

**COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES**

**INPUTS TO THE MANDATE OF THE SPECIAL RAPPORTEUR ON THE FIELD OF CULTURAL RIGHTS**

**IMPLEMENTATION OF CULTURAL RIGHTS AND SUSTAINED OR EMERGING ISSUES**

**26 OCTOBER 2018**

**Introduction**

1. The Commission on Human Rights of the Philippines (hereinafter the “Commission”)[[1]](#footnote-1) submits its written inputs to the Office of High Commissioner for Human Rights (OHCHR) as contribution to Ms. Karima Bennoune, Special Rapporteur in the field of cultural rights, on her first thematic report to the Human Rights Council.
2. This submission utilized the Commission’s own documentation of independent monitoring activities and statements, which were subjected to the internal deliberations of the Commission En Banc. The Commission also took into consideration local and international reports from government, civil society, the media, and international non-governmental organizations.
3. **The general recognition of cultural rights in national legal and policy frameworks**
4. Republic Act No. 7356, or the Law creating the National Commission for Culture and the Arts specifically recognized in Section 3 thereof that culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish. <http://ncca.gov.ph/republic-act-7356/#culture_as_human_right>
5. The Philippines has crafted and implemented a Philippine Development Plan for the years 2017-2022 that for the first time devoted a particular portion (Chapter 7) on promoting Philippine culture and values. The salient points of Chapter 7 is attached herewith as Annex A.
6. During the first State of the Nation Address of incumbent President Rodrigo Roa Duterte in 2017, he demanded the return of the Balanginga Bells, which the Americans considered their spoils of war during the 1901 Philippine-American War. Two of the three Balangiga Bells are displayed at F.E. Warren Air Force Base in Cheyenne, Wyoming. A third bell is with a US Army regiment in South Korea <https://www.philstar.com/headlines/2017/07/25/1721355/full-text-dutertes-state-nation-address-2017>
7. **Specific Issues Highlighted by the Mandate’s Work**

*Various forms of fundamentalism and extremism[[2]](#footnote-2)*

Reproductive Health (RH) National Inquiry Report of the Commission

1. The Gender Equality and Women’s Human Rights Center conducted the National Inquiry on Reproductive Health Rights in 2016. Throughout the National Inquiry, the Commission has documented good practices both at the community and the local government level to the national level. The culturally sensitive practice of one of the Lying-Ins in Cagayan de Oro, particularly in Brgy Tinagpoloan; The Lying in allows traditional/indigenous birth attendants to attend to and deliver the babies of IP women inside the Barangay Health Station (BHS) Lying In clinic for as long as the delivery is supervised by the Barangay midwife. They also allow the IPs to conduct their ritual in the vicinity of the BHS.[[3]](#footnote-3)
2. This led to recommendations on the need to improve information dissemination not only on the available RH goods and services, but also to include men, traditional and religious leaders in the RH agenda. It has also been pointed out that most of these barriers are based on misconceptions on RH and could well be addressed by more comprehensive information dissemination at the community level and by engaging religious and cultural leaders.

*Difficulties preventing the respect, protection and realization of Cultural Rights*

1. The Commission has also observed that our culture sometimes bars us from the attainment and enjoyment of our rights and sometimes they actually clash with human rights principles. In some instances, policy measures supposedly intended to protect women end up further discriminating them.
2. Instances of misinformation due to religion or culture have also been documented which were shown to have affected women and men’s willingness to access RH services. In some cases, while women are generally aware of the available RH services, they are unwilling to avail of services due to misplaced religious beliefs or cultural practices.

1. **Lessons learned and the way forward**

***Assessment of the implementation of Laws***

*Magna Carta for Women and Reproductive Health Law*

1. A national inquiry is an effective strategy adopted by national human rights institutions (NHRIs) in addressing systemic violations of human rights, based not only on evidence from individual cases, but also embracing an examination of the laws, policies, and programs (or lack of them) which have given rise to violations in question. Through the regional consultations, the fact finding, and the public hearings, the Commission has documented the issues and the gaps in the implementation of the Magna Carta for Women and Reproductive Health Law, and therefore made appropriate recommendations. It is in fervent hope that the findings and recommendations (attached) of the National Inquiry will help key influencers in the country see the continuing challenges to the implementation of the Magna Carta for Women and Reproductive Health Law and move them to utilize their significant political capital in galvanizing the rest of the nation to support the full implementation of these key pieces of legislation.

*Indigenous Peoples Rights Act*

1. In the Philippines, the Indigenous Peoples Rights Act (IPRA) or Republic Act No. 8371 was enacted in 1997, ante-dating the UNDRIP by ten years. It was a product of a collaboration between IPs and civil society organizations when the IPs were threatened by the development thrust of the Arroyo presidency of attracting large-scale foreign investments into open pit mining. The IPRA immediately underwent constitutional challenge before the Philippine Supreme Court and was upheld thereby enriching jurisprudence and legally entrenching native title and the collective rights of IP of the Philippines.[[4]](#footnote-4)
2. It is the policy gaps in IPRA and its implementation by myriad government agencies that bears closer examination after twenty (20) years of effectivity. It bears asking whether the State gone any further than issuance of a limited number of certificates of title in the promotion of IP rights. On the right to self-governance and empowerment, for instance, remedies appropriate to IP cultures are hindered by the State when IPs are forced to litigate in adversarial courts of justice. Police power and law enforcement for customary law decisions and domains protection as a measure of IP empowerment is not recognized and supported by the State. There is no provision in the IPRA or its implementing rules on customary law enforcement through traditional enforcers who are inherent in the societal structures of every tribal society.[[5]](#footnote-5)

***Cooperation with Stakeholders[[6]](#footnote-6)***

1. Other activities carried out by the Commission in the past two years related to protection and promotion of the rights of indigenous peoples include:

*Human Rights Promotion at the National level:*

1. In December 15-17, 2015, CHRP supported the workshop “Building Sustainable, Resilient and Rights-Inspired Communities of Lumads in Mindanao” which gathered around twenty five leaders representing the following ethnic tribes – Ata Manobo, Agusanon Manobo, Teduray, Mansaka, Balaan, Kiritekan Menuvu, Erumanen Ne Menuvu, Subanen, Mandaya and Higaonon. This meeting surfaced the ESCR-related needs of the Lumad members. As a follow-up, in June 21-23, 2016, a consultation “Empowering the Lumads Pursue Their Economic, Social and Cultural Rights (ESCR)” was conducted with partners coming from various government agencies dealing with education, health, local governance, social services, environment – as well as select members coming from the diplomatic community and donor partners such as the Royal Norwegian Embassy, Swiss, German Embassies and WorldBank.
2. In November 24-25, 2016, CHRP in coordination with the National Commission of Indigenous Peoples (NCIP), the Department of Natural and Environment Resources (DENR) facilitated a consultation-dialogue in Butuan City between the Ponson Tribe, the Carrascal Mining Company and the Marc Ventures Mining Company. Concerns discussed include environmental degradation, encroachment of mining activities in the Manobo-Ponson ancestral domain.

*Human Rights Protection at the National Level:*

1. In November 2015, CHRP also participated in the public inquiry initiated by the Committee

on Indigenous Cultural Communities of the House of Congress on the alleged violations

committed to more than 600 Mindanao-based indigenous peoples groups “encamped” at the compound of the United Church of Christ of the Philippines (UCCP) in Haran, Davao City.

1. In July 15,2016, CHRP wrote to the Office of Police Director General Ronald De la Rosa of the Philippine National Police (PNP) requesting for a security detail/assistance for Datu Nestor Apas a Mandaya who complained of being haras sed by the New People's Army ( a rebel group in the Philippines). In 20 July 2016, CHRP also officially coordinated with the Office of Police Director General Ronald De la Rosa of the Philippine National Police, PCSupt. Dennis Siervo of the PNP-Human Rights Affairs Office (PNO-HRAO) and its Internal Affairs Services (IAS) to investigate on the alleged harassment committed by police elements against Hawudon Kidlat Ruperto Ponson, a tribal leader of the Manobo tribe from Carrascal, Surigao del Sur Latter sought assistance from CHRP and also complained that when his house was raided in November 4,2014, personal belongings which he considered as tribal heirlooms were unlawfully taken from him.

*International Level*

1. In early 2016, the Office of Chairperson Jose Luis Martin C. Gascon participated in two regional events in Bangkok organized by the OHCHR in relation to the UNDRIP and its implementation in Asia.
2. The Commission actively participated in the third cycle of the Universal Periodic Review and contributes substantially to the work of the special procedures and treaty bodies. In 2016, the submitted parallel reports to the Committee Against Torture (CAT), Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), and Committee on Economic, Social and Cultural Rights (CESCR). For the UPR, the CHRP submitted its parallel report on September 2016 and actively monitored the interactive dialogue on 8 May 2017, both in Geneva and through the live webcast.
3. The Commission also actively participate in the annual UN Permanent Forum on Indigenous Issues (UNPFII) since 2016 and has provided written and oral statements on the situations of indigenous peoples in the country, including information highlighted in this submission.
4. The Commission reports include specific reference to indigenous peoples. For instance, the Commission requested the CESCR to call on the Philippines to:

* Re-examine the power of the NCIP, or even the regular courts, to timely issue injunctive writs to prevent displacement, harassment, and any untoward incident between contending parties.
* Generate sufficient resources to fully implement the necessary programs and to protect indigenous peoples’ rights.
* Ensure that the NCIP will continue to render effective assistance to indigenous peoples, particularly in cases that involve indigenous peoples and non-indigenous peoples, despite the Supreme Court decision in Unduran vs. Aberasturi. Moreover, there should be a clear delineation of NCIP’s mandate in protecting the rights of indigenous peoples.

***Issues related to Cultural Rights:***

*On Indigenous People [[7]](#footnote-7)*

1. Many indigenous peoples share legacies of removal from traditional lands, destruction of their cultures, discrimination and widespread violations of their human rights. They are commonly excluded from decision-making processes and from economic power; they suffer lower education and health outcomes; their cultures and languages are under threat; and they continue to be dispossessed of their traditional lands.[[8]](#footnote-8)
2. Remedies appropriate to IP cultures are hindered by the State when IPs are forced to litigate in adversarial courts of justice. Litigation is culturally, financially and geographically prohibitive for the IPs. The adversarial nature of the litigation process is a totally alien concept to the IPs being familiar only with the dispute resolutions of the customary law.
3. Police power and law enforcement for customary law decisions and domains protection as a measure of IP empowerment is not recognized and supported by the State. There is no provision in the IPRA or its implementing rules on customary law enforcement through traditional enforcers who are inherent in the societal structure of every tribal society. The IPRA provides no recognition of such traditional peacekeeping police function despite its repeated recognition of customary law.
4. If the Bangsamoro Basic Law (BBL) is passed into law by Congress, it would be an act of preferential treatment of the Bangsamoro impairing and/or nullifying the rights to self-governance and self-determination of IPs by allowing the Bangsamoro, through plebiscites, to annex portions of ancestral domains. The definition of the Bangsamoro people which eliminates the dichotomy between Moro and non-moro IPs as well as negates the diversity and multi-cultural character of IPs in Mindanao is violative per se of the rights to cultural identity of all IPs.
5. The IPs have registered their vehemently opposition to the “no home birthing” policy of the Department of Health. Although it is intended to lower the rate of maternal deaths in the country, it has the effect of violating the right of IP women to traditional birthing methods, The IP women are affronted by the strangers in birthing hospitals and clinics that witness the birth. Hence, programs perceived as oppressive or discriminatory such as the DOH prohibition on home-birthing among IPs, must be immediately re-formulated.

*On Women*

1. Indigenous communities’ practice of arranged marriages is still prevalent. Thus, young girls are prevented from exercising their right to decide whom to marry since, it is part of their customary law or embedded in their culture. Violence as a continuing cycle also leads to separation and eventually, women are disadvantaged due to lack of employment and livelihood opportunities. This situation makes women vulnerable to stay in an abusive relationship so they economically survive together with their children.
2. In times of armed conflict, the vulnerabilities of Bangsamoro women are more pronounced due to their religion, class, and other discrimination based on identities. For example, Moro women wearing hijab are more subjected to discrimination; they experience discrimination not only because they are women but also because of their religion. Moreover, as part of their culture, early marriages and arranged marriages are widely practiced during armed conflicts.
3. The displacement due to mining activities, dam construction and militarization affects indigenous women who are usually the food providers for their families given that the ancestral lands are the sources of their crops and traditional medicine. Therefore, women become dependent on their spouses or family members for their subsistence. Furthermore, displacements impact indigenous women as knowledge bearers in their communities. Being forcibly displaced from their lands affect the core of their culture, thus preservation and transfer of traditional knowledge are disrupted.
4. In Mindanao, concerns have been raised on the failure to engage indigenous and religious leaders in the reproductive health agenda and to engage them in information dissemination on reproductive health and rights. Barriers in accessing reproductive health services include lack of information and misinformation on reproductive health, breakdown of service delivery networks, religious and cultural barriers, and unprofessional and / or unethical practices of health service providers. Instances of misinformation due to religion or culture have also been documented which were shown to have affected women and men’s willingness to access reproductive health services.
5. In some cases, while women are generally aware of the available services, they are unwilling to avail of such services due to misplaced religious beliefs or cultural practices. For instance, while a ‘fatwa’ has been issued on the acceptability of reproductive health in Islam, not all Moro women are aware of the same. For indigenous peoples, while elders claim that it is not against indigenous culture, some women refuse to avail of services believing they are breaking cultural or that they have to seek the consent of their husbands. These led to recommendations on the need to improve information dissemination not only on available goods and services, but also to include men, traditional and religious leaders in the reproductive health agenda.
6. Discrimination and stereotypes exist, including labelling them as terrorists. For example, in Region 9, some employers in malls and stores refuse to hire Muslim women wearing Hijab because they fear that customers will be discouraged from buying in their shops.
7. Insensitivity to their culture and practices. Some establishments require Moro women to wear short skirts as uniform, which is contrary to their traditional attire. Women who wear niqab and hijab are discriminated.

***Recommendations to Special Rapporteur[[9]](#footnote-9):***

1. Strengthen the engagement with the mandate-holder and stakeholders even after country visits;
2. Strengthen the effectiveness of the communications procedure through the joint communications report;
3. Systematically sending reminders to States that have not replied to communications or provided responses that were not considered to contain any substantive information;
4. Strengthen follow-up research on communications to enable mandate holders to engage in a more sustained exchange of views with States on communications and to assess their impact;
5. Raise communications bilaterally with Government authorities or Permanent Missions in Geneva, if no reply is received;
6. Providing regular updates on all communications brought to the attention of a particular State to OHCHR field presences or NHRI to enhance follow-up at national level;
7. Systematically informing sources that a communication has been sent based on information they bring to the attention of Special Procedures;
8. Requesting sources to update on developments related to the communication or on any protection concerns that may arise;
9. Sharing Government responses systematically with sources to provide comments;
10. Informing sources when a communication brought to the attention of special procedures is published in a public report; and
11. Call for the return of the Balanginga Bells to the Republic of the Philippines from the United States.

1. As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights of has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has “A”-status accreditation from the Sub-Committee for Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI). [↑](#footnote-ref-1)
2. Response of the Commission on Human Rights of the Philippines to the call for contributions fo the Special Rapporteur in the field of cultural rights: Fundamentalism and extremism on women’s enjoyment of cultural rights and challenges related to the rights of women to access, take part on and contribute to cultural life, and to contribute to and enjoy arts and science, 2017. [↑](#footnote-ref-2)
3. “Let our voice be heard,” Report of the Commission on Human Rights Philippines’ National Inquiry on Reproductive Health and Rights, 2016. [↑](#footnote-ref-3)
4. General Assembly, 12 October 2017 3 Cruz vs. Secretary, G.R. No. 135385, December 6, 2000 [↑](#footnote-ref-4)
5. 2017 National Inquiry on the Human Rights Situation of the Indigenous Peoples of the Commission on Human Rights of the Philippines, 2017. [↑](#footnote-ref-5)
6. Inputs of CHR to the General Assembly Resolution 70/166: Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 15 May 2017 [↑](#footnote-ref-6)
7. 2017 National Inquiry on the Human Rights Situation of the Indigenous Peoples of the Commission on Human Rights of the Philippines, 2017. [↑](#footnote-ref-7)
8. “Promoting and protecting the rights of indigenous people,” Asia Pacific Forum. <https://www.asiapacificforum.net/support/training/indigenous-peoples/> (accessed 10 October 2018) [↑](#footnote-ref-8)
9. Note by the OHCHR on recent practices in follow-up to Special Procedures’ activities, 2010. [↑](#footnote-ref-9)