

## **Debriefing for the Government of the Philippines, by the UN Special Rapporteur on the Rights of Indigenous Peoples on the occasion of his visit to the Philippines, 2 - 11 December 2002**

At the invitation and as a guest of the government of the Philippines I visited the country on December 2 – 11, 2002. The mandate of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, established by the UN Commission on Human Rights in 2001, is “to gather, request, receive and exchange information and communications from all relevant sources, including governments, indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms.”

The program of my visit was negotiated carefully between the Office of the High Commissioner on Human Rights, the Philippine Government through its Delegation in Geneva and Tebtebba Foundation, the well-known and widely respected Philippine indigenous peoples research organization. In determining my final program, I took into account the wishes of the Philippine government, the suggestions of national indigenous organizations and my own concerns as expressed in my mandate. During the course of the visit some slight adjustments had to be made in the program due to time constraints. Despite the appearance of some misunderstandings relating to the setting up of my program here, I am pleased to say that it worked out very well and to my entire satisfaction.

The first two days of my activities involved numerous and very informative meetings with Philippine government authorities and the various UN agencies. I met with Task Force 63, the Dept. of Justice, the National Council on the Role of Filipino Women, the Commission on Human Rights, the Office of the Presidential Assistant for the Peace Process, the National Commission for Indigenous Peoples, the Department of National Defense, and the Department of Environment and Natural Resources. The meeting with the Dept. of Social Welfare and Development was canceled at their request. I held a fruitful interview with Ambassador Howard Dee, former presidential adviser on indigenous issues.

I had meetings with indigenous peoples' organizations, notably in Baguio City, Mankayan, and Butuan as well as in Manila. I was able to obtain information from a wide and representative segment of the indigenous organizations in the country. These community dialogues were open and transparent, and I am glad to acknowledge also the presence of representatives of the NCIP, the CHR and DNER, as well as the local authorities, at these dialogues.

At the invitation of Lepanto Mining Company I visited the Victoria Gold mine and spoke with company executives as well as with members of the local mining community. I also met with the president of the University of the Philippines and with a number of scholars from various academic institutions. In Mindanao I met with the bishop of Butuan. I obtained a considerable amount of documentation

regarding the human rights situation of indigenous peoples in the Philippines which is of great value in the preparation of my report.

I would like to share with you some of my initial impressions concerning what I perceive to be the major human rights issues confronting the indigenous peoples. Let me say, however, that I do not pretend to have full knowledge of the situation of all the indigenous peoples of the country and these preliminary findings are based exclusively on the contacts I was able to make briefly in only a few areas during my short visit. Therefore, what I have learned refers only to the organizations I did actually meet and does not pretend to be an overall assessment of all the indigenous peoples in the country.

- 1) An important step towards the full realization of the rights of indigenous peoples was taken by the Philippine government with the adoption of the Indigenous People Rights Act in 1997. This constitutes now the principal framework, after the Constitution, in which indigenous rights must be considered. Many of the provisions of IPRA are intended to enable and promote the full enjoyment of their rights. Nevertheless, some analysts have pointed to weaknesses in the law which may lead to contradictory or ambiguous interpretations that do not fully favor indigenous rights. They also mention the fact that other laws (such as the Mining Act of 1995) include other provisions that make the application of IPRA difficult. Indeed, the major concern seems to be not so much the text of the law itself, as the difficulties of its implementation. This appears to be a challenge that must be met squarely by the government agencies and the judiciary, as well as by Philippine society in general, if the objectives of the Act are to be truly attained.
- 2) Implementation depends not only on political will but also on the institutional effectiveness of the government agencies that are responsible for it. This means in first place the National Commission for Indigenous Peoples which has yet to consolidate its specific role and leadership in the promotion of indigenous peoples' rights within the framework of the administration. I would expect the NCIP to be able to establish itself firmly as the lead agency in protecting and promoting indigenous rights, as well as implementing government policy with regards to the indigenous communities and improve its coordination with other government agencies such as, in particular, the Dept. of Environment and Natural Resources.
- 3) In this task the role of the Commission on Human Rights is also essential, and the Philippine Human Rights Plan 1996-2000 contains a chapter on indigenous cultural communities, detailing specific actions to be carried out in their behalf. These provisions should receive priority attention by the Commission and their implementation must be carefully assessed and evaluated so as to increase their relevance in the current time frame. With its various regional branches the Commission attempts to establish full national coverage, but indigenous sources complain that their access to the Commission is still limited and its activities not yet fully effective.

- 4) The question of land rights is at the center of the concern of indigenous peoples. This has been mentioned extensively in my interviews with their organizations, and as it is not limited to any particular region it must be considered as a problem of primary national concern. The right to claim ancestral domains and titles must be seen as an important provision for the protection of indigenous rights. While some progress has been made in this respect, it is also clear that the legal recognition of ancestral domains and titles has been a slow and cumbersome process, full of pitfalls and ambiguities, which often lead indigenous communities to despair of the usefulness of the IPRA as an effective legal document. Many indigenous people have expressed to me their conviction that the business interests of private or corporate enterprises, which over the years have continuously encroached 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 which, if they do not receive prompt and effective attention, can lead once more to social and political conflict and even violence.
- 5) 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 which destroy their traditional economy, community structures, and cultural values, a process that has been aptly described as “development aggression,” and that challenges the prevailing view that there is only one possible way to promote and ensure economic development.
- 6) Serious human rights violations have been reported to me regarding the implications for indigenous communities of economic activities such as logging, mining, the building of 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. These environmental damages and human rights denials have been systematically documented. 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, especially now that the right to water has been declared a human right by the UN Committee on Economic, Social and Cultural Rights and is also mentioned in the IPRA.
- 7) Despite legal safeguards such as those referring to free, prior and informed consent, or environmental impact and assessment studies,

indigenous peoples report that their concerns are generally not given due attention and that powerful economic and political interests prevail over their legitimate rights. This has quite frequently led to protest action by indigenous organizations, leading to confrontation and conflict, with the result that in numerous cases indigenous activists are prosecuted, harassed, detained and imprisoned for their involvement in the protection of the rights of their environment and communities.

- 8) Equally serious are reports of arbitrary detention, persecution and even killings of community representatives, of coercion, forced recruitment, and also of rape, by the armed forces, the police or so-called paramilitaries. In this connection mention must be made of the CAFGU (Civil Armed Forces Geographic Units) 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. These reports are documented and substantiated, and yet the alleged victims claim that they do not receive due process and justice in the courts when they file their complaints. Indigenous organizations complain that their legitimate activities in defense of their civil and property rights tend to become criminalized by local military and civil authorities. Task Force 63, the NCIP and the CHR would be expected to take on a more active role in the judicial defense of the indigenous persons and communities involved in such human rights abuses. The Special Rapporteur recommends that CAFGU, given their divisive effects and alleged human rights violations, be withdrawn from indigenous areas altogether.
- 9) Indeed, the militarization of a number of indigenous areas, especially in Mindanao, was mentioned to me repeatedly. There are reports of indigenous people being accused and prosecuted of terrorist activities simply because of their involvement in legitimate protest or the defense of their rights, or because they happen to live in areas where the presence of guerrillas is suspected. Tribal areas are said to be "combed" by the military once or several times in anticipation of the activities of certain economic enterprises, such as mentioned before, which may be resisted by the local indigenous communities. Documented complaints about dispossession, forced displacement, physical abuse, torture, arbitrary detention, summary executions, destruction of houses, including the bombing of an indigenous village, as well as the practice of hamleting, have been reported in detail to the Special Rapporteur. Human rights defense organizations have also been harassed, in violation of national legislation and international human rights law. The intervention of the government agencies involved with indigenous and human rights issues does not appear to have been successful to date in determining the facts of each case, identifying and punishing the responsible perpetrators or bring justice to the indigenous peoples, the lumads of Agusan del Sur and other provinces.
- 10) While most human rights violations in the context of armed conflict are alleged to have been committed by the armed forces, cases of violations by the NPA have also been reported. The Special Rapporteur calls on

both sides to fully respect the provisions of international humanitarian law concerning the rights of civilians in armed conflict.

- 11) I have heard from the highest government authorities, and from the communities themselves, that indigenous peoples are essentially peaceful and not involved in any kind of subversive or insurgent activities. And yet, they may stand accused of terrorism or rebellion. In this respect I must confess that I find it hard to understand and totally inappropriate, that a regional police commander in the Cordillera can decide, at the behest of a mining company executive, to disqualify the legitimacy of some participants, and send his men to monitor a public meeting organized within the framework of the Special Rapporteur's official mission. He is also concerned about the highly irregular presence of members of the AFP, in civilian clothing, videotaping the proceedings of one of the regional dialogues he attended. Likewise, he must report that the offices of one of the human rights defense organizations were ransacked and documents were pilfered that were to have been presented at this meeting.
- 12) The Special Rapporteur 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 cross fire of this long-standing conflict.
- 13) From his dialogues and conversations the Special Rapporteur cannot escape the impression that numerous indigenous communities and organizations have lost their 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 democratic political system as a whole, and wish rather to concentrate on building their local organizations in order to address their immediate day-to-day concerns. However, they continue to suffer the pressures of outside economic, military and political forces which do not allow them to freely exercise their right to self-determination and their local autonomy, and thus their ability to defend their weakened human rights within the legal framework of the country's institutions is severely curtailed.
- 14) Numerous reports have been presented about indigenous peoples not being able to receive the benefits of social services to which they should have a right. Various surveys and studies also report that human development indicators are lower, and poverty indicators higher, for indigenous peoples than 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 high density of indigenous populations in certain provinces.
- 15) Indigenous knowledge systems, particularly 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. The intellectual property of indigenous peoples should be a matter of high priority at all times.

- 16) While no cases of direct personal discrimination on the grounds of race or ethnicity were reported directly, there is the sense of an atmosphere of discrimination against indigenous peoples in general terms, to the extent that mainstream Philippine society ignores and is not concerned about the issues facing indigenous communities, and that there is clear structural bias against indigenous peoples in the provision of basic services. Non acknowledgement and recognition of the cultural and social specificity of indigenous peoples is also a form of latent discrimination, as has been noted by the World Conference against Racism. This latent discrimination can only be overcome by adequate educational and cultural policies, and in this respect the curricula of the schools and the contents of textbooks have been mentioned as deserving careful revision in order to do justice to the true history of indigenous peoples and their contribution to national society.
- 17) The commitment of the Philippine government to the human rights of indigenous peoples has been underlined by President Macapagal-Arroyo's decision to establish and chair herself Task Force 63, which is concerned with emergency situations involving indigenous peoples. The human rights violations mentioned in the preceding paragraphs should certainly be considered as such an emergency and the Special Rapporteur would hope that Task Force 63 would be able to implement solutions to these various complaints before its forthcoming dissolution.
- 18) Inasmuch as the duty of states within the framework of their own legal systems and in accordance with international standards is to protect the human rights of their citizens and to ensure that government authorities do not themselves abuse these rights no matter what the apparent justification, the Special Rapporteur considers that it is of the highest priority that due attention be given by the Philippine government to the complaints of these alleged human rights violations of indigenous peoples.
- 19) Economic and social development are urgent tasks of our time, particularly when more than half of the world's population lives in dire poverty. Among these, the indigenous peoples have been acknowledged as being particularly vulnerable. But the United Nations have agreed that if development is to be at all effective even in purely economic terms, it must be a human rights centered development. The full enjoyment of human rights by all the people concerned are as important, if not more so, than growth rates, productivity and profits. The indigenous peoples are still waiting for human rights centered development to reach them.

- 20) Upon the completion of his mission, the Special Rapporteur will now proceed to carefully evaluate the information and documentation that has been provided to him by government agencies, indigenous organizations and academic institutions, and that he has been able to collect through community dialogues, meetings and interviews. He will draft a report on his mission which he will be happy to share with the Philippine government as soon as possible before its submission to the UN Commission on Human Rights.
- 21) In the report, he will not only describe the situation of the human rights of the indigenous people as he sees it, but also state some conclusions and offer recommendations in a spirit of constructive dialogue and goodwill.
- 22) Finally, he wishes to thank the Philippine government for having invited him and hosted his visit, as well as to the indigenous peoples organizations who have shared with him their plight, their needs and their hopes with great candor and clarity. He hopes that the results of this mission will be considered as a modest contribution to the fulfillment of the human rights of the indigenous peoples of the Philippines and to a more just and democratic national society.

Thank you.