



Committee on the Elimination of Racial Discrimination, 75th Session Philippines, 18-19 August 2009

1. Introduction

On 18 and 19 August 2009 the Philippines reported to the Committee on the Elimination of Racial Discrimination (CERD). The Philippines ratified the Convention on the Elimination of Racial Discrimination in September 1967. The state is obliged to implement all the provisions of the treaty, and to report to the Committee every two years. The State Report submitted by the Philippines for this session included periodic reports 15 to 20. It is twelve years since the Philippines submitted its last report to the Committee. Mr. Thornberry, the Committee Member who acted as Special Rapporteur for the Philippine report, emphasized that it would be good if the Philippines reported to the Committee more often in the future.

In general, the Committee recognised that many challenges exist in the Philippines with regards to racial discrimination. In particular, the Committee found that there seem to be conflicts between development projects and human rights, and that there are discrepancies between the evidence provided by the State party and evidence provided by NGOs for this CERD session. On a positive note, the Committee highlighted the innovative instruments created by the Philippines to deal with challenges that the country faces, such as the Indigenous Peoples Rights Act (IPRA) that protects and promotes the rights of indigenous peoples.

2. Presentation of State Report

Throughout the Philippine presentation, the state representative emphasised that the Philippines is a very multicultural country. Out of the Philippine's population of 86 million, 16% belongs 110 different indigenous groups. The delegation argued that the past struggle against three different colonisers has produced an anti-discrimination mentality among the population. The Philippine government attempts to cultivate this background of cultural diversity, said the Philippine representative and ensured that the National Constitution incorporates the highest acknowledgement to cultural equality. The Delegation made a thorough presentation of various individuals belonging to different minority groups who have had legislative and executive positions within national governing bodies. The Philippines further pledged the government's active role in the Durban World Review Conference Against Racism, Xenophobia and Related Intolerance, and in pushing for greater protection of the rights of migrants and members of their families in relevant international forums.

To uphold the rights of indigenous people and to enforce the Constitutional Provisions, the Philippines are working with four main areas; rights to ancestral domains, self governance and empowerment, social justice, and cultural integrity. Among the proof of the Philippines compliance to the Convention, as presented by the delegation, are the

implementation of the landmark Indigenous Peoples' Rights Act (IPRA), the activities of the National Commission on Indigenous Peoples (NCIP), creation of the Autonomous Region in Muslim Mindanao, the programs of the Office on Muslim Affairs, and the mechanism of Free Prior and Informed Consent to ensure participation of minority groups in decisions on issues that concern them.

3. Issues brought to the Committee from other sources

Implementation of Indigenous Peoples Rights

Philippines Indigenous Peoples reported that the general view among indigenous peoples is that the IPRA has been interpreted and implemented from the perspective of a national government driven primarily by corporate interests, as opposed to the demands, interests and needs of Indigenous Peoples. The NCIP, responsible for implementing the IPRA, is regarded as lacking transparency and accountability and being ineffective and dysfunctional. It is also widely accused of betraying Indigenous Peoples' interests and rights in the service of private business interests and corrupt government officials, including those within the NCIP, through the exploitation of indigenous lands and resources. It is felt that the manner in which the IPRA is currently being implemented and interpreted is in direct contradiction with the laws original intention and purpose.

Internally Displaced Persons

The Internal Displacement Monitoring Center (IDMC) raised the issue that nearly 3 million people have been internally displaced in the Philippines because of conflicts and human rights violations, of which ethnic minorities are disproportionately affected. A question raised by the IDMC to the Philippine government was what has been done from the part of the government to provide social services and protection among communities of IDPs. IDMC also asked what has been done to resolve the conflict between the Mining Act and the IPRA to ensure that the latter is used to protect indigenous peoples from eviction from their territories in connection to development projects.

4. The Philippine Human Rights Commission

Armed Conflict

The Philippine Human Rights Commission made a one hour presentation during which it highlighted the specific situation in the region of Mindanao. The population in this region is predominantly MOR indigenous peoples who suffer high risks of violence and forced recruitment by armed groups as separatist movements are active in the region. It further talked about extra-judicial killings, torture and disappearances, arguing that this is a casual effect of internal armed conflict and that both the AFP and rebel groups are to blame.

Internally Displaced Persons

Regarding internally displaced persons (IDP) the Commission stated that many of them are indigenous peoples. IDPs live under dehumanizing conditions and malnourishment, and there is a great need for better service for IDPs. However, the Commission argued that this situation is not racially motivated. The Commission also mentioned the need for

comprehensive agreement on the number and situation of the IDPs, as the numbers given by the government differ greatly from the numbers provided by for example IDMC.

Violence against women

Regarding violence against women, the Commission discussed cultural factors that affect the prevalence of violence against women and access to justice for minority communities. There is a need to look critically at the right of culture on this specific case. Women are taught to be second class citizens and are not taught to use the mainstream justice system, argued the Commission. In the south for example, there is preference to go to Shari'a law courts.

Rights of Migrant Workers

Another issue that was taken up by the Commission was that the Philippines has a growing number of immigrants coming to its country, and therefore has to ensure that these immigrants are treated well. As the rights of migrant workers are covered by the Committee's mandate to eliminate racial discrimination, the Commission on Human Rights advised the Committee to urge the Philippines and other states to ratify the Convention on Rights of Migrant Workers.

5. Issues taken up by the Committee and Answers by Philippine Delegation

The State party maintains that discrimination does not exist in the Philippines, on the grounds that all Filipinos have essentially the same roles. The Committee emphasized the fact that no nation is completely free from racial discrimination. The Philippine government needs to acknowledge the fact that there is racial discrimination in their country. The Committee also emphasized the fact that there are discrepancies between positive information from the government and more problematic information from NGOs. IPRA and NCIP are positive initiatives but there is still dissonance between various texts, insufficiency of information on implementation and practice on the ground. One Committee members highlighted the fact that paragraph 81 of the state report lists laws in the Philippines, but there is not one law about racial discrimination.

5.1 Continuous and Comprehensive Data

The Committee asked for detailed data or recent estimates regarding the ethnic and indigenous composition of the population including socio-economic indicators. It also asked for continuous statistical measurement to track the rights situation of minorities and improved access to birth registration for parents belonging to ethnic or indigenous groups.

Answer: The Philippine delegation said that in 2010 there will be a national census. The aggregation of the data however, will depend on the availability of funds.

5.2 Participation by NGOs and Minority Communities

The Committee asked whether non-governmental organisations have been consulted in the preparation of the State party's fifteenth to twentieth periodic reports to the Committee.

The Committee asked the delegation to provide further information on progress made in enhancing and ensuring equitable representation and participation of ethnic and

indigenous groups in national and local governance, as well as in the police and armed forces and in the judiciary.

Regarding information received by of development projects alleged to violate the rights of indigenous people, the Committee asked whether the mechanism of Free, Prior and Informed Consent of the peoples concerned is regularly obtained for such projects, as required by the Indigenous Peoples Rights Act. The Committee further demanded comments on reports that, in some cases, indigenous peoples' consent to projects within their territories has been obtained by means of misinformation, misrepresentation, bribery and intimidation.

5.3 Ancestral Domains

The Committee asked for proper respect for ancestral domains of indigenous peoples. NGOs have suggested that only 8 % of ancestral land have been registered as "ancestral land" within the context of the IPRA. Furthermore, NGOs report that people have to wait for years to get certificates of ancestral areas. The Committee expressed a fear that indigenous people will loose out to developers, especially since there have been reports of displacement of indigenous people because of development projects.

To put the land issue in a legal framework the Committee demanded descriptions of measures adopted and/or contemplated to harmonise the policies of the Department of Environment and Natural Resources (DENR), the Department of Agrarian Reform (DAR), and the Land Registration Authority (LRA) to address the problem of overlapping with regard to the issuance of Certificates of Ancestral Domain Titles. Please also specify what measures are undertaken to address existing land claims conflicts between the government and ethnic and indigenous groups.

Answer: All lands of the public domain, all forces of potential energy, and other natural resources are owned by the State, with the exception of agricultural lands. The rest will be under full authority of the State and has the right to start sharing agreements with Filipino citizens. In cases of water rights, beneficial use may be the measure of the grant. The Government is developing relationships with companies to retrieve natural resources in line with national law. The President informs the Congress about every contract that will enter into force. Rights of Indigenous Peoples over the natural resources, will be taken into account when the State signs agreements with companies to retrieve resources out of ancestral lands. Indigenous Peoples first have to be consulted.

There is a special Government agency responsible for the certification of applications for visa and the lengthening of projects. This Government agency is responsible for checking whether the application would affect an ancestral domain. This special agency undertakes field based assessments to investigate. If no ancestral domain is affected, a certificate of non-overlap is issued. However, if it does determine the existence of the ancestral domain, a lengthy consultation process is started with the full community possibly affected. The agency purely certifies when there is consent granted by the community. Sometimes there are cases of migrants that left their ancestral domain. As a rule these groups can only make use of this rule if they have been officially relocated.

5.4 Social services for Minority Groups

The Committee urged the Philippines to provide basic services to minority groups. It asked the delegation to indicate what measures have been adopted to ensure equal

access for indigenous and minority children to culturally appropriate services, including basic social and health services and education, and to indicate to what extent children belonging to different ethnic, indigenous and linguistic groups are taught their culture, language and history at school.

5.5 Legislation on Racial Discrimination

The Committee asked the delegation to specify which status the Convention on the Elimination of Racial Discrimination enjoys in the domestic legal order and whether it can be directly invoked before national courts. If this be the case, the Committee further asked for examples of court cases, if any, in which the Convention was invoked. Furthermore, the Committee demanded answers to whether the State party intends to make the declaration under article 14 of the Convention to accept the competence of the Committee to receive individual complaints.

Committee members pointed out that international instruments have not all been ratified and asked whether the State party considers ratifying the International Convention on the Protection of All Persons from Enforced Disappearance and the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

More specific issues that the Committee asked for further information on was; the relationship between native tribunals and national courts; and how the independence of the ombudsman office is ensured, how the ombudsman is chosen and whether they can be removed from office. One Committee member argued that the office of the Ombudsman is a public prosecutor service that only focused on civil service. Consequently, cases of racial discrimination are not covered by that body.

Answer: On the question on why there is no general law against discrimination in the Philippines, the delegation argued that it has seen that the CERD does not need any enabling law. The Philippines is not lacking in laws to comply with CERD. The Philippine delegation further assured that the ILO Convention 169 is under consideration but said in regards to the Convention on Migrant Workers that the universality of this convention can be questioned.

Additional comment by Committee: Legislation in the country is NOT responding to all the articles of CERD. On Article 4, it is enough to read and compare our Convention with domestic legislation and you will find out the needs which still exist.

5.6 Protection of Civilians from Armed Conflict

The Committee emphasized the responsibility of the Philippine state to protect people from armed conflict. It asked for indications of what measures have been adopted by the State party to ensure the protection and security of ethnic and indigenous groups in zones of armed conflict and about monitoring mechanisms to ensure this protection. Since indigenous children are particularly at risk of becoming involved in armed conflict, the Committee asked to be informed of the measures taken to enforce the provisions of the Indigenous Peoples Rights Act to ensure that indigenous children are not recruited by armed forces or armed groups.

Furthermore, the Committee asked about what measures have been taken to ensure that indigenous and Muslim women living in Mindanao, in particular in conflict zones, have access to justice, and that acts of violence against them are investigated and prosecuted. In addition, the Committee asked for information on steps taken to protect

and prevent indigenous peoples from being displaced due to armed conflict and eviction from their ancestral lands, to enforce their right to return and enhance access to basic services. Committee members also asked for comments on the fact that the peace process is largely inactive today.

Answer: On the issue of the peace process, the first interim agreement is signed between the two parties. The Islamic Liberation Front responded to steps taken by the government to a ceasefire and movement in the peace talks after a full year of impasse. Both parties agreed to work on the protection of non combatants in a framework which is applicable to both parties.

The armed forces are the responsible party in laying down the infrastructure to ensure the continuation of civilian life in conflict areas. Strict compliance is kept by the armed forces to ceasefire agreements. In addition, armed forces comply with the agreements signed with rebel forces for the protection of non-combatants.

Regarding children's involvement in armed conflict, there is no actual reliable data available. Strong suggestions are available that rebel groups recruit children. UNICEF is working on this issue. The Philippine Government is currently working on the development of a monitoring system for the protection of those children most at risk. Indigenous people's rights act also has the protection of children as part of it.

5.7 Internally Displaced Persons

The Committee commented on the fact that the numbers of IDPs given by the Philippine delegation differ a lot from the numbers provided from other sources. The Committee further asked what the government is doing with regards to the situation of IDPs in the Philippines.

Answer: The delegation answered that since that the parties to the conflict agreed upon a ceasefire over three years ago it is not possible that over 15% of the population is displaced. The Government has accomplished the following with regards to IDPs: 1) established task force on internally displaced persons, 2) implemented early recovery programme for IDPs, 3) close coordination with international agencies and donors, 4) a Mindanao working group which works closely together with donors of humanitarian and development aid.

5.8 Extra-judicial Executions and Torture

It has been reported that human rights defenders and members of indigenous and ethnic groups have been victims of extrajudicial executions, political killings, enforced disappearance, torture and ill-treatment committed by the Philippine Armed Forces (AFP) and the Philippine National Police (PNP). The Committee wished to know what follow-up measures have been taken to address this.

6. Conclusion

In its concluding remarks the Committee highlighted how positive it is that the Philippines have chosen to renew its collaboration with the Committee. Unremitting efforts are needed however, to make sure that this process continues. The Philippines is due to submit its next report to the Committee on Racial Discrimination in 2010. Follow up on

the recommendations made by the Committee at this session is needed. The Committee emphasized the need for a vocal civil society increasingly active in a democratic system to ensure the country's compliance with the Convention on the Elimination of Racial Discrimination. In its concluding remarks, the head of the Philippine delegation highlighted the government's willingness to cooperate with civil society.