



**International Convention
on the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Seventy-fifth session
3- 28 August 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

PHILIPPINES

1. The Committee considered the fifteenth to twentieth periodic reports of the Philippines (CERD/C/PHL/20), submitted in one document, at its 1956th and 1957th meetings (CERD/C/SR.1956 and CERD/C/SR.1957), held on the 18th and 13th of August 2009. At its 1969th meeting (CERD/C/SR.1969), held on the 27th of August 2009, it adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the fifteenth to twentieth periodic reports and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the constructive and informative dialogue held with the delegation and the responses provided to many questions raised in the list of issues and posed by Committee members during the dialogue.

3. Noting that the report was 11 years overdue, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

B. POSITIVE ASPECTS

4. The Committee notes with satisfaction that the State party has ratified, or acceded to all United Nations core human rights treaties and other international human rights treaties the

provisions of which have a direct bearing on the subject of racial discrimination, in particular Convention No. 111 (1958) of the International Labour Organization (ILO) concerning discrimination in respect of employment and occupation and the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

5. The Committee welcomes the State party's continued engagement with the United Nations on issues pertaining to human rights, including the rights of indigenous peoples, its participation in the Durban Review Conference and its work on fostering inter-faith dialogue.
6. The Committee welcomes the coming into force of the 1997 Indigenous Peoples Rights Act (IPRA) and the establishment of the National Commission on Indigenous Peoples (NCIP), since the last periodic report (CERD/C/299/Add.12).
7. The Committee welcomes the recognition and the protection by the State party of traditional indigenous justice and conflict resolutions mechanisms.
8. The Committee appreciates the standard procedural instructions issued by the National Police Commission to ensure that there shall be no discrimination on account of gender, religion, ethnic origin or political affiliation in the recruitment, selection and appointment of Philippine National Police personnel.
9. The Committee notes as positive that personnel of a certain level of the Armed Forces of the Philippines (AFP) cannot be promoted unless they receive a certification from the Commission on Human Rights in the Philippines that there are no pending cases or past findings that they have committed human rights violations.
10. The Committee welcomes the State party's commitment to advance the peace process in regions affected by armed conflict.
11. The Committee notes with appreciation the active role of a vibrant civil society, and of the national human rights institution, the Commission on Human Rights in the Philippines in providing extensive information to the Committee.
12. The Committee notes that the Study on lessons learned and challenges to achieve the implementation on the right of indigenous peoples to education (A/HRC/EMRIP/2009/2) prepared by the United Nations Expert Mechanism on the Rights of Indigenous Peoples cites a number of examples from the Philippines. The Committee appreciates the information received on the development and pilot testing of the Indigenous Peoples Core Curriculum and Instructional Materials for Alternative Learning System as well as on other educational initiatives including in the area of higher education and the educational assistance program.

C. CONCERNS AND RECOMMENDATIONS

13. The Committee is concerned by the State party's statement in its periodic report that racial discrimination has "never officially or factually existed in the Philippines, neither in a

systematic nor formal nor intermittent or isolated manner” (para. 6) and that “the Philippines Government therefore maintains “that discrimination based on race, colour or ethnic origin is non-existent in the Philippines” (para. 13).

While the denial of the existence of *formal* racial discrimination might be acceptable, the Committee wishes to note that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination. The Committee reiterates its observations that no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination.

14. The Committee notes that it did not receive adequate clarifications regarding the status of the Convention in the national legal system. While also noting that the Convention is regarded by the State party as “part of the law of the land”, the Committee observes that many provisions in the Convention are not self-executing and require national legislation to take effect at the national level.

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

15. While noting the State party’s information on legislative, judicial and administrative measures taken at the national, provincial and local levels with the aim of protecting against racial discrimination and that the “2007 Anti-Religious and Racial Profiling” bill is pending consideration by Congress, the Committee remains concerned that the State party has not adopted a comprehensive anti-discrimination law.

The Committee recommends that the State party adopt a comprehensive law on the elimination of discrimination on the grounds of race, color, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention. The Committee asks for further information on the status of the “2007 Anti-Religious and Racial Profiling” bill and any other bills relating to racial discrimination pending consideration by Congress.

16. The Committee is concerned that penal provisions classifying as punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, violence or incitement to such acts, and to prohibit all organizations and activities, which promote and incite racial discrimination to give full effect to article 4 of the Convention, remain lacking.

The Committee reiterates its recommendation that the State party should enact specific penal legislation in all areas required by article 4 of the Convention.

17. The Committee regrets the lack of disaggregated statistical data regarding the de facto enjoyment by members of indigenous peoples, ethnic minorities and non-citizens, of the rights

protected under the Convention, as without such data, it is difficult to assess the socio-economic situation of different groups in the State party. The Committee notes, however, that in the context of the 2010 national population census it is intended to include ethnicity as a variable. The Committee also notes the efforts undertaken within the framework of the Metagora Project to measure the level of awareness and fulfilment of Indigenous People's rights to their ancestral domains and lands.

Recalling the importance of gathering accurate and up-to-date data on the socio-economic situation of the population, the Committee encourages the State party to use the census in 2010 to include indicators disaggregated by ethnicity and gender on the basis of voluntary self-identification, and to provide the data obtained in its next periodic report. In this regard, the Committee draws the State party's attention to paragraphs 10 to 12 of its guidelines on the form and content of reports (CERD/C/2007/1). The Committee also recommends that the State party consult with relevant communities in the preparatory process leading up to the census and encourages initiatives such as the Metagora project.

18. The Committee appreciates the information provided by the State party that peace-processes in the different regions of armed conflict are resuming and takes note of the many initiatives taken to protect indigenous peoples including children in conflict zones. It welcomes the intention to establish a monitoring and reporting mechanism on the situation of children and the establishment of other committees monitoring different peace processes. The Committee is, however, concerned over reports of persisting human rights violations against indigenous peoples, who continue to be disproportionately affected by armed conflict. The Committee is concerned that leaders of these communities continue to be victims of extrajudicial executions as well as of disappearances and detention and over reports indicating occupation of indigenous territories by the armed forces and armed groups.

The Committee urges the State party to continue efforts to restore peace in the regions affected by armed conflict, to protect vulnerable groups from human rights violations, notably indigenous peoples and children of ethnic groups, and to ensure that independent and impartial investigations are conducted into all allegations of human rights violations. The Committee, recalling a recommendation from July 2008 by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, recommends the enforcement of the 1997 Indigenous Peoples Rights Act (IPRA) to ensure that indigenous children and children from other ethnic groups are not recruited by armed forces or armed groups (CRC/C/OPAC/PHL/CO/1, para. 19). The Committee seeks further information on the follow-up to the reports of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (A/HRC/8/3/Add.2) and of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90/Add.3).

19. The Committee is concerned about the effects of internal displacement as a consequence of armed conflict especially on indigenous peoples in relation to their livelihoods, health and education.

In the light of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Committee recommends that the State party adopt adequate measures in order to ensure the enjoyment by internally displaced persons of their rights under article 5 of the Convention, especially their right to security and their economic, social and cultural rights.

20. While taking note of additional information provided on the mandate of the Ombudsman, the Committee regrets that the information does not give a clear indication of the actual scope of activities and action of the Ombudsman in combating racial discrimination.

The Committee recommends that the State party provide concrete information on the actual scope of activities and action of the Ombudsman in combating racial discrimination, and on institutional guarantees for its independence in its next periodic report.

21. The Committee appreciates the work of the Commission on Human Rights in the Philippines, a national human rights institution established in accordance with the Paris Principles, but is concerned that its mandate does not explicitly include economic, social and cultural rights.

The Committee, recalling a recommendation of the Committee on Economic, Social and Cultural Rights from December 2008 (E/C.12/PHL/CO/4, paragraph 13), recommends that the State party include the protection and promotion of economic, social and cultural rights in the mandate of the Commission on Human Rights in the Philippines.

22. The Committee notes that IPRA is an impressive piece of legislature containing a welcome definition of indigenous peoples accounting both for self-definition and ascription by others. The Committee is concerned that the Regalian doctrine as applied to indigenous property seems to run counter to the notion of inherent rights under the IPRA. The Committee is also concerned over information that IPRA is significantly undermined by the Republic Act 942 (Mining Act of 1995).

The Committee recommends that the State party conduct an independent review, in consultation with indigenous peoples, of the legislative framework in relation to indigenous property, with particular regard to the question of consistency between the IPRA, its implementing guidelines, the Regalian doctrine and other related doctrines, as well as the Mining Act of 1995. The Committee, recalling a recommendation of the Committee on Economic, Social and Cultural Act from December 2008 (E/C.12/PHL/CO/4, paragraph 16), urges the State party to fully implement IPRA, in particular by securing the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and

ensuring that economic activities, especially mining, carried out on indigenous territories do not adversely affect the protection of the rights recognized to indigenous peoples under the aforementioned Act.

23. The Committee is concerned that the formal process for claiming collective land titles seems unduly burdensome, and is concerned over the fact that the indigenous communities bear the burden of proof when submitting applications.

The Committee seeks further clarification on the time frames for obtaining Ancestral Domains/Lands certificates and the number of applications filed and certificates issued for claiming collective land titles. The Committee recommends that the State party streamline the process for obtaining land rights certificates and take effective measures to protect communities from retaliations and violations when attempting to exercise their rights.

24. The Committee, while noting the increasing efforts of the National Commission for Indigenous Peoples (NCIP) to implement IPRA, is nevertheless concerned that consultation processes are not always adequately implemented when securing the Free, Prior and Informed Consent of indigenous peoples (FPIC) with regard to infrastructure and natural resource exploitation projects.

The Committee recommends that the State party verify that the current structures and guidelines/procedures established to conduct FPIC are in accordance with the spirit and letter of IPRA and set realistic time frames for consultation processes with indigenous peoples. It recommends that the State party verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims' lack of awareness of their rights, fear of reprisals, or a lack of confidence in NCIP.

25. The Committee welcome the State party's statements that it wishes to respect the customary practices and rights of the Subanon people of Canatuan within their ancestral territory and to address the community divisions associated with the *Subanon Mt Canatuan case*, which concerns mining operations at Mount Canatuan, a sacred site of the Subanon people, undertaken without prior consent by the Subanon people. The case was considered by the Committee under its early warning and urgent action procedure. The Committee remains concerned that contradictory information continues to be presented to it with regard to the status of actions taken to address the violations of the Subanon people's rights and destruction of their sacred mountain.

The Committee urges the State party to consult with all concerned parties in order to address the issues over Mount Canatuan in a manner that respects customary laws and practices of the Subanon people and welcomes information from the State party in relation to further developments.

26. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of

racial discrimination, such as the ILO Convention No. 169 (19609) concerning Indigenous and Tribal Peoples in Independent Countries().

27. The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

28. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the field of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

29. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

30. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

31. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

32. Noting that the State Party submitted its Core Document in 1994 (HRI/CORE/1/Add.37), the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 18, 23 and 25 above.

34. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 14, 15, 17, 22 and 24 and requests the State party to provide

detailed information in its next periodic report on concrete measures taken to implement these recommendations.

35. The Committee recommends that the State party submit its 21st and 22nd periodic reports in a single document, due on 4 January 2012, taking into account the guidelines for the CERD -specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
