



Commission on Human Rights of the Philippines

Inputs to the OHCHR Report on the Implementation of the United Nations Declaration on the Rights of Indigenous Peoples, focusing on Recognition, Reparations, and Reconciliation

February 27, 2019

1. The following inputs from the Commission on Human Rights of the Philippines (hereinafter the “Commission”)¹ took into consideration local and international reports from government, civil society, the media, and international non-government organizations. This submission also utilized the Commission’s own documentation of independent monitoring activities and statements all of which were subjected to the internal deliberations of the Commission En Banc.

Updates on draft legislation, national laws and frameworks

On Recognition

2. The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371, IPRA)² is the main national legislation in the Philippines that recognizes, promotes and protects the rights of indigenous peoples and indigenous cultural communities. IPRA aims to correct historical injustices against indigenous peoples, enforce constitutional mandates and observe international norms.

¹ As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights of the Philippines has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has “A” - status accreditation from the Sub-Committee for Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI).

² An Act To Recognize, Protect And Promote The Rights Of Indigenous Cultural Communities/Indigenous People, Creating A National Commission Of Indigenous People, Establishing Implementing Mechanisms, Appropriating Funds Therefor, And For Other Purposes [Indigenous Peoples’ Rights Act of 1997], Republic Act No. 8371, (1997),

3. The National Commission on Indigenous Peoples (NCIP) was created by IPRA as the implementing arm of the law, ensuring that the legal provisions are properly observed and applied.³ NCIP also has quasi-judicial functions where it attends to cases relevant to the law brought within its jurisdiction.⁴
4. The House of Representatives on 5 December 2018 approved on second reading House Bill 8637 or the "Anti-Racial, Ethnic and Religious Discrimination Act." The bill defines discrimination as "an act involving distinction, exclusion, restriction, or reference made on the basis of race, color, descent, national or ethnic origin, religion, or religious affiliation or beliefs, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on an equal footing of the human rights and fundamental freedoms in the political, economic, social, cultural, or civil life of a person."⁶
5. The Commission on its inputs for the General Assembly Resolution 70/166: Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities on 18 May 2017 recommended the consolidation of anti-discrimination bills using House Bill No. 3312 as the template for a comprehensive law against discrimination. The Commission similarly reported an update on anti-discrimination bills through its submission to the OHCHR in January 2019.⁷ If the draft legislations are passed into law, they would address discrimination committed against diverse groups including indigenous peoples.
6. The Philippine Development Plan 2017-2022 includes indigenous peoples in its chapters on Promoting Philippine Culture and Values (chapter 7) and Ensuring Ecological Integrity, Clean and Health Environment (chapter 20). Chapter 7 of the development plan aims for intensifying efforts to raise cultural awareness, while Chapter 20 take in to consideration indigenous peoples' issues on management of natural resources and land administration.⁸
7. Sec. 16 of RA 8371 provides that the Indigenous Cultural Communities /Indigenous Peoples (ICCs/IPs) have the rights to fully participate, if they choose to, at all levels of decision making in matters which may affect their rights, lives and destinies through procedure determined by them, thus the State is required to ensure that they shall be given mandatory representation in policy-making bodies and other local legislative councils.

³ Indigenous Peoples' Rights Act of 1997, § 38.

⁴ Indigenous Peoples' Rights Act of 1997, § 44.

⁶ "House passes "Anti-Racial, Ethnic and Religious Discrimination Bill," 9 December 2018, *available at* <http://www.congress.gov.ph/press/details.php?pressid=11111> (last accessed February 18, 2019).

⁷ Commission on Human Rights of the Philippines, "Effective Promotion of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities," 31 January 2019, <https://bit.ly/2tFnuQs> (Last accessed: 27 February 2019).

⁸ National Economic and Development Authority, Philippine Development Plan 2017-2022, *available at* http://www.neda.gov.ph/wp-content/uploads/2018/01/Abridged-PDP-2017-2022_Updated-as-of-01052018.pdf (last accessed 26 February 2019).

8. In 2012, through the Department of Interior and Local Government (DILG), together with the National Anti-Poverty Commission (NAPC), the government has started to integrate bottom-up budgeting in its social welfare and development programs, with the aim of involving the poorest communities, including the indigenous peoples sector, in identifying projects that they believe would be beneficial to them. The idea of bottom-up approach is that the budgeting proposals come from the "people who do the work", or the grassroots.⁹ Civil society organizations (CSOs), including the indigenous peoples sector, are able to participate and intervene in the identification and formulation of the priority projects of the local governments, in the project implementation as well as in monitoring.

On Reparation

9. Joint Administrative Order No. 1 Series of 2012 constitutes a violation of indigenous peoples' rights to be awarded Certificates of Ancestral Domain Titles (CADT) that sets the boundaries of their domains and allows them to assert rights within those boundaries against those operating to deny them the exercise of priority rights in developing said domains.¹⁰
10. Last 2018 the National Commission on Indigenous Peoples (NCIP) and the Department of Public Works and Highways (DPWH) have agreed to set guidelines to fast-track infrastructure projects and at the same time protect the ancestral domain claims of indigenous peoples. These guidelines aim to formulate procedures and documentary requirements in processing road right-of-way (RROW) claims for the compensation of indigenous peoples' properties which are affected by DPWH projects.¹¹
11. In the NCIP Administrative Order No. 1 Series of 1998¹² Rules and Regulations Implementing RA NO. 8371, compensations for infringement in Ancestral Domains includes damage in its eco-systems and for any loss of life, injuries or damage to property, displacement or relocation.

⁹ Mikki Eugenio, What is Bottom-Up Budgeting?, available at <https://www.scribd.com/doc/172766607/What-is-Bottom-Up-Budgeting>, (last accessed February 6, 2019).

¹⁰ Commission on Human Rights of the Philippines, Response of the CHRP to the "UN Permanent Forum on Issues: 2018 Questionnaire to National Human Rights Institutions", available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/02/The_Philippines.pdf (last accessed 26 February 2019) citing Commission on Human Rights of the Philippines, 2017 National Inquiry Report on the Human Rights Situation of the Indigenous Peoples.

¹¹ Julius N. Leonen, DPWH, NCIP set guidelines on infra projects in ancestral lands, Inquirer, April 07, 2018, available at <https://newsinfo.inquirer.net/980790/dpwh-ncip-set-guidelines-on-infra-projects-in-ancestral-lands> (last accessed February 18, 2019)

¹² NCIP Administrative Order No. 1 Series of 1998, available at <https://www.wipo.int/edocs/lexdocs/laws/en/ph/ph083en.pdf> (Last accessed February 18, 2019)

12. Republic Act No. 10368¹³ which was signed last February 25, 2013 provides for the recognition and indemnification of all the victims of human rights violations (HRVs), and their heirs, during the Marcos regime. As of 2018, the year when the Human Rights Victims' Claims Board ends its operations on May 12, 2018 as mandated by law, it is listed that 11,103 names who will receive monetary compensation was approved out of a total of 75,749 applicants¹⁴. Some claimants came from Mindanao, Visayas region and other IP core areas in the Philippines.¹⁵
13. The numbers stated seems small compared to the reported displaced 300,000 Moro people through a combination of "hamleting" and community takeovers during the Marcos Regime from 1972 to 1986. It also does not include the aggressive recruitment of the Presidential Assistant on National Minorities (Panamin) in 1968 to train and recruit indigenous peoples as part of paramilitary groups, and which was aimed to divide and harass the ranks of indigenous communities who were capable of resistance.¹⁶ This could be because it is difficult for the indigenous peoples to access information from their ancestral lands for them to be able to know about and file for recognition and reparation.

On Reconciliation

14. On the peace agreement, the government of the Philippines and the rebel group in Mindanao, the Moro Islamic Liberation Front (MILF), signed the Comprehensive Agreement on the Bangsamoro (CAB) on 27 March 2014. The peace negotiation was an attempt to put an end to the decades of conflict in Mindanao which stemmed from disputes on ancestral land and decades of neglect.¹⁷ The negotiations began in January 1997, continued, under the facilitation of the Government of Malaysia beginning 2001, and led to the signing of the Framework Agreement on the Bangsamoro in October 2012 and the completion of all its attached documents in January 2014.¹⁸ Both parties in

¹³ An Act Providing For Reparation And Recognition Of Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor And For Other Purposes, [Human Rights Victims Reparation and Recognition Act of 2013], Republic Act No. 10368.

¹⁴ Jodesz Gavilan, 11,103 victims of human rights violations under Martial Law to get compensation, Rappler, May 10, 2018 available at <https://www.rappler.com/nation/202033-human-rights-victims-claims-board-final-list-eligible-claimants-released> (last accessed February 26, 2019)

¹⁵ Vince F. Nonato, Marcos victims get partial compensation, Inquirer, May 8, 2017 available at <https://newsinfo.inquirer.net/895049/marcos-victims-get-partial-compensation> (last accessed February 26, 2019)

¹⁶ Pya Macliing Malayao, LETTERS TO THE EDITOR "IPs remember Marcos atrocities", Inquirer, December 28, 2016, available at <https://opinion.inquirer.net/100336/ips-remember-marcos-atrocities> (last accessed February 26, 2019)

¹⁷ Ver Marcelo, The Bangsamoro Organic Law: Everything you need to know, available at <http://cnnphilippines.com/news/2018/07/24/bangsamoro-organic-law-primer-everything-you-need-to-know-bbl.html>, (last accessed February 6, 2019).

¹⁸ The Comprehensive Agreement on the Bangsamoro (CAB) available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf (last accessed February 6, 2019)

the CAB pledge to continue to conduct multi-sectoral dialogues and consultations, take into account the concerns of the stakeholders, generate broad-based support, and ensure wide participation in the various mechanisms and processes that shall be instituted.¹⁹ Further, the two Parties agreed to ensure the establishment of a new Bangsamoro political entity that would protect individual and collective rights, and be truly democratic, representative of the diversity of the populace, and accountable to the communities therein.

15. The negotiations included consultations with the Mindanao Indigenous Peoples Legislative Assembly (MIPLA) which provided a platform for non-Moro indigenous peoples to present possible enhancements to the draft law that would protect and strengthen their rights and welfare.²⁰ Also, the Indigenous Peoples Peace Panel (IPPP) has coordinated dialogues between the Bangsamoro Transition Commission (BTC) and the MIPLA, and has drafted an enhanced Bangsamoro Basic Law (BBL) which proposed the creation of the Independent Mindanao IP Commission.²¹
16. The peace negotiations resulted in the enactment of Republic Act. No. 11054 otherwise known as the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (OLBARMM) on 27 July 2018. Said legislative measure strengthened the previously Autonomous Region of Muslim Mindanao (ARMM) which will have an asymmetrical relation with the national government of the Philippines. It will have more autonomy than other regions in the country. The new region will likewise have a different political structure and justice system, fiscal autonomy and special development fund, territory, inland waters, as well as defense and security.
17. In finalizing the OLBARMM, consultations with the MIPLA were conducted. This provided a platform for non-Moro indigenous peoples to present possible enhancements to the draft law that would protect and strengthen their rights and welfare.²² The IPPP has also coordinated dialogues between the BTC and the MIPLA, and has drafted an enhanced BBL which proposed the creation of the Independent Mindanao IP Commission.²³

¹⁹ *Id.*

²⁰ Office of the Presidential Adviser on the Peace Process, Mindanao Lumads partner with Congress to push for IP agenda, available at <https://www.facebook.com/notes/office-of-the-presidential-adviser-on-the-peace-process/mindanao-lumads-partner-with-congress-to-push-for-ip-agenda/1497187267017244/>, (last accessed February 18, 2019)

²¹ 2017 National Inquiry on the Human Rights Situation of Indigenous Peoples of the Commission on Human Rights of the Philippines, 2017

²² Office of the Presidential Adviser on the Peace Process, Mindanao Lumads partner with Congress to push for IP agenda, available at <https://www.facebook.com/notes/office-of-the-presidential-adviser-on-the-peace-process/mindanao-lumads-partner-with-congress-to-push-for-ip-agenda/1497187267017244/>, (last accessed February 18, 2019)

²³ 2017 National Inquiry

18. The Commission welcomed the start of the plebiscite on 21 January 2018²⁴, towards the ratification of the Bangsamoro Organic Law, envisioned to usher the creation of a new Bangsamoro autonomous region in Mindanao. Not only does this exercise give way to the people's right to political participation but, more importantly, asserts the right of Moros and non-Moros alike to self-determination.
19. The Commission shall continuously stand for measures that will allow the people to chart their futures through their choice of political structure within the bounds of our laws and national sovereignty. Through this process, the Commission hopes that the injustices committed against Moro communities can finally be corrected and the law to find a balance in advancing the rights and welfare of the peoples of Mindanao.
20. Prior to the plebiscite, the Commission issued a position paper on the draft Bangsamoro Basic Law, in which it highlighted the issues concerning the rights of non-Moro indigenous peoples and the creation of a regional human rights institution within the proposed Bangsamoro region.²⁵
21. In response to the passage of the Bangsamoro Organic Law, the government established the Bangsamoro Transition Commission (BTC)²⁶ which aims to aid the government in creating the draft of the Bangsamoro Organic Law, be the transition body in the areas to form the Bangsamoro Autonomous Region. The BTC consists of Commissioners which includes representatives from the Indigenous People's Community²⁷, it also includes a Committee on Basic Right, Culture, Social, Justice and Indigenous People.
22. Local mechanisms and government structures are also established. Examples include the Grievance Redress Mechanism²⁸ where project-related complaints or grievances of indigenous peoples may be raised, and Local Poverty Reduction Action Teams (LPRAT). The LPRAT is the group that would spearhead the formulation and monitoring of the Local Poverty Reduction Action Plans (LPRAP).²⁹

²⁴ Sheila Crisostomo, Comelec: 'Bangsamoro Organic Law voting successful', Philstar, January 22, 2019 available at <https://www.philstar.com/headlines/2019/01/22/1887141/comelec-bangsamoro-organic-law-voting-successful> (last accessed February 26, 2019)

²⁵ Commission on Human Rights of the Philippines, "Position Paper on the Draft Bangsamoro Basic Law," 7 May 2018, <http://chr.gov.ph/draft-bangsamoro-basic-law/> (last accessed February 18, 2019).

²⁶ Bangsamoro Transition Commission, available at, <http://www.bangsamoroonline.com/images/internal/btcinternalrule.pdf> 9 (last accessed February 26, 2019)

²⁷ Carolyn O. Arguillas, Members of Bangsamoro Transition Commission finally named, MindaNews, February 10, 2017, available at <https://www.mindanews.com/top-stories/2017/02/members-of-bangsamoro-transition-commission-finally-named/> (last accessed February 26, 2019)

²⁸ 2017 National Inquiry, *supra* note 12.

²⁹ DBM-DILG-DSWD-NAPC Joint Memorandum Circular No. 2 Series of 2012, available at <https://www.dbm.gov.ph/wp->

23. The National Land Use Bill³⁰ has been approved³¹ by the Lower House of Congress and is now pending before the Senate. The said bill makes mandatory the adoption by all local government units in whose jurisdiction lies Ancestral Domain/s, the ADSDPPs into their Comprehensive Land Use Plans (CLUPs). The bill aims to effectively enact a partnership between the local government units (LGUs) and the indigenous peoples in the development of Ancestral Domain.

<content/uploads/Issuances/2012/Joint%20Memorandum%20Circular/JMC2012-2/JMC2012-2.pdf>, (last accessed February 7, 2019).

³⁰ House Bill 5240, National Land Use and Management Act of the Philippines, available at http://www.congress.gov.ph/legisdocs/first_17/CR00167.pdf (last accessed February 26, 2019)

³¹ Janine Peralta, President Duterte calls for urgent passage of National Land Use Act, CNN Philippines, July 23, 2018, available at <http://cnnphilippines.com/news/2018/07/23/SONA-2018-Duterte-Boracay-land-use-act.html> (last accessed February 26, 2019)