



COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

WRITTEN STATEMENT ON THE OCCASION OF THE REVIEW OF THE PHILIPPINES COMBINED 5TH AND 6TH PERIODIC REPORTS TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 59TH SESSION, SEPTEMBER 2016

1. The Commission would like to highlight seven points which are based on our submission to the Pre-Sessional Working Group¹ and on the Philippines' recent response to the List of Issues.² They are as follows:

1. The formal and functional independence of the Commission
2. Torture, enforced disappearance and extrajudicial killing
3. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health
4. Land rights and adequate housing
5. Indigenous peoples
6. Environment and human rights
7. The rights of workers

1. The formal independence of the Commission

2. As the National Human Rights Institution (NHRI) of the Philippines, the Commission has the mandate vested by the 1987 Philippine Constitution³ and the Paris Principles⁴ to address, promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. We have the mandate to regularly report on human rights

¹ "CHRP Comments in Relation to the Concluding Observations of the Committee on Economic, Social and Cultural Rights," INT_CESCR_ICO_PHL_23087_E, 15 February 2016, http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/PHL/INT_CESCR_ICO_PHL_23087_E.pdf Last Accessed: 30 August 2016.

² "Philippine Response to the LOIs Raised by the UNESCR on the Combined 5th and 6th Philippine Report on the International Covenant on Economic, Social and Cultural Rights (ICESCR)," E/C.12/PHL/Q/5-6/Add.1, 18 August 2016, <https://daccess-ods.un.org/TMP/5104141.83139801.html> Last Accessed 30 August 2016.

³ Article 13, Section 17-18, 1987 Constitution of the Republic of the Philippines.

⁴ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993.

situations and violations, and recommend steps on advancing the realization of human rights and dignity of all.

3. Formal and functional independence from government is the cornerstone of an NHRI system. Formal independence entails not freedom from government intervention, having its own funding to fulfill its mandate and have the leeway to manage such funding and organizational structure, transparent recruitment of its members and ensuring a fixed tenure for members so as not to be summarily dismissed. Functional independence requires impartiality and freedom from the influence of the State and non-state actors, in line with the principle of plurality. NHRIs have the mandate to listen to all stakeholders—agents and organs of the State, civil society, academia and business sectors but must have its own stance on human rights issues guided by human rights—based approaches and standards.

4. The incumbent members of the Commission implemented organizational reforms to make the institution more effective and efficient to perform its mandate. While we welcomed the government's 2016 budget allocation of 439,671,000 Philippine Pesos for the Commission (a 24 percent increase from 2015), we are concerned with the latest decision of the budget department to allocate the Commission with only 496, 136,000 Philippine Pesos for 2017 (13 percent increase from the 2016 budget). The CHRP Charter is also still subject to re-filing at the onset of the 17th Congress and still awaiting the call for a committee hearing from both Houses of Congress.

5. We are also concerned with government agencies failing to act on the Commission's resolutions and recommendations. For instance, the Commission's 2014 advisory for the Philippines' ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, and its succeeding efforts⁵ to press on for ratification has yet to be heeded by the State.⁶

6. The Commission requests the Committee to reiterate its previous recommendations to the State Party and call on the Philippines to,

- a. Include the CHRP Charter in the priority legislation of the 17th Congress and ensure its passage into law by the current administration;
- b. Strengthen the Commission's mandate through its budgetary allocations in the General Appropriations Act; and
- c. Acknowledge and respect the Commission's independent mandate of promoting and protecting all human rights (civil, political, economic, social and cultural rights of Filipinos), and consider and follow through on the Commission's resolutions, advisories and recommendations.

⁵ The Commission has written letters to the Office of the President appealing for the ratification of the Convention. It also participated and collaborated with civil society partners in raising awareness about the importance of the Convention through conferences and workshops.

⁶ CHR Advisory for the Ratification by the Philippine Government of the International Convention for the Protection of All Persons from Enforced Disappearance, CHRA2014-010, Issued on 12 December 2014, Quezon City, Philippines.

2. Torture, enforced disappearance and extrajudicial killing⁷

7. We noted in our submission to the Pre-Sessional Working Group that Republic Act (R.A.) 10353 or the Anti-Enforced or Involuntary Disappearance Act was enacted in 2012. While this law is a welcoming milestone and the first of its kind in the Asian region, cases of torture, enforced disappearance and extrajudicial killings remain unresolved, and unabated even today. Additionally, the Philippines has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, a binding multilateral treaty that, together with the national law, will strengthen the protection of the rights of all from enforced disappearance.

8. There were 1,206 reported extrajudicial killings and 206 enforced disappearances during the Arroyo administration (from January 21, 2001 to June 30, 2010).⁸ The spate of killings at that time, particularly of human rights defenders, journalists, indigenous peoples and civilians, prompted a fact-finding mission in the Philippines by Mr. Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, on February 12-21, 2007.⁹ To respond to the recommendations of the Alston report and subsequently the Universal Periodic Review, Administrative Order 35 of 2012 was constituted creating an inter-agency committee on extrajudicial killings (EJKs), enforced or involuntary disappearances (EIDs), torture and other grave human rights violations (OGVs). AO 35 aimed to fast track the resolution of old and existing cases, while also aims to focus on coordinated effort to investigate and prosecute new cases involving these grave human rights violations. Unfortunately, the IAC has been slow in holding perpetrators liable to the violations and frankly been ineffective in arriving at the desired output. This is based on the fact that to date no case has been brought to conviction through the effort of the IAC as a super body. The lone conviction on the charge of torture was a result of a case filed by the CHR with the regional trial court of Pampanga.¹⁰

⁷ The list of issues of the Committee include a question on “whether measures to ensure effective enforcement of the Anti-Enforced or Involuntary Disappearance Act, and whether it prevents killings and disappearance of trade union activists, indigenous leaders and others advocating the Covenant,” Committee on Economic, Social and Cultural Rights, “List of issues in relation to the combined fifth and sixth periodic reports of the Philippines,” paragraph 4, E/C.12/PHL/Q/5-6, 27 April 2016, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/PHL/Q/5-6&Lang=E> Last Accessed 30 August 2016.

⁸ Karapatan, “2010 Year-End Report on the Human Rights Situation in the Philippines,” [http://www.karapatan.org/files/Karapatan%202010%20HR%20Report%20\(updated\).pdf](http://www.karapatan.org/files/Karapatan%202010%20HR%20Report%20(updated).pdf) Last Accessed: 3 September 2016.

⁹ “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Mission to the Philippines,” UN Human Rights Council Eighth Session, Agenda Item 3, A/HRC/8/3/Add.2, 16 April 2008.

¹⁰ PO2 Jerick Jimenez was sentenced to an indeterminate period of arresto mayor of two months and one day to a maximum of prison correccional of two years and four months, for being found guilty of torturing Jerry C. Corre of Angeles City, Pampanga in the north of the Philippines. Corre is a bus driver who was arrested by the police, taken into a police camp and was subjected to electrocution and beatings. The police accused him of peddling drugs and killing of a foreigner and police officer. While Jeremy was being tortured by the police, the latter kept calling him “Boyet” despite his ID showing that that is not his name, and an official from his community told the police they had arrested the wrong man. *“The torture stopped when Corre’s live-in partner Lyne Cabilangan and brother Reynante began visiting Jerry in jail the next day and began taking photos. Cabilangan later sought the help of the Commission on Human Rights. With CHR Region 3 Director Jasmin Regino giving this case priority, the CHR sent from CHR Manila Dr. Ludivino J. Lagat. The court noted that the examination by Lagat “even after the lapsed of 23 days from the date of the commission, evidence still exists on the physical torture of*

9. During the Aquino administration, besides the numbers it inherited from the Arroyo regime, there were 438 recorded cases of extrajudicial execution or killings, and 31 cases of enforced disappearance.¹¹ In the present government, from July 1, 2016 to August 22, 2016, the Philippine National Police (PNP) recorded 712 deaths of suspected drug users and peddlers from legitimate police operations and 1,067 killings committed by unknown assailants or vigilantes.¹² In the previous regimes, the victims of the killings were mostly activists, journalists, indigenous peoples and human rights defenders. While these groups of people are still targeted, the present killings involve a vast number of people from poor communities.

10. Extrajudicial killing is broadly defined by the Alston report, which was published almost a decade ago, but the definition still resonates and is applicable to the situation of the Philippines. Mr. Alston described that *“extrajudicial execution [or killing] encompasses any killing by the government forces as well as killing by any other groups or individuals which the government fails to investigate, prosecute and punish when it is in a position to do so.”*¹³

11. The Commission echoes Mr. Alston’s conclusion that *“it is not productive to play the numbers game and seek to confirm any definitive number. No one disputes that large numbers have been killed”*¹⁴ and to add, tortured and disappeared. One killing, one violation, is one too many. The key point is there is an increasing failure to end these grave human rights abuses as well as the failure to stop impunity that perpetuates such acts.

12. The Commission requests the Committee to call on the State Party to:

- a. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- b. Take measures to show that the government is doing everything it can to prevent the present killings from becoming a widespread, systematic practice.
- c. Grant country visit requests of the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The Anti-Drug Campaign has targeted and negatively affected the poor. As of 15 September 2016, there are 2,035 deaths under investigation by the Philippine National Police, and

the victim, hence indicating the severity of the physical abuse inflicted upon him, especially the electrocution.” The court gave weight to this medico-legal findings coupled with the photos taken by Cabilangan the morning after the torture.” The Standard, “First Conviction Under Anti-Torture Law Since 2009,” 3 April 2016, <http://thestandard.com.ph/news/-provinces/202777/first-conviction-under-anti-torture-law-since-2009.html> Last Accessed: 4 September 2016.

¹¹ Inquirer.net, “Amnesty Int’l PH dismayed with Aquino’s human rights record,” 31 March 2016, <http://globalnation.inquirer.net/138245/amnesty-intl-ph-dismayed-with-aquinos-human-rights-record#ixzz4JFRCx6RK> Last Accessed: 3 September 2016

¹² Intervention from PNP Chief De La Rosa, Senate Inquiry on Extrajudicial Killings of Drug Suspects, 23 August 2016, Senate of the Philippines, Manila, Philippines.

¹³ Professor Philip Alston, UN Special Rapporteur on extrajudicial executions, “Press Statement – Mission to the Democratic Republic of the Congo,” 5-15 October 2009, http://www.geneva-academy.ch/RULAC/pdf_state/Philip-Alston.pdf Last Accessed: 3 September 2016

¹⁴ “Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007),” paragraph 3, UN Human Rights Council Fourth Session, Agenda Item 2, A/HRC/4/20/Add.3, 22 March 2007, <http://www.refworld.org/pdfid/462390f62.pdf> Last Accessed: 3 September 2016

1,105 people killed during police operations.¹⁵ The Commission has been and is currently investigating the following cases related to extrajudicial killings: 941 cases during the Arroyo administration (2001 – June 2010); 531 cases during the Aquino administration (July 2010 – June 2016); and 144 cases under the Duterte administration (July 2016 – up to present).

3. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health¹⁶

13. While Philhealth, an agency attached to the Department of Health, is mandated by the State to provide social health insurance coverage to Filipinos, delivery of health services are decentralized, privatized and subsidized by government, private sectors and other stakeholders.¹⁷

14. In terms of access, Philhealth is not accessible to all members of society. Currently, majority of Philhealth members are those formally employed in private and public sectors that require contributions to the social health scheme. People in the informal sector that can access Philhealth are those who can pay such as high-skilled and semi-skilled workers paying individual contributions. “Indigents” can avail of Philhealth through sponsored programs, they have to apply or be identified for this sponsorship. The rest of the members of the informal and vulnerable sectors (poorest of the poor, street vendors, small-scale farmers, fisherfolks, people with disabilities, older persons, indigenous peoples, etc) are unable to register in the program due to financial hardship or difficulty in accessing the insurance (lack of information, physical and social barriers among others).

15. The Philippines is making efforts in identifying the poorest of the poor. Data that is available is based on a means test to determine family income, as well as data from the LGUs. It does not really approximate which households should be considered as poor. Technical capacity in this field is still limited, and hence it affects providing even disaggregated data.

¹⁵ Intervention from PNP Chief De La Rosa, Senate Inquiry on Extrajudicial Killings of Drug Suspects, 15 September 2016, Senate of the Philippines, Manila, Philippines.

¹⁶ The Committee in its List of Issues also raised the question on measures taken by the State Party to expand the coverage of the National Health Insurance Program. The prioritization of universal health coverage by the Philippines is seen in the creation of Philhealth – the country’s national social health insurance. RA 7875 and succeeding amendments including the National Health Care Act, implemented Philhealth as the compulsory insurance for Filipinos. Other provisions of relevant laws stipulate Philhealth coverage to specific groups (older persons, women, domestic workers).

¹⁷ The Department of Health focuses on policy direction, development of health plans and guidelines, oversees management of major hospitals and medical facilities; Philhealth contributions come from members or employees of the private and public sectors (with employer contributions as well), sponsored programs, retirees and more recently overseas Filipino workers, and Philhealth’s own reserves. Coverage is usually in-patient services; Local government units implement the national health programs of DOH, including delivery of primary health care services (e.g. immunization, TB, dengue, SARS, malaria, rabies, HIV/AIDs, reproductive health education, among others); Private sector provides walk-in services in private hospital and clinics, offers health maintenance plans (HMO providers such as Bluecross, Maxicare, FortuneCare, Medicaid, etc.); NGOs and charitable institutions also have their own health programs, in coordination with local government units and international organizations; Development aid money from foreign funds (foreign ministries office, international organizations such as the UN) and international financial institutions contribute to the national fund for health programs; and Social safety nets include contributions from SSS/GSIS membership (covering partial hospitalization and disability benefits), and conditional cash transfers (PPP) administered by the DSWD.

16. Political patronage is also pervasive. “Indigents” which may or may not be considered as legitimate beneficiaries of Philhealth, are covered because incumbent politicians sponsor them in exchange of the indigent’s political support. After the politicians’ terms have finished, indigents fall out of the social health coverage.

17. One gloomy example of a combination of patronage and charity is the situation of some people who have to go through the process of application in order to get medical assistance. The medical assistance program of Philippine Charity Sweepstakes Office (PCSO) requires those in need to apply for medicines, hospitalization payment, diagnostic procedures, dialysis procedures, and medical equipment. Requirements to avail of the program include a written request to the chair of the PCSO, medical abstracts from the physicians, and endorsement letters from the hospitals where PCSO allots an Endowment Fund. People in need line up to receive assistance. While others wait for their applications to be granted, some receive backing from politicians to expedite the process and be granted medical aid. The concept of universal health coverage and the principles of the right to health are at odds with this situation.

18. Financing the social health insurance is also a barrier in completely implementing the goals of UHC. Philhealth depends on premium payments (members’ contributions and reserve funds) and tax subsidies (Sin Tax) that are still unsustainable. Out of pocket expenses of Filipino households are 56.3% (P296.5 billion) of the P526.3 billion in overall health expenditures (2013 data from PSA National Statistical Coordination Board (NSCB). And of course there is the issue of persistent corruption and tax evasion in the country, which stymies the flow of funds to the national health policy and implementation system.

19. Healthcare alone is inadequate unless socio-economic and political factors in influencing health outcomes are given the same importance, i.e. social determinants to health. As one example, treatment of tuberculosis is expensive, it entails high out of pocket costs from the patient as well as costs from the health care provider. The issue as to why tuberculosis is prevalent in the first place is overlooked – poverty is an indicator, and also poorly ventilated, crowded living and working environments contribute to the transmission of the disease.

20. The Philippines should also prioritize sustainable health and rehabilitation programs and services that respond to the mental health and psychosocial health needs of its population. The term ‘psychosocial’ underscores the close connection between psychological aspects of our experience (e.g., our thoughts, emotions, and behavior) and our wider social experience (e.g., our relationships, traditions and culture). Mental disabilities, which often benefit from clinical treatment, tend to involve severe psychosocial difficulties in managing thoughts and feelings, maintaining relationships, and functioning in expected social roles. However, many psychosocial problems do not require clinical treatment but instead require understanding of and addressing their causes such as stigmatization, lost hope, chronic poverty, uprooting, and inability to meet basic needs.¹⁸

21. The Commission also emphasizes the need for the promotion and protection of the rights of older persons, particularly protection against elder abuse, the right to health and the need for an

¹⁸ INEE Thematic Issue Brief: Psychosocial Well Being.
http://www.toolkit.ineesite.org/toolkit/INEEcms/uploads/1128/INEE_Thematic_Issue_Brief_Psychosocial.pdf Last Accessed: 25 April 2016.

adequate, sustainable social pension. In the Philippines, a key issue is the invisibility of elder abuse as there is dearth of data and awareness that it is happening.¹⁹

22. Although older persons in the Philippines receive a monthly stipend of P500.00 per month,²⁰ they use the money not only for their needs but also for other members of their household, most especially their grandchildren.²¹ Furthermore, “while the pension may have made a major difference to older people facing high levels of vulnerability, it is still far from providing a decent level of income that ensures older people can meet their basic needs.”²²

23. The Commission requests the Committee to call on the Philippines to:

- a. Increase national spending on social services like health and social protection, so there would be adequate resources for a universal health coverage, social pension and funding for health programs and rehabilitation services that are accessible, acceptable, of good quality and available to everyone without discrimination.
- b. Address the current anti-drug campaign with a right to health perspective. In addition to the call for increased spending on health services and programs, the government should look beyond superficial indicators of abstinence from drug use but instead pay close attention to human rights and development indicators and outcomes like quality of life, physical and psychosocial health, employment and education.
- c. Strengthen primary health care. The following primary health care programs should be supported: delivering health education including awareness on the promotion and protection of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including reproductive health; promotion of nutrition, safe water and basic sanitation; maternal and child health care including family planning, and immunization; prevention and control of substance abuse, infectious and common, diseases and injuries, and access to essential medicines.
- d. Initiate in-depth study that would probe into cases and situations of elder abuse. Relevant government agencies such as the Department of Health (DSWD) and the Department of Social Welfare and Development (DSWD) can lead the initiatives that would address issues of elder abuse.
- e. Grant the country visit request of the Special Rapporteur on the right to health. (the right of everyone to the enjoyment of the highest attainable standard of physical and mental health).

¹⁹ “Gov’t Agencies and NGOs launch joint advocacy on Elder Abuse,” Quezon City, 15 June 2016.

²⁰ Sec. 5 (h.1) of the Expanded Senior Citizen’s Act of 2010 (Republic Act 9994) states that, “Indigent senior citizens shall be entitled to a monthly stipend amounting to Five hundred pesos (Php500.00) to augment the daily subsistence and other medical needs of senior citizens, subject to a review every two (2) years by Congress, in consultation with the DSWD.”

²¹ The Coalition of Services of the Elderly (COSE) and HelpAge International, “The Philippine Social Pension at Four Years: Insights and Recommendations,” 2016, <http://ageingasia.org/wp-content/uploads/2015/12/The-Philippine-social-pension-at-four-years-Summary-final-low-res-112715.pdf> Last Accessed: 14 September 2016

²² Idem; There are however city ordinances that provide benefits to older persons, which can add on to the monthly pension, such as birthday incentives, discounts in restaurants and groceries, and free passes to recreational activities.

4. Land rights and adequate housing

24. Land use conflicts in the Philippines are persistent causes of complaints for human rights violations. By way of example, we refer to the island groups comprising the municipality of Caluya, Antique. While former President Manuel Quezon, thru Proclamation No. 649, declared the islands of Semirara, Caluya, and Sibay as coal mining reserves on November 20, 1940, it turned out that land titles were later issued to certain individuals. The Department of Agrarian Reform even initiated to cover portions of Semirara Island under the Comprehensive Agrarian Reform Program (CARP), but eventually backed out upon being told that the land, while covered by a certificate of title, is a coal mining reserve. Yet, there were instances where land was disposed and acquired thru sale and donation. The Municipality even became a donee of mineral lands, but the donation was revoked by the purported owner, resulting to the displacement of the recipient of the land from the Municipality. The Commission has intervened in this case and formed an inter-agency working group. The Land Management Bureau is now investigating the basis for the issuance of the land patents.

25. The Commission requests the Committee to call on the Philippines to:

- a. Prioritize and fast track the resolution of land use conflicts, and recommend that adequate expertise and resources should be allotted.
- b. Establish or strengthen laws and policies with anti-discrimination provisions to protect marginalized and vulnerable groups from the effects of forced evictions and resettlement.²³
- c. Extend an invitation to the UN Special Rapporteur on adequate housing.

5. Indigenous peoples

26. During two focus group discussions (June 14, 2016 and August 18, 2016) between the National Commission on Indigenous Peoples (NCIP) and the Commission, it appears that there are policy efforts recognizing the rights of indigenous peoples. However, full rendition of services intended to promote the four bundles of IP rights requires more budgetary allocation, such as for documentation of customary laws and indigenous knowledge systems and practices, which are components of indigenous peoples' self-determination.

27. The titling of ancestral domains and lands remain a challenge for the State Party, which has seen as part of the solution in the suspension of titling and registration activities pursuant to Joint Administrative Order No. 1 Series of 2012. This means that no ancestral domain or land could be registered if they are contested due to overlapping land use and different claimants. In spite of this, there seems to be no effective mechanism to protect the IPs from harassment in such cases.

28. Grave human rights violations against *lumads* persist in Mindanao. Lumads face continuous displacement, harassment, and killings due to the armed conflict between government forces and the New People's Army.

29. The Commission requests the Committee to call on the Philippines to:

²³ Commission on Human Rights of the Philippines and the Institute for Popular Democracy, "Human Rights in the Rubble: A review of forced eviction and resettlement law and practice in Metro Manila," February 2014.

- a. 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.
- b. Generate sufficient resources to fully implement the necessary programs and to protect indigenous peoples' rights.
- c. 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*.²⁴ Moreover, there should be a clear delineation of NCIP's mandate in protecting the rights of indigenous peoples.

6. Environment and human rights

30. The Commission spearheaded the drafting of the guidelines for the national monitoring of human rights compliance in the mining industry after the Memorandum of the Executive Secretary dated July 06, 2012 (addressed to the Cabinet Cluster on Human Development and Poverty Reduction) was issued to implement and operationalize the mining policies of the Aquino Administration as per Executive Order No. 79 (s. 2012). It initially identified the Commission, the Department of Environment and Natural Resources – Mines and Geosciences Bureau (DENR-MGB), the Department of Labor and Employment (DOLE), and Department of Justice (DOJ) as implementing agencies to:

- a. Provide mechanisms and clear guidelines to monitor human rights and labor rights violations;
- b. Develop operational linkages with concerned government agencies, particularly the Commission and the DOLE, inter alia, to assist victims and take appropriate action against violators.

31. The guidelines expressly recognized among others that environmental concerns are human rights concerns and called on the government to apply a human rights-based approach to protect the environment. More so, the guidelines clarified that adverse impacts of mining activities to the environment in the form of pollution and disturbance to the livelihood and welfare of individuals or communities, among others, if finally supported by at least substantial evidence, shall be regarded as human rights abuses and violations. Said guidelines are still pending with the Mining Industry Coordinating Council (MICC).

24 The Supreme Court ruled pursuant to Section 66 of the Philippine Indigenous Peoples Rights Act that the NCIP shall have jurisdiction over claims and disputes involving rights of Indigenous Cultural Community/Indigenous Peoples (ICC/IPs) only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, i.e., parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP. In this case, while most of the petitioners (i.e. *Unduran, et al.*) belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, even if the real issue involves a dispute over land which appear to be located within the ancestral domain of the Talaandig Tribe, it is not the NCIP but the RTC which shall have the power to hear, try and decide this case. (*Unduran vs. Aberasturi*, G.R. No. 181284, October 20, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/181284.pdf> Last Accessed: 15 September 2016)

32. Nevertheless, the Commission observes a shift in policy as to the significance of the mining industry in the Philippines after the assumption of the current Duterte Administration. The current Environment Secretary, Ms. Gina Lopez, spearheaded the audit of mining firms and have suspended the operations of those found not complying with environmental laws²⁵. However, the State Party may need to present information whether or not the ordinary mining workers will not be adversely affected by the cessation of operations.

33. On July 27, 2016, the Commission has notified the 50 fossil-fuel producer companies named in the petition of Greenpeace Southeast Asia, et al., enjoining them to respond to the allegation of their involvement to global climate change that causes extreme weather events and damages to life and property. The so-called “Greenpeace Petition” was filed last September 22, 2015 months before the Conference of Parties 21 in Paris, France.

34. In the Matter of: the Farmers-Protesters' Rally and their Dispersal in Kidapawan City on April 1, 2016 (Case No. CHR-XII-2016-0129), the Commission resolved that the government failed on their duty to fulfill the right to food and freedom from hunger of the farmers-protesters by ensuring that adequate and sufficient food and assistance were available. The farmers rallied to demand food, particularly rice, from the government. Their action was triggered by the pernicious effects of the drought due to El Niño, depriving them of their usual produce. They had no access to their staple food - much less afford it, prompting them to march to and assemble along the Davao-Cotabato Road from March 30 to April 1, 2016. Thus, the Commission recommended, among others:

1. For the National Disaster Risk Reduction and Management Council (NDRRMC) to apply a policy of calling for a dialogue to address the farmers' right to timely and adequate supply of food for the families suffering from the drought caused by El Nino and to include in the process, community-based dialogues with all stakeholders especially the affected farmers, as rights-holders.
2. For Congress to amend the Philippine Disaster Risk Reduction and Management Act to ensure that its provisions are fully responsive to the needs of affected families and communities in light of the drastic climate change and its adverse impact on the right to adequate food.
3. For Congress to immediately pass into law the 'Zero Hunger Bill.
4. For the Commission on Audit (COA) to review COA Circular No. 2014-002²⁶ and Memorandum No. 2014-009²⁷ to clarify the steps in the procurement and the distribution of emergency food and supply needed by the local government units to immediately distribute said emergency food and supplies to their constituents, as rights-holders, in areas of declared calamity.
5. For LGUs to observe the provisions of the Local Government Code and the Philippine Disaster Risk Reduction and Management Act on the primary responsibility of LGUs as first

25 Manila Bulletin, Lopez stops operations of two more mining firms, August 12, 2016, <http://www.mb.com.ph/lopez-stops-operations-of-2-more-mining-firms/+&cd=6&hl=fil&ct=clnk&gl=ph> Last Accessed: 5 September 2016.

26 Accounting and Reporting Guidelines on the receipt and utilization of National Disaster Risk Reduction and Management Fund (NDRRMF), cash and in-kind aids/donations from local and foreign sources, and funds allocated from the agency regular budget for Disaster Risk Reduction and Management (DRRM) program

27 Guidelines in the Audit of Disaster Risk Reduction and Management (DRRM) Funds

responders in times of disasters and calamities specially in fulfilling the people's right to adequate food.

35. The Commission requests the Committee to call on the Philippines to:

- a. Clarify whether or not to ratify the Paris Agreement that was reached during the COP 21. The incumbent President has been quoted in saying that he will not honor the proposed restrictions on greenhouse gas emissions which was supported by his predecessor.²⁸
- b. Fast track the MICC deliberation on the guidelines for the national monitoring of human rights compliance in the mining industry
- c. Ensure the protection of the rights of mining workers who may be affected by work dislocation
- d. Conduct a study to incorporate standards of human rights impact assessment (HRIA) to its current environmental impact assessment framework, which is based on Presidential Decree no. 1586 (June 11, 1978)
- e. Support the Commission's inquiry on the impacts of climate change to the realization of human rights
- f. Adopt the Commission's recommendations In the Matter of: the Farmers-Protesters' Rally and their Dispersal in Kidapawan City on April 1, 2016 (Case No. CHR-XII-2016-0129)
- g. Extend an invitation to the UN Special Rapporteur on human rights and the environment.

7. The rights of workers and trafficked persons

A. On domestic workers

36. The enactment of Republic Act 10361 or Kasambahay Law in 2013 was a feat for Filipino domestic workers who have been finally recognized by law as workers. It was also a response to the adoption of an international labor treaty - ILO C189 Decent Work for Domestic Workers in 2011, which the Philippines ratified in 2012.

37. The Kasambahay Law is also facing challenges in its implementation. The Federation of Free Workers stated the government is having difficulty compelling employers to register their domestic workers in social protection programs of the State.²⁹ "From an estimated two million domestic workers only around 120,000 are registered with the Social Security System; 60,000 with PhilHealth; and 25,000 or so with Pag-IBIG (or the housing loan program)."³⁰

38. The Commission requests the Committee to call on the State Party to,

- a. Initiate measures to further raise the awareness of both employers and domestic workers on the salient provision of the Kasambahay Law, and ensure strict implementation of the

²⁸ CNN Philippines, Philippines reversal on Paris climate deal a risk, experts say, July 22, 2016, <http://cnnphilippines.com/world/2016/07/22/philippines-reversal-on-Paris-climate-deal-a-risk.html> Last Accessed: 5 September 2016.

²⁹ The Philippine Star, "1 M kasambahay still without social protection," 25 January 2016, <http://www.philstar.com/metro/2016/01/25/1546020/1-m-kasambahay-still-without-social-protection> Last Accessed: 3 September 2016.

³⁰ Idem.

law and determine the difficulties that prevent employers and workers from registering into the social protection programs.

B. On migrant workers

39. The CHR acknowledges the Philippines' efforts in migration management, more work still needs to be done to implement rights-based approaches in protecting the labor rights and human rights of migrant workers and members of their families.

40. Migrant domestic workers do not only experience exploitation by employers from the private sector. Diplomatic officials are also culpable of violating the labor rights and human rights of Filipino domestic workers.³¹ Additionally, shelters in the Philippine embassies in the receiving countries, which are supposed to be safe havens, have become notorious places where domestic workers in distress have experienced abuse.³²

41. The Commission requests the Committee to call on the State Party to,

- a. Enforce the regulation of zero recruitment fees and costs for workers and monitor and take in to account the activities of recruitment agencies that do not comply with the regulation. Prospective migrant workers should be made aware of the no-fees policy through information and education campaigns of the government, such as during the Pre-Employment Orientation Seminar.
- b. Ensure that the Pre-Departure Orientation Seminar and the Post-Arrival Worker Orientation Program are rights-based. Likewise, the outreach to migrant workers should have significant impact in raising awareness on their labor rights and human rights in all stages of the migration process. The latest initiative of the Philippines with the International Organization for Migration (IOM) on a comprehensive and integrated pre-departure and post-arrival worker orientation program³³, is an interesting development, and if

³¹ As per the cases handled by migrant support groups Center for Migrant Advocacy and Kanlungan Center.

³² In 2013, the then Chair of the Committee on Overseas Workers Affairs (COWA), Congressman Walden Bello, published a report on the sex-for-flight issue, based on his fact-finding mission in the Middle East, *"Sexual abuse on our womenfolk perpetrated by their hosts in a foreign country is an awful crime. But there is something more awful, and that is their exploitation by their own compatriots in that strange land. And it is triply terrible when they are exploited sexually by government officials that are supposed to protect them. In this last press conference that the COWA is holding during the 15th Congress, we are unmasking some of the sexual predators that our investigation has revealed. We would like to thank those of you in the media that called our attention to allegations of what was called 'sex-for-flight' transactions promoted by people in Philippine Embassies in the Middle East."* As a result of this probe, a year later, in 2014, then Foreign Secretary met with Chair Bello and recalled heads of posts in Jordan, Kuwait, and Saudi Arabia, initiated an internal investigation on the allegations and filed cases against embassy staff involved in the scam. However, progress on these cases have stalled since then.

³³ "The Philippines delegation presented [at the Abu Dhabi Dialogue in May 2016] a comprehensive and integrated pre-departure and post-arrival worker orientation program, which the government of the Philippines developed in cooperation with IOM. The proposed program consists of several modules, including ones on the cultural and social environments in the GCC, the rights and obligations under employment contracts, fundamental worker and human rights, gender considerations in preparing for going to work overseas, dealing with crisis and emergency situations, healthcare issues, financial awareness, travel and security and preparation for return to home countries." https://www.gfmd.org/files/documents/abu_dhabi_dialogue_senior_officials_meeting_-_final_report.pdf Last Accessed: 6 September 2016.

implemented should assist in empowering workers in making informed choices about migrating for employment.

- c. Strengthen the capacity of Mission officials in administering the shelters for migrant workers in distress. Strengthen the knowledge and adoption of participatory approaches and methods for the daily operation and governance of the shelter. Provide adequate funding to fulfill this responsibility. Furthermore, ensure that the State Party is responsible for facilitating the timely repatriation of migrant workers at no cost to the worker. Aggrieved migrant workers should have access to remedies and justice when their rights are violated. Members of the diplomatic corps who are found to be violating the rights of their workers should be properly sanctioned and made accountable to the abuses committed.
- d. Champion rights-based approaches at the regional and international levels. The Philippines has the opportunity to be instrumental in advocating for a migrants rights discourse as well as cooperation rather than a race to the bottom approach, at the ASEAN (in which the State Party will be Chair and host for 2017 Summit), Abu Dhabi Dialogue (in which the State Party is a Co-Chair together with Kuwait and the UAE), the Colombo Process, the Migrants in Countries in Crisis Initiative (Co-Chair with the United States), and the Global Forum on Migration and Development.

42. Finally, we request the Committee to call on the Philippines to lead the negotiation in the passing of a binding treaty for migrant workers in the ASEAN. The ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers, once finalized and implemented, can address the challenges to the rights of all migrant workers in the region. We urge the ASEAN governments to publicize the final draft in order for relevant stakeholders to give their input to ensure that a legally-binding, rights-based framework is included in to the instrument.

C. On trafficked persons

43. The Commission, during the sidelines of the 60th Session of the Commission on the Status of Women, participated in a forum organized by the Migrant Heritage Commission (MHC), a civil society organization in the Greater Metro D.C on 19 March 2016, in the Philippine Embassy in Washington D.C. The forum focused on the efforts of the Philippine government and relevant stakeholders in combating human trafficking for labor to the United States. Participants in the event included the Filipino teachers, who narrated their harrowing experiences of being trafficked to Washington D.C., by Isidro Rodriguez, the perpetrator and owner of the recruitment company Renaissance Support Center Inc. in Manila. A total of 85 cases have been filed against Mr. Rodriguez, and the license of his recruitment agency has been revoked. The Commission is harmonizing its efforts with MHC, The Philippine Embassy, the Philippine Overseas Employment Administration (POEA), and the Office of the Undersecretary for Migrant Workers Affairs of the Department of Foreign Affairs (OUMWA-DFA) of the Philippines, in order to apprehend Mr. Rodriguez, and bring justice for the aggrieved Filipino teachers and members of their families.

44. The key component of a human rights approach to countering trafficking in persons is ensuring the provision of equal protection of all trafficked persons regardless of their age, gender, field of work and migration status³⁴. Grievance mechanism, access to justice, rehabilitation and

³⁴ Migrant workers can be victims of trafficking / trafficked persons when in transit – a common occurrence when their recruiting agents promise employment to them while in the origin country, then turns out to be different upon reaching the destination country. Hence there is an element of fraud and deception. The nexus

reintegration should be equal and unrestricted for all trafficked persons, and should not compromise their rights, safety and psychosocial well-being.

45. The Committee may wish to recommend that the State Party,

- a. Collect, organize, coordinate data on trafficking of persons so as to efficiently respond to cases of rights violations against trafficked persons.
- b. Include the Commission in the Inter-Agency Council against Trafficking as a permanent member. The Commission can collaborate with the agencies and integrate human-rights based approaches to counter trafficking, and protect the rights of trafficked persons, as mandated by the Implementing Rules and Regulations of the Anti-Trafficking Act of 2003.
- c. Respect the human rights of and protect trafficked persons from being criminalized for any laws they may have inadvertently violated while in the process of being trafficked.
- d. Ratify the Protocol of 2014 on the Forced Labour Convention, 1930, a legally binding international instrument that aims to prevent contemporary forms of slavery, protect groups vulnerable to trafficking from forced labor and forced prostitution such as women, children, migrants and indigenous people, and compensate and rehabilitate abused workers and individuals.

- END -

between trafficking and forced labor comes into play in this context. Trafficking in persons can be best understood as a process while forced labor (including forced prostitution) is an outcome, a workplace situation.