous Peoples, has recognized Indigenous Peoples inherent right to self determination.¹⁰² Guaranteeing Indigenous Peoples' full and effective participation in all decisions relating to their rights and interests, and obtaining their Free Prior and Informed Consent (FPIC) in relation to any decisions that may impact on them, are fundamental requirements for ensuring non discrimination in the realization of this right to self determination. These obligations are addressed in the CERD's General Recommendation No, 23, paragraph 4 (d), which calls upon States to *'ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent'*. This requirement to obtain Indigenous Peoples' Free Prior and Informed Consent (FPIC) in the context of development projects in their lands, which have potentially major impact on their cultural, spiritual or physical well-being, has evolved into an established universal norm of international human rights law.¹⁰³ These requirements are essential for providing Indigenous Peoples with *'conditions allowing for a sustainable economic and social development compatible with their cultural characteristics'* and to enable them to *'exercise their rights to practice and revitalize their cultural traditions and customs'* as required under General Recommendation No. 23 paragraph 4 (c) and (e) respectively. Despite the recognition under the IPRA of Indigenous Peoples inherent right to self determination and to participation in decisions that impact on them and its requirement to obtain their FPIC, the Government of the Philippines has failed to meet these obligations in practice and is instead systematizing the violation of Indigenous Peoples right to self determination through the imposition of discriminatory policies, programs and projects in indigenous territories.

5.3.1 Externally imposed development projects in indigenous lands

The mountainous territories of Indigenous Peoples are among the most biodiverse places in the world and have ecological significance to the entire archipelago. Their lands also contain most of the country's remaining forests and watersheds that are the basis of indigenous communities' livelihoods, as well as providing water for downstream agriculture and fisheries.

The Government report noted the extent of natural disasters *'brought about by earthquakes, volcanic eruptions, typhoons and other weather extremes such as the El Nino/La Nina phenomena'* (See Government Report paragraph 25). The impacts of these phenomena are exacerbated by the fragility of the Philippine natural environment, which has yet to recover from the extensive logging of the last century. The country is densely populated with Indigenous Peoples and other communities highly dependent on the health of the environment for their survival.

Conscious of the impact of logging and dam projects on their environment and their livelihoods Indigenous Peoples were to the fore of efforts to protect their lands from the negative effects of these projects. This was particularly the case during the martial law era, when extensive logging and large scale dam projects threatened their existence. This struggle to have their land and self determination rights

recognized eventually contributed to the downfall of President Marcos and influenced the drafting of the 1987 Constitution.

The 1987 Constitution of the Philippines recognizes the inherent rights of Indigenous Peoples and requires that national development priorities be balanced with these rights and interests. The IPRA, enacted in 1997 to give effect to these rights, recognized Indigenous Peoples' inherent rights to self-determination, to development within their associated ancestral domains, inclusive of 'all resources contained therein'. It consequently placed clear limitations on the exercise of State power in relation to resource exploitation and military deployment within ancestral domains.

The former UN Special Rapporteur on the Fundamental Freedoms and Human Rights of Indigenous Peoples, Professor Rodolfo Stavenhagen, following his country visit to the Philippines, noted the impacts of externally imposed development activities such as logging, mining and plantations on indigenous communities had at times been 'catastrophic' as a result of environmental damage and human rights violations.¹⁰⁴ He explained that as a result 'many communities resist being forced or pressured into development projects that destroy their traditional economy, community structures and cultural values, a process aptly described as "development aggression"'.¹⁰⁵

For the Indigenous Peoples of the Philippines, control over and respect for their decision-making process and institutions is a prerequisite for the realization of a culturally appropriate sustainable and self-determined development path. The IPRA's requirement to obtain their Free Prior and Informed Consent (FPIC),¹⁰⁶ described in the IPRA's FPIC implementing Guidelines as '*an instrument of empowerment [that], enables ICCs/IPs to exercise their right to self-determination*' is seen as an essential element in achieving this.¹⁰⁷ Professor Stavenhagen also clarified that FPIC includes the "right to say no" and described it as being of "crucial concern" in relation large-scale development projects and "essential" for the protection of Indigenous Peoples' human rights.¹⁰⁸

The IPRA defines FPIC as '*the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community*'.¹⁰⁹

Furthermore, Section 59 of the IPRA requires that '*All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or – controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.*' (emphasis added)

This Section 59 of the IPRA is referred to in the Government report (paragraph 110).¹¹⁰ However, the reference makes no mention of the fact that concessions cannot be issued while CADT's are pending. Nor does it mention the right to stop or suspend projects that have failed to comply with the consultation process. Neither requirement is respected in practice. Concessions are granted while CADT's are pending or in dispute (e.g. in the cases of the Mangyan of Mindoro and the Mandaya of Caraga, Davao Oriental, Mindanao see sections 5.3.6.2.1 below). There has not been a single case where projects, that have commenced operations, have been stopped due to their failure to adhere with these consultation processes,

despite clear violations of FPIC processes (e.g. in the cases of the Subanon of Mount Canatuan and the Indigenous Peoples of Mankayan where the Lepanto Mining Company is operating).

5.3.2 *Trends in development aggression*

The experience of indigenous communities in the Philippines points to a significant failure of the Government of the Philippines to uphold the rights to self determination. This failure is particularly evident in the experiences of indigenous communities in relation to FPIC processes that fail to respect their decision-making processes and their customary laws and practices. The Government's repeated revisions of the FPIC implementing guidelines, particularly those driven by requirements of the mining sector to streamline the IPRA and harmonize it with the mining permit granting process, is illustrative of the significant lack of political will to uphold Indigenous Peoples' rights in practice. The result has been the transformation of FPIC from a tool to operationalize the right to self determination to a checklist that is used to facilitate the entry of development projects into indigenous lands regardless of the wishes of the indigenous communities.

A 2008 nationwide study involving the majority of the Certificate of Ancestral Domain Title (CADT) holders¹¹¹ found that over 70% of the mining and logging operations on their lands were being conducted without their FPIC. In those cases where an FPIC process had been conducted it was found that in the majority of communities '*not all the proper procedures were undertaken to ensure a fair and unbiased outcome*'.¹¹²

Noting the 'serious human rights violations' in relation to development projects, and in particularly mining operations, in Indigenous lands¹¹³. the UN Special Rapporteur on Indigenous Peoples highlighted the associated issues of '*militarization, intimidation and abuse by military and mine security*'.¹¹⁴ He reiterated these concerns following his return trip to the Philippines in 2007.¹¹⁵ The impacts mining has on indigenous communities were also raised by CERD in 1997, the Human Rights Council in 2002, in the 2008 OHCHR consolidated input to the Human Rights Council Universal Periodic Review and by the CESCR in its concluding observations in 2008.¹¹⁶

Of the forty-five (45) communities consulted in the preparation of this Shadow report, fifteen (15) reported flawed or non-existent FPIC processes in relation to the entry of projects in their ancestral domains. Of these FPIC processes eight (8) are in relation to mining projects, three (3) are dam and mini hydro construction projects, two (2) logging, one (1) quarrying and two (2) on the declaration of a protected area. This trend is reflective of the number of Certification of Preconditions provided by the Government purportedly following completion of an FPIC process, with mining accounting for 55% of projects entering indigenous territories.¹¹⁷

The Government's National Mineral Policy is at the root of the escalation in the mining related violations of Indigenous Peoples' rights.¹¹⁸ This policy targets up to 30% of the country's landmass as 'high potential' for mining. It is an integral component of the Philippines' Medium Term Development Plan (MTPDP) 2004 – 2010, which is the basis of the country's MDG program. Much of this mineral rich land is located in the ancestral domains of Indigenous Peoples. Indicative of this is the fact that 39 of the 63 identified mining projects, given priority status by the national Government, directly overlap ancestral domains and up to 60% of ancestral domains are impacted by mining applications.¹¹⁹

Despite the controversies surrounding mining development and its known and potential negative impacts, the administration and business interests have continued to promote mining investments even in areas where the Supreme Court had ruled that provisions of the 1995 Mining Act were unconstitutional. In 2005 the then Speaker of the House of Representatives, Jose DeVenecia, told international mining investors in London about his role in the controversial reversal of the Supreme Court decision on the La Bugal-B'laan Tribal Ass'n v. DENR Secretary et al case of 2004 (see section 5.5.4 below). He announced

that, together with the Chamber of Mines, ‘we mounted a strong campaign to get the Supreme Court to reverse itself. It was a difficult task to get 15 proud men and women of the Supreme Court to reverse themselves. But we succeeded. Finally, the law was declared constitutional’.¹²⁰

5.3.3 *Agency and regulatory capture– from legislators to corporate stenographers*¹²¹

The NCIP was recently transferred to the DENR (see section 5.1.5.1 above)¹²². This means that the body that is responsible for upholding Indigenous People’s rights now reports to the department responsible for the promotion of the mining industry. The fact that the DENR is under the influence of the mining industry is widely recognized.¹²³ The European Commission alluded to this fact in its 2005 Philippine Environmental Country Profile where it stated that ‘[DENR] in-house corruption is another concern. There is a lack of internal controls to curb bribery, which has traditionally been notorious with respect to illegal logging and mining concessions’.¹²⁴

The mining industry was instrumental in the drafting of the 1995 Mining Act and played an influence role in the formulation of the Government’s 2004 Mineral Action Plan under the National Policy Agenda on Revitalizing Mining.¹²⁵ Commitments under the Mineral Action Plan included the NCIP ‘amending existing procedures to simplify the grant of NCIP Certification Precondition/FPIC’ and reducing the number of days involved; ‘simplif[ying] procedures of DENR and other Government agencies on issuance of permits’ with the creation of ‘One Stop Shops’¹²⁶ where mining companies would be guaranteed the rapid processing of applications and the ‘harmoniz[ation of] the provisions of laws affecting mining’.¹²⁷ The IPRA was specifically identified as one of the laws that ‘affect[ed] mining’ which should be made more ‘current and responsive’ by harmonizing it with the 1995 Mining Act¹²⁸. A 2009 paper of the Philippine Chamber of Mines summarizes the current position of the NCIP vis-à-vis the mining industry, it states *‘It maybe noteworthy to inform you that NCIP has recently requested the Chamber’s assistance for capacity building as well as in helping their IP communities manage their royalties. Can we turn down such a request? Isn’t it ironic that they are turning on [sic] us and our mining companies for assistance instead of requesting NGO or CSO’s who were in [sic] the forefront of lobbying for their rights?’*

The current FPIC guidelines were issued in 2006 following the commitments made in the Mineral Action Plan to harmonize the IPRA with the Mining Act. As with the original IPRA Implementing Rules and Regulations and their 2002 revisions, these 2006 revised FPIC Guidelines fail to respect the principles of FPIC embedded in the IPRA. Indigenous Peoples have criticized the drafting process as lacking transparency and not providing for sufficient participation of Indigenous Peoples.¹²⁹ The resulting guidelines provide an FPIC implementation framework that is incompatible with the IPRA law. Instead of providing the mechanisms for the realization of Indigenous Peoples inherent self determination and land rights, the current FPIC guidelines have in effect repackaged these rights into a model that is amenable to the needs and interests of the mining sector. The repeated revisions of the guidelines have seen them gradually evolve into a set of rules which impose restrictions on the timeframes and processes of FPIC that are not in conformity with the customs, laws and traditional practices of indigenous communities. This imposition of a timeframe on indigenous decision processes is inconsistent with the right to self determination and self governance. It constitutes discriminatory treatment of indigenous governance systems vis-à-vis mainstream governance. No such time limitations are imposed on decision making processes of the Philippine national, provincial or local legislatures or on members of the Philippine judiciary.

The Philippines is one of the few States to have included FPIC in its legislation. As the obligation to obtain Indigenous Peoples’ FPIC becomes increasingly recognized by States, and other actors, the Philippines model may be chosen as an example for emulation, despite being flawed in the protection of Indigenous Peoples’ rights. Its guidelines and practice prescribing how FPIC is to be obtained could therefore have potential implications for Indigenous Peoples elsewhere. At the national level in the

Philippines these guidelines are used by the Government agencies to justify FPIC processes that are in clear violations of Indigenous Peoples' rights recognized under the IPRA. At an international level they allow the Government to present what is perceived as a landmark law, which it claims to be adhering to, while in reality implementing a framework that is systematizing violations of that law. These guidelines represent a bureaucratic definition of indigenous processes and have been strongly and repeatedly criticized by civil society and Indigenous Peoples' organizations as failing to recognize, respect, protect and uphold their rights. A subset of the grounds for these objections is briefly provided below.¹³⁰

5.3.4 Discriminatory FPIC guidelines that conflict with the law

a) Timeframe for the conduct of FPIC processes

The guidelines state that 'the period for the conduct of the mandatory activities...shall not exceed fifty five (55) days', of which approximately twenty (20) days are allocated for community decision-making. Such a timeframe is not consistent with the definition of FPIC, which requires that consensus building be based on traditional decision-making processes. It is incompatible with traditional decision-making processes, where the participation of all members of the community is normal and can entail long iterative discussions to reach a consensus opinion. A comparison with the legislation in the Australian Northern Territories, which provides communities with a 22-month negotiation period¹³¹, serves to illustrate the complete inadequacy and discriminatory nature of the Philippine FPIC guidelines.

b) Indigenous communities - non-existent until proven otherwise

The 2006 Revised FPIC guidelines stipulate that Certifications of Precondition can be issued for areas not appearing on an NCIP master list of ancestral domains.¹³² This represents a fundamental change from the IPRA's requirement (Section 59) that '*such certificate shall only be issued after a field-based investigation is conducted by the [NCIP] Ancestral Domain Office of the area concerned*'. The Government's own acknowledgement in its Medium Term Philippines Development Plan 2004 - 2010 of a '*lack of accurate data on the actual extent and location of ancestral domains and lands nationwide*'¹³³ highlights the danger in this. This *modus operandi* of the NCIP is reflective of the pre-IPRA conception of Indigenous Peoples' rights, whereby Government agencies perceived indigenous rights as being granted by the State rather than inherent rights pre-dating the existence of the state and that should be recognized as such. As with many land laws implemented in the past, this Master List of ancestral domains provides for potential extinguishment of Indigenous Peoples' land rights. The effect is to shift the associated burden of proof to indigenous communities to address violations of their rights post facto rather than placing the burden on the Government to avoid the rights violation in the first place. It is of grave concern that, in the interests of streamlining the process for granting mining permits, the NCIP is implementing guidelines that could lead to the systematic extinguishment of Indigenous Peoples' rights through the denial of their existence.

c) Failure to protect land rights prior to FPIC conduct

Section 59 of the IPRA requires that '*no department, government agency or government-owned or – controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT*'. However, the guidelines do not implement this provision. As a result concessions are issued in areas where CADT applications are pending or where communities have not yet decided to apply for official recognition of the ancestral domains using the IPRA's CADT mechanism. Worse still, in complete violation of the spirit, intent and letter of IPRA, the NCIP is facilitating agreements whereby companies offer to pay for community CADT applications. This is occurring in situation where the company and the NCIP are the ones determining the legitimate representatives of the community in violation of communities customary laws and practices.

d) Inadequate information provision requirements

The IPRA requires that consent be obtained '*after fully disclosing the intent and scope of the activity*'. However the FPIC guidelines divorce the FPIC process from Environmental and Social Impact

Assessments (ESIAs). The ESIA is a distinct activity for which FPIC should be required. Mining explorations and operations are other separate activities for which FPIC should also be clearly required. For FPIC to be meaningful the output of the ESIA process should be presented as an input to the FPIC processes for mining exploration and operations. The guidelines do not require for human rights impact assessments nor do they require the provision of information in relation to the potential risks associated with projects in indigenous territories, despite clear evidence of the potential for serious negative impacts.

e) Right to self governance and partitioning of ancestral domains

The current FPIC guidelines contradict the very concept of ancestral domains and the IPRA's requirement that FPIC be based on '*the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices*'. They do so by empowering the NCIP and not the community to determine if all members of the ancestral domain, or only some of them, are impacted and should be consulted. They also allow the NCIP to determine if an ancestral domain should be partitioned into smaller units for consultations. Under the guidelines the NCIP can do this without any reference to indigenous customary law or practice. This also contradicts the IPRA's definition of communal claims as referring 'to claims on land, resources and rights thereon, belonging to the whole community within a defined territory'.¹³⁴

f) No protection against repetitive FPIC processes

The guidelines allow multiple successive FPIC processes, one each time a project application is lodged. They oblige communities to participate in these processes and deny communities the opportunity to have their dissent registered as a long-standing position or policy. In doing so the guidelines transform FPIC from a self determination right to a tool for wearing down community opposition and facilitating the entry of projects into indigenous lands against community wishes.

g) Fragmentation of FPIC process and denial of information

The IPRA's definition of FPIC requires '*consensus...[be] obtained after fully disclosing the intent and scope of the activity*'. Mining projects are composed of distinct activities including exploration, feasibility analysis and extraction. However, past experience has shown that agreement to exploration inevitably leads to extraction. Due to the investments made by companies during the exploration phase it is virtually impossible for communities to stop projects once exploitable mineral deposits have been identified. For good faith full consultations to occur the FPIC guidelines should therefore require full disclosure of the potential impacts of extraction as well as exploration activities. The guidelines are silent on this. The guidelines are also silent on the requirement for FPIC in the context of expansion of or changes in operations that have potential impacts on the indigenous community.

h) Transferability of consent

The IPRA does not provide for the transfer of FPIC between companies. Its only reference to transfer of property rights is 'the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned'. However the FPIC guidelines explicitly allow transfer of FPIC. This encourages malpractice in relation to how FPIC is obtained and allows 'buyers' to claim immunity for past wrongs. At a minimum, communities should be afforded the right to renegotiate agreements with any new companies entering into their lands and where allegations of originally flawed FPIC process exist these should be addressed prior to the transfer of permits.

i) Requirement to justify decisions

The current FPIC guidelines require communities that withhold consent and reject the applications have to provide an explanation as to why. The proponent can then present a counter-proposal which the community has fifteen (15) days to consider. This requirement to justify decisions and review a determination after it has been made is a clear restriction on the right to self determination and is incompatible with indigenous customary laws and decision making practices. In the context of

widespread manipulation of FPIC processes it significantly increases the risk of undermining legitimate decision making outcomes.

j) Precedence given to private title holders over Indigenous Peoples' rights

The Revised 2006 FPIC guidelines uphold past practices whereby the rights of individual titled property holders within ancestral domain superseded the collective rights of the indigenous community. The guidelines state that while the exercise of rights by titled property holders 'carr[ies] with it the responsibility of respecting the rights of the ICCs/IPs within the domain' this is limited to consultations pertaining "to the determination and proper compensation through agreement of the loss, damage or injury that may be suffered".¹³⁵ In other words where private titled lands exist within ancestral domains FPIC is no longer required.

k) Limitations on the exercise of ownership and priority rights

The IPRA recognizes indigenous ownership as '*sustain[ing] the view that ancestral domains and **all resources found** therein shall serve as the material bases of their cultural integrity*'. It also states that '*ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains*'. The current FPIC guidelines impose costly and bureaucratic procedures in relation to exercising these priority rights. They also place time restrictions on the manner by which they may be exercised. In addition, they do not require that communities be informed of these ownership and priority rights in advance of considering any applications and FPIC processes to exploit these on behalf of third parties. This policy of placing restrictions on the exercise of priority rights is inconsistent with the IPRA's provisions on ancestral domain ownership rights. It is also inconsistent with their right to 'Develop Lands and Natural Resources' (IPRA Section 7 b) which includes the right to 'conserve natural resources within the territories and uphold the responsibilities for future generations'.¹³⁶

5.3.5 Violations of the right to self determination - Impacts of development aggression

The case of the Subanon of Mount Canatuan where TVI Pacific, a Canadian mining company, is operating without the required community consent and stands accused of human rights violations is currently being considered by CERD under its Early Warning Urgent Action Procedure. This case has national resonance among indigenous communities throughout the Philippines as evidenced by the endorsements of over one hundred indigenous community organizations, institutions and tribal leaders.

The following section aims to provide further information in relation to the extent and manner in which Indigenous Peoples' rights are being violated in the context of mining and other development activities. In doing so it aims to illustrate that Committee concerns '*that the situation of the Subanon of Mount Canatuan is not an isolated case, but that it is rather indicative of similar situations faced by other indigenous communities in the State party*' are well grounded.

The denial of their self determination right to decide what activities occur in their ancestral domains has resulted in violations of Indigenous Peoples' individual and collective rights. As a result of externally imposed projects traditional institutions and customs have been undermined, communities divided and social tensions created, livelihoods based on subsistence agriculture and fishing rendered impossible, humans and livestock have suffered from health problems, access to medicinal plants restricted or denied, evictions and homes and community structures demolished and sacred sites threatened or destroyed. In addition communities non—violently resisting these developments for prolonged periods, often through the use of human barricades, have suffered physical and legal harassment, intimidation and violence that in some cases have resulted in deaths. Where it is claimed that a community has given its consent this is generally based on divide and rule processes, which are incompatible with Indigenous Peoples' traditional decision making practices and the 'consensus of all' requirement mandated by the IPRA.

Mining is currently the major cause of violations of Indigenous Peoples' rights in the context of externally imposed development projects and policies. However, logging, dams and plantation agriculture have long been associated with the denial of indigenous rights and continue to impact negatively on the realization of indigenous rights. Likewise the declaration of protected areas, without the FPIC or participation of Indigenous Peoples, is serving to deny communities their land and self determination rights recognized under the IPRA and the 1987 Constitution. In accordance with the Government's obligations under the outcomes of the Convention on Biological Diversity¹³⁷ the Government should ensure that Indigenous Peoples are empowered to manage protected areas under their own governance systems.

Current Government plans for biofuel plantations overlapping indigenous domains indicate that this is a sector which will also have major implications for Indigenous Peoples. The Philippines has committed at least two million hectares for agrofuels. Jatropa, sugar cane and coconut are envisaged as the main sources of biofuels. The total area devoted to rice growing is four million hectares. A number of agreements for biofuel projects have already been signed with companies from Spain, China and the United Kingdom. A significant proportion of the lands already identified for these biofuel projects are located in ancestral domains. In Sarangani Province alone over 30,000 hectares are targeted for jatropa plantations. Indigenous communities there are already feeling the impact of biofuel projects. B'lann female tribal leaders attribute increased incidents of hunger in their communities to the fact that over 500 hectares of land that were previously used for growing rice, corn, banana and root crops are now planted with jatropa.¹³⁸

The IPRA Section 2 b recognizes Indigenous Peoples' right to 'develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations'. Section 17 recognizes their right 'to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use'. It also requires that they 'shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them'.

The Government, through the NCIP, has chosen to 'uphold' these rights through the development of Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs). However, draft guidelines associated with these ADSDPPs, which form the basis of current NCIP instructions to communities, are complex and do not allow for the cultural specificities of indigenous communities. Indigenous Peoples complain that as a result ADSDPP are not culturally sensitive and are expensive to prepare. As a result of these issues some communities are looking outside of the ADSDPP framework at alternative models for developing their own sustainable development plans. However, it is not clear from the NCIP ADSDPP guidelines if such plans would qualify for technical and financial support. A survey of communities with CADT's published in 2008 found that only 12% of the development plans formulated by these communities were recognized by the NCIP as valid ADSDPPs.¹³⁹ There have also been cases where companies, particularly mining companies, have offered to finance the preparation of ADSDPPs. This has occurred when companies are seeking consent to operate in indigenous lands and is a practice which many regard as undue influence.

As of July 2008 the NCIP had processed 18 ADSDPP's and was working on another 93. The direction adopted by the NCIP in facilitating the conduct of ADSDPPs appears to be towards the production of roadmaps that facilitate large scale investments in indigenous territories, rather than plans that seek to uphold Indigenous Peoples' rights while providing them with culturally appropriate self determined development options.

The NCIP is ‘consistently inconsistent’ in its application of its own FPIC guidelines. Even the limited protections that the guidelines afford to communities are not respected in practice. FPIC processes are tailored on a case-by-case basis towards the realization of company interests. This is apparent in both the processes and timelines followed. If community consent appears to be forthcoming FPIC processes are quickly completed without adequate time for proper consultations or negotiation or respect for traditional decision making processes and customary laws. On the other hand if community consent appears not to be forthcoming FPIC processes can run indefinitely or are repeated against community’s wishes and involve the manipulation of indigenous institutions and undermining of their decision making processes until such a time as that the outcome can be declared favorable to the project proceeding.

5.3.6 Experiences of denial of self determination rights and flawed FPIC processes

The particular circumstances by which the self determination rights of Indigenous Peoples are denied in the context of development projects vary from community to community. However, the practices facilitating this can broadly be grouped as follows:

- A) Failure to identify or consult indigenous communities
 - 1) De-facto denial of the existence of indigenous communities
 - 2) Discriminatory treatment of migrant indigenous communities

- B) Failure to respect for indigenous decision-making.
 - 1) Undermining representative institutions (including ignoring decisions and rulings of indigenous authorities and legal structures)
 - 2) Imposing predefined geographic boundaries
 - 3) Ignoring prior decisions made by the communities
 - 4) Ignoring dissent and lack of consensus
 - 5) National agencies overwriting local governance laws

- C) Inadequate Impact Benefit Agreements

- D) Undue influence and coercion

The following section outlines the experiences of the indigenous communities consulted for the preparation of the ICERD Shadow report in relation to development projects in their lands. The cases are described under the above headings but many of their experiences cover a range issues addressed throughout the report.

5.3.6.1 A) Failure to identify or consult indigenous communities

5.3.6.1.1 De-facto denial of the existence of indigenous communities

The IPRA Section 59 requires the NCIP to conduct a field-based investigation to validate the existence of an indigenous community and obtain its consent before issuing a certification of precondition for development projects. As outlined above (section 5.3.4 b) this requirement, which is integral to the IPRA, has been removed in the revised 2006 FPIC guidelines. However, even before these revised FPIC guidelines the NCIP and other Government agencies operated on the basis that the lack of a CADT application equated to no indigenous community or ancestral lands in an area. The widespread nature of this practice, which is now official policy under the NCIP guidelines, is evident in the experience of numerous communities in the Philippines.

Two Mineral Production Sharing Agreements [MPSAs] were issued in the ancestral lands of the Binongan tribe, in Baay Licuan in the province of Abra between 1998 and 2000, based on NCIP certifications that there were no Indigenous Peoples in the area. In February 2007 the community first learned of the MPSA when they were confronted with the Canadian-owned Olympus Pacific Minerals

mining company operating in their ancestral domain without any prior notice, community consultation or consent. The community represented by its elders mounted an intensive campaign to have the drilling temporarily halted and an FPIC process conducted. During this campaign a military presence was established in their village and a number of tribal elders opposing the mining were labeled as communists and terrorists. After four months the community succeeded in temporarily halting the operations, enabling the conduct of an FPIC process. Some local government officials, who openly advocated for acceptance of the mining operation, referred to the labeling of the elders as communists as a basis for minimizing the participation of these elders in the ensuing FPIC process. In addition the company attempted to exercise control over the conduct of the decision making process, and during the FPIC process also provided supplies to community members. The NCIP initially proposed processes that were not in keeping with the community's customary practices and excluded certain members of the community from the decision making process. They also allowed the company to dictate when the FPIC processes would be conducted. However, the community was eventually successful in insisting that decision-making follow their traditional practices and that all of the villages in their ancestral domain partake in it. The outcome of the process was a rejection of mining in their ancestral domain. However, despite this major collective effort on the part of the entire community over a period spanning a period of one year¹⁴⁰ it now appears that their decision is being deemed inconsequential as another company has lodged a mining application impacting on their ancestral domain forcing the community to go through the same process once again.

Between 1998 and 2000, seven other MPSAs were approved in Indigenous Peoples' ancestral domains in the provinces of Abra and Benguet in the Cordillera without any FPIC processes. These certifications were also granted by the NCIP based on the pretext that there were no issued or pending applications for ancestral domain in the areas under the mining applications. As of June 2008, the NCIP had taken no action to address the erroneously issued certifications which are the basis for the seven MPSA's.

On January 1st 2000 in the indigenous community of Mankayan, Benguet, the then NCIP Chairman issued the certification necessary for the expansion of Lepanto Mining's operation without the conduct of the necessary FPIC process. This was done on the basis that there was no CADT in the area. However, Benguet and Abra are two provinces within the Cordillera region identified in the 1987 Constitution as being indigenous homelands entitled to autonomous government because they are overwhelmingly occupied by indigenous communities. The impacts of the Lepanto mine were the focus of a community meeting conducted by the UN Special Rapporteur during his 2002 country visit. The mine, which has been in operation since 1936 without any consent from the local community, has seen tailings dam and spillway collapses, tunnels give way, landslides, sinking of lands and dumping of tailings in the river. It has caused serious impacts to the Abra River with widespread erosion and siltation, deterioration of aquatic life, death of domestic animals and biodiversity loss. It has been accused of contributing to major loss of livelihoods, with lost rice production alone estimated to be in the region of millions of dollars. Water pollution and health impacts on the surrounding indigenous communities have been extensively documented (see section 5.6.3.7 below). The company has applications to mine almost 420,000 hectares of Indigenous Peoples' lands in the Cordillera in addition to the 4,600 hectares it is mining in Makayan.

On the island of Palawan in Gotok, Iwahig, Bataraza the NCIP failed to identify the ancestral domain of the Palaw'an people due to the fact that they had not filed a CADT claim. It therefore granted the Rio Tuba Nickel Mining Corporation (RTNMC), a Japanese Filipino partnership, a certification to proceed with a limestone quarrying project, a necessary component for a larger hydrometallurgical nickel processing plant, without obtaining the FPIC of the Palaw'an community. Following complaints by the Palaw'an and the conduct of two Field Based Investigations the NCIP eventually recognized the presence of the Palaw'an tribe. However, the Department Environmental Natural Resources (DENR) insisted that the NCIP's initial certification was grounds for the company proceeding with its operations rendering the FPIC process that was eventually conducted futile. During this FPIC process the NCIP deemed the opposition of a community recognized tribal leader to be 'inconsequential'. The NCIP and the DENR also

accorded precedence to recently issued privately held individual titles to land in the ancestral domain over the community's collective right to FPIC and referred to these private titles when justifying the certifications issued.¹⁴¹ The Palaw'an tribe has not benefited from over thirty years of nickel mining on the island, which has seen millions of tons of nickel ore shipped to Japan and hundreds of millions of dollars in revenues. Instead, promises made to the tribe have not been kept and they continue to bear the impacts of the destruction of their physical environment with the right to sustainably utilize and manage their ancestral domain denied.¹⁴²

In 2007 TVI Pacific applied for an expansion of its existing operations into the area surrounding Mount Canatuan. The areas under application include portions of the Subanon of Mount Canatuan's ancestral domain as well as portions of a neighboring ancestral domain pertaining to another Subanon community. Despite the high profile of this controversial project the NCIP failed to conduct a field based investigation and did not inform and involve the second impacted Subanon community in the FPIC consultation. Similar procedures were adopted by the DENR in 1996 when it issued an initial mining permit to TVI on the basis of a seriously flawed company report, which stated that there were no indigenous people in the area. However, the Subanon of Mount Canatuan were not only in prior occupation of the lands but they already had an existing formal agreement with the DENR in relation to forest stewardship and had also applied for a Certification of Ancestral Domain Claim.¹⁴³ The company and Government agencies proceeded on the basis of false reports and in the face of legally binding agreements between the same Government agency and the community.

A mining permit was granted by the DENR to a Canadian / British company Crew Development Corporation in 2000 covering areas in the ancestral domains of the Alangan and Tadyawan Mangyans of Mindoro. The required certification was issued by the NCIP in 1999 in the absence of any FPIC process. The subsequent efforts of the NCIP to legitimize this breach of the IPRA, involved the creation of a new 'tribe', which has no basis in Mangyan tradition, from which they obtained "consent". This external creation of a subgroup within the existing Mangyan structures has major on-going impacts on the Alangan and Mangyan peoples as a result of Intex Resources Inc (a Norwegian company) on-going attempts to mine in their lands. (see section 5.3.6.2.1 below).

Mangyan tribes are also threatened by Government efforts at declaring conservation areas in their lands. As of April 2009 a bill was pending before Congress (HB 3180)¹⁴⁴ that would declare the Aglubang-Ibolo Watershed, in the same ancestral domain of the Mangyan tribes impacted by Intex's mining claim, as a protected area under the National Integrated Protected Areas System Act (NIPAS) of 1992.¹⁴⁵ The Watershed is located within the approved and pending Certificate of Ancestral Domain Claims/Titles (CADCs/Ts) areas of the Mangyan of Mindoro. Objections have been raised to the bill on the grounds that the Mangyan's ownerships, use and management rights over their ancestral domains would be undermined as instead of owners of their lands they would be treated as 'tenured migrants'.¹⁴⁶ The FPIC of the Mangyan for the declaration of lands within their ancestral domain as protected areas, as required under the IPRA, was not sought. In addition the Mangyan's right to self determination, self government and self directed development are directly challenged by the bills proposed for the creation of a Protected Area Management Board, (PAMB) that is planned to have the 'sole jurisdiction, power and authority for the activities and programs within the area', and associated Management and Successor plans.¹⁴⁷ There is a concern that the declaration of this protected area in the Mangyan ancestral domain will be used to facilitate the entry of mining against their will, as under the bill the PAMB is envisaged as a body with the power to authorize mining within the protected area.¹⁴⁸ The case of the Molbog and Palaw'an tribes of Balabac, Southern Palawan, (see section 5.2.5 above) involved a similar experience where a protected area was used to uphold the interests of a private pearl farmer over the traditional fishing rights of the indigenous community.

Sitio Hinaki, Barangay Tagmamarkay, Municipality of Tubay, Province of Agusan del Norte is the ancestral lands of the Manobo-Mamanwa. The San Roque Metals, Incorporated (SRMI) company claims to have received the necessary certifications from the NCIP and DENR to proceed with its mining operations in Sitio Hinaki. The Manobo-Mamanwa were never consulted in relation to the operations and accuse the mining company's security guards of intimidation and harassment and the destruction of their tribal hall and the homes of fifty (50) families in late 2007 and early 2008. This demolition was carried out during an inter-agency investigation that was undertaken upon the request of the Tubay community to determine the legality of SRMI operations. The community made appeals to the NCIP and the DENR for assistance but none was forthcoming from either agency. A complaint was submitted to the Philippines Commission on Human Rights in 2008 in relation to their case, but to date there has been no action on it.

Another case presented to UN Special Rapporteur on Indigenous Peoples was that of the Manobo tribes and a dam, known as Pulangi 5. The dam is planned near Kulaman-Pulangi River Junction, in Bukidnon Province, which would have major impacts on the Pulangiyan, Ilianen, Kulamanen, Dungguanen and Kirenteken Manobo tribes of Bukidnon and Cotabato. Planning for the dam, to be built by NAPOCOR, a former state-owned power corporation, has been on-going for over a decade. Although present planning activities appear to be on-hold, the Indigenous Peoples remain in the dark in relation to the long term plans for the dam or other potential development projects that are envisaged in the area. Pulangi 5 is a component of the Pulangi hydroelectric-irrigation project which consists of six (6) dams, four (4) in Bukidnon and two in Cotabato. Communities in four (4) Manobo Talaandig villages in the municipality of Maramag, Bukidnon were displaced by the fourth Pulangi hydro-electric dam, operational since the early 90's. It is estimated that nine thousand (9,000) people would be displaced if Pulangi 5 proceeds.¹⁴⁹ In July 1999, following an inter-Barangay consultation, impacted Indigenous Peoples¹⁵⁰ made a petition to stop the proposed Pulangi 5. Among their objections were that their ancestral domain, their source of life would be submerged; the project would impact on their cultural survival; it would create division in their tribe and the recognized sacred ground of the Manobo-Pulangiyan would be submerged¹⁵¹.

5.3.6.1.2 Discriminatory treatment of migrant indigenous communities

For both historical and cultural reasons there are many indigenous communities throughout the Philippines that have been driven out of their core settlements into other areas. In some cases this was the result of conflict, in other due to displacement by settlers. Communities have expanded, in line with their traditions, into neighboring locations that were suitable and appropriate to their traditional economies. These processes have been going on for centuries.¹⁵² While provisions of the 2006 FPIC implementing guidelines seem to afford these communities some recognition and protection, the failure to uphold their rights to self determination and development is evident in practice. Furthermore, the Philippine Chamber of Mines, at a forum in which the DENR participated, identified '*problems in dealing with transient IPs/ICCs [Indigenous Peoples / Indigenous Cultural Communities] claiming surface ownership of mineral lands*' as '*roadblocks*' to be '*remov[ed]*' to '*help steer priority projects into production*'.¹⁵³

A trend observed in communities where different indigenous communities share a geographical area is the use of NCIP facilitated FPIC processes as a means to marginalize indigenous communities who are opposed to development projects. FPIC processes are sometimes only conducted with one of the indigenous communities in an area, with communities that are perceived to be hostile to the development excluded from the consultations and decision making process.

An example is a priority-mining project to which there is strong opposition among the indigenous community in Didipio, Nueva Vizcaya. OceanaGold Philippines, a subsidiary of OceanaGold Australia,¹⁵⁴ has been attempting to mine gold and copper. The Ifugao's expanded into the area from their original homeland in the adjacent Mountain Province in the late 50's / early 60's with the assistance of the then Government agency for Indigenous Peoples, the Commission on National Integration¹⁵⁵. Ifugao agriculture is primarily based on terraced wet rice production. The original inhabitants, the Bukgalot have

an economy based on wide-ranging swidden dry rice cultivation and hunting and gathering. The Bukgalot welcomed and transferred some valley lands to the Ifugao and no longer lay claim to these areas.¹⁵⁶ The NCIP recognizes the Ifugao and other Indigenous Peoples who migrated there as an indigenous community. However, it argues that their consent for the project is not required, as they have not held this particular ancestral domain since time immemorial.¹⁵⁷ This position is inconsistent with CERD's General Recommendation 23 that consent be obtained for all decisions that directly impact on Indigenous Peoples' rights and interests. In doing so the NCIP also ignores the consensual transfer of lands from the original indigenous owners; Ifugao customary practice to migrate to neighboring areas; the IPRA and its FPIC guidelines requirements that these groups '*not be treated as migrants and can likewise exercise their right to FPIC*' and the role played by the Government of the time in instigating the Ifugao relocation to these lands. The resulting violations of the rights of the Ifugao at Didipio have included forced evictions, and demolitions of homes (totaling some 187 homes by April 2008).¹⁵⁸ The demolition of houses in Didipio started in December 2007 up to February 2008 when the affected community was able to secure a 20-day injunction against the demolition activities of mining company. The Regional Trial Court in the province of Nueva Vizcaya cited the demolition activities as "tainted with irregularity and contrary to law". The injunction order ended in 18 March 2008. On the 22 March 2008 OceanaGold hired a 200 member demolition crew and resumed demolishing houses. An Ifugao community member was shot in the back by a security guard of OceanaGold while attempting to stop the demolition of his neighbor's house.

Violations in Didipio also include the destruction of sources of livelihoods including citrus and banana trees and rice fields, use of law suits, including filing of criminal cases to pressurize community members to sell their homes and lands (see section 5.3.6.4 below), the failure to adequately inform the community members of their due process rights and violation of same, shooting incidents and intimidation of the community through the presence of a large contingent of armed security guards. Those who did not succumb to intimidation and refused to sell their lands had to construct barricades and file injunction cases in attempts to prevent the company from accessing their lands and destroying their homes. The result of this denial of their rights and the sustained pressure on individuals to sell their lands is a seriously divided community sadly manifested by a killing of a local official in 2008. The Didipio case has been widely documented, including reports from Oxfam Australia's mining ombudsman in 2007 and a submission was made with regard to the case to the Philippine Commission on Human Rights in 2008 (although . Resolutions have been filed with the Commission on National Cultural Communities to investigate 'the alleged abuses committed by the Australia-backed mining firm Oceania Gold Philippines Incorporated against Tribal Communities in Didipio'.¹⁵⁹

In Kasibu, Nueva Vizcaya, Royalco another Australian company, which took over the concessions of Oxiana Philippines Inc,¹⁶⁰ has been granted a permit to mine in an ancestral domain where the Bukgalot, migrant Ifugao and other indigenous communities had until recently peacefully coexisted. However, only Bukgalot leaders were consulted as part of the NCIP facilitated FPIC process. The consent of some Bukgalot leaders was obtained, and as part of the memorandum of agreement these leaders were added to the company payroll. The migrant Ifugao and other Indigenous Peoples, who were opposing the entry of the mining company were denied any participation in the process or say in the final decision. As a result the Ifugao and others, including some Bukgalots, have maintained human blockades since July 2007 preventing the entry of mining equipment. There have been threats of violence towards those opposing the operations, attempts to disperse and to intimidate them by force through the deployment of armed men.¹⁶¹ The intervention of the Secretary of the DENR had to be sought on a number of occasions to avert potential bloodshed and in 2008 the Congressional Committee on National Cultural Communities has conducted an inquiry 'into the alleged encroachment of the Australia-backed mining firm Oxiana Philippines incorporated into the Tribal Communities of Nueva Vizcaya'.¹⁶²

5.3.6.2 B) Failure to respect indigenous decision making processes

All of the indigenous communities consulted regarding the entry of development projects in their lands complained of having suffered from manipulation of their decision-making processes. This frequently involved the creation of ‘project friendly’ bodies which served to undermine existing indigenous structures and institutions. In facilitating such processes the NCIP is failing to uphold its mandate and the IPRA’s requirement that customary law be accorded primacy throughout FPIC processes.¹⁶³

5.3.6.2.1 *Undermining representative institutions*

As documented in the Subanon of Mount Canatuan complaint to CERD, processes were conducted, under the instruction of President Arroyo and carried out by the NCIP, which led to the disempowerment of the traditional Subanon leadership opposing mining in their ancestral domain. Recently arrived outsiders and locals employed by, or with links to, the mining company were elevated to represent the community as part of a newly created Council of Elders. A meeting of this newly created structure, conducted in 2002 in a hotel in Zamboanga City far from the communities, was pressed to a vote. The traditional leaders opposed such a culturally unacceptable process and withdrew from the meeting. Those remaining were offered financial incentives and duly agreed to the mine. A decision taken by the highest Subanon judicial body for that area, the Gukom of the Seven Rivers, declaring these new structures and associated practices illegitimate under Subanon customary law and instructing the NCIP to declare the related agreements null and void was ignored. The case of the Subanon of Mount Canatuan is typical of the Government’s acquiescence to company strategies and illustrates that applications for and titling of ancestral domains are not sufficient conditions for protection of lands and resources in the context of development projects.

In 2003, the Mandaya Tribal Council¹⁶⁴ in Caraga, Davao Oriental, Mindanao filed for a CADT. To date this has not been awarded by the NCIP. In the first quarter of 2006, the community became aware that a forestry company, Asian Evergreen Development Incorporated (AEDI), had applied for an Integrated Forest Management Agreement (IFMA) in their ancestral domain. The Tribal Council reached a consensus to oppose the IFMA. In September 2006, at the behest of the Barangay Council, composed of local government officials supportive of the forestry company, the NCIP unsuccessfully attempted to reorganize the Mandaya Tribal Council. In August 2007, the NCIP again acted beyond its mandate and proceeded with the Tribal Council’s reorganization. The manner in which it did this was inconsistent with the provisions of the IPRA and the tribe’s customary laws and practices which had been officially documented as part of the community’s ancestral domain sustainable development and protection plan (ADSDPP).¹⁶⁵ . Meanwhile in July 2007 the community submitted a complaint to the DENR in relation to the IFMA application and the failure to obtain their FPIC. The DENR proceeded to authorize the IFMA issuing it to the company on the 8th of August 2007. The DENR claimed that it was authorized to do so as the NCIP had given its clearance to the company provided FPIC was obtained prior to project commencement as opposed to prior license issuance. This is a clear violation of the IPRA Section 59, which explicitly states that ‘All departments and other Governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP’ and that where an indigenous community exists ‘no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned’. In addition Section 59 states ‘that no department, Government agency or Government-owned or – controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT’ (Section 59). In August 2008 the community submitted another complaint to the DENR and the NCIP, but no action was taken in relation to it. A resolution has been filed requesting the Committee on National Cultural Communities to conduct an inquiry into the issuance of the certification of precondition by the NCIP.¹⁶⁶ In March 2009 the community filed a criminal case against the company. It also filed a civil case before the Regional Hearing Officer of the NCIP with the DENR Secretary and the logging company as the respondents. The issuance of the IFMA within the Mandaya ancestral domain in the space of one year by the DENR, while

the Mandaya are waiting six years for their CADT to be processed, is illustrative of the Government de facto discrimination in relation the rights it grants to companies versus its respect for the inherent rights of indigenous community.

In 2000, a permit was granted by the DENR to a Canadian / British mining company Crew Development Corporation.¹⁶⁷ The permit covered areas in the ancestral domains of the Alangan and Tadyawan Mangyans of Mindoro. The certification was issued by the NCIP in January 1999 in the absence of the IPRA's required FPIC process. Following complaints, the NCIP attempted to legitimize this breach of the IPRA by facilitating the creation of a new 'tribe' from which to obtain FPIC. This was anomalous practice both in relation to the IPRA's requirements and the customary laws and practices of the Mangyan. The new group had no previous standing in local Mangyan society, had no basis in Mangyan tradition and represented only a small number of selected Mangyan, including those working for the company or in receipt of food or other gifts such as water buffalo from it. Officers in this newly formed group were elected on the company compound and included at least one non-Mangyan. Despite the IPRA's definition of FPIC as 'the consensus of all members of the ICCs/IPs [Indigenous Cultural Communities / Indigenous Peoples]' the ensuring FPIC process excluded the existing Mangyan organizations and community members. These organizations' Certification of Ancestral Domain Claims had been already lodged with the DENR and were overlapped by the proposed Nickel strip-mining operations. It also ignored the IPRA 1998 Implementing Rules and Regulations (IRRs) in force at the time which in Section 4 c explicitly required that when, as in the case of Crew's project, the '*project or plan affects...a whole range of territories covering two or more ancestral domains, the consent of all affected ICCs/IP communities shall be secured.*' In 2001 the former Secretary of the DENR, Heherson Alvarez, cancelled Crew-Aglubang's MPSA. In addition to citing negative environmental impacts he quoted the aforementioned IRRs and stated that "*Aglubang has not secured such consent*"¹⁶⁸ as the basis for canceling the MPSA. During the exploration activities in 1999 excavation activities had damaged sacred burial sites.

In July 2001, the then Canadian Ambassador, Robert Collette, wrote to the President of the Philippines to object to the fact that the permit of the Canadian company had been revoked. The embassy also played a role in the promotion of the mining project when in it provided funding for the building of a footbridge which the Canadian Ambassador opened. In 2002, the local Municipality and the Oriental Mindoro Provincial Government issued 25 year moratoria on mining. However, in 2004 the office of the President reinstated the permit without addressing the lack of valid FPIC or other concerns that were the basis for its cancellation. In 2006, the part of Crew Development Corporation responsible for the project, Crew Minerals, created Intex Resources Inc, as a Norwegian based company to take over the project. In 2007 Intex initiated the process to seek consent for an expansion area beyond the original permit. This same issue of only seeking the consent of a small minority while excluding the majority of the impacted Mangyan is also at the root of the issues pertaining to the subsequent 2008 FPIC process. The problem is substantiated by the 2007 investigation of the Norwegian Ambassador to the Philippines, Ståle T. Risa, on the mining project of Crew where the Ambassador observed that: '*With regards to the Mangyan peoples, the vast majority is strongly opposed to any form of mining in their areas - and there is substantial discontent with Crew Minerals.*'¹⁶⁹ A second mining permit was issued for this expansion area in 2009. The issuance of both the 2000 and the 2009 permits are in violation of Section 59 of the IPRA as Ancestral Domain Claims applications were pending on both occasions.

A complaint was made to the NCIP regarding the failure to include all the impacted Mangyan. The NCIP dismissed this saying that '*other areas that may be considered as affected areas after the conduct of the Environmental Impact Assessment [EIA] were not considered [in the FPIC process] as the EIA is still in process.*'¹⁷⁰ On this basis and other dubious technical grounds the NCIP justified the exclusion of the majority of the impacted Mangyan of the ancestral domain from the FPIC process. A complaint has been lodged with the OECD National Contact Point in Norway in relation to this case. In addition to the

manipulation of indigenous structures the complaint also points to the IPRA's requirement that FPIC be obtained in a manner that is '*free from any external manipulation, interference and coercion*'. However in both the 1999 and 2008 FPIC process the company provided financing to the select group of Mangyan before seeking their FPIC. In addition to providing money for community development projects before conducting the FPIC process, the company also provided money for a re-survey of ancestral boundaries based on the 1999 agreement with the created tribe. This money was provided in a manner that did not adhere to explicit requirements in the IPRA with regard to transparency, in order to discourage corruption.

Leaders and members of another Mangyan community in the municipality of Abra de Ilog, Mindoro Occidental, Mindoro Island, have filed petitions with the NCIP alleging violation of the guidelines in relation to the conduct of the FPIC process and the certification of precondition issued by the NCIP in May 2008 in relation to the mining permit of San Miguel Corporation in their ancestral lands. The associated Financial and Technical Assistance Agreement permit covers 46,000 hectares of the Mangyan's ancestral lands. Among the allegations is that leaders were brought out of their community and taken off the island to the mainland by the NCIP where they signed a memorandum of agreement (MOA) with the company. The signing of the MOA is part of the FPIC process. The IPRA requires FPIC 'to be in determined in accordance with their respective customary laws and practices'. Leaving the ancestral domain and the island to sign an agreement with major and intergenerational impacts on all community members is not compatible with Mangyan customary laws. In addition this was a violation of the NCIP's own FPIC guidelines which require that the meeting for the MOA signing be held at the Provincial Office or Service Center. The relevant provincial office is located on the Island of Mindoro and not on the mainland. FPIC was only obtained for exploration. However, in practice the granting of a permit for exploration means that the Mangyan will be powerless to stop extraction proceeding. One of the conditions of the agreement is that the company finances the communities CADT application. This is in complete contradiction to the IPRA section 59 which requires that 'That no department, Government agency or Government-owned or – controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT'. It would appear that the NCIP is in effect becoming a broker for ancestral domain titles offering them in exchange for community consent, regardless of how this consent is achieved.

Two international mining companies, British based Anglo American and Australian based OceanaGold Corporation, have mining applications in the municipality of Conner Apayao in the ancestral lands of the Isneg and where the Ibaloi, Kankanaey and Kalinga people from neighboring areas have also settled. FPIC processes were initiated for these two projects in 2005 and 2006 respectively. In the case of the first FPIC process for Anglo American's proposed operations the 'elders' chosen to represent the Isneg and other Indigenous Peoples in Conner Apayao were not selected by the community. Instead they were "appointed" by local government officials who had been asked by the NCIP to identify who the indigenous elders were. Community members who supported the proposed mining were identified in place of the community's traditional leaders. The NCIP then accorded recognition to these people as representatives of the community, despite the fact that many were not considered as legitimate leaders in the community itself. Those legitimate elders included decided to boycott the FPIC process, which they felt was being manipulated by the mining company and the local government officials. Other community members and leaders were deliberately excluded from the process. The recorded FPIC decision was therefore mostly in favor of mining, while in reality most of the affected community members were against it. The community submitted petitions rejecting mining but was told by the NCIP that the outcome of this flawed FPIC process had to be respected.

At the outset of the 2006 FPIC process for OceanaGold's operation the indigenous communities submitted resolutions and petitions to the NCIP and held a vote in the presence of the company rejecting the application. Instead of accepting this rejection the NCIP halted the FPIC process without offering any

explanation to the community. A year later the community learned that the NCIP had reinitiated discussions on the entry of mining with some local government officials. Despite the community's rejection of the proposed mining operations in their lands during the FPIC process the mining company, together with local government officials, continues to conduct community meetings to attempt to persuade the community to agree to the entry of mining. The NCIP facilitated consultation during which OceanaGold cited its activities in Didipio, Nueva Vizcaya, as an example of good practice. Allegations of serious violations of Indigenous Peoples' rights have been made in the courts and to the Philippine Commission on Human Rights in relation to the Didipio project (see section 5.3.6.1.2 above). While the Conner community was opposing to the entry of the mining companies, the military was deployed in the area. The military claim that its presence is insurgency related. However, the Isneg point to the fact that there was no violence reported in the area and no citing of any insurgent groups prior to the military arrival. They feel that the persistent military presence is intended to intimidate those community leaders who are opposing the mining operations by creating a climate of fear. During the 2007 local elections the community was strongly opposed to mining and the local organization spearheading the resistance, the Save Apayao Peoples Organization (SAPO), decided to have its chair, an indigenous woman, run for vice mayor. The woman who was to the fore in demanding valid FPIC processes was believed to be on a black-list of the military and had received death threats. In her bid for vice-mayoralty for Conner, an opposing public official and supporter of the mining projects, attempted to intimidate voters stating that "the number of votes for [this woman] will be the number of bodies that will float in the river".¹⁷¹

5.3.6.2.2 *Imposing predefined geographic boundaries*

Under current NCIP procedures indigenous communities are denied their right to determine the populations / communities and areas to be consulted within their own ancestral domains. Instead the NCIP is required only to seek the views of the elders / leaders before unilaterally deciding the area (e.g. a part of an ancestral domain) that will be included in the consultations. The NCIP also unilaterally decides if FPIC processes are conducted on a barangay basis, on ancestral domain basis, or on some other arbitrary basis. Furthermore, the choice of location for holding the consultations is determined by the NCIP. These practices are contrary to both indigenous practice and the provision of the IPRA law which requires that FPIC 'be determined in accordance with their respective customary laws and practices'. They also ignore the fact that ancestral domains are the territorial basis for the exercise of self governance and self determination as recognized under the IPRA.¹⁷²

In the ancestral domain of the Subanen of Bayog, Zamboanga del Sur, a large-scale mining company, Ferrum 168, commenced exploration activities without having first obtained a permit or consent to do so. The Subanen Timuay (traditional leaders), who had applied for a CADT in January 2006, objected to this illegal operation and demanded that the NCIP ensure it was halted. Two months later, in July 2007 (while the CADT application was being processed) the NCIP proceeded to conduct an FPIC process. It decided that only certain limited areas within the Subanen's ancestral domains would be consulted. It also decided that separate consultations would be conducted for each of the villages in these areas and on the location where the consultations would be held. The effect was to fragment communities denying them the possibility to conduct their collective decision making processes on an ancestral domain level. This policy was imposed despite the community's written objections that it violated their customary laws. The ensuing FPIC processes consisted of further violations of customary laws in terms of who was selected to represent the community and how the decision-making was conducted. Following the conduct of the first FPIC meetings a Gukom, the Subanen judicial authority, was convened. It deemed there to have been violations of customary law in the conduct of the FPIC process and consequently imposed a penalty on the NCIP. The NCIP has to date failed to respond to this ruling. The traditional leaders also submitted a complaint to the NCIP regarding the leader validation process. Following the MOA signing initiated by the NCIP the Subanen again submitted another letter asking the NCIP to explain why they had proceeded with this when their prior complaint had not been addressed and another petition requesting it to review the FPIC process. The legitimacy of the Timuay who opposed the FPIC process, who was an applicant for

the CADT and also an elected to the local government council, was publicly challenged by an NCIP staff member. This Timuay has since suffered attempts on his life as well as having his house burnt down in October 2008. Ferrum 168 was granted a MPSA during the last quarter of 2008 despite the major opposition to its operations. The commencement of large scale mining in Bayog also impacts other Subanen people such as the Subanen of Midsalip. It poses a threat to their sacred Mount Pinukis Range, which is also the source of the river providing water to the ancestral domains of the Subanen and to the surrounding municipalities.

5.3.6.2.3 Ignoring prior decisions made by the communities

Many indigenous communities in the Philippines have histories of prolonged opposition to logging, mining and dams in their ancestral domains. This resistance has invariably been at a significant cost to the communities well being. It has frequently entailed the maintenance of long-term physical barricades, harassment in the form of lawsuits, intimidation from armed groups, including the military and police, and in numerous cases it has culminated in violence at times resulting in deaths.¹⁷³ The NCIP continues to ignore the history of community resistance and continues to subject these communities to FPIC processes the outcome of which inevitably goes against the wishes of the community.

Communities such as the Subanen of Midsalip and Bayog, Zamboanga del Sur, had in the 1980's and 1990's prevented large-scale mining and logging operations through mass mobilization and pickets. In 1988 in one such picket which lasted five (5) months in Midsalip against logging in the Subanen ancestral domain, the Philippine National Police was sent to bolster the local police force and to ensure peace and order at the picket-line. It was the eventual violent deaths of three (3) of these policemen in a shooting incident instigated by the Philippine Armed Forces, that forced the suspension of the 'Timber License Agreement' (TLA) in December 1988.¹⁷⁴ The Subanen of Midsalip together with local farmers also succeeded in preventing Rio Tinto from proceeding with its plans to mine the Mount Pinukis mountain range in 1996. These Subanen communities subsequently requested in writing that the NCIP acknowledge their rejection of mining as a long-standing position. Instead of doing so the NCIP required them to enter into new FPIC processes each time an application for development projects is lodged. As a result the Subanen of Midsalip now face seven separate FPIC processes for recent mining applications.

To overcome the longstanding opposition to mining of the community a new organization of Subanen 'leaders' was established in 2005 at the behest of external parties acting on behalf of the mining company. The representatives of this group claimed community leadership status but failed to meet the requirements under Subanen customary law and lacked any support from community members other than their immediate families. In quarters one and two of 2006 the NCIP facilitated a process for the validation of these leaders granting them control over the decision making process. In doing so it excluded legitimate Subanen leaders and denied Subanen community members the voice in the decision making process which they were entitled to under their customary practices. The mandatory steps laid out in the FPIC guidelines, in force at the time, of 'consensus building', 'community consultation' and a 'show of hands' of the heads of households to validate the decision were not conducted. The NCIP attempted to justify these failings by retroactivity applying its revised FPIC guidelines that came into force in October 2006, some months after the conduct of the FPIC process. Petitions and resolutions were lodged by the Subanen with the NCIP at the outset of the FPIC process stating their rejection of the mining applications. Subsequent petitions were submitted outlining the flaws in the FPIC process and validation of leaders. Despite the fact that the majority of the Subanen and their leaders are strongly opposed to the project the NCIP issued a Certificate of Precondition for mining exploration of Geotechniques and Mines Inc (GAMI), the first of the seven companies to apply. The IPRA's definition of FPIC requires 'consensus of all Indigenous Peoples'. Nevertheless, in its resolution issuing a certification allowing exploration to proceed, the NCIP acknowledged that *'there is a conflict/dispute between those against and those in favor of the project'* and argued that the exploration period would give the community time to resolve its differences.¹⁷⁵ Such a position, in addition to being inconsistent with the IPRA, is a denial of the reality

that once a company has invested significant sums of money in exploration, a community is effectively powerless to stop them from proceeding to extraction activities. It also ignores the fact that authorizing this company will pave the way for the other six (6) companies to enter the ancestral domain of the Subanen.

In May 2009, in a repeat of the 2006 FPIC processes, the NCIP again denied the Subanen's right to withhold their consent and chose to ignore the longstanding position of the Subanen communities and organizations rejecting mining in their ancestral lands. It imposed and facilitated another seriously flawed FPIC process in other Subanen areas in Midsalip in relation to the mining application of Frank Real Inc.¹⁷⁶ The outcome of this flawed process was the signing of yet another agreement with a mining company, without having obtained the Subanen's consent in the manner required by law and despite their stated and clearly manifested opposition to mining projects in their ancestral lands.

The experience of the Subanon of Mount Canatuan illustrates the current futility, despite the nominal legal right, of trying to prevent operations proceeding once a company has been allowed to entry the community and conduct exploration activities. In 2008, the NCIP Chairman acknowledged *'that from the time it started operations, TVI encountered difficulty in securing the cooperation of the [local Subanon] community. Up to the present, conflicts between TVI and the community still persist'*.¹⁷⁷ The lack of FPIC had been addressed when TVI was still in its exploration stage by the Philippines Commission on Human Rights in 2002 and the Subanon judicial authority in 2004. Both clearly indicated the absence of FPIC and called for the removal of TVI as the solution to the problem. The company remained and severe damage to the lands and sacred sites of the Subanon followed. Nevertheless, the NCIP and the DENR continue to issue all of the necessary certifications and permits and accord recognition to non-representative bodies allowing mining to proceed without the consensus and against the wishes of the local Subanon.¹⁷⁸

5.3.6.2.4 Ignoring of dissent and lack of consensus

The IPRA defines FPIC as requiring *'the consensus of all members of the ICCs/IPs'*. As with the above case of the Subanen of Midsalip there are numerous examples of where, despite acknowledging community opposition and the lack of consensus of all members of the ICCs/IPs, the NCIP has nevertheless issued Certifications of Precondition. The DENR has likewise issued permits ignoring community opposition.

The Kankanaey and other Indigenous Peoples of Gambang and other barangay of the Municipality of Bakun, Benguet, were the first indigenous community, ever to receive a CADT, which they were awarded in 2002. The successful economy of Bakun is based on commercial and subsistence vegetable production. There was a long history of community resistance to proposed mining projects in the area. In 2006 an FPIC process was conducted with them in which they rejected the application of an Australian company Oxiana Gold to mine in their lands. The FPIC process facilitated by the NCIP culminated in a vote of all the households with 90% of households (450 out of 491) voting against the project. The community submitted its required statement of rejection to the NCIP in 2006. Despite this rejection, in 2007, the NCIP initiated yet another FPIC process for the same application, this time under Royalco, a company that acquired Oxiana Gold's assets. In order to achieve the desired outcome the NCIP split the community into three separate FPIC processes, which it called Phase I, II and III. It limited the first FPIC process to the area where the 10% (i.e. the 41) of households that had voted in favor of the project in the initial FPIC process. This area designated by the NCIP as the first FPIC zone has no distinguishing status in local indigenous tradition. The community filed a complaint to the NCIP in relation to irregularities of the FPIC processes. The NCIP agreed to investigate phase II and III but not the phase I. In limiting its investigation to only phase II and III the NCIP chose to ignore the outcome of the legitimate 2006 FPIC process and legitimized its own manipulative division of the FPIC process to facilitate the outcome required by the company. A resolution has been introduced in the House of Representatives calling for an

inquiry into the issuance of the certificate of compliance and exploration permit despite the opposition of the community.¹⁷⁹

5.3.6.2.5 National agencies overwriting local governance laws

Another important factor that influences the capacity of indigenous communities to exercise their self determination rights is the relationship with local government and the interplay between local and national Government. In areas where Indigenous Peoples represent the majority of the population some communities have attempted to exercise their rights under the 1991 Local Government Code (LGC). Two (2) of its most empowering provisions are Sections 26 and 27. These sections require consultations at the local level and approval of the Local Government Units (LGUs) for projects with potentially negative environmental impacts.¹⁸⁰ However, these sections are being undermined by the DENR through the Implementing Rules and Regulations of the 1995 Mining Act, which only require that ‘prior approval or endorsement in the form of a Resolution or Certification by at least the **majority** of the Sanggunian [Barangay (village), municipal or provincial] concerned shall be required in support of mining applications’¹⁸¹ (emphasis added) i.e. the DENR implementing guidelines are in breach of the law as they ignore the requirement that all LGU’s must approve such projects. The illegitimacy of a Government agency issuing administrative guidelines that attempt to overwrite requirements under national legislation (the LGC) has been pointed out by civil society groups as well as barangay, municipal and provincial governments.

In Didipio (see 5.3.6.1.2 above) the affected barangay withheld its approval for a mining project. This barangay level decision was supported at the Kasibu municipal level. Central Government pressure was exerted unsuccessfully on the municipal authorities but successfully at the level of the Province. However, the DENR ignored the local government decisions in breach of both the LCG and its own questionable ‘majority (or 2 out of 3) rule’. A Supreme Court case was taken challenging this failure of the DENR to obtain the approval of the municipality but was dismissed by the Court on the basis that it should first have been filed with the DENR, the agency against whom the complaint was made. In 2001 in Mindoro, the DENR cancelled a mining permit citing flaws in the FPIC process conducted with the Mangyan communities. In 2002, the municipal LGU and the Provincial Government issued a twenty five (25) year moratoria on mining. However, in 2004, despite these moratoria and the flaws in the FPIC process the Office of the President reinstated the mining permit of Crew Development Corporation. In March 2009 the DENR issued another MPSA to the same company again ignoring the flawed FPIC process and the existing moratoria on mining.

In some areas where Indigenous Peoples represent the majority of the population, such as in Conner Apayao (see section 5.3.6.2.1 above), LGU’s and traditional indigenous structures have come into conflict for the control over decision-making processes in relation to development projects in ancestral lands. In most instances Government agencies, including the NCIP, favored the LGU’s to the detriment of traditional institutions, despite the IPRA’s requirement for respect of customary law and institutions. Another emerging trend sees investors channeling funding through provincial and local government officials for what are misleadingly classified as small scale mining operations. Doing so allows them to circumvent the more stringent FPIC and other regulatory requirements pertaining to large-scale mining. In Bayog and Midsalip local government officials are pressuring the Subanen to accept the declaration of small scale mining areas in their ancestral domains. Based on statements of the provincial governor many are convinced that the plan is to use these small-scale mining areas as a means to facilitate the entry of large scale mining operations.

5.3.6.3 C) Inadequacy of Benefit and Impact Agreements

The IPRA requires that when an indigenous community consents to an activity in their domain a legally binding Memorandum of Agreement (MOA) should be entered into between the proponent and community concerned. The NCIP is responsible for ensuring that this is given effect. These contracts are

supposed to ensure that impacts and benefits are adequately addressed. However, communities are not provided with models of benefit sharing and the potential impacts of projects are not adequately addressed. Benefits negotiated are often paltry and in some cases communities settle for little more than mobile phones. The MOA's also afford little protection as a result of ineffective monitoring and a lack of follow up and grievance mechanisms. Where disputes have arisen with regard to compliance with these agreements, indigenous communities, such as those in Mankayan who have had serious issues with Lepanto's mine, do not have the capacity to employ lawyers to hold the companies to account.¹⁸²

The Kankanaey-Bago Indigenous Peoples of Kayapa Barangay, Municipality of Bakun, Benguet Province were encouraged by the NCIP in 2004 to conduct a four day FPIC process in relation to the approval of a water diversion and mini-hydro project. The timeframe and process were not compatible with traditional decision making processes, with issues such as representation not dealt with and local officials perceived as monopolizing the discussions. In addition the timing of the negotiations prevented many from attending. As a result serious divisions in the community's stance, particularly among those directly impacted by the project, only emerged after an agreement had been signed. Due to their economic situations the promise of a road had been a major incentive for the signing of a MOA allowing the project in their lands. The company eventually cancelled the project without informing the community and provided no compensation for rice fields that were bulldozed for a road that was never constructed.

In July 2006, a MOA was entered into by the Mamanwa Tribe of Surigao del Norte and Taganito Mining Corporation (TMC). The NCIP was a party to the agreement but failed to ensure that the 1% royalty payment to the indigenous community, which is required under the 1995 Mining Act, was included.¹⁸³ It later transpired that the actual benefits to which the community were rightly entitled to were some 68 times greater than the paltry amount provided for in the MOA. A legal complaint was lodged in late 2008 and the MOA was corrected. However, the opportunity to capitalize on a renegotiated agreement has attracted outsiders offering their legal services in exchange for a large percentage of the benefits. The result has been major division and tensions in the community with regard to who should get the benefits.

Where communities do engage with the available complaint mechanisms existing grievance mechanisms are dysfunctional (see section 5.5.4 below).

5.3.6.4 D) Coercion, undue influence, bribery and community development projects

Despite the requirement that consent be '*free from any external manipulation, interference, coercion*' there are numerous documented cases of direct and indirect forms of coercion and undue influence. As one of the Philippines' leading legal experts on Indigenous Peoples' rights has highlighted '*the political conduct of FPIC cannot be divorced from the economic realities*'.¹⁸⁴ The absence of basic services and infrastructure places communities in a vulnerable position where they are often forced to choose between their land rights and the promise of services and infrastructure. According to the Mining Act indigenous communities are entitled to a royalty payment which may not be less than 1% of the gross output. NGO's have complained that community development projects and payments made to communities prior to or during FPIC processes, are being used to influence the outcome of consent processes and constitute forms of coercion, undue influence or bribery especially when carried on before or during FPIC processes (see for example Mindoro case section 5.3.6.2.1 above).¹⁸⁵ Many of these costs, paid to communities to entice them to give their consent, are later charged against mandatory royalty payments to which communities are entitled.

The mining sector in the Philippines has been described as notorious for corruption.¹⁸⁶ Reports of explicit bribery of individuals in indigenous and other communities are common, however, given the context of intimidation and fear most community members are unwilling to go on the record in relation to these. A councilor from Didipio stated in his submission to the UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, that substantial payments and gifts were offered to him if he ceased his

opposition to the OceanaGold project.¹⁸⁷ In Canatuan the Subanon community elders report large cash offers. Several testimonies also record the payment of cash bribes for votes during a 2002 meeting of the so called “Council of Elders” called by the NCIP. Another case that has been documented by CAFOD, a British NGO, is that of the Hallmark project in Pujada Bay in relation to reports of attempted bribes to community leaders in exchange for their support for the project.¹⁸⁸ In February 2009 a local nun and three of her colleagues were held at gunpoint during the night by soldiers who forcibly entered and searched the building they were sleeping in. The group had been providing information to local indigenous communities in relation to the potential impacts of proposed mining operations on their environment and food security. Intimidation was also identified by a number of communities as playing a role in the conduct of FPIC processes, including in Conner Apayao where an indigenous leader and vice mayoral candidate had received death threats as a result of her opposition to mining projects as did those who might vote for her.

The law is also being used as a weapon against Indigenous Peoples to silence their legitimate opposition to unwanted developments in their lands both in the context of FPIC processes and assertion of their land rights. The manner in which the justice system is being distorted in order to deny Indigenous Peoples their rights and silence their opposition to unwanted development projects in their lands is addressed in the Access to Justice Section 5.5.5.

5.4 Militarization and Civil and Political Rights



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5.4 Militarization and Civil and Political Rights

ICERD Article 5 (b) requires that the Government ‘*guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law*’ in the enjoyment of ‘*the right to security of person and protection by the State against violence or bodily harm*’. Article 5 (d) addressing civil rights makes explicit reference to: ‘(i) the right to freedom of movement and residence within the border of the State;...(vii) the right to freedom of thought, conscience and religion; (viii) the right to freedom of opinion and expression; (ix) the right to peaceful assembly and association;.’. The CERD’s General Recommendation No.23, paragraph 4 (b), imposes an obligation on the Government to ‘*ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity*’. The Government’s current strategy and actions in relation to militarization of Indigenous Peoples lands directly contravenes its obligations to ensure non-discrimination in relation to the enjoyment of these and other rights and freedoms and is resulting in widespread and serious violations of Indigenous Peoples’ rights.

5.4.1 Militarization and development projects

The Government of the Philippines is implementing a national strategy that consists of the deployment of military detachments in indigenous territories. The purpose of these military detachments, which are manned by paramilitary forces under the command of regular army officers, is to quell legitimate dissent. The increasing presence of military in Indigenous Peoples lands has been described by the Indigenous Peoples’ rights Monitor (IPRM) as leading to the effective transformation of many indigenous territories into ‘military bases’. The practice of embedding military detachments or paramilitary forces within or in close proximity to indigenous communities has become increasingly common in areas targeted for development programs or counter-insurgency operations. Because indigenous territories are rich in natural resources, Indigenous Peoples suffer disproportionate impacts of militarization and so-called national development projects.

This militarization of Indigenous Peoples lands has been recognized as ‘a grave human rights problem’ by the then Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, Professor Rodolfo Stavenhagen. In his 2003 country report, he pointed to the direct link between the militarization of indigenous lands and development aggression, noting that:

‘Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries, such as Civilian Armed Forces Geographical Units (CAFGUs).’¹⁸⁹

The policy of militarization stems from the Government’s failure to uphold Indigenous Peoples’ rights to land and self determination including to a self-determined development rights, and to traditional livelihoods. In the context of national development programs, militarization perpetuates the on-going discrimination against these rights. Militarization is the Government’s response when Indigenous Peoples’ concept of development comes into conflict with its predefined model of national development. Rather than respect their rights and provide the context for meaningful and good faith consultations with them based on the principle of Free Prior and Informed Consent (FPIC), the Government instead uses military intimidation as a means to suppress community opposition.

Militarization as a means to deal with community dissent is frequently associated with grave human rights violations. It has also exacerbated the historical exclusion of Indigenous Peoples from the economic,

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social, cultural and political life of the State, and has created an atmosphere of impunity resulting in routine violations of human rights, both at the level of individual and collective rights. As noted by the UN Special Rapporteur on Indigenous Peoples in his 2003 country report, examples of extra-judicial killings, enforced disappearance, harassment and intimidation are found in militarized indigenous communities that have resisted development aggression. He also reported forced evacuation and strafing of indigenous communities as a result of militarization of their territories.¹⁹⁰ Militarization of indigenous territories therefore constitutes a violation of the Philippine Government to Article 5 (b) of the Convention, on the security of person and protection by the State.

The general trend of the co-location of a military presence with mining and logging operations and plantations also emerged from the ICERD Shadow report consultations. Militarization in communities consulted was accompanied by complaints of violence, displacement, intimidation and even killings.

Mining and other companies engage the military as well as paramilitary units and the police as elements of their security forces. The degree of influence which these companies exert over the military was witnessed by the UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, during his visit to the country in February 2007. In an open-forum-cum-dialogue with him, the Cordillera Human Rights Alliance (CHRA) reported how the Lepanto Consolidated Mining Company (LCMC) commissioned the military and paramilitary forces to ensure that members of the Cordillera Peoples Alliance (CPA), who were engaging in education activities in the mining-affected communities, were branded as insurgents and thus would be excluded from the area. A year later, LCMC supported the creation of military-led Task Force Lepanto, which was composed of the combined elements of the 54th Infantry Battalion, the police, and paramilitary groups (CAFGUS and former members of the Cordillera Peoples Liberation Army), as a means to confront legitimate workers strikes and peoples protests.¹⁹¹ The culture of impunity and the paranoia of the military and police forces in securing LCMC operations was manifested by the arrest, torture and detention on February 14th, 2006, of 11 young tourists wrongfully accused of being members of the NPA. Two of the tourists were minors and were released, with the others incarcerated for 10 months before being released in December of the same year. Intimidation by the military of community members in Barangay Bulalacao, Municipality of Mankayan, province of Benguet, in relation to Lepanto's operations was reported to the Special Rapporteur on Indigenous Peoples, Professor James Anaya, on March 6th, 2009. LCMC is among the major miners of gold in the country. Its mining application in the Cordillera covers a third of the total mining applications, which as of August 2006 covered 68% of the whole landmass of the predominantly indigenous Cordillera region.¹⁹²

Militarization results in the increased availability of arms. Mining in conflict zones, particularly in areas where Indigenous Peoples reside, was strongly recommended against by the Extractive Industry Review conducted for the World Bank by Dr. Emil Salim, former Environment Minister in Indonesia, as it tends to lead to militarization and human rights abuses in these areas. When this occurs in a conflict zones, it becomes of particular concern as the availability of weapons attracts more rebel groups and often results in community members that oppose development projects being labeled as rebels. Nevertheless the Government continues to promote mining in such conflict zones increasing militarization of indigenous territories.

The use of paramilitary security forces and the ensuing serious violations of Indigenous Peoples' rights were highlighted by the submission of the Subanon with regards to the TVI Resources Inc operations in their lands. The Zamboanga Peninsula is a recognized conflict zone. Professor Rodolfo Stavenhagen made explicit reference to the CAFGU or 'so-called paramilitaries' that are employed at TVI's operations at Mount Canatuan. His request to visit the site was refused by the Government. TVI has occupied the Subanon's land and secured its presence by deploying a 160 strong heavily armed paramilitary force, paid for by the company but armed, trained and supported by the Philippine military. Numerous paramilitary checkpoints were established in the ancestral domain restricting the Subanon's movement, one of which

is located next to a public school. This armed force stands accused of numerous human rights abuses (see Subanon 2007 submission to CERD).¹⁹³ The Philippine Commission on Human Rights (CHR) documented some of these abuses in 2002, but to date no effective action has been taken. In 2007, following a violent assault on the daughter of the Timuay (traditional Subanon leader) by company guards, the Gukom (Subanon judicial authority) of the Seven Rivers, ruled that the paramilitary forces had violated their customary laws and committed violence against Subanon community members.¹⁹⁴ It imposed fines on the company in relation to this. The company has failed to comply with the ruling despite a prior commitment to do so, and the Government and the NCIP failed to act to enforce the Gukom decision.

In 2007, the Philippine Government granted the HEDCOR Inc. the rights to develop the Sibulan Hydro Power Project (also known as the Tudaya Hydro Power Plant) in Sitio Tudaya, Barangay Sibulan, Municipality of Santa Cruz, Province of Davao del Sur after the latter's acquisition of project certification from the NCIP¹⁹⁵ in 2003. The project is located in an area of the ancestral lands of the Bagobo-Tagabawa people, considered a sacred site by local indigenous groups. Since the start of construction in early 2008, the military¹⁹⁶ began encamping in community houses, with the effect of intimidating and silencing those who object to the project. However, a fact-finding mission held in 2006 co-facilitated by the Indigenous Peoples organization, Kusog sa Katawhang Lumad sa Mindanao, reported an improper FPIC process as it had been conducted in a location far away from the community where only a small number of the indigenous community participated. In addition, community members claimed they were deceived into signing the agreement; some said they had agreed to the construction of a road, but not to building a dam within their ancestral land. The project site is located in Mount Apo, a declared protected area and a national park.

On March 12th, 2008, purportedly as part of its counterinsurgency operations, military troops¹⁹⁷ without uniforms entered the indigenous community in Barangay Pananuman, Municipality of Tubo, Province of Abra, and illegally searched 16 of the 18 households.¹⁹⁸ The community acquiesced to the search out of fear. In addition to the illegal searches the military stand accused of the following: establishing an encampment within the community and making use of their sacred Dap-ay (traditional building used for cultural activities) as their camp; forced entry into a home and taking personal items; interrogation of community members who the military alleged were supporters of the New Peoples Army (NPA); intimidation of community members including two children; curtailment of the freedom of movement of the community members; and establishing artillery and firing cannons and bombs from within the community. Complaints in relation to this case were submitted to the Indigenous Peoples Desk of the Armed Forces of the Philippines but no action was taken to address it. Community members believe that these military actions are related to the pending mining applications in their area to which they have expressed their opposition.¹⁹⁹

From November 4th, 2007 until December 16th, 2007 around 500 military personnel²⁰⁰ were stationed in and around the homes of members of the Manobo communities in the Municipality of Emerald, Province of Surigao del Sur. The community has been opposing a proposed coal mining project of Philippine National Oil Company in their lands. The military was present during the conduct of the FPIC process which the community said influenced the outcome of the process. They also claim that members of the community have been labeled as communist rebels by the military and that in the region of 50 community members were pressured into joining the paramilitary formation called Task Fore Gantangan. During the military operations schools and other buildings were appropriated as military barracks. The troops claimed to be engaged in counterinsurgency activities against the New People's Army, the military wing of the Communist Party of the Philippines. The presence of the military and its operations adversely affected the safety and livelihoods of the community. Earlier work of NGO's on livelihood and socio-civic projects, such as setting up fish farms and initiating informal education, was suspended and in some cases undone as a result of the military presence. Community members were denied access to their fields

and families were forced to leave their homes to seek shelter in makeshift evacuation centers. Community members also recounted that soldiers routinely interrogated their children and that some community members were forcibly engaged as military guides in pursuit of rebels. Before returning to their villages, community leaders issued a statement calling for the local government units and the military to end the military operations and withdraw the military troops from their communities. The military refused to sign the document. The case is a violation of the IPRA and the FPIC guidelines requirement that 'the cessation of hostilities and the presence or absence of clear and imminent danger shall be determined by the elders/leaders who may notify in writing the occupying military / armed force to vacate the ancestral domain'.²⁰¹

Indigenous lands in the provinces of Compostela Valley and Davao Oriental are extensively targeted for mining, logging and biofuel, in particular the biodiversity-rich Mount Kampalili-Puting Bato and Mount Agtuuganon-Pasian Ranges.²⁰² In 2008, there were a series of forced evacuations of Indigenous Peoples in Mindanao as a result of military operations in the area. In the first quarter of 2008, around 410 Mansaka and Mandaya families, including peasant settlers, were forcibly displaced from the towns of Baganga and Cateel in the province of Davao Oriental. By the second quarter, around 104 Mandaya and Mansaka families had been forcibly displaced from the Municipality of New Bataan, Province of Compostela Valley. In Barangay Mangayon, Compostela Valley, five individuals from an Ata-Matigsalug village, two of whom were children, reported incidents of torture, physical injuries, and harassment. The same community complained of military encampment in civilian houses.

In 1969, Alcantara and Sons (ALSON) applied for 29,000 hectares for a commercial tree plantation in the ancestral lands of the Ata-Manobo in the Municipality of Talaingod, Province of Davao del Norte. In 1994 an Industrial Forest Management Agreement (IFMA) was granted without obtaining the consent of the indigenous community and resulted in opposition to it. In the same year, seven Ata-Manobo datu (traditional leaders), representing 43 communities, formed the organization, Salugpongan Ta Tanu Igkanugon and declared opposition to the IFMA. The area was under heavy militarization at that time, with the military providing support to the company. The state of militarization and frequent chemical spraying by ALSON resulted in approximately 500 families having to evacuate to Davao City. In August of the same year, despite on-going protest of the Ata-Manobo against militarization of the area, the local government unit signed a memorandum of agreement with the military to continue the operations of the armed troops. In 1996, 15 datu, members of Salugpongan who were opposing ALSON and the associated military presence were charged with murder. The case was dismissed by the local courts 12 years later, in 2008. During the intervening period the datu were forced into hiding from the military and paramilitary groups, with PHP 1 million offered in 2002 for the capture of each one of them.

The IFMA area is in close proximity to a proposed Hydro Power Project which communities are opposing. In the first quarter of 2008, the Ata-Manobo learned that their ancestral lands are also targeted for mining. Community members believe that the combined plans of the tree plantation, the dam project and the prospect for mining activities are the reasons behind the continuing deployment of the military.²⁰³ In September 2005, the military occupied the village center in Nasilaban, some stayed in houses and others in the village hall, which served as the military headquarters. On October 4th, of the same year aerial bombardments resulted in the displacement of 500 residents from 12 villages.²⁰⁴ In January 2008, the military conducted counter-insurgency operations in the area, resulting in the evacuation of over 1,000 people.²⁰⁵ The Talaingod Municipal Government denied that an evacuation occurred and merely attributed the 'movement' to their traditional and seasonal way of farming. In May 2009 over 300 Ata-Manobo families were evacuated from their communities in Talaingod and surrounding areas due to military operations. In the course of the evacuation community members reported that three (3) indigenous children died. In April 2009 Butod Kapis, son of one of the aforementioned leaders wrongly accused of murder, was tortured and killed in his community allegedly by military.²⁰⁶

The provinces of Davao Oriental and Compostela Valley are major mining, logging and biofuel sites. These sites overlap with the ancestral lands of the Mandaya, Mansaka and Ata-Matigsalug peoples. The area is known for its rich biodiversity, particularly along the Kampalili-Puting Bato and Agtuuganon-Pasian mountain ranges. The military-led Investment Defense Force (IDF) created by the Government in January 2008 has been deployed in the area, employing composite units of Infantry Battalions²⁰⁷, Special Forces and Scout Rangers Battalion. Between January 30th and February 9th, members of Mandaya indigenous group in the Municipalities of Baganga and Cateel, Province of Davao Oriental, were evacuated from the barangays of San Victor and Kampawan. A total of 428 families were displaced. In addition, 21 bombs were dropped in remote but populated areas of the Mandaya lands. Three (3) community members were arbitrarily arrested and 23 cases of human rights violations were documented with reports of two (2) community members being tortured. On February 1st, 2008, 80 families evacuated from Boston, Davao Oriental, with two (2) community members killed. In April 2008, some 316 Mandaya and Mansaka and Ata Matigsalug families evacuated from barangays in the municipalities of New Bataan and Compostela Valley²⁰⁸. A four-month-old baby was reported to have died during one of the evacuations.²⁰⁹

Another case which is similarly reflective of the culture of impunity and excessive use of force by the military and police forces is the case of nine (9) indigenous farmers from the Municipality of Rizal, Province of Kalinga who were killed in the course of a demolition operation in June 26th, 2007 when all 34 houses were burned to the ground. Four (4) of those killed were elderly, one was a blind woman, and one was a minor. Others were wounded and others illegally detained.²¹⁰ The demolition, carried out by a combined force of military and police troops, was allegedly the municipal government's response to a 'case of complicated land dispute'. The demolition was conducted to drive away the present occupants whom the local government describes as 'squatters'. Various stakeholders are invoking different tenure systems and instruments to claim the same piece of land. These are reflected in varying tenurial instruments and interpretations from the responsible Government bodies. The Department of Agrarian Reform (DAR) claims that the area is private agricultural land, and therefore held under Certificate of Land Ownership titles. Meanwhile the DENR argues the disputed area is public land and tiled under Free Patent. The on the other hand NCIP holds that the area is ancestral land to which a group of Indigenous Peoples have ancestral ownership rights. The creation of a high-level task force (at the level of the national Government) in 2002 failed to resolve the issue, which ultimately lead to the killing of the nine (9) indigenous farmers.

The IPRA requires FPIC for activities and projects that occur in ancestral domains. Section 22 of the IPRA also requires that Indigenous Peoples 'have the right to special protection and security in periods of armed conflict' and that the State shall 'observe international standards, in particular, the Fourth Geneva Convention of 1949, and shall not...force indigenous individuals to abandon their lands, territories and means of subsistence'. The IPRA's 1998 Implementing Rules and Regulations Section 7f clarified that FPIC was required for 'the entry of Military or Paramilitary forces or establishment of temporary or permanent military facilities within the domains'. The revised 2006 FPIC guidelines contradict this requirement by stating that FPIC is not required for military operations 'in connection with hot pursuit operations, securing vital Government installations, programs and projects against clear and imminent danger'. Nevertheless the military frequently enter indigenous communities without obtaining their FPIC in the absence of any clear and imminent danger. One such case occurred in the Municipality of Baay Licuan in the Province of Abra (see section 5.3.6.1.1 above) where the military entered the area and established their presence under people homes without seeking the community consent. The military presence in the communities was a response to the communities' objection to a mining operation that had proceeded without first conducting an FPIC process. The elders leading the opposition to the mining project were in turn labeled as communists or terrorists by the military.

5.4.2 Policy of paramilitary build-up in indigenous territories

In light of the serious human rights violations resulting from militarization of indigenous lands, as explicitly noted in his Philippine country report in 2003, the Special Rapporteur on Indigenous Peoples recommended that irregular military units or paramilitary groups and CAFGUs ‘be withdrawn from indigenous areas altogether, within the framework of a national program to demilitarize Indigenous Peoples’ territories.’²¹¹

Rather than act on this recommendation and demilitarize Indigenous Peoples territories, the Philippine Government continues to promote militarization and the creation of new paramilitary group. In 2006 the NCIP revised its FPIC such that they no longer require indigenous communities consent prior to the militarization of their lands. In 2008, the President established an Investment Defense Force with the stated aim of protecting foreign investments in development projects, particularly in the mining sectors. As a result, military forces have been deployed in indigenous territories in areas targeted for logging, mining and biofuel investments. The Government’s report to the CERD made no reference to the establishment of this force and its presence in indigenous lands.

Recruitment of members of indigenous communities into the military and the establishment of paramilitary units within indigenous communities are among the components of the National Internal Security Plan for Indigenous Peoples (NISP-IP) which is the nationwide anti-insurgency military campaign, of the Armed Forces of the Philippines (AFP). The NISP-IP is the particular application of the counterinsurgency program to Indigenous Peoples. It includes recruitment of the members of indigenous communities into the military. It also envisages the establishment of paramilitary units within these indigenous communities.

In 2003, under the NISP-IP, the AFP, together with existing paramilitary groups, facilitated the creation of the Mindanao Indigenous Peoples Conference for Peace and Development (MIPCPD) which is aimed at eliminating the presence of communist rebel groups. A Memorandum of Understanding was signed between the AFP and the MIPCPD, and part of the agreement states that the MIPCPD will play a central role in reaching the military’s recruitment target of 5% of Indigenous Peoples into military.²¹² The MIPCPD is under the control and supervision of Task Force Gantangan, the paramilitary group which spearheaded its creation. Through the MIPCPD, Task Force Gantangan intensified its recruitment of Indigenous Peoples into civilian paramilitary groups.²¹³ The AFP had designed the Task Force Gantangan to be part of its counter-terrorism strategy. It and other paramilitary groups, purportedly established for counterinsurgency activities, also have as their agenda the facilitation of the entry of development projects, such as mining and biofuel projects into ancestral lands. Promises of large returns from royalty fees that would be paid by projects are used as incentives to recruit indigenous leaders into the MIPCPD and its paramilitary structure.

Paramilitary forces can serve to undermine indigenous community cohesion, unity and trust and foster an atmosphere of fear in communities. By adopting this strategy of militarizing indigenous communities, the Government is in essence treating indigenous communities as a tool and an expendable force in its battle with the rebel groups.

Among other paramilitary groups that are primarily composed of Indigenous Peoples are ALAMARA, Alsa Masa-Lumad Movement, Bungkatol Liberation Force (BULIF), Wild Dogs, Bagani Force, Salakawan Force, all in Mindanao and the Cordillera Peoples Liberation Army (CPLA) in the Cordillera Region.²¹⁴ These paramilitary units are composed of Indigenous Peoples with their own structure of command but adjunct to the AFP. For instance, according to the 73rd Infantry Battalion Briefing Manuscript, ALAMARA, a paramilitary group whose name means ‘great tribal war’, has been patterned after it’s the AFP’s counter-insurgency operation, Oplan Alsa Lumad, which is characterized by the recruitment of Indigenous Peoples into paramilitary groups. In 2002, the then Defense Secretary Angelo

Reyes was appointed as ‘Datu Kalasag’ by ALAMARA leaders. In addition to these paramilitary groups of distinctly IP composition there also exists the more common Citizens Auxiliary Force Geographical Units (CAFGUs) paramilitary units. Under Article 18, Section 24 the 1987 Constitution bans private armies and paramilitary forces. A distorted interpretation of the constitutional provision for a ‘Citizen Armed Force’ (Article 16, Section 4), has been used to justify the widespread reintroduction of these paramilitary groups.

Instead of taking special measures in dealing with the prevailing tradition of bearing firearms, this has been even taken advantaged of by the armed force in its military build up. Many Indigenous Peoples carry firearms for hunting and for various purposes, including ‘tribal wars’. In a situation where the use of arms in resolving individual/community conflict is still being practiced, it is the duty of the Government to take special measures to curb this tradition. In the Cordillera, in many cases the involvement of paramilitary forces has been blamed for the escalation into ‘tribal wars’ of disputes that would otherwise have been peacefully resolved through indigenous processes. Paramilitary build-up is resulting in the erosion of community cohesion, often leading to violent confrontations.

5.4.3 Labeling and intimidation of Indigenous Peoples

Following his 2007 visit to the Philippines, Special Rapporteur on Extra Judicial Killings, Summary or Arbitrary Executions, Professor Philip Alston, concluded that killings had ‘*eliminated civil society leaders...and narrowed the country’s political discourse*’ and that ‘*the priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers*’.²¹⁵ Human rights groups estimate that there have been 25 anti-mining environmental activists and 137 Indigenous Peoples killed since 2001.²¹⁶

Outlining the two underlying causes for these killings for which ‘an effective national response is required’, Professor Philip Alston’s report (paragraphs 8 and 9) stated that

‘The first cause has been variously described as “vilification”, “labelling”, or guilt by association. It involves the characterization of most groups on the left of the political spectrum as “front organizations” for armed groups whose aim is to destroy democracy. The result is that a wide range of groups – including human rights advocates...indigenous organizations... and others – are classified as “fronts” and then as “enemies of the State” that are accordingly considered to be legitimate targets. The second cause is the extent to which aspects of the Government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other ‘enemies’ in certain circumstances.’²¹⁷

Likewise UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, stated that:

‘members of indigenous communities are sometimes accused of rebellion or engaging in “terrorist” activity. In the context of the armed conflict that still prevails in the countryside, indigenous communities and organizations are often victimized and their human rights abused.’²¹⁸

In the PowerPoint slide presentation shown during a public fora hosted by the Armed Forces of the Philippines entitled ‘Knowing the Enemy’, various religious organizations, media institutions and other legal organizations were identified as enemies, including Indigenous Peoples’ organizations such as the National Federation of Indigenous Peoples Organizations in the Philippines (KAMP), Cordillera Peoples Alliance (CPA), Lumad Mindanao, Federation of Higaonon Tribal Council of Datus and the Federation of Socsargen Tribal Datus. In the Cordillera, a local version of the slide presentation is being publicized in the communities showing pictures of indigenous leaders as ‘enemies of the state’.

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In Mindanao, the MIPCPD has publicly labeled Indigenous Peoples' support organizations as fronts for rebel groups and organizations listed as terrorists, including some of the organizations (and/or their representatives) participating in this CERD submission, to wit, Legal Rights and Natural Resources Center, Tebtebba Foundation and KALUMARAN. The MIPCPD specifically identified the Subanon of Mount Canatuan CERD submission as one of the activities conducted by these so-called terrorist organizations.²¹⁹ Corporations are also citing this labeling such as in the case of Cordillera Exploration Inc., where the company refused to dialogue with affected communities if conducted with the presence of the Cordillera Peoples Alliance (CPA), a nationally and internationally respected Indigenous Peoples organization.²²⁰

Indigenous Peoples consulted during the ICERD Shadow report preparation noted that in the process of claiming and asserting their rights and in seeking justice and accountability, they and those supporting them are equated with armed rebel groups. The military frequently makes use of labels such as 'terrorists', 'enemies of the State', or 'front of Communist organizations'. As a result of suspected or alleged association with rebel groups they face harassment, intimidation, isolation, human rights violations and killings.²²¹

The enactment of the Human Security Act in 2007²²² has increased the threat to Indigenous Peoples who voice their opposition to Government imposed projects. The ambiguity in the definition of terrorism under the law allows the arrest and detention of persons without the benefit of due process. Martin Scheinin, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism, stated his concern 'that many provisions of the [Philippine] Human Security Act are not in accordance with international human rights standards'²²³ and are incompatible with Articles 9 and 15 of the ICCPR.

Grave threats and harassment has been documented in the case of B'laan leader Kerlan 'Lala' Fanagel, who is also the Secretary-General of a recognized and legitimate Lumad organization, Confederation of Lumad Organizations in Southern Mindanao Region (PASAKA). His picture was included in several 'wanted list' posters posted in the Municipality of Compostela, Province of Compostela Valley in August 2008. The Bisaya-vernacular text of which translated into English reads: "*Wanted rebel communist, people who are in pretense but big impediment in the development of our economy, brains of poverty and chaos in our country... Whoever helps in arresting these people 'DEAD or ALIVE,' will receive a reward-money from the Government. For more information, call or approach the officials of the Barangay, Municipality, Provincial or the Military Soldiers or cell NR: 0921.729.8341*" The poster (see Appendix 2) shows photos of accused leaders of Communist Rebels operating in the region.²²⁴ Fanagel's picture was also shown by the military in a slide presentation on July 27th 2008 at a meeting of all barangay officers²²⁵ and according to which he was a notorious criminal and a Commander of the New People's Army named Nelson Villanueva also known as Commander Lala.

An indigenous Ata-Matigsalug woman leader of San Fernando, Bukidnon, who was active in campaigns against the logging operations of the ALSON in the 1990's suffered harassments over a period of years from military and paramilitary groups. On August 24th, 2002, members of the 8th Infantry Battalion and of the ALAMARA paramilitary group broke into her house in Sitio Nabunturan, Barangay Kagalangan, San Fernando, Bukidnon and at gunpoint accused her of being a rebel supporter. On February 18th, 2006, during an alleged counter-insurgency operation, guns were fired in her community by paramilitary members and threats were made to her life. The threat forced her to go into hiding impacting on her livelihood and her family. The woman's nieces were also harassed by soldiers and a community school teacher, who was purportedly 'teaching communist propaganda', was killed during the military operations. Cases were filed before the NCIP and the Philippine Commission on Human Rights (CHR) but no action has been taken to date.

5.4.4 *Extra-judicial killings and enforced disappearances*

Extrajudicial killings claimed the lives of 16 indigenous leaders/activists: Leodinio Monson (April 29th, 2009), Datu Dominador Diarog (April 30th, 2008), Anthony Licyayo (November 27th, 2006), Jovito Pinakilid (September 4th, 2006), Alyce Claver (July 31st, 2006), Raphael Markus Bangit (June 8th, 2006), Abelino Sungit (February 20th, 2005), Randy Nuer (November 18th, 2005), Nicanor De Los Santos (December 8th, 2001), Jose Sinag Nayon (March 12th, 2005), Samson Sangyo (December 14th, 2005), Rodel Pelayo (February 20th, 2005), Joey Abraham (February 20th, 2005), Myrna Tabata (November 10th, 2004), Manolito Darug (August 24th, 2002), and Datu Manliguyan (November 14th, 2002). Indigenous advocates were also victims of extra-judicial killings: Romeo Sanchez (March 9, 2005), Jose Pepe Manegdeg (November 28th, 2005), Jose Doton (May 16th, 2006), and Albert Teredano (November 29th, 2005). A woman-teacher was arbitrarily killed in the assassination of Bangit.

Of the total 137 indigenous persons killed since 2001, thirteen (13) are women, four (4) of whom were pregnant at the time of their death, and nineteen (19) were minors. Most of the victims were arbitrarily fired upon or summarily executed during military counter insurgency operations. Some were killed in incidents of massacre, including children and women. A number of the victims were farmer-hunters who were out in their fields and forests when killed. Also included are those who died in the course of evacuations and those killed during police/military operations such as in incidents of demolition.

The phenomenon of politically motivated assassinations is happening throughout the country. The Lumad of Mindanao and the Igorot of the Cordillera are among the most targeted groups with members of indigenous leadership structures especially targeted. The extra-judicial killings of Indigenous Peoples and the continuing threats to indigenous leaders have major adverse social impacts. They have also weakened the Indigenous Peoples' movement for the respect and recognition of their collective rights, especially to their land and resources.²²⁶

The latest victim in the trend of killing anti-mining indigenous leaders is Leodinio 'Manong Dos' Monson on April 29th, 2009 in the Municipality of Boston, Province of Davao Oriental. He was the chairperson of a local Mandaya organization and active in the defense of the community's rights in relation to large-scale mining leading a major rally against the Omega Gold Mining and drilling sites in Boston in December 2007. A month prior to his killing he had reported to the media that he had been informed that his name was on the military's order of battle. He filed cases before the CHR against the military on his own behalf and on behalf of others in relation to harassment, threats and allegations that he was helping a wounded NPA rebel. These complaints however were not acted upon.

On April 29, 2008, Bagobo-K'lata leader Datu Dominador Diarog was shot dead in his home in Sitio Kahusayan, Barangay Manuel Guiangau, Municipality of Calinan, Province of Davao del Sur. The killing followed a series of attempts on his life and four (4) attempts to burn his home. The community and their support organization believe that the Datu's active and unfailing assertion of indigenous land rights was the motive behind the killing.²²⁷ The family recounted that armed men wearing military uniforms and wearing armbands with the name Task Force Davao, a paramilitary group under the AFP, were responsible for the killing. An investigation into his death has yet to be conducted. The community's access to their lands continues to be denied and threats continue to be made against them. The Commission on Human Rights has re-opened its investigation with leaders of the local Indigenous Peoples organization calling on it to conduct an 'in-depth and sincere investigation' into the case. They also demanded that the fences encroaching their lands be dismantled and that the appropriation of their ancestral lands cease. To date the Datu's family continue to experience threats.

In addition to killings, the military is implicated in the phenomenon of enforced disappearances. In September 2008, James Moy Balao disappeared. Balao, an Ibaloi Kankana-ey from Benguet, was abducted in La Trinidad, Benguet. He is a founding member of the Cordillera Peoples' Alliance (CPA).

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He was the staff of one of the Commissioner in the Constitutional Commission that framed the 1987 Constitution of the Philippines where the right of Indigenous Peoples to ancestral land, right to culture and the right to regional autonomy were enshrined. His primary focus was research on and education of indigenous communities. Since 2005, the military has been publicly denouncing the CPA as a front organization for the Communist party and accusing their leaders, including Balao as a leader in the Communist party in the Cordilleras. The use of a 'writ of amparo' and the filing of cases before bodies such as the commission on human rights has not been effective in the search for Balao. The chairperson and secretary-general of CPA have received threats to their own lives which they believe are a result of the campaign to find James Balao.

5.5 Access to Justice



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5.5 Access to Justice

ICERD Article 5 (a) obliges the Government to guarantee ‘*the right equal treatment before the tribunals and organs administering justice*’. Article 6 requires that it ‘*assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination*’. Discriminatory attitudes and practical obstacles to access to justice result in de-facto discrimination against Indigenous Peoples in relation to these rights to access to justice. The CERD’s General Recommendation No. 23 (paragraph 4 e) calls on State Parties to ‘*ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs.*’ In the context of Indigenous Peoples of the Philippines, most of which continue to invoke their customary laws and practices for dispute resolution, this requirement under General Recommendation No. 23, together with it’s the Government’s obligations under Articles 5 and 6, imposes a duty on it to respect decisions reached under customary law by indigenous authorities. This respect for customary law is explicitly required under the IPRA, but, is rarely, if ever, realized in practice.

5.5.1 Inaccessible justice for Indigenous Peoples –Failure to respect customary law

Access to justice remains elusive to many of those who are in the margins of Philippine society. This is particularly true for the country’s Indigenous Peoples. The reasons for this are many fold but central to it is the failure of the Government and the judicial system to live up to the constitutional and legislative recognition afforded Indigenous Peoples customary law.

As of 2009, there is no recorded application of anti discrimination provisions of ICERD and/or the IPRA in Philippine case law. The virtual non-existence of cases on discrimination can be attributed to several reasons from court fees, problems in access to justice and lack of awareness of ICERD and other anti – discrimination laws. It is also due in part to the vestiges of past discriminatory and paternalistic attitudes of the judiciary and Government agencies towards Indigenous Peoples. This attitude is reflected in the Government agencies and the courts’ failure to uphold customary laws, which is in part attributable to the judiciary’s and the Government’s lack of understanding of indigenous communities’ laws and customary practices.

However, the failure to implement the provisions in the 1987 Constitution and the 1997 IPRA in relation to customary law is most probably linked to the fact that discriminatory pronouncements made in cases decided in the early 1900s such as *Rubi vs Provincial Board of Mindoro* (see section 5.1 above) continue to inform judicial thinking. Not even the *Isagani Cruz and Cesar Europa v. Sec. of Environment and Natural Resources* case, (see section 5.1.4 above) in which the constitutionality of the IPRA was upheld, has had a significant impact in correcting the discriminatory judicial stereotypes of Indigenous Peoples as “non- Christian tribes with low level of civilization.” This judicial thinking was evident in the December 2004 Supreme Court ruling on the *La Bugal-B’laan Tribal Association, Inc. et al vs DENR Secretary et al* case. The decision, which reversed the courts prior ruling on the case in January 2004 which held that provision of the 1995 Mining Act were unconstitutional, characterized the rights of the indigenous community as “parochial interests”, and concluded that “The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interests”.

In 2003 the Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, encouraged the Philippine judiciary to ‘*adequately address the issue of indigenous customary law in the application and interpretation of law, leading, hopefully, to a shift in the mindset of legal practitioners, including judges*

and lawyers, in such a way that they recognize indigenous customary law as part of the national legal system, as laid out in IPRA'. The judiciary has yet to act on this recommendation.

This underlying discriminatory perception is evident in the continuing reluctance of the Court to categorically uphold Indigenous Peoples' rights and customary law despite having ample opportunity to do so. It is also evident in the practice of Government agencies that refuse to act on rulings taken under customary law by recognized indigenous judicial authorities.

Indigenous Peoples have long been resolving conflicts in accordance with their respective customs and traditions and indigenous legal processes. They continue to do so. This fact was recognized in the 1987 Constitution and in the 1997 IPRA.

The Constitution upholds Indigenous Peoples right to practice their customary laws governing their ancestral domain (Article XII Section 5 - *The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domain*) and guarantees respect for their traditional institutions which are necessary for the administration and promulgation of the same.²²⁸ The IPRA aimed to facilitate compliance with these obligations. It recognizes the primacy of customary laws and practices states (Section 65) that when 'disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute'. Sec. 15 addresses 'Justice System, Conflict Resolution Institutions and Peace Building Processes' and states 'The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights'

Other sections of the IPRA address the requirement to respect customary law in relation to disputes concerning property and land, the manner in which FPIC process are conducted and how related negotiations are conducted.²²⁹

The Barangay Justice System (BJS)²³⁰ was introduced in 1978 under Presidential Decree No.1508. This was 'repealed' by R.A. 7160, know as the Local Government Code (LGC), in 1991. The LGC recognized customary law as part of the BJS. However, the recognition afforded is of little practical use to Indigenous Peoples. It is narrower than that provided by the IPRA with the law limiting the applicability of customary law only to disputes between members of the cultural communities. In addition to being limited in scope the law is also confusing in terms of the applicability of customary law. Territorial jurisdiction is based on barangays, which are based on state imposed political boundaries. This is restrictive and generally not compatible with customary law as ancestral domain(s) which can span multiple barangays. Limitations are also placed on the sanctions that can be imposed and the offenses that can be addressed.

A study conducted by the Justice Reform Initiatives Support Project (JURIS) in line with the Action Program for Justice Reform (APJR) of the Supreme Court of the Philippines and the Alternative Law Groups on Indigenous Dispute Resolution Mechanisms and Indigenous Justice Systems found that customary dispute resolution systems were preferable to the BJS as they were faster, cheaper, less partial and restored harmonious relations.

Republic Act No. 6734 of 1989 An Act Providing For An Organic Act for the Autonomous Region in Muslim Mindanao and Republic Act No 9054, expanding on RA 6734, of 2001 envisaged the creation of tribal courts through the Regional Legislative Assembly. These courts were to be applicable to indigenous communities in ARMM²³¹. This has yet to be realized.

The aspects of the IPRA's provisions²³² that appear to limit the application of customary law to property and land disputes, require it be compatible with the national legal system and limit the authority to impose fines and criminal sanctions and cognizability of serious offenses are controversial. As a result of these many view it as inadequate in terms of the State's commitment under the 1987 Constitution to recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions.²³³

The IPRA nevertheless provides for the primacy of customary law in disputes involving Indigenous Peoples. It mandates the NCIP to uphold this primacy, stating that no dispute 'shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws' and that 'any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs'.²³⁴ It also is clear that customary law is the basis for engagement and negotiations with third parties wishing to enter into indigenous lands.

However, respect for customary law in practice is hindered by inherent contradictions within official legal systems and discriminatory attitude towards customary law that allow little if any space for its recognition in judicial proceedings. The lack of political will on the part of the NCIP and other Government agencies to uphold rulings made under customary law is also a major obstacle to the realization of the right of Indigenous Peoples to practice it as recognized under the IPRA. This failure to respect customary law and uphold rulings made under it is particularly evident in cases where indigenous communities have invoked their customary law in the context of development projects in their ancestral domains.

Communities such as the Subanen of Bayog and the Subanon of Mount Canatuan have asserted their right to use their customary laws and their commonly accepted indigenous justice systems. They have made rulings in relation to issues of access to their lands, representation of the community, NCIP responsibility and corporate behavior in their ancestral domains. In both of these cases the rulings taken under their customary laws were submitted to the NCIP for action, however, in neither case did the NCIP enforce the rulings, the specific actions requested of it or the penalties imposed. Other communities such as the Subanen of Midsalip, the Inseg of Conner Apayao, the Binongan tribe of Baay Licuan stated in their resolutions and petitions that the behavior of the NCIP and other Government agencies and corporate entities was in violation of their customary practices. No action was taken by the responsible Government agencies to address this.

In 2003, the Gukom of the Seven Rivers, the highest Subanon judicial authority in the area, informed the NCIP of its concern over the manipulation and misuse of indigenous structures and processes in the granting of "consent" to TVI Pacific mining and determined to examine the case. The legal office of the NCIP formally recognized the authority of the Gukom to settle the dispute according to their customary law and also stated that '*any judgment arrived at by the Gukom may be referred to the NCIP for enforcement*'. In June 2004, the Gukom ruled that the Siocon Council of Elders formed at the instigation of the Government in 2002 was '*illegitimate, illegal and an affront to the customs, traditions and practices of the Subanon*' on the grounds that it had no precedent in Subanon traditional culture, the vast majority of its members, 21 out of a total of 30, were not of Timuay lineage and a number of its members were not even from the Canatuan area. It instructed the NCIP to '*immediately declare the Siocon Council of Elders [CoE] NULL and VOID and to restrain it from representing the Subanon community of Canatuan and within areas covered by CADT No. R09-S10-04-03-00005 specially in dealing with TVI*' adding that '*Since it was created under the auspices of NCIP*' that the NCIP '*should officially and immediately cause its disbandment and the official nullification of all agreements, contracts or other instruments entered by it*'. In the Gokum's eyes failure to do so was '*tantamount to [the NCIPs] self-repudiation of its General Mandate*'. It also stated that under customary law the consent of the traditional leader, Timuay Jose Boy Anoy, was required prior to the entry of any entity impacting on their well being or lands such as the TVI mining company. The decision of the Gukom was forwarded to the NCIP.

However, no action was taken. Rather than adhere to its obligations under its mandate to uphold customary law and respect rulings and act on ruling made under it, the NCIP instead continued to bestow legitimacy on the CoE by attending its monthly meetings and continuing to acknowledge the CoE's signed MoA with TVI as a manifestation of the Subanon's consent.

The Gukom of the Subanen of Bayog was convened in 2007 following the conduct of the first FPIC meetings in relation to the entry of a mining company, Ferum 168, in their lands. It deemed there to have been violations of customary law in the conduct of the FPIC process and consequently imposed a penalty on the NCIP. The traditional leaders also submitted a complaint to the NCIP regarding the leader validation process, which failed to adhere with their customary laws. Despite these reported violations of customary law the NCIP issued the certification of precondition and the mining permit was granted to the company in January 2009.

The failure of the NCIP to act on these rulings is reflective of its paternalistic attitude towards Indigenous Peoples. Rather than acting as an agency responsible for ensuring respect of indigenous communities right to make their own decisions in accordance with their right to self determination the NCIP is instead acting as if it were an authority that has the right to determine what is best for indigenous communities.

5.5.2 Lack of access to mainstream justice

A study²³⁵ conducted by the Alternative Law Groups Inc (ALG) (an alliance of 20 Philippine legal organizations dedicated to defending the rights of marginalized sectors and groups), in 2003 identified the following factors as contributing to the lack or inadequate access to justice of Indigenous Peoples:

- a. Lack of understanding of judges on the indigenous communities' tribal laws and customary practices;
- b. Limited number of lawyers who are willing to handle cases for the poor and marginalized groups.
- c. Expensive fees for lawyers' services that the poor cannot afford.
- d. Non-recognition of paralegals from communities who are not given the opportunity to assist in cases, or, worse, branded as subversives;
- e. General public perception that Government lawyers are not competent and efficient in handling cases involving poor and marginalized groups, and sometimes favor the group litigants' adversaries.
- f. Prohibitive costs of court litigation, including direct and indirect expenses.
- g. Lack of financial support for pauper litigants, especially in criminal cases where they are required to post bail bonds for their temporary liberty.
- h. Lack of effective witness protection program at the trial courts in rural areas.
- i. Discriminatory treatment of litigants who are members of indigenous cultural communities.
- j. Problem with certain structures, systems and processes in the judiciary and justice system, which obstruct...access to justice which include:
 - Inadequacy of grievance machinery against erring judges.
 - Hostile atmosphere in courts that alienates poor litigants.
 - Absence of community participation in the selection of judges.
 - Lack of judges and prosecutors, particularly in remote areas.
 - Very stringent requirements for petitions before the Supreme Court and dismissal of cases due to technicality
 - The use of English instead of the local dialects in court proceedings.
 - Conflict between indigenous people's customary laws and the justice system, and the general non-recognition by the justice system of the indigenous people's tribal laws.
 - Problems related to the low budget allocation for the judiciary.

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Indigenous Peoples are frequently among the poorest of the poor in the country in relation to access to money and services. This also translates to having greater difficulty to accessing mainstream justice than other sectors. One factor that limits their access is the sheer distance of their territories from the venues where legal processes are conducted. Access to justice requires that the place or venue for redress or grievance should be accessible to Indigenous Peoples. Currently, the regional offices of NCIP are found in towns, cities or the provincial capitals, while the peoples are found in the hinterlands of these regions. Other administrative offices and the regular courts are even more so inaccessible to communities and national Government agencies and the Supreme Court of the Philippines are all located in Manila, a place where most indigenous communities members have never been.

The Ifugao in Didipio, Municipality of Kasibu, Province of Nueva Vizcaya, have a pending case regarding their land rights with the Panel of Arbitrators of the DENR which is located in Tuguegarao in Cagayan province. It takes at least six (6) hours to reach Tuguegarao from the closest residence of the community. The same community has also filed a case challenging the water rights applications of the OceanaGold Phils. Inc. mining company and the file is docketed and heard in the National Water Resources Board in Manila, at least nine (9) hours from the community.

Present legal processes are also not sensitive or appropriate to Indigenous Peoples. The official language that is exclusively used in the courts is English, with procedures adopted from the United States and other countries. Therefore it is imperative that a lawyer should always represent a community. This implies an expense beyond the capacity of most indigenous communities. Given its limited number of legal officers the NCIP does not have the capacity to extend legal assistance to communities, which comprise of approximately 15 million Indigenous Peoples in total. In many cases community complaints are against the NCIP itself and hence they are unwilling to seek assistance from the NCIP. The state has made no funds available to provide legal aid to indigenous communities and to ensure that there are public defenders who will travel to remote communities to provide legal service to Indigenous Peoples. Indigenous communities are obliged to try to seek assistance from the few available NGOs and independent and concerned lawyers.

Costs in the maintenance of cases are also prohibitive. Though the Revised Rules of Court and other quasi-judicial bodies provide for indigent suits, the legal processes require documentation of the case which in and of itself is expensive. The associated transportation costs alone would be a heavy burden for a community to bear. Therefore by virtue of logistical accessibility alone, legal forums still discriminate against Indigenous Peoples and deny access to justice.

The NCIP also lacks the capacity to process cases filed before it by indigenous communities. In 2008 it reported that, in the span of six (6) years, from 2002-2008, there have been 295 cases filed with its Regional Hearing Officers (RHO). Of these cases, only fourteen have been decided. All of the fourteen cases were decided in 2002, with no decisions being rendered from 2003 to 2008. Except for the sixteen (16) cases disposed in 2003, no other cases have been disposed by the NCIP. Thirty-eight (38) cases have been filed before the Commission *en banc* in the same period and only seven (7) decisions have been rendered.

Access to justice also means information must be transparent, and it cannot be when administrative fees for documents are exorbitant, and/or when provisions of the law, for example, the Philippine Mining Act of 1995 and its implementing rules and regulations provide for the confidentiality of documents. Communities that in law have the right to determine if, and under what circumstances, mining and other projects may proceed within their lands, may be denied the right to review documents essential to informed decision making.

Decision-makers responsible for the enactment of laws and pronouncements on cases are often not sensitive to the nuances of cultures. Unfortunately, there is a lack of awareness of Indigenous Peoples' rights and a lack of understanding of their culture and there is inadequate training on these matters within the legal system at all levels. As a result of this, despite the IPRA and the 1987 Constitution, most of the Government's behavior in relation to Indigenous Peoples continues to be as if it were in a position to grant or withhold rights as it sees appropriate rather than recognizing Indigenous Peoples pre-existing and inherent rights. Discrimination also exists in the courts. Judges have been openly discriminatory regarding Indigenous Peoples with discriminatory statements such as "*Why believe them [Indigenous Peoples] when they are illiterate and fond of making stories?*" attributed to certain judges.²³⁶

Access to justice is also denied to Indigenous Peoples due to disputes between Government agencies in relation to overlapping jurisdictions. Despite the fact that the IPRA provides the NCIP with jurisdiction on matters involving Indigenous Peoples, immeasurable time is still lost in administrative processes in questions regarding jurisdiction over some cases involving Indigenous Peoples. For example, the case of the T'boli in Brgy. Ned, Lake Sebu, South Cotabato (see section 5.2.6 above), the DENR and the DAR have both asserted jurisdiction over the area, delaying the resolution of the case. NCIP had no substantial contribution in the resolution of the issue, despite the fact that it involves land rights of Indigenous Peoples. As outlined in section 5.2.5 above, more often than not, NCIP does not have the political will to assert itself when pitted against other Government agencies.

Judicial decisions alone, however, would not mean that justice has been served. The ability to enforce judgments is essential for this to occur as without this the justice system is inutile.

In the area of Don Carlos, Bukidnon, Mindanao, the Daguiwa-as clan, belonging to the Manobo indigenous tribe, have pitched tents and have been forced to "squat" on their own land because of the Government's failure to fully install them even twenty (20) years after the Supreme Court decision which affirmed their right to ancestral domain over the area. The case started in 1979 when the clan filed a case for Land Recovery against the Bukidnon Farm Industries (BFI) before the Commission on Settlement of Land Problems (COSLAP). Ten years later, after appeals made, the Supreme Court resolved the issue in favor of the clan in a decision rendered in 1989. The 800-member clan tried to enter the property five times during these years, but to no avail as armed guards drove them out. In addition, the DAR also distributed the same area to other persons not members of the clan. Community members have been harassed and shot and killed over the years.²³⁷

An emblematic case of the Government's failure to enforce rulings is the Cariño case. As pointed out by the UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, the 1909 landmark decision by the US Supreme Court in relation to the Cariño case, brought by Ibaloi Mateo Cariño charging the US Colonial Government and military of seizing his ancestral lands to make a military reservation, still remains without effect and despite this decision in their favor, the Cariño family is still 'awaiting restitution of its ancestral domain claim'²³⁸. Meanwhile the Philippine Government itself took control of the land when the US relinquished control and subsequently leased the whole area to a foreign corporation without reference to and despite the opposition of the descendants of the traditional owners.

5.5.3 Inappropriate NCIP rules on pleadings, practice and procedure

In 2003 the NCIP issued an Administrative Circular No 1 Series 2003 (AC No 1 of 2003) entitled: Rules on Pleadings, Practice and Procedure before the NCIP. The guidelines established a Regional Hearing Officer with exclusive jurisdiction over cases related to land disputes, FPIC, violations of customary law, desecration of sacred sites and original jurisdiction over cases effecting property rights and claims of ownership that had not been settled under customary law.

However the fifteen-page circular imposes an extremely bureaucratic, complex and alien procedure on indigenous communities. The rules of procedure are strict and even go beyond those that govern regular courts.²³⁹ Communities that wish to file a complaint under it would need the assistance of a lawyer or a detailed knowledge of the law as for example the defendants must clearly state the facts that constitute his or her 'cause of action'. In addition it is unclear as to how the procedure relates to the Local Government Code and if there is a requirement for communities to obtain certification from the LGU before lodging a complaint with the RHO. It is also unclear with regard to already existing complaints under other mechanisms.

The timeframes imposed for response to complaints are unrealistic given the remote location of communities, however if the defendant does not adhere to them then an order of default is issued and the defendant will be excluded from the proceedings. A complex process must then be followed to have this order lifted. The Circular provides for potential NCIP legal representation but the means by which a community ensures this is not clear. In addition it is prohibited to file a motion to dismiss. There is also a lack of clarity with regard to overlapping jurisdiction with agencies such as the DENR in relation to issues pertaining to the issuance of licenses and permits.

There is a complete lack of awareness among indigenous communities of the existence of AC No 1 of 2003. The NCIP has done little or nothing to inform and educate Indigenous Peoples about its existence and how to engage with it. Even those communities that are most active in asserting their rights and have engaged national and international mechanism are, for the most part, not aware of the requirement to file complaints in line with the procedures outlined in AC 1 of 2003.

In practice the complaint procedure under AC No 1 of 2003 can be used as a tool to deny potential access to justice to indigenous communities. The imposition of such strict and complex bureaucratic procedures limits communities' ability to engage with the administrative mechanism. In the absence of state provided legal aid the associated de-facto requirement for community to engage lawyer renders the procedure unusable by the vast majority of communities.

The procedure goes against the spirit of the IPRA as social legislation the intent of which was to facilitate access to justice for Indigenous Peoples. Furthermore requiring indigenous communities to follow such a strict procedures, which bear no resemblance to customary practices, is itself in breach of the IPRA's requirement that customary law have primacy in the resolution of disputes. The NCIP is required to respect customary laws and practices and not force communities to deviate from these. Yet under this procedure communities are no longer entitled to make complaints to the NCIP in accordance with their customary practices.

Instead of imposing this highly legalistic complaint procedure on Indigenous Peoples the NCIP should act whenever it receives a communication from an IP community alleging violations of their rights. Communities should be free to provide this information through the format, process and timeframe that is in keeping with their customary practices.

Additionally many of the complaints that communities have in relation to FPIC processes are directed at the NCIP itself. Granting exclusive jurisdiction to the RHO means that the NCIP is sitting in judgment of itself. Such a situation only serves to deny indigenous communities recourse to an independent mechanism where their complaints can be heard. The procedure is also unclear what happens when a community has made a decision through its own judicial authority under its customary laws and issued rulings which the NCIP fails to uphold, including rulings against the NCIP itself.

As evidenced from the fact that of 295 cases filed with the RHO only 14 have yet been decided, the NCIP regional hearing officers do not have the physical capacity or will to cater for the level of complaints.

This lack of capacity also effectively serves to deny Indigenous Peoples access to justice. The option that indigenous communities had of filing cases directly with the Commission was removed under the circular. This stands in direction contradiction to the IPRA's IRR's that explicitly state that the commission 'may motu proprio file the claim for loss, injury or damage for and in behalf of the ICC/IP community'.

Finally, together with its guidelines on FPIC, these rules on pleading practice and procedure illustrate the NCIP's and the Government's lack of understanding of the spirit, intent and letter of the IPRA. The result is a set of administrative guidelines that instead of implementing the law serve to systematize violations of it. This disconnection, willing or otherwise, with the true situation of Indigenous Peoples is illustrated by the Governments' repeated claim that there have been no formal complaints in relation to breaches of FPIC process. This absurd claim is based on the technical assertion that communities do not fully follow the strict procedure under AC No 1 of 2003 when making their complaints known. It is made despite the clear evidence, including direct submissions to the NCIP, that communities have made in relation to FPIC processes conducted. As outlined earlier (see section 5.3.6 above Experiences of Indigenous Peoples with flawed FPIC processes), not only have complaints in the form of petitions and resolutions signed by large number of community members been submitted to the NCIP, but communities visibly have boycotted FPIC meetings facilitated by the NCIP or participated in direct action against the activities of third parties including the NCIP itself. In many cases as a result of their efforts to uphold their rights they have suffered harassments, intimidation, violence and even deaths. To disregard such clear acts of protest is a source of deep frustration for Indigenous Peoples.

5.5.4 Effectiveness of grievance mechanisms

Where indigenous communities have attempted to engage with the administrative or judicial grievance mechanisms they have discovered that they are essentially dysfunctional. The following are some examples of the experience of communities when seeking justice.

In April 2006 the Subanon of Mount Canatuan filed a case in relation to serious irregularities in the issuance of TVI Resources' MPSA in their ancestral domain with the Mine and Geosciences DENR panel of Arbitrators. Despite a requirement that all administrative cases should be processed within 90 days the case has not yet been heard. In the meantime new jurisprudence of the DENR emerged in December 2007 requiring all cancellation cases for mining to be lodged at the DENR Secretary. The implications of this for the case filed by the Subanon are unknown. In 2008 the DENR has authorized the expansion of TVI operations while failing to address the case brought before it regarding the legitimacy of its mining permit.

The Philippines Commission on Human Rights has in the past addressed cases of Indigenous Peoples including the case of Subanon of Mount Canatuan where it recognized that the failure of the responsible Government bodies had resulted in the denial of the Subanon's self determination and FPIC rights. It concluded that the granting of the MPSA at Mount Canatuan was the cause of the subsequent human rights violations and called for the removal of TVI as the solution to the problem. The CHR however lacks any enforcement powers and despite this investigation the violations of the Subanon's rights continued. In the past the CHR was also viewed as subject to external influence and lacking in political will to address violations of Indigenous Peoples' rights. The current Chair has expressed here willingness to address cases involving allegations of violations of Indigenous Peoples' rights. It would appear however that the CHR lacks the capacity to address the complaints that it receives, particularly those in relation to Indigenous Peoples and violations of economic, social and cultural rights. Complaints submitted to it in 2008 in relation to violations of Indigenous Peoples' rights in the context of mining projects on their lands at both Didipio and Tubay (see respectively sections 5.3.6.1.2 and 5.3.6.1.1 above) have not been acted on to date. This apparent lack of capacity of the CHR to deal with Indigenous Peoples complaints, and the fact that Indigenous Peoples represent 15% of the population and suffer

disproportionately from violation of their human rights, points to the need for a dedicated desk within the CHR to focus on Indigenous Peoples issues.

In 2006 the Subanen of Midsalip lodged complaints with regard to the FPIC processes conducted in their ancestral domain with the National Ombudsman. Despite the fact that the Ombudsman had initially invited them to file this complaint in relation to violations of the FPIC process with her office the Subanen have to date received no reply from her.²⁴⁰

The ancestral domain of the Manobo Tribes in Lanuza, San Miguel and Tandag, Surigao del Sur was recognized through the issuance of Certificate of Ancestral Domain Claim (CADC) prior to the enactment of the IPRA in 1997. In the last quarter of 2005, a total logging ban was issued by DENR that included an existing Timber License Agreement of Surigao Development Corporation (SUDECOR) in the Manobo's ancestral domain. However, the company continued to construct spur roads and in the process bulldozed a Manobo burial ground. In reaction the community launched a major campaign which included the setting up of human barricades to stop the logging operation. A DENR investigation prompted by these protests confirmed the destruction within the burial grounds, however, it set aside the issue of desecration of sacred grounds and cleared SUDECOR of any violations committed. Community leaders have been harassed and one of the petitioners killed. The Manobo filed a class suit regarding the illegal logging operation in their lands on June 20, 2007 with prayer for permanent injunction before the Regional Hearing Officer (RHO) of NCIP XIII. Lawyers for the community have sent a motion to resolve but there has been no response from the NCIP regional hearing officer as of yet. The community is in the process of applying for a CADT in an effort to prevent the logging company from having its license renewed against their wishes when it expires in 2011.

In January 2004 the Supreme Court finally ruled on a seven-year old case advanced by the LaBugal-B'laan Tribal Association and others, claiming that certain provisions of the Mining Act of 1995 covering the granting of a license for a mining project affecting the LaBugal and other Indigenous communities breached the constitution of the Philippines. The Court ruled that these provisions were unconstitutional. However, the Government, backed by the Chamber of Mines, appealed that decision and mounted a strong campaign for a reversal (see Section 5.3.2 above). In December 2004, the Supreme Court reversed its own decision. The new ruling was based on promised, but unsubstantiated, calculations of national economic gain and development that might flow from the full development and exploitation of all mining claims applied for nationwide. These claims of '*US\$840 billion (approx. PhP47.04 trillion) worth of mineral wealth lying hidden in the ground*' are widely disputed and their basis has never been disclosed.

Of even greater concern was the Court's highly discriminatory characterization of Indigenous Peoples' rights. The ruling is at odds with the intent of the 1987 Constitution to balance the rights and interests of Indigenous Peoples with national development. Instead of adopting this perspective it characterized the rights of the indigenous community as "parochial interests", concluding that it had '*weighed carefully the rights and interests of all concerned, and decided for the greater good of the greatest number*'. The Government's mining policy aimed at exploiting the '*US\$840 billion worth of mineral wealth lying hidden in the ground*' requires exploitation of 30% of the country's landmass, most of which is ancestral land of Indigenous Peoples. Despite this fact, the Court did not even consider the potential impacts of its decision on the intergenerational well-being and survival of the nations Indigenous Peoples, their rights to their livelihoods, to adequate food and a health environment. The following are extracts from the December 2004 revised Supreme Court decision which was a total reversal of the ruling issued in January 2004:

'The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interests'

Epilogue to the ruling:

“We must never forget that it is not only our less privileged brethren in tribal and cultural communities who deserve the attention of this Court; rather, all parties concerned -- including the State itself, the contractor (whether Filipino or foreign), and the vast majority of our citizens -- equally deserve the protection of the law and of this Court. To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens. They have as much right and interest in the proper and well-ordered development and utilization of the country’s mineral resources as the petitioners.

Whether we consider the near term or take the longer view, we cannot overemphasize the need for an appropriate balancing of interests and needs -- the need to develop our stagnating mining industry and extract what NEDA Secretary Romulo Neri estimates is some US\$840 billion (approx. PhP47.04 trillion) worth of mineral wealth lying hidden in the ground, in order to jumpstart our floundering economy on the one hand, and on the other, the need to enhance our nationalistic aspirations, protect our indigenous communities, and prevent irreversible ecological damage...

Verily, the mineral wealth and natural resources of this country are meant to benefit not merely a select group of people living in the areas locally affected by mining activities, but the entire Filipino nation, present and future, to whom the mineral wealth really belong. This Court has therefore weighed carefully the rights and interests of all concerned, and decided for the greater good of the greatest number.”

This ruling is clearly discriminatory in that it proposes to sacrifice the human rights of the B’laan to the questionable promise of economic benefit for others. It runs contrary to the Principles of the 1993 UN World Conference on Human Rights Vienna Declaration, the UN Declaration on the Right to Development, CERD Concluding Observations and the jurisprudence of the HRC.²⁴¹

In its subsequent 2006 ruling in relation to a case taken by the indigenous people of Didipio, *Didipio Earth-Savers’ Multi-Purpose Association, [DESAMA] Inc. et al. vs. Elisea Gozun, et al.*, the DESAMA case, the Court expanded on the La Bugal Ruling and effectively held that the rights of a mining company overwrite the property rights and social well being of the indigenous community. Mining was declared to be in the public interest with companies granted the power of eminent domain while the impacts on Indigenous Peoples’ rights and interests were not addressed. At the outset of the ruling the Court stated

‘the transcendental importance of the issues raised and the magnitude of the public interest involved will have a bearing on the country’s economy which is to a greater extent dependent upon the mining industry. Also affected by the resolution of this case are the proprietary rights of numerous residents in the mining contract areas as well as the social existence of indigenous peoples which are threatened.’

However, in the dispositive portion of its ruling the Court did not address the ‘*social existence of indigenous peoples which are threatened*’. Instead it justified the mining company’s taking of Indigenous Peoples private property in Didipio by citing former President Marcos’s 1974 Decrees 463 and 512, promulgated during his extended period of dictatorial rule, which respectively state that ‘*Mining industry plays a pivotal role in the economic development of the country*’ and that ‘*qualified mining operators had the authority to exercise eminent domain*’,

This interpretation of the common good and public interest in the La Bugal and DESAMA cases is discriminatory towards the nations Indigenous Peoples. It is also at odds with the Constitutional provision²⁴² (cited in the Government report paragraph 42) which states that the ‘highest priority’ shall be given to ‘the enactment of measures that protect and enhance the right of all the people to human dignity,

reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.’

5.5.5 *The law as a means to silence indigenous opposition*

The law is also being used as a weapon against Indigenous Peoples to silence their legitimate opposition to unwanted developments in their lands. The manner in which the justice system is being distorted in order to deny Indigenous Peoples their rights and silence their opposition to unwanted development projects in their lands is illustrated by the cases of the Ifugao community in Barangay Didipio, Municipality of Kasibu, Nueva Vizcaya. (see section 5.3.6.2.1 and 5.5.4 above for additional details of this case) and the Manobo in Quezon, Bukidnon.

In January 2007, the Provincial Environment and Natural Resources Officer (PENRO) issued Notices of Violation and Summons against eleven (11) persons belonging to the Ifugao tribe in Didipio for violation of Section 79 of the Forestry Code. The notices claimed that these persons were illegal settlers in forest lands of the public domain. On the day set for hearing, representatives from Australasian Philippines Mining, Inc. (now OceanaGold Philippines, Inc.) were present. The PENRO informed the eleven (11) Ifugao that instead of an investigation on this alleged violation of the Forestry Code, upon the request of the mining corporation, the process would instead be a negotiation for the sale of the lands of the accused, stating that the case may be dismissed if they would sell their land to the mining company. As a result of the threat of a criminal case against them and their being informed that they would lose their lands anyways, seven of the eleven agreed to negotiate the sale of their lands. In February 2008, before any findings in relation to the criminal cases, a demolition team accompanied by armed guards tried to enter the lands of these persons. They claimed that, since there were criminal cases already filed against the Ifugao community members, the DENR and the mining corporation already had the right to enter and demolish their houses, including the houses of the four (4) people who refused to negotiate with the mining corporation. Currently, an injunction case was filed against DENR and the corporation from entering the lands of the community members. An administrative case is also pending questioning the legality on the process by which these criminal cases were filed against community members.

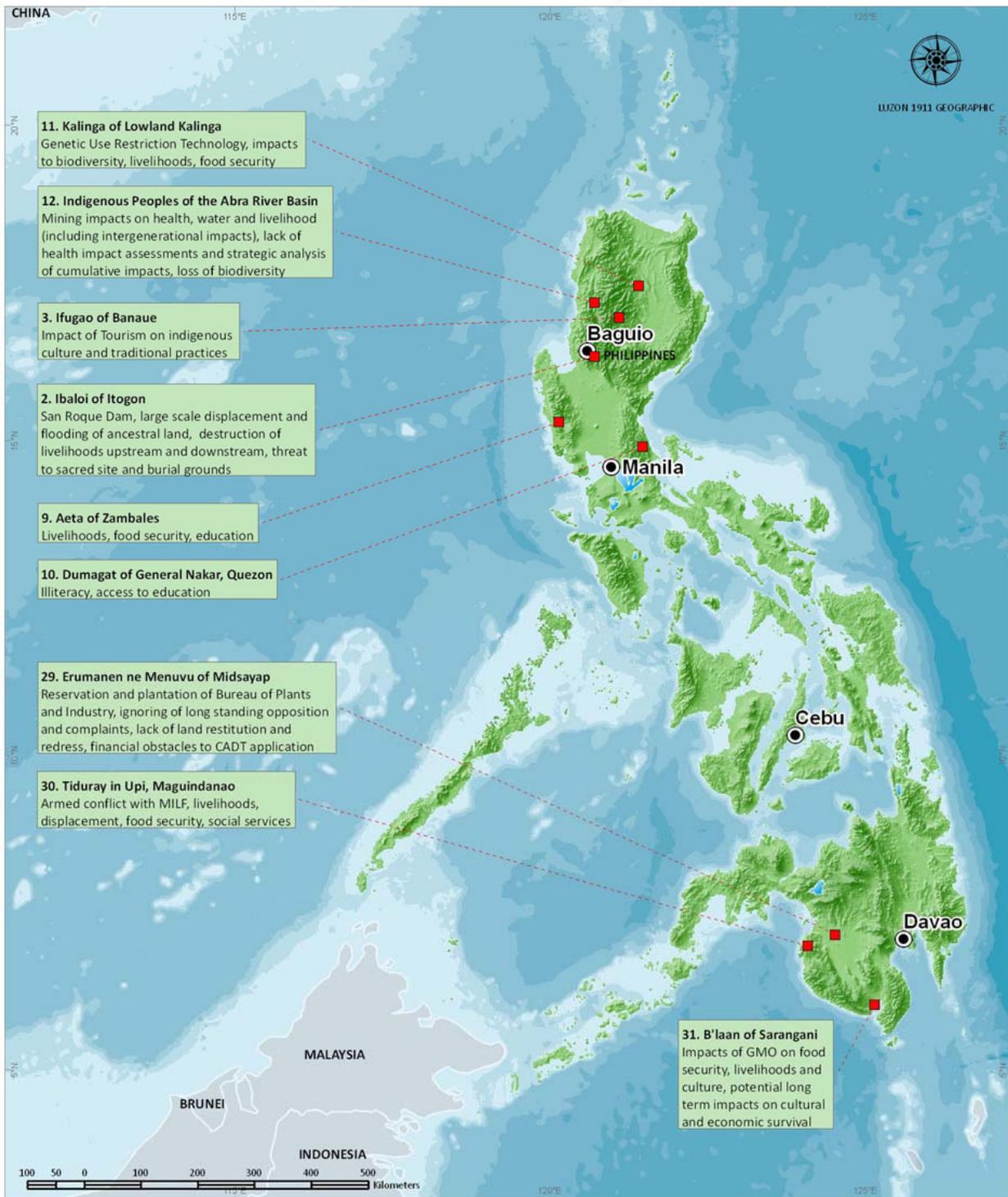
In 1998, the Manobo in Quezon, Bukidnon province, through their Quezon Manobo Tribal Association (QUEMTRAS) were able to secure a Certificate of Ancestral Domain Claim. For fifty years, they had suffered violations of their rights as a result of the entry of sugar cane plantations into their lands. During the Marcos regime, agroforestry farm leases were issued to the Silangan Investors and Management Inc., Rang-ay Farms, Inc. and Escano Hermanos. The leases were cancelled by the DENR as early as 1988, however, the corporations refused to leave the land. Attempts made by the Manobo to enter and occupy the land were met with harassments and violence from the corporation’s security forces. Members of QUEMTRAS and tribal leaders had been shot and killed by company forces.²⁴³ The corporations had previously sued leaders of QUEMTRAS on fabricated charges of causing physical injury and murder. The corporations subsequently filed an injunction case against the Manobo from occupying and entering their own ancestral domains. The court issued a 20-day temporary restraining order against the Manobo, despite the fact that the corporations no longer had any legal claim to the land. In 2001, it was only due to the political forces that came into play that the case was dismissed after a compromise agreement was made. However, the Manobo’s insecurity as a result of the lawsuits taken against them together with the harassments they experienced, have forced them to compromise on what was rightfully theirs.

Civil society groups and individuals supporting Indigenous Peoples in their opposition to development projects in their lands have also been served or threatened with strategic lawsuits against public participation (SLAPP suits). A group of teachers from Sibuyan Island are currently facing a SLAPP case before the Ombudsman. In 2007 a march was held on the island against the cutting of 70,000 trees, which would have paved the way for mining impacting the ancestral domain of the Mangyan Tagabukid people and the island’s watersheds and protected areas. A local councilor and former World Wide Fund for

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Nature (WWF) staff, Armin Marin, who was leading the protest was shot in the mouth and killed by a mining company's head of security. WWF staff and locals attending the protest witnessed the incident. The company security person was arraigned for murder but the case is currently suspended. Meanwhile the mining company has filed a case against the local teachers for their role in organizing the march. The Mangyan Tagabukid CADT application is pending for 10 years and the NCIP has informed them that areas under mining application within their ancestral domain will have to be excluded from their claim. The Mangyan Tagabukid also allege that NCIP created 'new' indigenous groups from which to obtain FPIC for mining.²⁴⁴ Another example of threats to take lawsuits against those Indigenous Peoples and those supporting them is in relation to the Subanon of Mount Canatuan Case. In 2004, following the publication of a report 'Breaking Promises, Making Profits' by PIPLinks and Christian Aid which addressed the history of TVI's operations at Mount Canatuan, the then Secretary for the DENR, Mike Defensor, gave a speech where he threatened to have the authors of the report arrested.²⁴⁵

5.6 Livelihoods and Economic, Social and Cultural Rights



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5.6 Livelihoods and Economic, Social and Cultural Rights.

In accordance with its obligations under ICERD Article 5 (e) the Government should guarantee that there is no de-jure or de-facto discrimination in relation to the enjoyment of economic, social and cultural rights, in particular the right ‘to work, to free choice of employment...to equal pay for equal work, to just remuneration;...to housing...to public health, medical care, social security and social services’ and to ‘the right to education and training’. Article 7 of ICERD imposes an obligation on the Government to adopt ‘immediate and effective measures, particularly in the fields of teaching, education, culture and information, to combat prejudices leading to racial discrimination and to promote understanding among nations and racial or ethnical groups and propagate the purposes and principles of the UN Charter, Universal Declaration on Human Rights and...this Convention’. In its General Recommendation No. 23 the CERD ‘calls in particular upon States Parties to: ...(c) Provide Indigenous Peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics’ While in paragraph 4 (a) it calls on the State to ‘recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation and to preserve and to practice their languages’. The IPRA also calls for the adoption of special measures to ensure Indigenous Peoples enjoyment of these rights. Despite these national and international obligations of the Government of the Philippines clear de-facto discrimination exists in relation to Indigenous Peoples enjoyment of their economic, social and cultural rights.

5.6.1 Failure to target and uphold economic, social and cultural rights

The IPRA explicitly requires the State to ‘protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being’.²⁴⁶ However, despite these national and international obligations to uphold their economic and social rights, Indigenous Peoples in the Philippines are facing barriers to the right to non-discrimination and equality as it relates to the foregoing economic and social rights. Indigenous Peoples are among the most marginalized sectors in the country. They do not fully enjoy the right to practice their traditional livelihoods and have the least access to adequate, quality and culturally appropriate food, health and education, among other basic social goods and services. After his mission to the Philippines in 2002, the then UN Special Rapporteur, Professor Rodolfo Stavenhagen, reported:

‘Various surveys and studies also report that Indigenous Peoples’ human development indicators are lower and poverty indicators are higher than those of the rest of society. While there are no systematic, disaggregated statistics to support these findings, there appears to be a valid correlation between lower human development indicators and the high density of indigenous populations in certain provinces. The income of Indigenous Peoples is still below average.’²⁴⁷

Additional studies and consultations, conducted following the report of Professor Rodolfo Stavenhagen, show that these issues have not been addressed by the Government.²⁴⁸ In 2005 a comprehensive study on the impact of the Local Government Code (LGC) on Indigenous Peoples was conducted. It consisted of case studies from throughout the Philippines and three regional workshops involving the NCIP, local government officials and indigenous leaders and organizations. The study found that as far as Indigenous Peoples were concerned, in many instances, State-introduced local governance structures ended up subsuming indigenous structures and weakening their influence. Indigenous communities often saw the development agendas and orientation adopted by LGU’s in the implementation of the LGC as being counterproductive to their interests, failing to address issues of local food security and sustainable production systems. The study also found that while the LGC was expected to improve the provision of social services, the funding sourced through it was ‘insufficient to make any material impact on the development needs of Indigenous Peoples’.²⁴⁹

The Government report cites the requirements under the IPRA Sec 23, 25 and 34 in relation to the requirement to adopt special measures for Indigenous Peoples in the area of economic and social conditions including employment, housing, sanitation, health and social security as well as special measures ‘to control, develop and protect their sciences, technologies and cultural manifestations’. However, a 2007 study of the Legal Assistance Center for Indigenous Peoples (PANLIPI) showed that of 99 projects implemented by various Government agencies, which were to be designated specifically for Indigenous Peoples, only 8% are specifically directed to Indigenous Peoples.²⁵⁰ Likewise a 2003 study conducted by the ILO and the NCIP showed that only 17% of the total number of programs and projects of all the Government agencies responsible for implementing the IPRA were directly targeted at Indigenous Peoples. The other 83% address all Filipinos. The study found that only three other agencies apart from the NCIP had projects ‘*specifically denominated for the indigenous peoples. All other programs and projects are being implemented to address primarily issues on the environment, natural resources, agrarian reform, agricultural productivity, basic service delivery and infrastructure.*’²⁵¹

The FOURmula ONE for Health Program is an on-going example of the failure to target Indigenous Peoples. The programs goals and targets are in many cases inappropriate for the physical and cultural realities of indigenous communities.²⁵² The European Commission is funding this program. The funding was premised on empowerment of Indigenous Peoples. Instead the Department of Health has targeted its program at ‘indigent people’ and thereby avoided incorporation of specific special measures necessary to address the needs of indigenous communities.

Data and information about Indigenous Peoples, including disparities, are obscured in national and even in subnational aggregates, rendering Indigenous Peoples invisible in official data. In its surveys, the National Statistics Office (NSO) only uses a single indicator, “mother tongue”, to determine a person’s ethnicity. As many Indigenous Peoples speak the dominant language, as well as their own language, this indicator is not sufficient. Consequently, no accurate population count of Indigenous Peoples is available. This fundamental methodological deficiency in the Government’s data collection and disaggregation is a reflection of the States neglect of Indigenous Peoples. It impacts on the accuracy, appropriateness and transparency of all Government processes (i.e., consultation, planning, implementation, monitoring, evaluation and reporting) that concern Indigenous Peoples.

Quantitative and qualitative data and information presented in this report come primarily from by civil society organizations and by indigenous groups themselves.²⁵³

5.6.2 Inadequate social services for Indigenous Peoples

Social services are in general under funded in the Philippines as a result of inadequate budgetary provision.²⁵⁴ The 2008 budget shows that regions with highest concentrations of Indigenous Peoples get the least budgetary allocations from the national Government (CAR – 1.22 %; CARAGA – 1.38%; Region IX – 1.58%).²⁵⁵ As a result of this social service provision in indigenous territories is far below that of the rest of the country. As noted in the Government report,

‘In a rapid field assessment conducted by the UNICEF-Philippines together with the NCIP on the situation of IP children, youth and women in 17 provinces nationwide, it was found out that basic services do not normally reach the IP communities since they lack representation in governance, specifically at the local legislative councils and other policymaking bodies where they can represent the needs, problems, and aspirations of IPs/ICCs. This right to equitable representation in governance has been neglected despite the provisions in the Local Government Code of 1991 and the Indigenous Peoples Rights Act (IPRA) of 1997 addressing this concern.’²⁵⁶

The grossly inadequate funding of the Local Government Units in areas populated by Indigenous Peoples is compounded by the fact that many of these areas tend to be remote with low population densities which

require special measures to address the physical access and cultural appropriateness aspects of service delivery. There is also a lack of adequate interface with and respect for traditional institutions by local government units. Illustrative of this is that while there is a requirement for Indigenous Peoples' Ancestral Domain Sustainable Development and Protection Plans to be incorporated into local government plans this is not happening at present.

5.6.3 Threats to Indigenous Peoples' livelihoods, right to food, health and education

The UN Special Rapporteur on Indigenous Peoples, Professor Rodolfo Stavenhagen, documented serious violations of Indigenous Peoples' rights to food and livelihoods and negative impacts on their traditional knowledge and practices resulting from economic activities such as large-scale logging, open-pit mining, multi-purpose dams, agribusiness plantations and other large scale development projects.

In his report, the Special Rapporteur observed that "indigenous knowledge systems, particularly those regarding environmental management and the subsistence economy, have come under increasing pressure from outside economic forces in recent years." He also noted that "of particular concern are the long-term devastating effects of mining operations on the livelihood of Indigenous Peoples and their environment."²⁵⁷ A recent report *Philippines: Mining or Food?* addressed five locations, three in Mindanao, and two on Islands Mindoro and Sibuyan in Southern Luzon, where mining applications cover up to 70% of the ancestral domains. The report concluded that if mining proceeded as planned it could pose a threat to the long-term food security and sustainable agricultural practices of the indigenous communities as well as to the communities downstream from them.²⁵⁸ The food security and livelihoods of many other indigenous communities throughout the country are similarly impacted. Nueva Vizcaya, a major citrus producing region in Northern Luzon, is another province where lands of Indigenous Peoples such as the Ifugao and Bugkalot and others are extensively targeted for mining. Citrus fruits serve as the main cash crop for the Ifugao at Didipio supplementing their subsistence farming activities. No study has been conducted to determine the cumulative effects of mining projects to the environment and by extension to the food security, livelihoods and health of the Indigenous Peoples that are dependant on the land.

Indigenous Peoples throughout the Cordillera face similar issues with up to 66% of the landmass estimated to be under mining applications. Some of the most productive vegetable growing areas upon which indigenous communities, such as the Kankanaey people in Bakun, Benguet, rely on for their livelihoods, are threatened by mining.

Indigenous Peoples' harvest in peril²⁵⁹

A study conducted by the Church Development Service EED Task Force on Indigenous Peoples' Rights reveals that there is a pattern of chronic to severe food insecurity among indigenous communities. Malnutrition among children is also among the highest in these areas.

The study reveals that Indigenous Peoples variably experience food insecurity - ranging from moderate to severe food shortages (i.e. those with reported malnutrition): This Shadow report provides information on a subset of the communities involved in the study in different regions to illustrate the general situation of Indigenous Peoples in the country: 1) Ibaloi of Itogon, Benguet; 2) Igorot of Lower Kalinga; 3) B'laan of Alabel, Saranggani; 4) Erumanen ne Menuvu of Cotabato; 5) Tiduray of Upi, Maguindanao; 6) Indigenous communities located along the Abra river 7) Dumagat of General Nakar, Quezon; and 8) Aeta of Botolan, Zambales.

Chronic food shortages are experienced when food stocks are continually inadequate within the household. At these points, extreme measures are taken within the IP household. These include the following: selling assets such as farm lands; stinting the number of meals per day; stinting the quality of meals; out-migration and mendicancy.

The following cases which were addressed in the ICERD Shadow report consultations are illustrative of the threats and violations to the right of Indigenous Peoples to food and traditional livelihoods: They point to threats and violations to the right to food and livelihoods of Indigenous Peoples as a result of modern agricultural and related development policies, programs and projects imported into and implemented in indigenous areas.

5.6.3.1 Impacts of large scale development projects on food security of Ibaloi people

The rich biodiversity, conducive climatic and soil conditions of indigenous communities' ancestral domains combined with indigenous traditional knowledge systems have provided Indigenous Peoples with a sustainable supply of their traditional foods in a culturally appropriate manner. However, the failure to translate land rights recognition under law into practice and the associated encroachment of companies and individuals into indigenous lands, together with a lack of access to justice, prevent Indigenous Peoples from enjoying their right to food. Mining, logging and dam construction operations and land conversion in areas of rich biodiversity, forest cover and watersheds has had major negative impact on surrounding indigenous communities' traditional food supply. Imposed modern agricultural techniques are also having a negative impact on indigenous communities' food security.

An illustrative case is the effective displacement of Ibaloi farming by the open-pit mining operations of the Benguet Corporation Itogon, Benguet.²⁶⁰ Houses, gardens, even burial sites were stripped away and incorporated in the mining area and the tailings dam. Once the mine was abandoned no effective restoration was undertaken. The lands remain barren. This situation is being replicated in ancestral domains that are now subjected to various forms of extractive industry (e.g. mining and logging) activities, despite and in spite of the existence of the IPRA and indigenous communities rejection of the these projects.

5.6.3.2 Implications of rice production methods on the Igorot's food security²⁶¹

Lowland Kalinga, which is composed of the municipalities of Pinukpuk, Tabuk and Rizal, is known as the rice bowl of the Cordillera Administrative Region. Indigenous communities have used the lands for farming since time immemorial. Igorot who expanded into the area in the 1930's with support from the United States colonial administration established a rice culture based on their local knowledge and farming techniques.²⁶² For about 45 years rice production thrived in the area. This was disrupted by the active promotion of the Philippine Government of the Green Revolution in the early 1970's.²⁶³ The Government's more recent promotion of the Genetic Use Restriction Technology (GURT) (commonly referred to as the terminator technology) in 2002 has further threatened the traditional varieties of rice and traditional way of rice production.²⁶⁴

The study reveals adverse impacts on indigenous communities of the major changes in the production system that shifted from traditional agriculture to the GURT technology. These include an increased dependency on expensive inputs reducing communities net revenues by approximately 30%, negative environmental impact including the disappearance of aquatic food in the rice paddy, erosion of agrobiodiversity in favor of monoculture and the increase in pests and diseases of rice plants; loss of indigenous traditional practices with increased influx of outside farm laborers, all leading to negative socio-cultural impacts. Despite its promotion of the use of these technologies, the state has failed to take any special measures to address the negative economic, social, cultural and health impacts on indigenous communities. In failing to do this the Government is in violation of its commitments under ICERD and the Convention on Biological Diversity.²⁶⁵

5.6.3.3 Impact of GMO's on the food security of B'laan in Sarangani Province²⁶⁶

Another community that has been impacted negatively by the Government's promotion of modern food technologies are the B'laan farmers in Sarangani Province.²⁶⁷ In this case the communities were

impacted by the introduction of GM/Bt corn. The Philippine Government granted approval to commercialize Bt corn in 2003 and since then the industry has been aggressively promoting it often without adequate labeling or informing farmers that it is genetically modified.²⁶⁸ The effects on the B'laan include lower net income to the costs of seeds and fertilizers; entrapment into a cycle of debt putting their lands at risk and converting some into leaseholders or tenants on their own lands; the inability to conduct their traditional practice of seed saving for reuse; the denial of subsistence agriculture as the corn produced is not for human consumption and communities are forced to eat these hybrid and Bt corn grits during times when they have no income to purchase other foods. There has been significant penetration of these genetically modified varieties into the upland areas where traditional non-Bt varieties are grown. The potential genetic contamination of traditional corn varieties is of major concern as the proliferation of Bt corn threatens to narrow the indigenous corn genetic pool available to farmers. This would impinge on crop diversity and food security especially of the upland corn-dependent indigenous communities. It threatens sustainable traditional farming systems, Indigenous Peoples traditional practices and knowledge and their development initiatives and the communities long-term health and survival. The Government has done nothing to address the situation of the B'laan or the potential long term implications as a result of the contamination of local corn varieties.

5.6.3.4 The Erumananen ne Menuvu struggle to reclaim their land and guarantee food security²⁶⁹

In 1939 the Government 'borrowed' 50 hectares of the ancestral land of the Erumananen ne Menuvu. This area was arbitrarily expanded in 1941 to 485 hectares through Presidential Proclamation No. 772. This Proclamation declares the land as a Government Reservation. Over the last decades the Erumananen ne Menuvu have sent petitions and appeals to the concerned Government agencies and organized a series of mass mobilizations. However, no action has been taken to address their situation. This is particularly true of the Bureau of Plant Industry (BPI) - an agency under the administrative control and supervision of the Department of the Agriculture (DA) - which is responsible for the management of the reservation. The Erumananen ne Menuvu are currently attempting to engage with the IPRA to assert their rights to re-occupy their lands and manage and control the natural resources therein which are the basis of their food security. They are engaged in an ongoing process to apply for a Certificate of Ancestral Domain Title (CADT). However, they have received minimal financial and legal assistance from the NCIP to conduct its mandatory titling activities. Meanwhile their tenure over their lands remains insecure.

5.6.3.5 Loss of Indigenous Peoples' livelihood due to armed conflict

Many of those communities consulted that have been forced to evacuate their ancestral domains (see section 5.4 Militarization above) reported problems in accessing adequate food as a result of their inability to sustain their livelihoods without access to their lands.

In 2008, the Supreme Court declared the Memorandum of Agreement (GRP-MILF MOA-AD) entered into by the Government of the Philippines and the Moro Islamic Liberation Front (MILF) on the creation of a Bangsamoro Juridical Entity (BJE) to be unconstitutional. This led to the resumption of hostilities between the MILF and the Government which has had major implications for indigenous communities and others in Mindanao. Civilians have been injured or killed and there are estimates of up to almost half a million people displaced. Some Indigenous Peoples have protested that there was a lack of adequate consultations with them during the BJE negotiations and also that there is general confusion with regard to the recognition afforded to Indigenous Peoples' rights, including their ancestral domain and self governance rights, in the final MOA-AD.

Under the Geneva Conventions the Government has an obligation to protect unarmed civilians and to relocate those displaced during conflict. During the recent breakdown in the peace process and escalation of conflict the Government failed in its duty to protect indigenous and Muslim communities that were caught in the cross fire. A 2008 Amnesty International report found that there were several

‘indiscriminate attacks....where no steps were taken to ensure that civilians were not disproportionately harmed’ and as a result many were forced to take shelter in schools and community halls.²⁷⁰

The Tiduray of Upi, Maguindanao, Mindanao, were forcibly evacuated from their domain as a result of armed conflict between the MILF and state forces. Their capability to access food and establish stable means of livelihood is seriously impacted by the on-going conflict. The future of their access to land and subsistence agriculture is further threatened by the uncertainty in relation to the impact of the MOA-AD.

5.6.3.6 Threats to Indigenous Peoples’ right to health

According to a study conducted by Anthropology Watch for the World Health Organization in 2005,

(T)he general health situation in regions and provinces with the largest concentration of IP populations is below the national average. The same can be said of IP-dominated provinces compared to other provinces within a given administrative region. In general, the data indicate a poorer health situation among IP communities compared to non-IP municipalities and to provincial averages as well.²⁷¹

Health indicators in provinces with high concentration of Indigenous Peoples lag behind national averages. Life expectancy in all but one province were well below the national average. The EED Philippine Partners’ Task Force for Indigenous Peoples’ Rights (EEDTFIP) study found an alarmingly high incidence of infant mortality across all indigenous communities studied.²⁷² The study also found that 29% of the indigenous communities experienced health problems due to food insecurity. According to the communities consulted distance from barangay health centers and inadequate facilities is a major reason for not seeking health assistance.²⁷³

Indigenous Peoples have been disproportionately impacted by the significant reduction in Government expenditure on health over the last two decades.²⁷⁴ Members of the T’boli tribe believe that the health status of their community prior to the IPRA enactment was relatively better than it is at present. According to them, there is a high level of undernourishment in their areas which is having a particularly negative impact on the health of children. They attribute this to lack of Government support for their traditional livelihoods which had in the past guaranteed their food security, a resulting increased dependence on external job markets combined with rising prices of food and other commodities.²⁷⁵

5.6.3.7 Health situation and impact of mining: Indigenous Peoples along the Abra River

Health impacts of development projects, particularly mining operations, are a major concern of indigenous communities. An Environmental Investigatory Mission (EIM) conducted by the Save the Abra River Movement (STARM) including health professionals, University of the Philippines academics and others in October 25-26, 2004, identified major adverse effects of large-scale mining on human and animal health, environment and culture, particularly affecting the indigenous peasants well-being and livelihoods.²⁷⁶

The study found that the inhabitants of Paalaban and Batbato in Makayan, a mining site of Lepanto

“are exposed regularly to mining waste waters. Coughing (48.5 percent), irritation of the nasal membrane (31.6 percent), skin irritations like rashes, itchiness or cauterization (31.6 percent), irritation of the eyes (16.5 percent) and vomiting (10.5 percent) are the symptoms most often diagnosed resulting from contact with the waste waters. Randomly obtained blood samples have shown that these people have higher concentrations of cyanide, lead, and copper in comparison to people without contact to mining waste waters...Workers’ occupational health and safety is also a grave concern”.²⁷⁷

The study also found that there was a significant loss of biodiversity including aquatic, plant and bird life. Evidence of elevated heavy metals content in water, associated with acid mine drainage (AMD), was found in waters and soil downstream from the mining operations. Livelihoods were impacted as a result of decreased fishery and agricultural yields.

However, despite these finding in relation to experience of indigenous communities living by the Abra river no Government sponsored studies have been conducted to determine the potential health impacts of mining projects which the Government is aggressively promoting in Indigenous Peoples territories throughout the country.

5.6.3.8 Denial of Indigenous Peoples' right to education

National Government spending on education has fallen from a peak of 4.0% of gross domestic product (GDP) in 1998, to only 2.5% in 2008 - a 14% fall in real terms on what was spent in 1998. In the period 2001-2006, interest payments on debt accounted for an average of 28.1% of the total budget while education only received 15.3 percent.²⁷⁸

Of this decreasing spend, only 0.17% is allocated to the Government's Alternative Learning System (ALS) program, a small portion of which is targeted at the educational needs of indigenous children and adults. Most of this ALS budget is allocated to salaries and infrastructure rather than on developing curriculum that meets the needs of indigenous communities.²⁷⁹ Measures taken to address the special educational requirements of Indigenous Peoples are also grossly inadequate with paltry budgets allocated to focus on the needs of indigenous children and adults who represent over 15% of the population

The UNDP *Philippine Human Development Report 2002* (PHDR) shows that indicators for education are lower than the national averages for provinces in which large populations of Indigenous Peoples are found with corresponding low percentages of high school graduates.²⁸⁰

According to an EEDTFIP study, one out of three indigenous children entering primary school will drop out and fail to graduate. An indigenous person's chance of availing of a secondary school education is around 27 percent, with only 11 percent completing secondary education. College education has a 6 percent entry rate and only about 2 per cent completion.²⁸¹ Illiteracy among the Dumagats, an Indigenous Peoples in Southern Tagalog, and other Indigenous Peoples in Rizal, Quezon, Palawan, Mindoro Oriental and Mindoro Occidental, is estimated to be as high as 60%.²⁸²

The case of Aeta indigenous communities in Botolan, Zambales²⁸³

Following the eruption of Mount Pinatubo in 1991, the Government forcibly resettled the Aeta in vacant lots in the Botolan town proper without access to agricultural lands. No other measures were put in place addressing their plight and access to adequate social services was not ensured. The only livelihood option available to a large percentage of the Aeta is as seasonal hired labor (40%). This is inadequate for a family's basic needs.

As a result of discriminatory attitudes toward the Aeta their indigenous learning systems have been completely ignored by the Government and instead they are required to fit into the mainstream education system to which many have found difficult to adapt.

5.6.4 Protection of Indigenous Peoples' cultural practices

Another area that is of concern is the commercialization of indigenous culture through the conduct of festivals and the failure to respect culturally significant sites, primarily in the context of the promotion of tourism in indigenous communities. Rituals, many of which are sacred and solemn in the culture of Indigenous Peoples, are being performed in these festivals without regard to their sacredness. Some of the festivals where Indigenous Peoples have raised concerns over the abuse of their rituals and the

commercialization of their traditional songs and dances include the Lang-ay Festival in Mountain Province, the Adivay Festival in Benguet and the Panagbenga festival in Baguio City. In Banaue Government promoted tourism is having a major impact on the world famous rice terraces of the Ifugao and their ability to manage their resources and maintain their culture. Instead of addressing a comprehensive sustainable development for the Ifugao's, the Government is tolerating the commercialization of woodcarving which is resulting in the depletion of the local forest resources which are located in the watershed of the Banaue rice terraces. This combined with an influx of tourists and increased water demands has resulted in a shortage of water for rice planting in the terraces, the abandonment of the rice terraces and an erosion in associated cultural practices. At the same time the local Ifugao have benefited little from the influx of tourism in their lands.²⁸⁴

At the level of family Indigenous Peoples' rights are also being impacted. Despite the recognition by the civil code of marriages conducted in customary laws, no specific rules were promulgated to give this effect for Indigenous Peoples. Another illustration of the failure to respect indigenous cultures relates to the imposition of standards in relation to names that can be given to children. Some Indigenous Peoples traditionally only use one name. However, they are currently required by the registry of births to use a surname and a middle name.

5.6.5 Impacts of climate change on Indigenous Peoples' livelihoods

Indigenous communities in the Philippines are already feeling the impacts of climate change. In recent years Indigenous Peoples in the Cordillera mountains have suffered significant loss of crops, which are the main source for their subsistence and their livelihoods, as a result of exceptional cold winters. This, combined with drought during the summer months and typhoons later in the season, threatens the communities' food security.²⁸⁵ The Government instead of taking mitigating measures to address the existing and potential major future impacts of climate change on Indigenous Peoples is instead authorizing the construction of large-scale infrastructure, such as tailing dams, which in the context of increasingly severe weather conditions pose major risks to indigenous communities.

5.6.6 Discriminatory implementation of Millennium Development Goals (MDG)

The manner in which the MDG project is being implemented in the Philippines is discriminatory towards Indigenous Peoples. Its reach and appropriateness in relation to Indigenous Peoples are grossly inadequate. In addition it is premised on development plans which are resulting in serious violations of Indigenous Peoples' rights. The 2006 report of the UNPFII assessing the Philippine Government's MDG report noted that it 'does not mention Indigenous Peoples in the context of the overall report, and rarely mentions them within the individual goals. If Indigenous Peoples are mentioned, they are mentioned in the challenges and priorities for the future section, indicating that their issues are not currently being addressed'. It also pointed out that there was no disaggregated information based on Indigenous Peoples. However, it noted that regional disparities overlapping with indigenous areas, indicated that they were 'suffering from undue poverty and negative health outcomes.'²⁸⁶ The UNPFII report also noted that '*Many indigenous peoples in the Philippines occupy lands with prime resources that the Government would use to jumpstart the economy since the logging industry is no longer environmentally sustainable. This has led to many legal battles regarding mining rights and indigenous land rights, as well as the reoccurring debates on free, prior and informed consent.*'²⁸⁷

Being among the poorest and most lacking in basic services Indigenous Peoples should be among the primary constituents for the MDGs. The Medium Term Philippine Development Plan (MTPDP) 2004-2010 is the Philippine Government stated roadmap for reaching its MDG targets. The Mineral Action Plan is one of the cornerstones of the MTPDP. This fact was reiterated by the President herself in a speech on the MDGs in which she stated that the revitalization of the mining industry was contributing to the realization of the MDGs. As outlined earlier (see section 5.3.2 above) much of the proposed and existing mining operations are located in Indigenous Peoples' ancestral domains. Most of the indigenous

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communities impacted by these mining projects have stated their strong opposition to them. As a result many are witnessing their rights being violated to enable these mining projects to proceed. The provision of basic services is being used as a bargaining tool to obtain community consent for projects. The result is that Indigenous Peoples are being asked, or in many cases forced, to trade their rights for services.²⁸⁸

5.7 Protection of Indigenous Beliefs and Sacred Sites



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5.7 Protection of Indigenous Beliefs and Sacred Sites

ICERD Article 5 (vi) guarantees *‘the right to equal participation in cultural activities’* *‘without distinction as to race, colour, or national or ethnic origin’*. General Recommendation No. 23 (paragraph 4 a) requires that the State *‘recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation’*. A similar requirement to uphold the right to culture is afforded under the ICCPR and the CERD General Recommendation No. 21 on Self Determination. Implicit in the Indigenous Peoples’ right to culture is the right to maintain and practice their belief systems. A fundamental component of the belief systems of many Indigenous Communities in the Philippines is the respect for sacred sites.

Indigenous Peoples throughout the Philippines have maintained their traditional belief systems since time immemorial. This has been unofficially recognized by governments throughout the course of the last century, as is evident in the names of government agencies such as The Bureau of non Christian Tribes. Previous Government agencies adopted an openly discriminatory view of these beliefs, viewing their role as one of modernizing Indigenous Peoples and relieving them of the burden of what they considered to be backward belief systems. As a result Christianity spread to many, but not all, indigenous communities. Estimates hold that approximately 30% of communities are neither Christian nor Muslim, and that many of those 70% of communities that did adopt these new faiths continued to maintain their traditional beliefs along side them. The 1987 Constitution of the Philippines, with its recognition of Indigenous Peoples inherent rights and guarantee of the freedom to exercise and enjoy religious worship, marked a change in the official position of the State towards indigenous beliefs.²⁸⁹

The Indigenous Peoples Rights Act (IPRA) provided the associated legal provisions aimed at ensuring non-discrimination in the exercise of the Indigenous Peoples right to religion. Protection of sacred sites is a core element in upholding this right of Indigenous Peoples. The State therefore committed in the IPRA to respect Indigenous Peoples’ rights to *‘sustainability use, manage, protect and conserve’*²⁹⁰ their sacred sites; and areas of ceremonial value *‘in accordance with their indigenous knowledge, beliefs, systems and practices’*. Furthermore, embodied within the very concept of Ancestral Domains, as recognized under the IPRA, is the recognition that *‘Ancestral lands/ domains shall include such concepts of territories which ... include the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership’*²⁹¹. Indigenous Peoples are guaranteed rights of ownership over their *‘sacred places’*, which must *‘be recognized and protected’*²⁹². Under the IPRA²⁹³ the State is also committed to take *‘effective measures, in cooperation with the ICCs/IPs concerned to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected’* thereby guaranteeing ICCs/IPs their *‘right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites’*. The IPRA’s requirement to obtain that Indigenous Peoples’ FPIC was an element of this protection of their sacred places.

In addition, the Philippines has ratified a range of international treaties which recognize the right to non-discrimination with regards to religious practice including Universal Declaration of Human Rights, ICERD, ICCPR and ICESCR²⁹⁴. Likewise the Convention on Biodiversity and associated Akwé: Kon guidelines require recognition of Indigenous Peoples sacred sites.²⁹⁵ The Philippines also voted in favor of the adoption of the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in September 2007. The requirement for respect of Indigenous Peoples’ sacred sites and spiritual places is specifically addressed in its Articles 12 and 25.²⁹⁶

However, despite this national legal framework and its international obligations, the attitude and practice of the Philippine Government and its agencies has not changed significantly since the days of the Bureau

of Non Christian Tribes. This fact is perhaps most evident in the failure of the Government to afford adequate protection to Indigenous Peoples' sacred sites. A number of cases have been addressed in various sections of the report where this failure to protect sacred sites was evident. They are representative of a widespread practice that threatens to undermine the fabric of many indigenous societies throughout the country.

Philippine cultures, Christian, Muslim and others, give great respect to the dead. Graveyards and burial sites are well preserved and protected. However, within indigenous territories mining and dam construction projects frequently proceed without any provision for the protection of sacred sites or the transfer of bones and burial sites. In Itogon the expansion of the open pit mining operation involved the destruction of burial sites without ceremony or protection. Elsewhere graves have been submerged or otherwise disturbed. For many Indigenous Peoples such ill treatment of the dead is seen as both disrespectful and dangerous to the health and well being of the living community. The following seven cases were identified in the Shadow report consultation process as illustrative of the trend of the Government's failure to protection Indigenous Peoples cultures, beliefs and sacred sites.

5.7.1 Destruction of Subanon's sacred Mount Canatuan

The clear and designated sacred mountain of the Subanon of Mount Canatuan, Siocon Zamboanga del Norte (see Subanon submission to CERD 71st Session currently under consideration under CERD's Early Warning Urgent Action procedure)²⁹⁷ was destroyed by the mining operations of TVI resources. This happened despite the fact that the NCIP and the DENR had both been made aware of its sacredness by the Subanon and were also aware of their opposition to the mining operation years prior to the commencement of TVI's excavation activities. Instead of acting on the Subanon requests they chose to accept the company's report which stated that the mountain was not sacred as there was no archaeological evidence to prove that it was. The Government of the Philippines forwarded this statement of the mining company, stating that the Subanon's claim that Mount Canatuan is their sacred sites is a 'ex post facto political construct', to the ICERD committee as part of its response to the questions posed by CERD under its early warning urgent action procedure at its 72nd Session. This in itself is indicative of the Government's disregard and inadequate processes for ensuring respect for indigenous belief systems.

5.7.2 Threat to Manobo-Pulangiyon sacred grounds

One of the major objections of the Manobo-Pulangiyon to the proposed Pulangi 5 hydro-electric dam (see section 5.3.6.1.1 above) was that their recognized sacred grounds would be submerged²⁹⁸. Despite this threat there was inadequate consultation with them regarding the proposed project, which appears to have been put on hold, and they still remain in the dark in relation to the long term plans for the dam or other potential development projects that could impact on this area.

5.7.3 Threat to Subanen's sacred Mount Pinukis mountain range

The Mount Pinukis mountain range located in the ancestral domain of the Subanen of Midsalip and held sacred by the local and other Subanen is currently under threat from a series of mining applications. In the 1990's as a result of their protests the Subanen were successful in obtaining recognition of the sacred nature of the area from Rio Tinto who subsequently withdrew their mining application. The Government has since opened up the area for mining applications and 7 applications are pending in the area. In 2006 the NCIP facilitated seriously flawed FPIC processes to allow mining activities to proceed against the wishes of the Subanen (see section 5.3.6.2.3 above). It has facilitated similarly flawed FPIC processes allowing mining to proceed in the neighboring ancestral lands of the Subanen of Bayog. Mining in these lands also threatens the Mount Pinukis range. The Subanen believe that any damage caused to the Mount Pinukis range will result in their own death and the destruction of all the surrounding areas.

5.7.4 Damage to Mangyan burial sites

In 1999 Mangyan sacred burial sites were damaged during the exploration activities of Crew Gold now Intex Resources in the ancestral lands of the Mangyan of Victoria, on the island of Mindoro. A scoping exercise conducted for the mining company in 1999 confirmed that '*Mangyans' sacred places will be affected / destroyed by the construction activities*' and '*affected by the project operation*'.²⁹⁹ Nevertheless the NCIP was complicit in the conduct of a seriously flawed FPIC process and permits were subsequently issued by the responsible Government agencies. The Mangyan ancestral domain claimants made it clear in statements at the initial stages of exploration in 1999 that the sacredness of their ancestral domain was the one primary reason for their rejection the mining project.³⁰⁰

5.7.5 Inundation of Ibaloi burial sites

The San Roque Dam which is located on the boundary between Benguet and Pangasinan province in the lands of the Ibaloi and other Indigenous Peoples of Itogon, Central Luzon³⁰¹ began operating in 2003. Its corporate shareholders are Marubeni Corporation and KPIC Singapore Pte Ltd. The Japanese Bank for International Cooperation (JBIC) provided \$400 million in loans to the National Power Corporation. It is the third dam to be built along the Agno River impacting on the Ibaloi. As a result of the earlier dams built in the 1950's the Ibaloi were required to give up their lands. Estimates for the number of people impacted by the San Roque Dam vary. The project management has recognized that at least 660 families from San Manuel; San Nicolas and Itogon who belong to the Ibaloi, Kankanaey and Kalanguya Indigenous People were displaced but has failed to confirm the total number of people displaced. A Friends of the Earth Japan report estimated that the flooding area will impact thousands of '*villagers of the Ibaloi who depend on the Agno River basin upstream of the dam*' with the sediment '*eventually burying their ancestral lands, including their homes, rice terraces, orchards, pasture lands, gardens and burial grounds*'.³⁰² Erosion and flooding resulting in the destruction of rice fields and fisheries and loss of gold panning opportunities are expected to impact on the livelihoods of thousands more indigenous people downstream from the dam. The Ibaloi communities allege that the construction of the San Roque Dam was allowed to proceed despite the clear and sustained objections of local Indigenous Peoples and without their Free Prior Informed Consent. A core reason for the objection of these communities to the construction of the dam was based on the fact that their gravesites and burial areas would be inundated. Elsewhere in Itogon the Ibaloi report the inclusion of know burial sites and graves within the Antamok open-pit mining operations of Benguet Corporation. The submissions allege that in the period 1989-1996 many of these burial sites were excavated and destroyed by these mining operations, but complaints lodged with the Government have never been addressed.

5.7.6 Intrusion into Buhid Mangyan sacred areas

The Department of Agrarian Reform (DAR) stands accused of intrusion into the lands of the Buhid Mangyan of Mindoro (see section 5.2.6 above) without their consent and of facilitating the entry of non Mangyan settlers. It is also accused of intrusion into the Buhid Mangyan's sacred places and burial grounds in violation of their customs and practices.³⁰³ The non Mangyan's, introduced to the area by the DAR, are also alleged to have violated sacred areas.

5.7.7 Destruction of Manobo burial grounds

A logging company, SUDECOR, which was operating illegally in the lands of the Manobo Tribes in Lanuza, San Miguel and Tandag, Surigao del Sur, Mindanao (see section 5.5.4 above) bulldozed a sacred Manobo burial ground in the process of constructing a road. In reaction the community launched a major campaign, which included the setting up human barricades to stop the logging operation. A DENR investigation prompted by these protests confirmed the destruction within the burial grounds. However, it set aside the issue of desecration of sacred grounds and cleared SUDECOR of any violations committed.

6 Part III - Conclusion and Recommendations to Philippine Government

6.1 Conclusion

In 1997, at the time of the last report of the Philippine Government to the CERD, the Government was on the point of enacting the Indigenous Peoples Rights Act (IPRA). This law promised to overturn the historical marginalization, land loss and impoverishment and injustice experienced by Philippine Indigenous Peoples. Indigenous Peoples were promised that the IPRA would address land loss not only at the hands of officially unauthorized settler encroachment and corporate exploitation, but also directly at the hands of the Government through the expropriation of lands for military reservations, schools, government farms, dams, ranch lands, urban expansion and other public works as well as the licensing out of indigenous lands to unwanted logging and mining operations, plantation agriculture and tourism development. During the 12 years of the IPRA's existence the reality is that the taking of indigenous lands for these activities and the effective extinguishment of their land rights and violations of other collective rights has continued unabated. The government's interpretation of the IPRA, which continues to subordinate Indigenous Peoples' ancestral domain rights to the Regalian doctrine and grants to mining companies the power to assert prior rights over Indigenous Peoples' lands, serves to legitimize these ongoing violations of Indigenous Peoples' rights. The overwhelming conclusion emerging from the consultations with Indigenous Peoples is that the IPRA has been interpreted and implemented from the perspective of a national government driven primarily by corporate interests, as opposed to the demands, interests and needs of Indigenous Peoples.

There is as a result a massive loss of confidence in NCIP, and in the Government in general, in relation to upholding Indigenous Peoples' rights. This was evident throughout the regional and national consultations conducted for this Shadow report. Rather than be a support for, or even less a champion of, Indigenous Peoples' rights, the National Commission on Indigenous Peoples (NCIP) has become one of the major burdens upon Indigenous Peoples in their struggle to have their rights respected. The NCIP is regarded as lacking transparency and accountability and being inefficient, ineffective and dysfunctional. It is also widely accused of betraying Indigenous Peoples' interests and rights in the service of private business interests and corrupt government officials, including those within the NCIP, through the exploitation of indigenous lands and resources. After 12 years of existence it has become increasingly apparent that rather than being part of the solution, the NCIP is in fact a major contributor to the problem of de-facto discrimination against Indigenous Peoples. Many indigenous organizations now proclaim their total loss of confidence in the NCIP and call for it to be replaced, with government responsibilities towards Indigenous Peoples reorganized to introduce effective checks and balances necessary to ensure greater representation of and accountability to Indigenous Peoples. The loss of credibility of, and confidence in, the NCIP are such that replacing it by a new structure, more accountable to and more representative of Indigenous Peoples, is necessary. The failures of the NCIP and the Government, particularly the subordination of indigenous rights to commercial interests, are manifested in discriminatory interpretations of the law and the repeated revisions of the NCIP's Implementing Rules and Regulations. It is felt that these failures have reached such a degree that the manner in which the IPRA is currently being implemented and interpreted is in direct contradiction with the laws original intension and purpose.

6.2 Recommendations to Philippine Government

6.2.1 *Overarching recommendations:*

1) Acknowledge, as a necessary first step to addressing the serious issues facing Indigenous Peoples, that Indigenous Peoples are suffering from serious discrimination which is manifested in various forms, including in their dealings with a wide range of State officials, Government agencies and institutions, the courts including the Supreme Court, and the military.

2) Initiate an in-depth credible and independent review, primarily involving Indigenous Peoples, of all laws that relate to them, including contentious provisions of the IPRA and its implementing guidelines and those laws that are alleged to be in conflict with rights recognized under the IPRA, ICERD and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international human rights treaties, standards and instruments. Laws, administrative guidelines and policies that are in violation of the collective rights of Indigenous Peoples and are not compatible with their diverse customary laws and practices should be repealed or amended. Where any ambiguity exists that may threaten the viability of their environment, economy, values or social cohesion of Indigenous Peoples, laws should be interpreted a precautionary manner in favor of Indigenous Peoples.

3) Work in cooperation with the UN and other bodies, to introduce education modules on racial discrimination and equality issues for all Philippine government employees.

6.2.2 *Land rights recommendations:*

4) Recognize and uphold the prior rights of Indigenous Peoples and revoke discriminatory legislation and doctrines which serve to deny these rights.

As noted by the UN Special Rapporteur on the Fundamental Freedoms and Human Rights of Indigenous Peoples, Professor Stavenhangen:

‘resolving land rights issues should at all times take priority over commercial development. There needs to be recognition not only in law but also in practice of the prior right of traditional communities. The idea of prior right being granted to a mining or other business company rather than to a community that has held and cared for the land over generations must be stopped, as it brings the whole system of protection of human rights of indigenous peoples into disrepute. Bringing justice to indigenous communities in the area of land rights is the great historical responsibility of the present Government of the Philippines’.

In line with the 1987 Constitutional requirement to recognize and promote the rights of Indigenous Peoples, the jurisprudence of the Cariño case and the IPRA’s recognition of native title and pre-conquest rights to lands and domains,³⁰⁴ the Government should as recommended by the UN Special Rapporteur on Indigenous Peoples recognize and uphold the prior rights of Indigenous Peoples particularly to their lands, territories and natural resources. It should also critically review all laws and policies which serve to deny these prior rights such as Section 56 of the IPRA and all laws espousing the legitimacy of the Regalian Doctrine in ancestral domains. The objective of this review should be to arrive at a framework of laws that upholds and protects the rights of Indigenous Peoples. This framework must recognize and incorporate indigenous concept of land and property relations, such that steps should be undertaken to strengthen these concepts and practices. Specifically the Government should:

- a. end the contradictory practice of interpreting Section 56 of the IPRA as granting to mining companies the power to assert prior rights over Indigenous Peoples’ (the traditional owners/occupiers of the land) ancestral lands.

- b. remove Section 78 of IPRA which discriminates against the Ibaloi of Baguio City as it excludes the area from the coverage of the IPRA.
- c. recognize the inapplicability of the Regalian doctrine to ancestral domains in accordance with the precedent setting 1909 Cariño case.

5) Reform cumbersome, expensive and bureaucratic procedures associated with titling of ancestral domains addressing the unacceptably long timeframes and the financial cost. The burden of proof placed on Indigenous Peoples in the CADT application process should be significantly reduced and recognition and respect afforded to Indigenous Peoples' customary practices in identifying territorial boundaries. Develop appropriate guidelines for the conversion of other existing titles to CADTs and guarantee that the rights of indigenous communities that do not apply for CADT's are not discriminated against, by eliminating the current trend towards the extinguishment of indigenous rights in cases where communities chose not to, or otherwise fail to, apply for government issued titles for their ancestral domains.

6) Ensure in line with UNDRIP Article 28 that restitution or, where this is not possible, compensation in the form of lands, territories and resources or other appropriate means of redress acceptable to the impacted Indigenous Peoples is provided for those displaced from or deprived of their ancestral lands by the Government or other actors without their FPIC.

6.2.3 Self-determination, self-determined development and FPIC recommendations:

7) Ensure genuine participation of Indigenous Peoples in the decision-making processes in matters affecting their lives and that agencies responsible for upholding Indigenous Peoples' rights are representative of and accountable to Indigenous Peoples and have adequate participatory oversight mechanisms in place.

To address the serious deficiency in transparency, participation, credibility, capacity and political will to implement the IPRA and uphold Indigenous Peoples' rights, it is imperative that existing structures, in particular the NCIP and its 'Indigenous Peoples Consultative Bodies', be replaced with new structures considered appropriate by Indigenous Peoples. These bodies / structures have to be more accountable to and more representative of Indigenous Peoples and provided with adequate financial and technical assistance. Indigenous Peoples themselves must participate in and oversee decision-making processes and have access to effective complaint mechanisms designed to uphold their rights which provide for punitive actions against corrupt and deficient officials. A broad participation of elders and leaders selected by Indigenous Peoples themselves through their own traditional processes is necessary for this to be achieved. Participation of other individuals, groups, organizations and institutions should also be provided for as deemed appropriate by Indigenous Peoples.

8) Ensure meaningful and genuine implementation of the right to free, prior and informed consent. As recommended by the UN Special Rapporteur on Indigenous Peoples, a different and 'broader structure' than the NCIP is necessary 'to determine and certify prior, free and informed consent by Indigenous Peoples'. This structure should be developed in accordance with the principle outlined in the previous recommendation guaranteeing the participation of Indigenous Peoples and those chosen by them through their own processes. This is a necessary component to ensure credible FPIC processes which guarantee respect for indigenous institutions and customary practices and decision making processes, ensure independent accurate information, reduce undue influence and bribery and provide adequate grievance mechanism and redress for violations inherent in or flowing from flawed FPIC processes.

This broader structure should develop new FPIC implementing rules and regulations / guidelines such that they are in accordance with the spirit and letter of the IPRA, Indigenous Peoples diverse customary laws and practices, CERD's General Recommendation no. 23 and the principles, substance and processes

as documented by the UN Permanent Forum on Indigenous Issues. These guidelines currently fail to adhere to the intent of the IPRA, by imposing restrictions on the time, manner and process of obtaining the FPIC that are not in conformity with the customs, laws and traditional practices of indigenous communities. Until such a time as the guidelines are revised to be consistent with Indigenous Peoples' rights all FPIC processes should be suspended or postponed.

9) Ensure, as prescribed under IPRA Section 59, that no certificates of precondition for commercial/industrial development are issued while CADT applications are pending.

10) Ensure strategies, policies and programs with the objective of national unity and development are fully consistent with Indigenous Peoples' rights. Review the implementation of the concept of national unity and development as it pertains to Indigenous Peoples and reformulate national development policies and strategies in a manner that is not in conflict with Indigenous Peoples' rights and is consistent with the principles of the Declaration of the 1993 Vienna Conference on Human Rights (i.e. that human rights can never be legitimately subordinated to national development or deferred while this is being pursued). Indigenous Peoples full and effective participation should be guaranteed in the identification, formulation and implementation of national development policies and programs that impact on their rights and interests. Their right to give or withhold their FPIC for the implementation of these projects should be respected. Development strategies should capitalize on the strength and wealth of diversity rather than treating it and its associated worldviews as something that can be sacrificed in the name of development. In line with this the Government, especially local governments, should recognize and promote self-determined development plans of local indigenous communities and likewise ensure that Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs) are culturally appropriate self-determined development plans rather than externally imposed investment roadmaps designed to suit the needs of corporations.

6.2.4 Militarization and civil and political rights recommendations:

11). Take steps to implement the recommendations of UN Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous Peoples, Professor Rodolfo Stavenhagen and UN Special Rapporteur on Extra-judicial Killings, Professor Philip Alston, in relation to the violations of Indigenous Peoples' rights by the military. In line with these recommendations the government should:

- a. cease and desist from using paramilitary units in indigenous territories and demilitarize indigenous territories. All paramilitary groups operating in indigenous territories should be dismantled. Any stationing of military troops in indigenous territories should be subject to the authorization of indigenous authorities through their own decision-making and consultative processes in keeping with their right to FPIC under the IPRA (chapter II section 3g) and rights under Article 30 of the UNDRIP.
- b. immediately halt the use of military, police, paramilitary or any other armed groups to suppress indigenous communities and individuals objecting to development projects in their lands and revoke its policy of using 'Investment Defense Forces' in Indigenous Peoples lands.
- c. *'carry out a prompt and effective investigation of the numerous human rights violations committed against Indigenous Peoples, which have been documented by human rights organizations and special fact-finding missions...take all necessary measures to prevent a recurrence of human rights violations'* and ensure that *'maximum protection be afforded to human rights defenders in carrying out their legitimate human rights work'*.³⁰⁵ In this regard the Government should take urgent measures to surface James Balao, an indigenous activist and founding member of the internationally respected Indigenous Peoples organization, the Cordillera Peoples Alliances (CPA), who was abducted in September 2008.

- d. ensure that all those responsible for abuses of Indigenous Peoples human rights, including officers under whose command such abuses occur, be prosecuted.
- e. stop the practice of labeling and vilification of Indigenous Peoples operating in legal and legitimate organizations, such as B'laan leader Kerlan 'Lala' Fanagel of the Confederation of Lumad Organizations in Southern Mindanao Region (PASAKA) and those supporting them, and eliminate the associated 'order of battle' lists that endanger their lives and their supporting.

12) The government should abandon all elements of its counter-insurgency program that are resulting in violations of Indigenous Peoples' rights. As emphasized by the UN Special Rapporteur on Indigenous Peoples, the current program has resulted in serious violations of Indigenous Peoples collective and individual rights. It has also failed to adhere to the Government's human rights and humanitarian obligations under international standards such as the Fourth Geneva Convention, and the Government of the Republic of the Philippines and the left-wing National Democratic Front of the Philippines' Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CAHRIHL). The government should also ensure the implementation of Indigenous Peoples' right to special protection and security in periods of armed conflict as recognized under the IPRA (Section 22).

6.2.5 Access to Justice recommendations:

13) Provide effective mechanisms for access to justice, address the numerous complaints of human rights violations. The government should act on the recommendations of the UN Special Rapporteurs on Indigenous Peoples and on Extra-Judicial Killings that:

- a. *'the Philippine judiciary fully respect the legislative intent and spirit of IPRA and ensure that maximum favor be accorded to Indigenous Peoples in resolving the issue of conflicts of law between IPRA and other national legislation such as the 1995 Mining Act. Moreover, special training programmes should be designed for judges, prosecutors and legal defenders regarding Indigenous Peoples' rights and cultures'*.³⁰⁶
- b. it uphold the requirement under the IPRA and the related provisions of the 1987 Constitution to respect and act on rulings of indigenous institutions taken under their customary laws. It should also ensure that obstacles to access to mainstream judicial systems are addressed with a fund for legal aid established and bureaucratic procedures made accessible for Indigenous Peoples.
- c. it should address the distortion of the criminal justice system by stopping the abusive use of lawsuits against Indigenous Peoples and their supporters to silence opposition to unwanted projects. It should also ensure that Government officials whose actions result in violations of Indigenous Peoples' rights are held to account
- d. *'the National Commission on Human Rights (NCHR) expand its activities in the area of indigenous rights and incorporate and train an increasing number of indigenous legal defenders to be active in taking up the human rights grievances of Indigenous Peoples.'*³⁰⁷ A dedicated and adequately funded Indigenous Peoples desk, staffed by Indigenous Peoples themselves, should be established in the NCHR to give effect to this recommendation.

6.2.6 Economic, social and cultural rights recommendations:

14) Provide basic services to Indigenous Peoples in a culturally appropriate manner and implement required special measures required to do this.

As recommended by the UN Special Rapporteur on Indigenous Peoples, the Government should ensure that 'adequate basic social services, including housing, education, health, food and drinking water, be made available to all Indigenous Peoples in the country to the maximum extent possible'. It should take the appropriate special measures as required under the IPRA Sections 23, 25 and 34 to address the specific needs of Indigenous Peoples and implement these through participative processes in accordance with Indigenous Peoples' rights and interests.

15) Disaggregated data on the situation of Indigenous Peoples should be gathered in a culturally sensitive and appropriate manner as an aid to monitoring progress towards the aforementioned goal.

16) Uphold the right of Indigenous Peoples to establish and control their own educational systems. As recommended by the UN Special Rapporteur on Indigenous Peoples '*the rights of indigenous peoples be a standard linchpin of all human rights education programmes at all levels of formal schooling, as well as in non-formal education*'. In addition the Government should take the measures to uphold and implement the Indigenous Peoples right, recognized in the IPRA, 'to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning' providing adequate financial and technical assistance for this to be achieved.

17) Afford adequate protection to Indigenous Peoples sacred sites. Eliminate discrimination with regard to indigenous religions and beliefs and develop in conjunction with Indigenous Peoples guidelines for the establishment of mechanisms and policies necessary for the effective recognition and protection of their religious, cultural and spiritual rights, including their sacred sites.

6.2.7 Recommendations to the international community

18) Home country governments of transnational mining companies and financial institutions that support them such as Canada, Australia, Norway and the United Kingdom should be encouraged and assisted to establish binding frameworks providing for extraterritorial regulation of their companies, in line with the international obligations of those states, ensuring access of impacted indigenous communities to courts and other effective mechanisms of redress within their jurisdiction.

19) All UN specialized agencies and in particular the World Bank Group should be called upon to review and update their policies to be in compliance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), specifically reflecting the provisions of its Article 32, requiring Free Prior Informed Consent as opposed to the Bank's current inadequate standard of Free Prior Informed Consultation. Funding of projects should only proceed in cases where they are consistent with the rights of Indigenous Peoples articulated in the UNDRIP.

20) As called for in the 8th Session of the UN Permanent Forum on Indigenous Issues, the World Health Organization (WHO) should consider conducting a study on the impact of cyanide and heavy metals on the right to health of Philippine indigenous and local communities impacted by mining. UNESCO, with the assistance of other relevant UN bodies and individuals (e.g. Special Rapporteur on Freedom of Religion and Belief), should consider addressing the issue of discrimination with regard to indigenous religions and beliefs in an effective manner and providing guidelines for the establishment of mechanisms and policies necessary for the effective recognition and protection of religious, cultural and spiritual rights, including their sacred sites. Where requested to do so by indigenous communities, the relevant UN Agencies could assist in the monitoring and provision of independent information in FPIC processes.

6.2.8 Recommendation in relation to Muslim People's issues

This Shadow report concentrated on highlighting some of the grave concerns of Indigenous Peoples which are predominantly from the animist tradition and who nowadays often include Christianized sectors in their populations.

In addition to these Indigenous Peoples, there also exists a substantial population of Indigenous Peoples living within Islamic traditions. These groups, are located in the south and southwest of the Philippines, and are often collectively referred to as Moro. They too are victims of sustained and grave discrimination and neglect. A war of resistance, based on asserting their right to self determination and independence, has raged across the southern Philippines for nearly 40 years. Much of the Philippine military is deployed in Mindanao to conduct this war and reports of atrocities are widespread.

The Government's report on matters relating to Moro Mindanao is scant and confined to theoretical aspirations. Its statements bear little relation to the realities of life for Muslims in the southern Philippines. For example, in 2000 the Philippine Government launched a major military campaign in Mindanao that terminated peace negotiations and resulted in the killing of thousands and displacement of hundreds of thousands of Muslims. Most of those killed and displaced were Maguindanao and Maranao Peoples. Military actions were also directed against Tausug Yakan and other groups. These Government actions inflamed anti Muslim sentiments both in Mindanao and elsewhere in the Philippines. The current Government report makes no mention of these grave matters. This and subsequent escalations in hostilities have been a major cause of concern to the international community and are the basis of significant relief and rehabilitation program supported by a range of Governments and UN agencies.

In more recent times there have been extensive on / off negotiations with political fronts of the Moro Peoples, nominally aimed at bringing a lasting settlement to the conflict in the southern Philippines. Some of the repercussions from these negotiations, as they affect other non Muslim Indigenous Peoples, are referred to in this Shadow report. However the numerous and complex issues raised by the "peace" negotiations are not addressed. The submitting organizations are deeply disturbed by the failure of the government to address these issues. We believe that CERD should, as part of it's follow up to the current report, highlight the absence of adequate coverage of the Moro question and invite a further report by the Philippine government. That report should be focused upon these issues and should be accompanied by comments from civil society organizations, particularly those based in the Moro regions of the Southern Philippines.

7 Acronyms

ADSDPP	Ancestral Domain Sustainable Development and Protection Plans
AFP	Armed Forces of the Philippine
ALAMARA	Alsa Masa-Lumad Movement
ALG	Alternative Law Group
ALSON	Alcantara and Sons
ANTHROWATCH	Anthropology Watch, Inc.
APJR	Action Program for Justice Reform
ARMM	Autonomous Region in Muslim Mindanao
BFI	Bukidnon Farm Industries
BJE	Bangsamoro Juridical Entity
BPI	Bureau of Plant Industry
BULIF	Bungkatol Liberation Force
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CAFGU	Civilian Armed Forces Geographical Unit
CAFOD	Catholic Agency for Overseas Development
CALT	Certificate of Ancestral Land Title
CAR	Cordillera Administrative Region
CARHRIHL	Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CERD	Convention on the Elimination of all forms of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CFSA	Certification of Forest Stewardship Agreement
CHR	Commission on Human Rights
CLOA	Certificate of Land Ownership Awards
CMU	Central Mindanao University
CNI	Commission on National Integration
CoE	Council of Elders
COSLAP	Commission on the Settlement of Land Area Problems
CPA	Cordillera Peoples Alliance
CPLA	Cordillera Peoples Liberation Army
CSO	Civil Society Organizations
CVO	Civil Volunteer Organizations
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DESAMA	Didipio Earth-Savers' Multi-Purpose Association
DLR	Department of Land Registration
AEDI	Asian Evergreen Development Incorporated
EED/TFIP	Evangelischer Entwicklungsdienst Philippine Partners' Task Force for Indigenous Peoples' Rights
EIA	Environmental Impact Assessment
EIM	Environmental Investigatory Mission
EIR	Extractive Industry Review
EITI	Extractive Industry Transparency Initiative
EJK	Extra-judicial killings
EO	Executive Order
ESCR	Economic, social and cultural rights
ESIA	Environmental and Social Impact Assessment
FPIC	Free, Prior, Informed Consent

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FTAA	Financial Technical Assistance Agreement
GAMI	Geotechniques and Mines Inc
GDP	Gross Domestic Product
GM/Bt	Genetically modified/Bacillus thuringiensis
GRP	Government of the Republic of the Philippines
GURT	Genetic Use Restriction Technology
HB	House Bill
HEDCOR	Hydro Electric Development Corporation
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCs/IPs	Indigenous Cultural Communities/Indigenous Peoples
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of all forms of Racial Discrimination
ICESR	International Covenant on Economic Social and Cultural Rights
IDF	Investment Defense Forces
IFC	International Finance Corporation
IFMA	Industrial Forest Management Agreement
ILO	International Labour Organization
IPRA	Indigenous Peoples' Right Act
IPRM	Indigenous Peoples' Rights Monitor
IP/s	Indigenous Peoples
ICHR	Irish Centre for Human Rights
IPCB	Indigenous Peoples Consultative Bodies
IPO/s	Indigenous Peoples Organizations
IRR	Implementation Rules and Regulations
ITPLA	Industrial Tree Plantation License Agreement
IWGIA	International Working Group on Indigenous Affairs
JBIC	Japanese Bank for International Cooperation
JURIS	Justice Reform Initiatives Support Project
KALUMARAN	Kusog sa Katawhang Lumad sa Mindanao
KAMP	Kalipunan ng mga Katutubong Mamamayan ng Pilipinas/National Federation of Indigenous Peoples in the Philippines
KASAPI	Koalisyon ng Katutuobng Samahan ng Pilipinas/National Coalition of Indigenous Organizations in the Philippines
KKINAMATTA	Kibalagon, Kisanday, Narukdukan Manobo-Talaandig Tribes Association
KKK	Kilusang Kabuhayan at Kaunlaran
LCMC	Lepanto Consolidated Mining Company
LGC	Local Government Code
LGU/s	Local Government Units/s
LRA	Land Registration Authority
LRC-Ksk/FOE Phils.	Legal Rights and Natural Resources Center – Kasama sa Kalikasan/Friends of the Earth Philippine
MAP	Mineral Action Plan
MDG	Millennium Development Goals
MGB	Mines and Geosciences Bureau
MILF	Moro Islamic Liberation Front
MIPCD	Mindanao Indigenous Peoples Conference for Peace and Development
MOA	Memorandum of Agreement
MOA-AD	Memorandum of Agreement – Ancestral Domain
MPSA	Mineral Production Sharing Agreements
MTPDP	Medium Term Philippine Development Plan
NCHR	National Commission on Human Rights
NCIP	National Commission on Indigenous Peoples
NEDA	National Economic and Development Authority

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NGOs	Non-government organizations
NIPAS	National Integrated Protected Area System
NISP	National Internal Security Plan
NISP-IP	National Internal Security Plan for Indigenous Peoples
NPA	New Peoples Army
NSO	National Statistics Office
OECD	Organization for Economic Cooperation and Development
ONCC	Office for Northern Cultural Communities
OSCC	Office for Southern Cultural Communities
PAMB	Protected Area Management Board
PANAMIN	Presidential Assistant on National Minorities
PANLIPI	Tanggapang Panligal ng Katutubong Pilipino/Legal Assistance Center for Indigenous Peoples
PASAKA	Pasakaday Salupongan Kalimudan/Confederation of Lumad Organizations in Southern Mindanao Region
PENRO	Provincial Environment and Natural Resources Officer
PD	Presidential Decree
PHDR	Philippine Human Development Report
PhilDHRRA	Philippine Partnership for the Development of Human Resources in Rural Areas
PIPLinks	Philippine Indigenous Peoples' Links
PNP	Philippine National Police
QUEMTRAS	Quezon Manobo Tribal Association
RHO	Regional Hearing Officers
RTNMC	Rio Tuba Nickel Mining Corporation
SAPO	Save Apayao Peoples Organization
SDA	Sacobia Development Authority
SII	Silvicultural Industries, Inc.
SLAPP	Strategic Lawsuits Against Public Participation
SRMI	San Roque Metals, Incorporated
STARM	Save the Abra River Movement
SUDECOR	Surigao Development Corporation
Tebtebba	Tebtebba, Indigenous Peoples' International Centre for Policy Research and Education
TLA	Timber License Agreement
TMC	Taganito Mining Corporation
TNC	Transnational Corporation
TVI	Toronto Ventures Incorporated
UN	United Nations
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNSR	United Nations Special Rapporteur
WHO	World Health Organization
WWF	World Wide Fund for Nature

8 Appendix 1 Table of Communities Consulted and Addressed in the Report

Community	Issues for Section Map	Report Section(s)
Ifugao of Didipio, Kasibu, Nueva Vizcaya, Didipio	Mining, FPIC not sought, Legal suits used to suppress community opposition, Evictions, Destruction of rice fields and citrus crops, Shooting, Discriminatory Supreme Court Ruling	Self Determination, Access to Justice
Ibalois of Itogon, Benguet	San Roque Dam and Mining, Large scale displacement and flooding of ancestral land, Destruction of livelihoods upstream and downstream, Threat to sacred site and burial groups	Sacred Sites, Livelihoods
Ifugao of Banaue, Ifugao	Tourism, Impact on culturally significant rice terraces and indigenous culture, Impact on watershed, water resources and livelihoods	Livelihoods
Calamian Tagbanua of Coron, Palawan	Delay's in titling of lands and processing of CADT, Rights to ancestral waters	Land Rights
Mangyan Tagabukid of Sibuyan Island	Mining, FPIC process involving creation of new IP groups, Impact of mining on ecology and Payment for Environmental Services, Delayed processing of CADT and exclusion of mining areas from ancestral lands, Strategic Lawsuit Against Public Participation	Access To Justice
Aetas of Bamban Tarlac	Military bases, Industrial Development Zone, Lack of redress and land restitution, Delays in processing land claims	Land Rights
Molbog and Palaw'an of Balabac, Southern Palawan, Palawan Island	Industrial Pearl Farming, Denial to access to ancestral waters, Declaration of protected area without FPIC, Intimidation and harassment, livelihood impacted	Land Rights
Carino and Ibaloy of Baguio	Military reservation, Special Economic Zone, Lack of redress and land restitution, Discriminatory Provision of IPRA re Baguio City, Failure to Enforce Supreme Court ruling recognizing Native Title	Land Rights, Access to Justice
Aetas of Zambales	Livelihoods, food security, education	Livelihoods
Dumagat of General Nakar, Quezon, Southern Tagalog	Illiteracy, Access to Education	Livelihoods
Kalinga of Lowland Kalinga	Genetic Use Restriction Technology, Impacts to biodiversity, Livelihoods, Food security	Livelihoods
Indigenous Peoples of Abra River basin	Mining, Impacts Health, water and livelihood impacts (including intergenerational impacts), lack of health impact assessments and strategic analysis of cumulative impacts, loss of biodiversity,	Livelihoods
Binongan of Baay-Licuan, Abra	Gold Mining, Non Recognition of existing of indigenous peoples, Militarization and labelling of indigenous leaders as communist rebels, Local Government v/s Traditional System, Mining company giving gifts during FPIC process	Self Determination, Militarization
Maeng of Pananuman, Tubo	Militarization; Threats, Shelling and Bombardment, Intimidation, Harassments, Hamletting; Restriction of freedom of movement; Illegal searches of homes; Setting up military detachment without FPIC, Mining Applications	Militarization
James Balao of Baguio	Enforced disappearance with suspected military involvement, Inadequate investigation, Threats	Militarization
Alangan and Tadyawan Mangyans of Victoria, Mindoro Oriental	Nickel Mining, Creation of new tribe by NCIP; Mining company paying for titling for this tribe, Flawed FPIC process provision of funds to select community members during FPIC process, Potential Impact on Watershed, Burial grounds damaged, Militarization, Declaration of protected area without FPIC	Self Determination, Land Rights, Sacred Sites

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Community	Issues for Section Map	Report Section(s)
Inseg, Ibaloi, Kankanaey, Kalingas of Conner Apayao	Gold and Copper Mining applications, Flawed FPIC process, Militarization, Intimidation, Exclusion of traditional elders from decision making, Inaction on petitions and complaints	Self Determination, Access to Justice
Palaw'an of Bataraza, Palawan	Limestone quarry for Nickel processing plant, Non Recognition of Indigenous People, Private lands given precedence over Ancestral Domain, Lack of benefits to Indigenous communities after 30 years of mining	Self Determination
Kankanaey-Bago of Kayapa of Bakun	Hydro Project, Flawed FPIC process, Inadequate protections for community under agreement with company, Lack of compensation for damages caused, Vulnerability of community due to lack of basic services and infrastructure	Self Determination
Kankanaey and Igorot of Mankayan, Benguet	Mining expansion, Certification Issued with no FPIC despite being in ancestral lands, militarization and intimidation of communities and organizations	Self Determination, Militarization
Kankanaey of Gambang, Bakun	Gold and copper Mining, FPIC process manipulation, NCIP ignoring communities certificate of rejection of proposed mining, Inadequate investigation by NCIP	Self Determination
Subanon of Mt Canatuan, Siocon, Zamboanga del Norte	Gold and Sulphide Mining, lack of FPIC and creation of new representative bodies, destruction of sacred site, use of paramilitary groups and HR Violations, Failure to uphold rulings under customary law, Cases not processes by courts	Self Determination, Access to Justice, Sacred Sites, Militarization
Manobos of Quezon, Bukidnon	Plantation, Use of legal suits to suppress opposition, ineffectiveness of CADC for protection of land rights, harrassment and violence by company security forces	Access To Justice
T'boli tribe of Barangay Ned, Lake Sebu, South Cotabato	Logging and coffee plantation encroachment, Displacement, Intimidation and violence, Failure to recognize land rights, Conflicting tenurial insturments, Overlapping jurisdiction of government agencies	Land Rights
B'laan of Columbio, Sultan Kudarat	Sugar cane plantations and Mining, Failure to recognize land rights, Conflicting tenurial insturments, Overlapping jurisdiction of government agencies, Discriminatory Supreme Court Ruling	Land Rights, Access to Justice
Manobo-Talaandig of Maramag, Bukidnon	Educational reserve, Failure to ensure restitution / reconveyance, Harassment, Displacement, use of legal mechanisms to prevent realization of indigenous land rights	Land Rights
Daguiwa-as clan, Manobo of Don Carlos, Bukidnon	Industrial farming encraoched on ancestral lands, Displacement, Violence, shooting and killings, Failure to enforce Supreme Court Ruling affirming land rights, Lack of redress, Distribution of lands to outsiders	Access To Justice
Talaandig of Talakag, Bukidnon	Private land owner occupying ancestral land, Strategic Lawsuit Against Public Participation, Courts ignoring indigenous land rights and titles	Land Rights
Erumanen ne Menuvu of Midsayap, Cotabato	Reservation and plantation of Bureau of Plants and Industry, Ignoring of long standing opposition and complaints, Lack of land restitution and redress, Financial obstacles to CADT application	Livelihoods
Tiduray of Upi, Maguindanao	Armed conflict with MILF, Livelihoods, Displacement, Food security, social services	Livelihoods
B'laan of Saranggani	Impacts of GMO on food security, livelihoods and culture, Potential long term impacts on cultural and economic survival	Livelihoods

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Community	Issues for Section Map	Report Section(s)
Mandaya and Mansaka of Baganga, Cateel and Boston, Davao Oriental	Investment Defense Force for mining, hydro and plantations, Evacuations, Military encampment, Ariel bombings, Torture, Labelling as communist rebels	Militarization
Ata-Manobos of Talaingod, Davao del Norte	Logging; Hydro power and mining applications; Counter Insurgency operations; Long running legal harrassment of leaders; Bombardments	Militarization
Bagobo-K'lata of Sitio Kahusayan, Barangay Manuel Guiangau, Calinan, Davao del Sur	Extrajudicial Killing of indigenous leader, Threats and harrassment, Private individual taking ancestral lands and denying community access to them, Impacts on livelihoods, Paramilitary involvement, Inadequate investigation	Militarization
Ata Matigsalugs of Compostela, Compostela Valley	Militarization, Mass evacuation; Torture, Lack of FPIC for Migrant Groups	Militarization
Manobo of Emerald, Surigao del Sur	Coal Mining, Flawed FPIC process, Forced evacuation; Military use of schools and public places; Use of community members in military operations as guides, destruction of livelihoods, Refusal of military to sign agreement with community	Militarization
Tagabawa of Sitio Tudaya, Barangay Sibulan, Stanta Cruz, Davao del Sur	Hydro Dam enchoachment on sarcred area and natural park, Flawed FPIC process, MOA , Military encamped in community houses;	Militarization
Ata-Matigsalug of San Fernando, Bukidnon	Military and paramilitary harrasement of elderly female indigenous leader, Inaction on complaints files with CHR and NCIP	Militarization
B'laan Leader in Davao	Military posting of Wanted Dead or Alive poster with photo of indigenous leader secretary general of legitimate indigenous organization, Inadequate investigation	Militarization
Mandaya of Caraga, Davao Oriental	Granting of forestry licence without FPIC, Delay in proceesing ancestral domain claim, Issuance of licence while CADT is pending, Violations of customary law, NCIP reorganization of Tribal Council	Self Determination
Manobo of Lanuza, San Miguel and Tandag, Surigao del Sur	Illegal logging operation, Direct Action and barricades, destruction of burial sites, flawed ruling by government agency, harrassment, killing of community member, NCIP failure to act on class suit	Self Determination, Access to Justice, Sacred Sites
Manobo-Pulangiyan of Damulog and Kibawe, Bukidnon and Cotabato	Plans for large scale dam; Inadequate consultation with indigenous community, Threat to sacred site; Displacement due to previous dams,	Self Determination, Sacred Sites
Subanen of Bayog, Zamboanga del Sur	Mining (Iron Ore and other minerals), Flawed FPIC process, Failure to uphold rulings under customary law. Leader receiving death threats and home burnt down	Self Determination, Access to Justice
Manobo-Mamanwa, Barangay Tagmamarkay, Tubay, Agusan del Norte	Mining, no consultation or FPIC, Intimidation, Harassment, Destruction tribal hall and homes, Lack of response of government agencies to communities pleas and complaints	Self Determination

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Community	Issues for Section Map	Report Section(s)
Subanen of Midsalip, Zamboanga del Sur	Mining and logging, Ignoring of communities long standing opposition to mining and logging, inaction of NCIP and Ombudsman to complaints and petitions, retroactive use of FPIC guidelines to justify flawed FPIC process, exclusion of community members and leaders from decision making process, threat to sacred site and livelihoods	Self Determination, Access to Justice, Sacred Sites
Buhid Mangyan of Mindoro	Department of Agrarian Reform appropriating Ancestral land, Lack of FPIC, Sacred burial grounds	Land Rights, Sacred Sites
Mamanwa of Surigao del Norte	Mining, Flawed benefit sharing agreement, Division as a result of disputes over benefit sharing	Self Determination
Ifugao and Bugalot of Kasibu, Nueva Viscaya	Mining, exclusion of migrant indigeneous communities from FPIC processes, human blockades, intimidation and use of force	Self Determination
Mangyan of Abra de Ilog, Mindoro Occidental	Mining, flawed FPIC process, linking CADT application financing to granting of FPIC	Self Determination
Indigenous peoples of Rizal, Kalinga	Land dispute, housing demolition, deaths, overlapping land claims and conflict between government agencies	Militarization

9 Appendix 2 Wanted Poster of B'laan leader Kerlan 'Lala' Fanagel



10 Endnotes

¹ The Philippine Commission Act No. 178 of 1903

² United States Supreme Court –Cariño vs. Insular Government of the Philippine Islands, 212 U.S. 449 (1909)

³ See A Divided Court Case materials from the constitutional challenge to the Indigenous Peoples Rights Act of 1997, Legal Rights and Natural Resources Center (2001 Quezon City) p15

⁴ United States Supreme Court –Cariño vs. Insular Government of the Philippine Islands, 212 U.S. 449 (1909) at 941, 944

⁵ 1987 Constitution of the Philippines Article XIV, Section 17

⁶ 1987 Constitution of the Philippines ARTICLE XII NATIONAL ECONOMY AND PATRIMONY Section 2

⁷ Isagani Cruz and Cesar Europa v. Sec. of Environment and Natural Resources, et al. G.R. No. 135385 the court stated “there is nothing in the law that grants to the Indigenous peoples ownership over the natural resources within their ancestral domains...The IPRA does not therefore violate the Regalian doctrine on the ownership, management and utilization of natural resources, as declared in s 2, art XII of the 1987 Constitution.”

⁸ See Paragraph 93 of Government Report

⁹ Seven justices voted in favor of IPRA and seven against. Of the seven who voted in favor of four joined Justice Kapunan in filed this opinion

¹⁰ Addressed in the Government report in paragraphs 43, 173 and 174

¹¹ IPRA Section 7 g. Right to Claim Parts of Reservations.- The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service;

¹² These provisions ignore the basic legal principle that land titles issued contrary to law are to be given no effect as they are null and void.

¹³ Response of the Philippines Government (letter dated 30th June 2008) to CERD 72nd Session Early Warning Urgent Action Procedure, page 3. The governments letter to CERD reflects the position adopted by the NCIP and other government agencies.

¹⁴ IPRA Section 63. Applicable Laws.- Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes.

¹⁵ Powerpoint report of NCIP Executive Director Helen J. Saulon, presented Feb 13, 2009

¹⁶ IPRA Section 3(g)

¹⁷ The follow are a sample of the statements made by UN Treaty and Charter bodies and procedures on the issue of development projects in indigenous lands in the Philippines. In its Concluding Observations to the Philippines Government in 1997 the CERD committee raised its concerns in relation to the negative impacts development projects were having on the country's Indigenous Peoples. In the intervening decade discrimination against Indigenous Peoples, particularly in the context of development projects, has become increasingly pervasive. In 2002 the Human Rights Committee expressed concern for the ‘human rights implications for indigenous groups of economic activities, such as mining operations’. The 2003 report of the Special Rapporteur on Indigenous Peoples addressed this issue in greater detail. It noted ‘serious human rights violations regarding the human rights implications for indigenous communities of economic activities such as large-scale logging, open-pit mining, multi-purpose dams, agribusiness plantations and other development projects’. The report documented violations of Indigenous Peoples’ rights resulting from a sample of the aforementioned development project throughout Indigenous Peoples lands. The concluding observations of the Committee on Economic Social and Cultural Rights in 2008 urged the Philippines to fully implement the 1997 Indigenous Peoples Rights Act (IPRA), in particular by ensuring the effective enjoyment by Indigenous Peoples of their rights to ancestral domains, lands and natural resources, and avoiding that economic activities, especially mining, carried out on indigenous territories adversely affect the protection of the rights recognized to Indigenous Peoples under the Act.

¹⁸ Philippine Asset Reform Report Card PhilDHRRRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI) pg 78 108 indigenous communities were addressed in the survey.

¹⁹ See Indigenous Peoples Rights Monitor and CAFOD et al submissions to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>

²⁰ On May 28, 2008 the NCIP was transferred to the DENR. However, following objections it was temporarily returned to the Office of the President for a period of six (6) months from August 11, 2008. Implicitly, it is assumed, without any other order from the President of its status, the NCIP is currently under the DENR. However, based on a recent discussion with the NCIP (April 2009), their current status is still under the Office of the President.

²¹ R Goodland and C Wicks *Philippines: Mining or Food?* 2009 pg 21

²², Philippines Country Environmental profile. Makati City, Delegation of the European Commission to the Philippines <http://www.delph.ec.europa.eu/docs/cep%20Philippines.pdf>; European Commission, 2005

²³ The Philippines National Mineral Policy is based on its mineral action plan (MAP). According to the DENR MAP was subject to consultations and ‘incorporated most of the comments of...the mineral industry’ see R Goodland and C Wicks *Philippines: Mining or Food?* pg 24 On the other hand Indigenous Peoples have complained that their alternative proposals and contributions were ignored in the drafting process. Many civil society organizations decided to boycott the consultation process which they considered hopelessly skewed in favor of the industry. See ‘People's Unity Statement on the Philippine Mineral Action Plan’ June 21st 2004 and ‘Not In Our Name: Why We Refuse to Participate in a Consultation on the draft National Mineral Plan that

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Ignores the Realities and Rights of Local People' Joint Statement of the DIOPIM Committee on Mining Issues (DCMI) and the LRC-KsK Friends of the Earth Phils Dipolog City. Available at <http://www.minesandcommunities.org/article.php?a=1884>

²⁴ Ancestral Lands at Risk from Mining (ALARM Sites) KAMP Kalipunan ng Katutubong Mamamayan national alliance of regional and provincial Indigenous Peoples' Campaign Briefing Paper p2

²⁵ Mineral Action Plan for Executive Order No. 270 and 270-A National Policy Agenda on Revitalizing Mining in the Philippines

²⁶ The FPIC process was first addressed in the IPRA's 1998 Implementing Rules and Regulations. It was revised in 2003 and again in 2006. With each revision the procedures deviated further from the definition of FPIC in IPRA.

²⁷ Statement on the NCIP's Free Prior and Informed Consent Guidelines of 2006 by participants of the 3rd Luzon Policy Dialogue 15-17 December 2006 Baguio City. 'We, therefore, require that the NCIP immediately scrap the 2006 FPIC Guidelines, and instead issue rules and regulations which would truly recognize, respect, protect and uphold the rights of the Indigenous Peoples.' Signed by 36 organizations including indigenous communities and their support organizations.

²⁸ The areas mentioned included Mankayan, Itogon, Mindoro, Panay, Zamboanga and Cotabato

²⁹ See Indigenous Peoples Rights Monitor submission to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>. See also Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 48

³⁰ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 67 g

³¹ Based on the tabulated cases of killings on mining environmental activists by Kalikasan/People's Network for the Environment (as presented in a slide presentation during the Forum on Indigenous Peoples and Mining held sponsored by Kalipunan ng mga Katutubong Mamamayan ng Pilipinas, 5 March 2009), and on Indigenous Peoples as presented by the Indigenous Peoples Rights Monitor (updated listing as of May 1, 2009 based on the tabulation presented in IPRM's 2007 annual report).

³² See Indigenous Peoples Rights Monitor and CAFOD et al submissions to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>

³³ IPRA Section 2 b

³⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 40

³⁵ 'Initial Assessment of the Extent and Impact of the Implementation of IPRA', 2007, The Legal Assistance Centre for Indigenous Peoples (PANLIPI) p63

³⁶ An example of the inadequacy of the project in addressing the needs of Indigenous Peoples includes its target figures for the number of pregnant women who should give birth in health centres. Given that indigenous women may have to walk for hours to reach these centres such a target is not applicable to them.

³⁷ 2008 Department of Budget and Management Budget of Expenditures and Sources of Financing (DBM - BESF)

³⁸ NCIP Organizational Performance Indicator Framework National Commission on Indigenous Peoples p13

³⁹ IPRA Section 3 Definition of Sustainable Traditional Resource Rights

⁴⁰ Shattered Peace in Mindanao: The human cost of conflict in the Philippines Amnesty International 2008 p2

⁴¹ 2008 Human Rights Report: Philippines Bureau of Democracy, Human Rights, and Labor February 25, 2009 available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119054.htm>

⁴² The alliance included Indigenous Peoples Rights Monitor (IPRM); Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP) / National Federation of Indigenous Peoples in the Philippines; Koalisyon ng Katutubong Samahan ng Pilipinas (KASAPI) / National Coalition of Indigenous Organizations in the Philippines; AnthroWatch; EED Philippine Partners' Task Force for Indigenous Peoples' Rights (EEDTFIP); Legal Rights and Natural Resources Center - Kasama sa Kalikasan / Friends of the Earth Philippines (LRC-KsK/FOE Phils.); Tebtebba, Indigenous Peoples' International Centre for Policy Research and Education; Philippines Indigenous Peoples Links (PIPLinks); Irish Centre for Human Rights (ICHR) and Tanggapang Panligal ng Katutubong Pilipino (PANLIPI) / Legal Assistance Center for Indigenous Filipinos and Alternative Law Groups Inc (ALG) (an alliance of 20 Philippine legal organizations dedicated to defending the rights of marginalized sectors and groups).

⁴³ IPRA Chapter 2 Section 3 h) 'Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains'

⁴⁴ Philippine Asset Reform Report Card PhilDHRRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI) 82

⁴⁵ Philippine Asset Reform Report Card PhilDHRRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI) pg 78

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⁴⁶ Initial Assessment of the Extent and Impact of the Implementation of IPRA 2007 PANLIPI (Legal Assistance Centre for Indigenous Peoples) and the International Labour Organization p90

⁴⁷ Case Study - Philippines Metagora Pilot Project Chapter 10: General Lessons and Conclusions available at <http://www.metagora.org/training/casestudy/casestudy10printable.html>

⁴⁸ MDG Report and Indigenous Peoples A Desk Review January 2006 prepared by Kelly Larid for the Secretariat of the UNPFII p45 C Doyle *Indigenous Peoples and the MDG's* International Journal of Human Rights Feb 2009

⁴⁹ This issue has been raised by the Asian Caucus of Indigenous Peoples at the UNPFII during its agenda item on the MDGs and Indigenous Peoples. Statement available at www.docip.com

⁵⁰ An example includes the target figures for the number of pregnant women who should give birth in health centres. Given that indigenous women may have to walk for hours to reach these centers such a target is clearly not relevant to them.

⁵¹ *Rubi vs Provincial Board of Mindoro*, 39 Phil. 660 (1919)

⁵² Message of the President Vol 2 Part 1, Revised Edition Bureau of Printing, Manila, 1938 p 200 cited in Anti Slavery Society Indigenous Peoples and Development Series: 1 The Philippines, Authoritarian government, multinationals and ancestral lands p42

⁵³ The Philippine Commission Act No. 178 of 1903.

⁵⁴ . These areas corresponded to much of the ancestral lands of the Philippines' Indigenous Peoples to whom the decree attributed responsibility for forest damage.

⁵⁵ PD 1529 An Act Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes Chapter XIII Dealings with Unregistered Lands

⁵⁶ United States Supreme Court –*Cariño vs. Insular Government of the Philippine Islands*, 212 U.S. 449 (1909)

⁵⁷ A Divided Court Case materials from the constitutional challenge to the Indigenous Peoples Rights Act of 1997, Legal Rights and Natural Resources Center (2001 Quezon City) p15

⁵⁸ United States Supreme Court –*Cariño vs. Insular Government of the Philippine Islands*, 212 U.S. 449 (1909) at 941, 944

⁵⁹ 1987 Constitution Section 5, Art. XII

⁶⁰ 1987 Constitution of the Philippines Article II Section 22.

⁶¹ 1987 Constitution of the Philippines ARTICLE XII Section 5

⁶² 1987 Constitution of the Philippines Article XIV, Section 17

⁶³ 1987 Constitution of the Philippines Article XII National Economy And Patrimony Section 2

⁶⁴ *Isagani Cruz and Cesar Europa v. Sec. of Environment and Natural Resources, et al.* G.R. No. 135385 the court stated “there is nothing in the law that grants to the Indigenous peoples ownership over the natural resources within their ancestral domains...The IPRA does not therefore violate the Regalian doctrine on the ownership, management and utilization of natural resources, as declared in s 2, art XII of the 1987 Constitution.”

⁶⁵ Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago join, sustaining the validity of the challenged provisions of R.A. 8371

⁶⁶ Block, Edmond and Noble, H. L., *Digest of the Report of the Supreme Court of the Philippine Islands*, Vol 4, The Lawyers Co-operative Publishing Company, Rochester, New York, 1927, p85 Cited in *The Philippines* p39

⁶⁷ Anti Slavery Society Indigenous Peoples and Development Series: 1 The Philippines, Authoritarian government, multinationals and ancestral lands p126

⁶⁸ Anti Slavery Society Indigenous Peoples and Development Series: 1 The Philippines, Authoritarian government, multinationals and ancestral lands p127

⁶⁹ A clear example of this was a recent report of the NCIP in relation to the imposition of FPIC requirements on NGO's and church organizations with Mangyan community in Mindoro despite the fact that the Mangyan Organizations and communities have a history of working with these organizations predating the NCIP.

⁷⁰ See Indigenous Peoples Rights Monitor and CAFOD et al submissions to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>

⁷¹ On May 28, 2008 the NCIP was transferred to the DENR. Following objections it was temporarily returned to the Office of the President for a period of six (6) months from August 11, 2008. Implicitly, it is assumed, without any other order from the President of its status, the NCIP is currently under the DENR. However, based on a recent discussion with the NCIP (April 2009), their current status is still under the Office of the President.

⁷² National Commission on Indigenous Peoples Presentation By: Helen J. Saulon Executive Director NCIP, 2008

⁷³ Resolution 119, Series of 2004, otherwise known as “Memo 119”

⁷⁴ Memorandum of agreement between Mindex and Kalibogon 1999

⁷⁵ CADC were issued in accordance with DENR Administrative Order No. 2

⁷⁶ Successive legislation included the 1982 Presidential Decree No. 1260 or the Integrated Social Forestry Program (ISFP) providing for Certification of Forest Stewardship Agreement (CFSA) application; January 1993 DENR Administrative Order No. 02 series of 1993 (DAO 2 – 1993) entitled, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domains providing for CFSA to CADC conversion and October 1997 Indigenous Peoples Rights Act providing for CADC to CADT conversion

⁷⁷ Certificate of Land Ownership Awards are grants by the State to peasants under its Comprehensive Agrarian Reform Program.

⁷⁸ IPRA Section 12 Chapter V provides the option to secure title under Commonwealth Act 141, as amended, or the Land Registration Act 496.

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⁷⁹ IPRA Section 7 g. Right to Claim Parts of Reservations.- The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service;

⁸⁰ *Oposa et al. v. Fulgencio S. Factoran, Jr. et al* G.R. No. 101083

⁸¹ *Tan vs. Director of Forestry* 125 SCRA 302, 325 [1983]

⁸² IPRA Sec. 63. Applicable Laws- Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes.

⁸³ Response of the Philippines Government (letter dated 30th June 2008) to CERD 72nd Session Early Warning Urgent Action Procedure, pg 3. The governments letter to CERD reflects the position adopted by the NCIP and other government agencies.

⁸⁴ Executive Order No. 586. of 1980

⁸⁵ Bases Conversion and Development Act of 1992. Republic Act 7227

⁸⁶ Transferring the Sacobia Development Authority and the Jurisdiction over Sacobia to the Clark Development Corporation, June 14, 1996.

⁸⁷ Aeta Certification of Ancestral Domain RO3-CADC-107

⁸⁸ Memorandum of Agreement, No. 1 Series of 2007 Supplemental Guidelines to Memorandum of Agreement dated August 28, 2002.

⁸⁹ Department of Environment and Natural Resources Memorandum Order No. 08, series of 2008, "Simplification of Procedures in the Issuance of Mining Contracts and Permits."

⁹⁰ Republic Act No. 7611

⁹¹ Republic Act No. 8550.

⁹² Balabac Protected Marine Eco-Region Ordinance Municipal Ordinance No. 01-2005

⁹³ "*Jomlee Callon, et al. v. Municipality of Balabac,*" docketed as Special Civil Action No. 4138 in the Regional Trial Court of Palawan, Branch 48, dated August 18, 2005.

⁹⁴ Civil Case No.4232 for Prohibition against Municipality of Balabac rep. the Hon. Rommel Sulani, ET.AL(JILMANE NASERON, ET.AL Petitioner vs Municipality of Balabac Rep by the Hon. Romel S. Sulania ET., AL). For more details on the case see 'The Indigenous Peoples and small fishers of Southern Palawan: a case of local communities' exclusion from the management and utilization of municipal fisheries and aquatic resources' A Case Study by: The Palawan NGO Network, Inc. Atty. Jose Florante M. Pamfilo Lead Researcher Victor B. Colili Elizabeth A. Maclang Assistant Researchers July 31, 2006 available at http://www.accessinitiative.org/sites/default/files/PNNI_Case_Study_Report.pdf

⁹⁵ Philippine Asset Reform Report Card PhilDHRRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI) p78 - 79 20% of the overlapping boundaries were not classified.

⁹⁶ The program was called Kilusang Kabuhayan at Kaunlaran (Movement for Livelihood and Development)

⁹⁷ Entitled "Reserving for Settlement Purposes under the Administration and Disposition of the Land Authority a Parcel of Land of The Public Domain Situated In The Proposed Townsite Of Bangingo And The Town Of Surallah, Province Of Cotabato, Island Of Mindanao, Philippines." It was published in the Official Gazette on June 2, 1969 and came into law on June 17, 1969.

⁹⁸ The most recent encroachment into T'boli lands was in 2007

⁹⁹ CADT No. R10-TAL0703-00010

¹⁰⁰ Regional Trial Court in Manolo Fortich

¹⁰¹ In addition to the provision on prior vested rights Section 56 and Section 7 IPRA's limited classification of indigenous ownership systems into either ancestral domains or ancestral lands. These models of ownership fail to capture the myriad of practices of ancestral land ownership as they truly exist in the various Indigenous Peoples' areas. In doing so IPRA imposes an ownership structure that is considered too rigid by many indigenous communities.

¹⁰² The Human Rights Committee has recognized Indigenous Peoples as having the right to self-determination. See for examples Concluding Observations Canada CCPR/C/79/ADD. 105 para 8, Mexico CCPR/C/79/ADD. 109 para 19, and Norway CCPR/C/79/ADD. 112 para 10. The Committee on Economic Social and Cultural Rights in its General Comment no 15 on the Right to Water (2002) linked the right to self-determination to the provision of water to Indigenous Peoples.

¹⁰³ This requirement to obtain the FPIC of Indigenous Peoples in the context of projects such as mining, which have potentially major impact on their cultural, spiritual or physical well-being, is contained in the jurisprudence of the IACHR in the 2008 Saramaka v/s Suriname case, see Inter-American Court of Human Rights Case of the Saramaka People v. Suriname Judgment of November 28, 2007 (Preliminary Objections, Merits, Reparations, and Costs) para 134 The Saramaka ruling was referred to by the current UN Special Rapporteur on the Fundamental Freedoms and Human Rights Indigenous Peoples, Professor James Anaya, in 2008, when giving his opinion to the Government of Ecuador in relation to the requirement to obtain FPIC in such contexts, see Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya Addendum A/HRC/9/9/Add.1 15 August 2008 Annex 1 p. For an overview of recent developments in relation to the respect for FPIC see Free Prior Informed Consent (FPIC) – a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector. Paper prepared for OHCHR Workshop on Extractive Industries, Indigenous Peoples and Human Rights Moscow, 3rd - 4th December 2008 Cathal Doyle, University of Middlesex available at http://www2.ohchr.org/english/issues/indigenous/resource_companies.htm

¹⁰⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 31

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¹⁰⁵ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 30

¹⁰⁶ The 1995 Mining Act, enacted two years prior to IPRA enactment and during its drafting It anticipated IPRA's provision on FPIC and required that Indigenous Peoples consent be obtained prior to mining operations in their ancestral lands Section 16.

¹⁰⁷ FPIC Guidelines AO 2003 Section 3

¹⁰⁸ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 paras 13 & 66

¹⁰⁹ IPRA Sec. 3(g)

¹¹⁰ Government Report to CERD para 110. The IPRA provides further that no certification shall be issued by the NCIP without FPIC and written consent of the concerned Indigenous Peoples. This provision is a leverage given to Indigenous Peoples and serves as a tool to balance the interests of the State and the Indigenous Peoples. The issuance of the Certification Precondition (CP) is the Indigenous Peoples' primary safeguard mechanism to ensure that their rights, interests and welfare as well as equitable benefits are protected when these development projects enter their ancestral domains/lands. (Sec. 59, IPRA).

¹¹¹ The survey addressed some 108 communities

¹¹² Philippine Asset Reform Report Card PhilDHRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI)

¹¹³ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 addressed seven large-scale mining projects Namely 1) the Subanon in Sitio Canatuan, Siocon, Zamboanga del Norte in Mindanao; 2) the B'laan, particularly the Bong Banwu Salnaong; 3) the Mamanwa in Surigao del Norte; 4) the Ifugao in Barangay Didipio, Nueva Vizcaya; 5) the Indigenous Peoples of the Macambol region in the municipality of Mati, Mindanao; 6) Mamanwa tribe in Surigao del Norte and the Indigenous Peoples of Mankayan, Benguet. It also stated that 'of particular concern are the long-term devastating effects of mining operations on the livelihood of Indigenous Peoples and their environment'

¹¹⁴ Specific areas mentioned in relation to militarization included Mankayan, Itogon, Mindoro, Panay, Zamboanga and Cotabato

¹¹⁵ Oral statement by Mr. Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. 6th Item On The Agenda: Half-Day Discussion On Asia. New York, 21 May 2007 pg 3 '*But experience has shown that, even when specific legislation exists, such as the 1997 Indigenous Peoples Rights Act in the Philippines...there still remain serious problems with regard to their effective implementation*' Cordillera Peoples Alliance 'UN Special Rapporteur on Indigenous Peoples The Pattern of Human Rights Violations of Indigenous Peoples Continues' February 8, 2007 reported that the Special Rapporteur described '*a deterioration in the human rights situation of indigenous peoples*' and '*a legal framework of current economic policies that favor the dispossession of indigenous lands and resources for the benefit of a handful of international corporations or other private interests*'

¹¹⁶ The following are some of the statements made by UN Treaty and charter bodies and procedures on the Issue of Development projects in indigenous lands in the Philippines. In its concluding observations to the Philippines Government in 1997 the CERD committee raised its concerns in relation to the negative impacts development projects were having on the country's Indigenous Peoples. In the intervening decade discrimination against Indigenous Peoples, particularly in the context of development projects, has become increasingly pervasive. In 2002 the Human Rights Committee expressed concern for the 'human rights implications for indigenous groups of economic activities, such as mining operations'. The 2003 report of the Special Rapporteur on Indigenous Peoples addressed this issue in greater detail. It noted 'serious human rights violations regarding the human rights implications for indigenous communities of economic activities such as large-scale logging, open-pit mining, multi-purpose dams, agribusiness plantations and other development projects'. The report documented violations of Indigenous Peoples' rights resulting from a sample of the aforementioned development project throughout Indigenous Peoples' lands. The concluding observations of the Committee on Economic Social and Cultural Rights in 2008 urged the Philippines to fully implement the 1997 Indigenous Peoples Rights Act (IPRA), in particular by ensuring the effective enjoyment by Indigenous Peoples of their rights to ancestral domains, lands and natural resources, and avoiding that economic activities, especially mining, carried out on indigenous territories adversely affect the protection of the rights recognized to Indigenous Peoples under the Act.

¹¹⁷ Government Report Para 115. 'Presently, the NCIP has already issued a total of 127 Certificates Precondition broken down as follows: 70 on Mining Projects; 11 on Mini-Hydro/Dam Projects; 4 on Forestry; 5 on ISAG; 3 on Research (Bio-diversity); 34 on smaller projects.'

¹¹⁸ The National Mineral Policy is reflected in its 2003 mineral action plan

¹¹⁹ Ancestral Lands at Risk from Mining (ALARM Sites) KAMP Kalipunan ng Katutubong Mamamayan national alliance of regional and provincial Indigenous Peoples' Campaign Briefing Paper p2 See also C Doyle, C Wicks and F Nally Mining in the Philippines: Concerns and Conflicts 2007 p

¹²⁰ Statement made at the Philippine government's mining roadshow in London in June 2005, See Minesite.com Speech of Jose DeVenecia 17 June 2005, London. <http://clients.westminster-digital.co.uk/minesite/microsite/events/philippines/index.aspx> See also C Doyle, C Wicks and F Nally Mining in the Philippines: Concerns and Conflicts 2007 p 10 available at http://www.epolitix.com/fileadmin/epolitix/mpsites/MininginthePhilippines_Report.pdf

¹²¹ Regulatory and Agency capture are in synonymous and refer to situations where a Government agency that is supposed to be acting in the public interest in a regulatory or oversight role is influenced or controlled or even dominated by those it is supposed to regulate e.g. the industry it should be supervising.

¹²² On May 28, 2008 the NCIP was transferred to the DENR. However, following objections it was temporarily returned to the Office of the President for a period of six (6) months from August 11, 2008. Implicitly, it is assumed, without any other order from the President of its status, the NCIP is currently under the DENR. However, based on a recent discussion with the NCIP (April 2009), their current status is still under the Office of the President.

¹²³ R Goodland and C Wick Philippines: Mining or Food? pg 21 available at www.piplinks.org/miningorfood

¹²⁴ European Commission, 2005 Philippines country environmental profile. Makati City, Delegation of the European Commission to the Philippines available at <http://www.delph.ec.europa.eu/docs/cep%20Philippines.pdf>

¹²⁵ The Philippines National Mineral Policy is based on its mineral action plan (MAP). According to the DENR MAP was subject to consultations and 'incorporated most of the comments of...the mineral industry' Mining or Food? pg 24 On the other hand Indigenous Peoples have complained that their alternative proposals and contributions were ignored in the drafting process. Many civil society organizations decided to boycott the consultation process which they considered hopelessly skewed in favor of the industry. 'People's Unity Statement on the Philippine Mineral Action Plan' June 21st 2004 and 'Not In Our Name: Why We Refuse to Participate in a Consultation on the draft National Mineral Plan that Ignores the Realities and Rights of Local People' Joint Statement of the DIOPIM Committee on Mining Issues (DCMI) and the LRC-KsK Friends of the Earth Phils Dipolog City

¹²⁶ Department of Environment and Natural Resources Memorandum Order No. 09, series of 2004, "Simplification of Procedures in the Issuance of Mining Contracts and Permits."

¹²⁷ Mineral Action Plan for Executive Order No. 270 and 270-A National Policy Agenda on Revitalizing Mining in the Philippines

¹²⁸ Mineral Action Plan for Executive Order No. 270 and 270-A National Policy Agenda on Revitalizing Mining in the Philippines

¹²⁹ Statement on the NCIP's Free Prior and Informed Consent Guidelines of 2006 by participants of the 3rd Luzon Policy Dialogue 15-17 December 2006 Baguio City. 'We, therefore, require that the NCIP immediately scrap the 2006 FPIC Guidelines, and instead issue rules and regulations which would truly recognize, respect, protect and uphold the rights of the indigenous peoples.' Signed by 36 organizations including indigenous communities and their support organizations.

¹³⁰ A Critique on the Philippine Free Prior Informed Consent Guidelines of 2006 LRC-KsK / Friends of the Earth Philippines Issue Paper 2007-01

¹³¹ Aboriginal Land Rights (Northern Territory) Act 1976 Section 42 para 13 allowed for a 22 month negotiating period with a possible open ended extension. This option for an open ended extension has been removed by the controversial 2006 Land Right Legislation Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 which was implemented many claim without adequate participation or consent of the Aboriginal people.

¹³² 2006 FPIC Guidelines Section 9

¹³³ Medium Term Philippine Development Plan (MTPDP) 2004 – 2008 p8

¹³⁴ IPRA, Section 3,e, Chapter II

¹³⁵ The Free Prior Informed Consent (FPIC) Guidelines of 2006 NCIP AO No 01 Series of 2006 Section 4 j

¹³⁶ Sec. 7 b Right to Develop Lands and Natural Resources

¹³⁷ CBD COP 7 : Target 2.2: Full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders in the management of existing, and the establishment and management of new, protected areas.

¹³⁸ Information in this paragraph is based on research of LRCKsK/FOE-Phils. Unpublished report, LRCKsK/FOE-Phils.

¹³⁹ Philippine Asset Reform Report Card PhilDHRRRA May 2008 In Partnership with Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI) page 74

¹⁴⁰ Illegal Exploration started in the first quarter of 2007; Opposition gained momentum in October 2007. FPIC processes were conducted in the 2nd quarter of 2008 and the outcome of these rejecting the operation recognized later in 2008.

¹⁴¹ DENR Batazara p15 NCIP Batazara p17 Interview with NCIP Commissioner Lagtum Pasag

¹⁴² Information on situation of Pala'wan people based on information provided by Environmental Legal Assistance Centre and also Tebtebba Case Study FPIC in Bataraza: who approves consent?

¹⁴³ Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanon of Mt Canatuan, Siocon, Zambonga del Norte, Philippines in the context of large-scale gold mining on their ancestral domain. Committee on the Elimination of all forms of Racial Discrimination 71st Session, 30th July – 17th August 2007 para 19

¹⁴⁴ HB 3180 An Act Declaring the areas around and between Aglubang-Ibolo Rivers in the Municipality of Baco, Naujan and Victoria, all in the province of Oriental Mindoro and the Municipality of Sablayan, province of Occidental Mindoro a Protected Watershed Landscape under the National Integrated Protected Areas System, and for other purposes

¹⁴⁵ Republic Act No 7586 National Integrated Protected Areas System Act of 1992 (NIPAS)

¹⁴⁶ Comment on the Proposed House Bill No.3180, Declaring the Areas Around and between Aglubang-Ibolo Rivers as Protected Watershed Landscape Under NIPAS Signed 14th day of April 2009. MS. CAROLINE G. MANUEL Municipal Planning and Development Coordinator; Mangyan Mission's Position on House Bill No. 3180 Submitted for the House of the Representatives Committee on Natural Resources Meeting on April 15, 2009. Fr. Edwin A. Gariguez Mangyan Mission, Bishop Finneemann Center Calero, Calapan City

¹⁴⁷ HB3180 Sections 3,4 and 5

¹⁴⁸ HB 3180 Section 12.1

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¹⁴⁹ Dam affected Communities join International Day of Action Against Dams March 2005 available at <http://www.cpaphils.org/campaigns/2005034-dam.htm>

¹⁵⁰ Consultation conducted by the group in Barangay Sinipon, Kibawe Bukidnon

¹⁵¹ Petition Paper of NATABUK, July 28, 1999, Kibawe IP-inter Barangay Consultation Meeting.

¹⁵² A history of peace pacts in relation to the expansion of ancestral domains exists in the Cordillera, where it has long been customary practice of some indigenous groups to expand into neighboring areas.

¹⁵³ Status and Directions of Mining and Minerals Industry in the Philippines Nelia C. Halcon Executive Vice President Chamber of Mines of the Philippines, at Initial Consultation Meeting on Mining and Minerals Sector 08 February 2008 The Sulo Hotel, Quezon City

¹⁵⁴ OceanaGold is listed on Canadian, Australian and New Zealand stock exchanges.

¹⁵⁵ The Commission on National Integration was established in 1957 act of Congress, authorizing it to 'effectuate in a more rapid and complete manner the economic, social, moral and political advancement of the Non-Christian Filipinos or National Cultural Minorities' REPUBLIC ACT NO. 1888 of 1957

¹⁵⁶ Both communities have traditions of tribal wars and head hunting which, while reducing in prevalence throughout the 20th Century continued to restrict intertribal exchange and cooperation until after World War II. Today Ifugao and Bugkalot live in peace and therefore in closer proximity

¹⁵⁷ Meeting Minutes NCIP with Ifugao community in Didipio 2008. According to the NCIP's the lands they are occupying, which these communities have exclusively occupied and developed for almost a half a century, cannot be considered as ancestral domain as they have not been in their possession since time immemorial.

¹⁵⁸ Data collected during the international fact finding mission conducted in 1-4 April 2008, submitted to the Philippine Commission on Human Rights 2008. OceanaGold have not contested the figure nor denied the violent and illegal nature of the demolition activity.

¹⁵⁹ Resolution urging the Committee on National Cultural Communities to conduct an inquiry, in aid of legislation, into the alleged abuses committed by the Australia-backed mining firm Oceania Gold Philippines Incorporated against Tribal Communities in Didipio, Kasibu, Nueva Vizcaya. Filed: 2008-05-20

¹⁶⁰ Royalco was publicly floated in 2006 and as part of the float it took over the properties of Oxiana Philippines (among others) for which Oxiana got to hold an initial 17.7% of stock in the company (Oxiana Philippines was valued at \$5 million in scrip and \$200,000 cash). Oxiana general manager-corporate development Peter Lester got a seat on the Royalco board.

¹⁶¹ These attempt involving the use of large machinery driven within centimeters of those blocking the roadway resulted in scuffles between those protesting and those working for the company and necessitated police intervention.

¹⁶² Resolution urgently directing the Committee on National Cultural Communities to conduct an inquiry, in aid of legislation, into the alleged encroachment of the Australia-backed mining firm Oxiana Philippines incorporated into the Tribal Communities of Nueva Vizcaya. Filed: 2007-09-04.

¹⁶³ IPRA's FPIC definition requires that it be obtained in accordance with customary laws. IPRA's 2006 Revised FPIC implementing guideline Section 4 f Operating Principles Primacy of Customary law, also requires that primacy be given to customary law in the conduct of Field Based Investigations and FPIC processes.

¹⁶⁴ The entire domain is populated by about 90% Mandaya with only 10% lowland settlers. The ancestral territory of the Mandaya Tribe is situated within the administrative jurisdiction of the municipality of Caraga, Davao Oriental and covers the barangays of Pantuyan and San Pedro.

¹⁶⁵ Documented as part of the Mandaya's Ancestral Domain Sustainable Development and Protection Plan.

¹⁶⁶ Resolution urging the committee on national cultural communities to conduct an inquiry, in aid of legislation, into the alleged violations of the Asian Evergreen Development Incorporated of the customary laws and practices of the Mandaya Tribe in the said company's objective to obtain a free and prior informed consent to enter the tribe's ancestral domain to conduct logging operations in Caraga, Davao Oriental. Filed: 2008-07-23

¹⁶⁷ The initial application was made by a Norwegian company, Mindex, which was subsequently acquired by Canadian and British based Crew Development Corporation (the local company was know as Crew-Aglubang) in 2000. In 2006 Crew then created Intex Resources, a Norwegian company, which currently holds the permit.

¹⁶⁸ DENR Secretary Heherson Alvarez, Philippine Star, November 13, 2001.

¹⁶⁹ Report of Ambassador Ståle T. Risa to the Office of Secretary for Development, translated from Norwegian, September 26, 2007.

¹⁷⁰ NCIP Investigation Report on the Complaints filed by KPLN and Mangyan Mission on the FPIC Process Conducted by the NCIP for the Certification Precondition of Intex Resources, October 9, 2008.

¹⁷¹ A presentation to the Inter-disciplinary Conference on Mining in the Asia-Pacific. 26-28 November 2007, Quezon City, Philippines By Vernie Yocogan-Diano Chairperson, Innabuyog (alliance of indigenous women's organizations in the Cordillera, Philippines).

¹⁷² IPRA Chapter 4 Rights to Self Governance and Empowerment Section 13

¹⁷³ Allegations of intimidation involving armed security groups and paramilitaries, with certain incidents also involving the Philippines Armed Forces (AFP) and National Police (PNP). Examples of cases where killings have resulted are Didipio, Sibuyan Islands and in Midsalip. In Mt Canatuan and other locations there have been shooting incidents by security and paramilitary groups.

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¹⁷⁴ See Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanen of Midsalip, Zambonga del Sur, Mindanao, Philippines in the context of applications for large-scale mining on their ancestral domain. Additional Information in relation to Early Warning and Urgent Action procedure initiated in relation to the Philippines. Committee on the Elimination of all forms of Racial Discrimination 72st Session, 18th February – 8th March 2008. Appendix 1

¹⁷⁵ NCIP Resolution No 27 Series of 2007 Certification of Precondition Included as Appendix 9 in Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanen of Midsalip, Zambonga del Sur, Mindanao, Philippines in the context of applications for large-scale mining on their ancestral domain. Additional Information in relation to Early Warning and Urgent Action procedure initiated in relation to the Philippines. Committee on the Elimination of all forms of Racial Discrimination 72st Session, 18th February – 8th March 2008

¹⁷⁶ The 2009 FPIC process was for the two barangays of Duelic and Matalang, Midsalip. False, misleading and inadequate information was provided in relation to the scope of the project, its environmental impacts and potential risks and benefits. Time allotted to those questioning the projects environmental impacts was curtailed. The NCIP again failed to ensure genuine representation of the community with legitimate Subanen leaders were excluded from the process. Non-Subanen local government officials, who are advocating for the project, were allowed to control the leader validation process and exert undue and inappropriate influence over the FPIC process. The consensus of the community members was not obtained, as required by the IPRA. Instead the NCIP relied exclusively on the opinion of these non-representative ‘leaders’. An atmosphere of fear, combined with bribery and a patronage system premised on indebtedness to local government officials prevented community members from openly raising their objections to the flawed process.

¹⁷⁷ Speech of Atty. Eugenio A. Insigne, Chairman, National Commission on Indigenous Peoples (NCIP) on ‘The important role of free and prior informed consent in responsible mining’ before the Chamber of Mines on November 19, 2007

¹⁷⁸ In 2002, when TVI was still in its exploration phase, an investigation of the Philippines Human Rights Commission concluded that consent, as required by law, had not obtained and that this and the related invalid issuance of the MPSA were at the root of the conflicts in Mt Canatuan. In 2004 the Subanon judicial authority, the Gukom of the Seven Rivers, declared the body which TVI claims granted consent on behalf of the Subanon to be ‘illegitimate’ and instructed the NCIP to disband it and declare all agreements entered into it as ‘null and void’.

¹⁷⁹ A resolution has been introduced in the House of Representatives calling on the Committee on National Cultural Communities to conduct an inquiry into the alleged irregularities committed by the NCIP and the MGB of the DENR in the issuance of the certificate of compliance and exploration permit despite the opposition of the Indigenous Peoples of Barangay Gambang, Bakun, Benguet to the ongoing mining exploration activities.

¹⁸⁰ The jurisprudence of the Supreme Court also extends this requirement to obtain local government approval to cases where there are potential health impacts of projects. See ‘Asserting Local Autonomy: LGUs’ Right to Veto Mining’ LRC-KsK Friends of the Earth Philippines 2009.

¹⁸¹ DENR Memorandum Order No. 2004-09 (August 31, 2004) which updated the Revised Implementing Rules and Regulations of the Philippine Mining Act of 1995

¹⁸² Professor Stavenhagen visited the communities impacted by Lepanto’s mining operations in 2002 as part of his country visit and heard testimonies of members of the impacted communities which could not afford to take legal action against the company

¹⁸³ Instead of the 1% royalty required under the mining act the agreement provided for the payment of a fixed annual financial assistance of half a million pesos, significantly less than the 1%, to the Mamanwa.

¹⁸⁴ Leonen, Marvic (1998) “Indigenous Peoples Rights Act of 1997 (R.A. 8371): Will this Legal Reality Bring Us to a More Progressive Level of Political Discourse?” PHIL. NAT. RES. L. J. 7.

¹⁸⁵ Mining Revisited Environment Science for Social Change Bishops-Businessmen’s Conference for Human Development 1999 page 39. An extensive study on revitalizing the mining industry conducted in 1999 on behalf of the Catholic Bishops-Businessmen’s Conference examined the issue of the use of community development funds as a form of undue influence and a corruption of the FPIC process

¹⁸⁶ Philippines Country Environmental profile. Makati City, Delegation of the European Commission to the Philippines <http://www.delph.ec.europa.eu/docs/cep%20Philippines.pdf>: European Commission, 2005

¹⁸⁷ The Councilor named company officials and reported an offer of 8 hectares of land away from the community and a four wheel drive car.

¹⁸⁸ The case has been documented by the British Catholic Agency for Overseas Development, CAFOD, in its 2008 Report Unearth Justice ‘Kept in the Dark’ available at <http://www.cafod.org.uk/policy-campaigns/unearth-justice/panels/resources-to-download/unearth-justice-kept-in-the-dark>

¹⁸⁹ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human Rights resolution 2002/65, E/CN.4/2003/90/Add.3, 5 March 2003. Executive Summary page 2

¹⁹⁰ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 48

¹⁹¹ Indigenous Peoples Rights Monitor, “The Situation of Human Rights and Fundamental Freedoms of the Indigenous Peoples in the Philippines (January 2003 to November 2007),” Manila, Philippines, December 2007. From the segment, “Annex F - A Comprehensive Case Profile on Violations of Collective and Civil Rights by Lepanto Consolidated Mining Company in Benguet Province, Cordillera.”

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¹⁹² Report submitted by Ambino Padawi of the MaQuitakdeg peoples organization during the country visit of UN Special Rapporteur Rodolfo Stavenhagen in February 2007

¹⁹³ See Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanon of Mt Canatuan, Siocon, Zamboanga del Norte, Philippines in the context of large-scale gold mining on their ancestral domain. Committee on the Elimination of all forms of Racial Discrimination 71st Session, 30th July – 17th August 2007 paras 56 - 62

¹⁹⁴ Ruling of the Subanon Gukom of the Seven Rivers 2007 Appendix 2 to Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanon of Mt Canatuan, Siocon, Zamboanga del Norte, Philippines in the context of large-scale gold mining on their ancestral domain. Committee on the Elimination of all forms of Racial Discrimination 71st Session, 30th July – 17th August

¹⁹⁵ Issued by NCIP Region XI

¹⁹⁶ 39th Infantry Battalion under the 10th Infantry Division

¹⁹⁷ 50th Infantry Battalion, under the 503rd Infantry Brigade of the Philippine Army.

¹⁹⁸ From the accounts of the residents, the soldiers purportedly asked permission from the Barangay Captain for them to search the households. They apparently took advantage of the lack of knowledge of the residents on the law and the fact that a Barangay Captain cannot lawfully authorize anyone to conduct a search on someone else's premises. The Barangay Captain later clarified to his constituents that he never gave any permission for the soldiers to search the houses.

¹⁹⁹ Letter of complaint jointly submitted by the Indigenous Peoples Rights Monitor and Cordillera Human Rights Alliance to the Commission on Human Rights, Joint Monitoring Committee of the Government of the Republic of the Philippines and National Democratic Front, the IP-Desk of the Armed Forces of the Philippines, and human rights desk of the National Commission on Indigenous Peoples. June 4, 2008.

²⁰⁰ 58th Infantry Battalion

²⁰¹ 2006 FPIC Guidelines Part II Section 6

²⁰² Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP), "The Situation of the Indigenous Peoples of the Philippines: A Country Report," prepared for the Asia Workshop for the Promotion of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), June 8-11, 2008, Baguio City, Philippines.

²⁰³ 73rd Infantry Battalion Re-engineered Special Operations Team

²⁰⁴ Villages of Tibukag, Paiton, Purok 31, Purok 17, Dalingding, Tibugaw, Natampod, Labuo, Duryan, Tambuko, Mahindang, and Nasilaban

²⁰⁵ People were evacuated from the sitios of Bagang, Damagan, Laslasakan, Basagang, Nalubas and Sasu

²⁰⁶ In April 14, 2009, Butod Kapis, son of Datu Subowan Kapis a local leader opposed to militarization, was tortured and killed in Sitio Milansad, Bgy. Palma Gil, Talaingod allegedly by the military.

²⁰⁷ 28th Infantry Battalion Philippine Army (IBPA), 72nd IBPA, 67th IBPA, 30th IBPA,

²⁰⁸ Including Barangay Manurigao and Barangay Binondo

²⁰⁹ A communiqué from PASAKA-Confederation of Lumad Organizations of Southern Mindanao, which includes this information, was forwarded to the Office of the High Commission on Human Rights in June 16, 2008.

²¹⁰ Four people were wounded and another six were detained; one of whom was jailed for 28 days without proper charges in court.

²¹¹ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 67 g

²¹² Lumads: militarization is number one problem Carolyn O. Arguillas / MindaNews - Date of publication: 1 March, 2009 available at http://www.mindanews.com/index.php?option=com_content&task=view&id=6002&Itemid=50 See also Background Briefing on Task Force Gantangan Powerpoint slides of the MIPCPD Slide No 73 MIPCPD Undertaking 2003 – 2007 'DND Directive on IP Desk and 5% Quota for Enlistment', See also INPEACE MINDANAO Initiatives for Peace in Mindanao 'Kalisang, Kaisog, Katungod: Terror, Resilience, Rights A Mindanao Indigenous Peoples Rights Situation' available at http://kalinaw.com.ph/pages/IP/Kalisang_Kaisog_Katungod.html

²¹³ Ibid

²¹⁴ Indigenous Peoples Rights Monitor, "The Situation of Human Rights and Fundamental Freedoms of the Indigenous Peoples in the Philippines (January 2003 to November 2007)," Manila, Philippines, December 2007. See segment on "C. Escalating militarization of indigenous communities." The Cordillera Peoples Liberation Army (CPLA) is a break-away group of the New Peoples' Army (NPA). It was legitimized by the Aquino Administration despite its public acknowledgement in 1987 of its responsibility for the disappearance of Ama Daniel Ngayaan and killing of Romy Gardo, the chairperson of the Cordillera Bodong Association and a member Cordillera Peoples' Alliance, respectively. Since then, numerous serious human rights violations are attributed to the CPLA. Despite popular call for disbandment, the Armed Forces of the Philippines has started the process of integrating the CPLA forces to the regular troops.

²¹⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, submitted in accordance with General Assembly resolution 61/173 16 August 2007 A/62/265 para 13, 14

²¹⁶ Based on the tabulated cases of killings on mining environmental activists by Kalikasan/People's Network for the Environment (as presented in a slide presentation during the Forum on Indigenous Peoples and Mining held sponsored by Kalipunan ng mga Katutubong Mamamayan ng Pilipinas, 5 March 2009), and on Indigenous Peoples as presented by the

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Indigenous Peoples Rights Monitor (updated listing as of May 1, 2009 based on the tabulation presented in IPRM's 2007 annual report).

²¹⁷ Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007) A/HRC/4/20/Add.3 22 March 2007 para 8

²¹⁸ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 Executive Summary page 2

²¹⁹ Background Briefing on Task Force Gantangan Powerpoint slides of the MIPCPD Slide No 121 Stating that communist rebels had a 'Legal Complainant of Ethnic Genocide with UN' in relation to the TVI mining project and that they use it as 'a reason why there is a systematic genocide against IP's and forward it as complaint to the UN.'

²²⁰ It was the first Indigenous organization to attend the UNWGP. The current Chair of the UNPFII is a former chair person of CPA. The chair of Asian Indigenous People Pact is also a former CPA chair person.

²²¹ See Indigenous Peoples Rights Monitor submission to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>

²²² Republic Act 9372, "An Act to Secure the State and Protect Our People from Terrorism".

²²³ "UN Special Rapporteur Calls for Changes to the Philippines' Human Security Act," available at [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/B34290F01513578BC125729C00581865?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/B34290F01513578BC125729C00581865?OpenDocument)

²²⁴ Under the photo of Kerlan "Lala" Fanagel was the name Minandro Villanueva @ Nelso/ Bos – NMRC Secretary

²²⁵ The meeting was held in Compostela Gym, Compostela Valley

²²⁶ See Indigenous Peoples Rights Monitor submission to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>

²²⁷ The Datu had refused to sell his lands to an outsider who had acquired Bagobo-Giangnan lands, fenced off areas and threatened to shoot any 'trespassers'.

²²⁸ 1987 Constitution Article XIV, Section 17 'The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions'

²²⁹ IPRA General Provisions Section 2 b Section 2 b) requires that '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;' IPRA also requires that FPIC be sought 'in accordance with their respective customary laws and practices' and that negotiations with regard to 'the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures' be pursuant to customary laws.

²³⁰ See Sec 412 (c) RA 7160, (c) Conciliation among members of indigenous cultural communities. - The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities. see also Secs 399 (f) (f) In barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of datos or elders shall be recognized without prejudice to the applicable provisions of this Code. and 408. See also Sec 407 (c) Muslim Mindanao Autonomy Act No. 25. (MMMA No. 25). MMMA No. 25, is the regional local government code of the ARMM.

²³¹ REPUBLIC ACT NO. 6734 of 1989 An Act Providing For An Organic Act For The Autonomous Region In Muslim Mindanao Tribal Court Section 14 and Republic Act No. 9054 2001 An Act To Strengthen And Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For The Purpose Republic Act No. 6734. The jurisdiction of the tribal courts is to be limited to issues involving personal and family and property rights of Indigenous Peoples and crimes where the offended parties were Indigenous Peoples and penalties were of less than six years imprisonment and / or P50,000 Section 18. Shari'ah Courts The Shari'ah district courts and the Shari'ah circuit courts created under existing laws, shall continue to function as provided therein. The judges of the Shari'ah courts shall have the same qualifications as the judges of the regional trial courts, the metropolitan trial courts, or the municipal trial courts, as the may be. In addition, they must be learned in Islamic law and jurisprudence. Section 19. Tribal Courts There is hereby created a system of tribal courts, which may include a Tribal Appellate Court, for the indigenous cultural communities in the autonomous region. These courts shall determine, settle, and decide controversies and enforce decisions involving personal and family and property rights of members of the indigenous cultural community concerned in accordance with tribal codes of these communities. These courts may also exercise exclusive jurisdiction over crimes committed by members of indigenous cultural communities where the imposable penalty as prescribed by the Revised Penal Code or other pertinent law does not exceed imprisonment of six (6) years of a fine not exceeding Fifty thousand pesos (P50, 000.00) or both such imprisonment and fine and where the offended party or parties are also members of the indigenous cultural community concerned. The Regional Assembly shall define the composition and jurisdiction of the said courts in accordance with the Constitution, existing laws, and this Organic Act.

²³² IPRA (RA 8371) Secs. 29, 63, 66, 72.

²³³ 1987 Philippine Constitution Art. XIV, Sec. 17.

²³⁴ . IPRA Section 63

²³⁵ Study conducted by the Alternative Law Group (ALG) in 2003 as part of the Reform Advocacy activities of the Justice Reform Initiatives Support Project (JURIS).

²³⁶ An affidavit has been made attesting that this statement was made in the court room to the lawyers by the judge in the a case filed for a writ of amparo for Bobong Panay, an indigenous leader from Saranggani province, who was being held by the military. b) Indirectly address the case by making a statement in the report that:

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'judges have been openly discriminatory regarding Indigenous Peoples', and in the footnote mention the affidavit of Warren with the statement made by the judge.

²³⁷ Inside Mindanao: September 26, 2007, Plea to return ancestral land, By Rosemarie Laurente-Velez and Mark Anthony Velez <http://www.insidemindanao.com/daguiwaas.html> (accessed 14 May 2009)

²³⁸ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 32

²³⁹ Issue Paper 2004- 02 p19 E. L. Manuel Comments on NCIP Administrative Circular No 1, Series of 2003

²⁴⁰ Mining or Food p85

²⁴¹ In *Lansman et al. v. Finland*, the HRC ruled that there is no margin of appreciation with regard to development on Indigenous Peoples' lands. Rather the scope of a States freedom is in reference to its obligations under article 27 of the ICCPR.

ICERD in its Concluding Observations to Suriname in 2004 emphasized that national development, particularly resource extraction, must proceed consistently with Indigenous Peoples' rights.

²⁴² (Article XIII, Section 1)

²⁴³ Assault on Manobos continues as their pleas fall on deaf ears Source: Philippine Daily Inquirer Date Published: 9/24/99 <http://www.afrim.org.ph/Archives/1999/Philippine%20Daily%20Inquirer/September/24/Assault%20on%20Manobos%20continues%20as%20their%20pleas%20fall%20on%20deaf%20ears.txt> (accessed 14 May 2009)

²⁴⁴ Meeting for ICERD Shadow report held with the Mangyan Tagabukid leaders on the Island of Sibuyan January 2009.

²⁴⁵ The threat was followed up with the British Embassy by the concerned NGO's.

²⁴⁶ IPRA Section 2 b

²⁴⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 40

²⁴⁸ These reports include: Ma. Teresa Guia, Elizabeth Matibag, Sabino Padilla and Laurie Ramiro. *The Philippines: The Situation of the Health of Indigenous Peoples Today and the Main Issues and Challenges for the Future*. Study undertaken by Anthropology Watch for the WHO. 19 January 2005.; EED-TFIP. *Our Harvest in Peril: A Sourcebook on Indigenous Peoples' Food Security (2005)*.; Montanosa Research and Development Center and EEDTFIP. *Initial Study on the Modernization of Rice Production in Lowland Kalinga: It's Implication to Food Security*. May 22, 2007; PANLIPI- *Tanggapang Panligal ng Katutubong Pilipino (Legal Assistance Center for Indigenous Filipinos)*. *Initial Assessment of the Extent and Impact of the Implementation of IPRA (December 2005)*.; *Socio-economic Impact of Transgenic Corn on Peasants and Lumad Indigenous Peoples in Mindanao*. Sibol ng Agham at Teknolohiya (SIBAT and Center for Lumad Advancement (CLAN). May 2007

²⁴⁹ *Indigenous Peoples and local government Experiences from Malaysia and the Philippines CPA and PACOS Trust IWGIA Copenhagen 2005 p 182 and 185*

²⁵⁰ *Initial Assessment of the Extent and Impact of the Implementation of IPRA, 2007, Philippines p63*

²⁵¹ International Labor Organization, *Result of Scoping Activities Undertaken on Existing Projects and Programs Benefiting Indigenous Peoples of the Philippines, 2003*. The survey covered a majority (twenty-eight) of government agencies implementing IPRA.

²⁵² An example includes the target figures for the number of pregnant women who should give birth in health centers. Given that indigenous women may have to walk for hours to reach these centers such a target is clearly not relevant to them.

²⁵³ In addition to the consultations conducted with indigenous communities for the drafting of the Shadow Report information was also provided by EEDTFIP and ANTHROWATCH.

²⁵⁴ Cited from the position paper submitted by IBON Foundation to the Philippine Supreme Court's Forum on Increasing Access to Justice: *Bridging Gaps, Removing Roadblocks (June 30-July 1, 2008)*

²⁵⁵ 2008 Department of Budget and Management Budget of Expenditure and Sourcing of Finance (DBM BESF)

²⁵⁶ NCIP Organizational Performance Indicator Framework National Commission on Indigenous Peoples p13

²⁵⁷ Stavenhagen Report E/CN.4/2003/90/Add.3, 5 March 2003 , paragraph 28 and 31, pp. 12-13.

²⁵⁸ R Goodland and C Wicks *Philippines: Mining or Food? 2009*

²⁵⁹ Primary source: EED-TFIP research, *Our Harvest in Peril: A Sourcebook on Indigenous Peoples' Food Security (2005)*

²⁶⁰ (EED-TFIP, 2004:126-127)

²⁶¹ Montanosa Research and Development Center and EEDTFIP. *Initial Study on the Modernization of Rice Production in Lowland Kalinga: It's Implication to Food Security*. Presented during the EEDTFIP Roundtable Discussion in May 22, 2007.

²⁶² Kalinga is a landlocked province bounded by the provinces Apayao in the northwest, Cagayan in the northeast, Isabela on the east, the Mountain Province in the south and Abra in the west. The municipalities of Pinukpuk and Tabuk and the municipality of Rizal in the northern part compose its lowland areas. This is thirty-seven percent (116,083 hectares) of the total land area of the province.

²⁶³ The Philippines was one of the primary countries where the home government, international organizations and the United States funded research into the hybrid strains of rice. In 1960, the Ford and Rockefeller Foundations, the U.S. Agency for International Development and the Philippine government established the International Rice Research Institute in the Philippines.

²⁶⁴ Examples include Mr. and Mrs. rice varieties

²⁶⁵ The 5th COP of the CBD recommended that, 'in the current absence of reliable data on genetic use restriction technologies, without which there is an inadequate basis on which to assess their potential risks, and in accordance with the precautionary approach, products incorporating such technologies should not be approved by Parties for field testing until appropriate scientific data can justify such testing, and for commercial use until appropriate, authorized and strictly controlled scientific assessments

with regard to, inter alia, their ecological and socio-economic impacts and any adverse effects for biological diversity, food security and human health have been carried out in a transparent manner and the conditions for their safe and beneficial use validated.' See <http://www.cbd.int/agro/gurts.shtml>

²⁶⁶ Socio-economic Impact of Transgenic Corn on Peasants and Lumad Indigenous Peoples in Mindanao. Sibol ng Agham at Teknolohiya (SIBAT and Center for Lumad Advancement (CLAN). The paper was presented in a Roundtable Discussion May 22, 2007.

²⁶⁷ This research was based primarily based on the investigation of randomly selected samples of OPV/traditional, hybrid and GM/Bt farmers aimed to determine the socio-economic impacts of the farming systems and technologies associated with the three seed types: crop productivity, local economy and debt pattern, tenurial issues and poverty. Agro-ecosystem aspects were also examined: traditional farming practices and the implications of these seed types on farmer seed or genetic resources.

²⁶⁸ The GE Debate in the Philippines: An Update By Roberto Verzola 12Jan2005 From the GM Watch website: <http://www.grain.org/research/contamination.cfm?id=273>

²⁶⁹ Based on the reports during the Mindanao-wide consultation and the briefer, The Erumanen ne Menuvu and their Struggle, prepared for the Visayas-Mindanao Indigenous Peoples' Leaders' Training cum Indigenous Peoples' Exchange in May 2007. and Ambangan, Rodelio. Briefer: The Erumanen ne Menuvu and their Struggle. Visayas-Mindanao Indigenous Peoples' Leaders' Training / Indigenous Peoples' Exchange. Community Visit. August 12, 2007. Aroman, Carmen, Cotabato. Condensed from the Aromanen Sinimburan Tindeg Bansa Inc. (ASTBI)-Ancestral Domain Committee meeting held last July 21, 2007 at Pependayan Ni Apu Vanlak, Aruman, Carmen, Cotabato

²⁷⁰ Shattered Peace in Mindanao: The human cost of conflict in the Philippines Amnesty International 2008 p8

²⁷¹ See Ma. Teresa Guia, Elizabeth Matibag, Sabino Padilla and Laurie Ramiro. The Philippines: The Situation of the Health of Indigenous Peoples Today and the Main Issues and Challenges for the Future. Study undertaken by Anthropology Watch for the WHO. 19 January 2005. p. 17.

²⁷² EED-TFIP. Our Harvest in Peril: A Sourcebook on Indigenous Peoples' Food Security (2005), p. 34.

²⁷³ Soluta et al. found that about half (51%) of the Bukidnon people and 92% of the Ati do not avail of services at barangay health centers because of inadequate facilities.

²⁷⁴ Health spending as a % of GDP decreased from a peak of 0.74% of GDP in 1990 to 0.58% in 1997 to 0.31% in 2008. Position paper submitted by IBON Foundation to the Philippine Supreme Court's Forum on Increasing Access to Justice: Bridging Gaps, Removing Roadblocks (June 30-July 1, 2008)

²⁷⁵ International Labor Organization, Result of Scoping Activities Undertaken on Existing Projects and Programs Benefiting Indigenous Peoples of the Philippines, 2003.

²⁷⁶ The EIM covered the Upper Abra River (Mankayan, Benguet down to Cervantes and Quirino, Ilocos Sur) and the Lower Abra River (Abra and lower Ilocos Sur).

²⁷⁷ Results from the Abra River study are quoted in the report of the German NGO Philippinenbüro 2008 'German Money for Philippine Gold How German banks co-finance large-scale-mining in the Philippines.' Printed in the Südostasien Magazine Volume 24, Issue 1, March 2008 available at [www.asienhaus.de/public/archiv/German Money for Philippine Gold.pdf](http://www.asienhaus.de/public/archiv/German_Money_for_Philippine_Gold.pdf) (accessed 12th May 2008 Volume 24, Issue 1, March 2008 P76 / 77

²⁷⁸ EEDTFIP research desk

²⁷⁹ Briefer prepared by Project Development Institute for the Luzon-wide consultation

²⁸⁰ See Ma. Teresa Guia, Elizabeth Matibag, Sabino Padilla and Laurie Ramiro. The Philippines: The Situation of the Health of Indigenous Peoples Today and the Main Issues and Challenges for the Future. Study undertaken by Anthropology Watch for the WHO. 19 January 2005. p. 16

²⁸¹ EED-TFIP. Our Harvest in Peril: A Sourcebook on Indigenous Peoples' Food Security (2005), pp. 33-34

²⁸² Report of the Integrated Development Program for Indigenous People in Southern Tagalog (IDPIP-ST) during the consultation in Luzon

²⁸³ Based on the sharing and report of Project Development Institute for the Luzon-wide consultation.

²⁸⁴ Maurice Malanes Tebbeba Foundation Tourism killing world's eighth wonder available at

<http://www.twinside.org.sg/title/mm-cn.htm>

²⁸⁵ Advisory Group Meeting on Article 8(J) and Related Provisions of the Convention on Biological Diversity Second meeting Montreal, 30 April – 03 May 2007 Distr. GENERAL UNEP/CBD/WG8J/AG/2/3 16 April 2007 Original: English Draft Report on Indigenous and Local Communities Highly Vulnerable to Climate Change

²⁸⁶ MDG Report and Indigenous Peoples A Desk Review January 2006 prepared by Kelly Larid for the Secretariat of the UNPFII p45

²⁸⁷ Ibid p41

²⁸⁸ This issue has been raised by the Asian Caucus of Indigenous Peoples at the UNPFII during its agenda item on the MDGs and Indigenous Peoples. See www.docip.com

²⁸⁹ 1987 Constitution of the Philippines Article III "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

²⁹⁰ IPRA Section 3 Definition of Sustainable Traditional Resource Rights

²⁹¹ IPRA Section. 4. Concept of Ancestral Lands/Domains.

²⁹² IPRA Section 7 Rights to Ancestral Domains. a) Right of Ownership

²⁹³ IPRA SEC. 33. Rights to Religious, Cultural Sites and Ceremonies.

²⁹⁴ Universal Declaration of Human Rights, Articles 2 and 18, International Covenant on Civil and Political Rights, Articles 2, 4, 18, 24, 27, International Covenant on Economic, Social and Cultural Rights, Article 2, Convention on the Rights of the Child, Articles 2, 14, and 30, Convention on the Elimination of all forms of Racial Discrimination Article 5 f and 5vii.

²⁹⁵ The Akwé Kon guidelines require that Environmental Impact Assessments address the issue of sacred sites of Indigenous Peoples. See also the UNESCO/IUCN Guidelines for the Conservation and Management of Sacred Natural Sites and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Proclaimed by General Assembly resolution 36/55 of 25 November 1981

²⁹⁶ These Articles require States to ensure that “Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites” along with the right to ‘maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.’”

²⁹⁷ Submission to the Committee on the Elimination of all forms of Racial Discrimination regarding Discrimination against the Subanon of Mt Canatuan, Siocon, Zamboanga del Norte, Philippines in the context of large-scale gold mining on their ancestral domain. Committee on the Elimination of all forms of Racial Discrimination 71st Session, 30th July – 17th August 2007 para 45 -55

²⁹⁸ Petition Paper of NATABUK, July 28, 1999, Kibawe IP-Inter Barangay Consultation Meeting.

²⁹⁹ Mindoro Nickel Project Formal Scoping Matrix Prepared by Dames & Moore

³⁰⁰ Position paper of Samahang Nagkakaisang Mangyan Alangan (1999), the indigenous Alangan organization and claimant for the Certificate of Ancestral Domain Claim (CADC).

³⁰¹ Cordillera Peoples Alliance. December 2002. Cordillera Hydropower Projects and the Indigenous Peoples

³⁰² See San Roque Dam Project, Philippines By Hozue Hatae, Friends of the Earth-Japan 2006 available at <http://www.hlrn.org/violation/Japanese%20funded%20dams2006case.pdf> (last accessed June 2008)

³⁰³ Ma. Simeona, E Rey, P Villarante IP land rights and the Agrarian Reform Program: The buhid mangyan experience in A. B. Gatmaytan Negotiating Autonomy Case Studies on Philippines Indigenous Peoples’ Land Rights IWGIA 2007 p100

³⁰⁴ US Supreme Court Carino v. Insular Government, 212 U.S. 449 (1909) Page 212 U. S. 458; IPRA Section 3 l Native Title and pre-conquest rights and Section 13 ‘Inherent right to...Self Determination’. Constitution Section 22

³⁰⁵ See Indigenous Peoples Rights Monitor submission to the 2008 UN Universal Period Review (UPR) of the Philippines Government available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPhilippinesStakeholderInfoS1.aspx>. See also Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples Rodolfo Stavenhagen 21 January 2003 E/CN.4/2003/90 para 67 i and f

³⁰⁶ *ibid* para 67 c

³⁰⁷ *ibid* para 67 d