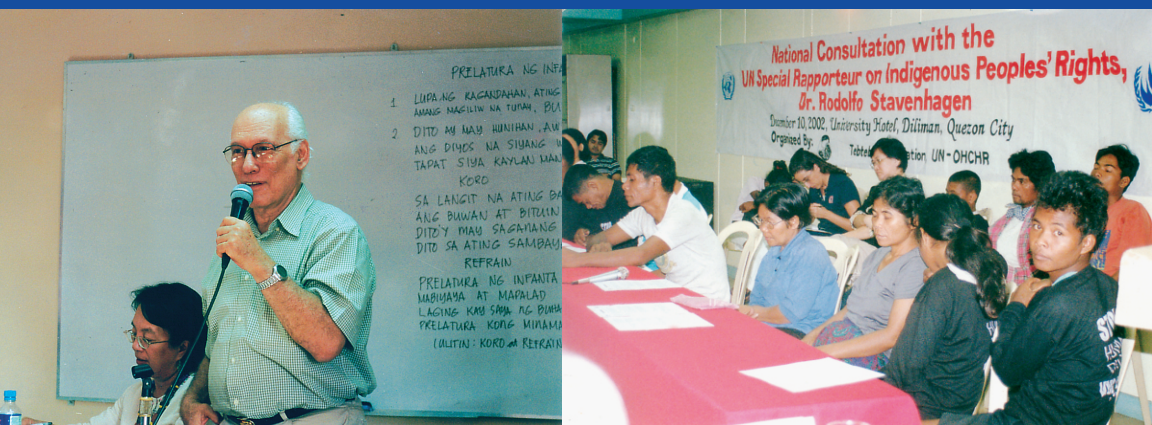




ENGAGING THE UN SPECIAL RAPPORTEUR ON INDIGENOUS PEOPLE: Opportunities and Challenges

By Victoria Tauli-Corpuz & Erlyn Ruth Alcantara

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**The Philippine Mission of the UN Special Rapporteur
on the Situation of Human Rights and
Fundamental Freedoms of Indigenous People**

December 2 - 11, 2002



Tebtebba

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Opportunities and Challenges*
Tebtebba Foundation

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PART 1

BACKGROUND & GUIDE ON ENGAGING THE UN SPECIAL RAPPORTEUR ON INDIGENOUS PEOPLE

By Victoria Tauli-Corpuz

This book emerged from the experiences of the indigenous peoples in the Philippines with the official mission of the Dr. Rodolfo Stavenhagen, the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Tebtebba was the key indigenous organization which worked with him to ensure that the indigenous peoples will represent themselves and the mission will be of benefit to them. Since we got involved in the whole process, we thought it would be useful to write about our experience and the insights and lessons we have learned.

We thought it is a good idea to come up with a fuller report of the visit of the Special Rapporteur because of the wealth of information which was presented to him. The United Nations, in their reform process, made strict rules on the number of pages for a report which can be released by a Special Rapporteur (SR). So the whole report of his mission to the Philippines had to fit in twenty-five pages. Therefore, it would be useful to complement his excellent report with a longer one which can provide more background and detail on the issues highlighted in his report. With the encouragement of the SR, himself, and the support of our partner, the Indigenous Workgroup on Indigenous Affairs (IWGIA), we embarked on this project.

When we talked about experience in helping organize the country visit, we were always asked how we did it and what advice can we give to those who would like to use this mechanism. We

Background & Guide on Engaging the UNSR

realized that what might even be more useful is a simple primer which will provide a background of this mechanism and possibilities which it offers. Then it can tackle the more technical aspects of what to do to get the Special Rapporteur to address their issues or to visit their communities. This is why this book ended to be this way, a combination of a guide and a report on the Philippine mission. It will be a work in progress which can be improved, through the years. Since Mr. Stavenhagen assumed this position he has visited already several countries, responded to communications sent to him and undertook several thematic studies on the issues he prioritized. No doubt, there is a diversity of experiences both from the side of indigenous peoples and from the Special Rapporteur, himself, which will enrich this guide in the future. So we hope that on the basis of further collaboration with the Special Rapporteur and with our indigenous sisters and brothers in other countries, we can do more work on this.

The background and guide will be the first section of this book. It will include the following subsections; a brief introduction; a background on why and how resolution 2001/57 came into being; who is the Special Rapporteur which will include his mandate, priorities and methods of work; his framework for analyzing the situation of human rights and fundamental freedoms of indigenous peoples; the relationship of the Special Rapporteur with the other United Nations bodies dealing with indigenous peoples and other independent experts; possibilities and limitations of the mechanism; effects of the engagement and factors to consider; other strategies to complement the process; and, conclusions.

The second section will contain the report on his mission to the Philippines. This will include the following: a background on how this mission came about and how it was organized; a brief overview of the indigenous peoples in the Philippines; laws on the protection of indigenous peoples' rights and fundamental freedoms; response of the Philippine government to the SR's report; lands and resources of the indigenous peoples in the Philippines; the Indigenous Peoples' Rights Act; the mining industry and the Philippine Mining Act; economic strategies and development aggression; militarization; and, conclusion.

The third section will be the Appendix which will include the official report of the SR on his visit to the Philippines, summaries

of the reported human rights violations presented to the SR, relevant documents useful in terms of providing more background to the establishment of the Special Rapporteur mechanism, forms which can be used by the indigenous peoples when they submit an appeal to the SR.

We hope this book can contribute in strengthening the efforts of indigenous peoples to assert their rights. This is also a modest effort to provide more information to indigenous peoples on the existing mechanisms in the United Nations, with focus on the Special Rapporteur, which they can make use of to further have their rights recognized and protected.

Tebtebba and the authors thank all those who participated and submitted reports in the consultations and meetings done with the SR. To the co-organizers of the the regional and national consultations, as well as the community meetings: SILDAP-Sidlakan, KAMP (Alliance of Indigenous Peoples in the Philippines), the Cordillera Peoples Alliance (CPA), Legal Rights and Natural Resources Center /Friends of the Earth (LRC/FoE) and KALIKASAN (Peoples Network for the Environment). We thank IWGIA and Evangelische Entwicklungsdienst (EED) for consistently supporting our efforts in Tebtebba and for the Danish Development Agency (DANIDA) for supporting this publication. Finally, we warmly thank Professor Rodolfo Stavenhagen for his untiring efforts as a partner of indigenous peoples in his multiple capacities as an academic, a writer, a human rights advocate, the Special Rapporteur, and most importantly as a friend.

A Background and Guide on How to Engage with the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People

Background

For several decades indigenous peoples have been actively involved in creating and occupying spaces in the United Nations which they can use. These spaces are either mechanisms or processes where they can bring their issues and get the member-states of the UN to

address these. The UN Working Group on Indigenous Populations (WGIP), which was established in 1982, was a result of sustained efforts primarily of indigenous peoples from the Americas, Australia, New Zealand and the Arctic. This is composed of five independent experts chosen from the five United Nations geographical regions. The mandate of the WGIP is twofold: first, to review national developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples; and secondly, to develop international standards concerning the rights of indigenous peoples. Thus, together with indigenous peoples and UN experts, it crafted the Draft Declaration of the United Nations on the Rights of Indigenous Peoples. This was adopted by the UN Subcommission on Prevention of Discrimination and Protection of Minorities¹ at its 46th Session in 1994.

This Draft Declaration is still being considered at the Commission on Human Rights Open-ended Intersessional Working Group to Elaborate on a Draft Declaration (WGDD). This body was created in 1995 by the Commission on Human Rights resolution 1995/32. While the progress of this work is very slow, indigenous peoples are using the draft already as a framework to influence the evolution of national laws and governmental or intergovernmental policies on indigenous peoples. The Indigenous Peoples' Rights Act (IPRA) of the Philippines of 1997 is one example of a national law which was significantly influenced by this Draft.

Every year indigenous peoples report to the WGIP countless violations of their human rights by governments and even non-state actors like corporations or armed insurgency groups. These are heard but not acted upon. Their mandate is to review national developments with regards human rights and fundamental freedoms of indigenous peoples. So on the basis of what was reported from the floor they make a report of the session which contains their observations and summaries of what they heard. Their mandate does not include investigating human rights complaints nor resolving these. The Chairperson of the WGIP never fails to remind indigenous peoples that the WGIP is not a complaints body. Some indigenous peoples pursue their complaints at the Sub-Commission or the Commission on Human Rights. However, the best that they can achieve is to shame the member-state which is perpetrating these violations or an acknowledgement of

the complaint and maybe a recommendation to conduct further studies on the issue.

The Treaty bodies² have not been extensively used by indigenous peoples because of the tedious processes involved and the framework which underpins their mandate. They receive complaints from cases of violations of human rights of individuals, not from violations of collective rights which is what also confronts indigenous peoples. While their basic civil and political rights are constantly violated as seen in numerous reports of arbitrary detention, torture, etc. their collective rights are also infringed upon. Some examples of these are their rights to their communal ancestral lands, their right to their cultures and their identity, and their right to self-determination. It is only the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and its Committee which accepts complaints both from groups or collectivities and individuals. The complainant is also asked to show that he/she exhausted all possible remedies at the domestic front before the complaint is brought to the treaty bodies. Indigenous peoples hardly use domestic courts as they do not have the means to do so and most of these do not recognize indigenous customary laws. The processes entailed in bringing complaints to the Treaty bodies are too tedious for the average indigenous peoples who do not have the needed means nor the connections.

It is clear that there is a gap in terms of a mechanism which is more sensitive and friendly to indigenous peoples. With this realization, some indigenous organizations and NGOs came up with the idea for a Special Rapporteur. There are already existing Special Rapporteurs for specific countries and themes, such as the Special Rapporteur for Burma or the Special Rapporteur on Torture, on Violence Against Women, etc. So why should indigenous peoples not have a rapporteur on their human rights and fundamental freedoms? These organizations started lobbying governments who can support and propose the idea to the Commission. The International Indian Treaty Council (IITC), an indigenous NGO is one of the indigenous organizations which spearheaded this effort. They said "Many of us saw a need, given the persistent, grave and massive attacks on the human rights and fundamental freedoms of our communities, to have a mechanism within the UN that could receive complaints and investigate them as they should be investigated. We saw an urgent need to have a UN

mechanism that could put a stop to these gross and massive attacks on the survival of Indigenous communities or at least denounce them for grave violations that they are.”³

At the 57th session of the Commission on Human Rights, a resolution on human rights and indigenous issues was presented by the Guatemalan and Mexican delegations. This was Resolution 2001/57 which establishes a new thematic procedure through the appointment of a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. It was adopted without a vote in 24 April 2001. According to the International Service for Human Rights, “This decision was taken in spite of the strong objections raised by the United States, Canada, New Zealand, Australia and Russia.”⁴ The resolution authorized the President of the Commission, Mr. Leandro Despuy of Argentina, to appoint the Special Rapporteur. Several names of indigenous and non-indigenous experts were nominated. On 25 June 2001 he appointed Mr. Rodolfo Stavenhagen, the first Mexican who was appointed as a Special Rapporteur.

Who is the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples?

Mr. Stavenhagen was introduced in a press release⁵ made by the High Commissioner on Human Rights in this manner:

Mr. Stavenhagen has extensive qualifications for the position. The author of many books on sociology, ethnic conflicts, development and human rights in general and indigenous rights in particular, he is currently a research professor at El Colegio de Mexico. He was the founding president of the Mexican Academy for Human Rights and a member for 10 years of the Council of the National Commission on Human Rights. Currently, he is a member of the Commission on the Monitoring and Follow up of the San Andres Peace Accords between the Federal Government and the Zapatista National Liberation Army. He has been a visiting professor at Harvard and Stanford Universities and elsewhere.

The mandate of the Special Rapporteur was renewed by the

Commission at its 60th Session, in April 2004, for another three years (resolution 2004/62). He was asked to present a report to the General Assembly at its 2004 Fall meeting. This will be a report of his first three years.

We have no doubt that Mr. Stavenhagen is an excellent choice. His track record in terms of support for indigenous peoples is excellent and he has the trust of both indigenous peoples and most governments. Special Rapporteurs are appointed by the Chairperson of the UN Commission on Human Rights. State members are asked to nominate candidates but NGOs can also suggest names and lobby governments to nominate these names. They can send letters to support candidates to the:

Bureau of the Commission on Human Rights
Office of the High Commissioner for Human Rights
United Nations, CH-1211 Geneva 10, Switzerland

Mandate

Resolution 2001/57⁶ has identified the following as the mandate and functions of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People.⁷

- 1.1. 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;
- 1.2. To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people;
- 1.3. To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights, taking into account the request of the Commission contained in resolution 1993/30.

The resolution also specifically stated that the SR will pay special attention to the discrimination against indigenous women and the violations of human rights and fundamental freedoms of indigenous children. The SR has the power to investigate specific human rights complaints. Investigation means he can ask for more detailed information from the complainant/s and he can request a government to respond to a complaint or allegation made. He can visit a country where the alleged violation is committed. From his findings he can make recommendations and proposals to the State concerned and to the Commission, as well as to other inter-governmental bodies which have some involvement in the complaints. These recommendations can be concrete steps, measures, and activities to remedy the violations and to prevent further occurrences of the same. He is also expected to respond to urgent appeals from indigenous peoples and communities.

The methods of work he will use and the specific human rights and fundamental freedoms he will address were not elaborated in the resolution. These were left for him to define. In July 2001, he attended the WGIP where he met with indigenous peoples, governments, human rights organizations, UN bodies and agencies, among others. He also participated at the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban from 31 August to 7 September 2001. In these meetings he discussed his own ideas for on how to carry out the task and solicited suggestions and comments.

His first annual report, which he presented at the 58th Session of the Commission in 2002, presented a background on existing instruments, declarations, guidelines and legislations which are addressing human rights and fundamental freedoms of indigenous peoples. He also highlighted major human rights issues confronting indigenous peoples, question of definitions and specific concerns and cases. The last part contained his proposed framework, methods of work and agenda for future activities.⁸

Priority Topics to Address

The UNSR identified the following topics which he will focus on:

- Impact of development projects on the human rights and fundamental freedoms of indigenous communities;
- Evaluation of the implementation of recent legislation at the national level related to the rights of indigenous peoples;
- Human rights issues for indigenous peoples in the realm of administration of justice, including, where relevant, the relationship between positive and customary (non-written) legal systems;
- Cultural rights of indigenous peoples as reflected in bilingual and intercultural education, as well as the preservation and development of their own cultural heritage;
- Human rights issues – particularly economic and social rights –regarding indigenous children, especially girls, in different settings, such as migrations, trafficking of women and girls, violent conflicts, the informal economy, etc.;
- Participation of indigenous peoples in decision-making processes, autonomic arrangements, governance and policy-making, with special regard to the full implementation of civil and political rights;
- Old and new forms of discrimination against indigenous people, within a gender perspective, in the light of the Declaration and Programme of Action of the World Conference on Racism..., as well as measures and remedies undertaken to combat discrimination and implement the human rights and fundamental freedoms of indigenous peoples.

In this report he proposed that these studies will be substantiated by his country visits and he plans to do one or more countries in three regions each year. He hopes that an effective exchange of communications and reports between him and indigenous peoples regarding the violations of their rights will develop. He also has recommended that all data should be entered into a computerized database for easy access and effective monitoring.

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On the basis of all these he will make a set of recommendations and proposals on appropriate measures and activities to be undertaken by relevant bodies.

Methods of Work

In summary, the UNSR's methods of work are as follows:

Thematic Research

These will be on issues that have an impact on the human rights situation and the fundamental freedoms of indigenous peoples. He will prepare topical studies in each of the areas mentioned above and he will do this by going through relevant documents, national reports, indigenous peoples' submissions and answers to questionnaires he will send out.

Country Visits

He will undertake country visits annually and his goal is to visit one or more countries in three regions of the world. Country visits are made through an official invitation of a government or invitations from indigenous organizations, academic institutions, or NGOs. These are meant to foster constructive dialogues with governments, indigenous peoples and other relevant organizations or institutions. These will also provide opportunities for him to have a more objective assessment of how the human rights and fundamental freedoms of indigenous peoples are protected at the national level.

Communications

He will receive from and exchange communications with indigenous organizations and communities, NGOs, and governments and intergovernmental organizations and other United Nations bodies on issues around human rights and fundamental freedoms of indigenous peoples worldwide. He has developed some guidelines and a form which can be used by indigenous peoples who are sending complaints. The communications he sends out are

three types. The first type are “urgent appeals” in cases of imminent dangers of violations of human rights. The second type are “allegation letters” which contain the allegations sent to him by indigenous peoples who are victims of human rights violations. These are cases of less urgent character but which require responses from governments. These communications are confidential until he discloses these in his annual reports.⁹ A third type are the follow up letters to the earlier communications.

Framework for Human Rights and Fundamental Freedoms of Indigenous Peoples

In his report (E/CN.4/2004/80/Add.1), he outlined the human rights framework which underpins his work. All of the rights in these legal instruments apply to indigenous peoples. He highlighted specific articles which address the most common violations of the rights of indigenous peoples as he has seen in reports he received, in his country visits and other documents.

Universal Declaration of Human Rights

While the entirety of this Declaration applies to indigenous peoples we will highlight some of the articles.

- *Article 1*: All human beings are equal in dignity and rights;
- *Articles 3 and 5*: Allow for action to bring to justice any persons who commit violations of human rights of indigenous peoples, such as violations of the right to life or subjection to cruel, inhuman or degrading treatment or punishment;
- *Article 6*: Provides that everyone has the right to recognition everywhere as a person before the law;
- *Article 7*: All are equal before the law and are entitled, without any discrimination, to equal protection of the law;
- *Article 8*: Proclaiming that everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights. This facilitates the legal and administrative protection of in-

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indigenous peoples to the extent that the domestic law incorporates such guarantees;

- *Articles 9 to 12*: Prohibits arbitrary arrest, provides the right to a fair trial, the right to be presumed innocent until proven guilty according to law, and protection of the law against arbitrary interference with a person's privacy, family, home and correspondence;
- *Article 17*: Everyone has the right to own property and no one shall be deprived of his/her possessions;
- *Articles 18 to 20*: Right to freedom of thought, conscience and religion, including the practice of religion; right to freedom of opinion and expression; universal right to freedom of peaceful assembly and association;
- *Article 22*: Right to social security and the realization, in accordance with the organization and resources of each State, of the individual's economic, social and cultural rights indispensable for his/her dignity and freedom to development of personality;
- *Articles 23 (1 and 2), 25, 26, 27*: Right to work; right to equal pay for equal work; right to a standard of living adequate for the health and well-being of the entire family; right to education; right to freely participate in the cultural life of the community.

International Covenant on Civil and Political Rights (ICCPR)

This has been ratified by 115 states and it has an Optional Protocol and a committee (Human Rights Committee) to receive and act on complaints of violations of the rights under this Covenant. This covenant provides for civil and political rights, including collective rights, which apply to indigenous peoples.

- *Article 1*: All peoples have the right to self-determination and, by virtue of this right may freely determine their political status and freely pursue their economic, social and cultural development;
- *Article 2(1)*: States Parties are required to extend the rights recognized in this Covenant to all individuals

within their territory and those subject to their jurisdiction and requests that these rights be ensured without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

- *Article 26*: Provides for specific protection of the law without discrimination.

The Covenant does not define discrimination but the Human Rights Committee at its thirty-seventh session (1989) adopted a general comment on this. It reiterated that the term “discrimination” should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying, impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms.

- *Articles 6, 7, 8, 9*: Right to life; protection against torture and cruel, inhuman or degrading treatment or punishment; protection against slavery; right to liberty and security of person;
- *Articles 14 (1 and 3)*: All persons be equal before the courts; and be given a fair trial;
- *Article 18*: Guarantees freedom of thought, conscience and religion;
- *Article 27*: Provides that ethnic, religious, or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

This Covenant was ratified by 148 States and has its own committee (Committee on Economic, Social and Cultural Rights). There is still an ongoing debate at the Commission whether it should have its own Optional Protocol.

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- *Article 1(1)*: All peoples have the right of self-determination and by virtue of this right may freely determine their political status and freely pursue their economic, social and cultural development;
- *Article 1(2)*: All peoples may freely dispose of their natural wealth and resources;
- *Articles 6, 7, 8, 9, 11*: Right to work; right to just and favorable conditions of work; right to form and join trade unions; right to strike;
- *Articles 11, 12, 13*: Right to an adequate standard of living; right to the highest attainable standard of physical and mental health; right to education.

International Convention on the Elimination of All Forms of Discrimination:

This was ratified by 168 States and has its own Committee (Committee on the Elimination of all Forms of Discrimination).

- *Article 1*: Defines racial discrimination as any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying, impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life;
- *Article 2*: Requires States Parties to condemn racial discrimination and pursue a policy of eliminating racial discrimination in all its forms;
- *Articles 3 and 4*: Condemns racial segregation and apartheid; condemns propaganda and organizations which are based on ideas of the superiority of one race, the promotion of racial hatred and incitement to racial discrimination.

Convention on the Elimination of All Forms of Discrimination Against Women:

This was ratified by 164 States. This Convention has its own committee (Committee on the Elimination of Discrimination Against Women) and has just adopted an Optional Protocol on Violence

Against Women.

- *Article 2*: States Parties condemn discrimination against women in all its forms and agree to pursue all appropriate means and without delay a policy of eliminating discrimination against women;
- *Articles 10, 11, 12, 13*: Foresee the eradication of discrimination of women in the fields of education; employment; health care; take all appropriate measures to eliminate discrimination against women in other areas of economic and social life;
- *Article 14*: Highlights particular problems faced by rural women and requires States Parties to take all appropriate measures to ensure that rural women participate in and benefit from rural development, particularly in areas of health care, social security, education, employment, land and agrarian reform and land resettlement schemes. It also requires them to ensure that rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

While CEDAW does not specifically mention violence against women (VAW), the Committee concluded in its general recommendation No. 19 that gender-based violence breaches many of the rights guaranteed by CEDAW, i.e., that VAW is a form of discrimination which impairs women's ability to enjoy human rights on a basis of equality with men. It outlines preventive, punitive and remedial measure to be taken by States Parties. The provisions in this Convention also addresses trafficking of women and girls which is one of the worst forms of human rights violations and a contemporary form of slavery.

Convention on the Rights of the Child:

This was ratified by 191 states and has a committee (Committee on the Rights of the Child).

- *Article 2(1)*: Provides that States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimi-

nation of any kind, irrespective of the child's or his / her parent's or legal guardian's race or colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;

- *Articles 3, 6, 12:* Right to life and survival; right to development; right to express his/her views freely on all matters affecting the child;
- *Articles 19, 24, 27, 28, 29:* Importance of certain guarantees such as protection from all forms of physical or mental violence, maltreatment or exploitation; sexual abuse; right to physical, mental, spiritual, moral and social development; right to education; includes education on human rights, the child's own cultural identity, language and values;
- *Article 30:* Children of minorities or indigenous origin shall not be denied the right to their won culture, religion or language.

Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment:

Ratified by 113 States, this Convention has its own Committee (Committee Against Torture).

- *Article 1:* Defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any person acting in an official capacity;
- *Article 2:* Requires States Parties to take effective measures to prevent acts of torture in any territory under their jurisdiction;

- *Articles 11, 12, 13, 14:* States Parties are required to systematically review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in their jurisdiction with the view to preventing cases of torture; to ensure that alleged acts of torture are promptly investigated; and that victims of torture obtain redress and have an enforceable right to fair and adequate compensation.

The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, includes the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time. Principles 11 and 17 of this stipulate that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority and that a detained person shall be entitled to have the assistance of a legal counsel.

ILO Indigenous and Tribal Peoples Convention No. 169 (1989): ratified by 17 States¹⁰ and entered into force in 1991.

This, and ILO Convention No. 107 (1957, ratified by 20 States) are the only international legally binding instruments which address specifically indigenous and tribal peoples. The ILO's supervisory system does not provide for the filing of complaints by individuals or general NGOs or indigenous organizations. Complaint procedures are handled by the ILO Committee of Experts on the Application of Conventions and Recommendations and a tripartite committee, to which indigenous individuals and organizations have indirect access through the ILO tripartite structure.¹¹

- *Article 4:* Requires ratifying States to adopt special measures for safeguarding the persons, institutions, property, labour, cultures, and environment of indigenous and tribal peoples;
- *Article 5:* Recognize and protect the social, cultural,

religious and spiritual values and respect the integrity of their values, practices and institutions;

- *Article 6:* Consult indigenous and tribal peoples through appropriate procedures, particularly through their representative institutions when legislative or administrative measures that may directly affect them are being considered;
- *Article 7:* Right to decide their own priorities for the process of development and to exercise control over their own economic, social, and cultural development. States Parties should take measures to protect and preserve the environment of the territories inhabited by indigenous peoples;
- *Article 8:* States Parties to take indigenous and tribal custom and customary law into account when applying national laws and regulations to the peoples concerned;
- *Article 13:* Respect the special importance to the cultures and spiritual values of indigenous/tribal peoples of their relationship to their lands and territories;
- *Article 14:* Recognizes the right of ownership and possession by indigenous and tribal peoples to the land and territories which they traditionally occupy and that adequate procedures within the national legal system shall be established to resolve land claims brought by them;
- *Article 15:* Rights to natural resources pertaining to their lands;
- *Article 16:* Right to be protected from removal from their lands;
- *Article 20:* Right to benefit from equal conditions of employment;
- *Article 25, 26:* Right to health services; right to education.

Representations have been brought against States under Article 24 of the ILO Constitution which says that it is “the duty of States to consult with indigenous and tribal peoples when consid-

eration is being given to legislative or administrative measures that affect them, and the same duty of consultation prior to the exploration or exploitation of natural resources on the lands they occupy or use.”¹²

*Draft United Nations Declaration on the Rights of Indigenous Peoples*¹³

This draft contains 19 preambular paragraphs and 45 articles or provisions divided into nine sections. These are:

- Rights to self-determination, participation in the life of the State, nationality and freedom from discrimination;
- Threats to the survival of indigenous peoples as distinct peoples;
- Spiritual, linguistic and cultural integrity of indigenous peoples;
- Education, information and labour rights;
- Participatory rights, development, economic and social rights;
- Land and resource rights;
- The exercise of self-determination, indigenous institutions;
- The effective implementation of the Declaration and general concluding provisions.

While this remains as a draft the discussions going on in the Commission’s open-ended intersessional working group to consider the draft declaration are already raising the awareness of governments on indigenous peoples’ issues. It is also used by indigenous peoples for awareness raising and to influence the creation of national laws on indigenous peoples rights.

Relationship of the Special Rapporteur to Other Bodies and Mechanisms Dealing with Indigenous Peoples

The UN bodies which indigenous peoples are actively engaged with are the WGIP, the WGDD and the recently established Per-

manent Forum on Indigenous Issues (PFII). A few indigenous organizations are covering the Sub-Commission and the Commission on Human Rights. The WGIP and the Sub-Commission has also appointed Special Rapporteurs to do studies on particular themes which will aid them in the standard-setting process.¹⁴ Since the early 1990s, indigenous peoples participated in the World Conferences organized by the United Nations. As a consequence of this participation, they are now engaged with the bodies created to follow-up and monitor the results of these conferences. Some of these bodies are the Commission on Sustainable Development, the Convention on Biological Diversity, the Framework Convention on Climate Change, the UN Forum on Forests, Convention on Desertification, Committee on the Elimination of Discrimination, the Commission on the Status of Women, among others.

The PFII was born in 2000 on the basis of Economic and Social Council resolution 2000/22. This is another space which came into being because indigenous peoples, together with support NGOs and a few governments, worked very hard on it. The mandate of the PFII is to raise awareness and promote the integration and coordination of indigenous issues within the UN System, while preparing and disseminating information on these issues. It also provides expert advice and recommendations to the Economic and Social Council (ECOSOC), as well as to programmes, funds and agencies of the UN. This is a subsidiary organ of the ECOSOC and it is composed of eight members to be nominated by governments and elected by the Council and eight members to be appointed by the President of the ECOSOC after broad consultations with indigenous organizations and groups. The mandated areas which will be covered by the PFII are education, culture, environment, economic and social development, health, and human rights.

During the deliberations on the resolution on the Special Rapporteur the issues raised were that this might make the PFII redundant and that it is duplicating the functions of the WGIP. These arguments cannot hold water, however, because the mandates of each of these mechanisms are carefully crafted to ensure that there will not be duplication but complementation. Furthermore, with the serious massive violations of the rights of indigenous peoples, not only as individuals but as collectivities (as peoples), the existing

mechanisms are not even adequate to the address and resolve these. This is precisely why the move for the creation of a Special Rapporteur on Indigenous Rights came about. Some governments are using the establishment of the PFII and the Special Rapporteur to justify the dismantling of the WGIP. This move did not receive support from indigenous peoples and the Chairperson of the WGIP strongly asserted that “..the only purpose of this Commission is to enlarge – not to restrict, limit, ignore or nullify – the work that has been advanced in this field, before the establishment of these new bodies.”

The SR gets officially invited to the WGIP and also the PFII to his findings and his own proposals to these bodies. It is only at the WGDD that he has not been invited but this situation is being remedied through a statement signed by many indigenous organizations urging the Chairperson of the WGDD to invite the SR. His mandate also requires him to work closely with other Special Rapporteurs, other working groups and independent experts of the Commission and Sub-Commission. During his first year, a resolution was also passed for him to participate officially in the Durban World Conference on Racism. The studies and reports he makes and the complaints and reports sent to him from indigenous peoples, governments and NGOs can be used by the WGIP, the WGDD and the PFII to enhance further the work they are doing. His reports and insights are important contributions in developing further the discourse and standard-setting processes on the rights of indigenous peoples.

One of his mandates is to work closely with other Special Rapporteurs and other special human rights mechanisms and independent experts of the Commission and the Sub-Commission. He makes joint letters with other Special Rapporteurs if the issue concerns the thematic areas covered by two or more of them. Some Special Rapporteurs and independent experts which Mr. Stavenhagen made joint communications with are the following:

1. Special Representative of the Secretary-General on the situation of human rights defenders;
2. Special Rapporteur on the question of torture;
3. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expres-

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- sion;
- 4. Special Rapporteur on extrajudicial, summary or arbitrary executions;
- 5. Special Rapporteur on the independence of judges and lawyers;
- 6. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- 7. Special Rapporteur on adequate housing;
- 8. Special Rapporteur on the situation of human rights in the Democratic Republic of Congo;
- 9. Chairperson-Rapporteur of the Working Group on arbitrary detention.

Other Special Rapporteurs who can be invited by indigenous peoples depending on their issues and needs are as follows:

- 10. Special Rapporteur on adverse effects of illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights;
- 11. Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance;
- 12. Special Rapporteur on religious intolerance;
- 13. Independent expert of the Commission on Human Rights on the right to development.

Special Rapporteur's Reports

Every year the Special Rapporteur submits various reports to the Commission on Human Rights. The types of reports he has submitted so far are the following:

Thematic reports

These deal with the various topics he has identified as his priorities and these are basically his main reports.

- 1. April 2003 (59th CHR session) – first thematic report (E/CN.4/2003/90) on the impact of large-scale or major development

projects on human rights and fundamental freedoms of indigenous peoples and communities. He noted in this report that whenever large-scale development projects are brought to indigenous communities profound social, economic, and environmental changes take place which have, more often than not, adverse impacts on indigenous peoples and their communities. "Major development project" as described in his report is a process of investment of public and/or private, national or international capital for the purpose of building or improving the physical infrastructure of a specified region, the transformation over the long run of productive activities involving changes in the use of and property rights to land, the large-scale exploitation of natural resources including subsoil resources, the building of urban centers, manufacturing and/or mining and extraction plants, tourist developments, port facilities, military bases and similar undertakings.

The principal human rights effects of these projects relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts and in some cases, harassment and violence.

He made several recommendations addressed to governments, private business enterprises, the UN system and indigenous peoples. Indigenous peoples' rights to land, to free, prior, and informed consent, right to participation in decision-making and the right to self-determination, among others, must be considered of utmost priority when development projects are undertaken in indigenous territories.

2. April 2004 (60th CHR Session) second thematic report (E/CN.4/2004/80)¹⁵ on the question of administration of justice and in particular, on the implementation of recent legislation at the national level related to rights of indigenous peoples. His main observation is that indigenous peoples the world over are usually among the most marginalized and dispossessed sectors of society, the victims of perennial prejudice and discrimination. Even when protective legislation is available their rights are frequently denied in practice, a pattern that is of particular concern when present in the administration of justice. In this context, the Special Rappor-

teur stresses that a fair and effective justice system is crucial in fostering reconciliation, peace, stability and development among indigenous peoples.

He said that in many countries indigenous peoples do not have equal access to the justice system as others and they frequently encounter discrimination of all kinds in the operation of the justice system. He attests this to racism and partly because of non-acceptance of indigenous law and customs by the official legal institutions of the state. He recommends, among others, that States carry out exhaustive reviews and, if necessary, reforms of their justice systems which can include respect for indigenous legal customs, language and culture in the courts and administration of justice.

His second report reflects the results of submissions to the questionnaire he sent out on this issue, his country visits, and the “Expert Seminar on Indigenous Peoples and the Administration of Justice” which was held in November 2003.

3. For 2005, his main report will be on the question of indigenous peoples and education.

Reports of his country visits

These contain the results of his country visits.¹⁶ Since he was appointed, the SR was able to visit officially, Guatemala and the Philippines in 2002; Chile and Mexico in 2003; and Colombia and Canada for 2004. He has reports for the missions he made in 2002 and 2003 and for the 2004 missions, this will be presented to the Commission in April 2005. After a visit, he makes a draft report which he sends out to the government of the country he visited, the indigenous organizations and NGOs for them to make their comments. This usually takes three months after which he will make his final draft, taking into consideration the comments submitted. If his draft was sent early enough, these are translated into the six official languages of the UN. The governments would usually make their official response to the report which will also be printed out by the UN for distribution. The response of the Philippine government¹⁷ was not printed out by the UN because this only came on the day the SR presented his report at the 59th Commission Session. The ones made by Guatemala and Mexico were official documents.¹⁸

These reports contain the summary of his observations and findings and the recommendations for the government, the UN system, the indigenous peoples and NGOs.

Summaries of communications examined by him

Since he assumed his post, the SR made a report of the summaries of communications examined by him in 2001/2002 and another on the communications he got from February 2002 to 14 December 2002.¹⁹ His first report (2001/2002) presented a summary of 16 cases received from governments, indigenous organizations and NGOs. He makes it clear that he selected a few from what was sent to him and that these are just presented for information purposes. He is soliciting for more information on the cases he cited. Some of these are a report he received from the Argentinian government, from the Chiquitano people of Bolivia, communications from an NGO, Survival International on the Awa people of Brazil, etc.

His second report contains communications he sent out which contains allegations of violations of human rights of indigenous peoples. He indicated in the report which governments responded and those who did not. He made a table of communications sent to and received from governments. Out of nine communications he sent out to governments only three sent replies. His conclusion in this report says:

The Special Rapporteur notes with regret that violent acts against indigenous peoples and communities in different parts of the world have not ceased. They are usually linked to social conflicts over land rights and use of resources. While there is progress regarding legislation concerning indigenous peoples, very often the laws include provisions that actually limit the full enjoyment of all human rights by these peoples. There is "implementation gap" between the laws themselves and their effective application at the local level. Institutional mechanisms to ensure their adequate implementation are not always available...Much too often, powerful economic and political interests override the laws themselves, leaving indigenous communities without due protection of their rights...

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The reports of the Special Rapporteur can contribute significantly to the evolution of standards on the rights of indigenous peoples. These can also contribute to the recognition and compliance of state obligations to ensure the human rights and fundamental freedoms of indigenous peoples.

His reports can be downloaded from: www.unhchr.ch/indigenous/rapporteur/htm. The secretariat which provides him assistance and service is the Office of the United Nations High Commissioner for Human Rights in Geneva. Indigenous peoples can submit reports and complaints to him to this person and address:

Mr. Pablo Espiniella
Human Rights Officer
OHCHR, United Nations
1211 Geneva 10, Switzerland
email: indigenous@ohchr.org
telephone: 41-22-9179413 fax: 41-22-9179008

Possibilities and Limitations of the Mechanism

Possibilities

From the earlier sections, we can see that there are many possibilities offered to indigenous peoples by this mechanism. These can be summarized as follows:

Complaints and reports

Indigenous peoples can send to him their complaints in terms of how their human rights and fundamental freedoms are being violated by the state and even by non-state actors such as corporations. These should be well-substantiated by facts such as names of victims, identities of perpetrators if known, dates, places, etc. The annex contains the guidelines for making such reports. These can be sent to the address above. The framework presented in the earlier section can serve as a guide for making the complaints. One can cite which specific violation/s have been committed by citing which article/s of the various human rights instruments were violated.

On the basis of these complaints, he prepares “urgent appeals” to the government and the Commission. Sometimes he makes

joint appeals with the other Special Rapporteurs whose mandate include the issues being addressed. He also sends out “allegation letters” to the governments. While these are confidential while being processed, he will make a report on these in his main paper presented in April. This will show whether governments responded to his appeal or not.

Indigenous peoples should make it a practice to send to him copies of alert letters they make.

Invitation for country visits

There are various ways to do this:

a. Official country mission. For his visit to be official, he has to be offered an official invitation by the government. Indigenous peoples can prod the government to do this by preparing petitions or resolutions to request the government to invite him. In the Philippines, what we did was to come up with a resolution from a national conference of indigenous peoples to ask the government to invite him. This resolution was justified by the reports of increasing violations of the human rights and fundamental freedoms of indigenous peoples. Generally, governments on their own would not extend an invitation to him. So the possibility of this happening is through increased pressure from the indigenous organizations. From his end he, himself, will solicit an invitation from governments.

The advantage of going through this route of making his visit an official one is that his visit will be funded by the Office of the High Commissioner on Human Rights. Because his funding is limited to his air ticket and his daily subsistence allowance, additional funds should be generated by indigenous organizations or NGOs to ensure that he can visit communities. In the Philippine experience the government does not have a budget for this. This can be a convenient reason to limit his community visits. However, we raised some funds to ensure that he will be able to visit communities and consult with the widest number of people possible. These funds were also used to organize regional and national consultations with him.

b. Unofficial country visits. If it is difficult to get the government to invite him, indigenous organizations, academic institutions, human rights NGOs and even indigenous communities can also extend him an invitation. In this case those inviting him should

produce the resources to pay for his travel expenses and daily subsistence allowance.

Pointers for preparatory work, conduct during the country visit, and matters to deal with after the visit.

Whether the visit is official or unofficial, the preparations needed can be the same. Main pointers for these are as follows:

a. Maintain constant communications with the Special Rapporteur and his assistant to plan the details of his visit and to provide the most important information he needs to have. It is usually the Permanent Mission of the Government based in Geneva which will serve as the liaison between the host country and the SR. At the country level, the Department or Ministry of Foreign Affairs is usually the lead body to deal with this. If there are institutions dedicated to indigenous peoples, like the National Commission on Indigenous Peoples (NCIP) for the Philippines, these will be entities which will receive an official order from its higher body. Indigenous organizations should assert that they will be included in making the decisions on which communities to visit. If left to the government, they will stick to the least controversial areas or make an itinerary which will be more like a tourist visit.

b. Link up with the biggest possible number of indigenous peoples through their networks and organizations. Ideally, it would be good to create a national organizing committee which will include the various indigenous organizations and support networks. If this is not possible, the lead organizer should ensure that the other networks and organizations are consulted and informed about the developments. If a particular community is identified to be visited, the local groups should be involved in planning, organizing and evaluating the visit.

c. Ensure that the indigenous organizations are able to prepare necessary reports and documentation which can be submitted to the SR. The documentation should be very thorough. Affidavits of persons who are victims of violations can be made. Guidelines for documentation of violations of human rights should be provided to the organizations. If necessary, training-workshops on how to use the guidelines and conduct documentation can be done. If the security of these persons are not compromised, they should be able to have a face to face meeting with the SR. Ocular

visits to communities where the violations occurred should be organized, if possible, when the schedules of the SR allows this. Photo or video documentation can also be submitted to him.

d. Generate adequate resources to make the visits to communities happen. As mentioned earlier, such visits, in most cases, will not be funded by the government. So the key organizers should generate resources at the early stage. Local counterparts in terms of contributions from host communities or institutions (government or non-government, academic institutions, NGOs) should be encouraged. Resources are needed not only for visits but also to ensure that efficient documentation of violations and of the visit itself is done.

e. Prepare and send needed background documents for the SR. It will help the SR if he will receive background documents even before he comes to the country. This will give him the information he will need to familiarize himself with the situation of indigenous peoples. These can be published or unpublished materials, press releases, books, monographs, etc.

f. Coordinate closely with the government body assigned to organize his visit and with the UN Development Programme (UNDP), which is the UN body within the country that will host him. Communications and close coordination between the government body, the UNDP, and the indigenous organization/s should be ensured. If this is an official visit, the government and the UN are obliged to ensure the security of the Special Rapporteur. To avoid security lapses, coordination between the organizers is imperative.

g. Attend the debriefing session and the press conference. Before the SR leaves the country, he will hold a debriefing session where he will present his initial findings and recommendations. This is usually organized by the government and the UNDP. It is also during this time that he holds a press conference. Attend this debriefing session and disseminate widely his debriefing report to those he visited.

h. After his draft report is out, go through this and send your comments as soon as possible. The SR is very efficient. He makes it a point to make his draft report as soon as possible to allow for governments and indigenous organizations to make their comments. He has a strict timetable to follow to ensure that his report will be released during the April meetings of the Commis-

sion on Human Rights. He has to submit this six weeks before the Commission meeting. So when he releases his draft in December, he expects comments to be in by January so he can submit his final draft in February. Go through his draft to make sure that the facts are correct so the chances of this being undermined by the government or other possible detractors, e.g., corporations, will be diminished.

i. Disseminate widely his report nationally and internationally. When his report is out, disseminate this widely to those whom he had dialogues with. When he presents this report to the Commission, it is a good idea to send indigenous person/s who represent any of the organizations involved with his visit, to be present. This is to thank the SR and also to support him in case the government responds negatively to the report.

j. Closely monitor and follow-up the recommendations he made. He usually makes recommendations addressed to the government, the UN, the indigenous peoples, and NGOs. Develop a system to monitor and ensure that his recommendations are implemented by the relevant bodies.

k. Hold consultations or workshop-seminars with indigenous peoples to assess their situation of human rights and fundamental freedoms after the country visit has been done. One year after the country visit, processes to assess the situation of indigenous peoples can be done. These will be useful to see whether the government and others implemented the recommendations. If the SR is available it would be good to invite him to a national consultation.

l. Continue sending him updates and reports. The engagement with the SR should not end after he leaves the country. There should be constant communications with him to give him updates on what is happening to indigenous peoples.

Thematic reports

The SR is making thematic reports based on the various topics or themes which he identified as his priorities. (Please refer to section on “Who is the Special Rapporteur? Priority Topics” p. 8) He already finished his report on impact of large-scale development projects on the human rights and fundamental freedoms of indigenous peoples (2003) and another one on administration of justice (2004). For the latter, the UN Voluntary Fund for the De-

cade of Indigenous Peoples set aside a budget for an expert seminar on this. This allowed him to have a more in-depth consultation with indigenous peoples and experts on this issue. Indigenous peoples can use this process by doing the following;

- a. Responding to the questionnaire he sends out on these themes. Please see the Appendix K for the questionnaires he sent out for these two themes;
- b. Sending him documents and reports on indigenous peoples and education as this is his theme for 2005.;
- c. Organizing national or regional consultations on this theme and inviting him;
- d. Monitoring how his recommendations are being implemented at the national level or at the global level, particularly by UN bodies or other intergovernmental bodies like the World Bank;
- e. Using his thematic reports to inform your interventions during the Permanent Forum on Indigenous Issues and the WGIP and WGDD.

Limitations

While there are many possibilities in terms of how indigenous peoples can use the Special Rapporteur mechanism, it is also realistic to identify what are its limitations. The presence of the SR does give some strength and hope to indigenous peoples. But he also cautions indigenous peoples by saying that “ I cannot promise you anything but to bring your message to the United Nations..”²⁰ This is an important point to make lest indigenous peoples believe that he has the capacity to solve all their problems. These problems are results of centuries of colonization and neglect by governments of their plight. So a Special Rapporteur, who has very limited resources in his hands, cannot just undo these.

Some limitations of this mechanism are the following;

Lack of follow-up mechanisms within the Commission on Human Rights, in particular, and the UN system, in general

The reports and recommendations of the Special Rapporteur are important. However, after he submits his report the task of

ensuring that these recommendations are implemented is out of his hands. There is actually no mechanism within the Commission nor the whole UN system which ensures this. The best that the SR can do is to write in his next reports what governments or other entities did in response to his recommendations.

Lack of resources to follow-up or implement recommendations

The general lack of resources within the UN is one source of its weakness. Even the extent of what the SR can do is very much defined by the available resources. For instance, when he does a country mission, if he just relies on what is budgeted for him, he cannot visit as many places as he should nor could he hold widespread national or regional consultations with indigenous peoples.

The reception to his country mission reports, “allegation letters,” and communications by States

The United Nations is first and foremost an organization of nation-states. The member-states assert their sovereignty as nations and therefore cannot be compelled to implement those recommendations they do not like to implement nor to accept a report they do not like. So far, in the three years that the Special Rapporteur has been in existence, the general responses of the governments of the countries he visited were constructive. This is with the exception of the Philippines whose delegation lashed back irrationally at his Philippine Mission report. This is discussed in more detail in the next section of this book. In terms of the “allegation letters” contained in his report of his communications, there are many governments who do not even respond at all.

The need for an invitation from governments for him to conduct an official country mission

While he can visit a country upon the invitation of indigenous organizations, NGOs or the academe, his missions can only be considered “official” if the governments extend to him an invitation. Many indigenous peoples have antagonistic relationships with governments so it is not easy for them to pressure their governments to invite the Special Rapporteur. Other governments do not even recognize that there are indigenous peoples in their territories or claim that they are all indigenous.

Thus, it happens that the Special Rapporteur would have a slim chance of visiting countries where the worst violations of human rights of indigenous peoples are taking place. When he is in the country as a visitor of the State, he also has to play a delicate balancing act so that he will not offend his host. So far, Mr. Stavenhagen has been uncompromising in pointing out the realities in a country and this can be attributed to his qualities as a person and as an expert. However, if it happens that the Special Rapporteur does not have these same qualities, then the quality of his/her report can be highly compromised.

Accessibility of the reports

UN reports, even if these are excellent, are not easily accessible to the people who can use the reports to assert their rights. The limitations of the UN in terms of resources is one reason for the inaccessibility of these documents.

In spite of these limitations, however, the value of the Special Rapporteur mechanism cannot be underestimated. These limitations can be overcome through the creativity of indigenous peoples and their supporters. The next part will look into what are the challenges so that the work of the Special Rapporteur can be maximized by indigenous peoples.

Challenges and Strategies

In light of the limitations discussed earlier there are clear challenges for indigenous peoples. It has been seen in history that UN mechanisms and processes can only be useful if there are constituencies outside of the member-states who use these opportunities and spaces which are created. Indigenous peoples are one of these constituencies who have shown how they can create spaces or use opportunities offered by the multilateral system to promote their interests and their rights.

The women also are using the UN system very well. Environmental and development NGOs who became the champions of the UN processes on sustainable development is another example. Of course, the human rights NGOs are the ones who have the longest history of engaging with the UN system to strengthen the human rights instruments and mechanisms. There is a wealth of

historical experience which can show how ‘we the peoples’ have used and owned the mechanisms and processes within the multi-lateral system represented by the United Nations. This is one way of making the member-states more accountable to the peoples in their territories.

Many challenges remain for indigenous peoples to make the Special Rapporteur mechanism useful for their efforts to have their rights recognized and respected. Some of these are challenges in terms of fitting in the work of the Special Rapporteur within the strategies they are already employing.

Policy Advocacy

I. International level:

Compliance of states with their international obligations

The findings, opinions and recommendations of the Special Rapporteur in terms of how the human rights and fundamental freedoms of indigenous peoples are respected, are important. These should be extensively used to make States comply with their international obligations especially in relation to the recognition and promotion of human rights.

Promotion of the discourse and awareness of rights of indigenous peoples

The active participation of indigenous peoples in the international arena and the strength of the national and global movements have raised the level of awareness on their rights. They have also contributed in enriching the discourse on human rights. The dynamic discourse on collective rights, right to self-determination, sovereignty, among others, came about because of the representations of indigenous peoples of their history, situation and issues. Mr. Stavenhagen, way before he was the Special Rapporteur, has contributed significantly to these discourses. His reports and writings should be used more widely by indigenous peoples to support their assertions. These, together with indigenous peoples’ writings and contributions, are crucial in evolving international law to be more relevant for indigenous peoples.

Getting more effective international attention and response to situations of indigenous peoples which have reached levels of ethnocide and genocide.

There are many indigenous peoples which have very small populations and are on the verge of extinction. The loss of these peoples and cultures should be prevented at all costs. Thus, it is important to facilitate the visit of the Special Rapporteur to the territories of these peoples.

The need to be more vigilant in following up the recommendations from the Special Rapporteur's reports

If the UN system has built-in limitations which cannot allow it to follow-up on the recommendations, indigenous peoples should not relent in pushing the UN to explore further possibilities within the system. Sometimes, what is lacking is the creativity and commitment from the secretariat. Indigenous peoples should find and create more allies and champions within the secretariat and among the member-states who will support them. On the other hand, indigenous peoples should not also expect that the UN will do all these for them. They can also develop ways and means among themselves and with the support of the Special Rapporteur and NGOs to implement the recommendations.

2. National level

The need to publicize widely the findings and recommendations of the Special Rapporteur and to raise wider awareness on indigenous peoples' rights and issues

If the knowledge on the report of the SR is widespread, there will be more pressure upon the government to acknowledge its transgressions and implement the recommendations. What makes governments lackadaisical is the ignorance and apathy on the side of the people.

Using SR recommendations to lobby local and national officials for new legislation, policies and making amendments to existing discriminatory laws and policies

Most of the recommendations from the reports are on changing existing laws and systems or putting into place laws and systems which will promote rights of indigenous peoples. Indigenous

peoples should collate these and use these to lobby further for the needed changes.

The need to generate and mobilize more human, technical and financial resources to maximize the presence of the Special Rapporteur and to use more effectively his reports

The limitations of UN and governmental resources should not be used as a reason for limiting the exposure of the SR. The challenge for indigenous peoples is how to mobilize more resources to increase the possibilities to bring the SR to the communities who need him the most. This can be done not only by getting more funds from donors but also by mobilizing local resources such as getting the local governments, churches, academic institutions to let their buildings and other resources to be used for meetings.

Research

It was mentioned earlier that the effectivity of the SR can be enhanced further if indigenous peoples help in providing the data and information he needs. There is a need to generate data which cannot be questioned by governments and corporations. The findings and analysis of the Special Rapporteur can be used to also enhance the knowledge and data base on indigenous peoples situations.

Training

Training of indigenous peoples in terms of documenting human rights violations, research on the various topics identified by the Special Rapporteur as his priorities, organizing hearings, etc. are important. The SR cannot stay in a country for a month. At the most he can do the visit for tendays. Therefore it is crucial that preparations in terms of training indigenous peoples to do more effective research and documentation, organizing visits and hearings, regional and national meetings, even in public speaking so they can be better understood, are important. Such preparations can help him cover a lot of ground even if he is around for a short time.

Networking

The visit of the Special Rapporteur also gives a very good opportunity to network not only among indigenous peoples but also with government, academe, and other NGOs, among others. The linkages and networks built around the visit of the SR should be sustained for other activities in the future. Relationships with support NGOs can be enriched further especially if they join the country missions. In our experience in the Philippines, we invited the representative of the International Workgroup on Indigenous Affairs (IWGIA) to join the mission. They contributed resources to allow the SR to visit other places. Her participation has definitely increased her understanding of the situation of indigenous peoples in the Philippines.

Bonds of friendship have also been created with the Special Rapporteur and his assistant, representatives of support NGOs, those from government and the UNDP, and indigenous peoples who were part of the mission team. These bonds extend beyond the professional relationships. Confidence and trust-building among the members of the team are crucial to make the mission successful. The challenge of having to travel in the most difficult circumstances, both physically and psychologically because of highly militarized areas, is a test of each of our capacities in human relationship building.

Awareness-raising

The potentials of the SR's visit to raise public awareness on indigenous issues are great. His report can also be made widely accessible not only among indigenous peoples but also with the public at large. There may be wisdom in translating his report in the national language. Making popular versions of it can also help. As the SR is the face of the United Nations in places where people have never heard about it, this is also a good opportunity to use his presence to raise awareness on what the UN is all about and what it stands for.

Conclusion

The wealth of experiences gained in engaging with the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People should not be wasted. This post was created with the facilitation of indigenous organizations because of the gaps in addressing indigenous peoples' rights. The work of the Special Rapporteur in the past three years no doubt has brought about positive results for indigenous peoples.

It is important to share the experiences and the lessons we have learned in engaging with the Special Rapporteur. This background and guide is an initial attempt to capture the experiences we had in the Philippines. We enjoin the others who also worked with him to contribute in enriching this guide further.

Victoria Tauli-Corpuz is Executive Director of Tebtebba and Convenor of the Asian Indigenous Women's Network (AIWN).

Endnotes

¹ This body is now known as the Sub-Commission on the Promotion and Protection of Human Rights.

² The Treaty bodies are the supervisory bodies of the six major international human rights treaties (legally binding instruments). These bodies monitor how the States Parties (those countries whose governments accepted or ratified the treaty) are fulfilling their human rights obligations as stipulated in the relevant treaty. These treaties and their committees or treaty bodies are the following: the International Covenant on Civil and Political Rights (ICCPR, Human Rights Committee), International Covenant on Economic, Social and Cultural Rights (ICESCR, Committee on Economic, Social and Cultural Rights), the International Convention on All Forms of Racial Discrimination (CERD, Committee on the Elimination of Racial Discrimination), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT, the Committee Against Torture) and The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, Committee on the Elimination of Discrimination Against Women), the Convention on the Rights of the Child (CRC, Committee on the Rights of the Child).

90/Add.3), Mexico (E/CN.4/2004/80/Add.2) and Chile (E/CN.4/2004/80/Add.3).

¹⁷ This will be included in the Appendix of this book as it is part of the longer report on the Philippine country visit. This is entitled "Statement by Mr. Denis Yap Lepatan, Head of Philippine Delegation to the 59th Commission on Human Rights in Response to the presentation by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People of the Report on His Visit to the Philippines," Geneva, 10 April 2003.

¹⁸ Response of Guatemala is in Document E/CN.4/2003/G/59 and it is entitled "Letter dated 13 February 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Guatemala to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights." Response of Mexico (E/CN.4/2004/G/22) "Letter Dated 11 March 2004 from the Permanent Mission of Mexico to the United Nations Office at Geneva addressed to the Acting High Commissioner for Human Rights."

¹⁹ See Document E/CN.4/2002/97/Add.1, Selected Summaries of communications examined by the Special Rapporteur in 2001/2002. and E/CN.4/2003/90/Add.1, Communications received by the Special Rapporteur.

²⁰ When he visited the Philippines, he made this clear in almost all his introductory speeches.

PART 2

MAIN REPORT

**Report on the Country Visit to the Philippines of the
Special Rapporteur on the Situation of Human Rights
and Fundamental Freedoms of Indigenous People**

By Victoria Tauli-Corpuz and Erlyn Ruth Alcantara

Mission to the Philippines, December 2002

This section will present a report on the Philippine country visit of the Special Rapporteur (SR). It will provide the background on how the mission was organized because this is needed to see the Philippine government response in a better light. This will also present a brief historical overview of the indigenous peoples in the Philippines. After this will be a summary of the testimonies and data presented to the Special Rapporteur.

How the Country Visit was Organized

At the invitation of the Government of the Philippines, Special Rapporteur, Mr. Rodolfo Stavenhagen made an official visit to the Philippines on December 2-11, 2002. He presented a preliminary report in February 2003 and a final report in March 2003. This invitation came about through the active intervention of indigenous peoples. The idea cropped up during the “National Indigenous Peoples’ Workshop on Indigenous Peoples Rights Act and Development” held in February 2002 in Cagayan de Oro City in Mindanao. Indigenous participants in the conference reported several cases of human rights violations. Tebtebba proposed that the body pass a resolution¹ to ask that the Philippine Government invites the Special Rapporteur to conduct a mission

here. This was accepted by the workshop participants. The resolution was addressed to the government body in charge of indigenous peoples, the National Commission on Indigenous Peoples (NCIP).

Subsequently, the Philippine government, through the Philippine Permanent Mission in Geneva, issued Mr. Stavenhagen an official invitation in May 2002 to visit the country. To prepare for this, the Special Rapporteur met with the indigenous delegation from the Philippines who were attending the July 2002 session of the UN Working Group on Indigenous Populations Session. The indigenous delegation included Victoria Tauli-Corpuz (Kankanaey), Jimid Mansayagan (Manobo), Onsino Mato (Subanen), Beverly Longid (Kankanaey) and Joji Cariño (Ibaloi). To ensure that he will have direct links with the indigenous peoples in the country, Mr. Stavenhagen explicitly requested that an indigenous peoples' organization in the Philippines should closely collaborate with him. The indigenous delegation assigned this role to Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education) which we readily accepted.

Hurdles to Handle

The itinerary for this mission had to be worked out with the Permanent Mission of the Philippines in Geneva with instructions from the Department of Foreign Affairs. A suggested itinerary was sent to him in August 6, 2002 and the SR in turn sent this to Tebtebba for comments. We found this to be more like a tourist itinerary, so we suggested some alternative places and activities. On this basis the SR presented his own proposal to the government. This included a visit to Dalupirip, Benguet Province, the community which will be affected by the San Roque Multipurpose Dam Project. Another suggestion was for him to visit Siocon, Zamboanga del Sur. The Subanen people are currently locked in a dispute with a Canadian mining corporation, Toronto Ventures Incorporated (TVI) which is located in the area covered by a Certificate of Ancestral Domain Claim (CADC) of the Subanen people. Inasmuch as his theme for this year (2002) was large-scale development projects these two areas were perfect sites for him to see the impact on human rights of indigenous peoples. Unfortunately, the government objected to these suggestions. The reason they

gave was that these communities were subjects of the Special 1503² procedure of the UN Commission on Human Rights. The Secretariat inquired whether there was such a rule and the legal department of the Office of the High Commissioner said no such ruling exists. Furthermore, as far as we know, the indigenous organizations in these communities never sent a complaint under the Special 1503 procedure. The only place where the Siocon case was raised was at the WGIP where Onsino Mato³ intervened and raised this issue. In spite of this, the government would not budge from its position and even insinuated that should the SR insist, they will withdraw the invitation. So the compromise reached was that the SR will visit Mankayan, Benguet and San Luis, Agusan del Sur, instead.

The next hurdle was the National Commission on Indigenous Peoples. By mid-November 2002, there was still no certainty whether the mission will push through as the Philippine government still had not given the final confirmation. On 18 November I called up Mr. Denis Lepatan, the diplomat assigned from the Philippine Permanent Mission in Geneva, to inquire about the delay. He said there was still no signal from the head office in the Philippines and without this he cannot move. I wrote a letter to Ambassador Delia Albert, then the Undersecretary of Foreign Affairs, to get updates. It was then that I learned that the NCIP Chairperson, Mrs. Evelyn Dunuan, wrote earlier to the Department of Foreign Affairs (DFA) suggesting that the mission be postponed because the NCIP, which is suppose to be lead organization for the mission, had not been involved in preparing his itinerary (the original tourist itinerary they made was changed). I called up Mrs. Dunuan to explain to her that it was not the responsibility of an indigenous organization to do this. This is a matter for the government bodies to settle. Our role is to make suggestions to the SR and to liaise with indigenous peoples.

I wrote a formal letter to the Undersecretary to inform her about the preparations on the ground and to say that it would be a mistake if they cancel this mission at the eleventh hour. She responded and a meeting was convened in November 26 between all the parties involved, the DFA, the NCIP, the UNDP (UN Development Programme) and us in Tebtebba. Issues were clarified in this meeting. It was established that there were internal communication problems within the government regarding the

mission and Tebtebba had nothing to do with this. The DFA representative asked how the visits of the Rapporteur will be financed because there were no resources allotted for this from the government side. We informed them that we will take care of this. All the necessary matters on coordination were discussed. Finally, the DFA sent the go signal to Geneva and Mr. Stavenhagen and Jong-Gil Woo, the SR's assistant, arrived on November 30, 2002 in Manila.

Covering a Wide Ground in Ten Days

The ten-day trip included a visit to Manila, Baguio City and Mankayan (Benguet Province) in the Cordillera Region in Northern Luzon and in Butuan City in Mindanao. The SR met with senior government officials and UN agencies. In Manila, he met with the Secretary of the Department of Environment and Natural Resources, the Undersecretary of the Department of Justice, the Undersecretary of the Department of National Defense, Co-Vice Chair of Task Force 63,⁴ the Presidential Adviser on Peace, the Chair of the Commission on Human Rights, the Commissioners and Executive Director of the National Commission on Indigenous Peoples and the Chair of the National Commission on the Role of Filipino Women (NCRFW).

He also met with the president of the Chamber of Mines of the Philippines, Mr. Artemio Disini (who happens to be President of Lepanto Mining Corporation also). The President of the University of the Philippines hosted him for a luncheon meeting with the other University officials. In Butuan City, he met with the Catholic Bishop of Butuan. He had a breakfast meeting with the staff of the Lepanto Mining Corporation before he went to the field visit to Culalo, the community which will be affected by the Victoria Gold Project of this company in Mankayan, Benguet Province.

To ensure that the SR will be able to meet the indigenous peoples from the communities he cannot visit, two regional meetings were organized. One was held in Luzon, in Baguio City, where indigenous peoples from Southern Tagalog, Central Luzon, and Northern Luzon were present to present their testimonies to him. The other one was the Mindanao Regional Consultation held in Butuan City. There were representatives from the indigenous organizations and communities from all the regions in Mindanao.

The only community visit which did not materialize was the one for San Luis, Agusan del Sur. This had to be canceled because the visit to Mankayan took longer than was expected as the roads were very bad. This is important to note as when Mr. Denis Lepatan⁵ made his response, he was referring to a visit to San Luis, when in fact, this did not happen.

On December 10, International Human Rights Day, the mission team arrived in Manila and a celebration of some kind was held where the SR met with other indigenous peoples at a National Consultation. The next day, he held a debriefing session where he presented his Debriefing Report⁶ to the government and held a press conference. In this session, the NCIP Chairperson, Evelyn Dunuan, and Ambassador Howard Dee, the Presidential Adviser on Indigenous Peoples' Affairs responded and they both agreed that the report was a "very precise, accurate and comprehensive report."⁷ Ambassador Dee even reinforced the recommendation of the SR that the paramilitary units, particularly the CAFGU,⁸ be withdrawn from indigenous peoples communities upon their request.

The Indigenous Peoples of the Philippines

The Philippines is comprised of a diversity of peoples with distinct cultural differences, speak different languages and practice varied yet interconnected cultural traditions. There are 42 indigenous peoples' groups in the country, making up about 10 to 12 per cent of the national population of 75 million. On the basis of languages spoken, there are 114 ethnolinguistic groups in the country.

The indigenous cultural communities or indigenous peoples, are defined in the Indigenous Peoples Rights Act (IPRA) as:

a group of people or homogenous 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.⁹

The National Commission on Indigenous Peoples further divided the country into seven major groupings namely Northern Luzon and the Cordillera Administrative Region, Northeastern Luzon, the rest of Luzon, Visayan island groups, Northern and Western Mindanao, Southern and Eastern Mindanao and the Caraga region and Central Mindanao.

A geographical distribution prepared by the Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP) is as follows:¹⁰

Mindanao – These 18 ethnolinguistic groups on this island comprise the largest number of indigenous peoples in the country: Subanen, B'laan, T'boli, Mandaya, Tiruray, Higaonon, Bagobo, Bukidnon, Tagkaolo, Ubo, Banwaon, Dibabawon, Talandig, Mamanua and Manguangan. They live in the mountainous areas of Davao del Norte, Davao del Sur, Bukidnon, Agusan del



Norte, Agusan del Sur, Surigao, Zamboanga, Misamis Oriental, Misamis Occidental, Cagayan de Oro, North Cotabato, South Cotabato and Sarangani province.¹¹

Cordillera – Indigenous peoples in the north-central region of Luzon Island are the Apayao, Bontoc, Ibaloy, Ifugao Isneg, Kalinga, Kankanaey and Tingguian. They occupy the six provinces of Abra, Apayao, Benguet, Kalinga, Ifugao and Mountain Province.¹²

Caraballo Mountains – In the mountainous region along the provinces of Nueva Vizcaya, Aurora and Nueva Ecija are the Ibanag, Bugkalot, Ilongot, Gaddang, Ikalahan and Isinai peoples.

Sierra Madre Mountains – The Dumagat people of the Sierra Madre, can be classified into subgroups namely the Agta, Alta and Remontado.

Mt. Pinatubo – The Aeta peoples live around the Mt. Pinatubo mountain range along the quadri-boundary of Zambales, Bataan, Pampanga and Tarlac. After the eruption of Mt. Pinatubo in 1991, many were forced to

resettle in other provinces.

Palawan Island – Six major ethnolinguistic groups in the south-central island of Palawan are the Tagbanua, Batak, Kalamianes, Cuyonin, Ken-uy and Palawanis.

Mindoro Island – The Mangyan peoples of Mindoro are divided into seven major groups: Alangan, Iraya, Hanunuo, Tadyawan, Buhid, Bangon and Gubatnon.

Panay and Negros Islands – Prior to the expropriation of their lands the Ati peoples occupied the mountainous areas of Panay and Negros. Today almost all the Ati are either farm workers or hacienda peasants.

Laws on the Protection of Indigenous Peoples' Rights and Fundamental Freedoms

1987 Philippine Constitution

Article XI, Section 5.b. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Article XIII, Section 15. The State shall respect the role of independent peoples organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

Peoples' organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

Section 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

Local Government Code

Chapter 3, Article One, Section 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, non-governmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27. Prior Consultations Required. No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the Sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

1997 Indigenous Peoples Rights Act (IPRA)

Chapter. II, Section. 3.

a. "Ancestral Domains refer to all areas generally belonging to indigenous cultural communities and indigenous peoples (ICCs and IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs and IPs, by themselves or through their ancestors, communally or individually since time immemorial.... 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

and IPs but from which they traditionally had access to for their subsistence and traditional activities...”

b. “Ancestral Lands refer to lands occupied, possessed and used by individuals, families and clans who are members of the ICCs and IPs Including but not limited to, residential lots, terraces or paddies, private forests, swidden farms and tree lots.”

h. “Indigenous Cultural Communities/Indigenous Peoples refer to a group of people or homogenous 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 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...”

Chapter 3, Section 4. Concept of Ancestral Lands/Domains

“Ancestral lands/domains shall include such concept of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the indigenous cultural communities and indigenous peoples possess, occupy and use to which they have claims of ownership.”

International Covenant on Civil and Political Rights (ICCPR)¹³

Part I, Article 1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Part I Article 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Part III, Article 7. No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment...

Part III, Article 9.

Section 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Section 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Section 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

Section 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that it may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Section 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Part III Article 17.

Section 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

Section 2. Everyone has the right to the protection of the law against such interference or attacks.

Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their

group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 1.

Section 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Section 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Convention on the Rights of the Child

Part I, Article 2, Section 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Part I, Article 3, Section 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Part I, Article 24, Section 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Part I, Article 24, Section 2c. The state is obligated to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution.

Part I, Article 30. In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Part I, Article 31, Section 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Part I, Article 34. State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse...

Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law

Part 3, Article 2.

Section 5. ...the right to liberty, particularly against unwarranted and unjustified arrest and detention and to effectively avail of the privilege of the writ of habeas corpus.

Section 11. ... the right to freedom of thought and expression, freedom of conscience, political and religious beliefs and the right not to be punished or held accountable in the exercise of these rights."

Section 24. ... the right of children and the disabled to protection, care and a home especially against physical and mental abuse...

Part 3 Article 15. ...the right not to be subjected to food and other forms of economic blockades...

Free and Prior Informed Consent (FPIC)

Central to all the foregoing stipulations are the rights to liberty, life, culture, traditional knowledge systems and to ancestral domain (and the natural resources therein). In the IPRA, Free and Prior Informed Consent (FPIC) is a requisite in the operation of development projects, requiring:

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*the consensus of all members of the indigenous cultural communities and indigenous peoples to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.*¹⁴

The abovementioned laws, however, do not protect the indigenous peoples from abuse and resource exploitation. The pursuit of economic development and much-needed dollars for servicing the \$55 billion foreign debt¹⁵ seem to justify development strategies that circumvent laws and violate rights and fundamental freedoms of indigenous peoples.

Over the past 25 years, resource extraction in ancestral domains in the Philippines grew exponentially. Presidential Decrees in the 1970s and post-Marcos legislative acts legitimized the plunder of the peoples' mines, forests and rivers.¹⁶ (Refer to discussion in "Land and Resources of the Indigenous People: A Historical Context")

In the official report on the Mission to the Philippines, the Special Rapporteur cited meticulously documented reports and case studies on serious human rights violations. He also enumerated development projects carried out without *free and prior informed consent*. These include large-scale mining, multipurpose dams, large-scale logging, agribusiness, agro-industrial zones and tourist-oriented heritage parks. The operation of these projects is prepared and secured by the military in the guise of counter-insurgency. Indigenous resistance and protest are countered by military force involving numerous human rights abuses.¹⁷

Stavenhagen's report expressed incisive insights on the human rights implications of development projects and concluded with comprehensive recommendations. The Philippine Government, however, sweepingly rejected the entire report as "pure nonsense."¹⁸

The Official Response of the Philippine Government to the Report of the Special Rapporteur

The Philippine Government “could not respond positively to the report.”¹⁹ In the first page of the official response, the Philippine Government already patently accused the Special Rapporteur of ill will, bad faith and malicious intent. The representative of the Philippine Mission to Geneva launched a shameless verbal assault. In a delivery that sounded like routine political sound bites, the representative dismissed the report as “sophomoric” and “pure nonsense”²⁰ and openly mocked Professor Stavenhagen’s sense of judgment. Vicious and condescending, the government representative rejected all the points made by the Special Rapporteur and passed them over as “a litany of unsubstantiated allegations and ridiculous recommendations.”²¹

He quoted two news articles in a major Philippine daily. One was on what the Special Rapporteur said in his press conference urging Philippine officials to look into “extremely serious allegations of summary executions, rape and forced recruitment on account of militarization.” Another was a report on armed communist rebels who abducted and killed four tribesmen loyal to the government. He said “The significance of the second news report is that this happened in San Luis, Agusan del Sur, one of the places the Special Rapporteur himself chose to visit... Obviously, the Special Rapporteur had inspired the wrong group – communist terrorists – who considered his visit to San Luis as an endorsement of their evil designs and, therefore, free to terrorize and enforce their will on hapless indigenous communities...” Mr. Lepatan got this all wrong, as the Special Rapporteur did not even visit San Luis. I mentioned earlier that this visit had to be cancelled because the Mankayan trip took longer than expected.

The government response immediately backfired and became an embarrassing display of arrogance and idiocy. A response typical of a government blindly defensive of its development policy, the report could not reflect even a narrow view of social costs and ecological causality. Citing the Special Rapporteur’s assessment on the San Roque Dam as a final salvo in his attempt to demolish the credibility of Professor Stavenhagen, the government asked him to explain how “his still-to-be discovered magic force will make

sediment and water defy the law of gravity and move upstream to affect villages higher in elevation than the dam... to inundate the helpless indigenous villages above it."²²

In a quick turn-around, the Philippine Government's barrage exploded on itself since there is no "magic force" that silts and floods villages upstream a dam. It is a natural consequence of damming rivers called "backwater" effect²³ caused by sediment buildup in the reservoir. Instead of learning from the experience with the two dams built along the same river where the San Roque Dam now stands, the Philippine Government chose not to see the devastation in the upstream villages. In the Ambuklao and Binga dams built on the Agno River in 1956 and 1960 respectively, progressive accumulation of silt and the backflow from the dam reservoirs have destroyed lands not originally projected to be "dam-affected." To this day accumulated silt continues to creep into upstream villages swallowing up rice fields and agricultural land.²⁴ (See discussion on the San Roque Dam)

Like the other 45,000 large dams in the world today, the San Roque Dam will last only as long as it takes nature to fill up with silt.²⁵

The government response to the Special Rapporteur's report shows a stance that precludes any possible discourse on substantive issues or urgent situations. It also clearly illustrates how the Philippine government makes decisions on economic development policies without adequate understanding of the actual social and environmental costs. It is indeed lamentable that "irreparable" and "long-term destruction" is incomprehensible to a government so steeped in its arrogance and complacency.

An embarrassment in international diplomacy, the government response bared its hypocrisy and mocked the democratic ideals it claims to hold.

At the very least, the government could have shown some effort to review the reports presented to the rapporteur during his visit and soberly examine their veracity instead of demolishing the credibility of the people and organizations presenting them. Besides, the Special Rapporteur gave to them a draft of the report, three months before it was presented. There was no response at all from them within that period. The day before the Special Rapporteur presented his report he even had another meeting with Mr. Lepatan. Thus, this irrational response with its unfounded ac-

cusations is obviously the work of a diplomat who did not do his assignment very well. After all, the Special Rapporteur's recommendations were being made in the spirit of constructive dialogue. The Philippine Government,²⁶ instead, made sweeping conclusions regarding the issues at hand.

Land and Resources of the Indigenous Peoples: A Historical Context

The history of colonialism has been the history of appropriation of the best lands from the tribals in the cause of development – for others – through, mines, commercial plantations and others.²⁷

In the American colonial era, early legislation upheld Spanish cadastral laws and Spanish titles but also required that in order for land to be segregated from public domain, it would have to be covered by Spanish title or registered with the new government.²⁸ With the Land Registration Act of 1902 and the Public Land Act of 1905 put into effect, most lands of indigenous peoples in both the northern Luzon Cordillera region and Mindanao island became, technically, public land because these were not covered by Spanish titles. Furthermore, these lands, many of which were communal land, had not been registered due to ignorance regarding land registration procedures and its implications. In many cases, the people were simply unable to afford the cost of cadastral surveys.

Because the framework of the law does not correspond to traditional concepts of land ownership, these laws were prejudicial to the peoples' interests. Specifically, Philippine indigenous peoples do not regard all land inherited from ancestors as private property and thus, could not be registered privately. Custom law limits private ownership and inheritance of land to residential sites and irrigated rice terraces and in some instances, orchards and woodlots.²⁹

Laws enacted early in the 20th century provided legal basis in the indigenous peoples' dispossession over their land. Mining companies filed claims over huge tracts of land bearing the richest mineral deposits and acquired concessions over vast forests to supply timber for the mines. Transnational logging companies staked claims over timber land not covered by concessions of mining

companies. Homesteading schemes that began in the late 1940s opened up frontier lands to large-scale acquisition by Filipino landlords, American citizens, and corporate interests.

Logging Companies Deplete Forest Resources

At the time of Spanish conquest, the Philippines was about 90 per cent forested. Logging began to significantly reduce the primary forests during the American colonial period. In 1934 the Philippines had a forest cover of 17 million hectares at a time when its population was 14 million.³⁰ In Northern Luzon, logging for timber used to shore up the tunnels of Benguet's underground mines largely contributed to cumulative deforestation.

After World War II, forest cover, especially in Mindanao, dropped to less than 60 per cent. This had decreased to 35 per cent during the 21-year government of President Ferdinand Marcos that began in 1965. The plunder of natural resources reached staggering proportions during Marcos's Martial Law era.³¹ In 1980, there were 110 logging concessions, 92 grazing projects, eight (8) mining concessions, four (4) plantation corporations, four (4) industrial tree plantations, four (4) government reservations and four (4) power generating plants.

Unregulated logging generated billions of pesos for companies engaged in the commercial exploitation of forests but ironically, impoverished the people who lived in these forest lands.

Today, the country's remaining forest cover is 4.6 million hectares or less than 15 per cent of its total land area³² and of this figure, only 700,000 hectares are virgin forests. This remaining and fast diminishing forest cover is less than a third of the 54 per cent forest cover that the country needs to maintain a stable ecosystem. Of the approximate six million hectares of remaining forests, at least 100,000 to 200,000 hectares disappear every year.³³

This loss in forest cover affects over 20 million Filipinos who live in these over-logged uplands, about a third whom are indigenous peoples. Almost all the remaining forests are located on the ancestral domain of indigenous communities. Stewardship over these lands is enshrined in oral history, myths, prayers, and traditional laws that predate the Philippine state.³⁴ These indigenous communities "have traditionally lived sustainably in the forest"³⁵ but have been displaced by commercial logging and are increas-

ingly pushed to more marginal lands.

In the beginning, logging started out as a minor industry and largely served to fill the needs of the mining companies. It grew rapidly after 1945 when logging for export escalated to fill the needs of Japan's post-war reconstruction. Japan imported 80 per cent of all Philippine round wood exports. But while the country became a major producer of untreated round logs, local wood-based processing and manufacturing did not progress much. Using our round logs, the Japanese developed their own wood products but protected their own wood manufacturing industry.

Japanese companies like Mitsubishi Corp. invested in logging companies that operated in Mindanao to supply their wood-based industry. Lianga Bay Logging Corp., operating on a 92,000 hectare concession on land owned by the Manobo peoples of Eastern Mindanao, exported high quality mahogany to Japan as round logs. In the mid-1960s, as a subsidiary of the US-based Georgia Pacific Corp., the company began exporting to the US. More US logging firms, with stable concessions in North America, operated huge logging-for-export industries in Mindanao during the Martial Law era in the 1970s. Their operations in the country yielded higher return-on-investment because American forest management regulations were more stringent and more expensive. In the Philippines, unrestrained logging operations generated more output and bigger profits.³⁶

The highly profitable industry opened up even precious forest reserves to uncontrolled logging, made possible by the collusion of government officials and the military. Timber and Pulpwood Licensing Agreements (TPLA) legalized logging concessions over vast forests. Under the Martial Law regime, legislation and development schemes that expanded commercial logging complemented the clandestine cooperation between the local government and transnational logging companies. Large-scale denudation all over the country began in the 1970s at a staggering 170,000 hectares annual loss rate of forest cover.

Under the Marcos government's Five Year Philippine Development Plan, 1978-1982, the commercial exploitation of forest resources states:

In the short-and medium-terms, log production will increase by 500,000 cubic meters a year, to reach 14 million cubic

*meters by 1987 from the present 9 million... By the early 1990s when the virgin forests in Mindanao are completely logged off, production will reach the limits of the allowable annual cut of about 13 million cubic meters. This will decline further to about 12 million by mid-1990 when all Luzon virgin forests are also completely logged off.*³⁷

Clearly, this government view of forests as nothing more than resources that must be reaped and converted to revenue determined development policy then and still does today. It is a policy that shows no regard to the social implications and to the scale of environmental devastation that uncontrolled logging will create.

Loss of Biodiversity

Deforestation has increasingly destroyed land cultivated for rice and corn, the Filipinos' staple food. Yields continue to decline in fields in low-lying areas below over-logged forests. With little vegetation to anchor the soil and hold subsurface moisture, heavy rainfall causes water runoff to accelerate and carry away the topsoil.

The loss of forest cover has inevitably brought on extensive erosion, flooding and loss of agricultural topsoil. Indeed, about "a billion cubic meters of agricultural topsoil (100,000 hectares of land one meter deep) are lost to erosion each year."³⁸ This massive loss of topsoil weakens the productivity of agricultural land and only aggravates prevalent poor economic conditions. Meanwhile soil washed down the streams steadily silts the riverbeds and consequently cause flooding.

Trees and other vegetation form "the roots of many natural systems"³⁹ and are invaluable to the ecological integrity of an area and adjacent ecosystems.

The Philippine forests sustain great numbers of unique species. One survey in just one hectare of forest reserve showed more than 100 species of trees.⁴⁰

With the extent of forest destruction, half of the species and the endemic life forms unique to this country have already vanished. The Philippines is "the single worst case scenario" of biological diversity loss in Southeast Asia.⁴¹

Agri-Business Expansion in Mindanao and the Displacement of Indigenous Peoples

Commercial crop production was geared primarily towards the export market early in the American colonial era. This pattern became more pronounced in the Martial Law regime. Following the enactment of the Investment Incentive Law in 1967 and stimulated by the sharp decline of peso value in 1973-74, foreign agribusiness interests saw tremendous expansion in Mindanao. Agricultural land formerly planted to food staples were converted to cash crop cultivation. Coconut, abaca, sugar, tobacco, and fruits contributed to almost half of the Philippine export economy in 1977. The production of new export crops like pineapple and rubber extended to vast areas. Corporate farms and plantations required the expansion of areas for commercial production.

To indigenous communities, this meant losing ancestral territories and being pushed further into the outer reaches of the mountains. But as agribusiness engulfed wider tracts of arable land and logging companies consumed the forests, more indigenous peoples found their former subsistence economies increasingly precarious. Organized and staunch resistance was the only recourse of people who had been displaced from their land.

Foreign Debt Servicing and Resource Exploitation

US and Philippine trade legislation in 1909 formed the basis for an outward orientation of the Philippine economy: industrial goods were imported and agricultural products had to be produced for export to earn the dollars needed to pay for the imported goods. Economic activity was reoriented to serve the world market. Trade agreements with the US enacted after World War II,⁴² started the repeated balance of payment deficits in the Philippine economy largely due to the heavy repatriation of foreign capital. To remedy the deficit created by the unequal trade relationship, the World Bank (WB) granted its first loan to the Philippines in 1957.⁴³ Since then, the influence of the World Bank increased in proportion to the swelling foreign debt.

Government policies that followed the first WB loan were directed towards compliance to conditions set on standby loan agree-

ments. Following recommendations of the International Monetary Fund (IMF) President Diosdado Macapagal proclaimed full and immediate decontrol, lifting all restrictions on foreign exchange receipts. US firms based in the Philippines were allowed to remit huge profits while the Philippine peso was converted to US dollars for the importation of finished products. This led to the slide of the peso from the rate of P2.00 to \$1.00 to P3.90 to \$1.00. The 100 per cent devaluation severely weakened the economy.

Efforts to strengthen the independence of the Philippine economy became futile. President Macapagal promoted his "open door policy" for foreign investment. But while the foreign investors⁴⁴ brought in new capital investments of \$160 million, they repatriated \$482 million in capital withdrawals and profits remittances. Moreover, foreign firms increased their capitalization using local borrowings, taking up 84 per cent of the capital and operations funds of foreign investments in the Philippines.

Carried over to the administration of President Ferdinand Marcos were policies complying with IMF, WB, and the Asian Development Bank. Marcos enacted the Investments Incentives Law in 1967 to attract more foreign investments by allowing 100 per cent equity in Philippine-based subsidiaries.

By 1970, the bankruptcy of the Philippines became evident given the huge internal and external debt. The IMF required yet another peso devaluation as a precondition to restructuring of loan payments and the granting of fresh loans. The peso value sank to P6.00 to \$1.00 in 1970 and consequently, the peso value of the \$1.5 billion external debt inflated from P5.85 billion to P9.3 billion.⁴⁵ Peso devaluations not only bloated the foreign debt but also made Philippine exports cheaper and imports more costly. Increasing exports and foreign investments achieved at the expense of depleting scarce natural resources dictated government policy.

Bankruptcy of government persisted and got even worse. Loans from the IMF-WB determined government economic strategy and continue to direct a development policy that is anchored on export-oriented industries and foreign investment.

In agriculture, export and foreign investment orientation requires expanding the area devoted to export products and stepping up the exploitation of primary resources: rivers, mines, forests and agricultural lands.

The demands made upon the country's resource areas are enormous.

In the Martial Law era, the Five Year Philippine Development Plan sought to:

*... expedite geological surveys and the search for economic mineral deposits and disseminate such information to investors interested in developing marketable products therefrom . . .*⁴⁶

Agribusiness corporations and industrial farms sought commercial expansion in the country's remaining resource areas in the interior forests and river valleys. The indigenous peoples, whose lives depend on these dwindling natural resources, continue to lose to commercial expansion both rights to their land and their sources of livelihood.

In most of Mindanao, (excluding figures from the Caraga region and the ARMM) foreign direct investment (FDI) from 1998 to 2002 was at least P1.2 billion and about 75 per cent of these were invested in exploiting the mines, land, forests, rivers. As of 2003, there are 125 foreign-owned/affiliated corporations in Mindanao alone.⁴⁷ For 2000-2003, the Asian Development Bank (ADB) released \$235 million in loans earmarked for Mindanao. The ADB, one of the Philippines' main foreign creditors, presently has 45 loans under implementation in the Philippines.⁴⁸

In Mindanao, more than 4.4 million hectares, mostly within forest areas, have been appropriated for mining, logging concessions, industrial forestry or agri-business.⁴⁹ Resource exploitation has become justified in the name of national survival and necessitates the sacrifice of affected indigenous peoples. Ironically, this national interest does not include the communities directly affected by the government's development projects. Evidently, the interest of the indigenous peoples is not considered the interest of the nation.

Government development projects uproot thousands of people from their homes, their land, their communities, leaving once viable rural communities impoverished. For the indigenous peoples, losing control over their land "relegates them to a state of dependency, leaving them unable to solve ... poverty and attendant social problems."⁵⁰

A Closer View of One of the Country's Key Resource Areas

Northern Mindanao encompasses the CARAGA region and Misamis Oriental and Bukidnon and has an aggregate area of 31,934.14 sq. km. The newly created CARAGA region comprises four provinces namely Agusan del Norte, Agusan del Sur, Surigao del Norte and Surigao del Sur.

Together, these six provinces have enormous resources: forest land 20,176.77 sq. km. producing 57 per cent of the country's annual log and lumber output; metallic and non-metallic mineral resources 735,894 million metric tons and agricultural land, 9,194 sq. km.

The CARAGA's estimated metallic and non-metallic reserves is about 3.5 billion metric tons, the largest of which is found in Surigao. Vast reserves for cement are found in Surgao City. Nonoc Island in Surigao del Norte has the largest nickel deposits in Asia while Surigao del Sur has one of the largest iron deposits in the world.⁵¹

In the CARAGA region alone, there are 11 medium and large-scale mines for gold, silver, copper, nickel, cobalt, chromite and limestone covering 44,811.25 hectares. Some 27 mining applications have been approved by the DENR-MGB (Department of Environment and Natural Resources-Mines and Geo-Sciences Bureau) and a total of 33,456 hectares covered by exploration permits. There were 25 Mining Production Sharing Agreement (MPSA) approved by the DENR-MGB as of December 31, 2000, covering 70,154.48 hectares.⁵²

In the entire northern Mindanao, mineral lands applied for by transnational mining corporations cover about 40 per cent of its total land area. Agusan del Sur has the highest number of approved Industrial Forest Management Agreement (IFMA) in the Philippines.

(Continued next page)

During the Ramos government in the year 2000, Northern Mindanao was designated as the Domestic Food Basket and Agri-Industrial Corridor of Southern Philippines. As an integral part of Mindanao 2000 Development Framework Plan, the provinces in the newly created CARAGA region were assigned specific functions in the micro-development plan that created the CARAGA Area Development Zone (CADZ). In the government's master development plan, the expanded Cagayan-Iligan Industrial Corridor (CIIC) that encompasses the CARAGA region, Misamis Oriental, Bukidnon and Cagayan de Oro City will play key roles in making it a major agro-industrial and trade center in Mindanao.

- Butuan City: Regional center for processing, commercial trading, and related services for CARAGA;
- Surigao City: Special zone for mineral-based industries; commercial and trading center in the region's Pacific rim;
- Agusan del Norte: Agricultural center and agri-processing zone;
- Surigao del Norte: Zone for mineral industry and fishery; eco-tourism destination;
- Surigao del Sur: Agri-industrial zone (for agricultural, forest and fishery products);
- Agusan del Sur: Agri-forest zone and agricultural center
- Cagayan de Oro City: The regional center;
- Misamis Oriental: Site of the Phividec Industrial Estate of Misamis Oriental;
- (PIE-MO): Center for the manufacture of coconut and synthetic resins;
- Bukidnon: Pineapple cultivation, industrial tree plantations; rice, corn and other high value crop production.

Table 1. Summary of Large Businesses in Northern Mindanao

Type of Business/Project	Status	No.	Area Coverage (hectares)
Mining Industry:			
FTAA	Applications	15	1,235,927.00
MPSA	Operating	29	59,592.38
EPA	Operating	12	150,467.00
Small Scale Mining Operation	Operating	—	—
Logging and Agro-Forestry:			
CBFMA	Operating	64	302,022.80
IFMA	Operating	18	296,650.00
Existing Logging Companies	Operating	4	359,000.
Agri-Business and Plantations:			
Palm Oil	Operating	1	10,000.00
Rubber (including contract growers)	Operating	3	23,600.00
Banana	Operating	1	2,000.00
Coffee	Operating	1	6,000.00
Fruit trees	Operating	—	—
NIPAS/Watershed Projects:			
Surigao del Norte	Ongoing	3	35,000.00
Agusan del Norte/Butuan	Ongoing	2	78,000.00
Agusan del Sur	Ongoing	2	135,600
	TOTAL:	166	2,692,859.18

Source: NEDA, MGB, DA and NCIP Year-end Reports, 2000

Management of Natural Resources and the Indigenous Peoples

The recognition of ancestral domain rights of indigenous peoples is a major environmental and development issue. Being directly dependent on the natural resources, the indigenous peoples “are the greatest stakeholders and must be recognized as full partners in the effort to protect and sustainably manage them.”⁵³

Philippine NGOs and other concerned groups have made the following connections that link environmental issues to development issues.⁵⁴

The environmental movement is a struggle for equity in the control and management of natural resources.

Government development strategies are rooted in inequities and foster greater inequities. All over the country, large corporations and foreign banks reap the profits while indigenous communities remain poor and still get poorer because of the resource loss. In resource-rich Mindanao, 11 of 14 provinces fall among the 20 poorest provinces in the country. It also has the highest figure of poverty incidence at 57.3 per cent. Indeed, development is not trickling down to the people. And because natural resources have been the key to economic power, government and its policies are easily molded to serve the interests of the resource exploiters, even providing the military protection needed to secure the operations of dams, mines, large-scale commercial logging and corporate farms.

Table 2. Poverty Thresholds: All Areas, Rural and Urban, Philippines, 2000-2002

Year	All Areas	Urban	Rural	Urban-Rural Difference	
				Level	%
2000	P11,620	P12,933	P11,130	P1,803	16.2
2001	P11,786	P13,235	P11,255	P1,980	17.6
2002	P11,906	P13,313	P11,390	P1,923	16.9

Source: www.nscb.gov.ph

The struggle for the environment and for control of resources requires a far more participatory notion of development.

From the authoritarian rule of Marcos to the present Arroyo administration's "restored democracy" a pattern of developments shows that even the best laws, treaties and government decrees cannot stop environmental destruction. Resource exploiters, as the case studies show, either ignore laws, have learned to work around them or simply pay the meager penalties rather than to comply with the laws. But the active involvement and the perseverance of citizens' groups have brought about tangible results. In the 1980s, strong resistance from the indigenous communities in Mountain Province and Kalinga in the Northern Luzon Cordillera region made the World Bank withdraw funding for the Chico Dam. Consequently, the project came to a quick halt. In Bukidnon, the local community put up barricades to stop logging trucks and con-

fiscated illegally cut logs to stop over-logging by a large timber company. As a result, the timber license of the company was revoked.

Such a resistance however opens indigenous communities to military repression, harassment and abuse. The people pay the price for this, often with their own lives. Undeniably, the struggle for the environment is a struggle for power.

The struggle for peace is a struggle for sustainable development and the struggle for sustainable development is a struggle for true peace and justice.

The absence of equity, participation and ecological sustainability has generated widespread social unrest. As noted in the Special Rapporteur's visit report, several insurgencies in various parts of the country confront the Philippine government. Feeding on rural poverty and social unrest, the country's insurgency is the largest in Asia. Counter-insurgency measures by the Philippine military have invariably created an ongoing crisis causing human rights violations that affect indigenous communities caught in the fight between government troops and rebel groups.⁵⁵

Peace movements (advocating conflict resolution between the government and rebel groups) are now discussing development questions, aware that there must be equitable development for peace to be sustainable. Community-based schemes of resource management and stewardship contracts have been proposed by groups advocating indigenous peoples' rights over their ancestral domain and resources.

To work for environmentally sustainable development requires working for human rights.

Various testimonies and documents submitted to the Special Rapporteur show that indigenous peoples involved in legitimate social protest and defense of their rights are accused of belonging to rebel groups and are prosecuted for terrorist activity. People working for sustainable development face threats on their lives and their families as they to confront powerful landlords, mining corporations, loggers, big landowners of corporate farms along with politicians and the military organization that protect them.

The Indigenous Peoples Rights Act

The legislative intent of the Indigenous Peoples Rights Act (IPRA) is rather impressive. It is proudly claimed by the Philippine government as one of the most comprehensive laws pertaining to indigenous peoples' rights – codifying respect for ancestral domain, self-governance, self-determination and right to cultural integrity.

The spirit of the law, however, has yet to translate itself to actual circumstances. Factors such as corruption in government, the lack of institutional effectiveness and ambiguities in the interpretation of the law contribute to stymie any efforts to apply the IPRA. In many cases, the government is simply unwilling to enforce the law and neither is it interested to engage communities in any democratic process. Recent developments point to the reality that the government can simply ignore the laws. In the end, “the acquiescence to the status quo” prevails.⁵⁶

A basic ambiguity lies in the interpretation of “ancestral domain.” In international usage, this refers to the territory occupied and controlled by an entire ethnolinguistic group or by a smaller kinship or settlement group since the time of its ancestors. Thus, it does not refer to a piece of land that a family has cultivated or lived in for a number of generations. Ancestral domain refers to “all the land and resources collectively held by a distinct peoples as their inheritance from ancestors in stewardship for the generations yet to come. It is, in short, a peoples' patrimony. It covers both water and land rights, surface and subsurface rights.”⁵⁷

National law, however, negates this. While the 1987 Philippine Constitution mandates the promotion of indigenous peoples' rights in Article XII, Section 4 and 5, the Constitution also stipulates in Article XII, Section 2 that:

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.

Section 3a of the IPRA defines ancestral domain as that which encompasses “such concepts of territories which cover not only the physical environment but the total environment including spiritual and cultural bonds to the areas ...”⁵⁸ An expanded definition of ancestral domain includes not only ancestral lands, residential and agricultural lands, forests, worship areas, hunting and burial grounds, but also pastures residential and agricultural lands, bodies of water and mineral and other natural resources.

Existing Property Rights Regimes (Sec. 56) however overrides this as it states “property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.”⁵⁹ This has been used by mining companies to their advantage, interpreting “vested rights” to include mining concessions, excluded from the scope of ancestral domains are vast tracts of land under timber concessions and permits to operate commercial tree farms.⁶⁰ Indeed various projects in ancestral domains attest to this and are legitimized by contracts with the government like the Community-Based Forestry Management Agreement (CBFMA), the Industrial Forest Management Agreement (IFMA) and mining agreements.

A fundamental contradiction in Philippine law lies in the exercise of “the power of eminent domain” which “may be invoked and exercised for the entry, acquisition and use of private lands.”⁶¹ This totally nullifies the protection for ancestral domains provided for in the IPRA as “prospectors, claimants of mineral lands shall not be prevented from entry into private lands, surface owners, and occupants when prospecting or exploring therein.”⁶² This not only negates the intent of the IPRA but also illustrates how the government can invoke the *jura regalia*, known as the Regalian Doctrine⁶³ to protect private interest in the exploitation of mineral resources. Large-scale underground and open-pit mines in ancestral domains in Mindanao and in the Northern Luzon Cordillera region are stark examples of this.

With resources other than mines where the power of eminent domain is not invoked, the urgency of “community development projects” prevails. Most of these projects bypass constitutional laws on ownership since most of these are 100 per cent foreign-owned under onerous “Build, Operate and Transfer” (BOT) schemes and by contract agreements like the Mineral Production Sharing Agreement (MPSA) and the Financial and Technical Assistance (FTAA).

Clearly, the Philippine Government will not risk compromising the interests of private business and foreign-owned corporations.

In the case of the San Roque Dam, its “flagship project” status exempted it from all the legal processes such as the passing of an Environmental Compliance Certificate (ECC) and the requisite of free and prior informed consent (FPIC) required of environmentally critical projects.

The processing of certificates of ancestral domain claims (CADCs) and certificates of ancestral land titles (CALTs) has created tension among indigenous peoples as it has become an arena of power play, corruption, and violation of human rights. In an exposé made by a former NCIP Commissioner and published in a weekly paper in Baguio City on February 15, 2004, the former chair of the NCIP, David Dao-as, is accused of signing over a thousand fake CALTs on his last day of office on February 21, 2001. These defective CALTs cover vast tracts of land in Baguio City, Benguet and Mindanao. These titles have been reportedly “negotiated, sold, or offered for sale not only here but even abroad,” particularly to Filipinos in the US.⁶⁴

In two documented cases in Mindanao, it has become an instrument for land grabbing by politicians, warlords, and other powerful individuals “who have access to information, legal assistance and logistical and political support.”⁶⁵

An increasing number of documented cases point to the fact that the IPRA, at this stage, is not effective as a legal instrument and the report of the Special Rapporteur presented examples attesting to this. Abuses, opportunism, land grabbing and other issues have eroded community protection. Past and recent developments continue to generate mistrust in the legal system.

As noted in the rapporteur’s visit report, questions of identity “continue to be constructed and reconstructed amid demographic changes, political exigencies, and religious dimensions (particularly on the island of Mindanao).”⁶⁶

The Mining Industry and the Philippine Mining Act of 1995

In the early American colonial period, American mining prospectors began to file claims even before a law passed in 1905 opened all mineral lands in the country to exploration, occupation and

Summary of Approved CADC in the CARAGA Region (1998)

Tribe	Organization/ Leader	Location	Area Hec- tares	CADC No.
Agusan del Norte Higaonon	Kilusang Nagkahiusang Minorya/ Datu Deo Ongcad Maguanta	Lawan- lawan, Las Nieves, Agusan del Norte	8001	R13-018 5 Aug 1995
Agusan del Sur Manobo	Datau Hawodon Tagilong Cuguit	Kasapa II, La Paz	51000	R13- CADC-132 (5 June 1998)
Manobo	Datu Sumapnay	Veruela	7478	R13- CADC-155 (5 June 1998)
Manobo	Datu Manbyahe Benhur Mansulohay	Binicalan, San Luis	6094	R13- CADC-158 (5 June 1998)
Manobo	Datu Kandibuko Wenceslao Reyes	Katipunan, Loreto	3800	R13- CADC-157 (5 June 1998)
Higaonon	Datu Mankombate Deo Manpatian	Esperanza	74827	R13- CADC-154 (5 June 1998)
Surigao del Sur Manobo	Pakuan Manobo Indigenous Cultural Communities (PMICC)/ Anilao Dawog	Pakuan, Lanuza	312	CADC No. 11-01 (20 June 1998)
Manobo/ Maman- wa	KALASAG/Ric- ardo Salazar (Datu Depensa)	Lanuza, San Miguel, Tandag	14071	CADC No. 13-070 18Nov1998

purchase by Americans and Filipino citizens. The law now referred to as The Mining Act of 1905, applied to all mineral lands not segregated from the public domain.

Mining became a main industry and the Philippines is recog-

Manobo	San Miguel Manobo Indigenous Cultural Communities (SAMMINCC)/ Garcia S. Montenegro (Datu Mananaw)	Bgys Bitan-agan, Bagyang, Calatagan, Bolhoon, Carromata, Magroyong, Sagbayan, San Roque, Siagao Libassob, Castrillo, Umalag, Tina, all of San Miguel	42121	R13-CADC-137 (5 June 1998)
Manobo	Cagwait Manobo Indigenous Cultural Communities (CAMICC) Datu Josepito "Maloloy-an" Tanola	Tubo-Tubo, Cagwait	12104	R13-CADC- (5 June 1998)
		Total	219808	9 CADCs

nized as a major producer of metallic and nonmetallic resources. In the Northern Luzon Cordillera, large-scale underground mining in Benguet accounted for 75 per cent of the gold produced in the country. Until the mid-1980s, the Philippines was the world's ninth largest gold producer. Benguet Corporation, operating since 1903, became the country's largest primary-gold producer and the seventh largest gold producer in the world.

Gold and copper became the country's leading exports. When metal prices reached all-time highs in the late 1970s and well into the early 1980s, over 20 per cent of the country's revenues from total export earnings derived from mining. In the 1970s, the Philippines exported \$4.1 billion worth of mineral products and in the first half of the 1980s, \$4.7 billion. A slump in metal prices worldwide in 1985 pushed the mining industry to the verge of collapse. Political instability and an economic recession further aggravated this.

In 1993, the mining industry lobbied for the passing of a new law that would liberalize the industry, provide favorable tax incen-

tives and allow the entry of foreign capital. This was intended to improve the investment climate, bail out distressed companies and also entice new explorations and fresh foreign investments. In 1995, the Philippine Mining Act was signed into law.

In essence, this law was directed at two things: first, to improve the state of the local mining industry that benefit a few large Filipino mining companies and second, and perhaps more importantly, to adhere to the IMF-WB development model of a liberalized economy. For the industry, this meant encouraging the entry of global mining giants.

Towards the end of the Marcos dictatorship, the IMF-WB and creditor nations stringently imposed macroeconomic measures directed towards economic liberalization through an export-oriented industry and a trade, import and investment liberalization. These structural adjustment programs carried over to the governments after Marcos in exchange for fresh loans and grants that would sustain the ailing economy.

The passage of the Philippine Mining Act practically opened up the country to exploration and subsequently, mining operations.

While it stipulates that:

*No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.*⁶⁷

the same law also states that:

*Mineral resources are owned by the State and the exploration, development, utilization and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.*⁶⁸

*... all mineral resources in public or private lands, including timber or forestlands... shall be open to mineral agreements or financial or technical agreements applications.*⁶⁹

Thus, when indigenous cultural communities assert their right to have “prior consent” to mining operations, the state invokes ownership of mineral resources. Or, as cited earlier, the government can simply apply “the power of eminent domain.”

The Mining Act of 1995 and Indigenous Cultural Communities

Following the passage of the law, applications for mining exploration swamped the Philippines mainly by foreign mining companies from the US, Australia and Canada. Majority of the sites for exploration and operation fall within the domains of indigenous cultural communities.⁷⁰

Three kinds of mining rights dispense applications for access to mineral resources: the Exploration Permit (EP), the mineral agreement and the Financial or Technical Assistance Agreement (FTAA).⁷¹

An Exploration Permit grants the right to explore a prospected area for two years. If a mineral deposit is found and show potential commercial viability, the permit holder may enter into any type of mineral agreement or FTAA with the government.

A mining agreement grants the contractor the right to conduct mining operations within a specified contract area for 25 years, renewable for another 25 years. There are three modes of mineral agreements: Mineral Production Sharing Agreement (MPSA), the co-production agreement and the joint venture agreement. Each one differs from the other only in the extent of government involvement in the mining operation.

In large-scale mining operations, the FTAA provides financial and technical assistance, and grants Filipino or foreign companies full equity and control of mining projects. For a minimum investment of \$50 million, a mining firm is allowed to 81,000 hectares of land for mineral exploration for 25 years and renewable for another 25 years.

In essence the FTAA contradicts provisions in the Philippine Constitution disallowing foreign-owned corporations to control and engage in full mining operations. Apart from generous terms, the law also grants auxiliary rights that ensure that the mining rights are applied: the right to enter private lands, to build infrastructure on private lands and water and timber rights within the mining area as needed by the mining operations.

Moreover, the contract guarantees fiscal incentives that ensure investment returns and profitability to the mining contractor. Among these are a 100 per cent repatriation of investments in dollars, a 100 per cent remittance of earnings in dollars, freedom from ex-

propriation and double acceleration of depreciation costs. For example, in the case of Lepanto Mining Corporation's Victoria I and II projects in Mankayan, Benguet Province, the government's Board of Investments granted the company a four-year tax holiday, extendable by another three years. As specified in the FTAA, corporate income tax, excise tax and other duties commence only after the mining operator has recovered all its pre-operating expenses.

These incentives have certainly been favorable for foreign mining companies judging from the ongoing FTAA's and others that are expected to commence operations. But looking beyond the mining operations' 25-year lifespan, the staggering environmental impact and social costs particularly on indigenous cultural communities would be irreversible.

Economic Development Strategies Threaten to or Have Eroded Traditional Economy, Community Structures and Cultural Values

In compliance with the demands of globalization and the policies of the International Monetary Fund (IMF) and the World Bank, the Philippine Government implements economic development projects that threaten to or have already eroded traditional economies, community structures and cultural values. In indigenous communities, development strategies have resulted in anything but progress.

Documentation presented to the rapporteur included:

- large-scale logging of forests including watersheds and communal forests;
- open-pit mining and large-scale underground mining;
- conversion of pasture lands, rice fields, orchards and swidden farms to agro-industrial plantations or tourist destinations;
- construction of large dams and hydropower plants.

The following were presented in the testimonies by NGOs and peoples' organizations as examples of development projects that

violate indigenous peoples' rights and fundamental freedoms. Affidavits and supplementary reports were submitted to the Special Rapporteur.

Luzon Island

San Roque Multi-Purpose Dam⁷²

Itogon, Benguet province and San Manuel and San Nicolas, Pangasinan province

The San Roque Dam is the third large dam built on the Agno River. It is one of six dams intended to tap the hydropower potential of the river. It is designed to be Asia's highest and the world's 12th largest dam. The first two dams, Ambuklao and Binga built in 1956 and 1957 became known as the biggest in Asia at the time. Both are now silt-logged and only partially operational.

The San Roque Dam has a storage capacity of 850 million cubic meters and a height of 200 meters. The Philippine government and the consortium of multinational giants comprising the San Roque Power Corp. built this new mega-dam. Its construction cost of \$1.2 billion was negotiated by the Philippine government under President Fidel Ramos through credit financing mainly from the Japan Bank for International Cooperation. The San Roque Dam became a flagship project under three government administrations.

The dam was built in barangay San Roque, municipality of San Manuel, Pangasinan province. The reservoir that the dam has begun to create is expected to extend 18 square kilometers from barangay San Felipe, San Nicolas to the barangays of Ampucao and Dalupirip in the municipality of Itogon, Benguet province. It is projected to submerge eight upland villages.

Beyond these eight villages, many others are bound to be affected by sediment buildup and upstream flooding once the reservoir gets silted and is estimated to extend 30 square kilometers along the Agno River. Sediment buildup and flooding are expected to occur along seven tributaries of the Agno, over an area of more than 20 square kilometers.

Living in the upper reaches, in the river valleys and mountain ridges of Benguet and adjacent provinces, are three groups of indigenous peoples: the Ibaloy, Kankanaey and Kalanguya. They

have a decent livelihood supporting themselves through a combination of rice agriculture and hill farms, fruit orchards, mining lodes and placers of gold ore and pasturing the cattle that they purchased with their gold. In the second World War the river valleys produced rice surpluses for southern Benguet.

Some 20 Ibaloy, Kankanaey and Kalanguya households were among the people displaced from Bolangit (one of the sites for the dam reservoir) a village they had developed alongside Ilocano migrant households. More than 60 other such households previously lived in the seven other villages. The members of 40 households used to frequent the vicinity of all the eight villages to cultivate swiddens, pasture cattle and pan for gold from the river banks. These 120 households comprise about 600 persons.

Upstream the reservoir, about 26,000 individuals comprising nearly 5,000 Ibaloy, Kankanaey and Kalanguya households will be affected by the sedimentation and flooding that the reservoir will inevitably induce. In addition to them, 22,000 persons or over 3,000 households will be affected by watershed management.

Given that the rate of sedimentation in the lower Agno river system is quite high, estimated at 6.35 million cubic meters a year, it is projected that the sedimentation of the reservoir and the build up of sediments upstream will progress rather quickly. This estimate does not include the huge spillage of silt released from the Ambuklao and Binga dams into the lower Agno river system during periods of heavy rainfall.

Apart from the two dams, eleven mine tailings dams have been built on the Agno's tributaries. Two of those tailings dams have collapsed. Together, the nine store over 500 million metric tons of silted waste from the milling of gold ore.

Since the last quarter of 2003, Filipino electricity consumers began paying for the cost of the San Roque Dam through unusually high electricity bills, whether the power produced by the SRPC is consumed or not. For the next 25 years, the Filipino public will be paying the SRPC US\$10 to \$17 million a month, or about US\$120 to \$204 million a year, adding about nine per cent to the country's foreign debt.⁷³ In 2003, net loss of the state-owned National Power Corporation reached P100 billion due to the peso depreciation and the buy-out power contracts with San Roque and Binga dams.⁷⁴

Building and operating the San Roque Dam has major human rights implications for the indigenous communities. First, there has been and will be environmental disruption. Second, there has been and will be displacement. (Indigenous peoples displaced by the two earlier dams have scattered and to this day, have not received compensation for the loss of their land.)

Thirdly, there has been disregard of indigenous peoples' land rights.

The proprietary rights of families to land inherited from their ancestors have not been given due recognition. Before project implementation began, no family was asked for consent to giving up landed property.

Furthermore, the rights of indigenous communities to ancestral domain have not been given due respect. No community was asked for consent to having any portion of its ancestral domain submerged in the reservoir or destroyed by sedimentation and upstream flooding. None was asked for consent to transferring control of livelihood-resource use from its own hands to those of the DENR. Only after the dam construction was well underway were the communities drawn into discussions pertaining to project-impact mitigation by means of watershed management.

None of the disruptions, and not even the dam itself would have been possible if both policy and its actual enforcement favored the indigenous peoples. None of the laws, specifically in the Philippine Local Government Code and the Philippines' Indigenous Peoples Rights Act could protect the people. The national government simply ignored these laws and pushed ahead in spite of community resistance, local government opposition and widespread public opinion contrary to the dam project.

Victoria Gold Project, Lepanto Mining Company⁷⁵

Mankayan, Benguet

In pre-colonial Philippines, small-scale lode and placer mining of copper and gold was a major livelihood activity of the indigenous peoples of Mankayan. The people smelted copper and made them into body ornaments and household ware. They traded these and raw gold in the lowlands. In the early 1900s, American prospectors arrived in Mankayan and through a combination of means, were able patent mineral claims, take over the land, le-

gally dispossess the land occupants, open large mines and displace indigenous small-scale miners. In 1936, Lepanto Consolidated Mining Company began operating an enargite mine with copper as the main product and gold, silver and zinc as by-products. Tailings from its ore mill emptied into the water bodies, polluting and silting the Mankayan and Abra rivers. The smelter plant spread toxic contaminants over a wide area. Affected communities protested as irrigation systems failed, rice fields damaged, crops ruined, livestock died and people fell ill. Their protest was brought to a halt by the outbreak of World War II.

After the war, the company resumed operations. Over the years, Lepanto has installed six tailings dam on the Mankayan river, four of which have collapsed, aggravating the sedimentation of the Abra river.

Lepanto presently controls 297 mineral claims which cover a land area of 4,621 hectares in Mankayan. The company has either “acquired or taken steps to acquire and operate other mineral claims in Mankayan and neighboring municipalities and provinces which cover 20,709.84 hectares.”⁷⁶

In 1995, Lepanto discovered the Victoria ore body, “one of the largest and richest ore deposits in the Philippines.”⁷⁷ The Victoria Gold Project became highly profitable in 1997 and the next year made Lepanto the top gold producer in the Philippines. In 1999 the company discovered another large deposit of gold ore and thus, was named Victoria II and the earlier one Victoria I.

The Victoria Gold Project has an operational lifespan of 26 years. The company plans to extract 110,417.42 kilograms of gold from Victoria I & II and 6,437,600 metric tons of copper from Victoria II.⁷⁸ It also aims to extract 765,450 kilograms of gold and 4,050,000 metric tons of copper from the Far Southeast ore body; 9,355.5 kilograms of gold and 77,190 metric tons of copper from its old enargite mine.

Massive volumes of toxic mine tailings are generated in the production process gold and copper extraction. For many decades, the Mankayan and Abra rivers have served as the disposal system of Lepanto’s mine tailings.

Occupying the river valleys are indigenous communities of Mankayan and ten other municipalities. The floodplains of the Abra river are occupied by Hispanized Ilocano communities. These peasant communities bear the consequences of environmental

disruption caused by Lepanto's operations. Livelihood dislocation has resulted from the mining operations' impact on the land and water resources:

- Pollution and sedimentation of the Mankayan and Abra rivers;
- Poisoned animal and plant life that depend on the river;
- Washed out agricultural and residential land;
- Silt accumulation on rice lands (and hardening like cement);
- Backflow of tributaries due to the rivers' sedimentation, inundating villages and washing out rice fields;
- Continued ground destabilization in two communities resulting from tailings Dam 5-A.

The damage on the livelihood resources of the indigenous communities is expected to worsen and spread over a wider area as Lepanto's operations expand. Indeed, "serious environmental disruption and livelihood displacement are at the heart of all this."⁷⁹

In full knowledge that doubling its ore processing capacity will increase the volume and rate at which it will discharge tailings into the river, Lepanto operated the mines without disclosing the environmental impact *before* project implementation nor discussed any impact-mitigation measures.

There are major implications posed by Lepanto's current and anticipated mining operations on the human rights of the affected indigenous communities. Foremost is the disregard of land-resource rights. Lepanto and the Philippine government have disregarded the fact that the land and other natural resources on which the mining company's activities impact are within ancestral domains of indigenous communities. They have also disregarded the proprietary rights of specific members of the said communities to ancestral landholdings.

Another major implication is the disregard of the freedom of indigenous communities to freely consent to or reject a project that affect them. The people have not been given the chance to speak directly on the issues at stake.

Lastly, environmental disruption and livelihood displacement

point to yet another major implication. These have pushed people into markets where these people will find it difficult to compete – the labor market already bursting with the unemployed and the cash crop market which has recently been filling up with goods from foreign competitors.

The indigenous communities of Mankayan, Cervantes, Quirino and Tadian, through various petitions, dialogues, statements and resolutions have protested the current operations and expansion plans of Lepanto. Invoking laws aimed to protect them have been no help at all. Obviously Lepanto, like other mining companies in the country today are able to have it their way because the government continues to regard them as prime movers in industrial development.⁸⁰

Bakun AC Supplementary Water Project⁸¹

Bakun, Benguet

The municipality of Bakun, located on the northernmost east tip of Benguet province, consists of seven barangays and has a total land area of 31,136 hectares. It is populated by Kankanaey peoples comprising about 90 per cent while the rest are migrants from nearby provinces.

Bakun is characterized by towering peaks with a network of rivers and springs traversing the mountainous terrain. These waters feed into the Amburayan and Abra rivers.

The Bakun AC Supplementary Water Project (BWSP) is designed to harness the hydrostatic power of the Bakun and Lon-oy rivers. This is aimed to increase the annual energy output of the existing power station by supplementing the water flow in the Bakun River through the diversion of water from the Lomboy and Suyoc rivers.

This would entail directing the rivers into a reinforced concrete buttress weir. The water is then directed towards two concrete channels, 65 meters long and into a diversion tunnel with a diameter of 3.6 meters and a length of 9.8 kilometers. It will pass underneath at least four sitios with a maximum diverted flow of 10 cubic meters per second.

A key issue being in the community's opposition to the project is the destruction of hydrological formations due to the diversion tunnel. Water tables will be drained while the diversion of the

river will deplete domestic water sources. This would be disastrous especially for peasant communities whose livelihood depend on water for the irrigation of their rice fields, vegetable farms, and their cattle.

Several indigenous peasant communities will suffer the environmental impact of the hydropower project. In Bakun alone, over 425 households or 2,031 individuals and over 175 hectares of rice fields and 135 hectares of vegetable farms will be affected. No community consultations were held to present the features and environmental implications of the project.

Another point of concern is the pollution of the Abra and Bakun rivers as a result of the waste from the tunnel construction and motor pool. Over 100,000 cubic meters of earth will be moved from the tunnel area.

The people expressed opposition to the project from the very beginning especially since the power that will be generated by the Independent Power Producer (IPP) is not needed by the community and can in fact be derived from other power sources at lower rates. Like other contracts with IPPs, the proponents and contractors stand to gain huge profits even in the early years of project operation, even if the power generated is not used or needed.

A community group, Sinacbat-Bagu-Dalipey Indigenous Peoples' Association was organized as the main vehicle for the opposition to the project. Petitions and resolutions were sent to all local and national government agencies since 2001. In July 2002, the Municipal Council of Bakun passed a resolution for non-endorsement of the project in support of the peoples' stand. Still, the proponents are poised to push ahead with the hydro power project.

Happy Hollow Segregation Plan⁸²

Baguio City

The Ibaloy peoples of Happy Hollow trace back their ancestry to five generations. There are nine clans that descend directly from the original settlers of this community. Almost half of the 250-hectare land located in eastern Baguio City is set to be subdivided into home lots as required by a Segregation Bill filed with the Philippine Congress.

A contract lease for 25 years, renewable for another 25 years,

was awarded to the Camp John Hay Development Corp., a consortium of private real estate developers. The expansion into Happy Hollow fits nicely into the plans of CJH DevCo to develop Camp John Hay, a former American military base, into a first class tourist destination. As part of a larger plan, a circumferential road of about nine kilometers will also be built and its eastern link will ruin the watershed of the community and subsequently affect the abundant fresh water, rice lands and swidden farms.

The indigenous peoples of Happy Hollow were not involved in any level of decision-making with regards to the segregation plans. In effect, the plan reduces the people to “bona fide home lot owners,” a term that has not been sufficiently explained to them.

While the people had previously filed for an ancestral land claim in 1993, this was strongly opposed by the Baguio City Council asserting that no ancestral land claims can be made within the city. The passing of the IPRA in 1997 did not provide any legal option either since one provision explicitly excludes Baguio City from IPRA coverage.

The Ibalays are seeking the implementation of the provision on “free and prior informed consent” true to the intent of the law to protect the people from external manipulation, interference, coercion and abuse.

The Cariño Claim to Native Title over Camp John Hay⁸³

Baguio City, Benguet province

Almost a hundred years since the US Supreme Court affirmed the validity of the native title of Mateo and Bayosa Cariño over an area that became part of a US military reservation in Baguio City, there is still no decisive action on the part of the Philippine government to resolve the issue. The Cariño heirs continue to file petitions seeking recognition of their ancestral land claims in Camp John Hay.

A lawyer, Metcalfe Clarke, representing Mateo Cariño claimed that the land had been sold to him in March 1909 and in turn, sold part of this in 1910 to two other lawyers. These lawyers, Clarke, Haussermann and Cohn were then issued Certificate Title No. 2 in June 1910 after eight years of litigation and one year of bargaining with the US Army. Just four months afterwards, the

property in question was transferred to the US government, four days after it had already been declared by the US president as a military reservation.

Mateo Cariño died in June 1908 but is alleged to have sold the property in March 1909 for P6,000. Cohn later admitted that he had only made an advance payment of P1,100. In June 1910, the payment requested from the US Treasury Department for the 300-acre property by the three lawyers was \$100,000.⁸⁴ It appears that a deal had been negotiated with the US Army so that Clarke, Haussermann and Cohn had to establish ownership of the property. Otherwise, the US Army would have to deal directly with Cariño heirs and thus deprive them of any profit.⁸⁵ It had been a foregone conclusion that if Cariño would win the case, the government would buy the land from Clarke, Haussermann and Cohn, who would first finalize their supposed original arrangement with Cariño. "All that remained was to negotiate the price."⁸⁶

These irregularities in the case should have provided sufficient basis for the Philippine and US governments to declare the sale null and void.

Evidently, this is calculated foot-dragging by the government: to affirm native title as the US Supreme Court did in February 1909 would certainly open the floodgates for all claims to native title, to the advantage of the country's indigenous peoples and indigenous cultural communities with legitimate claims. Conversely, this would imperil corporate interests and private parties that have staked their ownership over ancestral lands.

Didipio Gold-Copper Project, Climax-Arimco Mining⁸⁷

Nueva Vizcaya

Through a Financial and Technical Assistance Agreement (FTAA) with the Philippine Government, the Climax-Arimco Mining Corp. acquired a mining concession of 37,000 hectares within the provinces of Nueva Vizcaya and Quirino. The FTAA contract with Climax-Arimco was signed in June 1994 even before the enactment of the Philippine Mining Act of 1995. The 100 per cent Australian-owned mining company was granted rights to explore and exploit mineral resources of the vast concession area over a nine-year mine life and a three-year development period.

The Didipio Gold-Copper Project will extract 1,200,000 ounces of gold and 99,000 tons of copper metal. Climax-Arimco will employ the open-pit and cave-block mining process to extract the metals and is expected to produce 4,550,000 tons of waste rock.

Since both underground and open pit mining methods will be used, this will require the diversion and impoundment of the Surong River. A massive tailings dam will also be constructed along with waste rock dumps, drainage tunnels, a mill plant, administrative offices, housing and other facilities.

Due to the magnitude of the project and the physical requirements of open-pit mining, several communities will be relocated and vast tracts of land will be inundated by the diversion of the river. The Didipio Gold-Copper Project has been determined to be an environmentally critical project because it will pollute water bodies, inundate agricultural lands, destroy watershed forests, flatten mountains and ravage plant and animal life. Losing their farm lands, fresh water resources and their sources of livelihood will displace entire communities and push them to poverty.

Some of the major implications posed by the Didipio Gold-Copper Project on the human rights of the affected indigenous communities:

- First is the violation of the right to self-determination. The indigenous communities of Didipio vigorously opposed the project and articulated their desire to maintain their present way of life. The DENR Secretary in 2000 recognized the project's lack of social acceptability and suspended Climax-Arimco's exploration permit. However, Arimco found ways to circumvent this since only the exploration permit was suspended.
- Second is the violation of the right to participate in the community's cultural life. Because the life of the Ifugaos in Didipio is linked to the land that they till, the destruction that open-pit mining will bring on is a threat to their subsistence and their cultural life.
- Third is the violation of the right to security of person and to be free from torture, cruel/inhuman or degrading treatment or punishment. There have been

incidents of physical attacks, intimidation and verbal assault.

- Fourth is the threat of losing their food sources because open-pit mining will destroy the peoples' rice fields and vegetable farms.

The people continue to protest against the Didipio Gold-Copper Project.

Nestle Coffee Plantation, Royal Cement Mining Corporation

Jones, Isabela

Operations of Royal Cement Mining Corp. will cover 23,490 hectares and the Nestle plantation will convert to coffee cultivation about 165,000 hectares of agricultural land presently producing a variety of fruit and vegetables. Big businesses, government projects, foreign agribusiness and forced crop conversion threaten to destroy the community's basic sources of livelihood.

Opposition to the projects is quickly labeled as "communist" and leaders are tagged as NPA supporters. Peoples' resistance have been matched by heavy troop deployment.

Clark Development Corp. Corporation⁸⁸

Pampanga

Clark Air Base was a US military base within Tarlac and Pampanga provinces. Together with the US Naval Base in Subic, Zambales province, covering an area of about 65,000 of forest and marine environment, these were considered the largest US military base outside the mainland. In 1991, these installations were turned over to the Philippine government after the Philippine Senate rejected the ratification of another agreement that would extend the presence of military bases in the country.

Before the development of Clark Air Base, the area was a hunting ground for the Aetas who had lived there. Then within the first decade of American rule, it became Fort Stotsenburg, a US Cavalry Post that preceded the creation of the sophisticated military post with an airport. The Aetas had to move into the outskirts of the reservation, constricting the world that they once knew.

When the Philippine government, through the Bases Conversion Development Authority (BCDA), took over the management, the former military base became the Clark Special Economic Zone. It is presently being developed as a commercial and industrial estate, recreational and tourism and posh residential villages. Infrastructure development was divided into two key areas: the “main zone” falls within the former airfield and covers 4,400 hectares while the “sub-zones” cover 31,828 hectares.

Thus, despite the expulsion of the military base, the indigenous community that had once lived and hunted there could not reclaim the area. Unable to practice traditional hunting and food gathering practices, the Aetas are forced to a nomadic existence.

The Aetas comprise six major clan groups, each with self-asccribed territories around the four provinces surrounding Mt. Pinatubo: on the east side in Tarlac are the Abarlen; on the south in Pampanga are the Mag-anchi and Mag-Indi; on the southwest in Bataan are the Bayukan and Ambala; and in the west are the Hambali of Zambales.

Sitio Kalangitan, Capas, Tarlac

After the eruption of Mt. Pinatubo in June 1991, all the Aetas had to evacuate to resettlement areas designated by government agencies. About 400 Aetas resettled in Sitio, Kalangitan. Of the 750 hectares of resettlement area, 80 hectares fall within a private property of Coronel Farms.

In 1998, some 100 hectares of the Kalangitan Resettlement was apportioned as landfill for the Clark Integrated Waste Management Project, a joint project of the Clark Development Corp. (CDC) and two German companies. The Aeta community strongly opposed the project that would stack the garbage of other communities and pollute their surroundings. Their opposition was promptly dismissed and they were told that they had no right to protest since the landfill area falls within the 750-hectare Kalangitan Settlement and thus, belongs to the CDC.

Sitio Burog, Bamban, Tarlac

About 80 Aeta families resettled in this small village. There are plans to convert the village into an eco-tourism park. Already there are frequent guided tours into Burog’s caves and tunnels. Since the village is in the sub-zone of the CDC, the fate of the Aeta families who resettled there remain uncertain.

Sitio San Martin, Bamban, Tarlac

There are about 100 Aeta families who resettled in this village that lies on the road to Burog. The ongoing construction of a road leading to Mt. Pinatubo will cut across this village and yet again disperse the community.

Sitio Kalapi, Bamban, Tarlac

This village, occupied by about 150 Aeta families, falls within the sub-zone and the 2000 hectare reforestation project of the CDC. Though it is not a resettlement area, the Aetas were allowed to stay because they act as stewards for the planted trees in exchange for a monthly wage of P800. (approximately \$14.) and house plots for vegetables and root crops. The arrangements are, however temporary and the Aetas can be evicted from the land.

In 1996, the Department of Tourism (DOT) presented its "Mt. Pinatubo Tourism 2000" project. To be constructed are roads leading close to the crater of Mt. Pinatubo and support facilities such as cottages, hotels and resorts.

In June 2001, some 500 Aeta leaders, women and youth held a week-long activity commemorating the 10th year since the Mt. Pinatubo eruption. The event was called "The Aeta Day." It was marked by a declaration of unity as a way of asserting their historical right to the land along the Mt. Pinatubo mountain range. For the first time in recorded Aeta history, representatives of the six major groups formed a council that would coordinate their efforts to reclaim their traditional land. In a symbolic act of defiance to the plans of the CDC and DOT, the Aetas put up an emblematic barricade of rocks that signified their determination to defend their land and their communities.

Southern Tagalog

Mangyan Heritage Nature Parks⁸⁹

Oriental and Occidental Mindoro

Straddling ten municipalities of Oriental Mindoro and five municipalities of Occidental Mindoro, the Mangyan Heritage Nature Parks (MHNP) constitutes 27 per cent of the island's land area. This is home to four Mangyan groups with a population of 90,990 or 74 per cent of the total Mangyan population. The Mangyans are the indigenous peoples of Mindoro and those living

in what is now the park area are the Mangyan Iraya in the northwest, Mangyan Alangan in the north, Mangyan Batangan in the central and the Mangyan Buhid in the south and southeast.

The MHNP is divided into three parts: strictly protected area: 228,209 hectares; managed and multiple-use zone: 46,698 hectares and tamaraw reservation and bird sanctuary: 106,669 hectares.

Considered one of the ten priority sites of the National Integrated Protected Areas System (NIPAS Act 1992), the MHNP is one of the projects of the World Wildlife Fund (WWF) with a funding of \$25 million from the World Bank.

From the start, the project was designed without the participation of any Mangyan leader or legitimate representatives. A "consultation" was initiated by the project proponents when the MHNP had been planned and the design was already in its early stages of implementation. This token effort was intended to involve the Mangyans following widespread and multisectoral protest over the project.

After the MHNP's components were revealed to the community, it became clear what its overall impact would be to the Mangyan communities in the designated park area.

The indigenous peoples themselves will be part of the entire eco-tourism concept. They will be designated as "forest ranger volunteers" and will be trained to assist, guide, and act as porters to guest and tourists. They will also be hired as contractual workers in the facilities of the park. Their homes and farms as well as the plant and animal life will be part of the tourist entertainment package. The cultural practices and rituals of the people will be included in this eco-tourism complex.

There are more serious implications in the nature park concept. Because a vast portion of the island has been delineated as a "strictly protected area," the people are being prevented free access to the forests, vegetable gardens and swidden farms. Thus, they cannot cultivate crops and vegetables and neither can they gather forest products nor hunt wild game in these areas.

The MHNP points to the nonrecognition of the peoples' right to their land and is the latest threat to their natural resources and sources of livelihood. Through the organization *Samahang Pantribu ng mga Mangyan sa Mindoro* (SPMM) the Mangyans forged unity to defend their land and resources and promoted their right to

self-determination. They opposed projects like coal mining in 1986 and Oriental Wood Processing in 1987, a hydroelectric power plant through petitions, dialogues and protest rallies. Due to the strong opposition to the MHNP in 1992-93, the budget for the project shifted to the Subic-Bataan Natural Forest. The project has since resumed and the Tamaraw Reservation and Bird Sanctuary covering the 106,669.73 hectares are presently being developed.

Mindanao Island

Canatuan Gold Project, TVI Resource Development Phil., Inc.⁹⁰ *Siocon, Zamboanga del Norte*

A rich cultural heritage and a sustainable way of life has marked the presence of Subanens in the Siocon region. Oral histories trace back several generations.

Life for the Subanens took a decisive turn after the entry of logging companies in the 1950s. Timber volumes began to dwindle in the 1980s as even the richest forests were no match to massive, uncontrolled logging.

Some experienced small-scale miners began to investigate the viability of mining in Canatuan. Immediately after the discovery of a gold deposit, an area of 200 hectares was delineated and subdivided among the 14 pioneers. Prospectors and would-be miners flocked to the area. At the peak of the gold rush in 1990, Canatuan hosted a vibrant community of 7,000 families.

TVI Resources Development Philippines acquired development rights to over 500 hectares through a speculator and financier who had earlier swindled the original 14 pioneers. Benguet Corporation conducted exploration studies. TVI Resources acquired development rights to the site and began the Canatuan Gold Project. The huge ore reserve in this project promises quick recovery of initial costs and would allow subsequent profits to fuel TVI's expansion plan. Apart from the Mineral Production Sharing Agreement (MPSA) granted in 1996, TVI also has other agreements and applications covering an area of 5,642 hectares in Siocon. The Canatuan reserve is projected to have a seven-year mine life using the open pit method. On the other hand, small-scale miners estimate that the gold deposits could sustain the community for over

40 years. Within this period, the community would have time to reforest the area and institute means for waste-management that could reduce the impact of small-scale mining on the environment.

Subanens organized themselves to assert their position as original occupants of the land and rightful claim owners to the gold deposits thus forming the Siocon Federation Subanen Tribal Council (SFSTC) and the Siocon Subanen Association (SSAI). While their application for CADC was approved in 1997, four years since it was filed with the DENR, TVI's MPSA appears to take precedence. Countless legal obscurities continue to muddle the issue. Meanwhile TVI aggressively moves in: it bans small scale miners from operating, enlists the Special Citizens Armed Auxiliary (SCAA), bulldozes small scale mining areas, bribe local people to create strife, imposes an economic blockade and a host of other tactics aimed to break down bonds in the community that has sustained resistance to the Canatuan Gold Project.

As a people, they have the vitality and the livelihood resources to support a vibrant, self-sufficient community. Now they have to strive for their survival as they face economic dislocation and social instability.

Philex Gold Philippines⁹¹

Sibutad, Zamboanga del Norte

Mining became a major economic activity in the sitios of Lalab and Larayan, barangay Libay, Sibutad, Zamboanga del Norte in the 1980s. The discovery of major gold deposits in the mid-1980s attracted the migrants from different parts of the country. At the peak of the gold rush in 1989, there were about 10,000 people living off the 150 small-scale mining operations.

Philex Gold Philippines Inc. began prospecting in the area in 1987. Its operations began by entering into agreements with original claim owners and buying mill tailings of small-scale miners. Soon after however, Philex revealed plans to shift to large-scale, open-pit mining.

In 1995, Philex moved in its machinery. Earth-moving activities for the building of a diversion road began before a permit was granted by the DENR. Community protests over the massive earth-moving and sedimentation of the Murcielagos Bay did not prevent

Subanens Form Barricade to Block TVI Equipment

TVI Resource Development Philippines moved in its drilling equipment to Siocon on August 17, 1999 to begin its exploration. Determined to stop the entry of TVI equipment, the Siocon Subanon Association Inc (SSAI) and the Canatuan Small Scale Miners' Multi-Purpose Cooperative formed a human barricade to block the trails leading to five new drilling sites. They protested the absence of community consultation and a "free and prior informed consent" for the project. The leaders also called the mining operation unlawful because it violated their Certificate of Ancestral Domain Claim (CADC number 113) for 6,000 hectares which the Department of Environment and Natural Resources approved in 1997. At the time of the barricades, TVI was in its final phase of its metallurgical in preparation for a full-scale mining operation on a 2000 hectare land in Siocon covered by an MPSA. The protesting Subanen groups were able to delay the drilling activity for one week. On August 27, 1999, a Temporary Restraining order issued by the Regional Trial Court instructed them to "cease and desist" from blocking the trails and to allow the entry of TVI equipment. The protesters stayed put.

On September 6, 1999, without any formal negotiations, the protesting Subanens were surrounded by a composite group of Police forces, CAGU, Special Citizens Auxiliary Army (SCAA), goons and company workers. Protesters were brutally beaten with truncheons and rattan sticks, pushed to the ground, kicked and stomped on, dragged and tied up like resisting pigs. Parrying the violent blows, the protesters engaged the attacking group and desperately tried to hold on to their barricade of interlocked arms.⁹² But they were outnumbered and already badly injured. The approaching bulldozer was poised to slam into their barricade. When the protesters realized they had to break up the barricade to stay alive, they quietly sat on the ground, joined by their stunned families, broke down in tears as they listened to the drone of passing heavy machinery.

As the Subanens saw that day, asserting their rights to the land will be a long-drawn battle against a company giant.

A week after the attack on the protesting Subanens, they were back again on the barricades, this time joined by the Catholic Diocese of Dipolog, the municipal government of Siocon and several non-government organizations.⁹³

Philex from continuing operations. In January 1997, it was granted an Environmental Compliance Certificate (ECC) even as Philex had been advised to revise its environmental plan. In April 1997, Philex's application for a Mineral Production Sharing Agreement (MPSA) for 3,888 hectares in Lalab was granted. That same year, a mudslide caused by the failure of one of Philex's silt dams after two hours of heavy rains created a torrent that inundated agricultural lands and destroyed five homes.

Economic displacement

Heavy sedimentation of the Murcielagos Bay has disrupted the ecological balance that keeps marine life alive. To the fisher folk, this means losing the primary source of livelihood that the bay once provided abundantly: fish, shellfish, and seaweed. In the long-term, this means losing control over their right to livelihood.

On several occasions, the people have complained with government agencies about the pollution of the bay and the destruction of their agricultural lands. To date, the government has not been able to take decisive action nor impose penalties on Philex in spite of obvious neglect and ECC violations largely because government monitoring procedures remain ambiguous. Ultimately the fisher folk, the small scale-miners and residents of Sibutad bear the brunt of these violations and the lasting consequences that will linger long after Philex has closed its open pit mines.

**Tampakan Copper Project,
Western Mining Corporation, Phil.⁹⁴**

Kiblawan, Davao del Sur

Earlier known as the "Columbio FTAA," the Tampakan Copper Project was the second FTAA to be approved in the Philippines since the Mining Act was passed in March 1995. Prior to the signing of the FTAA contract with Western Mining Corp. Philippines (WMCP) in April 1995, a special contract had been negotiated between the government and WMCP, so barely a month after the Mining Act was passed, the signing of the FTAA only reaffirmed an earlier agreement.

The FTAA covers a staggering 89,669 hectares⁹⁵ straddling the provinces of Sultan Kudarat, South Cotabato, North Cotabato, Davao del Sur and Maguindanao. Even after eliminating areas of low mineral potential and only about 5,000 hectares is selected as

the mining development area, the company maintains auxiliary rights over the area and thus, holds timber rights and the rights to construct needed infrastructure such as roads and waste dumps. The company also has easement rights and is permitted to enter private property and occupy areas within the lease for mining-related activities.

Australian Mining Giant

WMCP first began exploration in the Philippines in 1987 and owns San Manuel Mining Corp. and Mt. Matutum Corp. The company is 100 per cent owned subsidiary of Western Mining Corp. Holding Ltd. (WMC), one of Australia's largest gold and nickel producers with vast interests in copper, uranium, bauxite, talc, oil and gas.

Entry into B'laan Territory

Marked for extensive mineral exploration is Bong S'bang, a small sitio in Kiblawan municipality, Davao del Sur populated by the B'laan indigenous peoples. Like all other sitios located in the interior, Bong S'bang is poorly furnished with basic services and infrastructure. In the rainy season, the rugged roads into the community are virtually impassable.

As part of its "community relations activities" WMCP personnel arrived with profuse promises of "progress for the community." They built a school, a community center and improved the road. All the while however, the company made no direct reference to its imminent exploration activities in the community. Only after the trucks and heavy machinery started arriving did the people become aware that the drilling activities were about to begin.

With regards to community consent, the deception was far less subtle: two documents were prepared for the signature of community residents without the benefit of a legal counsel who should have translated the contents of the papers. The first document essentially asked for confirmation that they "will make no objection to the grant of a FTAA to WMCP and acknowledge and confirm WMCP's exclusive right to conduct mining activities."⁹⁶

The other document, consisting 100 pages, enumerated technical details that elaborate on the terms contained in the first document. The Office of Southern Cultural Communities (OSCC), the government agency tasked to liaise with the community claimed that there was no budget to hire a legal counsel for the B'laan. An excuse so feeble it not only embarrasses the OSCC for its inepti-

tude but also insults the community it is supposed to stand for since it was clearly a way of keeping the people in the dark regarding specific and contentious details.

Indeed, at the time the documents were signed, the affected communities knew nothing about WMCP's coverage area for its mine development, how many families would be displaced, how the mine tailings would be disposed, how extensively the rivers will be polluted and what the immediate and long-term effects of open-pit mining would be.

The legitimacy of the signed documents supposedly giving consent to the project is still questionable since it was signed in May 1995, a month *after* the issuance of a mining permit and the signing of the FTAA. The law stipulates that "free and prior informed consent" is required before granting a mining permit.

When full-scale operations begin in 2004 or 2005, five indigenous communities are expected to be displaced.

Mine Tailings

With the extraction rate at 10 million tons of ore per year, the volume of tailings that will be generated over the entire mine life of the Tampakan Copper Project is quite alarming. The disposal of mine tailings is a crucial issue especially since five major river systems will be affected by erosion, sedimentation, and toxicity. The Padada River alone is a primary water source for over 33,000 hectares of irrigated lowland farms. Downstream, the river ecosystem could be irreversibly degraded as the waters will be polluted with silt and contaminated with toxic tailings. This could mean depleting the harvests of fisher folk along the coasts of the Davao Gulf.

Unable to make informed, independent choice

From the time a special pre-FTAA contract was signed to the time WMCP began drilling for explorations, no community consultations were held to present facts regarding the project. Certain details, such as the exact mining development areas, tailings disposal options, projected environmental impact, damage mitigation measures and other key information, were presented to the people. Ideally, this level of transparency is a necessary to equip the people with essential details on the project for them to make an informed and independent choice. But this does not seem to be the intention at all. In an article published by the Philippine

Center for Investigative Journalism in 1996, former President Fidel Ramos “exerted pressure on the Municipal Mayor of Tampakan to cooperate with WMCP.”⁹⁷

These and the military deployments in Tampakan, South Cotabato and Columbio, Sultan Kudarat have convinced the people that given the investment that the company has made to date, community opposition will not be allowed to impede the mining operation.

Climax Mining

Agusan del Sur, Surigao del Sur

Climax Mining of Australia has at least seven Mineral Production and Sharing Agreement applications in the CARAGA region under the following company names: Climax Australia, Occidental Pacific Climax, Great Southern Climax, Alto Sierra and Climax Mining. The MPSAs cover an aggregate area of 400,000 hectares or 21.22 per cent of the CARAGA region’ land area of 1,884, 697 hectares. About 100,000 hectares in the boundaries of Agusan del Sur and Surigao del Sur fall within the FTAA application of Climax Mining and covers the indigenous communities of Hugmakan, Balalan, Kagnoti and Magasang of San Juan, Bayugan, Agusan del Sur.

Asiaticus Management Corporation⁹⁸

Mati, Davao Oriental

In the late 1960s, exploration tests and geological mapping of barangay Macambol, Mati, Davao Oriental yielded six prospective laterite deposits. Now known as the Pujada Nickel Laterite Project these deposits are presently being tapped by the Asiaticus Management Corp. (AMCOR) in partnership with BHP-Billiton.

AMCOR’s mining application extends beyond the municipality of Mati. It encompasses barangay Bagting, Governor Generoso and barangay Sto. Rosario, San Isidro. A total area of 16,054 hectares covered by the Mineral Production and Sharing Agreement of AMCOR comprises the following contractors:

B'laan Community Files Petition to Supreme Court

In a move to nullify the supposed signed “community consent” fraudulently extracted from leaders of the B’laans of Bong Banwu Salnaong in the “Heads of Agreement” on February 17, 1995, community leaders made public statements to divulge the deception (cited in preceding section). On October 10, 1996, B’laan leaders issued a statement that the signatories were not aware that the agreement meant giving consent to mineral exploration in B’laan territory (The prepared agreement was written in English and was not translated to them)⁹⁹

The following day, on October 11, 1996, the B’laan leaders issued a position paper articulating the community’s stand against WMCP mining operations and submitted this to a hearing conducted by the House of Representatives, Philippine Congress.

In 1997, Salnaong community leaders and members joined other communities affected by the WMCP FTAA and filed a petition before the Philippine Supreme Court. The case entitled “La Bugal B’laan Tribal Association, Inc., et. al. versus DENR Secretary, et.al.” challenged the validity of the WMCP FTAA and questioned the constitutionality of the Philippine Mining Act and its implementing rules and regulations and similar administrative acts. The petition also called for the cancellation of the WMCP FTAA. The case was docketed in the Supreme Court as G.R. No. 127882. Seven years since the submission of required pleadings and given due course by the Court, the community is still waiting for a decision.¹⁰⁰ The community presently holds a Certificate of Ancestral Domain Claim (CADC) number 074 covering sitio Salnaong.

Bayugan, San Juan, Agusan del Sur¹⁰¹
August 19, 1995

Artillery and aerial bombs rocked the communities in the hinterlands around the boundary between Agusan del Sur and Surigao del Sur on August 18-19, 1995.

After a bomb exploded in the village of Balalan, horrified residents scampered to the house of Pio Ponso, a residence nearest to them. Eight persons rushed out to the open field, waved a white cloth for the military in the planes hovering above them to see and raised a child up to show that they were unarmed.

Seeing them instead as perfect targets, the planes attacked with more artillery, peppered them with machinegun fire and tearing their bodies apart. Relatives had to gather the dismembered body parts scattered all over the field.

Killed on the spot:

Mayda Ponso, 60 years old

Cayangga Ponso, 38 years old

Marcial Tana, 44 years old

Didi Tana, 35 years old

Jocelyn Tana, 17 years old

Vilma Tana, 14 years old

Borondos Tana, 9 years old

Bunsil-an Brital, 50 years old

Wounded:

Boyet Brital

Doringo Tana, 2 years old

Inday Tanay, 5 years old

Col. Ernesto Carolina, 401st IB brigade commander dismissed the case as simply an accidental explosion from an M203 that belonged to the children's father.

Report on the Philippine Visit of the Special Rapporteur

1. Blue Ridge Mineral Corp.
2. St. Patrick Mining and Development Corp.
3. P. L. Goodman Mining and Development Corp.
4. Hopewell Mining Corp.
5. Galactica Mining and Development Corp.
6. Mt. Peak Mining and Development Corp.
7. Oregon Mining and Development Corp.

Minerals that will be extracted are nickel, cobalt, iron, silica, magnesium and aluminum.

Misrepresentation

The United Pujada-Macambol Mandayan Council of Elders, Inc. led by Rufino Mapinogos has a pending application for a Certificate of Ancestral Domain Claim (CADC). The application over an area of 18,000 hectares covers the entire contract area of AMCOR's MPSA.

Macambol's Mandaya peoples are contesting the CADC application of Mapinogos because his organization has no members that belong to an indigenous group. It is, in fact, a ragtag group that Mapinogos put together and presenting as Mandaya peoples. They have signed petition letters disowning Mapinogos as their chieftain. As the Mandayas of Macambol feared, AMCOR now has a Memorandum of Agreement with Mapinogos and his spurious group of "tribal chieftains." Moreover, the Mandayas believe that Blue Ridge Mineral Corp. supported pro-mining candidates in the July 15, 2002 barangay elections are presently seated in the barangay council.

As of February 2002, the status of Mapinogos as tribal chieftain has been put on hold. In a community consultation, the NCIP commissioner for Southern Mindanao Norma Gonos said that Mapinogos should be elected by constituents of a community and not appointed by the local government. As earlier raised by the Mandaya peoples of Macambol, Mapinogos's council of elders does not have a constituency to speak of.

Macambol Alliance

In a united move to protect their land and forests from destructive large-scale mining, the people revived an alliance that had earlier protested and successfully suspended the reckless logging operations of Asia Pulp and Paper Integrated Mills, Inc. also

in Macambol. Spurred to revive a multisectoral alliance called *Nagkahiusang Katawhan sa Macambol Alang sa Kinaiyahan ug Kalambua* were the Mandaya and Higaonon peoples, members of Basic Christian Communities, teachers of Wagon and Macambol Elementary School, members of the Macambol Community Co-operative and other non-lumad residents of Macambol.

The Macambol Alliance has produced a manifesto and sent petition letters opposing large-scale mining to President Arroyo, Congressman J.M.Z. Almario, acting DENR Secretary Heherson Alvarez, NCIP Commissioner N. Gonos, and Davao Oriental local officials.

Taganito Mining Corporation¹⁰²

Barangay Taganito, Claver, Surigao del Norte

Taganito Mining Corp. (TMC) started open-pit mining operations in 1987 but declared its full operation only in 1992, benefiting from a government tax holiday scheme five years thereafter. TMC has two sister companies in the Philippines: Rio-Tuba Mines in Palawan and Hinatuan Mining Corp. in Hinatuan Island, Taganaan, Surigao del Norte. The company extracts nickel, laterite, cobalt and manganese from its areas of operation.

Of its work force of 350 persons, only 110 are regular employees and the rest are on contractual basis and receive a daily wage of P86. (\$1.52).

As of 2002, about 100 hectares of the open-pit operations has been excavated to a maximum depth of 36 meters below sea level. From 1897-1997, eight barangays have been adversely affected by the sedimentation caused by the erosion of laterite clay that find their way into the rivers and the seas. These barangays are Taganito, Hayangabon, Cagdianao, Urbiztondo, Cabugo, Wangki, Panatawo and Lapinagan. The Mamanwa peoples who once derived some food and income from fishing barely get any harvests since fish and crabs could no longer thrive in the silted waters. In the rainy season, the waterways even of neighboring barangays and municipalities become heavily silted.

Fruit farms and rice fields are becoming less productive because the plants and seedlings get smothered with the dust blown into the air from the abandoned laterite clay of the open pit mines.

The laterite dust from the dumping grounds of the mines has also caused countless lung-related health problems because it is inhaled by the people and contaminates the drinking water sources.

Dislocating the Mamanwa

Before TMC moved into their land, the Mamanwa subsisted on their rice and fruit harvests and from the forests, hunted wild animals, gathered honey and rattan. They sold some of these forest products for cash. The arrival of TMC in 1987 changed all that. As soon as the company began setting up their camps, 30 families were immediately driven out. Men, women and children who bravely resisted have suffered from the brutality of the company's security force, military troops and the provincial police mobile group (PPMG). Even their farm animals were not spared. The people decided to leave their homes and relocate. Tending to their farms and gathering forest products became difficult, forcing some to take on contractual jobs with TMC, crushing boulders or loading crushed boulders.

For over ten years, the displaced Mamanwa peoples have been seeking government intervention: they filed petitions for the recognition of their claims to ancestral domain, sought the institution of their 1 per cent share from the mining operations as stipulated in the IPRA, protested the pollution of their rivers and demanded for security of tenure and just wages from the company. So far, no one in government has seriously looked into the obvious impact of the pollution caused by mine wastes and mill tailings, the sedimentation of the rivers and how this is also destroying the people whose livelihood depend on nature's resources.

At present, a stronger company security force (a private army called "Warriors") augmented the PPMG to ensure the continued operation of the mines.

Manila Mining Corporation¹⁰³

Sitio Tinabingan, Brgy. Magsaysay, Placer, Surigao del Norte

Starting out as an underground mining operation in 1975, Manila Mining Corp. shifted to open-pit mining in 1986. Since then, over 400 hectares have been ravaged. There were four huge open pits:

- The first and the largest is 18-hectare wide with a depth of 78 meters below sea level;
- Second largest is 14-hectare wide with a depth of 56 meters;
- Third is 9-hectare wide with a depth of 52 meters;
- Fourth is 7-hectare wide with a depth of 36 meters.

Of its work force of 1,500 in 1996, only 762 were regular workers. After three mass layoffs in 1997-1998, only 586 workers remained. Key officials of the workers' union were among those laid off in 1998.

Environmental Disaster

After 1986, massive earth movement and wastes of the open-pit mines turned the once fertile land into a huge dump and barren land. About 3,000 residents of barangay Tinabingan had to move out and resettle elsewhere, mostly to barrio Mapaso, Placer. In an expansion of MMC in barrio Suyok, over 80 families moved out since almost the entire barrio was destroyed by earth-moving and dumping. Potable water sources have been damaged with barrio Banban suffering the most.

Each day about 20,000 metric tons (MT) of earth is dug up. For every three MT, only one MT is processed for the ore. Hence, huge tracts of land are used as dumping sites for muck waste.

The tailings ponds and the toxic tailings are another story. In 1995, tailings pond No. 5 collapsed, killing 12 persons and inundating about 10 hectares of rice fields in Magsaysay, Placer. Today, the fields still could not be planted to anything due to the land's high toxicity levels.

In 1998, tailings pond No. 7 breached the 30 meter maximum level of impounded tailings as required by the DENR and was in fact approaching 50 meters. MMC did not heed calls to stop impounding. On April 22, 1999, the tailings pond collapsed unleashing 184,867,200 gallons of toxic mill tailings over 52 hectares of land for barangay Magsaysay, Placer. It was a nightmare for the 18 families whose homes were wiped out and their rice fields reduced to wasteland.

The indigenous communities continue to protest the continued mining activities of MMC. Three church institutions, the Roman Catholic Church (Surigao Diocese), the *Iglesia Filipina*

Independiente, and the United Church of Christ in the Philippines (Surigao District Conference) strongly denounced the destructive open-pit mines. Together with other peoples' groups, they

Table 3. Summary of Development Projects in Western Mindanao

Name of Projects	Location	Area (hectares)
A. NIPAS		
Protected Areas		
1. Aliquay Protected Landscape	Dapitan City, Zamboanga del Norte	1,187.51
2. Dumanguilas Protected Landscape	Malangas and Buug, Zamboanga Sibugay, Margosatubig, Vincent Sagun, Zamboanga del Sur	25,948
3. Selinog Island Protected Landscape	Dapitan City, Zamboanga del Norte	1,294.35
4. Murcialagos Island Protected Landscape	Labason, Zamboanga del Norte	151
5. Buug Biotic Area	Buug, Zamboanga Sibugay	1.095
6. Siocon Resource Reserve	Siocon, Zamboanga del Norte	186
7. Pasonanca Natural Park	Zamboanga City	681
8. Sta. Cruz Protected Landscape	Zamboanga City	1,548
9. Jose Rizal Memorial Protected Landscape	Dapitan City, Zamboanga del Norte	439
10. Dumingag Natural Biotic Area	Dumingag, Zamboanga del Norte	7,630
Natural Park		
1. Mt. Malindang Natural Park	Misamis Occidental	53,262
2. Rizal Park	Dapitan City, Zamboanga del Norte	10
Watershed Forest Reserve		
1. Pasonanca Watershed	Pasonanca, Zamboanga City	10,580
2. Buug Watershed Forest Reserve	Buug, Zamboanga Sibugay	612
3. Mangrove Swamp Forest	Bagumbang, Misamis Occidental	-

Community Based Forest Management Agreement (CBFMA)		
1. Bayog Watershed Rehabilitation Project	Bayog, Zamboanga Sibugay	2,020
2. Maragang Watershed Rehabilitation Project	Nine (9) towns in Zamboanga del Sur	13,000
B. Pasture		
1. Kalawit Livestock	Kalawit, Zamboanga del Norte	3,025
2. Breeding Center	Tiala, Lipay Jose Dalman, Zamboanga del Norte	200
3. Breeding Center	Dapiwak, Dumingag, Zamboanga del Sur	1,300
4. Livestock	Bayog, Zamboanga del Sur	1,900
C. Mining		
1. TVI Resource Development Corp.	Siocon, Zamboanga del Norte	508.34
2. Kennel Mining Corp.	Siayan, Sindangan, Jose Dalman, Zamboanga del Norte	5,751
3. Pescador Glicerio, Jr.	Kumalarang, Zamboanga del Sur	243
4. Sienallyn Gold Mining Corp.	Titay, Ipil, RT Lim, Zamboanga Sibugay	4,116
5. Transtech Industries Phil.	Liloy, Zamboanga del Norte	3,078
6. Villor Mining Corp.	Siayan, Zamboanga del Norte	4,941
7. VL Chrome Corp.	Dumingag, Zamboanga del Sur	3,483
8. Zamboanga Mineral Corp.	Diplahan, Zamboanga Sibugay	4,779
9. Dynasty Multi-purpose Coop.	San Miguel and Guipos, Zamboanga del Sur	2,025

prepared petitions and resolutions for local and national government offices seeking the cancellation of all large-scale mining permits in the province.

Provident Tree Farms Inc.

San Luis, Agusan del Sur

San Luis was once verdant forest land. Large-scale commercial logging, which began in the 1950s and peaked in the 1970s, has

practically wiped out the forests. Two principal roads into the interior areas of the municipality are logging roads referred to as Side 1 and Side 2, terms that derive from map-references of the former logging companies in the area.

With the decline of commercial logging, industrial tree plantations have taken over, mainly for imported softwood species such as *gmelina* and *falcatta*. San Luis has “one of the largest concentrations of tree plantations established through the government’s Industrial Forest Program,”¹⁰⁴ in terms of the number of corporations as well as in the total coverage area. These plantations are operated by Provident Tree Farms Inc. (which has two separate plantation areas), the Royal Match Inc., the Casilayan Softwood Development Corp., and Woodland Domains Inc.

The Banwaon Peoples

Historical accounts describe the areas around the Maasam River, a tributary of the grand Agusan River, as an early settlement of Banwaon indigenous peoples. In recent years, Visayans and other migrants settled in San Luis, particularly in the more accessible places. In the interior areas, mostly in the upper reaches of the river and its many tributaries are communities dominated by the Banwaon. Upland rice cultivation remains a major economic activity supplemented by the growing of corn, sugarcane, kamote and other rootcrops. Apart from the usual rattan-gathering, growing and harvesting softwood trees and contractual labor for the softwood industries have become key sources of cash for other necessities.

With the implementation of Industrial Forest Management Agreements, thousands of hectares of ancestral domain were appropriated for the growing of softwood for large companies. Concerned over the short- and long-term implications of increasingly losing land, the Banwaons organized themselves to assert their rights over their ancestral territories. Under the Marcos dictatorship, this meant a major backlash on the community: since the 1980s, military operations and the attendant abuses have become a part of the peoples’ lives.

With the new agreements and larger areas covered by IFMAs, vigorous resistance from the people was matched by military muscle. Heavy troop deployment, food blockades and bombings have taken a heavy toll on the community life of over 500 Banwaon families.

**Tecland Inc., GoldenBell Hills Inc., Caraga Forest Inc.,
Transland Inc., Shannalyne Inc.¹⁰⁵**

Agusan del Sur

The highlands of Agusan del Sur covering 110,790 hectares were appropriated in 2001 as commercial agricultural estates through Industrial Forest and Plantation Management Agreement with five multinational companies. These five companies – Tecland Inc., GoldenBell Mills Inc., Caraga Forest Inc., Transland Inc., Shannalyne Inc. – will invest about \$100 million for a plantation exclusively for *acacia mangium* which will be used in the production of fiber for the pulp and paper industry.

The *acacia mangium*, a fast-growing tree species is native to tropical Queensland, Australia and is also grown in Malaysia, Papua New Guinea, Vietnam and Bangladesh. The government predicts the plantation “will attract at least a billion US dollars worth of capital investments that will help the Philippine wood industry contribute an annual \$300 million in foreign exchange earnings for the country.”¹⁰⁶

The mangium tree, however, has been genetically modified to increase its growth rate and thus, means shorter but more intensive rotation of tree crops. So while the mangium offers fine prospects in the production of globally competitive pulp and paper products, it also poses unknown risks and potentially damaging

Company	Location	Area Covered
Goldenbell Hills, Inc.	Barangay Binicalan, San Luis, Agusan del Sur	18,196 hectares
Tecland, Inc.	San Luis, Agusan del Sur Barangay Kasapa, Loreto, Agusan del Sur	12,940 hectares 2,120 hectares
Caraga Forest, Inc.	Barangay Casapa, Agusan del Sur	37,660 hectares
Transland, Inc.	Barangay Waloe, San Mariano, Agusan del Sur Barangay Kauswagan, Loreto, Agusan del Sur	34,874 hectares
Shannalyne, Inc.	Loreto, Agusan del Sur	5,000 hectares

effects on the forest ecosystem. Such a threat on the natural environment makes it even more precarious for the indigenous peoples – the Banwaon, Higaonon, Manobo and Talaandig – whose ancestral domain has already been appropriated by the national government for the mangium plantations.

According to the World Wildlife Fund (WWF), the commercial application of genetically altered tree species indicates a move towards the expansion of plantations over wider areas. Faster growth of trees and increased yield rotations will put greater demand on soil nutrients and available ground water and “may ultimately threaten the long-term sustainability of plantation land especially in the tropics.”¹⁰⁷

Other risks of genetically modified trees according to the WWF are as follows:

- The possible instability of an introduced gene which may have unintended side effects on the tree and forest ecosystem;
- The engineering of trees with a competitive advantage could create super weeds;
- Trees engineered for sterility would support far less diversity;
- Trees engineered for pest resistance and herbicide tolerance may have unintended impact on non-target species.

A justification being made by the DENR is that the forests are denuded anyway so the plantations would not only rehabilitate the area but also generate jobs for the residents. Community leaders denied there was forest denudation, pointing to the variety of species of native trees and the robust growth of young hardwood, indicating the regeneration of forest cover.

The indigenous peoples resisted the project, invoking IPRA provisions on ancestral domain and “free and prior informed consent.” The DENR, however, claims prior consultations were made in 1999. One leader recounted how constituents were asked by the town mayor to sign a document on the pretext that it was for the assigned polling places because it was during the period before elections in May 2000. It turned out later that it was attached

to a document to serve as “proof” of the community consent to the entry of the plantations.

Artillery bombardment of Banwaon villages and the military deployments to Agusan del Sur in April 2001, one of the largest ever military campaigns is directly linked to the approval of the IFMAs of Tecland Inc., GoldenBell Hills Inc., Caraga Forest Inc., Transland Inc., Shannalyne Inc. and the operation of other IFMA plantations.

Otto Precioso, chairman of Tagdumahan, a council of Banwaon leaders said he expects military operations will intensify as IFMA plantations become fully operational: “The government knows that the Banwaon peoples will strongly oppose the loss of more tribal lands that is why they are now terrorizing the communities.”¹⁰⁸

The laws provide for environmental protection through the process of issuing Environmental Clearance Certificate for critical projects and the Local Government Code pays lip service to consultation and informed consent. Heavy troop deployment and artillery bombardment will push for the desired results.

Dawang Coffee Plantation¹⁰⁹

Sultan Kudarat and South Cotabato

In May 1992, Silviculture Industries acquired a contract through an Industrial Forest and Plantation Management Agreement to lease 11,862 hectares of public forests in the municipalities of Kalamansig, Bagumbayan, Isulan Palimbang all in Sultan Kudarat and in the municipality of Maitum, South Cotabato.

Indigenous peoples living in these forests are mostly the T’bolis but there are smaller groups of Manobos, B’laans, and Kaulo. The forests abundantly provided them with food and the land yielded abundant harvests of various crops, fruits and native coffee.

In 1991, company representatives informed them that their land was part of a logging concession area but that this would be a positive development because of the building of new roads to transport their produce. Company representatives made no reference to the planting of coffee, much less the conversion of the area into a large coffee plantation.

Within seven months, trees were felled until the area was completely logged over.

Soon after, bulldozers and other heavy machinery arrived and cleared the entire area of bananas, fruit trees, native coffee and other locally grown plants including rattan to make way for a coffee plantation. Only when the mechanized and massive clearing was in full swing did the people realize that their land had been taken away from them.

Thereafter, they were prevented from tilling their farms and those who attempted to do so were harassed by company guards armed with carbines, armalites and rifles. Those who tried to work on the company's clearings were fired at. Before long, the cleared areas were planted to arabica and robusta coffee.

Pleas and petitions with government agencies proved futile. Community leaders, Datu Victor Danyan and his elder brother Benig, staunchly resisted the company's move to take over their lands, bravely facing threats made by armed guards. The two became "marked men" and their sitio soon became a target for military operations. Fearing their lives, especially the youth, 37 T'boli families (about 100 persons) fled in the night and without lamps, groped in the dark and reached Blugsanay, the next sitio at the dawn the next day. Without their sources of livelihood, the people had no choice but to evacuate and develop new settlements, enduring harsh conditions in breaking new ground.

When the living conditions became unbearable, Datu Danyan and three others decided to return to their former sitio, prepared to struggle to reclaim their lands. Armed guards threatened them but they were prepared with a strong defense system. Eventually, the families returned, rebuilt their houses and began cultivating patches of land. The leaders succeeded in obtaining from the Certificates of Land Ownership (CLOAs) on a limited scale largely due to the resistance of the company to allow a resurvey.

To this day, conflict continues between the Department of Agrarian Reform and the Department of Environment and Natural Resources over the plotting of reference points of the area occupied by the T'bolis and the land delineated for the IFMA. There is still no clear resolution on the conflict over the Silivicultural Industries' takeover of their lands.

Maguindanao Coastal Logging Concession¹¹⁰

North and South Upi, Maguindanao

Maguindanao Coastal Logging Concession (MCLC) covers six barangays in North Upi and South Upi, Maguindanao. Of the six, three barangays are populated by Teduray and Lambangian peoples.

In November 2002, a group of workers and some heavy equipment arrived in North Upi and began clearing an area for the construction of a logging road. It was only then that the people were informed that the Industrial Forest and Plantation Management Agreement 005 was approved and would cover Barangays Rifao, Renti, Ranao Midafa, Sedem and Laguitan of North Upi and Barangay Kuya of South Upi. IFMA 005 belonged to one Alonto Kader. It turned out that the IFMA was approved as early as February 13, 1998 by the Department of Environment and Natural Resources -Autonomous Region of Muslim Mindanao (DENR-ARMM) Secretary Datu Faizal Karon but was known to the community and the municipal officials only in November 2002.

Two years before IFMA 005 was approved, the indigenous community through the Mamalo Descendants Organization Inc. already filed for a Certificate of Ancestral Domain Title at the DENR-ARMM, the Office of Southern Cultural Communities (OSCC) – ARMM and the National Commission for Indigenous Peoples (NCIP)-ARMM. There was a pending application in 1996 so that even after Kader's IFMA was approved in 1998, the community was not informed about it lest they preempt the logging concession's entry.

The Teduray and Lambangian peoples and other residents of North and South Upi questioned not only the deception in the obscure processing of the IFMA but also in the true intention of the IFMA holder. Ordinarily, applications for IFMA are made to reforest open, denuded areas. But the IFMA area in North and South Upi is a residual forest with hardwood and a variety of natural growth trees. Since a logging company is involved, the people knew that the primary intention is to log the existing trees and reforestation is only secondary. In many instances, reforestation never happens, and if at all, done haphazardly and fails. Since the trees have been logged, reforestation is usually just a token

move; the logging concession packs up and is ready to move to the next site.

The indigenous communities covered in IFMA 005 also raised the absence of consultation and that there were no discussions towards giving “free and prior informed consent” because they had no knowledge about the IFMA and the logging concession. In a letter to President Arroyo, the people asked that the IFMA and the MCLC logging contract be revoked and that the forests of North and South Upi should be declared a watershed because it supports two major rivers, Tubuan and Tran, and other tributaries that sustain upland, lowland and coastal communities. Deforestation, the people wrote, would mean the loss of a variety of natural growth plants, herbs and other life forms that depend on the forest. Losing the forest would ultimately displace the indigenous communities and threaten their cultural integrity.

In a position paper issued by the Lumad Development Center, Inc., the people posed:

... As far as we know also, the IFMA is a government tenurial instrument which transfers the management of covered areas to the IFMA holders rather than to the community themselves. Given that this is a claimed ancestral domain area, why not approve the CADC and let the people manage and develop the area according to their Ancestral Domain Management Plan.¹¹¹

In November 30, 2002, bulldozers, chainsaws, trucks and other facilities and equipment of MCLC moved into Barangay Rifao, North Upi.

Resource Extraction not Development

There are real issues that form the legitimate and moral basis of the peoples’ defense of their fundamental freedoms. The fact that large corporations like the ones cited earlier in this section continue to operate despite repeated human rights abuses, environmental violations and community opposition reveals an obvious bias that favors big business. “As corporations are in a better position to satiate the government’s need for funds in times of finan-

cial crisis, it is disturbing, but hardly surprising, that laws, budgets and programs reflect this bias."¹¹²

For decades, the only development projects that the people have known are those that:

- displace families and uproot communities because of dispossession of land and water resources;
- ruin self-reliant economies; ravage sources of livelihood connected to the land and rivers;
- contaminate land and water resources;
- disrupt the environment's natural processes;
- imperil a people's cultural survival.

It is not surprising therefore, that government and private interests do not seek out any substantive input from affected communities given a predisposition to downplay any environmental and social impact of development policies. So that even if once vibrant, viable and self-reliant communities are left impoverished because of these development policies, the much-needed foreign investments for this debt-ridden country take precedence.

The impact of environmental degradation and the consequent economic and social problems bear heavily on indigenous communities. Their economic subsistence and vitality as a people are tied to the land, the waters and forests. Losing these to large-scale mining, industrial plantations, dams and vast logging concessions not only wipe out their resources but push them into deeper poverty. In the desolate and despoiled landscape that once nurtured generations, communities have scattered, bonds broken and the people become more impoverished.

The question of what constitutes environmental justice needs to be addressed urgently. Ignoring it all together like a non-issue appears to be the government's way of "handling" this. Because the potential ecological problems that the extractive projects have created are so massive, environmental devastation will be irreversible.

In the face of far-reaching problems of reduced biodiversity and its serious social implications, the government cannot continue to dismiss these as non-issues. Minimally, the government should demonstrate an understanding of the long-term ecological

consequences as these are reflected in the community's economic and cultural life. Only within this context can a government construct its own definition of what constitutes environment justice.¹¹³

Militarization Faces Opposition to “Community Development Projects”

Militarization is a self-fulfilling prophecy: it creates the very conditions which ‘justify’ it.

Jose W. Diokno, former Philippine senator

In recent years, people have become more involved in the political processes that impinge on the economic and social life of their communities. However, “community organizing and critical participation in the local, regional and national politics is also threatening for the government, particularly the Armed Forces of the Philippines.”¹¹⁴

Indeed, given the history of the military in this country – the unlimited power and influence it wielded in the years of the Marcos dictatorship – the AFP and its constituent units are “strongly suspicious of any community-based attempt to empower people through political education and organizing.” Thus any vision of a future that threatens the politicians and the powerful economic interests that they serve become suspect. “This is especially true when the education and organizing is particularly critical of the existing political, economic and cultural system.”¹¹⁵ It is this that forms a solid basis for cooperation between interests of big business and the military.

Militarized indigenous communities in various parts of the country report recurrent forms of abuse and strategic operations. Social, cultural and economic human rights violations have become part of the preparation for “community development projects” such as mines, dams logging, tree-plantations or huge agribusiness companies.

These violations that became institutionalized in the Martial Law era continue to occur “because the government and the whole system have created the conditions under which they become acceptable and perhaps even inevitable.”¹¹⁶

A lesson from the Marcos dictatorship that the present government must learn from is that “trying to defeat a rebellion primarily

through military means is counterproductive and ultimately self-defeating. The strategy of total war did not only fail to stop the insurgency under Marcos but proved extremely wasteful of human and economic resources and morally unsustainable. This is the same lesson the United States learned in Vietnam. Despite all the troops and military resources the US deployed in the Vietnam War, the rising toll of casualties and expenditures ultimately drained public support for US intervention in an increasingly unpopular war.”¹¹⁷

Militarization and the Indigenous Peoples

(Please refer to Appendices B to E for “A Summary of Human Rights Violations,” tables and some affidavits.)

The Cordillera Region

The provinces of Abra, Apayao, Benguet, Kalinga, Ifugao and Mountain Province comprise the Cordillera region.

Since the 1980s, the government maintained military campaigns to protect development projects and to quell the growing revolutionary movement. This meant the massive deployment of troops and the organization of paramilitary organizations at the grass-roots level. Among these were Oplan *Katatagan* (Operational Plan Stability), Oplan *Cadena de Amor* (Chain of Love), Oplan *Mamamayan* (Citizenry), Olan Red Buster, Oplan *Pakilala* (Introduction), Oplan *Salidummay* (Cordillera Melody), Oplan *Lambat Bitag* 1, 2, 3, 4 (Net and Snare) and Oplan *Makabayan* (Nationalist).

Military deployment in the region is as follows:¹¹⁸

- The 501st Brigade with headquarters at Calanan, Tabuk, Kalinga operates in the provinces of Kalinga, Apayao and in parts of Cagayan. Attached are the 41st, 21st, 77th, 54th, and 45th infantry battalions;
- The 502nd Brigade with headquarters in Echague, Isabela operated in the provinces of Ifugao, Mountain Province, parts of Benguet, Isabela, Nueva Vizcaya and Quirino. Attached are the 45th, 54th, an engineering battalion and the 3rd Special Forces battalion;

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- The 503rd Brigade with headquarters at Tayum, Bangued, Abra operates in the provinces of Ilocos Sur and Abra. Attached are the 17th and 50th infantry battalions.

Aside from these, the military maintains at least five CAFGU companies. Recently integrated into the military is the Cordillera Peoples' Liberation Army (CPLA), a paramilitary group that has been accused of countless atrocities against the people. There is also a Civilian Relations Services unit, an active propaganda arm based in Baguio City. Noteworthy are the deployment of troops in areas where "development projects" are ongoing:

- 3rd Special Forces Bn in Cabiten, Mankayan secures the mining expansion of the Lepanto Consolidated Mining Corp. (LCMC); in October 2002, 70 soldiers were deployed in eight villages where LCMC operates;
- 22nd Special Forces Bn and 29th Coy in Mountain Provinces protect Newmont Mining Company's FTAA being processed and would cover 77,549 hectares;
- 21st Infantry Bn in Kalinga protects Newcrest Mining Company's areas applied for FTAA;
- 77th Infantry Bn in the boundary of Ifugao and Nueva Vizcaya secures the construction of the Matuno Dam;
- Combined elements of the 5th Infantry Bn, 502nd Brigade, BC Coy, 45th Infantry Bn, 41st Infantry Bn and 48th Infantry Bn heightened military operations in Jones, Isabela. The intensified military campaign is aimed at dispersing the widespread opposition by peasant and indigenous communities to Australian-owned Royal Cement and Mining Corp. which covers a lease area of 23,490 hectares;
- CPLA serve as private security guards of key development projects. Some of them, according to the office of the military's Community Relations Services, are deployed to protect the San Roque Dam construction/operation;

- CAFGUs are deployed as military backup in areas where projects are ongoing or being planned.

The impact of human rights violations on indigenous women and children of the Cordillera region over 16 years of militarization is a main concern of rights advocacy groups. This has become especially sensitive in the light of continued incidence of human rights abuses and the increasing number of unresolved cases committed under four government administrations.

Documented cases from 1972 to the present reveal similar abuses, whether these were committed under the Martial Law era or in recent times of President Arroyo's "restored democracy." The cases range from:¹¹⁹

- sexual abuse/opportunism;
- abandonment of women and children;
- war trauma (insanity, psychological stress);
- physical injuries;
- reproductive health-related concerns (premature deliveries);
- illegal arrest;
- harassment/accused as NPAs;
- murder, frustrated murder;
- disruption of economic activities;
- use of children as human shields in military operations;
- disruption of classes in school/use of school as military camp.

Countless violations to human rights have been documented but several others were never reported. Almost all of these remain unresolved and the military or paramilitary troops involved who are criminally liable are still unpunished. These violations continue to occur as these are repeatedly justified as part of the anti-insurgency campaign of the government: communities are forcibly evacuated or food-blockaded and sometimes subjected to repeated artillery bombing, properties destroyed, leaders shot or

tortured, or people arrested arbitrarily. Documented reports show that the people are simply asserting their right to express opinions opposing militarization, the loss of their sources of livelihood and the destruction of water and land resources.

Other Provinces in Northern Luzon

Isabela

Jones, Isabela - Increased troop deployment was the military's response to organized protests to projects that would jeopardize peoples' sources of livelihood. Big businesses like Royal Cement Mining Corp. and the Nestle coffee plantation, government projects, foreign agribusiness and forced crop conversion threaten to destroy the community's basic sources of livelihood.

People opposing the projects are quickly tagged as "communists" or NPA supporters and have become easy targets for harassment, coercion, physical assault, intimidation, and torture.

San Mariano, Isabela - Heavy build up of troops from the 45th IB and 77th IB began in July 2002. Two howitzer cannons were positioned in the grounds between the church and the elementary school: one was aimed at the direction of Barangay Balliao and the other faced Barangay Ueg. Military presence was fortified by an armored personnel carrier (APC), three army trucks and two helicopters. In July 25, 2002, the howitzers were fired indiscriminately towards Barangay Balliao. This terrified the residents and caused severe trauma and psychological distress especially for the children, the elderly, young mothers and pregnant women.

Young residents – Melicio Guzman, 17 yrs. old, Annibal Aglugob, 22 yrs. and Jorday Deray, 17 yrs. were harassed and tortured by troops and forced to join military operations as guides and to show NPA camps.

Temporary checkpoints were setup and activity in the farms were restricted, "to isolate and starve the fleeing rebels." according to Capt. Rogelio Nigote, spokesperson of the 45th IB. At the checkpoints, the military would randomly interrogate people, do body searches and inspect bags. At Barangay Balliao, farmers and wood gatherers could not go near the area where there had been a clash between the military and the NPAs. The military however denied that there was an economic blockade and called it as a case of "population mobility and resource control."

Farmers, meanwhile, are especially encumbered by this since they cannot tend to their farms nor harvest crops. Much of the banana and corn crops that were ready for harvest ended up rotting in the fields because the farmers were not allowed to go near them.

Southern Tagalog Region

Mindoro and Rizal

Six battalions of the AFP were deployed in Mindoro in June 2001. Between June 2001 and March 15, 2002, there were 91 cases of documented human rights violations involving 329 families and 103 individual victims. Of this figure, 313 families and 85 persons are Mangyan while the 16 families and 18 individuals are Dumagat.

Three cases of summary execution were as follows:

- Pakling Basa, a Mangyan Hanunuo leader disappeared during a military operation of the 16th IB on July 7, 2001. Five days later, his body was found hanging from a tree in San Roque, Bulalacao, Oriental Mindoro;
- Budbud Usting, a Mangyan woman disappeared during a military operation of the 16th IB. on October 4, 2001. The following day, her body was found, decapitated, near Panaytayan, Mansalay, Oriental Mindoro;
- Nicanor de los Santos, a Dumagat leader and coordinator of Bayan Muna, a party list group in the House of Representatives, was shot dead by Task Force Panther headed by Col. Laureano Tolentino on December 8, 2002 in Antipolo City.

The military stepped up its campaign in 2002-2003. There have been more cases of human rights abuses but only documentation until March 2002 was available.

**Abduction, Summary Execution
Secretary-General, Karapatan-Southern Tagalog and
leader, peasant group**

On April 21, 2003, military and paramilitary troops near Calapan, Oriental Mindoro abducted a team of five persons who were part of a fact-finding group investigating reports of a recent spate of human rights violations in the province. The following day, two were found dead: Eden Marcellana, 31 yrs. old, secretary-general of the human rights watchdog Karapatan-Southern Tagalog and Eddie Gumanoy, chairperson of the peasant group Kalipunan ng mga Magbubukid sa Timog Katagalugan (Kasama-TK). The other three survived but showed signs of torture.

Officers of the 204th IB and Special Forces Tabak Kaagapay denied involvement in any of the human rights violations and refused to give government investigators the names of its soldiers suspected of abducting and killing the two human rights activists. A week after the incident, the 204th brigade was placed under formal inquiry in the Philippine Senate and House of Representatives. A number of residents from Oriental Mindoro appealed through the media – wrote letters to the editor and called radio stations – demanding the pullout of military troops in the province.

Col. Jovito Palparan, 204th IB brigade commander, who was vying for a meritorious promotion to general, was transferred due to allegations that the military was involved in the killings, illegal arrests, harassment and other human rights violations in the province.¹²⁰

Visayas

Panay Island

In October 2000, residents of Barangays Daan Sur, Sinunod, Bato-bato, Mabini, Rizal Sur, Nayawan, Tacayan and Aglinab Capiz and Garangan, Calinog, Iloilo reported increased military presence and human rights abuses by troops from the 12th IB. A Fact-

Finding Team and Peace Mission documented the reports, adding to a long history of human rights violations by the military and the CAFGU.

The ancestral domain of the indigenous peoples at the boundary of three Panay provinces covers over 33,000 hectares of forest land and form the headwaters of three major river systems – Pan-ay, Jalaur and Mambusao.

Being planned for construction by French *Spie Enertans* and EGIS is an \$18 million dam is but the details of the project are not fully known to the indigenous peoples residing in the area. The people fear losing their land because 12,400 hectares upriver will be delineated as watershed areas.

The military – Scout Rangers and 12th IB – claim they are there to provide security for the construction of a barangay road from Roxas to Agpalali, presumably in preparation for the dam construction. They occupied a schoolhouse, three houses in Daan Sur, a house in Sinunod and built a temporary house in Batobato. The military men instruct barangay officials to recruit four persons per sitio for the CAFGU but the people resisted. They fear that the soldiers would do something drastic to pressure them to form CAFGU units.

Following the 1962 presidential proclamation by President Macapagal delineating over 30,000 hectares of ancestral domain as an army reservation, the military built Camp Peralta and soon after began weapons testing. The farmers then were obliged to pay *tumado* – a form of land rent. Other parts of the land were sold or leased to cattle ranchers and big landlords. Ranchers were under no obligation to pay for farmers' crops damaged by cattle. This was a way of driving out the original settlers. In the 1970s, organizing efforts consolidated the people and began resisting the impositions of government or landlords. Military might met the opposition head-on and many found it best to join the armed resistance.

In 1994, the AFP ordered the evacuation of 10,000 indigenous peoples from land that was chosen for military purposes. The military reservation is the country's largest military training ground after Crow Valley at Subic Naval Base was converted to civilian use in 1992. In spite of the peoples' resistance, the military proceeded with weapons testing. Mount Danao, a mountain traditionally considered as sacred, was not spared from artillery shell-

ing. Four residents including two children were injured by shrapnel during the weapons-testing.

A move to turn the military reservation into a mahogany plantation was widely opposed by the people. This prompted the military to declare them “squatters.”

Military presence heightened further in 2000 with “Task Force Panay” as the construction of a dam was about to begin and as project FTAA applications await implementation.

Mindanao

Complementary to the government’s social reform agenda is an operational plan formulated the Armed Forces of the Philippines. The strategy of the military’s Oplan *Unlad Bayan* (or Op-

Summary Execution

Secretary-General, Karapatan-Southern Mindanao and three members of a peasant organization Barangay Kinawayan, Arakan Valley, Cotabato.

A research team conducting field work on the peasant situation and the impact of the peace process was attacked by CAFGU men on April 5, 2002. The men, led by 12th SF Company, 7th SF Bn Staff Sgt. Antonio Torrilla, shot dead Crisanto Amora, 23 years old, Vivian Andrade, 18, Benjaline Hernandez, and Labaon Sinunday, 30. The team was also conducting a fact-finding mission in relation to the recent Tababa massacre in Arakan Valley.

Sinunday, a lumad, was fatally shot in the first volley of gunfire. The other three were shot at close range. Hernandez, secretary-General of human rights organization, Karapatan-Southern Mindanao was riddled with bullets. An autopsy report showed that two bullets were shot at very close range. She may have been holding on to the barrel of the gun, pleading for mercy or trying to push it away when it went off. The bullet pierced the left side of her neck and shattered her skull as it exited to the right side of her head. Another bullet appeared to have been fired at her right side while she lying on her back.¹²¹

The two others were killed in a similar brutal way – Amora was hit in the stomach, his innards were exposed. Both

Andrade and Amora's heads were blown off, their brains spilled to the ground.

The Commission on Human Rights, Region XII in Cotabato conducted its own investigation and concluded that findings establish probable cause for murder against Sgt. Torilla and the 15 CAFGU men. The accused have not been brought to justice.

erational Plan "Develop the Nation") supports the development agenda and confronts peoples' opposition with force. From the militarist point of view, all opposition and resistance efforts are subversive – or "an internal threat to peace and development" and in recent times, branded as "terrorist acts." This explains the strategic deployment of troops from the 401st Brigade in areas where there are ongoing (or in preparation for) projects such as mines, dams, industrial plantations, and agricultural estates. In most cases paramilitary or vigilante groups also operate in these areas.

In Northern Mindanao for example, the Regional Special Action Force (RSAF) Company and 20th IB and 58th IB, 401st Brigade are deployed in Surigao del Norte and Agusan del Norte where these are set to begin operations: Climax of Australia, Assisi Mining Corp., Occidental Pacific Climax, Lesseter Mining Corp., and Copperfield Mining Corp.; or are already operating: Hinatuan Mining Corp., Manila Mining Corp., Taganito Mining Corp., Pacific Cement Corp., and Southseas Natural Resources. The 62nd IB, 36th IB and at least three paramilitary groups operate in Surigao del Sur where IFMA and MPSA areas of Corplex Mining, Irag Mining Corp., Golden Mining Corp. and Great Southern Climax are located. In Agusan del Sur, the 36th IB merged with the 29th IB for composite operations in the IFMA areas, and supported by three paramilitary groups and at least two private armies (in the guise of company security forces), they operated in the IFMAs of Extensive Wood Processing Corp., Softwood Development Corp., Provident Tree Farms Inc. and PICOP Resources Inc.

Superseding OPLAN Lambat Bitag (or Operational Plan Drag-net) that has been in place since 1987, OPLAN Unlad Bayan operates in the grassroots level and is characterized by the following:

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- The use of development rhetoric by the AFP in its civilian military operations;
- The combination of civil and military services in projects situated in delineated ancestral domains of indigenous peoples;
- The forced recruitment for the Civilian Volunteers Organization (CVO) and Civilian Armed Forces Geographical Unit (CAFGU); the creation of the Special Citizens Auxiliary Army (SCAA), the Civilian Auxiliary Army (CAA), Barangay Intelligence Network (BIN) and

Paramilitary Groups Operating in the CARAGA Region and Nearby Provinces

Agusan	
LUPACA/ Bagani Warriors	La Purisima, Prosperidad
Sagrado Corazon Senior Fanatical Group	Putting Bato, Cabadbaran
CAFGU	Several detachments all over the province
Surigao del Norte	
Special Civilian Auxiliary Army (SCAA) Civilian Auxiliary Army (CAA)	Mining site, Taganito, Claver
Tadtad Fanatical Group	Barangay Mabuhay, Municipality of Sison
4Ks Fanatical Group	Barrio Hacienda, Mainit
The Philippine Benevolence Missionary Association (with an armed wing "White Eagle")	San Jose, Dinagat Island
Surigao del Sur	
SCAA/Pulahan	Around the area of the PICOP Company
Misamis Oriental	
CAFGU	Several detachments all over the province
Benevolent Christian Missionary	Tagoloan
Bukidnon	
CAFGU	Several detachments all over the province

Source: KARAPATAN-CARAGA

the creation or maintenance of paramilitary or fanatical/vigilante groups. These include the *Tadtad*, *Pulahan*, and *Itoman*, White Eagle, Philippine Red Cobra, LUPACA-Bagani-Warriors, 4 Ks Tribal Council of Rebel Returnees, *Kalihukan sa Nasudnong Minorya* (KNM), *Rebolusyonaryong Kalihukang Lumad* (RKL), and others. In Southern Mindanao, armed vigilante groups include the *Alamara*, Black Fighter, *Bagani Warrior*, *Reunion*, *Lihok Lumad* and *Pulang Mandalangan* Command.

In a localized version of Uplan Unlad Bayan, the military aimed at winning the indigenous communities at the grassroots level through the “Unity for Peace, Unity for Progress” (UP-UP Normin) program. With this as a blueprint, Col. Ernesto Carolina created *Luntiang CARAGA* “a development program for the lumads” which combined the military component of the operational plan for Mindanao and its socioeconomic component through a reforestation program in collaboration with the DENR and NCIP. In the end, *Luntiang CARAGA* was intended to push for the CBFMA/IFMA/MPSA projects in areas with ancestral domain title applications.

Systematic military campaigns dispersed entire communities of indigenous peoples with massive artillery shelling and aerial bombardment. Among the most recent are *Lawan-lawan* (Las Nieves, Agusan del Norte), *San Juan* (Bayugan, Agusan del Sur), and *Mahagsay* (San Luis, Agusan del Sur).

Community Response

Because of continued violations to human rights of indigenous peoples, community groups and NGOs have repeatedly recommended the following:

1. Investigate all cases of human rights violations;
2. Stop military operations (deployment, patrolling, setting camp, weapons testing, artillery shelling, bombing and strafing) in residential and farming areas;
3. Disband and disarm all paramilitary and vigilante groups;

**Bombardment
San Luis, Agusan del Sur
October and November 1997 and April 2001**

In October and November 1997, 36th IB helicopters bombarded Sitio Kiamo, Mahagsay, San Luis, Agusan del Sur, destroying homes, vegetable gardens and rice fields. Banwaon families scurried to the nearest forests for safety, leaving newly harvested palay (rice grains). After huge explosions and aerial strafing, people who returned to their homes and rice fields to inspect the damage found smoking pits with craters about two meters deep. Many fell very ill and weak for days after inhaling the dust from the bombed areas. Col. Carolina admitted later, in a dialogue in Balit, San Luis in December 1997 that the military used discarded explosives.

On April 26, 2001, troops from four infantry battalions forming Task Force Diamond descended on San Luis. This was the largest military deployment the Banwaons have ever seen. From April 26 to May 7, troops from the 62nd, 36th, 28th and 20th IB occupied the villages. People's activities – in the farm and in the forests became suspect as the military monitored their routines. Some, who had been harassed, accused or tortured, refrained from tending their farms. Repeated artillery shelling kept them in constant fear. Of the 79 artillery shells recovered after May 7, 45 came from 105 mm howitzers, 10 from 90RRs or recoilless rifles and 24 from 81 mm mortars.¹²² Shocked residents said they never imagined non-combatants like themselves would ever experience the kind of bombardment seen only in war time.

In November 2001, a 500-man team from the 36th IB and 20th IB, 402nd Brigade occupied barangays in San Luis as part of the Military-Barangay Social Development Workers. Residents and barangay officials appealed to government and military officials for the pullout of the soldiers since they were scrutinizing barangay projects and were always quick to accuse the people of being NPA supporters.

4. Pull out military detachments and return them to headquarters;
5. Prosecute erring Armed Forces of the Philippines (AFP) officers and personnel and hold them accountable to violations against residents and damage to their properties; indemnify the victims of human rights violations;
6. Instead of military troops, deploy health workers, teachers and training personnel to interior barangays to help people cope with economic, social and health problems;
7. Provide community assistance in the form of agricultural and livelihood support.¹²³

With the growing environmental and social crises, communities are inclined to use confrontation to communicate their grievances. People take to the streets to publicize their issues and are growing more angry and distrustful of government. Community groups, as a last line of defense of their land and resources, take up arms. Feeding on rural poverty and social unrest among peasant populations as well as political convictions, several insurgencies confront the Philippine Government in various parts of the country.¹²⁴ Counter-insurgency rationalizes all military action and abuse.

After the September 2001 bombing of the N.Y. World Trade Center and the March 2003 Iraq invasion, antiterrorist security legislations become conveniently used in the crackdown on political opposition. The US-led war on terror is bound to have direct consequences on indigenous peoples, particularly on Mindanao island. In April 2003, the US offered solutions to the insurgencies and to develop Central Mindanao. US troops started to arrive soon after to assist the Armed Forces of the Philippines in its battle against insurgency. Since the MILF and the NPA were declared "terrorist groups," the US is geared up for military confrontation. It is no coincidence that:

a US government satellite survey [in the 1980s] indicated that Mindanao contains the largest oil deposit in Asia. This means that our oil deposits are larger even than China's. Oil and gas in commercial quantities are identified and currently being

*exploited in offshore Palawan. The deposits are deemed to extend all the way to Mindanao and Sulu.*¹²⁵

Environmental Justice, Unresolved Issues, and a History of Abuse & Violations of Human Rights

*A democratic society can only thrive in full respect of human rights.*¹²⁶

Many issues concerning human rights remain unresolved. This is aggravated by the Philippine Government's refusal to acknowledge that there are violations of human rights and fundamental freedoms of indigenous peoples. This denial has brought numerous tragedies on lives, communities and the natural environment.

In mineral-rich regions in the northern Luzon highlands and in vast areas on Mindanao island, large-scale underground mining and open-pit mines have displaced communities, degraded rivers, and forcibly disengaged indigenous peoples from sources of livelihood linked to the land and the rivers. Rivers are poisoned by toxic mine tailings from corporate mines, forests and watershed areas denuded by logging and mining concessions.

In various parts of Mindanao, land use conversion and mock-reforestation schemes are taking over the lands and forests of indigenous peoples. Mostly foreign-owned companies are acquiring long-term leases for the extraction of minerals and oil deposits.

Indeed, the burden of environmental justice lies heavily on the indigenous peoples whose sustenance, ritual life, and vitality are connected to the land, forests and rivers. Taking these resources away and destroying them beyond regeneration imperils the peoples' survival.

In its characteristic ignorance/arrogance, the government oversimplifies the complexities of the ecological process as demonstrated in its evaluation of the San Roque Dam. It then becomes easy to take for granted what constitutes an acceptable level of ecological risk and social cost for communities upstream and downstream a river. "Fundamental connections are not being made – between mountains, trees, the land, rivers, the oceans, air, life, earth and human existence."¹²⁷ Like other large dams elsewhere in the world today, the San Roque Dam is an icon of conspiracy by government and by economically powerful elite. They stand to

benefit from the dam's onerous terms while making electricity consumers pay for the foreign loans incurred to fund the dam's power generation component cost at \$1.2 billion.

Large-scale resource exploitation, pervasive brutality, torture and repression became trademarks of the Marcos dictatorship. These, however, should be considered aberrations in this supposed restored democracy.

In the larger picture, the Filipino nation has yet to confront its authoritarian past. To this day however, no post-Martial Law government has been able "to assess, much less purge the legacy of the Marcos era."¹²⁸ No government after Marcos has aimed for a higher level of respect for human rights.

As the legacy of the Marcos era awaits overdue purging, a "collective trauma"¹²⁹ generates cynicism in the Filipino consciousness and in a parallel sense, a paralysis in government. At this point in our history when it is most needed, public policy is not directed to deal effectively with environmental problems and the resulting social-economic problems. At its very best, government policy and existing laws confuse the issues to elude accountability.

Land Rights Lie at the Core of Past and Present Conflict

The Special Rapporteur concluded that "bringing justice to indigenous communities in the area of land rights is the great historical responsibility"¹³⁰ of the present government. Indeed, the question of land rights of indigenous peoples lies at the core of all past and present conflicts.

There is a pattern of resource exploitation all over the world. Indigenous peoples are especially vulnerable because the world's richest and the only remaining natural reserves are found in their resource-rich territories. In the Philippines, the ancestral domains of indigenous peoples are the only resource areas left in the country.

The indigenous peoples' concept of ownership is viewed from the perspective of stewardship: it "sustains the view that ancestral domains and all resources found therein shall serve as the material basis of their cultural integrity."¹³¹ With the laws requiring land titling of ancestral lands and ancestral domain, this view is changing radically and being made to fit the legal framework of the IPRA. These laws have also made the people even more vulnerable to the abuse of interest groups that wield political clout.

“The rights of indigenous peoples to ancestral lands and natural resources found therein is of more substantial primacy than old and new concessions of private business.”¹³² Yet the history of government’s development policy and the volume of cases presented to the Special Rapporteur clearly show that powerful economic and political interests prevail over legitimate rights such that indigenous peoples are progressively dispossessed of their lands; and private and corporate businesses are more protected than the people.

The overall picture revealed by the pattern of “community development projects” in the territories of indigenous peoples attests to the fact that the Philippine Government and industry regard human rights as something that can be exchanged, purportedly for economic growth. Transnational corporations engaged in environmentally destructive industries are allowed by government presumably for “the greater good.” Government leaders contend that there are certain concessions that they must ask from the people to develop the debt-ridden nation. “To say that this sacrifice is necessary for development is essentially telling the people that their very insistence on respect for their human rights is what is keeping the nation poor.”¹³³

Confronting the Legacy of the Country’s Authoritarian Past

Many Filipinos have come to accept a certain level of suffering and abuse of human rights and fundamental freedoms. Newspapers regularly report cases of reckless exploitation of natural resources in territories of indigenous peoples. To a large extent, these and the consequent violations of their human rights have become accepted as matters of course.

Over three decades, scores of indigenous communities have been forced to scatter, many live in desperation, poverty and hopelessness.

The Philippine Government – since the regime of the dictatorship in the 1970s to the present – refuses to acknowledge the violations of human rights. It cannot, however, continue to elude culpability nor evade its moral responsibility. As noted by the Special Rapporteur:

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... 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.*¹³⁴

Documented cases of violations on human rights of indigenous peoples continue to rise. So many lives have been broken and traumatized by brutality and abuse. Communities displaced by “community development projects” are trapped in poverty. Statistics, cases and affidavits on the repeated brutality and patterns of abuse tend to numb peoples’ sensibilities. There is a deep sense of frustration over the futility of laws intended to protect the people and the natural environment.

A Call for the Philippine Government to Bear the Burden of Reform

Let accountability prevail

The Special Rapporteur called for “the prompt and effective investigation” of numerous documented human rights violations and environmental injustice. This is a time for the government to soberly assess past and current records of reported violations to indigenous peoples’ human rights and fundamental freedoms.

After a long history tainted by terror, abuse, and torture the Philippine government must bear the burden of reform. This requires nothing less than constructive dialogue based on cooperation, trust, and reciprocity.

Justice is essential in rebuilding the nation after the trauma of a dictatorship

The Philippine Government has a 20-year record of unsolved cases of human rights violations and has yet to show political will to prosecute all past and present violators. Necessarily, this calls for a public admission of human rights violations for the government to rectify the injustices in a meaningful way. For years, various sectors have called on the civilian authority to purge the political system that panders to the military to be able to face the task of formally investigating and prosecuting the violators.

Ethical action is required to address the issue of environmental justice

Our limited and increasingly diminishing natural resources demand nothing less than careful stewardship and ethical action to ensure the survival of future generations. But without an integral sustainable development policy and well-defined environmental ethic, development cannot be pursued judiciously.

Reports and case studies from indigenous peoples' groups submitted to the Special Rapporteur made the following calls for the government to:

- Consider the interest of the majority of the indigenous peoples and as partners, consult and involve the people in the decision-making process;
- Evaluate potential environmental damage *before* project implementation as opposed to thinking of ways to mitigate after implementation;
- Enforce the laws that protect indigenous peoples.

As a parallel to the government's response to the report of the Special Rapporteur, the San Roque Dam can be viewed as a test case: We have sufficient scientific data and insight available to us now that calls for the decommissioning of the dam. The Philippine Government can still stop the momentum of events that the San Roque Dam will bring on. It has the opportunity to mark a milestone in the history of rivers and large dams in the world. It can still protect the people in the Agno River valley from devastation.

By operating the San Roque Dam under her term, President Arroyo will, in due course, be held accountable for the social and environmental problems it would create: before the dam's formal inauguration, there was scientific certainty that the consequences will imperil lives and threaten the survival of future generations. The consequences of building the Ambuklao and Binga Dams are there to see and there is available data that the San Roque dam will destroy the Agno River irreversibly and displace the villages along its river valley – but her government chose to ignore these.

The issue cannot be reduced to discussions regarding com-

pensation – for how could anyone quantify, much less compensate for irretrievable losses?

Villages upstream the Ambuklao and Binga dams are grim reminders of the certainty of devastation that turned once robust communities into wasteland. “As more mines expand and the silt piles up behind the San Roque Dam and widens its lake, who will replace the rice, cattle, and orchard land that will be swallowed up by its reservoir? Where will the people of Dalupirip, Tinongdan and Ampucao go and how will they live?”¹³⁵

*They have taken the gold. The mines have taken the trees. Our springs have been covered over [by the mining] and we have little water left. The government even prohibits us from pasturing cattle [in the watershed]. Now they will take our rice land away too. How will we live now?*¹³⁶

Environmental justice requires that we address the issue of ecological integrity and social-economic justice as well as the issue of self-determination of indigenous peoples. “(The indigenous peoples) have provided good stewardship of the land; we can learn from them; they can help us reconnect to the land and teach us how to have more reverence for nature...”¹³⁷ There are significant cultural differences among all the indigenous groups in the Philippines, yet one common trait that may characterize indigenous culture is their reciprocal relationship with the land that casts them into a collective and intergenerational role of caretaker.¹³⁸

Can governments, corporate bureaucracies and private interests wield the power “to use caprice to fracture a peoples’ faith in ancient things - earth, forest, water, air”?¹³⁹ The rights and interests of future generations are the same as contemporary generations. Yet, we are using the earth’s resources “as if we were the last generation.”¹⁴⁰

There are laws intended to protect the indigenous peoples. The government simply has to muster the political will and the respectability to enforce them. As cited in the Special Rapporteur’s report, “the application and interpretation of laws shall be resolved in favor of the indigenous peoples.”¹⁴¹

For the indigenous peoples and the Filipino nation as a whole, the Philippine Government has a moral duty to restore the peoples’

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faith not just in laws and justice but in a democracy that is for the people not against it.

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Endnotes:

¹ This resolution is found as an Annex in the Appendix.

² The 1503 Procedure was set up in 1970 and was reformed at the 56th Session of the CHR. This is the complaints procedure of the Commission on Human Rights where individuals or NGOs can make complaints on human rights abuses.

³ Onsino Mato is the Secretary General of the Siocon Subanen Association Incorporated (SSAI) which is the official holder of the CADC affected by the mining corporation. He was one of those who met with the SR in July 2002.

⁴ Task Force 63 is the interagency body of the government which consists of the NCIP, the Department of Defense, the Department of Environment, National Anti-Poverty Commission, among others. This body is a quick reaction team which should respond to emergency situations in indigenous peoples communities.

⁵ See Appendix which contains the official response of the Philippine Government which was presented by Lepatan.

⁶ Please see this report in the Appendix.

⁷ Tebtebba was present at this debriefing session and took note of all the comments made.

⁸ Citizens Armed Forces Geographical Unit.

⁹ IPRA Sec. 3h. To a large extent, the IPRA prescribed the parameters within which indigenous peoples should define themselves. It also made drawing ethnic boundaries important because of specific political purposes that this would serve particularly in the application for ancestral domain titles or making ancestral land claims.

¹⁰ *Kalipunan ng mga Katutubong Mamamayan ng Pilipinas* (KAMP), "The Situation of National Minorities in the Philippines," n.d., typescript, p. 1-2.

¹¹ The term "lumad," as it appears in the media and popular litera-

ture, is used in a generic sense to refer to ethnolinguistic groups in Mindanao, i.e., non-Muslim, non-Christian peoples. Like the word "Igorot" in Northern Luzon's Central Cordillera region, "lumad" is a term used by people outside of themselves. In interactions with people to whom these ethnic boundaries are important, some refer to themselves as "lumad," knowing that it is a term commonly used to apply to them, e.g., "We are the people you call lumads," and became perceived as self-identification. Over years of repeated use, it became a popular term used to refer to any ethnolinguistic group in Mindanao.

¹² While the word "Igorot", (literally "people of the mountains") is popularly used as a collective term refer to the peoples of the Cordillera region, "its earliest and most limited reference was to speakers of Southern Cordilleran languages – people called Ibaloy, Kallahan and I'uwak in the province of Benguet and speakers of Central Cordilleran languages (the Bontoc and Kankanaey peoples) on the western side of the Cordillera. Most peoples of the Cordillera accept this narrow meaning; Gaddang, Ifugao and Kalinga peoples, for example, are not ordinarily called "Igorot" either by themselves or others.... When identifying themselves to others outside of their extended kinship groups, peoples in the Central Cordillera traditionally refer to the settlement or region where they were born or in which they lived." Patricia O. Afable, "The Peoples of Eduardo Masferrer's Photographs," (*Discovery*, Vol. 25, Number 2, New Haven CT: Peabody Museum of Natural History, Yale University) 1995, p. 11-13.

¹³ The ICCPR and ICESR implement the provisions of the UN Universal Declaration of Human Rights.

¹⁴ Sec. 3, Chapter II, Republic Act No. 8371.

¹⁵ In 2003, the Philippine government's outstanding debt is P3.36 trillion and the foreign debt is \$55 to 57 billion. Interest payments alone amount to P271.5 billion annually, or about a third of the national budget. Teodoro C. Benigno, "Government debt frightening..." *The Philippine Star*, Manila, February 18, 2004, p. 17.

¹⁶ The most recent ones include The Mining Act 1995, Financial and Technical Assistance Agreement, (FTAA), Industrial Forest Management Agreement (IFMA), Community Based Forest Management Agreement (CBFMA), National Integrated Protected Areas System (NIPAS) among others.

¹⁷ Stavenhagen, p 17.

¹⁸ Denis Yap Lepatan, "Statement in Response to the Presentation by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People of the Report of his Visit to the Philippines," 59th Commission on Human Rights, April 10, 2003, Geneva, Switzerland, p. 3. Lepatan is the head of the Philippine Delegation to the 59th UN Commission on Human Rights convention in Geneva on

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April 10, 2003.

¹⁹ Lepatan, p. 1.

²⁰ *Ibid.*, p. 1.

²¹ *Ibid.*, p. 8.

²² *Ibid.*

²³ For a discussion on the “backwater” effect of dams, see Patrick McCully, *Silenced Rivers: The Ecology and Politics of Large Dams*, New Jersey: Zed Books, 1996, p. 68.

²⁴ Patricia O. Afable, *On the San Roque Dam and The History of the Southern Cordillera*, typescript, p. 2 (published in the Baguio Midland Courier in three installments, Jan. 31, Feb. 7, and Feb 14, 1999).

²⁵ Arundhati Roy, *The Greater Common Good*. Bombay: India Book Distributors Ltd., 1999, p. 8.

See also Cordillera Peoples Alliance, *The San Roque Dam: Updated Primer midyear 2001*, Baguio City, 2001, p. 19. As cited in this primer, “sediment buildup along the Agno river system between the Ambuklao-Binga area and San Roque Is estimated at 6.35 million cubic meters a year. This does not take into account 93 million cubic meters of sediment currently contained in the mineral tailings dams of large mining companies operating in Itogon and... Tuba.”

²⁶ It might not be fair to pin the blame on the Philippine government, in general, but since it was presented by the head of the Philippine Delegation then the responsibility is fully that of the government's. In some private conversations with other diplomats from the government they mentioned that Mr. Lepatan was reprimanded for this. Whatever the truth is, the fact remains that this government response stands out because of the malicious intent to attack on the integrity of the Special Rapporteur. It is so different from the responses of the governments of Mexico and Guatemala. These were very constructive addressing point by point the recommendations of the Special Rapporteur and presenting some moves which the government is taking or planning to take.

²⁷ Michael Amaladoss, *Life in Freedom: Liberation Theologies from Asia*, New York: Orbis Books, 1997, p. 47.

²⁸ Lulu A. Gimenez, “Going Against the Giant: The Pocket Miners of Itogon and Benguet Corp.’s Antamok Gold Project,” *Special Report on the Antamok Gold Project*, Baguio City: Task Force Against Open Pit Mining, 1991, p. 20.

²⁹ Refer to Gimenez, p. 17.

³⁰ In 1960, the forest cover decreased to 13 million while the population swelled to 27 million. See Henrylito Tacio, “Philippine forests dwindling fast,” *People and the Planet*, <http://www.peopleandplanet.net/pdoc.php?id=8>.

³¹ The Marcos dictatorship collapsed in February 1986 following massive popular protests in Manila now remembered as “People Power” or “EDSA 1986.”

³² John Paul Andaquig, “The Green Agenda,” *Philippine Star*, June 7, 2004 quoting 2004 figures from the Kalikasan People’s Network for the Environment (KPNE). In 2002, forest cover was recorded at 5.5 hectares or about 18.3 per cent of the total land area. (Tacio, *People and the Planet*, op. cit.).

³³ Robin Broad with John Cavanagh, *Plundering Paradise: The Struggle for the Environment in the Philippines*, Berkeley: University of California Press, 1993, p. 29, 32.

³⁴ Ben and Nilo Langa-an, *Squatters in Their Own Land*, n.p., 1980, p. 47.

³⁵ Broad, p. 33.

³⁶ Langa-an, p. 48.

³⁷ *Five Year Philippine Development Plan 1978-1982*, (Annex), Manila: National Economic Development Authority, 1978, p. 5.

³⁸ Broad, p. 33 citing figures from the Center for Environmental Concerns, “A Glance at Philippine Environment Data (Manila: Center for Environment Concerns) 1990. p. 2.

³⁹ Lester R. Brown, et. al., *State of the World 1988: A Worldwatch Institute Report on Progress Towards a Sustainable Society* (New York: W. W. Norton, 1988), p. 83.

⁴⁰ According to experts, in Mt. Makiling alone, more woody plant species exist than in the entire continental United States.

⁴¹ Broad, p. 33 citing Myers, “Environmental Destruction and Some Economic Consequences in the Philippines.”

⁴² Particularly the Bell Trade Act and the Laurel-Langley Agreement.

⁴³ Langa-an, p. 20.

⁴⁴ Mostly American firms; with the formation of the Asian Development Bank, Japan’s share in Philippine trade was 20 per cent.

⁴⁵ Langa-an, p. 22.

⁴⁶ *Five Year Philippine Development Plan 1978-1982*, p. 96.

⁴⁷ Arnold Padilla, “War for Exploitation of Mindanao’s Resources,” [www. Ibon.org/news/if/11.htm](http://www.ibon.org/news/if/11.htm) IBON Foundation, 2002.

⁴⁸ “Mindanao Gets Priority In ADB Assistance For 2000-2003,” <http://www.adb.org/Documents/News/2000/nr2000031.asp>.

⁴⁹ These are covered by contract agreements with the government and are called Timber Licensing Agreement (TLA), Mineral Production Sharing Agreement (MPSA) and the Financial and Technical Assistance (FTAA), Community-Based Forestry Management Agreement (CBFMA), and the Industrial Forest Management Agreement (IFMA).

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⁵⁰ Bunyan Bryant (ed.) *Environmental Justice: Issues, Policies and Solutions*, Washington DC: Island Press, 1995, p. 18.

⁵¹ CARAGA Profile, National Economic Development Authority (NEDA) quoted in "The Peace and Economic Disorder in CARAGA Region," p. 1.

⁵² *Ibid.* p. 4.

⁵³ Broad, *op. cit.* p. 151 quoting Paul "Chip" Fay, director of the Manila office of Friends of the Earth.

⁵⁴ Broad, *Ibid.*, p. 139-145.

⁵⁵ Stavenhagen, p.19.

⁵⁶ Bryant, p. 18.

⁵⁷ Gimenez, p. 18.

⁵⁸ Sec. 3, Indigenous Peoples' Rights Act

⁵⁹ Sec. 56, Indigenous Peoples' Rights Act.

⁶⁰ Stavenhagen p. 11; See also Marit Stinus-Remonde and Chris Vertucci (eds.), *Minding Mining: Lessons from the Philippines*, Quezon City, Phil: Philippine International Forum, 1999, p. 23.

⁶¹ Sec. 1, Presidential Decree 512.

⁶² Sec. 2, Presidential Decree 512.

⁶³ After the Spanish conquest in the 16th century, all lands and natural resources of the Philippines became the exclusive patrimony and dominion of the King of Spain. The American colonial government maintained this system and passed laws that opened public mineral lands to exploitation, occupation and purchase by American and Filipino citizens.

⁶⁴ Sworn statement by former NCIP Commissioner Castillo Tidang, Jr., quoted in "Ex-NCIP head accused of forgery," *Baguio Midland Courier* vol. LVII, Number 7, February 15, 2004, p. 1, 29. See also "NCIP decides to destroy forged "midnight titles," *Baguio Midland Courier* vol. LVII, Number 8, February 22, 2004, p. 1, 38; "Listing bares names of persons in faked titles," *Baguio Midland Courier* vol. LVII, Number 10, March 7, 2004, p. 1, 31 and Artemio A. Dumlaog, "Midnight titles' soon to go up in smoke," *Skyland News*, vol. VII, No. 39, February 29, 2004, p. 1, 15. Almost 160 families in Baguio City alone are holding fake CALTs covering over 120 hectares. Titles covering lands in Baguio City are defective because the city of Baguio is governed by its charter and as stipulated in Sec. 78, Special Provision of the IPRA, "all lands proclaimed as part of the town site reservation shall remain as such unless otherwise classified by appropriate legislation, provided that prior land rights and titles recognized and/or acquired through any judicial or other processes before the effectivity of this Act remain valid."

Now popularly known as the "midnight titles" of ex-NCIP chair David Dao-as, these fake CALTs are causing a major stir because most

of the titles, according to Tidang, “had no supporting papers, and that all were unnumbered, undated and did not contain any technical description making it difficult to locate or determine if they overlap or not with any titled property.”

⁶⁵ Stavenhagen, pp. 10-11.

⁶⁶ Stavenhagen, p. 8.

⁶⁷ RA 7942, Chap. 3, Sec. 16.

⁶⁸ RA 7942, Chap. 2, Sec. 4.

⁶⁹ RA 7942 Chap. 3, Sec. 18.

⁷⁰ As of December 1996, 100 FTAA applications and 1,454 MPSA applications were filed before the Department of Environment and Natural Resources-Mines and Geosciences Bureau (DENR-MGB). Of the 100 FTAA applications, 99 were foreign-owned mining companies and only one Filipino company, which is also partly foreign-owned.

⁷¹ Remond and Vertucci, pp. 16-21.

⁷² Based on a report “The Impact of the San Roque Dam Multipurpose (Dam) Project on Indigenous Communities in the Lower Agno River Basin of the Northern Luzon Cordillera, Philippines,” presented to the UN Special Rapporteur, December 2002, Apit-Tako, Alliance of Peasants in the Cordillera Homeland; with supplementary material from Patricia O. Afable, “Celebrate Waters, Rivers, and Life, Baguio Midland Courier, 1999 and Erlyn Ruth Alcantara, script of AGNO, a video documentary on the peoples’ opposition to the San Roque Dam, December 2002.

⁷³ Cordillera Peoples Alliance, The San Roque Dam, An Updated Primer, midyear 2001, Baguio City, p. 12, 14.

⁷⁴ Lenie Lectura, “Napocor Losses Reached P100 Billion Last Year,” *Today*, May 3, 2004, p. 13.

⁷⁵ Based on “The Impact of the Current and Anticipated Operations of the Lepanto Consolidated Mining Company on Indigenous Communities in Mankayan and other Municipalities of the Abra River Valley of Northern Luzon,” a report presented to the UN Special Rapporteur, December 2002, Apit-Tako, Alliance of Peasants in the Cordillera Homeland.

⁷⁶ Apit-Tako, p. 2.

⁷⁷ *Ibid.*

⁷⁸ The rated capacity of Victoria II is 162,860 ounces of gold per year. From Zinnia B. de le Pena, “Lepanto gets perks for P4-B gold project,” *The Philippine Star*, October 11, 2003.

⁷⁹ Apit-Tako, p. 9.

⁸⁰ One of the financial incentives given to Lepanto Consolidated Mining Company’s Victoria II Project, being “a new project on a non-pioneer status” is an income tax holiday for four years, extendible by

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three years starting in April 2004 or when actual operation commences. De la Pena, "Lepanto gets perks *op. cit.*

⁸¹ Based on "The Bakun AC Supplementary Water Project," a report presented to the UN Special Rapporteur, December 2002, Cordillera Peoples Alliance.

⁸² Based on "A Case Study on the Impact of Camp John Hay Barangay Segregation Plan on Happy Hollow," a report presented to the UN Special Rapporteur, December 2002, Ormus Kadamay.

⁸³ Based on a position paper prepared in January 1992 and presented to the UN Special Rapporteur, December 2002, The Heirs of Mateo and Bayosa Cariño and Eryn Ruth Alcantara, "Notes on the History of Camp John Hay," ms, 1998.

⁸⁴ Alcantara, "Notes on the History of Camp John Hay," no pagination.

⁸⁵ The Cariño Case Over Camp John Hay, Position Paper for the Petitioners, Baguio City: The Heirs of Mateo and Bayosa Cariño Foundation, Inc., 1992, p. 45.

⁸⁶ Sanders Laubenthal, History of John Hay Air Base, American Historical Bulletin, Vol. XXI, No. 4, p. 31.

⁸⁷ Based on "Documentation on the Climax-Arimco Mining Corp. (CAMC) Didipio Gold Project," a report presented to the UN Special Rapporteur, December 2002, Didipio Earth Savers Multi-Purpose Association.

⁸⁸ Based on "The Aetas of Central Luzon: Defending their Lands, Reclaiming their Birthright," a report presented to the UN Special Rapporteur, December 2002, *Kalipunan ng mga Katutubong Mamamayan ng Pilipinas* (KAMP).

⁸⁹ Based on "Mangyan Heritage Nature Parks," a report presented to the UN Special Rapporteur, December 2002, Bigkis at Lakas ng Katutubo sa Timog Katagalugan (BALATIK).

⁹⁰ With notes from Andrea Patenaude, "Bully on the Mountain: A Case Study on TVI's Canatuan Gold Project" Minding Mining! Lessons from the Philippines, Philippine International Forum, 1999.

⁹¹ Andrea Patenaude, "Bye-bye Murcielagos Bay, Bye-bye," *Minding Mining! Lessons from the Philippines*, Philippine International Forum, 1999.

⁹² Tito Natividad Fiel, DIOPIM Committee on Mining Issues, "Fact sheet of Violation of the Rights of Subanon People, Sitio Canatuan, Siocon, Zamboanga del Norte, Philippines," Dipolog City, p. 4.

⁹³ Merpu Roa, "Subanos wage anti-mining war vs. Canadian firm," *Philippine Daily Inquirer*, November 16, 1999.

⁹⁴ Felicity Smith, "Don't Mine Me! A Case Study of Western Mining Corp. in Southern Mindanao," *Minding Mining! Lessons from the Philip-*

pines, Philippine International Forum, 1999, p. 55-65.

⁹⁵ 2002 figures from Legal Rights and Natural Resources Center-Kasama sa Kalikasan-Friends of the Earth Phil. is 99,387 hectares.

⁹⁶ Heads of Agreement signed between WMCP and the traditional representatives of the Bong Mal Bong Banwu, Sec. 7 as quoted in Smith, "Don't Mine Me! A Case Study of Western Mining Corp. in Southern Mindanao," p. 60.

⁹⁷ Chay Florentio-Hofileña, "Searching for Gold in Blaan Country" in *Patrimony: Six Case Studies on Local Politics and the Environment in the Philippines*, Philippine Center for Investigative Journalism, Pasig City 1996.

⁹⁸ Interfaith Movement for Peace, Empowerment, and Development, Inc. (Anawim-IMPEDE), "Mining Invades Macambol, People Resist," Tagum City, Davao Oriental.

⁹⁹ "A Report to the UN Special Rapporteur on Indigenous Peoples on Human Rights Violations Suffered by B'laan Community of Bong Banwu Salnaong, Columbio, Sultan Kudarat, Mindanao, Philippines," p. 5.

¹⁰⁰ *Ibid.* p. 11. The latest development on this is that on 27 January 2004, the Supreme Court decided on this case and this declared unconstitutional and void the Financial and Technical Assistance Agreement provision of the Philippine Mining Act. "This says that the concept of an FTAA under RA 7942 or the Philippine Mining Act of 1995, is no different from the "old" service contract which "in effect conveys beneficial ownership over the nation's mineral resources to the foreign contractor, leaving the State with nothing but bare title thereto." A look into the provision of the WMCP FTAA reveals its true nature as a service contract thus it is unconstitutional even if executed before the RA 7942 came into effect." (Notes presented by the LRC-KSK at a briefing session on 28 June 2004 in Quezon City) The vote was eight Justices in concurrence with The Decision, five Justices dissented and one abstained as one of the parties involved was his former client. The Philippine Government through the Department of Environment and Natural Resources and the Office of the Solicitor General is filing a motion for reconsideration.

¹⁰¹ Karapatan- CARAGA, Fact Sheet, Agusan del Norte, 1-2.

¹⁰² "The Impact of Mining on the Indigenous Peoples of Surigao del Norte," _____, a report presented to the UN Special Rapporteur, December 2002.

¹⁰³ "The Impact of Mining on the Indigenous Peoples of Surigao del Norte," _____, a report presented to the UN Special Rapporteur, December 2002.

¹⁰⁴ Fact-finding Mission Report, May 7, 2001, p. 1.

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¹⁰⁵ Based on “_____” a report presented to the UN Special Rapporteur, December 2002.

¹⁰⁶ Ma. Kristina E. Cassion, “Tearing the Land Apart” Inquirer News Service, http://www.inq7.net/archive/2001-p/reg/2001/jul/29/reg_4-1.htm.

¹⁰⁷ *Ibid.* p. 3.

¹⁰⁸ “Relentless AFP Operations Displacing Banwaon Tribe,” *Tan-awan*, Vol. 4, No. 2 (Quezon City: Legal Rights and Natural Resources Center-Kasama sa Kalikasan-Friends of the Earth, Philippines), July-September 2001, p. 25.

¹⁰⁹ based on “Report from the T’bolis of Datal Bonlangan, Barangay Ned, Lake Sebu, South Cotabato,” a report presented to the UN Special Rapporteur, December 2002.

¹¹⁰ Notes from “A Letter of Appeal to the President – IFMA 005 Endangers the Life of Teduray and Lambangian, North and South Upi, Maguindanao,” Lumad Development Center, December 6, 2002 and “IFMA Case Within the Teduray and Lambangian Territory, North and South UPI, Maguindanao,” a report submitted to the UN Special Rapporteur, December 2002.

¹¹¹ “Position Statement on Approved IFMA and the Planned Logging Operation in Selected Barangays of North and South Upi, Maguindanao,” p. 2.

¹¹² Andrea Patenaude, “Making Sense of it All – The Context: The Perspective of the Philippine International Forum,” *Minding Mining! Lessons from the Philippines*, Philippine International Forum, 1999, p. 89.

¹¹³ Environmental justice mandates the right to ethical, balanced and responsible uses of land, rivers and forests in the interest of sustaining life. It demands governments to recognize and honor the cultural integrity of all communities and to craft public policy based on mutual respect and justice for all peoples, free from any form of discrimination or bias. SNEEJ and CRT, *Sacred Waters: The Lifeblood of Mother Earth*, Southwest Network for Environmental and Economic Justice and the Campaign for Responsible Technology (SNEEJ and CRT): n. p. 1997 p. 130.

Broader in scope than environmental equity [or the enforcement and equal protection of environmental laws], environmental justice “refers to those cultural norms and values, regulations, behaviors, policies and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing and productive... These are communities where both cultural and biological diversity are respected and highly revered and where distributed justice prevails.” Bryant, p. 5-6.

¹¹⁴ Fact- Finding Mission Report, May 7, 2001, Municipality of San Luis, Agusan del Sur, p. 9.

¹¹⁵ *Ibid.*

¹¹⁶ Patenaude, "Bully on the Mountain..." *op. cit.*, p. 80.

¹¹⁷ Wigberto E. Tanada, from the welcome remarks to the Second Regional Consultation on the Philippine Human Rights Draft Declaration (Nawawalang Paraiso Resort, Tayabas, Quezon, May 29, 2000).

¹¹⁸ "The Worsening Human Rights Situation in the Cordillera Region: A Summary Report" A report presented to the UN Special Rapporteur, December 2002, Dinteg).

¹¹⁹ Innabuyog, "An Executive Summary on the Impact of Militarization on Women and Children in the Cordillera," a report presented to the UN Special Rapporteur on December 2002. For a summary of cases, please refer to the Appendix.

¹²⁰ Michael Lim Ubac, "Army refuses to aid probe of activists' death in Mindoro," *Philippine Daily Inquirer*, May 4, 2003, p. A3. "Survivors ready to talk on killings," *Philippine Daily Inquirer*, May 4, 2003, p. A3.

¹²¹ "Autopsy report, April 7, 2002" Dr. Reynaldo Romero, medico-legal officer, National Bureau of Investigation.

¹²² Ma. Kristina E. Cassion, "Bombed Away: A Banwaon Story," *Inquirer News Service*, June 9, 2001 (printed from www.inq7.net).

¹²³ Task Force Tapaz Fact-finding and Peace Mission, October 15, 2002, p. 5-6, KARAPATAN files.

¹²⁴ Stavenhagen, p. 19.

¹²⁵ Alejandro Lichauco, "Mindanao is next target of US oil imperialism?" *Today*, May 1, 2003, p. 9.

¹²⁶ Stavenhagen, p. 25.

¹²⁷ Roy, p. 48.

¹²⁸ Alfred McCoy, *Closer Than Brothers: Manhood at the Philippine Military Academy*, Philippines: Anvil Publishing, 1999, p. 334.

¹²⁹ *Ibid.*

¹³⁰ Stavenhagen, p. 3.

¹³¹ Sec. 5, Indigenous Peoples' Rights Act.

¹³² Stavenhagen, p. 12.

¹³³ Patenaude, "Bully on the Mountain..." *op. cit.*, p. 80.

¹³⁴ Stavenhagen, p. 24.

¹³⁵ An elder quoted at a church meeting in Itogon, 1997, cited in Afable, "Celebrate Rivers, Water and Life!," *op. cit.*, p. 1.

¹³⁶ *Ibid.*

¹³⁷ Bryant, p. 26.

¹³⁸ Andrea Paternaude, "Making Sense of it all – The Context: The Perspective of the Philippine International Forum," *Minding Mining*:

Lessons from the Philippines, Quezon City: Philippine International Forum, 1999 p. 85.

¹³⁹ Roy, p. 61.

¹⁴⁰ Ross McCluney, "Sustainable Values," *Ethics and Agenda 21*, New York: UN Publications, 1994, p. 22.

¹⁴¹ Stavenhagen, p. 12.

PART 3

ANNEXES

APPENDIX A

Excerpts from ARTICLE III (Bill of Rights) Philippine Constitution

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of

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detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided*, that he has been duly notified and his failure to appear is unjustifiable.

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

APPENDIX B: Summary of Human Rights Violations

1. Cordillera Region

a. Arbitrary Arrest and Detention

Location	Number of Victims	Military/Para-Military Involved
Abra	227	125 th and 135 th PC Coy, PNP Provl Command
Kalinga	159	21 st IB, 41 st IB, 48 th IB, Cresaf, CAFGU
Baguio	10	PNP
Mountain Province	8	24 th IB, 69 th IB, RSAF
Apayao	16	21 st IB, 45 th IB, 48 th IB, CAFGU
Benguet	16	MIG, 129 th IB, Crecom

b. Murder and Summary Execution

Location	Number of Victims	Military/ Para-Military Involved
Abra	36	125 th and 135 th PC Coy, PNP Pr Command
Kalinga & Apayao	28	21 st IB, 41 st IB, 48 th IB, Cresaf, CAFGU
Mountain Prov	2	24 th IB, 69 th IB, 3 rd SF
Benguet	14	MIG, 129 th IB, Crecom

c. Physical and Mental Assault

Location	Number of Victims
Abra	33 (40 cases)
Kalinga and Apayao	33 (33 cases)
Mountain Province	3

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d. Forced Evacuation

Location	Number of Victims
Abra	40 families
Kalinga	62 families, 1334 indiv. (6 barangays)
Apayao	at least 450 families

e. Destruction of Property, Robbery and Looting

Total # cases	Location	Number of Victims	Total # Victims
24 individuals, 2 barrios, 61 families	region	undetermined	

f. Raid on NGO Offices and Homes of NGO leaders

NGOs Raided	Name/Field of NGO	Lost
Dinteg	Indigenous people's law center(three times raided)	documents, files-human rights cases, file of legal services
MCDC	Mining Communities Devt. Center	documents, files, diskettes, office equipment
IIBA	Itogon Inter-Barangay Alliance	documents, files, diskettes
CPA	Cordillera Peoples' Alliance	documents, files, diskettes
ORNUS	Urban poor organization	documents, files, diskettes, office equipment

g. 1.7 Harassment

Total # cases	Location	Number of Victims	Total # Victims
188	entire region region	undetermined	
3	Ifugao	124	

2. Quirino Province, Northern Luzon

Indigenous Groups Affected: Aggay

	Persons Affected	Place	Military/ Paramilitary Involved
Ransack house	Sayas	Bgy Disimungal, Nagtipunan, Quirino	CAFGU
Physical abuse	Osyas Gubledan	-do-	
Forced evacuation	Six families	-do-	
Harassment/ Accuse as NPAs	Daday Ruma Chona Ruma Abet Ruma Other residents	Tilitilan and Disimungal, Nagtipunan, Quirino	CAFGU (Allan Dana Jr., Cesar Pitong, Eddie Altre)
Theft (of chickens, eggs, or rice)	Diosdado Rivera	Tabiis, Nagtipunan, Quirino	54 th IB, CAFGU
Use of civilians as human shields		Bgy Villa Gracia, Maddela, Quirino	54 th IB, CAFGU
Indiscriminate firing/threats	Sherwin Macadaeg (13 yrs old) Jomar Medes (12 yrs old)	Bgy Villa Ylanan, Maddela, Quirino, Bgy Ysmael	54 th IB, CAFGU
Indiscriminate firing Theft/ Harassment/ Physical abuse	Peter Yamoyam, Ronald Agis, Louie Nakie, Ruben Balawis and other residents	Bgy Sangbay, Nagtipunan, Quirino	Carlos Bulante, CAFGU and civilian intelligence
Disguise as NPA and create bad impression		Bgy Villa Gracia, Maddela, Quirino, Anak, Nagtipunan, Quirino	54 th IB, CAFGU

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3. Isabela, Northern Luzon

Indigenous Groups Affected: Kalinga, Ifugao, Ibanag

	Persons Affected	Place	Military/ Paramilitary Involved
Restrict farming activities	Ambrocio Mateo	Villa Bello, Jones Isabela	45 th
Use of school grounds as military camp		Bgy Villa Bello Primary School	-do-
Illegal Arrest and Torture, Accuse as NPA	Emersin Acierto, Alfredo Domingo, Francisco Miguel, Willy Lumajo	Villa Bello, Jones	-do-
Intimidation (set up military camp, mount Howitzer canons, position Armed Personnel Carrier (APC), set up rolling checkpoints)	Daday Ruma, Chona Ruma, Abet Ruma, other residents	Tilitilan and Disimungal, Nagtipunan, Quirino	-do-
Coercion/Use of civilians in combat operations, physical blows, torture	Dionisio Bunnag, Rolen Ligmayu Melicio Guzman, Annibal Aglugob, Jordan Deray	Villa Bello, Jones Dinuman, San Mariano Buyasan, San Mariano	-do-
Torture/Accuse as NPA	Jerwin Malteso Andres Agustin Danilo Manansala	Villa Bello, Jones	-do-
Illegal Detention, harassment	Tomas Banhan	-do-	-do-
Forced Evacuation/ Harassment	George Tumapang	-do-	-do-

Illegal Search	Isabel Lumajo	-do-	-do-
Divestment of Property	Anabelle Liberato	-do-	-do-

Note: 1. Councilman Daniel Delattre attested to the truth of the reported cases of human rights violations by the 45th IB. He said the military men get especially abusive when intoxicated. He said the barangay officials were not informed that the military would be stationed in their barrios and that they intended to recruit youth to the CAGU.

2. Royal Cement and Mining Corp. (23,490 hectares), Nestle Phil. (165,000 hectares), IFMAs and government programs is projected to operate in Jones, Isabela. Peasant and indigenous communities are opposing these.

4. Cagayan Valley*

Indigenous Groups Affected: Kalinga, Ifugao, Ibanag

Landgrabbing and killings	2
Coercion/assault	3
Mauling & Physical Assault	1

5. Southern Tagalog***

(May 2001- March 2002)

Indigenous Groups Affected: Mangyan, Dumagat, Rimuntado

Killings	3
Illegal Arrest	17
Using civilians in combat operations	7
Torture	5
Coercion	53
Disappearance	3
Forced Evacuations	12 cases (309 families, 26 indiv.)
Physical Assault	13
Harassment	78
Illegal Search	20
Degrading treatment	16 families, 9 individuals
Divestment of Property	50

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Internal refugees

Indigenous Peoples	No. of Families	Women	Men	Individuals
Mangyan	15	33	38	71
Dumagat	2	8	6	14
total	17	41	44	85

Source: BALATIK

Indigenous Peoples	0-1 yr old	2-14 yrs old	15-21 yrs old	22-90 yrs old
Mangyan	4	39	4	24
Dumagat	0	6	5	3
Total	4	45	9	27

Source: BALATIK

Pinpointed human rights offenders in the military

Military involved in human rights abuses	Commander	Area of Operation
204 th Brigade, Phil Army	Col. Jovito Palparan	Oriental Mindoro
6 th SFC, Phil Army	Lt. Sergio Macarandan	Oriental Mindoro
16 th IB, Phil Army	Major Isles	Oriental Mindoro
68 th IB, Phil Army	2 nd Lt. Benjamin Lebesteros	Oriental Mindoro
52 nd IB Phil Army	Lt. Robert Batenga	Oriental Mindoro
RHB and 8 th Scout Rangers		Oriental Mindoro
22 nd Recon Company, 2 nd IB	Capt. Navarro, Col. Efren Orbon	Gen Nakar, Quezon Province
Task Force Panther	Col. Laureano Tolentino	Antipolo City, Rizal Province

6. Panay*

indigenous Groups Affected: Tumanduk

Killings	1
Massacre	3
Physical assault	2
Harassment	1

Destruction of property	2
Illegal Search	1
Rape	1

* compiled by Kalipunan ng mga Katutubong Mamamayan sa Pilipinas; hereafter referred to as KAMP records)

** compiled by KARAPATAN, Alliance for the Advancement of People's Rights

*** compiled by Bigkis at Lakas ng Katutubo sa Timog Katagalugan (BALATIK)

7. Iloilo**

Dates: January-November 2002

	Persons Affected	Place	Military/Paramilitary Involved
Divestment of Property: Est. 60 soldiers trampled on rice plants ready for harvest; Est. 80 soldiers trampled on rice plants beginning to form grains; Same soldiers also trampled on ricefields adjacent to Victor's	Noe Tupaz, Antonio Victor, Loreto Tupaz, Pio Olido, Pepito Gelbaliga	Bgy. Sinunod, Tapaz, Capiz	12 th IB
Restrict going to farms to certain hours so they are not mistaken for NPAs	farming families	Bgy Daan Sur, Bato-bato, Sinunod	-do-
Harassment/Forced to transfer place of work: Couple accused of being NPAs; husband had to find work elsewhere	Celsa Gicalao, Alex Gicalao	Bgy Daan Sur, Tapaz, Capiz	-do-

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Harassment/accuse as NPA: Husband accused as NPA; house was to be searched for arms but was firmly resisted; she had hypertensive attacks since the incident	Teresita Gayas	Bgy Aglinab, Tapaz, Capiz	-do-
Threat to lives: Five grenades were strung together by soldiers as booby traps for NPAs set up near a residence	Jonathan Belo	Bgy Daan Sur, Tapaz, Capiz	-do-
Harassment/accuse as NPA/Physical Abuse: Farmer accused of supplying food to NPA but countered that they hardly have enough for their own family; son was beaten up and threatened to be shot	Carlito Diaz , Henry Diaz	Bgy Nayawan, Tapaz, Capiz	-do-

8. Northern Mindanao

Tribe	Case	Place of Incident	Victims	Military/ Para-Mil. Involved
Maman-wa	Harassment/ Forced Evacuation; Non-payment of just share as agreed bet. community and Tag-anito Mining Corp	Tag-anito, Surigao del Norte	Residents of Sitio Barobangkaw, Tag-anito, Claver, Surigao del Norte	Regional Special Action Force "Warriors" – private guards of Tag-anito Mining Corp.

Manobo	Establishing, arming, instigating and tolerating paramilitary groups; Murder, Grave threats, Harassment	Cabadbaran and RTR Agusan del Norte	Residents of Bgy. Mahaba, Cabadbaran; Bgy. Anticala, Butuan City and Bgy. San Antonio RTR, Agusan del Norte	Tribal Council of Rebel Returnees; technical staff of DENR and adviser of MTCCCI; CAFGU in San Antonio, RTR
Higaonon	Forced Evacuation; Aerial bombardment Forced recruitment into paramilitary grps; Murder Grave threat Harassment	Lawan-lawan, Las Nieves, Agusan del Norte	Over 300 Higaonon families from different sitios and Higaonon communities/ sectors in Bgy Lawan-lawan Datu Saldong; Domino's Family; Ronel Domino	58 th IB; 1 platoon from Civil Mil. Operations Unit; 1 squad of the Special Forces, elements of the Division Redondo Unit
Higaonon	Forced Evacuation; Use of civilians as guides during military operations; Coercion, Harassment, Destruction/ divestment of property	Sinakunangan and Simon-tahan, Esperanza, Agusan del Sur	Ronel Sigahan, Omar Samahan, Sardan Banong Undayao Datu Man-Altuan Benhur Hagonoy, Damas Hinupad, Madceto Pinakilid, 19 families from Sitio Pinamas-basan & Sitio Simontahan in Bgy Calabuan, Sitio Kiadjaw, Imbatog; Nangka in Bgy Agsabo, Agusan del Sur	36 th IB ; elements of "Wild Dogs" CAFGU, 36 th IB in Esperanza, Agusan del Sur

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Manobo	Aerial bombardment; of comm.-unities Massacre of 8 civilians during operation; Forced Evacuation; Destruction of property Desecration of the remains of the dead	Hug-makan, San Juan, Agusan del Sur	Dead: Mayda Ponso, 60 old Marcial Tana, 44 Didi Tana, 35 Jocelyn Tana, 17 Vilma Tana, 14 Borondos Tana, 9 Bunsil-an Brital, 50 Cayangga Ponso, 38 Wounded: Boyet Brital, 12 Doringo Tana, 2 Inday Tana, 3 Gina Tana, 12	58 th IB, 401 st Brigade; Mayor of Bayugan, Agusan del Sur
Manobo	Establishing, arming, instigating and tolerating paramilitary groups; Forced recruitment to Paramilitary Group; Harassment Coercion	La Purisima, Prosperidad, Agusan del Sur	22 families from La Purisima, Prosperidad Agusan del Sur Edgardo Cinzo, 26 Cesar Perez	36 th IB, 401 st Brigade; Military assets; LUPACA-Bagani Warrior leaders
Manobo	Use of public buildings as military Bararacks; Building a military detachment within 200 meters of residences; sexual harassm	Km. 19, Km. Han-ayan, Km 18 Kabulo-han Diatagon, Lianga, Laganagan, Caras-an, Tago, Surigao del Sur	Residents of Han-ayan and Kabulohan	29 th IB

9. Southern Mindanao

Date	Case	Place of Incident	Victims	Military/ Para-Mil Involved
Aug 18, 2002	Strafing at dawn of three houses	Binondo, Baganga, Davao Oriental	Killed: Marequiel Jose, 13 yrs old Kevin Dongia-pon, 7 Raprap Jose, 5 Ka Ronson Wounded: Jovet Jose, 6 Jonel Jose, 10 Emilia Donga-pon, 34 yrs Maria Cabanog, 30	8 th Special Forces Bn; 8 th SF 1 st platoon; 27 th SF; 30 th SF; CAFGU
-do-	Physical assault/ mauling	Binondo, Baganga, Davao Oriental	Dodong Dongiapon, 33 Emilia Dongiapon, 34 Danilo Jose, 42 Julito Dongiapon Camili, 23	
	Summary Execution	-do-	NPA cadre, Ka Alvin surrendered but was tied, beaten, then shot dead	
	Divestment of property	-do-	Roger Jose: 2 chainsaw; Aquilina Jose: cash; goods from store, kitchen utensils; 2 radios; Romeo Cabano: carpentry tools; Dodong Dongiapon: chicken, clothing Felina Calistro: cash, clothing	

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	Disruption of economic activity	-do-	William Jose: had to abandon abaca farm	
	Abduction	-do-	Jovet and Jonel Jose, wounded in military strafing , were whisked by the military in a helicopter and declared as NPA when brought to the hospital; Emilia Dongiapon: taken by military in a helicopter and held prisoner for 6 days	
	Forced evacuation	-do-	6 lumad families forced to abandon homes and farms fearing military attacks: families of William Jose (2 families), Romeo Cabanog, Dodong Dongiapon, Roger Jose, Alicia Donato and Julito Camili.	

Compiled from Fact-finding Mission Reports, KARAPATAN (Alliance for the Advancement of People's Rights, Southern Mindanao), Aug 2002.

APPENDIX C:

Some Accounts and Summaries of Human Rights Violations

The following section recounts some of the documented cases of human rights violations. These form part of the statistical summaries in Appendix b. Due to voluminous records of these violations compiled over the past two decades, only a few of the cases can be included in these summaries. The cases recounted here were chosen to present a range of the type and degree of violation.

1. Cordillera Region

Mass Arrest and Detention

a. Bangilo, Abra, October 1981 (compiled from reports of the Research, Documentation and Information Program, Task Force Detainees of the Philippines, n.p., n.d.; hereafter referred to as TFDP reports):

In October 1981, residents of Bangilo, Abra were rounded up by combined forces of the 125th PC Coy led by Lt. Pedro and Sgt. Benjie Garcia, Phil. Army-Integrated National Police (PC-INP) and brought to the detention center in Camp Villamor, Bangued for interrogation. They were suspected of supporting the NPA. Among those arrested were 40 men and women, all farmers, with ages ranging from 13 to 70 years old, majority of whom were above 55 years old. Two were 70 year olds and five were women.

In spite of their detention, they were not formally charged and there was no proof that the farmers were indeed NPA supporters.

b. Conner, Apayao, March 1992:

Five farmers representing 20 families were asked to report at the Buluan military camp. Pedro Appadan, Edmundo Ganumang, Domingo Balunsad, Vicente Mattalang and Jim Manera were accused of being NPA regulars or supporters since they did not evacuate like other residents after the bombing and mortar shelling of barangays Daga, Puguin and Banban in Conner.

The farmers said their families had no place to go and had no other source of livelihood elsewhere and so they decided to stay in spite of the continued bombings. For the farmers, their choices were narrowed down: if they are not careful, it would be an instant death from the bombing or they moved out, a slow but certain death from starvation.

Appadan was held only for three days but the others were detained for 15 days. All of them were released as "NPA surrenderees."

c. Paco Valley, Marag, Apayao (Dinteg files), January-May 1993:

In April 1993, members of CAGU and the Military Intelligence

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Company (MICO), 7th IB rounded up 37 residents of Paco Valley and presented them as rebel returnees to authorities at Kabugao poblacion. They were all housed in a small barangay hall and were made to survive on whatever little food the soldiers would provide for them. Lack of food and the unsanitary conditions made it difficult particularly for the 20 children in the group: some began to suffer malaria, upper respiratory tract infections and stomach trouble while others contracted measles. Initially, four children were taken to the hospital but soon after, almost all the evacuees fell ill. Church groups and NGOs organized medical and relief services to the

Arbitrary Arrest, Detention and Torture

Lacub, Manabo, Malibcong, Bangued, Bucloc, Dolores, Bangilo in Abra (Ibid.):

Between 1981-1986, there were 102 documented cases of arbitrary arrest, detention and torture. This included the arrest of 30 Tinguians in Lacub, 11 farmers also from Lacub, students, teenaged women and other older men who were all farmers. Tortured were a 72-year old farmer, a 37-year old woman, two middle-aged farmers and five youths ages 17 to 24.

The arrest and detention made by 135th PC coy, Abra PC-INP and ICHDF (a paramilitary group) were all based on suspicion that they were either NPA sympathizers, supporters or couriers. None of the accusations were ever proven.

Summary Execution

a. Galeng Langa, Kelyat, Conner, Apayao, December 1986:

Galeng Langa, a mother of five was shot dead by troops during a military operation. She was coddling her baby and tried to flee upon seeing the troops approaching. The soldiers shot her thinking she was carrying an armalite. Her husband and their children were in a state of shock after the incident and were evacuated to Lenneng, Conner to help recover from the trauma. The baby had to be taken to the Children's Rehabilitation Center in Manila.

b. Peter Dangiwan, Balbalan, Kalinga:

An incumbent municipal councilor and a candidate for vice-mayor, Peter Dangiwan was shot to death by unidentified troops. Dangiwan was outspoken about his views against the entry of large-scale mining into Kalinga and the militarization of their municipality. Gawaan is heavily militarized with an active CAFGU unit.

c. Esther Gaano, Pinukpuk, Kalinga:

Esther Gaano, four months pregnant was washing clothes by a river just below a bridge on June 22, 1991. As soldiers of the 48th IB crossed the bridge, one of them aimed at Esther and shot her in the head, killing her instantly. The soldiers quickly blamed the NPAs but there were witnesses who attested that only the soldiers were crossing the

bridge at the time of the incident.

d. Johnny Camareg Case, Sadanga, Mountain Province, August 2001 (compiled from documents and annexes assembled by DINTEG, 2002):

Johnny Camareg, 55-year old farmer was shot to death by a platoon of the 22nd Special Forces Company on August 9, 2001 at Sitio Pusong, Betwagan, Sadanga, Mountain Province. He was on his way to check on his carabao before he would proceed to the next sitio to join his family to harvest rice. Along the way he encountered the military troops and was gunned down, dragged to an irrigation canal and covered with leaves. His body was found two days later. The military reported that it was an encounter with the NPA and that he was killed with two other rebels. The family disputed the allegation saying he was simply on his way to see his carabao before proceeding to the next sitio to help in the rice harvest. Fifty residents of Betwagan who knew Camareg executed an affidavit to affirm that he was a civilian, a farmer and was not with the NPA.

A dialogue was set between the family, local government and officers of the 3rd Special Forces Bn to which the 22nd Special Forces Company was attached to. The family was given P115,000 and a scholarship for the two children of Camareg. Lt. Col. Juanito Dalmas, 17th IB commanding officer however maintained that it was “a legitimate encounter prompted by NPA presence.”

The family of Camareg is disputing the military’s claim that they signed an affidavit of desistance or any such documents that would prevent them from pursuing the case nor demanding that the military keep to the promised scholarship for the three children of Johnny.

e. Daniel Ngaya-an, Lubuagan, Kalinga, October 1987:

Daniel Ngayaan, vice-chairman of the Cordillera Peoples’ Alliance and chairman of the Bodong Association, was one of the key leaders in the opposition to the Chico Dam in the early 1980s. He was killed on October 4, 1987 and the Cordillera Peoples’ Liberation Army (CPLA) publicly admitted the crime. Ngayaan’s remains were never found and the family and his villagers have yet to accord the respected elder a decent burial. The CPLA, now officially integrated into the military, has not been held accountable for the execution in spite of the public admission. (Please refer to Appendix D for a transcription of her daughter’s testimony and request to the UN-SR on December 5, 2002) *Hamletting*

a. Tubo, Abra, May 1994 (TFDP reports):

About 60 troops of the 72nd IB led by Lt. Gregorio Nieveras entered sitio Taleb, Barangay Tabakda, Tubo Abra on May 23 1994 searching for NPAs. Finding none, the troops entered the houses and Lt. Nieveras ordered the residents to gather outside and were then brought to one house. From May 23 to June 1, the residents became the soldiers

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prisoners and were not allowed to go out of the house nor move without the military's permission. Among the "imprisoned" residents were Jerome La-aw, Pacita La-aw, Alfredo Lino, Viernes Lino, Khemstone Lino, Eliza Suyon, David Suyon and Irene Suyon. Immediately after the incident, the residents evacuated to another barangay and were too traumatized to consider returning to their homes very soon.

Forced Evacuation, Physical and Psychological Trauma Due to Military Operations

a. Juliet Bawenta, Pinukpuk, Kalinga, May 1991:

A military operation began at a neighbor sitio only a few minutes after Juliet Bawenta delivered to her second child. Juliet and her husband faced the dilemma of whether to evacuate to a safer place. They decided to stay because she was still weakened by childbirth. Two days later, the military started mortar shelling towards the direction of their sitio. She started to bleed profusely due to the ordeal. She was rushed to the provincial hospital with her baby left behind and was confined for a week. Against doctors' advice, she checked out of the hospital because she was worried about her baby and because they could not afford the hospital bills.

b. Balbalan, Kalinga, June 1991:

Early in the morning, a group of residents – ten women and seven men – went to harvest in a rice field in Kilayon, Balbalan, Kalinga. Five children were with them. One of was an eleven-month-old baby harnessed on the back of her mother, , Margarita Damon. At lunch time, soldiers of the 45th IB passed by but refused the people's invitation to join them for lunch. After their meal, Margarita and the children stayed behind and the rest went back to the harvest. As Margarita was washing the dishes by the creek, she heard a burst of gunfire and felt them just over her head. The volley of gunfire continued. One of her companions, Bonil Mosing rushed to rescue her, against the soldiers' warnings and brought her to a house where they had brought the children for safety.

Margarita's baby was in shock and had to be brought to the hospital. One of the women, 30-year old Erlinda Bayubay who was eight months pregnant delivered prematurely. The condition of both mother and child were not known. Both the children and adults were so traumatized that they would panic at the site of uniformed troops.

c. Conner, Apayao, January-February 1991:

On January 24, 1991, bomb explosions rocked the barangays of Puguin, Daga and Banban in Conner, Apayao. Tora-tora planes and Sikorsky helicopters dropped a series of bombs, throwing the three barangays into panic. The next day, helicopters hovered and dropped leaflets instructing the residents to evacuate to safer grounds and demanding the surrender of rebels. The message, written in Malaueg, a

language that the residents could not understand, had to be translated.

Since the bombing lasted till the following day and would not let up, the residents were forced to evacuate to Tuao, Cagayan, Catbalogan and Pinukpuk in Kalinga and Buluan, Conner. This required hiking for one to two hours to the nearest safe village. It was especially difficult for the children and the older folk. Some pregnant women due to the trauma, delivered prematurely or their babies died in the womb. Amy, eight months pregnant died from complications after she went into premature labor on the second day of bombing. She was carried on a makeshift hammock over a two-hour hike to the nearest district hospital but had to be brought to a provincial hospital. She died along the way. Paulina Iyawon, six months pregnant, had to be hospitalized after her baby died in her womb following the evacuation's two hour hike. Mila Catnag went into labor at the height of the evacuation and collapsed along the way and suffered a malaria attack as her resistance dropped.

For weeks the residents endured conditions in makeshift living quarters or in taking up any available space in the houses of relatives.

After periodic bombing and mortar shelling of their villages for more than a year, many families decided not to return to Conner.

The following basic data were gathered by a relief and medical mission conducted February 15-28, 1991:

Number of Evacuees:

Buluan, Conner	125 families
Tuao, Cagayan	165 families
Catbalogan, Pinukpuk	84 families
Total:	341 families

Number of Pregnant Women

Buluan, Conner	17
Tuao, Cagayan	21
Catbalogan, Pinukpuk	2
Total:	40 women

d. Luna, Kalinga, August 1992:

About 25 families or 130 persons were forced to evacuate from Barangay Kalayukay, Luna, Kalinga following intensified military operations. The families were forced to abandon their farms and because they were completely unprepared for the evacuation, many of the children fell ill. A report from the NGO Initiatives for Rural Development (for Kalinga and Cagayan) reported that many of the Luna evacuees were starving and became prone to multiple diseases.

Rape and Summary Execution

Tabuk, Kalinga:

Four soldiers barged into the house of Delia Mangay-ayam on February 3, 1991 and ransacked the place. The soldiers tied up her five

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relatives and then raped her in full view of the others. After Delia reported the incident to the police, she was able to identify one of the rapists and was arrested three months later. A hearing was set the next month but before then three soldiers offered to help with the case. Delia, her father, the barangay captain and a councilman were invited to the detachment to identify the rapist. Within a few meters of Delia's house, the soldiers raped her again and then shot her and her father to death.

Military encampment in community centers, indiscriminate firing, harassment, economic blockade

San Mariano, Isabel:

Heavy build up of troops from the 45th IB and 77th IB began in July 2002. Two howitzer canons were positioned in the grounds between the church and the elementary school: one was aimed at the direction of Bgy. Balliao and the other faced Bgy. Ueg. Military presence was fortified by an armored personnel carrier (APC), three army trucks and two helicopters. In July 25, 2002, the howitzers were fired indiscriminately towards Bgy. Balliao. This terrified the residents and caused severe trauma and psychological distress especially for the children, the elderly, young mothers and pregnant women.

Young residents – Melicio Guzman, 17 yrs. old, Annibal Aglugob, 22 yrs. and Jorday Deray, 17 yrs. were harassed and tortured by troops and forced to join military operations as guides and to show NPA camps.

Temporary checkpoints were set-up and activity in the farms were restricted, "to isolate and starve the fleeing rebels." according to Capt. Rogelio Nigote, spokesperson of the 45th IB. At the checkpoints, the military would randomly interrogate people, do body searches and inspect bags. At Bgy. Balliao, farmers and wood gatherers could not go near the area where there had been a clash between the military and the NPAs. The military however denied that there was an economic blockade and called it as a case of "population mobility and resource control."

Farmers, meanwhile, are especially encumbered by this since they cannot tend to their farms nor harvest crops. Much of the banana and corn crops that were ready for harvest ended up rotting in the fields because the farmers were not allowed to go near them.

Harassment, Coercion, Intimidation, Torture

Jones, Isabela:

Increased troop deployment was the military's response to organized protests to projects that would jeopardize people's sources of livelihood. Big businesses, government projects, foreign agribusiness and forced crop conversion threaten to destroy the community's basic sources of livelihood. These companies include Royal Cement Mining Corp. that will cover 23,490 hectares and the Nestle plantation that

would convert to coffee cultivation about 165,000 hectares of agricultural land presently producing a variety of fruit and vegetables.

People opposing the projects are quickly tagged as “communists” or NPA supporters and have become easy targets for harassment, coercion, physical assault, intimidation, and torture.

2. Visayas - Panay Island, Capiz, Iloilo

Restrict farm activities, harassment, illegal search, destruction of property

Residents of barangays Daan Sur, Sinunod, Bato-bato, Mabini, Rizal Sur, Nayawan, Tacayan and Aglinab Capiz and Garangan, Calinog, Iloilo met with a Fact-Finding Team and Peace Mission in October 7 to 11, 2002 following increased military presence and human rights abuses in the said areas. An \$18 million dam is under construction by French Spie Ewertans and EGIS.

The main source of livelihood of the residents is raising agricultural products in their swidden farms—root crops, fruits and vegetables. They plant rice in some areas but the produce is very limited. Farmers form work groups composed of many families to share the tasks of plowing, planting and harvesting without paid labor. This has changed radically as Task Force Panay consolidated military units to break tumanduk resistance.

In the report of the Fact-Finding Team, “the presence of armed soldiers has adversely affected the farming activities of the residents... They are prevented from going too early to their farms and are obliged to be home before dark. thus, spend less time to tend to their farms. They worry about leaving their families behind because they might be harmed by soldiers or, those whose houses are occupied by soldiers or are near the camps, they fear the children would play with their grenades or guns and get hurt...”

The military – Scout Rangers and 12th IB – claim they are there to provide security for the construction of a barangay road from Roxas to Agpalali, presumably in preparation for the dam construction. They occupied a schoolhouse, three houses in Daan Sur, a house in Sinunod and built a temporary house in Bato-bato. The military men instruct barangay officials to recruit four persons per sitio for the CAFGU but the people resisted. They fear that the soldiers would do something drastic to pressure them to form CAFGU units.

Since 2000, four residents of barangays Nayawan and Acuna were shot, made to dig their own graves and subjected to interrogation. In Bgy. San Miguel Ilaya, a teenage girl was raped by an officer identified as Capt. de la Mota. In barangays Minan, Siya, Aglupacan, Mabini and Tinubasan, peoples’ homes were searched without warrants and their hunting weapons confiscated. The CAFGU is reviving old conflicts and

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pitting one community against another.

The FFM recommended the pull out of military detachments in the residential areas and deploy instead health workers, teachers and training personnel to help the communities. It also called for the prosecution of erring military officers and soldiers.

Bombardment of Community, Forced Evacuation, Hamletting, Destruction of Property, Fake Surrender

Barangay Lawan-lawan, Las Nieves, Agusan del Norte, October 1997, March 1998 (KARAPATAN-Caraga files):

Residents of all sitios of Barangay Lawan-lawan received notice on October 26, 1997 to evacuate to Kilometer (Km.) 27 before 4 p.m. after which the place would be "No Man's Land." Looming in the horizon was a major military operation by combined forces from the 401st Brigade: the 58th IB, Special Forces, Civil-Military Operations (CMOU) and the Division Redondo Unit.

Over 300 Higaonon families of Bokbokon, Ojot, Talotoan, Bantayan, Kilagnay, Carbon, Anas and Km. 30 evacuated to Km. 27. Houses and makeshift quarters crammed five to ten families. That evening, troops started moving into Lawan-lawan in trucks, from platoon-size swelling to division-size in just three days. One truck had a canon in tow.

For some, the notice came too late. Rather than risk meeting the military along the way out, two groups decided to take a detour familiar to them and go into the nearby forest. In these two groups were seven families from Sitio Tagpangi, Lawan-lawan and Sitio Malayag, Simbalan, Buenavista and the other was a group of five families from Sitio Malayag, Simbalan, Buenavista. These families made temporary shelters in the forests that day. Early the next day, two helicopters swooped down towards Tagpangi and Macabay: they dropped bombs and fired at the farms, houses and surrounding forests. This was complemented by steady mortar shelling from the direction of Km. 27. The group decided to move deeper into the forests and met by six other Higaonon families evacuating from Km. 30, Anas and Carbon .

The bombardment went on for days, would stop temporarily and then resume unexpectedly. Because they had left behind their farms, livestock, food supplies, crops ready for harvest, all the evacuees in Kam 27 and in the forests would soon run out of food and basic necessities. The 19 families would live in the forests for two months, moving from place to place as food became scarce. They had to part ways in December 1997 when some families decided to evacuate to Nabangkal.

Fake Surrender. In January 1998, one of the leaders of the 19 families, Datu Saldong Domino, was met by Datu Mantimongmong who negotiated his surrender to the 58th IB. Datu Saldong resisted since he was a civilian and was not with the NPA, he was forced to "surrender" and was promised financial aid and guaranteed a safe return for his

family.

Datu Saldong's entire family, including a six-year-old child was included in the surrender papers. He was given a firearm to surrender. He was presented to Capt. Miranda and Col. Rara of the 58th IB on March 24, 1998 and photographs of the "surrender rite" were taken.

The following day, Datu Saldong and his wife Nene and children Rosa, Gary, Olin and Ulos were brought to Prosperidad, Agusan del Sur where they reenacted the surrender. Photographs were again taken and the same firearm was surrendered, this time to Col. Ernesto Carolina, commanding officer of the 401st Brigade.

The family was given P11,000 cash and a carabao worth P11,000. The balance of P3,000. was never given. Despite the "surrender" they were unable to return to their community and had to relocate as the 58th IB and the CAFGU continued to monitor their movements.

After this and similar highly publicized "surrender rites," Col. Carolina earned his meritorious promotion and became major general.

Forced Evacuation, Harassment, Forced Recruitment, Fake Surrender

La Purisima, Prosperidad, Agusan del Sur, September 1998:

Twenty two Manobo families fled their village on September 19, 1998 after a number of violent incidents with the paramilitary group, Pakigbisog sa Caraga (Lupaca) -Bagani warriors led by Manuel (Datu Mantimbangan) Perez.

Before they decided to flee, the evacuees were constantly harassed because they refused to join the Lupaca-Bagani warriors, a fanatical group formed to fight the NPAs. Perez earlier claimed that they confiscate eight firearms from "NPA hideouts" in their village. The residents however said the firearms seized were old firearms used in ransacking tunnels of bandits. One of the Manobos in La Purisima, Edgar Cinzo, 26 years old was shot dead, his head, thighs and buttocks severed by Lupaca-Bagani warriors. Cinzo openly opposed the entry of the CBFMA in their village and was an outspoken critic of the role of the Lupaca-Bagani warriors in pushing for the CBFMA's approval. He was tagged as an NPA because of his views and was accused of being an NPA hitman. He was a worker at Liberty Forest Incorporated.

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APPENDIX D:

A Plea from the Daughter of a Murdered Leader

Warmest Greetings!

I am Joan Ngayaan, the sixth of eight children of Daniel Ngayaan. In the hope of bringing justice to the brutal death of my father, I come here today to share with you what transpired on October 5, 1987 and what my memories I have of him. These memories and his principles are what we inherited from him

When I was a child, I remember that my father would be out of our home and our village most of the time and would come back with stories of what he did in other villages and in other places outside of the province and the region. I was too young to comprehend all of these – the incidents and the stories. However, as I got older and eventually became part of the Cordillera mass movement I gradually understood all these.

During the period of the Chico Dam opposition, our village of Tanglag, Lubuagan, Kalinga was highly militarized. Our village was one of the communities that the Chico Dam would have submerged [if the project proceeded as planned]. Ama [father] was one of the firm leaders who led the opposition to the Chico Dam.

But because I felt that he did not have enough time for us, I earlier thought of Ama as an irresponsible father. I would weep whenever he would leave our home and would only be consoled by his promise that he would be back at once and that he would buy nice slippers for me.

At the height of the people's opposition to the Chico Dam, my father did not come home. The military incarcerated him and hundreds of others from our village and from other communities at the military barracks two hours away from our place.

I remember that went along with Auntie Felisa (Ama's younger sister) and many others to visit Ama and his other companions detained at the barracks the following day. We were allowed to see him that day but we could also not leave the military barracks. Like him, I became a young political detainee. The presence of three other children detainees cushioned the harshness of captivity. I remember riding together with some of my playmates on the backs of our uncles or older cousins, alongside fully armed soldiers. However, I was only seven years old to realize that the soldiers were using us as human shields while on patrol against possible attacks from the NPA. We were detained until they transferred Ama and the other detainees in Camp Crame in Manila.

In spite of the incarceration and the death of his comrades, my

father did not waiver in his commitment for what is just and right. He continued to serve the Kalinga people, made efforts in forging unities among villages and advanced the people's interests. He became the founding vice-chairperson of the Cordillera Peoples' Alliance and chairperson of the Cordilleran Bodong Association.

On October 5, 1987, he was not able to come home.

Elements of the Cordillera Peoples' Liberation Army abducted Ama at the Cagaluan checkpoint in Kalinga on his way home from a CPA regional council meeting in Baguio City. Days later, Conrado Balweg, the CPLA chief, admitted to the local press of Baguio that he ordered the execution of Ama for his membership in the CPA.

We were not able to see his body nor give him a decent burial. All we have retrieved in our search for him were pieces of his teeth and some torn and bloodied pieces of his clothes.

Fifteen years after, the remains of Ama are still missing. Fifteen years later the State has not lifted a finger to assist us in giving justice to Ama's death.

On December 31, 1999, twelve years after Ama's death, the New Peoples' Army in the Cordillera punished Conrado Balweg for his culpability in the murder of Ama and other crimes that his CPLA committed against the people of the Cordillera.

However, even with the death of Balweg, justice has not been fully served.

We still demand from the State and the CPLA to produce the remains of Ama. We still demand from the State that they punish the other CPLA perpetrators of this crime to the fullest extent of the law.

I am enraged that President Gloria Macapagal-Arroyo has integrated the CPLA into the Armed Forces of the Philippines even with their countless atrocities against the Cordillera people.

I am enraged that the CPLA and the State have unjustly denied me and my kin the happiness of having a father and getting to know more of Ama. What I have are memories – memories that are hazy as I lost a father at a tender age.

Ama played a crucial role in uniting various villages of Kalinga and Mountain Province against the Chico Dam. Ama and countless other Cordillera martyrs have given so much in the defense of our lands and rights.

Ama is a hero of the peoples of the Cordillera. Ama was not only a Father to his family but also to his village and to the Cordillera mass movement. His ideals live on as we persevere in the struggle that he and other Cordillera heroes fought for valiantly.

This testimony by Joan Ngayaan was delivered during the Luzon-wide dialogue with the UN Special Rapporteur for Indigenous Peoples

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on December 5, 2002 at the Sta. Catalina Convent, Baguio City, Philippines. It was transcribed and translated from Ilocano by the Beverly Longid (DINTEG) and the Cordillera Peoples' Alliance.

APPENDIX E:

Affidavits

Several affidavits from victims or witnesses of human rights violations were submitted to the UN Special Rapporteur during the regional dialogues. Some of these affidavits are being reprinted here.

Affidavits from Northern Luzon:

Republic of the Philippines)
Mountain Province)) S.S.
Municipality of Sadanga)

AFFIDAVIT

I, MARCY CAMMAREG, of legal age, married, native and resident of Posong, Anabel, Sadanga, Mountain Province and a farmer by occupation after having been duly sworn to in accordance with the law, depose and state to wit:

1. That in the morning of August 9, 2002, my father Johnny Cammareg armed with a carbine and I with an airgun left home purposely to visit our carabao at Sitio Ofor then after which we would go hunting;

2. That before reaching sitio Potakag, my father instructed me to go cut wood instead, but before departing he advised me to tell my mother to meet him at Sitio Forasao to harvest rice as he would proceed to Sitio Ofor and will stay there overnight to *enlenao* (to position one's self near a *kaingin* planted with camote and wait for wild pigs to hunt down). I then gave him his *pasiking* (native backpack made of rattan).

3. That on or about 11 a.m. of that day, while I was cutting wood, I heard a burst of automatic gunfire somewhere at Potakag but could not pinpoint exactly the location as I was a little bit far.

4. In the afternoon I went home and in the evening, I informed my mother what my father said so that on the next day August 10, 2001, we went to Forasao to harvest palay and late in the afternoon my father did not arrive so when we went home we contacted our relatives and sitionates and formed a search party.

5. That before proceeding, my group went first to the camp of the Philippine Army to ask permission and to inform them about our purpose then after which joined the rest and started going to Ofor using a torch as our light. On our way we were shouting his name expecting a response but there was no reaction until we reached Sitio Ofor. We then went from one cabin to another and in places which

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ought to be searched but to no avail. We went further expanding our search until we rested and slept in a small hut.

6. The next morning we resumed and thought of the gunfire some of us heard at Sition Potakag so we went back to the said place and on the way, just above the irrigation, some of us saw some empty shells of ammunition on the edge of the footpath. We then scoured the area and noticed combat boot prints and a mark indicating something has been dragged then thrown. We traced the impression and below the irrigation, about 40 meters, was my father already dead, lying face down and in a state of decomposition. I noticed his bolo was missing so I told my companion to look for it to include the carbine and the pasiking. As others were retrieving the cadaver, one shouted "*Fetad!*" (a shout to alarm the populace on the death of a person and implying assistance needed). We made an improvised stretcher and then when the notified populace began arriving we brought home the cadaver to our residence.

7. That I am executing this affidavit to attest to the foregoing facts and circumstances.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 24th day of August 2001 in Sadanga, Mountain Province.

(signed) MARCY CAMMAREG
Affiant

Johnny Cammareg was shot dead by the 22nd Special Forces Company. Please refer to case summary in Appendix C.

Republic of the Philippines)
Province of Isabela) S.S.
Municipality of Jones)

AFFIDAVIT

I, WILLY LUMAJO, 37 years old, currently residing at Sitio Germitan, Barangay Bello, Jones, Isabela under oath do hereby depose and state:

That on October 22, 2001 at 4 a.m., soldiers of the 45th IB PA went to our house;

That the soldiers forcibly dragged me outside of our house, punched me repeatedly, strangled me and stepped on my legs and feet;

That they brought me to the mountainous part of Barangay Villa Bello, tied my hands behind my back, tied my clothes around my neck and covered my mouth so that according to them I would not be able

to shout;

That they tied me to a tree, with my hands tied behind my back and with ropes tied around my stomach;

That I was tied to the tree for approximately four hours;

That I was exposed to direct sun for hours and the soldiers even said, "Kulang na lang ang katay!" (The only thing lacking is the slaughter);

That I swear under oath, to the truth and of the foregoing statements.

IN WITNESS WHEREOF, I have hereunto affixed my signature on this 6th day of November 2001 in Sitio German, Barangay Villa Bello, Jones, Isabela.

(Signed) WILLY LUMAJO
Affiant

Affidavits from Mindanao:

These were all compiled by Karapatan-Caraga Among the affidavits submitted were the following: Tandag and Bislig Surigao del Sur – 8; Butuan City, Agusan del Norte – 5; Gingoog City, Misamis Oriental – 7; Buenavista, Agusan del Norte – 9; Prosperidad, Agusan del Sur – 8; San Luis, Agusan del Sur – 8;

Republic of the Philippines)
Province of Agusan del Norte) S.S.
Municipality of Buenavista)

AFFIDAVIT

I, DATU CIRIACO MANSAMAHAN, 49 years old, Filipino, married, residing in Sitio Bagang, Simbalan, Buenavista, Agusan del Norte and a member of the Higaonon indigenous people, after having been sworn to in accordance with the law, depose and state that:

1. I was a resident of Sitio Malayag, Lawan-Lawan, Las Nieves, Agusan del Norte until the bombing incident which affected our community;

2. On October 26, 1997, while I was visiting relatives in Simbalan, Buenavista with Datu Batalon Mansamahan, I heard about the directive to evacuate and the planned military operations in Lawan-lawan so I hurried home and arrived in Malayag at around 7 a.m. on October 27, 1997.

3. Because it was already beyond the deadline, I met with the heads

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of the 7 families with 37 people who were left behind and we decided to stay and hide in the nearby forest for protection;

4. That afternoon at around 4 p.m., I heard bomb explosions coming from the direction of Kiupaw, Nabangkal, Kamang-kamang, Segunda, Balanatiyong, Talabugtaa, Tagpangi and Macabay, all Higaonon communities in Lawan-Lawan, Las Nieves, Agusan del Norte;

5. On October 28, 1997 at around 1 to 2 p.m. , 2 helicopters flew over Malayag and opened fire, hitting our big house for assemblies and rituals;

6. We hid deeper into the forest, leaving our houses with our clothes, utensils and farm implements, 11 hectares of unharvested crops and livestock (pigs and 30 chickens);

7. We lived in the forest for 2 months, hunting wild animals and gathering edible plants;

8. On December 26, 1997, there was mortar shelling in the forest and we were forced to part with Datu Batalon and seek safer ground with my family;

9. We reached Sitio Bagang, Simbalan, Buenavista, Agusan del Norte after 2 days and were able to find somewhere to live;

10. Because of the unhealthy conditions she had to go through during her pregnancy, my wife had a difficult deliver and my baby son died after 5 months;

11. For fear of further military operations, we have not gone back to our farms and have not recovered from the economic cost of the evacuation;

12. I am executing this affidavit freely and voluntarily attest to the truth of that written above and for such legal purposes this may serve.

IN TRUTH WHEREOF, I hereunto set my hand this 5th day of March 1999 at Purok 1, Ampayon, Butuan City.

(signed) DATU CIRIACO MANSAMAHAN
Affiant

Republic of the Philippines)
Province of Surigao del Sur) S.S.
Municipality of Tandag)

AFFIDAVIT

I, GILBERTO MARQUEZA, married, 37 years old and a resident of Sitio Boyon, Maitum, Tandag, Surigao del Sur, after being sworn to in accordance with the law, depose and state that:

That on July 27, 1998, at about 8:30 a.m., seventeen (17) elements of the 67th IB PA, bearing no name plates, based in Barangay Dayoan, Tago, Surigao del Sur, arrived in Sitio Boyon, Maitum, Tandag, Surigao del Sur;

That upon their arrival, they proceeded to harass us and ransack our houses without due authorization from the court (no search warrant). The military searched through our belongings looking for firearms. They alleged that we safe-kept firearms for the New People's Army (NPA);

That the military did not find any firearms from our abode;

That since they failed to find arms, they took our photographs without stating their reasons;

That I could not refuse because they were all armed;

That included in the search were the houses of Nicolas Velasco Sr. and Nicolas Velasco Jr.;

That they were also forcibly photographed by the military;

That later, I learned that the 67th IB PA entered our community through our Barangay Councilor Pedro Velasco;

In order to attest to the truth of my statements mentioned above, I affix my signature this 3rd of August, 1998 here in Tandag, Surigao del Sur.

(signed) GILBERTO MENDOZA
Affiant

Republic of the Philippines)
Province of Agusan del Norte) S.S.
Municipality of Las Nieves)

AFFIDAVIT

I, Dodong Alba, 39 years old, Filipino, married, residing in Km. 24, Lawan-lawan, Las Nieves, Agusan del Norte and a member of the Higaonon indigenous people, after having been sworn to in accordance with law, declare and state that:

1. On October 26 1997 at around 7 a.m., while I was harvesting our crops in Kilometer 30, Lawan-lawan, Las Nieves, Agusan del Norte, my sister, Erlinda Talja informed me of the directive to evacuate to Kilometer 27 by 4 p.m. that day;

2. Areas beyond Kilometer 27 were to be declared "no man's land" after the allotted deadline for military operations shall start then, according to the directive;

3. At around 8 a.m. I decided to bring my family to Kilometer 27

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with my sister, Yolly Talja's family;

4. We arrived at the town center at around 3 p.m. and met up with two other families, that of my sister, Erlinda Taja and my parents;

5. Upon seeing that all houses, bunkhouses, the public school and even the Kalihukan sa Nagkahiusang Minorya (KNM) office were full, I asked for permission from Datu Ongcad "Deo" Maguanta to proceed to Km. 24;

6. Before we left, we were warned not to leave Lawan-Lawan until we were allowed to do so by the barangay officials, the KNM officials and the military;

7. We arrived at Km. 24 at around 4 o'clock in the afternoon and I built a *payag* (shed) to house my family about ten meters from the main road;

8. At around 6 pm, I saw two armored cars dragging two 60 mm machine guns and three 6 x 6 filled to a capacity of 30 soldiers each, of which dragged a cannon going towards Km. 27;

9. On October 27, 1997 at about 2 pm while I was home, I saw two helicopters going towards Km. 27 and bomb explosions followed minutes later;

10. This was then followed by mortar fire and rapid gunfire;

11. Bomb explosions, mortar and rapid gunfire occurred intermittently for three days;

12. On October 29, 1997 a census was conducted by elements of the 58th IB, issuing each family a blue card listing all household members with instructions to report any change in household size to the barangay leaders or to the military;

13. On this same day, the military started to recruit all males and females aged 14 and above to become members of the Civilian Volunteers Organization (CVO);

14. Children aged 9 to 13 were recruited and trained as spies and informants of the military for any suspicious occurrences in the *puroks* (house groupings);

15. Elements of the 58th IB conducted spot checks and roving activities at different times of the day;

16. The military also called purok meetings wherein government projects and its achievements were discussed, encouraging the people to trust and help the military in its anti-insurgency campaign;

17. On November 2, 1997, Datu Panalang, the barangay kagawad in Purok 1 visited our purok and informed us of the directive that no one is allowed to go beyond Km. 27 without a safe conduct pass, effective for a maximum of three days, signed by the barangay kagawad, the barangay captain, the KNM and the military;

18. People were allowed to leave the area only in groups of eight or more with one CAFGU, usually armed with a Garand rifle or an M14

standing as guard;

19. On November 4 to 8, upon our complaint, the military allowed us to visit our abandoned farms and houses with the precondition that we should return on or before the deadline;

20. I lost 25 sacks of corn and palay from my harvested stock and was able to bring home only five sacks;

21. Five hectares of rice and corn with another five hectares planted with bananas, vegetables, sweet potatoes and other root crops rotted in the fields, unharvested;

22. I lost 30 chickens and three pigs, all in their cages when we left;

23. During this entire period of hunger, fear and insecurity, one one-year old nephew and another six-month old niece of malaria;

24. Because these continue to this day, we are not allowed to visit our farms and the forest unguarded so that we are unable to go back to our usual economic activities thus production is limited; we are not able to perform our tribal rituals and gatherings; we live in constant fear of continued military operations and suspicion;

25. I am executing this affidavit freely and voluntarily to attest to the truth of all the above, and for such other legal purposes it may serve.

IN TRUTH WHEREOF, I hereunto set my hand this 5th day of March 1999 at Purok 1, Ampayon, Butuan City.

DODONG ALBA

Affiant

Republic of the Philippines)

Butuan City) S. S.

AFFIDAVIT

I, ROBERTO "DATU ANDARIQUE" Tanugan, of legal age, Filipino, a resident of Purok 9, Balalaan, San Juan, Bayugan, Agusan del Sur, and a member of the Manobo indigenous cultural community, after having been duly sworn to in accordance with the law, do hereby freely and of my own volition, state and depose that:

1. I am the duly recognized tribal chieftain of Balalaan, San Juan, Bayugan, Agusan del Sur, with the traditional authority and jurisdiction over the Manobo residents thereof;

2. MARCIAL TANA, DIDI TANA, JOCELYN TANA, VILMA TANA, BORONDOS TANA, BUNSILIAN BRITAL, ESTRELLA UNDAYON, and MAYDA PONSO are residents of Purok 9, Balalaan, San Juan, Bayugan,

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Agusan del Sur, and are personally known to me as such;

3. I certify that the above-named persons were killed by strafing and bombing operations conducted by the Philippine Air Force in Purok 9, Balalaan, San Juan, Bayugan, Agusan del Sur on August 18, 1995 as described in the information sheets appended hereto as "Annex A" and made an integral part of this document;

4. I am executing this affidavit to attest to the truth of the above, and for such other legal purposes it may serve.

IN WITNESS WHEREOF, I hereunto set my hand this 26th day of March 1996 in the City of Butuan.

(Thumbark affixed) ROBERTO "Datu Andarique" TANUGAN
Affiant

BEFORE ME, A NOTARY PUBLIC, appeared the affiant, who presented his Residence Certificate No. 13693731 issued at San Juan, Bayugan, Agusan del Sur on March 25, 1996.

WITNESS MY HAND and seal, this 26th day of March 1996 in the City of Butuan, Agusan del ____.

(signed) ROAN LIBARIOS
Notary Public

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Republic of the Philippines)
Province of Surigao del Norte) S.S.
Municipality of Claver)

AFFIDAVIT

I, LOUIE BAGO, 27 years of age, member of the Mamanwa people and resident of Purok 5, Tag-anito, Claver, Surigao del Norte, after having been duly sworn to in accordance with the law, freely and of my own volition do hereby depose and state the following:

1. That, the Mamanwa community has a total household of 26, once peacefully settling in the forest recesses of Boronbangkaw, Claver, Surigao del Norte with agriculture and hunting as primary source of subsistence;

2. That, we were forced to vacate our settlement due to extreme

pressure due to the intrusion of Tag-Anito Mining Corporation (TMC). To my knowledge, the company went into full operation two years after my birth;

3. That, to ensure the company's operation, military personnel were augmented;

4. That, as part of the company's interest in the reported rich mineral resource areas, communities were compelled to vacate and many families left the area and settled in the lowland barangays near town centers;

5. That, the mining company offered not development but dislocation and environmental hazards. The fresh green forests had turned to a virtual desert; laterite dust from the mines lingered in the air and polluted our water;

6. That, due to the loss of our farms we were forced to be employed as the TMC's laborers. We were paid P110 per day for three loader's buckets of boulders. This was insufficient to feed our families. Sometimes we were employed on a ten-day contract with the company for P140 to P160 per day;

7. That, to ensure the company's swift operation, it employed a private army led by a certain Letty So Paton. Said company armies restricted us from freely passing their concession going to our farms. We were forbidden from entering said areas;

8. That, aside from the existing company army, paid elements of the Regional Special Armed Forces (RSAF) of the Philippine National Police (PNP) served as augmentation to security personnel within the premises of the company. The said armed groups were responsible in frequent investigations on the alleged involvement of the datos (tribal leaders) with the New People's Army (NPA);

9. That, a company-sized RSAF and a platoon-sized PNP units were deployed for the protection of the company;

10. That, the NPA was believed to be the company's threat in its vast mining concession due to the company's atrocities committed against the indigenous people;

11. That, we were frequently asking the authorities of TMC for help with our devastated economic condition. We have already made resolutions asking the interference of government agencies especially the National Commission on Indigenous Peoples (NCIP) as to compel TMC regarding our claims of security of tenure within TMC, lessen the pollution inflicted by the mining operations based on our agreement and as mandated by Republic Act 7942;

12. That, from year 1998 until now, we instituted every effort to consolidate our lumad communities of Kapangdan, Urbiztondo, Taganito, Huyanggabon and Cagdianao as our ancestral domain where right to self-determination be founded. Files and documents were sent to the

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concerned government agencies. Government response is still to be heard;

13. That, I am executing this affidavit to attest to the truth and veracity of the above, and for such other legal purposes it may serve.

(signed) LOUIE BAGO

Affiant

IN WITNESS WHEREOF, I hereunto set my hand, this 9th day of December 2002 at the City of Butuan, after the affiant exhibited to me his Community Residence Certificate No. 19648365 issued at Claver, Surigao del Norte on August 2, 2002.

(signed) DANTE C. M. TIROL

Notary Public

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Series of 2002

Republic of the Philippines)

Province of Agusan del Norte) S.S.

Municipality of San Luis)

AFFIDAVIT

I, MAMA M. GOMANSIL (Datu Manhumagpay), A Filipino citizen, 40 years old, married, a resident of Km. 44, Kiamo, Mahagsay, San Luis, Agusan del Sur and a member of the Banwaon indigenous people, after having been duly sworn to in accordance with the law, do freely depose and state that:

1. On 8 October 1997, while I was in Km. 19, Policarpo, San Luis Agusan del Sur, my wife, Joy Gomansil sent me a letter informing me of the bombing incident in Sitio Kiamo the day before, 7 October 1997;

2. When I showed the letter the Major Cinco, the commanding officer of the detachment of the 36th IB, he did not deny the incident;

3. Instead, Major Cinco defended their action saying the bombs just gave off a loud noise but cannot kill. He called those "baby rockets;"

4. After one week, when I went home I saw out *tambobong* was ransacked by the soldiers;

5. There were 2 sacks of palay that was spilled, our work clothes were thrown about and our *gimbal*, the drum for rituals, was stolen;

6. On November 1997, at about 2 in the afternoon, 15 families of about 55 persons from my community in Kiamo were gathered outside my house for a thanksgiving ritual for a good harvest. Some were drying their palay on the road and some were hand-milling their *palay* (rice grains) outside their houses;

7. Then we saw 2 helicopters reconnoitering around our communities;

8. When the helicopters reached the area above Bulalang, 8 kilometers from Kiamo, one bomb exploded. This was followed by aerial strafing by the other helicopter;

9. Over Kandiidan, 2 kilometers from Kiamo, another bomb fell and exploded as the strafing continued;

10. By this time our community was so frightened that people ran and hid near the forest, behind the trees. The helicopters were fast approaching Kiamo;

11. Over at Kiamo, a bomb fell and exploded 150 meters from my house;

12. Another fell and exploded in our rice field 500 meters from my house;

13. The aerial strafing continued for 30 minutes, hitting trees and felling logs about one foot in diameter;

14. Thirty minutes after the bombing and strafing, my son, Tami Gomansil and I went to our rice field, where we saw a smoking pit, half a meter wide and two meters deep.

15. I stepped on the cement-like dust, some parts of which still gave off sparks. The cloud of dust hovered in the air; giving a burning sensation to our eyes and lungs;

16. After 5 minutes we began to feel dizzy and sick;

17. Our family remarked on our pallor and weakness; it took one week before we could go back to our daily work load;

18. When I asked Col. Ernesto Carolina about these bombings during the dialogue held in Balit, San Luis, Agusan del Sur on 1 December 1997, he said that the bombs used were discarded explosives which the military cannot use anymore.

19. "Then why did you make our community the dumping ground of your deadly trash?" I asked him, but he did not answer.

20. I am executing this affidavit to certify and affirm the truth of all the above and such legal purposes it may serve.

IN TRUTH WHEREOF, I hereunto set my hand, this February 23, 1999, at Barangay Balit, Municipality of San Luis, Province of Agusan del Sur.

(signed) MAMA M. GOMANSIL (Datu Manhumagpay)
Affiant

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Republic of the Philippines)
Province of Agusan del Norte) S.S.
Municipality of Buena Vista)

AFFIDAVIT

I, MALITO BINANUGAN, of legal age, Filipino, married, residing in Purok 8, Linaw-Linaw, Simbalan, Buenavista Agusan del Norte and a member of the Higaonon indigenous people, after having sworn to in accordance with the law, depose and state that:

1. On October 28, 1997 at around 1 to 2 p.m., while my family and I were in my payag (shed) in my in-law's farm in Butay, Maimo, I heard mortar firing then explosions hitting 30 meters then another at 50 meters away from my shed;

2. This was followed by 2 more mortars hitting about one kilometer way then another in the direction of Bagang, Simbalan, Buenavista, Agusan del Norte;

3. For fear of further shells hitting near us, I fled to the forest together with my pregnant wife and 3 children aged 7 to 18 years old;

4. I left my house with all our things, one hectare of rootcrops and 2.5 hectares of bananas and coconut, and livestock (3 pigs and 20 chickens);

5. On October 30, 1997, I met Datu Manatagbay with his family of about 10 persons in the forest and decided to stay with them;

6. After 3 days, because of hunger and insufficient food supplies, we decided to part with Datu Manatagbay;

7. On November 5, 1997, I reached the forest near Segunda, Malayag and met Datu Batalon and the families with him and decided to seek safety with them;

8. The circumstances in the forest were difficult: there was hunger, sickness and fear of further military operations so that I decided to part with Datu Batalon's group after one month;

9. We walked through the forest and reached Purok 8, Linaw-linaw, Simbalan, Buenavista, Agusan del Norte, where we were met by Datu Mantimongmong Bayunos;

10. He started to negotiate the surrender of Datu Manatagbay;

11. In about mid-January 1998, I met with Captain Miranda of the 58th IB who instructed me to report to the 58th IB detachment in Guinabsan, Agusan del Norte;

12. He also negotiated for the surrender of Datu Manatagbay;

13. Until now I am asked to report suspicious occurrences and the whereabouts of Datu Manatagbay to the barangay captain in Sangay, Buenavista, who reports to the detachment in Sangay;

14. I have had no contact with Datu Manatagbay since our meeting

in the forest despite the military's belief to the contrary.

15. I am executing this affidavit freely and voluntarily to attest to the truth of that written above and for such legal purposes it may serve.

IN TRUTH WHEREOF, I hereunto set my hand this 5th day of March, 1999 at Purok 1, Ampayon, Butuan City.

(signed) MALITO BINANUGAN
Affiant

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APPENDIX F: Mandate of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People

Human rights and indigenous issues
Commission on Human Rights resolution 2001/57

The Commission on Human Rights,

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights, that all are entitled to equal protection against any discrimination and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, national origin, birth or other status,

Mindful of the relevant recommendations adopted by the World Conference on Human Rights, in particular those contained in Part I, paragraph 20, and Part II, paragraphs 28 to 32, of the Vienna Declaration and Programme of Action,

Recalling that the objective of the International Decade of the World's Indigenous People is the strengthening of international cooperation for the solution of the problems they face in areas such as human rights, the environment, development, education and health,

Noting with satisfaction the progress in some countries on the protection and promotion of the human rights of indigenous people,

Encouraged by the growing interest of the international community in the full and effective protection of the human rights of indigenous people,

Taking into account the mandate of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights to review developments pertaining to the promotion and protection of their human rights and fundamental freedoms, giving special attention to the evolution of standards concerning their rights,

Noting with satisfaction the decision of the Economic and Social Council to establish a Permanent Forum on Indigenous Issues, as a

subsidiary organ of the Council, with the mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights,

Taking into account the absence of a mechanism in the Commission on Human Rights with a specific mandate to protect and monitor the respect and enjoyment of the human rights and fundamental freedoms of indigenous people,

Taking particularly into account the recommendation of the Sub-Commission on the Promotion and Protection of Human Rights that the Commission on Human Rights appoint a special rapporteur on the human rights and fundamental freedoms of indigenous people,

Taking into account decision 2000/105, adopted without a vote by the Commission on Human Rights, to postpone the consideration of draft resolution E/CN.4/2000/L.63,

Bearing in mind resolution 2000/22 of the Economic and Social Council, entitled "Establishment of a Permanent Forum on Indigenous Issues",

Conscious of the situation of vulnerability in which indigenous people frequently find themselves and that in various situations they are unable to enjoy their inalienable human rights and fundamental freedoms,

Reaffirming the urgent need to recognize, promote and protect more effectively the human rights and fundamental freedoms of indigenous people,

Determined to promote the enjoyment of their human rights and fundamental freedoms by indigenous people,

1. *Decides* to appoint, for a three-year period, a special rapporteur on the situation of human rights and fundamental freedoms of indigenous people, with the following functions:

(a) 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;

(b) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people;

(c) To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights, taking into account the request of the Commission contained in resolution 1993/30;

2. *Invites* the special rapporteur to take into account a gender perspective while in carrying out her/his mandate, paying special attention

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to discrimination against indigenous women;

3. *Also invites* the special rapporteur to pay special attention to violations of the human rights and fundamental freedoms of indigenous children;

4. *Further invites* the special rapporteur, in carrying out his/her task, to take into account all the recommendations of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and of the Permanent Forum on Indigenous Issues relevant to her/his mandate;

5. *Encourages* the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to give special attention to discrimination against indigenous people and requests the special rapporteur to consider, in performing his/her work, the recommendations of the World Conference on matters concerning his/her mandate;

6. *Encourages* the United Nations, including its specialized agencies, other regional intergovernmental organizations, Governments, independent experts, interested institutions, non-governmental organizations and, in particular, indigenous people to cooperate to the fullest extent possible with the special rapporteur in the fulfillment of his/her mandate;

7. *Requests* all Governments to cooperate fully with the special rapporteur in the performance of the tasks and duties mandated, to furnish all information requested and to react promptly to his/her urgent appeals;

8. *Encourages* all Governments to give serious consideration to the possibility of inviting the special rapporteur to visit their countries so as to enable him/her to fulfil the mandate effectively;

9. *Requests* the Chairperson of the Commission, following formal consultations with the Bureau and the regional groups through the regional coordinators, to appoint as special rapporteur an individual of recognized international standing and experience;

10. *Requests* the special rapporteur to submit annual reports on his/her activities to the Commission, starting at its fifty-eighth session;

11. *Requests* the Secretary-General and the High Commissioner for Human Rights to provide all the necessary human, technical and financial assistance to the special rapporteur for the fulfillment of her/his mandate;

12. *Decides* to consider the follow-up to this question, as a matter of priority, at its fifty-eighth session, under item 15 of its agenda.

76th meeting
24 April 2001
[Adopted without a vote]

APPENDIX G:

PETITION TO THE NCIP TO INVITE THE UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE TO INVESTIGATE ALL FORMS OF HUMAN RIGHTS VIOLATIONS AGAINST INDIGENOUS PEOPLES IN THE PHILIPPINES

Whereas: the Indigenous Peoples' Rights Act (R.A. 8371) of the Republic of the Philippines has been enacted...

Whereas: the National Commission on Indigenous Peoples is the government body tasked to implement the Indigenous Peoples' Rights Act.

Whereas: a "National Indigenous Peoples' Workshop on the Indigenous Peoples Rights Act (IPRA) and Development" was held at the St. Paul Seminar House at Punta Bonbon, Cagayan de Oro, from February 26-March 3, 2002.

Whereas: this was participated in by 90 representatives of indigenous peoples organizations and communities, support NGOs and observers.

Whereas: there is unity within the workshop that indigenous peoples rights to their ancestral domain, to self-determination and self-governance should be recognized and promoted by the government.

Whereas: there are indigenous peoples who have already acquired CADC/CALC and CADT/CALT.

Whereas: numerous cases of violations of indigenous peoples' rights and development aggression were presented in the workshop and it was also seen that globalization, which is characterized by liberalization, deregulation, privatization, has further exacerbated this and also worsened the poverty situation of indigenous peoples.

Whereas: this can be seen in the following developments:

- The Mining Act of 1995 which facilitated the increasing incursion of mining corporations in indigenous peoples ancestral domains leading to the destruction, pollution and environmental degradation of the lands and waters.
- The NIPAS Act which has deprived indigenous peoples' access and control of their ancestral lands and sacred sites.
- Deceptive reforestation programs like the IFMA and CBFM, etc.
- Ecotourism programs which facilitate the entry of bioprospectors and which further commodify the indigenous cultures and traditions.

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- Expansion of operations of transnational corporations in agribusiness plantations, mining of metals and minerals, logging, etc.
- Field trials, distribution and sale of genetically modified seeds, patenting of indigenous seeds and medicinal plants.
- Increasing militarization of indigenous peoples' communities leading to the killing of indigenous peoples' leaders and activists (Nicanor Santos, Dumagat leader of Rizal (Dec. 8, 2001), arbitrary arrests and detentions, harassments, raids of offices of indigenous peoples' organizations.

It is hereby resolved by the Workshop Participants to ask NCIP;

1. To seriously address the violations of the human rights of indigenous peoples and to create effective mechanisms within the NCIP to deal with this concern.
2. To conduct dialogues with other government agencies, corporations and other entities who are directly responsible for violating indigenous peoples rights.

It is further resolved that the NCIP extends an official invitation to the UN Special Rapporteur on Indigenous Peoples' Rights, Rodolfo Stavenhagen, to visit the Philippines to investigate and document human rights violations of indigenous peoples and to put forward recommendations on how to redress and bring justice to the victims of these violations.

Signed by the participants of the National Indigenous Peoples Workshop on the Indigenous Peoples' Rights Act (IPRA) and Development on 28 February 2002.

APPENDIX H:

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, December 2 – 11, 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

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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 DENR, 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.

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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 indig-

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enous 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 de-

serving 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

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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.

APPENDIX I:

**UNITED
NATIONS**

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**Economic and Social
Council**

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INDIGENOUS ISSUES

Human rights and indigenous issues

**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***

Addendum

MISSION TO THE PHILIPPINES

* The executive summary is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

Executive summary

At the invitation of the Government, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited the Philippines from 2 to 11 December 2002, where he met with government officials, indigenous and other organizations and United Nations agencies.

About 140 indigenous ethno-linguistic groups, representing 15-20 per cent of the total population of 80 million, are present in more than 50 of the country's 78 provinces. They have continuously lived as communities in communally bounded and defined territories, which they have occupied from time immemorial. By retaining their traditions and values from long before European colonization they contribute to the rich cultural diversity and uniqueness of the Philippine nation.

The legal framework in which indigenous rights must be considered under the Constitution is the Indigenous Peoples Rights Act (IPRA) of 1997, which also established the National Commission on Indigenous Peoples. While IPRA recognizes the right to land, self-determination and cultural integrity of indigenous peoples, the Special Rapporteur is concerned about serious human rights issues related to the lack of its effective implementation.

For poor indigenous farming communities crucial land rights are addressed by filing legal claims to their own ancestral domains and titles. The process is cumbersome and indigenous representatives perceive that the business interests of private enterprises, which over the years have encroached upon their ancestral domains, are more protected than their own rights based on land use and continuous occupation. High poverty rates and the lack of basic social services force many indigenous people to migrate to poor urban areas where the situation of women and children is of particular concern.

The present report documents serious human rights violations regarding the human rights implications for indigenous communities of economic activities such as large-scale logging, open-pit mining, multi-purpose dams, agribusiness plantations and other development projects. Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment.

These activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as "development aggression". Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbi-

trary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries, such as Civilian Armed Forces Geographical Units (CAFGUs). The militarization of indigenous areas is a grave human rights problem, as members of indigenous communities are sometimes accused of rebellion or engaging in "terrorist" activity. In the context of the armed conflict that still prevails in the countryside, indigenous communities and organizations are often victimized and their human rights abused.

In view of the above, the Special Rapporteur makes the following recommendations to the Government of the Philippines and other parties:

(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 indig-

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enous 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.

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

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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 Manakayan 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-Secre-

tary 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 de-

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mographic 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 subdi-

vided 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 Regu-

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lations, 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

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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

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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

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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 commu-

nity 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,

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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 op-

eration, 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

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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 com-

pared 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.

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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 Tumanduk²⁸ 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

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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 popula-

tions 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

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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 will-

ingness 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 sur-

vival 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 pro-

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moting 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 Spe-

cial 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)

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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 (ADCs) 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

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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 Fishermen 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.

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APPENDIX J:

PHILIPPINE MISSION TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS

Please check against delivery

Statement by

Mr. DENIS YAP LEPATAN
Head of the Philippine Delegation

**to the 59th Commission on Human Rights
in Response to the presentation by
the Special Rapporteur on the situation of human rights
and fundamental freedoms of indigenous people
of the Report on His Visit to the Philippines**

Item 15: Indigenous Peoples

Geneva, 10 April 2003

STATEMENT BY
Mr. Denis Yap Lepatan
Head of the Philippine Delegation to the 59th CHR
In response to the presentation by
The Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people
of the Report of his visit to the Philippines

Madame Chair,

The visit of Mr. Stavenhagen, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, was the third and last visit the Philippines received last year from the mechanisms of the Commission on Human Rights. Unfortunately, and unlike our response to the first two visits, the Philippines cannot respond positively to the report of this Special Rapporteur.

The Philippines responded to the request for a visit by the Special Rapporteur with openness and transparency, including proposing visits to areas where the communities complained of land tenure problems, lack of livelihood and even militarization. The Special Rapporteur ignored the government proposal. This we can understand since we can only suggest but not impose on the Special Rapporteur.

What we found difficult to understand was the insistence of the Special Rapporteur to reopen two cases that have been considered and decided upon under other procedures of this Commission. The original programme he presented was built around these two cases. During the preparations for the visit, the special Rapporteur also sought to reduce the time for meetings with government officials, which we find surprising considering that after two previous visits by Special Rapporteurs, we have made these meetings a standard part of the schedule. Obviously, unlike the two previous Rapporteurs, this Special Rapporteur gave little importance to dialogue and cooperation with the government. It was also evident that the Special Rapporteur was going to the Philippines, not with an open mind nor in a constructive manner, but with a foregone conclusion in mind, ill-will and bad faith.

In fact, the Special Rapporteur had the opportunity to verify first hand some of the allegations when he visited the Victoria gold mine which was the object of complaints. Unfortunately, he did nothing of this sort and instead used the occasion merely as a media opportunity to cast wild accusations against the government.

Notwithstanding, the Special Rapporteur's malicious intentions, the Philippines allowed the visit to proceed. Since the Philippines has nothing to hide, it was our hope that reason and a sense of fair play

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would eventually guide the Special Rapporteur in preparing his report. This was not to be, as shown by his report, which is nothing more than a litany of unsubstantiated allegations and ridiculous recommendations. The Philippines can only conclude that the Special Rapporteur had allowed his mandate to be hijacked and manipulated by groups with hidden agenda with bloody consequences for the people the Special Rapporteur is supposed to protect.

Madame Chair,

I have here a news report from the Philippine Inquirer, a major daily newspaper with a web-site, dated 12 December 2002, headlined "Tribal folk's rights status worsening, says UN expert," which covered the press conference given by the Special Rapporteur at the end of his visit to the Philippines. To quote from the report, "Prof. Rodolfo Stavenhagen.. urged top Philippine officials to look into 'extremely serious allegations' of summary executions, rape and forced recruitment on account of militarization."

I have another report from the same newspaper on 17 December 2002 under the headline "army troops in pursuit of NPA hostage takers," and I quote "some 30 heavily armed communist rebels attacked a tribal village in sitio Bagul, barangay Binicalan, San Luis town in Agusan del Sur Friday... the rebels killed four tribesmen who have expressed their loyalties to the government... the rebels also burned down the houses owned by the tribesmen and took them as hostages." In all 22 hostages were taken and, while the Special Rapporteur was enjoying his Christmas holidays, these poor hostages suffered in captivity until 9 January 2003 when the last 18 were released.

The significance of the second news report is that this happened in San Luis, Agusan del Sur, one of the places the Special Rapporteur himself chose to visit. Even more significant, this happened on the very same day, 11 December 2002, when the Special Rapporteur gave his press conference. Obviously, the Special Rapporteur had inspired the wrong group – communist terrorists – who considered his visit to San Luis as an endorsement of their evil designs and, therefore, free to terrorize and enforce their will on hapless indigenous communities. They did not even wait for the Special Rapporteur to leave before perpetrating their heinous crime.

Madame Chair,

This is not an isolated incident. There are tons of similar news reports, if the Special Rapporteur really cares about the truth. Yet, in his concluding recommendation, the Special Rapporteur has the gall to say that "the mass media should provide sufficient time and space for the presentation of the major human rights issues confronting indigenous peoples."

The Special Rapporteur also has the effrontery to say that our National Commission on Human Rights should expand its activities in the area of indigenous rights. The Philippine Commission on Human Rights is a recipient of a UNESCO award for human rights education and somewhere in the Office of the high Commissioner for Human Rights are volumes of materials on the indigenous programme of the National Commission that its last chairperson provided the Office, perhaps gathering dust unless they were thrown away.

Madame Chair,

The Special Rapporteur would do better as a diplomat in Geneva. His first recommendation was "that the NCIP become firmly established as the lead agency..." since the National Commission on Indigenous Peoples is already established, he added "firmly" to make a fact appear a recommendation. Given the opportunity next year, he will probably replace it with "concretely" to make it look progressive.

His second recommendation was "that Task Force 63 be maintained." Since Task Force 63 is also existing and effective, he found it nice and neat to have it "maintained." Unfortunately, these two recommendations are contradictory. How can an agency like the NCIP be the lead agency, if there is another body above it like Task Force 63? It was not the intention of our law that created the NCIP to place another body above it. Neither is it the intention of the Philippine Government to "maintain" a body whose purpose was purely transitory.

We find these two recommendations ridiculous.

We would be pleased to comment on each and every recommendation and each and every point raised in the Special Rapporteur's report but, for lack of time, we will simply state that he does not know what he is talking about. We reject his report which is pure non-sense. To illustrate this point, I will conclude by commenting on the San Roque Dam Project dealt with in his visit report, and more extensively in his main report.

The Special Rapporteur, in his main report wrote: "Many villages are bound to be affected by sediment build-up and upstream flooding as the reservoir becomes silted." He further wrote: "Furthermore, nearly 5,000 indigenous households (about 26,000 individuals) are going to be affected by the sedimentation and flooding to be expected from the reservoir's eventual siltation..." In the event that the dam becomes fully silted, the Special Rapporteur may wish to explain to the Commission how sediment and water can defy the law of gravity and move upstream to affect villages higher in elevation than the dam. For the information of the Commission, the crest elevation of the dam is 295 meters while the elevation of Tabu, the nearest indigenous community to the dam, is 339 meters, a difference of 44 meters in elevation.

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Madame Chair,

We have a location map of the dam and surrounding villages and an elevation map of the dam that can be projected on the screen so that the special Rapporteur can vividly explain to this Commission his still to be discovered magic force that will prevent sediment and water from spilling over the dam and instead make them rise 44 meters (more than the height of a ten-story building) above the level of the dam to inundate the helpless indigenous villages above it.

We cannot believe that a Special Rapporteur with such impressive credentials can produce a sophomoric report. At the same time, we also cannot believe that such a Special Rapoporteur would go down to the level of simply lifting from another report and make it his own, warts and all. Either way, the Special Rapporteur cannot avoid responsibility for his report.

Thank you, Madame Chair.

(included with the report are two maps, one showing the location of the Binga, Ambuclao and San San Roque dams along the Agno river, and a map on the Projection of SRMP Sedimentation)

APPENDIX K:

Questionnaire Regarding the Administration of Justice

(Please answer the following questions as detailed as possible. You are welcome to provide any additional information if you deem it necessary)

1. Do indigenous persons have access to the administration of justice system?
2. Does the system deal equitably with indigenous people?
3. Is the judiciary well trained in dealing with multicultural situations, are they knowledgeable about indigenous cultures?
4. Do indigenous communities have their own legal systems, and if so, how do they relate to the national or official system?
5. Is there discrimination against indigenous persons in the justice system, if so, in which way?
6. What measures has the state taken to prevent, redress discrimination in the justice system?
7. How are individual and collective rights of indigenous communities protected in the justice system?

APPENDIX L:

REPUBLIC ACT NO. 8371

**[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]**

**CHAPTER I
GENERAL PROVISIONS**

Sec. 1. Short Title.- This Act shall be known as "The Indigenous Peoples Rights Act of 1997."

Sec. 2. Declaration of State Policies.- The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as

other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.

CHAPTER II DEFINITION OF TERMS

Sec. 3. Definition of Terms.- For purposes of this Act, the following terms shall mean:

a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which their traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) Ancestral Lands - Subject to Section 56 hereof, refers 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 by force, 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 or paddies, private forests, swidden farms and tree lots;

c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;

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d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

e) Communal Claims - refer to claims on land, resources and rights thereon, belonging to the whole community within a defined territory

f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;

g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to; be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language an process understandable to the community;

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

i) Indigenous Political Structure - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processed for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;

j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;

k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;

l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III RIGHTS TO ANCESTRAL DOMAINS

Sec. 4. Concept of Ancestral Lands/Domains.- Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

Sec. 5. Indigenous Concept of Ownership.- Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

Sec. 6. Composition of Ancestral Lands/Domains.- Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Sec. 3, items (a) and (b) of this Act.

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Sec. 7. Rights to Ancestral Domains.- The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a. Rights of Ownership.- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b. Right to Develop Lands and Natural Resources.- Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c. Right to Stay in the Territories.- The right to stay in the territory and not be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d. Right in Case of Displacement.- In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support system: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/

IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed:

e. Right to Regulate Entry of Migrants.- Right to regulate the entry of migrant settlers and organizations into the domains;

f. Right to Safe and Clean Air and Water.- For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

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

h. Right to Resolve Conflict.- Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

Sec. 8. Rights to Ancestral Lands.- The right of ownership and possession of the ICCs/IPs, to their ancestral lands shall be recognized and protected.

a. Right to transfer land/property.- Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b. Right to Redemption.- In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

Sec. 9. Responsibilities of ICCs/IPs to their Ancestral Domains.- ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c. Observe Laws- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

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Sec. 10. Unauthorized and Unlawful Intrusion.- Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

Sec. 11. Recognition of Ancestral Domain Rights.- The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

Sec. 12. Option to Secure Certificate of Title under Commonwealth Act 141, as amended, or the Land Registration Act 496.- Individual members of cultural communities, with respect to individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since the immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this Section shall be exercised within twenty (20) years from the approval of this Act.

CHAPTER IV RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

Sec. 13. Self-Governance.- The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

Sec. 14. Support for Autonomous Regions.- The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao

and the Cordillera to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

Sec. 15. Justice System, Conflict Resolution Institutions and Peace Building Processes.- The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

Sec. 16. Right to Participate in Decision -Making.- ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

Sec. 17. Right to Determine and Decide Priorities for Development.- The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

Sec. 18. Tribal Barangays.- The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

Sec. 19. Role of Peoples Organizations.- The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

Sec. 20. Means for Development /Empowerment of ICCs/IPs.- The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS

Sec. 21. Equal Protection and Non-discrimination of ICCs/IPs.- Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force of coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

Sec. 22. Rights during Armed Conflict.- ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

Sec. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment.- It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned,

adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.

ICC/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' conditions. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

Sec. 24. Unlawful Acts Pertaining to Employment.- It shall be unlawful for any person:

- a. To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

- b. To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

Sec. 25. Basic Services.- The ICC/IP 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 shall 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 electrical facilities, education, health and infrastructure.

Sec. 26. Women.- ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

Sec. 27. Children and Youth.- The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and

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establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

Sec. 28. Integrated System of Education.- The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and Young people of ICCs/IPs.

CHAPTER VI CULTURAL INTEGRITY

Sec. 29. Protection of Indigenous Culture, traditions and institutions.- The state shall respect, recognize and protect the right of the ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.

Sec. 30. Educational Systems.- The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

Sec. 31. Recognition of Cultural Diversity.- The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

Sec. 32. Community Intellectual Rights.- ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

Sec. 33. Rights to Religious, Cultural Sites and Ceremonies.- ICCs/IPs shall have the right to manifest, practice, develop teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial object; and the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

a. Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and

b. Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

Sec. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.- ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, 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.

Sec. 35. Access to Biological and Genetic Resources.- Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

Sec. 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the biogenetic and resource management systems among the ICCs/IPs and shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

Sec. 37. Funds for Archeological and Historical Sites. - The ICCs/IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the

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financial and technical support of the national government agencies.

CHAPTER VII NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

Sec. 38. National Commission on Indigenous Cultural Communities /Indigenous Peoples (NCCP).- to carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

Sec. 39. Mandate.- The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

Sec. 40. Composition.- The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommendees submitted by authentic ICCs/IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven (7) Commissioners shall be women.

Sec. 41. Qualifications, Tenure, Compensation.- The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be the members of the Philippine Bar: Provided, further, That the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

Sec. 42. Removal from Office.- Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

Sec. 43. Appointment of Commissioners.- The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

Sec. 44. Powers and Functions.- To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, thorough which such assistance may be extended;

b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;

c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;

d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;

e) To issue certificate of ancestral land/domain title;

f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;

g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;

h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;

i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;

j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;

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k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;

l) To prepare and submit the appropriate budget to the Office of the President;

m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;

n) To decide all appeals from the decisions and acts of all the various offices within the Commission:

o) To promulgate the necessary rules and regulations for the implementation of this Act;

p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and

q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

Sec. 45. Accessibility and Transparency.- Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

Sec.46. Officers within the NCIP.- The NCIP shall have the following offices which shall be responsible for the implementation of the policies herein after provided:

a. Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral land/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with the master plans as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

b. Office on Policy, Planning and Research - The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan

shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs.

c. Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and related rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and related subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices who shall personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs /IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

d. Office on Socio-Economic Services and Special Concerns - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;

e. Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous socio-political, cultural and economic rights are respected and recognized. It

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shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all level decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations are protected and promoted;

f. Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies, and related services. It shall also administer the Ancestral Domains Fund; and

g. Legal Affairs Office - There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

Sec. 47. Other Offices.- The NCIP shall have the power to create additional offices as it may deem necessary subject to existing rules and regulations.

Sec. 48. Regional and Field Offices.- Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field office shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field offices, the NCIP shall establish field offices in said provinces.

Sec. 49. Office of the Executive Director.- The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon the recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

Sec. 50. Consultative Body.- A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from the time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII

DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

Sec. 51. Delineation and Recognition of Ancestral Domains.- Self-delineation shall be guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the Scope of the territories and agreements/pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the rights of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

Sec. 52. Delineation Process.- The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

a. Ancestral Domains Delineated Prior to this Act - The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of this law. ICCs/IPs enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

b. Petition for Delineation - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;

c. Delineation Paper - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;

d. Proof required - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of

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owners which shall be any one (1) of the following authentic documents:

1. Written accounts of the ICCs/IPs customs and traditions;
2. Written accounts of the ICCs/IPs political structure and institution;
3. Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
4. Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
5. Survey plans and sketch maps;
6. Anthropological data;
7. Genealogical surveys;
8. Pictures and descriptive histories of traditional communal forests and hunting grounds;
9. Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
10. Write-ups of names and places derived from the native dialect of the community.

e. Preparation of Maps - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office of the NCIP shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;

f. Report of Investigation and Other Documents - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;

g. Notice and Publication - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;

h. Endorsement to NCIP - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the selection below.

i. Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies - The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;

j. Issuance of CADT - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and

k. Registration of CADTs - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

Sec. 53. Identification, Delineation and Certification of Ancestral Lands.-

a. The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b. Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

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c. Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this act, including tax declarations and proofs of payment of taxes;

d. The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e. Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available

f. Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g. The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate or corporate (family or clan) claimant over ancestral lands.

Sec. 54. Fraudulent Claims.- The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

Sec. 55. Communal Rights.- Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provide, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.

Sec. 56. Existing Property Rights Regimes.- Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

Sec. 57. Natural Resources within Ancestral Domains.- The ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains.

Sec. 58. Environmental Consideration.- Ancestral domains or portion thereof, which are found necessary for critical watersheds, mangroves wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by the appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of the government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirement of the existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

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

Sec.60. Exemption from Taxes.- All lands certified to be ancestral domains shall be exempt from real property taxes, specially levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes and upon titling by other by private person: Provided, that all exactions shall be used to facilitate the development and improvement of the ancestral domains.

Sec. 61. Temporary Requisition Powers.- Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

Sec. 62. Resolution of Conflicts.- In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That in any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application,

implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

Sec. 63. Applicable Laws.- Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs.

Sec. 64. Remedial Measures.- Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good". The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided, further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, That the action for reconveyance shall be a period of ten (10) years in accordance with existing laws.

CHAPTER IX JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

Sec. 65. Primary of Customary Laws and Practices.- When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Sec. 66. Jurisdiction of the NCIP.- The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Sec. 67. Appeals to the Court of Appeals.- Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

Sec. 68. Execution of Decisions, Awards, Orders.- Upon expiration of the period here provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

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Sec. 69. Quasi-Judicial Powers of the NCIP.- The NCIP shall have the power and authority:

a. To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;

c. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

d. To enjoin any or all acts involving or arising from any case pending therefore it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

Sec. 70. No restraining Order or Preliminary Injunction - No inferior court of the Philippines shall have the jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER IX ANCESTRAL DOMAINS FUND

Sec. 71. Ancestral Domains Fund.- There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of the One Hundred thirty million pesos(P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten millions pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may be deem appropriate. Thereafter such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments shall be exempted from income or gift taxes and all other taxes, charges or fees

imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI PENALTIES

Sec. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, authorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

Sec. 73. Persons Subject to Punishment.- If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office.

CHAPTER XII MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES (ONCC) AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES (OSCC)

Sec. 74. Merger of ONCC/OSCC.- The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the posi-

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tions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials and employees of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filing up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

Sec. 75. Transition Period.- The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

Sec. 76. Transfer of Assets/Properties.- All real and personal properties which are vested in, or belonging to, the merged offices as aforesated shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

Sec. 77. Placement Committee.- Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The placement Committee shall be composed of seven (7) commissioners and an ICCs/IPs representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), non-government organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII

FINAL PROVISIONS

Sec. 78. Special Provision.- The City of Baguio shall remain to be governed by its Chapter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or required through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

Sec. 79. Appropriations.- The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

Sec. 80. Implementing Rules and Regulations.- Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

Sec. 81. Saving Clause.- This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

Sec. 82. Separability Clause.- In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

Sec. 83. Repealing Clause.- Presidential Decree NO. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 84. Effectivity.- This Act shall take effect fifteen days (15) days upon its publication in the Official Gazette or in any two (2) newspapers of general circulation.

Approved: 29 October 1997.

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APPENDIX M:

Draft Declaration on the Rights of Indigenous Peoples

COMMISSION ON HUMAN RIGHTS Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-fifth session

Discrimination against indigenous peoples

Report of the working group on indigenous populations on its eleventh session

Chairperson: Ms Erica-Irene A Daes

ANNEX I

Draft declaration as agreed upon by the members of the working group at its eleventh session

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the rights of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of all civilizations and cultures, which constitute a common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in their colonization and the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

Welcoming the fact that indigenous peoples are organizing them-

selves for political, economic, and social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

Acknowledging that the Charter of United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination,

Encouraging States to comply with and effectively implement all international instruments, in particular those relating to human rights, as they apply to indigenous peoples, in consultation and cooperation with the people concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

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Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

Part I

Article 1.

Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of the United Nations and in the human rights law;

Article 2.

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity;

Article 3.

Indigenous people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;

Article 4. Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State;

Article 5.

Every Indigenous person has the right to belong to a nationality;

Part II

Article 6. No Genocide Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

Article 7.

Indigenous peoples have the collective and individual right not to be subject to ethnocide and cultural genocide, including the prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of

violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them;

Article 8.

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such;

Article 9.

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right;

Article 10.

Indigenous peoples shall not be forced from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return;;

Article 11.

Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will in the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centers for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions;

Part III

Article 12.

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and

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literature, as well as the right to restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs;

Article 13.

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to use and control of ceremonial objects; and the right to repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected;

Article 14.

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, especially whenever any right of indigenous peoples may be affected, to ensure this right and to ensure that they can understand and be understood in political, legal and administrative proceedings where necessary through the provision of interpretation or by other appropriate means;

Part IV

Article 15.

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

Article 16.

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate all prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society;

Article 17.

Indigenous people have the right to establish their own languages. They also have the right to equal access to all forms of non-indigenous

media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity;

Article 18.

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, inter alia, employment and salary;

Part V

Article 19.

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own indigenous decision-making institutions;

Article 20.

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures;

Article 21.

Indigenous people have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation;

Article 22.

Indigenous people have the right to special measures for 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 shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons;

Article 23.

Indigenous people have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous people have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through

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their own institutions;

Article 24.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care;

Part VI

Article 25.

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard;

Article 26.

Indigenous peoples have the right to own, develop, control and use the lands and territories, including to total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights;

Article 27.

Indigenous peoples have the right to the resititution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Article 28.

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and production capacity of their lands, territories and resources, as well as to the assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measure to ensure, as needed, that programmes for monitoring, maintaining and restoring health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented;

Article 29.

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts;

Article 30.

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreements with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

Part VII

Article 31.

Indigenous peoples, as a specific form of exercising their right to self determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Article 32.

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 33.

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human right standards.

Article 34.

Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

Article 35.

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Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across the borders.

States shall take effective measures to ensure the exercise and implementation of this right.

Article 36.

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned;

Part VIII

Article 37.

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38.

Indigenous people have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Article 39.

Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with the states, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

Article 40.

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues

affecting them shall be established.

Article 41.

The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

Part IX

Article 42.

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43.

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 44.

Nothing in this Declaration may be construed as diminishing or extinguishing or future rights of indigenous peoples may have or acquire.

Article 45.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.