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ВОПРОСЫ КОРЕННЫХ НАРОДОВ

Права человека и вопросы коренных народов

Доклад Специального докладчика по вопросу о положении в области прав человека и основных свобод коренных народов г-на Родольфо Ставенхагена, представленный в соответствии с резолюцией 2002/65 Комиссии по правам человека*

Добавление

Миссия на Филиппины**

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* Резюме доклада распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на языке его представления.

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Резюме

2-11 декабря 2002 года по приглашению правительства Специальный докладчик по вопросу о положении в области прав человека и основных свобод коренных народов посетил Филиппины, где он встретился с правительственными должностными лицами, представителями коренных народов и других организаций, а также с сотрудниками учреждений Организации Объединенных Наций.

В более чем 50 из 78 провинций страны живут около 140 этнических языковых групп коренных народов, которые составляют 15-20% от общей численности 80-миллионного населения Филиппин. Они традиционно живут общинами на совместно разграниченных и определенных территориях, которые они занимают с незапамятных времен. Сохраняя свои традиции и ценности, сложившиеся задолго до прихода европейских колонизаторов, они способствуют обогащению культурного разнообразия и уникальности филиппинской нации.

Правовые рамки, в которых права коренных народов следует рассматривать в соответствии с Конституцией, определены в Законе о правах коренных народов (ЗПКН) 1997 года, где предусмотрено также создание Национальной комиссии по делам коренных народов. Хотя в ЗПКН признается право коренных народов на землю, самоопределение и культурную целостность, Специальный докладчик обеспокоен теми серьезными проблемами в области прав человека, которые связаны с недостаточно эффективным осуществлением упомянутого Закона.

Фермерские общины бедных коренных жителей отстаивают свои важнейшие земельные права, подавая в судебные органы притязания на исконные земли своих предков. Этот процесс сопряжен с трудностями, и представители коренных народов понимают, что деловые интересы частных предприятий, которые уже много лет посягают на их исконные земли, защищены лучше, чем их собственные права, основанные на постоянном землепользовании. Высокий уровень нищеты и отсутствие основных социальных услуг вынуждают многих коренных жителей мигрировать в бедные городские районы, где особое беспокойство вызывает положение женщин и детей.

В настоящем докладе приводится документальное подтверждение серьезных нарушений прав человека, в том что касается негативного воздействия на права общин коренных народов, таких видов промышленной деятельности, как широкомасштабная вырубка лесов, открытые горные разработки, строительство плотин многоцелевого назначения, создание агропромышленных комплексов и другие проекты развития. Особое беспокойство вызывают долгосрочные негативные последствия деятельности горнодобывающих предприятий для жизненного уклада коренных народов и окружающей их среды.

Такая деятельность зачастую осуществляется без их предварительного, свободного и осознанного согласия, как то предусматривает законодательство. Общины протестуют против проектов развития, которые разрушают их традиционную экономику, общинные структуры и культурные ценности, т.е. против того, что они называют "агрессивным развитием". Сопротивление и протесты коренных жителей нередко подавляются военной силой, что сопровождается такими многочисленными нарушениями прав человека, как произвольные задержания, преследования, убийства представителей общин, акты принуждения, применение пыток, разрушение домов, уничтожение собственности, изнасилования и принудительный призыв в вооруженные силы, полицию и так называемые полувоенные формирования, например в военизированные территориальные отряды самообороны (ТОС). Милитаризация территорий коренных народов представляется одной из серьезных проблем прав человека, поскольку членов общин коренных жителей зачастую обвиняют в мятеже или участии в "террористической" деятельности. В условиях вооруженного конфликта, который по-прежнему актуален в сельских районах, общины и организации коренных народов часто становятся жертвами нарушений их прав человека.

С учетом сказанного выше Специальный докладчик формулирует следующие рекомендации для правительства Филиппин и других сторон:

a) Национальная комиссия по делам коренных народов (НККН) призвана играть ведущую роль в защите и поощрении прав коренных народов, а также в осуществлении государственной политики в отношении общин коренных жителей. Необходимо укрепить потенциал НККН, выделив ей надлежащие институциональные, людские и финансовые ресурсы. Во всех районах проживания коренного населения необходимо создать отделения НККН, которые должны обладать всеми возможностями для решения проблем развития и прав человека в интересах общин коренных жителей. Комиссии надлежит еще теснее координировать свои усилия с другими правительственными ведомствами, особенно с министерством по охране окружающей среды и природных ресурсов, в целях эффективного осуществления положений ЗПКН, в частности в том, что касается

претензий коренных жителей на земли своих предков. На всех уровнях следует обеспечить максимально широкое участие коренных жителей в деятельности НККН. Соответственно Специальный докладчик рекомендует Комиссии созвать национальную консультативную ассамблею по этим вопросам;

b) сохранить на максимально возможном уровне представительства Целевую группу 63 под председательством Президента Республики для решения не терпящих отлагательства вопросов, затрагивающих коренных народы;

c) филиппинским судебным органам следует в полной мере уважать дух и букву ЗПКН и обеспечивать как можно более благожелательное отношение к коренным народам при урегулировании правовых коллизий между ЗПКН и другими национальными законодательными актами, такими, как Закон о горнодобывающей деятельности 1995 года. Кроме того, необходимо разработать для судей, прокуроров и адвокатов специальные программы подготовки по правам и культуре коренных народов;

d) Национальной комиссии по правам человека (НКПЧ) следует активизировать деятельность в области прав коренных народов, а также привлекать и подготавливать больше адвокатов из числа коренных жителей для оказания эффективной помощи коренным жителям, подающим жалобы на нарушения прав человека. НКПЧ могла бы, например, возглавить движение за создание более широкой структуры для установления и официальной регистрации свободного, предварительного и осознанного согласия коренных жителей во всех случаях, когда это необходимо;

e) урегулирование вопросов, связанных с земельными правами, должно при любых обстоятельствах быть более приоритетным, чем коммерческие интересы. Необходимо признать не только законодательно, но и на практике приоритетное право традиционных общин. Следует прекратить практику предоставления приоритетного права горнодобывающим или иным компаниям, а не общинам, которые владели землей и заботились о ней на протяжении многих поколений, поскольку такая практика дискредитирует всю систему защиты прав человека коренных народов. Обеспечение справедливости в вопросах земельных прав общин коренных народов является великой исторической миссией нынешнего правительства Филиппин;

f) правительству Филиппин следует провести оперативное и эффективное расследование многочисленных нарушений прав человека коренных народов, которые документированы правозащитными организациями и специальными миссиями по установлению фактов. Кроме того, Специальный докладчик настоятельно призывает правительство принять все необходимые меры для предотвращения новых нарушений прав человека;

g) с учетом серьезного характера различных предполагаемых нарушений прав человека и тех вызывающих раскол среди общин коренных жителей последствий, которые имеют действия нерегулярных воинских подразделений или полувоенных формирований, Специальный докладчик настоятельно призывает ТОС покинуть все районы проживания коренного населения в соответствии с национальной программой действий по демилитаризации территорий коренных жителей. Кроме того, Специальный докладчик рекомендует правительству Филиппин уделять, руководствуясь международными гуманитарными стандартами, максимум внимания защите прав коренных жителей во время проведения военных операций;

h) обеспечить в максимально возможной степени адекватные основные социальные услуги, включая доступ к жилищу, образованию, здравоохранению, продовольствию и питьевой воде для всех коренных жителей страны;

i) следует обеспечить максимальную защиту правозащитников, осуществляющих свою легитимную деятельность по защите прав человека;

j) правительству Филиппин следует обратиться к Верховному комиссару Организации Объединенных Наций по правам человека с просьбой создать на Филиппинах представительство для обеспечения технического сотрудничества в области поощрения и защиты прав человека коренных народов;

k) Филиппинам следует как можно скорее ратифицировать принятую Международной организацией труда Конвенцию № 169 о коренных народах и народах, ведущих племенной образ жизни;

l) университетам, исследовательским центрам, фондам, государственным научно-исследовательским институтам, учреждениям Организации Объединенных Наций и неправительственным организациям следует объединить и координировать свои усилия и ресурсы для проведения базовых и ориентированных на политику исследований в общинах коренных жителей и с их участием в целях укрепления механизмов защиты прав человека и доведение проблем, касающихся прав коренных народов, до сведения более широких слоев общественности;

m) права коренных народов должны стать обязательным основополагающим элементом всех программ по образованию в области прав человека на всех уровнях официального школьного и неофициального образования;

n) средствам массовой информации следует выделять достаточное время и место для освещения наиболее важных проблем, касающихся уважения прав человека коренных народов.

Annex

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

CONTENTS

CONTENTS (*continued*)

INTRODUCTION

1. At the invitation of the Government of the Philippines, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people paid a visit to the country from 2 to 11 December 2002, where he met with senior government officials, representatives of indigenous organizations, United Nations agencies, non-governmental organizations (NGOs) and civil society. He also had direct consultations with indigenous peoples themselves during one field visit, two regional consultations and one nationwide consultation in Manila. The Special Rapporteur would like to thank the Government of the Philippines for inviting him to visit the country and for the full cooperation extended to him prior to and during the visit, which greatly facilitated his work. He is also grateful to the United Nations Development Programme (UNDP) Resident Coordinator and staff for their assistance throughout the visit and its preparation. He would further like to extend his profound gratitude to the indigenous peoples who received him with an open heart and provided him with invaluable information and testimonials, in particular the Tebtebba Foundation (Indigenous Peoples International Centre for Policy Research and Education) for coordinating his agenda with other indigenous organizations. Thanks are also due to academics and others who assisted his visit.

I. PROGRAMME OF THE VISIT

2. The Special Rapporteur visited Manila, Baguio City and Mankayan in Benguet Province, and Butuan in Mindanao. In Manila, he met with senior government officials, including the Secretary of the Department of Environment and Natural Resources, the Under-Secretary of the Department of Justice, the Under-Secretary of the Department of National Defence, the Co-Vice Chair of Task Force 63, the Presidential Adviser on Peace, the Chair of the Commission for Human Rights, the Commissioners and Executive Director of the National Commission on Indigenous Peoples (NCIP), and the Chair of the Commission on the Role of Filipino Women. The Special Rapporteur also met with the Catholic Bishop of Butuan, the President and members of the academic community of the University of the Philippines and other academic institutions, and the President of the Chamber of Mines of the Philippines.

3. The Special Rapporteur had fruitful meetings with a wide and representative segment of indigenous peoples' and human rights organizations, who provided him with valuable information and documentation. He also visited the Lepanto Victoria gold mine where he met with members of the mining community.

II. GENERAL CONTEXT

4. The varied geography of the Republic of the Philippines consists of more than 7,000 islands inhabited by about 140 ethno-linguistic groups. Between 15 and 20 per cent of the total population of 80 million are composed of indigenous cultural communities or indigenous peoples (15 to 20 million), who are present in more than 50 of the country's 78 provinces. NCIP estimates that the majority (61 per cent) of the indigenous peoples live in Mindanao while one third reside in Luzon. The other 6 per cent are scattered among the Visayan islands.[1]

5. Philippine indigenous peoples/cultural communities are defined by the Indigenous Peoples Rights Act (IPRA) of 1997 as "a group of people or homogeneous societies identified by self-ascription and ascription by others, 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 and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos."[2]

6. Inherent in this definition are factors such as historical continuity, self-identification and group membership. The thread that weaves these factors together is the indigenous peoples' attachment to land and territory. Nevertheless, it appears that there is no consensus as to exactly who are indigenous peoples in the country. Indigenous identities probably continue to be constructed and reconstructed amid demographic changes, political exigencies, and religious dimensions, particularly on the island of Mindanao.[3]

7. During the Spanish colonization, some natives of the Philippine islands became Christianized and Hispanicized, and in time they made up the majority of the lowland and urban populations of the country. Those people who resisted colonization and maintained their cultural, linguistic and religious identities, mainly in the hard-to-reach mountainous areas, became known as cultural minorities and, more recently, as Indigenous Cultural Communities/Indigenous Peoples. In Mindanao they are collectively known as Lumads, whereas in Luzon the various indigenous peoples of the Cordillera are grouped together under the label Igorots. While indigenous peoples show diverse social, cultural, political and linguistic features, they live mostly in rural areas and depend mainly on swidden and wet-rice cultivation, hunting, fishing, gathering, trading and the commerce of handicrafts. In recent decades the effects of economic development strategies and globalization have been felt on indigenous and tribal communities with mixed results that have led to the emergence of human rights issues, which are the subject of the present report.

8. In pre-Hispanic times indigenous communities held land collectively, but after the Spanish conquest all lands became the exclusive patrimony and dominion of the Crown. The colonial government, applying the theory of *jura regalia*, known as the Regalian Doctrine, distributed land grants to private individuals but also protected, under certain conditions, the pre-existing communal holdings. The American colonial administration inherited this system and the State's control over the public domain was reinforced, communal landholdings were not legally recognized and private land titles were issued in accordance with new legislation.

9. According to the 1935 Constitution, all agricultural, timber and mineral lands of the public domain, waters and minerals, coal and petroleum, and other natural resources of the Philippines belong to the State, and indigenous communities were progressively dispossessed of their lands. In 1957 the Philippine Congress created the Commission on National Integration, intended to foster the "moral, material, economic, social and political advancement of the Non-Christian Filipinos (National Cultural Minorities)", by integrating them "into the body politic", a process also referred to as "mainstreaming".[4] Section 5 of the above-mentioned Act establishes the Commission as the custodian and administrator in charge of the disposition of public lands in the provinces and regions inhabited by National Cultural Minorities for settlement, town sites, roads, and the agricultural lands. A presidential decree issued in 1976 declared the ancestral lands of National Cultural Communities as alienable and disposable, to be identified and subdivided into family-sized private plots.

10. The Aquino Government signified a shift from the policy of integration to one of pluralism. President Aquino created the Office of Muslim Affairs, the Office for Northern Cultural Communities and the Office for Southern Cultural Communities. The 1987 Constitution "recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development" (art. II, sect. 22). It also protects "the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being" (art. XII, sect. 5), and recognizes, respects and protects "the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions" (art. XIV, sect. 17).

III. 1997 INDIGENOUS PEOPLES RIGHTS ACT: A NEW BEGINNING

A. Codification of indigenous peoples' rights

11. Based on the Constitution, the Indigenous Peoples Rights Act (IPRA)[5] was enacted by the Congress in 1997. This Act codifies a wide range of indigenous peoples' rights, including the right to ancestral domains, the right to self-governance and self-determination, the right to

cultural integrity and the right to free, prior and informed consent. It further includes social justice and human rights for indigenous peoples, particularly the principle of non-discrimination, the right to equal opportunity and treatment, the rights of indigenous peoples during armed conflict, the provision of basic services, and the special protection of the rights of indigenous women, children and youth.[6] The enactment of this Act is an important step taken by the Government of the Philippines towards the full realization of the rights of indigenous peoples. IPRA now constitutes, along with the Constitution, the principal framework in which indigenous rights must be considered.

12. Shortly after being enacted, IPRA was challenged in court on several legal grounds. The Supreme Court, however, confirmed its constitutionality in December 2000, marking the beginning of a new era for indigenous rights. The Special Rapporteur hopes that primary attention may now be given by the Government, as well as by the judiciary, to the progressive application of the Constitution and IPRA in the promotion and protection of the human rights of indigenous peoples. Nevertheless, some analysts have pointed to weaknesses in the law, which may lead to contradictory or ambiguous interpretations that do not fully favour indigenous rights. Indeed, the major concern seems to be not so much the text of the law itself as the difficulties of its implementation, despite the adoption of the Implementing Rules and Regulations, and a series of executive orders issued by NCIP. This appears to be a challenge that must be addressed squarely by Government agencies and the judiciary as well as by Philippine society in general if the objectives of the Act are to be truly achieved.[7]

B. NCIP and its role in the implementation of IPRA

13. Implementation depends not only on political will, but also on the institutional effectiveness of the government agencies that are responsible for it. The Special Rapporteur recognizes the importance of Task Force 63, established and chaired by the President of the Republic, which deals with emergency issues regarding indigenous peoples, and is expected to dissolve shortly. Considering the current importance of these issues, the Special Rapporteur believes that Task Force 63 should continue to operate for some time.

14. NCIP is the primary government agency responsible for the formulation and implementation of policy, plans and programmes to promote and protect the rights and well-being of indigenous peoples and the recognition of their ancestral domains. NCIP has not yet been able to live up to the expectations and aspirations of indigenous peoples regarding the full implementation of IPRA. This results in part from insufficient funding, bureaucratic hitches, and the inexperience of NCIP itself, as well as from delays in implementation. NCIP appears to be ready now to fulfil its mandate as the primary government agency responsible for the implementation of IPRA. It has yet to consolidate its specific role and leadership in the

promotion of indigenous peoples' rights within the framework of the Administration, and should be able to establish itself firmly as the lead agency in protecting and promoting indigenous rights, in coordination with other government agencies, particularly the Department of Environment and Natural Resources.

15. Accordingly, NCIP has set a range of policy priorities and goals for the upcoming years in order to implement IPRA, which include: delineation and titling of ancestral domains; ancestral domains development and protection; delivery of basic social services for indigenous peoples; support services for the preservation, protection and promotion of indigenous traditional knowledge systems and practices; and enforcement and protection of the human rights of indigenous people. This ambitious programme is still in its formative stages.

C. Certificates of ancestral domains title and ancestral lands title

16. The question of land rights is at the centre of the concern of Philippine indigenous peoples, as mentioned often during interviews with their organizations. It is a matter of primary national interest and relates directly to the implementation of the relevant provisions of IPRA.

17. Chapter III, section 5, of IPRA provides that "the indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material basis of their cultural integrity ... [as their] private but community property which belongs to all generations and therefore cannot be sold, disposed of or destroyed. It likewise covers sustainable traditional resource rights".[8]

18. The right to claim ancestral domains and lands must therefore be seen as an important provision for the protection of indigenous rights. Whilst some progress has been made in this respect, it is also clear that the legal recognition of ancestral domains and land titles has been a slow and cumbersome process, full of pitfalls and ambiguities, which often drive indigenous communities to despair of the usefulness of IPRA as an effective legal instrument.[9] Many indigenous communities in the Philippines, for various reasons, have not yet made application for the recognition of their ancestral land rights. One reason for this is the lack of information. Another reason relates to past negative experience in which communities anxious to emphasize

their claims to specific pieces of land drew the attention of predatory officials and others to such land and provided opportunities which at times have led to the land being claimed and registered to other than the traditional landholders, thus eroding community protection. Many indigenous communities have no trust in government agencies or office holders.

19. According to the law, ancestral domain claims are to be converted into actual land titles. The Special Rapporteur was informed that only one certificate of ancestral domains has been so converted by NCIP in Bakun, to the great disappointment of indigenous communities who expected the process to be smoother and more efficient.[10] One indigenous community in central Mindanao is struggling to obtain the title to their ancestral domain, currently occupied by the Central Mindanao University. In the process of claiming this right, various human rights violations, including physical harassment and threats, have been reported to the Special Rapporteur.

20. In some cases, these ancestral domains certificates create tension among indigenous communities. In San Luis, for instance, two ancestral domains certificates were issued to local commanders of the Civilian Armed Forces Geographical Units (CAFGUs), an irregular military formation, by the Department of Environment and Natural Resources (DENR), which led to a dispute with neighbouring indigenous communities. The Special Rapporteur was informed that there was no consultation or agreement on issuing these certificates. Therefore some indigenous peoples perceive that ancestral domains certificates are also being used as land-grabbing mechanisms by powerful individuals among their members who have access to information, legal assistance and logistical and political support.

21. Most indigenous communities and leaders have comparatively poor access to the ancestral domains certificates system, and lack the skills required to obtain them. Indigenous peoples are less concerned about title deeds than about actual possession of their traditional lands and territories inherited from their ancestors.[11] Their mistrust of the legal system is bolstered by their conviction that the interests of private or corporate businesses which have encroached continuously over the years upon their ancestral domains, are more protected than their own rights based on land use and occupation from time immemorial. These are lingering social problems that can lead once more to social and political conflict and even violence if they do not receive prompt and effective attention.

D. Conflict of laws

22. The protection of indigenous rights may be hampered, however, by the conflict of laws between the 1995 Mining Act and IPRA. The right of indigenous peoples to their ancestral domains and lands and natural resources found therein is in fact limited by section 56 of IPRA,

which provides that property rights within the ancestral domains already existing and/or vested shall be recognized and respected. Thus, mining companies licensed by the Government under the 1995 Mining Act continue to operate in these domains despite opposition by indigenous communities and organizations. Indigenous representatives in the Cordillera region complained to the Special Rapporteur that the interests of business enterprises under the Mining Act are better protected than their right to their ancestral lands.

23. The Special Rapporteur is of the view that priority should be accorded to the rights of indigenous peoples, as stipulated in IPRA, and as recognized in both long-standing indigenous occupation and government practice and legal precedent. The legislative intent of 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. This tension-fraught situation must be resolved through negotiations with the participation of all interested parties, and the full consent of the indigenous peoples, as well as in the courts, if future conflict is to be avoided and indigenous peoples rights are to be truly protected.

E. Indigenous customary law

24. In cases of conflicting interests regarding claims within ancestral domains, IPRA stipulates that indigenous customary laws, traditions and practices should apply first, and that any doubt or ambiguity in the application and interpretation of laws shall be resolved in favour of the indigenous peoples.[12] Indigenous organizations have complained to the Special Rapporteur that legal practitioners and judges are not usually inclined to refer to indigenous customary law, perhaps because the national legal system has not contemplated its incorporation. The Special Rapporteur considers that this gap in the protection of the rights of indigenous peoples must be filled and should be addressed consistently by the national judiciary and the Administration.

25. The Special Rapporteur welcomes the initiative of the Philippine Supreme Court to train judges in the rights of indigenous peoples recognized in IPRA, and encourages 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.

F. Indigenous knowledge systems and practices

26. As many Philippine indigenous peoples recognize the importance of their traditional knowledge systems and practices in order to preserve cultural diversity, IPRA specifically

provides protection for indigenous community intellectual property rights and indigenous knowledge systems. In this regard, the Special Rapporteur welcomes the fact that NCIP has accorded a high priority to the preservation of indigenous knowledge systems and practices in its upcoming work programme.

27. According to chapter VI, section 34, of IPRA, indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual rights. They shall also have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

28. However, the Special Rapporteur noted 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. Indigenous communities are justly proud of their traditional knowledge and concerned about its preservation and protection. This is part of their cultural integrity, considered to be an important and justiciable human right. Therefore, the intellectual property of indigenous peoples should be a matter of high priority at all times.

IV. MAJOR HUMAN RIGHTS ISSUES FOR PHILIPPINE INDIGENOUS PEOPLES

29. The major human rights issues faced by indigenous peoples in the Philippines are closely linked to various underlying economic, social and political factors. Widespread poverty among the indigenous peoples is related to the land issue and to the unevenly distributed benefits of the economic development process. Social and political unrest in rural areas has also led to civil armed conflict in various parts of the country. The following human rights issues and problems deserve special mention.

A. Resource management and sustainable development

30. The land rights problem is closely related to the issues surrounding economic development strategies as they affect the areas in which indigenous peoples live. Numerous indigenous communities have taken advantage of new economic opportunities provided by changes in productive activities, adjusting their lifestyles accordingly. Others, however, have felt the negative impacts on their lives of such changes, which frequently occur without their prior consent. 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”.

31. Serious human rights violations have been reported to the Special Rapporteur regarding the implications for indigenous communities of economic activities such as logging, mining, multi-purpose dams, commercial plantations and other development projects. Of particular concern have been the long-term effects on the environment and the livelihood of indigenous peoples of open-pit mining, and the expansion of existing mining operations. Sometimes, the effects appear to have been catastrophic for the people concerned, and entire areas are reported to have been devastated without regard to the wishes and rights of indigenous communities. Special attention should be given to the pollution and deterioration of the supply of fresh water for human consumption and agricultural activities in some areas.

32. Legal safeguards such as those referring to the free, prior and informed consent, as well as the requirement of environmental impact and assessment studies before undertaking development projects, are recognized in principle. The Special Rapporteur noted, however, that indigenous peoples’ concerns are generally not given due attention, and that powerful economic and political interests prevail over their legitimate rights. Sometimes, officials argue that because no ancestral domains claim was filed this “proved” the absence of claimants or rights and therefore was used to justify extending rights to private commercial interests. The tension generated by these problems has frequently led to protest action by indigenous organizations, leading to confrontation and conflict. In numerous cases, indigenous activists have been prosecuted, harassed, detained and imprisoned for their involvement in the protection of the rights of their environment and communities.

- The Kankaney people in Bakun Benguet (Luzon) reject a proposed mini-hydro project involving the construction of a tunnel passing under their territory, to which they did not give their prior consent and which they believe will adversely affect them by diverting river water needed for their traditional agricultural activities.[13]

- In the early nineties around 67 T’Boli families of Sitio Datal Bonlangan in Mindanao were evicted from their ancestral domain by a private company, which took over their land under a government-approved contract to fell trees in the forest and turn it into a coffee plantation, as well as for other activities. While eventually some of the evicted families returned to their village, the community is still claiming access to its land and resolution of the long-standing conflict.[14]

- The San Roque Multipurpose Project in the Cordillera region involves the construction of a large dam, which will affect several municipalities and is expected to flood eight

indigenous villages. After several years of protest and negotiations indigenous peoples were enjoined to accept the project, despite their original resistance to it and the fact that they were not at all involved in the planning and execution of the project. Proprietary ancestral rights of indigenous families have not been given due recognition and their livelihoods are forever being changed.[15]

- The Carino 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 favour 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.[16]

- For over 10 years 256 Tagbanua families on Calauit island (Palawan, Visayas) have been reclaiming their ancestral lands, which by presidential decree were turned into a sanctuary of African animals. The families had to suffer relocation under stress and duress.[17]

- The Subanon tribe of Zamboanga peninsula (Mindanao) have been forced over several decades to migrate into the mountains and forests, pushed by an increasing number of settlers from other areas and government development projects, including commercial tree plantations on the Subanon's ancient lands, the conversion of forests into pastures, and mining. The resistance of the Subanon led to serious conflict, violence and human rights violations of the indigenous communities involving the Philippine Army, which led to attempts at negotiating the differences between the parties. At the present time, the Subanon people demand "the full recognition of their ancestral land rights … that will allow them to contribute to the process of defining a development … that is people-centred".[18]

33. The Subanon people in Sitio Canatuan, Siocon, Zamboanga del Norte in Mindanao have also complained of various human rights violations associated with the operations of TVI Pacific, a Canadian mining company. A Mineral Production Sharing Agreement, signed between the company and the Government of the Philippines, covers around 508 hectares within the 6,500-hectare area of the Certificate of Ancestral Domains Claim acquired by the Subanon

people. It has been reported that the company's presence on their ancestral land has caused militarization and acts of violence, by the company's security guards and other armed units, such as rape, the establishment of checkpoints and the maintenance of blockades, barring of food and essential commodities, blocking health services and religious practices, desecration of the sacred sites and breaking the ritual requirements of the sacred ground. They further allege that the presence of TVI Pacific has led to the destruction of hunting grounds and herbal medicine areas, the disruption of education and divisions between indigenous peoples.

34. Elsewhere, a mining license was granted to the Western Mining Corporation (WMCP) for areas that cover the territory of the community of B'laan, particularly the Bong Banwu Salnaong, where ancestral domains claims have been made. As a result of this mining operation, it was reported that the B'laan were deprived of their right to determine their own economic, social and cultural development and their property was disposed of. No genuine consent was given by the indigenous peoples. They argue that their leaders were tricked by the authorities into signing agreements which they could not fully understand and which have not benefited them.

35. Community leaders who are reluctant to sign their support for mining may also be intimidated. A Mamanwa leader in Surigao del Norte reported that he had signed a document because he feared under repeated company and local government pressure that if he did not sign he might be killed. The document was written only in English. The leader could not read the document or understand its content in English, but made his mark on the document anyway. He was only later able to learn that it gave agreement to company entry.[19]

- In Nueva Vizcaya, a Financial and Technical Assistance Agreement was signed with the Climay-Arimco Mining Corporation (CAMC) in 1994. As a result, CAMC was given the right to exploit the Barangay Didipio area, largely inhabited by the Ifugao people. It was reported that there was neither consultation nor consent. The economic and environmental impact of the mining project will affect farming, which is expected to suffer or disappear as the source of income of local residents. Their water supply will become polluted, and the surface topography as well as the flora and fauna will be altered.

- The Macambol region in the municipality of Mati, Mindanao, has also been affected by mining activities. Irregular consultation procedures have been reported in order to obtain consent from indigenous peoples. They were promised an economic uplifting of the region and infrastructure projects. However, due to the hazardous impacts on the environment and the population, the indigenous people of Macambol resisted these destructive activities and oppose any further mining operations on their lands.

- There have also been reports of displacement of indigenous peoples in San Luis, Bukidnon. The Manobo people, ancestral owners of tracts of land in San Luis, have reported that their land has been forcibly converted into large-scale agribusiness ventures, whose ownership was ultimately transferred to non-indigenous lowlanders. They have been reclaiming their traditional land through legal means since the 1980s, but to no avail.

- In Surigao del Norte, one of the provinces of the Caraga region, numerous families have been displaced from their homes and fields, and their agricultural lands were destroyed as a result of open-pit mining operations in Taganito and Tinabigan. Thirty families of the Mamanwa tribe are still living under a concrete bridge, exposed to the harsh climate and the pollution. Despite their appeal to NCIP, their demands were not met.

- Community leaders and even elected officials are openly offered financial inducements and other payments in exchange for their support. In Vizcaya Climax Arimco makes regular payments to *barangay* (local community) councillors. In Siocon, Zamboanga del Norte, such payments are reported to have been offered to Community elders in return for their support. In this case elders were also offered one-off payments for their vote in favour of the project. In Vizcaya a councillor reports being offered substantial bribes to buy his silence in opposition to the company.

- The operations of the Lepanto Victoria gold mine in Mankayan, Benguet province (Luzon), has disrupted the lives of indigenous communities in the area, who complain about serious environmental deterioration, health hazards due to the discharge of toxic wastes and tailings, disregard for indigenous land resource rights, non-compliance with the principle of free and prior consent, and disruption of traditional lifestyles and livelihoods. Pollution of the river, rice-paddies, destruction of fruits and cattle, and potable water shortage for indigenous peoples in the area were also mentioned. A dam with tailings had collapsed some years before, causing extensive damage, and the community fears that yet another dam might collapse, which would further impact the environment. The activities of the mining company were blamed for the recent collapse of an elementary school, which appeared to have been caused by ground subsidence as a result of quarrying to gather material for the raising of a tailings dam. The communities oppose the proposed expansion of the company's activities in their area, and complain that the Government and the existing laws accord privileges to the mining enterprise instead of recognizing the rights of the indigenous peoples set forth in IPRA.

- During a visit to the Victoria mine, the Special Rapporteur was informed by mining executives and given documentation detailing the technical aspects of the operation. He was told that the company abides by strict international standards of environmental management, and he also spoke with family members of the local mine workers who explained that were it not for the mine they would probably be out of work altogether. While no doubt some community members have benefited from the mine's operation, others who attempt to maintain their traditional ways of life have indeed suffered. They despair of the fact that their needs and interests were not taken into account when mining operations were decided upon, and they fear the company's intention to expand its activities in the future. Those who have worked in the mine complain of low wages and sub-standard working conditions.[20]

36. A number of indigenous organizations have also complained about the negative impact brought about by Industrial Forest Management Agreements (IFMA) under the jurisdiction of DENR. The gist of complaints is that these agreements provide concessions to companies interested in establishing and operating large-scale tree plantations. Through these agreements, the IFMA awardees will secure the land and resources within their contract areas. One local *datu* in San Luis, referring to the negative impact of this process, complained that "logging companies are better than tree plantation operations because the former only steal the trees; the latter steal the trees when they clear the forests, as well as the land, where they plant their seedlings". The local indigenous organizations perceive IFMA as acquiring legal control over lands and resources that properly belong to the affected indigenous communities.

37. As indigenous peoples are displaced from their traditional territories, they often end up as poor urban migrants, a condition which was brought to the attention of the Special Rapporteur during his consultations in Baguio City and Manila. In the urban setting they live in dismal conditions, without adequate shelter, jobs, or basic social services. They cannot afford expensive housing, do not easily find jobs and even low-paying jobs are out of reach because, in most cases, they lack formal education. For instance, more than half of Baguio City's total population comprise indigenous peoples from the Cordillera villages. The main factors pushing indigenous farmers to the city are a lack of livelihood sources, almost non-existent basic social services, tribal conflicts or war and militarization. About 65 per cent of the indigenous migrants in Baguio City suffer from extreme poverty due to underemployment and joblessness.[21]

38. The Special Rapporteur was informed that indigenous areas are frequently subject to sweeping military operations to clear the way for future development projects, be they mining, logging, or large-scale plantations on indigenous lands, while government sources claim that these military operations are part of the fight against the insurgents. Thus, tribal areas are combed by the military once or several times in anticipation of the activities of certain economic

enterprises, which may be resisted by the local indigenous communities. Such operations may result in land dispossession, forced displacement, physical abuse, torture, arbitrary detention, summary executions, destruction of houses, including the reported bombing of an indigenous village, as well as "hamleting", (see para. 48 below) and appear to form part of recurring patterns of human rights abuses committed against Philippine indigenous peoples in anticipation of the establishment of major development projects in indigenous areas.[22]

- In mining areas, "militarization, intimidation and abuse by military and mine security are reported from areas including Mankayan, Itogon, Mindoro, Panay, Zamboanga, Cotabato". *Philippine Indigenous Peoples Links*.

B. Poverty and insufficient provision of basic social services for indigenous peoples

39. Section 25 of IPRA provides that "the indigenous cultural communities/indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention should be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electric facilities, education, health, and infrastructure." The Act provides a clear legal framework for the basic social services to which the Philippine indigenous peoples are entitled.

40. Numerous reports were presented to the Special Rapporteur by indigenous organizations claiming that they are not able to receive the benefits of social services. 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. For instance, in 1997 in the Caraga region, the average income of indigenous peoples was 42 per cent lower than the national average.[23] Basic services such as health and education are more easily available in urban areas, leaving out the rural poor. In the Cordillera region poor families in urban areas account for 14 per cent as compared to 55 per cent in rural areas.[24]

41. In the Cordillera region, malnutrition is on the increase. Nine per cent of pre-school children were classified as either moderately or severely underweight in 1999 as compared to 5 per cent in 1998. Maternal care, as well as access to water and basic sanitation facilities,

continue to be a problem for indigenous peoples in this region. Only 19 per cent in Kalinga and 34 per cent in Ifugao have facilities for sewage and garbage disposal. The spectre of tuberculosis continues to haunt the region.[25]

42. PASAKA, a regional confederation of Lumad organizations in Mindanao, expressed its concerns over an epidemic in Malabog in which 38 children died. This organization denounced the Government for building up the armed conflict instead of satisfying the indigenous peoples' basic needs, particularly in the field of health. The indigenous peoples in San Luis composed of the Manobo, Banwaon and the Tala-andig are reported to be among the poorest in the country. Many of them suffer from the effects of poverty: periods of hunger, high morbidity and infant mortality rates, illiteracy, and a serious lack of basic social and other services.[26]

43. The *Philippine Indigenous Peoples Links* reports: Women who are dominant in the subsistence agricultural sector suffer particularly with the introduction of mining. Lost livelihoods for women are replaced by a few work opportunities, mainly for men. Women and family life also suffer in the restricted residential conditions often associated with mine sites (Lepanto, Philex, Benguet Corp-Benguet Province). Families live in one room. There is little or no chance for privacy. Family breakdowns and domestic violence are increasing in mining camps, according to a Cordillera Women's Education and Resource Center Study.

C. Militarization and human rights violations

44. Feeding on rural poverty and social unrest among peasant populations as well as political convictions, several insurgencies confront the Government of the Philippines at the present time in various parts of the country. Some indigenous regions have suffered the impact of the insurgency and governmental counter-insurgency measures, so that numerous indigenous representatives of these regions complain of the effects of militarization on their communities and activities.[27]

45. The militarization of indigenous communities and territories in the course of counter-insurgency operations has created an ongoing crisis causing numerous human rights violations affecting indigenous peoples, who are sometimes caught up in this fight between government troops and rebel groups.

46. The Special Rapporteur received reports of arbitrary detentions, persecution and even killings of community representatives, of mass evacuations, hostage-taking, destruction of property, summary executions, forced disappearances, coercion, and also of rape by armed forces, the police or so-called paramilitaries. When indigenous peoples were involved in counter-insurgency operations they suffered indiscriminate firing, dispossession and destruction

of their property, food blockades, illegal detentions, physical assaults, harassment, torture and threats. Such incidents have been reported in various parts of the country.

The National Federation of Indigenous Peoples' Organizations in the Philippines (KAMP) presented an extensive dossier to the Special Rapporteur detailing a number of alleged human rights violations suffered by indigenous communities, among them:

- Intimidation and harassment of indigenous communities of the Cagayan Valley, Luzon, by soldiers of the 45th Infantry Battalion of the Philippine Army, who accused them of being New People's Army (NPA) rebels (August 2002).

- In July 2002 soldiers harassed members of the Association of Tribal Peasants in San Mariano and local community officers during the election campaign, accusing them of being NPA sympathizers and traumatizing the population.

- Massive military operations since October 2001 have resulted in numerous human rights violations in peasant and indigenous peoples' communities in Jones, Isabela. These operations were timed with the widespread opposition of peasant and indigenous communities to the incursion of a huge Australian-owned mining company. According to KAMP, these violations include various abuses categorized under torture, harassment and grave coercion.

- For many years the Tumanduk[28] of Panay Island, Visayas, have been harassed by the Army, ever since the setting up in 1962, on ancestral *tumanduk* land, of an army reservation for training and weapons-testing purposes. Conflicts and clashes occurred over the years, as various corporations also took an interest in *tumanduk* land, and various unsuccessful attempts were made at peace negotiations. The Tumanduk organized a resistance movement in 1996 to reclaim their ancestral land, which now has 29 village affiliates, and the army countered with the formation in July 2001 of a special Task Force Panay to break this resistance. Within this conflictive situation, numerous human rights violations occur.

- Extensive human rights violations by the Army have been reported in northern Mindanao in connection with a number of economic development projects (mining, forestry, agribusiness) in indigenous areas that affect the livelihoods of local indigenous communities.

- In southern Mindanao, near Davao City, the Army and the CAFGU are said to have organized armed indigenous civilians in the Alsa Lumad Movement to fight against

NPA. This has "brought untold suffering among the majority of the indigenous populations due to illegal arrests and detention, physical abuse, food blockades, divestment of property, forced evacuation, and summary executions perpetrated by the military and Lumad CAFGUs".

- In April 2002 in Pangyan, Davao City, Mindanao, inhabited by Ata-Matigsalug people, six people were killed in a massacre and several more wounded and abducted by the military and CAFGU irregulars, who were ostensibly looking for NPA rebels. The perpetrators have not been prosecuted.

Source: Original documents including affidavits presented to the Special Rapporteur by Kalipunan ng Katutubong Mamamayan ng Pilipinas (KAMP). On file.

47. Special mention must be made of CAFGUs set up by the army in numerous indigenous municipalities, whose semi-military activities often tend to divide local communities and set one group against another. The Under-Secretary of National Defence informed the Special Rapporteur that these units should be considered as reserve units of the armed forces, which occasionally carry out military activities when the need arises. However, indigenous peoples reported that these are not regularly trained military units and that their objective was to control the political and social life of local communities, in disregard of the latter's traditional customs. They reported that divisions among indigenous peoples were created by a tactic whereby the military actually chooses the community leaders (Datu) in order to manipulate and control the community. They asked that CAFGUs be removed from their communities because they do not carry out any beneficial activity.

48. The practice of "hamleting" whereby the military force indigenous peoples to congregate in specified locations against their will and restrict their free movement by imposing a curfew, constitutes another serious human rights violation. There have been reports of "hamleting" in Bukidnon. Within the framework of the conflict between NPA and the Government, indigenous farmers suffer limits on the time allowed for tilling lands, food blockades, divestment of property, illegal arrests and detention, illegal searches, forced surrenders of civilians, bombings and strafing, along the area between Quezon and the neighbouring municipalities of Kitaotao.

- Human Rights violations attributed to CAFGUs include serious threats and harassment of 18 families in *barangays* Sitio Calut and Santa Filomena, indiscriminate firing, destruction of property, forced evacuation, violent physical assault, illegal detention and use of civilians in military operations in San Fernando, Bukidnon, in February 2000. In January 2001 the armed forces of the Philippines and CAFGUs forced two villages to abandon their homes and farms, disrupted schooling

and harassed those trying to provide education to indigenous communities, which led to further exacerbation of the living conditions of the already impoverished indigenous communities. CAFGUs are also said to forcibly recruit young indigenous people into their ranks.[29]

- The LUPACA-Bagani Warriors is a Lumad organization set up by the Philippine military in the Caraga region of Mindanao to fight the NPA rebels. It has been accused of committing human rights abuses against unarmed people in the indigenous communities. Among other things, it has staged fake NPA "surrenders" to impress public opinion.

49. The highest government authorities and the communities themselves assured the Special Rapporteur that indigenous peoples are essentially peaceful and not involved in any kind of subversive or insurgent activities. And yet, as described in the preceding paragraphs, indigenous peoples may stand accused of terrorism or rebellion. The Special Rapporteur received communications about indigenous people being accused of belonging to NPA and prosecuted for terrorist activity simply because of their involvement in legitimate social protest and the defence of their rights.[30]

50. In the Cordillera region, it was also reported that militarization has engendered human rights violations against women and children. Most of these abuses are cases of rape, sexual harassment, forcing girls to serve as "comfort women" in military camps, and compulsory prostitution. After the military leave the area, the victims are abandoned. This has caused fear, coercion, intimidation, and humiliation of indigenous communities. Also in Mindanao, various indigenous leaders complained about numerous cases of rape by members of the armed forces. Only a few of such abuses are reported, and even fewer are prosecuted and punished.

51. Human rights violations are also committed at times by members of rebel groups and private armies. For instance, in the indigenous community of Tineg, Abra, cases of forced evacuation of the populations are attributed to the political rivalry between different armed clans. Multiple cases of murder by local "warlords" have also been reported, such as the recent killing of an indigenous leader of the Benwaren clan, which caused high tension in the municipality and the entire province. In Mindanao, it is reported that an indigenous Datu (village chief), with the help of the military, runs a private army that recruits criminals and sows violence.

52. To date, peace negotiations between the Government and rebel groups have not been successful. The Special Rapporteur calls on all parties to the conflict, particularly the Government, to respect fully the provisions of international humanitarian law concerning the rights of civilians in armed conflict. He further considers that the resumption of peace

negotiations between the Government and the insurgents is of the highest priority for the adequate protection of the human rights of indigenous peoples who often find themselves literally and metaphorically in the crossfire of this long-standing conflict.

53. There are also reports of harassment of indigenous human rights defence organizations. For instance, the offices of an indigenous human rights organization in Butuan, Mindanao, were ransacked and documents were pilfered. It is believed that this illegal search was designed to prevent the organization from presenting to the Special Rapporteur documents denouncing human rights violations, which had been prepared in anticipation of his visit. There have also been reports of 10 raids and 3 attempted raids, mainly in Baguio City, against several human rights NGOs and homes of human rights advocates. In San Luis, it was reported that there is a growing trend towards harassing NGOs or support groups, or even government officials working with indigenous communities. For instance, the military and CAFGU took measures to undermine the integrity of the Catholic sisters and staff of the Religious of the Good Shepherd-Tribal Filipino Ministry, which has been working with indigenous communities for 24 years, and forced them out of local communities.[31]

D. Remedial measures for human rights violations

54. Prompt and effective remedial measures for human rights violations constitute, by themselves, a human right. In principle, indigenous peoples can bring their grievances before authorities at the local (*barangay*), municipal and national levels. They can - and do - appeal to the highest echelons of the army and the police, to NCIP and to the National Commission on Human Rights. Through their friends and supporters in the human rights NGOs, the churches and other instances, some of them have been able to bring their cases to the courts. And yet the Special Rapporteur kept hearing complaints about insufficient remedial measures taken by the national authorities to remedy human rights violations. Indigenous peoples believe that their voices have not been adequately heard nor their situation remedied by the authorities. This has created a looming "protection gap" in the human rights protection system for indigenous peoples in the country.

55. As a result of multiple complaints, the House of Representatives of the Republic of the Philippines passed House Resolution No. 295 in November 2001 directing the House Committee on Civil, Political and Human Rights to conduct an investigation into the numerous cases of human rights violations in Mindoro Oriental and other areas that were allegedly committed by Task Force Banahaw (Rizalde) of the Armed Forces of the Philippines deployed in the southern Tagalog region. It also recommended appropriate legislation to address, prevent, monitor and punish violations of human rights, as well as measures to provide for indemnification,

rehabilitation and restitution for all victims and their families. The findings of the investigation are not known to the Special Rapporteur.

56. It appears that the intervention of government agencies concerned with indigenous human rights issues has been only partially successful to date in determining the facts of numerous cases, identifying and punishing the perpetrators, or bringing justice to the indigenous peoples, whether in Luzon, Mindoro, Mindanao or other provinces. The Special Rapporteur cannot escape the impression that numerous indigenous communities and organizations have lost faith in the ability of government agencies and the judicial system to address their concerns effectively. They appear at times to have given up on the wider democratic political system as a whole and wish rather to concentrate on building their own local organizations in order to address their immediate day-to-day concerns.

V. UNITED NATIONS SYSTEM EFFORTS FOR THE PROTECTION AND PROMOTION OF THE RIGHTS OF PHILIPPINE INDIGENOUS PEOPLES

57. The United Nations system organizations have also joined in numerous efforts for the promotion of the human rights of indigenous peoples in the Philippines. UNDP is involved in a preparatory assistance project entitled "Empowerment of Indigenous Peoples for Sustainable Management of Ancestral Domains", intended to develop indigenous peoples' capabilities, including enabling policies, human resources development, and institutional and community-based mechanisms that would empower the indigenous peoples in their quest for self-determination, and strengthen the capacity of the Government and support groups to provide assistance for sustainable management of ancestral domains. The project further aims to promote and protect the rights of indigenous peoples to development, as recognized by both national and international laws. Another project entitled "Building Knowledge and Information Network of Indigenous Peoples through Information and Communications Technology", aims to assist NCIP in strengthening its technical and institutional capacities. The project "Integrated Biodiversity Conservation and Sustainable Management of Ancestral Domains in the Zambales Mountain Range", will make practical use of indigenous knowledge systems and practices for the direct benefit of the indigenous communities living along its boundaries.

58. ILO carries out various projects under the "Inter-Regional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and Other Self-Help Organizations (INDISCO)". These involve activities aimed at testing alternative approaches to indigenous peoples' development, taking into consideration the spirit and intent of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and focusing on strengthening the indigenous institutions with selected partner communities.[32] The

Asian Development Bank is involved in a Cordillera Highland Agricultural Resource Management Project to benefit indigenous peoples in the context of a poverty reduction strategy.[33]

59. In 1999 six United Nations agencies working in the Philippines issued a Joint Statement of Principles Regarding Development Assistance to Indigenous Peoples. These principles include the right of indigenous peoples to determine and decide their own priorities for development and to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them. In delivering development assistance, the consensus of all the members of a given community of indigenous people must be determined according to their customary laws. Indigenous peoples have the right to development in their ancestral domains, as well as the right to their cultural integrity.[34]

VI. CONCLUSIONS

60. **IPRA of 1997 is an important step forward in the official recognition of the rights of the indigenous peoples of the Philippines that provides a normative legal framework for their protection. Further efforts in this direction were undertaken by the establishment, not without delays, of NCIP and Task Force 63 (which is, however, slated to be dissolved).**

61. **The Special Rapporteur is concerned with the slow pace of implementation of the provisions of IPRA, and he senses a loss of confidence among indigenous organizations in the ability or willingness of government agencies to proceed actively with its effective implementation. This perception applies especially to the crucial issue of claims to ancestral domains and the issuance of land titles to indigenous communities. If this problem is not properly and promptly addressed and the rights of indigenous peoples to land, territory and natural resources are not fully respected, it is likely that further serious social conflict and attendant human rights violations will occur. It is possible to speak here of a human rights "protection gap" for indigenous peoples.**

62. **The Special Rapporteur is concerned about multiple reports of serious human rights violations involving indigenous peoples, within the framework of a process of militarization of indigenous areas. Such abuses include attacks upon the physical integrity and security of indigenous persons, dispossession and destruction of property, forced evacuation and relocation, threats and harassment, disruption of the cultural and social life of the community, in other words, the violation of civic, economic, social and cultural rights. This situation has several aspects. On the one hand it involves units and military personnel of the Philippine Army who have been accused of perpetrating such human rights abuses, as well as local military irregulars such as CAFGUs and "private" armies of local political**

and economic elites with the backing of members of the army hierarchy. On the other hand, militarization is related to two concurrent processes: firstly, the powerful interests of mining, logging and agribusiness enterprises, which acquire control over indigenous lands and resources even against the wishes of the indigenous communities and without their free and prior consent as the law establishes. Secondly, militarization takes place in the framework of the counter-insurgency tactics of the Philippine Army in the war against rebel groups, particularly NPA, in which indigenous communities may be caught up as hapless victims.

63. **Human rights violations frequently occur as one of the negative effects experienced by Philippine indigenous peoples of various economic development projects, including dams, mining, logging and commercial plantations. Such effects upon the livelihoods and lifestyles of indigenous peoples are aptly described as "development aggression". They involve damage to the traditional environment, involuntary displacements, threats to health, disruption of the right to food and shelter, imposed changes in economic activity and livelihoods, and cultural and psychological traumas. Such effects are particularly hard on women and children, especially indigenous girls. The Special Rapporteur concludes that unless adequate measures of protection are taken urgently to diminish or halt these development-induced negative impacts, the very survival of indigenous peoples may be at stake.**

64. **The Special Rapporteur is also concerned about numerous reports of harassment of indigenous human rights defenders and their organizations, who, together with responsible government agencies, are the cornerstone for the protection, promotion and realization of the human rights of indigenous peoples. These organizations should not be dismissed by the Government as troublesome critics of the State, but rather as partners in the search for constructive solutions to the human rights protection gap mentioned earlier. A democratic society can only thrive on full respect for human rights.**

65. **The Special Rapporteur found in the Philippines a thriving, articulate and assertive human rights movement that is especially concerned about human rights abuses against the indigenous peoples. These are the most vulnerable social groups in human rights terms, particularly in the rural areas that are currently being targeted for rapid development activities. Nevertheless, this movement faces many handicaps and a serious challenge in the lack of effective remedial measures to rectify human rights violations perpetrated against the indigenous peoples. Many indigenous representatives reported that they regularly present their grievances to whoever they believe is in a position to assist them at the local *barangay*, municipal, provincial or national levels, including the police,**

the army, NCIP, and the National Commission on Human Rights, but most of the time they do not receive a satisfactory response.

66. **The Special Rapporteur welcomes the efforts made by the United Nations system for the promotion and protection of the rights of the Philippine indigenous peoples, noting that UNDP and ILO in particular have played a significant role in this process. The Special Rapporteur also notes the work being undertaken in this area by the Asian Development Bank, and wishes to encourage other multilateral financial institutions to concentrate as well on the human rights-based approach to the development of indigenous communities.**

VII. RECOMMENDATIONS

67. **The Special Rapporteur would like to make the following recommendations to various actors for the better promotion and protection of the human rights of indigenous peoples in the Philippines:**

(a) That the National Commission on Indigenous Peoples (NCIP) become firmly established as the lead agency in protecting and promoting indigenous rights, as well as in implementing government policy with regard to the indigenous communities. The capacity of NCIP must be strengthened in terms of adequate institutional, human and financial resources. NCIP offices fully qualified to deal with development and human rights issues in defence of indigenous communities should be set up in every indigenous area. NCIP should further improve its coordination with other government agencies, particularly with the Department of Environment and Natural Resources, for the effective implementation of the provisions of IPRA, especially as regards the question of ancestral domain claims and titles. The widest possible participation of indigenous peoples in the activities of NCIP must be assured at all levels. Indeed, the Special Rapporteur recommends that NCIP call for a National Consultative Assembly on these issues;

(b) That Task Force 63 be maintained as the highest level for dealing with emergency issues regarding indigenous peoples, under the chairmanship of the President of the Republic;

(c) That the Philippine judiciary fully respect the legislative intent and spirit of IPRA and ensure that maximum favour 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;

(d) That 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. NCHR could, for example, spearhead a movement to create a broader structure to determine and certify prior, free and informed consent by indigenous peoples, whenever necessary;

(e) 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;

(f) That the Government of the Philippines 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. The Special Rapporteur further urges the Government to take all necessary measures to prevent a recurrence of human rights violations;

(g) Given the severity of the various alleged human rights abuses and the divisive effects on indigenous communities caused by irregular military units or paramilitary groups, the Special Rapporteur urges that CAFGUs be withdrawn from indigenous areas altogether, within the framework of a national programme to demilitarize indigenous peoples' territories. Furthermore, the Special Rapporteur recommends that the Government of the Philippines take maximum caution to protect indigenous peoples' rights during its military operations, in accordance with international humanitarian standards;

(h) 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;

(i) That maximum protection be afforded to human rights defenders in carrying out their legitimate human rights work;

(j) That the Government of the Philippines request the United Nations High Commissioner for Human Rights to establish an office in the Philippines to provide

technical cooperation in the field of the promotion and protection of the human rights of indigenous peoples;

(k) That the Philippines speedily ratify International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries;

(l) That the universities, research centres, foundations, government research units, United Nations agencies and non-governmental organizations combine and coordinate their efforts and resources to carry out basic and policy-oriented research in and with the participation of indigenous communities in order to strengthen human rights protection mechanisms and bring the issues surrounding the rights of indigenous peoples to a wider audience;

(m) That 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;

(n) That the mass media allocate sufficient time and space for the presentation of the major human rights issues involving indigenous peoples.

Notes

[1] NCIP has divided the Philippines into seven ethnographic regions, as follows: (1) Northern Luzon and the Cordillera Autonomous Region (CAR); (2) North-eastern Luzon; (3) the rest of Luzon; (4) Visayan Island groups; (5) Northern and Western Mindanao; (6) Southern and Eastern Mindanao and Caraga; and (7) Central Mindanao.

[2] Section 3 (h) of the Indigenous Peoples Rights Act of 1997. "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."

[3] Raymond D. Rovillos and Daisy N. Morales. *Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Philippines* (Manila, Asian Development Bank, June 2002), pp. 4-6.

[4] Republic Act No. 1888.

[5] Republic Act No. 8371.

[6] Marvic M.V.F. Leonen, "The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371): Will this Legal Reality Bring Us to a More Progressive Level of Political Discourse?" *Philippine Natural Resources Law Journal*, Vol. 9, No. 1, September 1998, p. 9, summarizes the provisions of the law as follows: (a) civil and political rights of all members of indigenous cultural communities or indigenous peoples; (b) social and cultural rights of all members of indigenous cultural communities or indigenous peoples; (c) recognition of a general concept of indigenous property right and granting title thereto; and (d) creation of a National Commission on Indigenous Peoples (NCIP) to act as a mechanism to coordinate implementation of the law as well as a final authority that has jurisdiction to issue Certificates of Ancestral Domains/Land Titles.

[7] According to the law, claims to ancestral domains must be applied for by the interested communities for ancestral land titles to be formally recognized. Some lands are not considered subject to claims at all, when other private land claims exist, and there is a special provision of exemption for Baguio City (the indigenous city in Benguet Province, northern Luzon). All this has confused indigenous organizations as to the possible benefits for them of IPRA. Some indigenous representatives indicated to the Special Rapporteur that IPRA "should be scrapped altogether" because it does not fully meet the aspirations of indigenous peoples.

[8] This provision raises the issue of conflict of laws particularly between the 1995 Mining Act and IPRA. See section III D below, "Conflict of Laws".

[9] Ancestral domains refer to "all areas generally belonging to indigenous cultural communities/indigenous peoples (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs,

by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present … It shall include ancestral lands, 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 they 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". Ancestral lands, on the other hand, refer to "land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces, private forests, swidden farms and tree lots" (chapter II, section 3 of IPRA).

[10] The Department of Environment and Natural Resources (DENR) was the responsible government agency issuing certificates of Ancestral Domain Claims (CADCs) since 1993 through its Department Administrative Order No. 2. Since the enactment of IPRA, NCIP became the responsible agency for these ancestral domain claims, and the relevant documentation in the custody of DENR is now in the process of being transferred to NCIP.

[11] One village chieftain in Aguisan del Norte walked for three days to report her community's plight regarding the struggle over ancestral domains to the Special Rapporteur.

[12] Chapter VIII, section 63. See also Marvic Leonen, note 6 above.

[13] Information provided by SIPBAD, Sinakbat, Bagu, Dalipey Indigenous Peoples Association, (on file).

[14] Document on file.

[15] For more detailed information on the San Roque Dam, see the main annual report (E/CN.4/2003/90).

[16] Document on file.

[17] In 1995 they appealed to the United Nations Centre for Human Rights for help but except for a letter acknowledging their communication they never received an answer (communication from the Balik Calauit Movement, on file).

[18] Balay Danddawan No'k Subanen, "The Effects of Government Laws and Development Projects on Subanen people in Zamboanga Peninsula" (document prepared for the Special Rapporteur, on file).

[19] Information provided by Philippine Indigenous Peoples Links.

[20] The Special Rapporteur heard the views of both the indigenous communities and the mining company on this issue (documents on file).

[21] Geraldin Cacho and Joan Carling, "The Situation of Poor Indigenous Peoples in Baguio City - the Philippines", *Indigenous Affairs*, 4-4/02, IWGIA.

[22] TAGDUMAHAN, Alliance of Banwaon Peoples' Organizations, San Luis, Agusan del Sur. A comprehensive report on human rights violations in the region was prepared by this organization and presented to the Special Rapporteur during this visit. According to the report, "local communities perceive military and paramilitary operations to be linked to the entry of big business or transnational corporations, particularly industrial tree-plantations ... Military and paramilitary operations are intended to disable communities from opposing the entry or presence of logging, tree-plantation or other commercial companies".

[23] Rovillos and Morales, op. cit., pp. 19-24.

[24] Ibid., p. 26.

[25] Ibid.

[26] TAGDUMAHAN, *loc. cit.*

[27] Social conflicts and ideological confrontations, which have deep historical roots that stretch back to before the Second World War and Cold War eras, led to military insurgencies that the Government of the Philippines has attempted to stamp out for many years. One of the rebel groups, known as the New People's Army (NPA) had its origin in the Hukbalahap movement against the Japanese occupation during the Second World War. The Moro rebellion is located in Mindanao and consists of two distinct rebel groups: the Moro National Liberation Front, and the more radical Moro Islamic Liberation Front, which has been accused of serious human rights violations.

[28] Also known as Pan-ayanon and Suludnon-Bukidnon.

[29] Documents presented to the Special Rapporteur. On file.

[30] The Special Rapporteur found it totally inappropriate that a regional police commander in the Cordillera decided, at the behest of a mining executive, to disqualify the legitimacy of some participants, and send his men to monitor a public meeting of indigenous peoples organized within the framework of the Special Rapporteur's visit. He was also concerned about the highly irregular presence of members of the Armed Forces in civilian clothing videotaping the proceedings of one of the regional dialogues that he attended (substantiating documents are on file).

[31] "Beacon of Hope to Lumads", www.inq7.net, 28 December 2001.

[32] Since its launching in 1994, five pilot projects have been carried out in different parts of the country: (1) Support to Indigenous Women Empowerment through Human Resource Development and Income-Generation Employment Activities in San Carlos Heights and Quirino Hill, Baguio City; (2) Support to Alternative Income and Employment Generation Schemes of Indigenous Upland Communities in the Aeta Community, Masikap Village, Mambog, Botolan, Zambales, the Tau-Buid Community, Balangabong, Occ. Mindoro, and in the Batangan Community, Balani, Ligaya, Occ. Mindoro; (3) Support to Alternative Income-Generation Schemes of Indigenous Fisher-folks in the Sama Muslim Community, Bakong and Panglima Mastul, Simunul, Tawi-Tawi; (4) Support to Production and Promotion of Indigenous Arts and Crafts in Bubong, Tugaya and Dayawan, Marantao, Lanao del Sur and Luia, Sultan Kudarat and Lapaken, Upi, Maguindanao; and (5) Support to Management of Ancestral Domains by Indigenous Peoples, Kankanaey-Bago Community in Bakun, Benguet.

[33] Rovillos and Morales, op. cit., chap. 9.

[34] Joint Statement of Principles Regarding Development Assistance to Indigenous Peoples in the Philippines issued in 1999 by FAO, ILO, UNESCO, UNDP, UNFPA and UNICEF.
