The Philippine Government's Responses to the Recommendations of the Committee on Elimination of All Forms of Racial Discrimination (CERD)

National Consultation with the UN Special Rapporteur on the Rights of Indigenous Peoples
8 August 2014
The Sulo Riviera
The ICERD

International Convention on the Elimination of All Forms of Racial Discrimination

The Philippines ratified the ICERD on 15 September 1967; came into force on 4 January 1969

The Philippines submitted its consolidated 15th-20th periodic reports (covering the period 1997-2008), reviewed by the CERD on August 18, 2009; IPs submitted a shadow report

Concluding Observations – 23 recommendations
Obligations under the ICERD

- Definition of racial discrimination (RD) - includes not only blatant RD (apartheid), but also laws and policies that have the effect of RD (unintentional)

- Prohibits states from engaging in RD

- Adopt legislation to prevent RD

- Protects civil, political, economic, social and cultural rights

- Provides for Special Measures
Reporting Procedure

State Report
Committee Observations
Follow-up
Main Recommendations

Concluding Observation 13 (CO 13): “even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination”

“no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination.”
Main Recommendations

CO 14: The Committee urges the State party to ensure that the Convention becomes fully applicable in the national legal system, including through adoption of the necessary legislation.

Philippine Response: request for clarification, enumeration of 197 national laws on human rights (IPRA, Magna Carta for Women, Anti-Torture Act, etc.)
Main Recommendations

- CO 15: “adopt a comprehensive law on the elimination of discrimination on the grounds of race, color, descent or national or ethnic origin”
- Committee asks for further information on the status of pending bills relating to racial discrimination
- CO 16: enact specific penal legislation
- Philippine Response: At least 10 house bills and 4 senate bills refiled in 16th Congress
Main Recommendations

- CO 17: use the census in 2010 to include indicators disaggregated by ethnicity and gender on the basis of voluntary self-identification, and to provide the data obtained in its next periodic report
- consult with relevant communities in the preparatory process leading up to the census
- Philippine Response: Disaggregated data from 2010 census still being generated
- Others: Senate & House Bills on inclusion of ethnicity data in census
Main Recommendations

- **CO 18**: continue efforts to restore peace in the regions affected by armed conflict, to **protect vulnerable groups from human rights violations**, notably indigenous peoples and children of ethnic groups, and to ensure that independent and impartial investigations are conducted into all allegations of human rights violations.

- Implement IPRA to prevent recruitment of IP children into armed forces.

- Implement recommendations of UN SRs on EJKs and IPs.

- **Philippine Response**: NCIP EO 56 (26 Nov 2001) addresses CIAC, recognizes IP children as zones of peace; NCIP legal assistance, 4 clustered courts (RHOs), QRM/QRU, MOA with AFP on IP desks, PPP, AO 35.
Main Recommendations

CO 19: ensure the enjoyment by internally displaced persons of their rights

Philippine Response: various inter-agency programs and projects as well as monitoring systems for IDPs; Kapit-Bisig Laban sa Kahirapan – Comprehensive and Integrated Delivery of Social Services program (KALAHI-CIDSS) - a community driven development program seeking to empower communities through enhanced participation in local governance and community projects

Observation – no program directly targeting IP IDPs
Main Recommendations

- CO 20: provide concrete information on the actual scope of activities and action of the Ombudsman in combating racial discrimination

- Philippine Response: Ombudsman's jurisdiction is to prosecute erring public officers and employees violating the anti-graft and corrupt practices and such other offenses that maybe committed by such officers and employees; different from Ombudsman in other jurisdictions/countries
Main Recommendations

- CO 21: include the protection and promotion of economic, social and cultural rights in the mandate of the Commission on Human Rights in the Philippines
- Philippine Response: bill pending in Congress
Main Recommendations

CO 22: conduct an independent review, in consultation with indigenous peoples, of the legislative framework in relation to indigenous property, with particular regard to the question of consistency between the IPRA, its implementing guidelines, the Regalian doctrine and other related doctrines, as well as the Mining Act of 1995.

fully implement IPRA, in particular by securing the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and ensuring that economic activities, especially mining, carried out on indigenous territories do not adversely affect the protection of the rights recognized to indigenous peoples under IPRA.
Main Recommendations

Philippine Response: inconsistency arises in the implementation of these policies

need to prevent and resolve conflicts of ancestral domain and land claims with other Resource Use Instruments, such as mining contracts – Joint DAR-DENR-LRA-NCIP Administrative Order No. 01-12 was issued in January 25, 2012 to Clarify, Restate and Interface the Respective Jurisdictions, Policies, Programs and Projects of the DAR, DENR, LRA, and NCIP in order to address jurisdictional and operational issues between and among these agencies

new mining policy under EO 79 seeks to reform the Philippine Mining Sector – environmental protection & responsible mining
Main Recommendations

- Philippine Response: 159 CADT issued, of which at least 41 are registered with LRA
- FPIC 2006 policy strengthened and streamlined under NCIP Administrative Order No. 3, series of 2012
- NCIP sits as permanent member of the Mining Industry Coordinating Committee (MICC) and its Technical Working Group (TWG) created under EO 79; submitted inputs to the draft National Monitoring Guidelines in the Observance of Human Rights in the Mining Industry
- To enhance coordination for IPs/ICCs to have better access to government services, to date, the NCIP has forged at least 13 Memorandum of Agreements with government agencies
Main Recommendations

CO 23: clarification on the time frames for obtaining CADT/CALTs, number of applications filed and certificates issued; recommends the streamlining of the process for obtaining land rights certificates and take effective measures to protect communities from retaliations and violations when attempting to exercise their rights.

Philippine Response: NCIP AO No. 4 Series of 2012 or the Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012 which simplifies submission of proofs; NCIP conducting validation research on list of elders/leaders/representatives.
Main Recommendations

- CO 24: verify that current structures and guidelines/procedures established to conduct FPIC are in accordance with the spirit and letter of IPRA, set realistic time frames for consultation processes, verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims’ lack of awareness of their rights, fear of reprisals, or a lack of confidence in NCIP.

- Philippine Response: no-go zones in new FPIC guidelines, requirement for posting of bond, mandatory contents of MOA, emphasis on exercise of priority rights
Main Recommendations

- CO 25: consult with all concerned parties in order to address the issues over Mount Canatuan in a manner that respects customary laws and practices of the Subanon people.

- Philippine Response: NCIP identifies divided perspective of Subanen leaders as part of the problem, NCIP has been facilitating reconciliation and peace-building activities.
Main Recommendations

- CO 26: consider ratifying ILO 169
- CO 27: take into account the Durban Declaration and Programme of Action
- CO 28: continue consulting and expanding its dialogue with civil society organizations working in the field of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report
- CO 29: encourages the State party to consider making the optional declaration provided for in article 14 of the Convention
- Philippine response to CO 29: State defers
Main Recommendations

- CO 30 – 35: various administrative matters on adoption of amendments, submission of reports, follow-up

CONCLUSIONS

- Report is heavy on enumerations of laws and policies enacted, but lacks information in implementation
- Need for more input from indigenous communities
- Need for a more IP-specific lens in responses
- Need for concrete examples from the ground