



Republika ng Pilipinas

Komisyon ng Karapatang Pantao ng Pilipinas

(Commission on Human Rights of the Philippines)

**Human Rights and the
Memorandum of Agreement on Ancestral Domain
An Advisory from the Commission on Human Rights**

CHR A2008-003

For indigenous peoples, *“Land is power as all creatures live on land and depend on land; Land is Mother in that it feeds, it nourishes, it provides, it gives love to all and leaves it alone, its always there to offer something to man; and Land is Heritage for in it triba peoples’ life and culture flourish and reside.”*

- Fr. Raymundo Hilot (Episcopal Commission on Tribal Filipinos)

“While for some, land signifies a source of living, to the Indigenous Peoples – land is life itself. While for some, land is a mere source of economic gain, to the Indigenous Peoples – land is the very root of their existence.”

The **Memorandum of Agreement on Ancestral Domain (MOA AD)** finalized and initialed by the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) Panel on the Peace Process on July 27, 2008, raises important issues on human rights vis-à-vis peace building and human rights of indigenous peoples, including the right to ancestral domain. Said MOA AD creates a Bangsamoro Juridical Entity (BJE) and seeks to end the 40 year long Moro armed struggle in Mindanao.

While peace-building is a laudable and long-desired objective, one that would enhance the environment for improved human rights promotion and protection and prevent human rights violations done in the name of insurgency and counter-insurgency, the measures proposed to build such peace must be carefully considered in terms of their impact on the civil, political, economic, social and cultural rights of the people of the Philippines including, but not exclusively, those who live in the areas affected by armed conflict.

The scheduled signing of the MOA AD on August 5, 2008 in Malaysia was halted by the Supreme Court, through the issuance of a Temporary Restraining Order directing status quo, upon the petition of residents of Cotabato, an area which would be included in the proposed BJE.

When the proposed MOA AD reached the knowledge of the Filipino people through public media, it was met by vigorous opposition and resistance from several sectors of society, especially those who stand to be

Karapatang Pantao: Likas Sa Atin, Tungkulin Natin

*Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines
Tel. Nos. 927-0172 • 928-2018*

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directly affected. Christians, Muslims and Indigenous Peoples alike question the propriety and wisdom of the said MOA AD.

The Commission on Human Rights joins several sectors of the nation in its concern about the propriety of the current action of the executive branch, through the government panel on the peace process, which would potentially affect the history, territorial integrity and destiny of the entire country.

Without going into the merits of the MOA AD, **the Commission questions the process or the approach by which it was negotiated, decided and reached.** Issues of the people's right to information, disclosure and transparency of governmental action are raised. Possible violations of the right to participation, non-discrimination and self-determination have become pressing concerns.

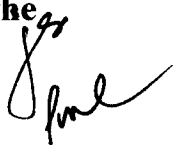
No less than the Bill of Rights of the 1987 Philippine Constitution guarantees that, "The right of the people to information on matters of public concern shall be recognized xxx."¹

Accordingly, we find the following as one of the Declared Principles and State Policies of the Philippines:

"Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."²

The people have the right to know and to participate in all matters that affect, and will affect, them. The government cannot, and should not, at any time hide behind the cloak of executive privilege in transactions it enters into in the guise of national security. We salute the judiciary in taking an active step in delaying the final signing of the MOA AD and allowing time for its further reflection and circumspection by relevant stakeholders.

Meaningful participation, through genuine consultation, is the key. Through a human rights based approach the people's right to participation could be recognized and realized. However, contrary to the claim of the GRP Panel, **consultation of stakeholders by plebiscite or other means must be had prior to the commencement of any governmental action that will affect them, and not after a major national measure is made final in the eyes of some of the parties. To do otherwise would defeat the purpose of consultation and participation.**



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¹ Section 7, Article III

² Section 28, Article II

Further, such process may produce irreparable and irreversible consequences to the detriment of the Filipinos. Unnecessary tension and violence may result and more human rights violations may not be far behind.

The consultations should include the Filipino people in general because of the impact on the territory, economics, and national security of the nation as a whole, with particular attention to the participation of the people of Mindanao, including the indigenous cultural communities.

Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act or the IPRA Law, is clear:

“Free and Prior Informed Consent – as used in this Act shall mean the consensus of all members of the Indigenous Cultural Communities/Indigenous Peoples to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”³

The right of the Indigenous Peoples to free, prior and informed consent (FPIC) is an internationally and nationally guaranteed right. It has been legislated in the Indigenous People's Rights Act (IPRA), and recognized and accepted by a number of intergovernmental organizations and international bodies and, increasingly, in the laws of the states.⁴

In contemporary international law, indigenous peoples have the right to participate in decision-making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities, and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence, the formulation: free, prior and informed consent.⁵

The U.N. Committee on the Elimination of Racial Discrimination called upon states parties⁶ to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”⁷ The Committee particularly urges the State party “to consult and seek the consent of the indigenous peoples concerned.”⁸

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³ Section 2 (g), IPRA Law

⁴ Indigenous Peoples' Right to free, prior and informed consent and the World Bank's Extractive Industries Review, 2004

⁵ Ibid.

⁶ the Philippines is a State Party to the Convention on the Elimination of Racial Discrimination since January 4, 1969

⁷ Indigenous Peoples' Right to free, prior and informed consent and the World Bank's Extractive Industries Review, 2004

⁸ Ibid.

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This assumes primordial importance in the proposed MOA AD as the title itself suggests that it is a Memorandum of Agreement *on Ancestral Domains*. The significance of ancestral lands and ancestral domains in the life of indigenous peoples cannot be overemphasized as they consider land as life to them – the very root of their existence. Rights over land must include recognition of the spiritual relation indigenous peoples have with their ancestral territories.

In the Philippines, around 15 to 20 million people belong to indigenous peoples communities (about 25% of RP population). They are located in 50 of the country's 80 provinces. This significant sector of RP society cannot be ignored or neglected.

Our indigenous peoples, who are not members nor part of the MILF, stand to be directly affected by the inclusion of their ancestral domain in the proposed MOA AD. They stand to lose their land, their identity, their life and their very existence.

For example, Iligan City's populace consists of Christians, Muslims and Indigenous Peoples such as the Higaonons and Kolibugans. Much to their surprise, eight of the total 44 barangays, covering 80% of the whole city, were drafted to be included in the proposed Bangsamoro Juridical Entity (BJE). This is despite the fact that the city voted *twice* against its inclusion in the Autonomous Region for Muslim Mindanao in past plebiscites.

We ask, therefore, why are they included this time? There was apparently no wide multi-sectoral consultation of the people in the said barangays, especially the indigenous communities.

The Filipino Indigenous Peoples wish and long for peace as much as any other sector in the country. Yet they have been denied participation in setting an agenda that addresses some of the root issues of the conflict. The Commission strongly endorses proper fora that could allow them a voice. And such fora should be constituted now, and not after, the signing of any agreement that would affect them.

Just last year, or on September 13, 2007, the Philippines signed the *Declaration on the Rights of Indigenous Peoples*. Pertinent provisions of the said Declaration are as follows:

“Indigenous 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.”⁹

“Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”¹⁰

⁹ Article 3, Declaration on the Rights of Indigenous Peoples

"Indigenous peoples shall not be forcibly removed from their lands or territories. xxx"¹¹

"Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."¹²

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."¹³

"States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process."¹⁴

The right to participation is an important element of democracy and human rights. Lest we forget, "Democracy is the government of the people, by the people, for the people."¹⁵

On August 9, 2008, the world will be celebrating the "International Day of the World's Indigenous Peoples."¹⁶ It is sad that issues surrounding our indigenous peoples should come at such an inopportune time.

Recommendations

All stated, the Commission respectfully puts forth the following recommendations:

For the Executive, especially those involved in the peace process:

1. to conduct meaningful and constructive consultations and dialogues with all stakeholders during negotiations and *prior* to the drafting, and signing, of any such agreement, or

¹⁰ Article 8, paragraph 1, Ibid.

¹¹ Article 10, Ibid.

¹² Article 18, Ibid.

¹³ Article 19, Ibid.

¹⁴ Article 27, Ibid.

¹⁵ Abraham Lincoln

¹⁶ By Resolution 49/214 of 23 December 1994 of the United Nations General Assembly

any governmental action for that matter, that will affect public interest, including impact on territorial integrity, economic and social order, particularly to consult the indigenous communities and Muslim communities in the affected areas, the National Commission on Indigenous Peoples, the local chief executives and other stakeholders who stand to be affected, directly or indirectly, by the proposed measure bearing in mind the right of the people to participation on all matters that affect them;

2. to ensure transparency and full disclosure of all transactions involving public interest – including the intended MOA AD – as guaranteed under the Constitution taking into consideration the right of the people to information on matters of public concern;
3. to respect the people's 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, enshrined in the Constitution, especially in these times of passionate inquiries and protests, while safeguarding public order and safety and observing the Public Assembly Act and other guidelines; and
4. to continue to pursue durable and long-lasting solutions to the conflict with the aim of attaining just, sustainable and comprehensive peace and development for all.

For the Legislature:

1. to enact laws that will ensure true and lasting peace and development especially in the countryside where the so-called poorest of the poor are found; and
2. to take the opportunity to review the IPRA and accordingly amend it to strengthen the law and its implementation.

For the Moro Islamic Liberation Front (MILF) and other armed groups:

1. to show the true spirit of peace by respecting the human rights of all and refraining from using violence as a means of attaining their ends. Even groups that feel the need to protect themselves from possible violence are reminded of the need to respect human rights.

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For the Other Stakeholders:

1. to continue to pursue peaceful means in making their views, disagreements and concerns heard in the proper fora to ensure meaningful engagement and dialogue with the Executive;

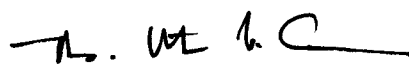
The Commission seeks peace as all members of our society do. But until and unless all sectors are heard, consulted and have participated, conflict will be far from being resolved and genuine nationalism and unity will never be a reality.

Human Rights are not only an end but an important tool in achieving harmony, consensus and true and lasting peace and development for the Filipino nation.

Issued on 08 August 2008 at Quezon City, Philippines.


LEILA M. DE LIMA
Chairperson


CECILIA RACHEL V. QUISUMBING
Commissioner


MA. VICTORIA V. CARDONA
Commissioner