THE HARAN REPORT:

On Human Rights Violations Against the *Lumad* of Mindanao

Commission on Human Rights
Quezon City, Philippines

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Acronyms

4P	Pantawid Pamilyang Pilipino Program
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
AFP	Armed Forces of the Philippines
ALCADev	Alternative Learning Center for Agricultural and Livelihood Development
BAYAN	Bagong Alyansang Makabayan
BSDU	Barrio Self-Defense Unit
CAA	Civilian Active Auxiliaries
CADT	Certificates of Ancestral Domain Titles
CAFGU	Citizen Armed Force Geographical Unit
CARHRIHL	Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law
CCT	Conditional Cash Transfer
CHR	Commission on Human Rights
CLIP	Comprehensive Local Integration Program
CPP	Communist Party of the Philippines
CPP-NPA-NDF	Communist Party of the Philippines-New People's Army-National Democratic Front
CRC	Children's Rehabilitation Center
CVO	Civilian Volunteer Organization
DENR	Department of Environment and Natural Resources

DepEd	Department of Education
DND	Department of National Defense
DOJ	Department of Justice
DSWD	Department of Social Welfare and Development
EJK	Extra-Judicial Killing
EO	Executive Order
FOO	Field Operations Office
FPIC	Free, Prior and Informed Consent
ICC	Indigenous Cultural Community
ICHDF	Integrated Civilian Home Defense Forces
ID	Infantry Division
IDP	Internally Displaced Person/s
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INF	Infantry
IP	Indigenous People
IPMR	Indigenous People Mandatory Representative
IPRA	Indigenous Peoples' Rights Act
IPSP	Internal Peace and Security Plan
KARAPATAN	Karapatan Alliance for the Advancement of Peoples Rights
KATRIBU	Kalipunan ng Katutubong Mamamayan ng Pilipinas
KilosKa	Kilusang Maralita sa Kanayunan
KMP	Kilusang Magbubukid ng Pilipinas
LGU	Local Government Unit
LIO	Legal and Investigation Office
LMPF	Lumad Mindanao Peoples Federation
LRC-KsK/FoE Phils	Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth Philippines
MAPASU	Maluhutayong Pakigbisog Alansa Sa Sumusunod
MILF	Moro Islamic Liberation Front

MISFI	Mindanao Interfaith Schools Foundation, Inc
MNLF	Moro National Liberation Front
MSM	Missionary Sisters of Mary
NCIP	National Commission on Indigenous People
NDF	National Democratic Front
NGO	Non-Government Organization
NPA	New People's Army
PA	Philippine Army
PASAKA	Panahugpong sa mga Samohante Alang sa Kausaban
PDOP	Peace and Development Outreach Program
PNP	Philippine National Police
PPPHS	Philippine Prayer for Peace for the Holy Spirit
PTA	Parents and Teachers Association
SCAA	Special CAFGU Active Auxiliary
SONA	State of the Nation Address
SOS	Save Our Schools Network
STTICLCI	Salugpongan Ta Tanu Igkanugon Community Learning Centre, Inc
UCCP	United Church of Christ of the Philippines
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCERD	UN Committee on the Elimination of all Forms of Racial Discrimination
UNCESCR	UN Committee on Economic, Social, Cultural Rights
UNCRC	UN Convention on the Rights of the Child
UNDRIP	UN Declaration on the Rights of Indigenous People
UNGPID	UN Guiding Principles on Internal Displacement
UNHRC	UN Human Rights Council
UNICCPR	UN International Covenant on Civil and Political Rights
UNICESCR	UN International Covenant on Economic, Social, and Cultural Rights
USSD	United States State Department

Foreword and Preface

This Haran Report was engendered by two position papers, one from the Save Our Schools Network (SOS), and another from the "tribal leaders of Talaingod, Davao del Norte."

The SOS paper, which was submitted to the CHR on 15 July 2015, contained the "findings of a two-day fact-finding mission" conducted by the SOS and other parties on 13-14 July 2015, in Cateel, Davao Oriental. The SOS assailed the Department of Education (DepEd) for an "unjustified closure" of IP schools put up by the Salugpongan Ta Tanu Igkanugon Community Learning Centre, Inc. (STTICLCI). It also denounced the AFP's civil-military operations within the *Lumad* ancestral domains where these schools were located. The SOS and other NGOs demanded the pull-out of AFP troops and the re-opening of the schools.

At about the same time, the Commission also received a copy of a manifesto, entitled "Unified Declaration of Tribal Leaders of the Municipality of Talaingod, Davao del Norte." The Ata-Manobo leaders declared that the STTICLC schools were being used for communist indoctrination of *Lumad* students, and took a position diametrically opposed to that of the SOS Network. They urged the DepEd to close the said schools.

The opposing positions on the operation of the schools heightened with increasing reports of *Lumad* casualties in the escalating insurgency war between the government and the New People's Army (NPA).

Earlier in February, before the submission by SOS of its position paper, *Lumad* families had encamped in a compound owned by the United Church of Christ of the Philippines (UCCP) in Haran, Davao City. The leaders of the evacuees demanded the pull-out of government paramilitary forces from their land.

To be sure, not all the *Lumad* who came down from their homes and encamped in the cities did so to escape the ravages of conflict. Some *Lumad* who went to Haran came from areas where there was no actual conflict, but only abject poverty. They were promised sacks of rice, kitchen utensils, farming implements, a few thousand pesos, and an audience with politicians and a boxing idol. Their

hardship and lack of education made it easy to entice them to come down to the City.

On 18 August 2015, five Ata Manobos were killed in Sitio Mahayhay, Barangay Mendis, Pangantucan, Bukidnon. The military claimed the killings resulted from an encounter between the 1st Special Forces Battalion of the Philippine Army and the SPP1 Guerilla Front 68 of the NPA. However, during the Public Hearing conducted by the CHR in Davao, witnesses testified that the killings were a rub-out of a *Lumad* family perceived by the military to be sympathetic to the NPA. Two of the five victims were minors – 13 and 16 years old, and the other was a blind 72-year-old person.

Less than a month later, in the first week of September 2015, the nation was shocked by the slaying of an executive director of a privately-operated learning institution accused of teaching insurgent ideology to *Lumad* children. His throat was slit from ear-to-ear in *Bagani* fashion. The *Bagani*, in traditional Manobo culture, are warrior-defenders of their tribe.

Immediately following the grisly killing was the execution of two more *Lumad*, a leader and chairman of an IP group called the Maluhutayong Pakigbisog Alansa sa Sumusunod (Mapasu), and a barangay officer. Residents of Diatagon in Surigao del Sur, Mindanao – including children, women and the elderly – were forced by the perpetrators to gather in the town square to witness the atrocity. The message was not lost on the townspeople. Fearing more violence, some 2,000 residents fled their homes. The governor of Surigao del Sur accused a paramilitary group operating in the towns of Diatagon, Lianga, San Agustin and Marihatag as responsible for the killings.

Then, on 19 October 2015, the Mayor of the Municipality of Loreto, Agusan del Sur, and his son were abducted from Barangay Baan Riverside, Butuan City. On 26 October 2015, the CPP-NPA-Southern Mindanao Regional Operations Command claimed full responsibility for the executions, describing it as "revolutionary justice." The Mayor was a Lumad and former NPA rebel. He later became a staunch critic of the NPA and was instrumental in the surrender of around 150 of his former comrades. A month before his killing, he led the Provincial Tribal Council of Agusan del Sur into signing a manifesto which denounced the abuses of the CPP-NPA-NDF against IPs and declared their ancestral domain to be off-limits to the insurgents.

On 3 December 2017, eight *Lumad* farmers were killed in an encounter with the Army's 27th and 33rd Infantry Battalions and the Philippine Marines in South Cotabato. According to Datu Jerome Succor Aba, co-chairperson of Sandugo, *Lumad* farmer families had sought to reclaim 300 hectares of their ancestral land from a mega-corporation which had earlier displaced their families. A day before the encounter, a military official was supposed to have warned the *Lumad* farmers, especially Datu Victor Danyan, to surrender. Danyan, a *Lumad* leader who denied being a member of the NPA, was among those killed by the military forces.

On 9 February 2018, Dakula Guillermo Tiambong, a *Lumad* leader of the Mamanwa tribe in Alegria town, Surigao del Norte, was killed by alleged members of the NPA in Davao del Norte. According to the 402nd Infantry Brigade, the

52-year-old Datu was shot in front of his family, while tending to his farm at the mountains of Sitio Palo 10, Barangay Camp Edward, Alegria.

On 4 April 2018, Antonio Takinan, the IP mandatory representative to the town council of Magpet, North Cotabato, was killed in an ambush. Communist rebels later claimed responsibility, declaring that the execution was an imposition of revolutionary justice against "anti-people" individuals.

To date, killings on both sides continue unabated, with no end in sight.

Undoubtedly, rampant resource-exploitation by outside business interests has given impetus to insurgency. These killings have been attributed in equal measure to outside business interests, the military establishment, paramilitary groups, the NPA, politicians, and a religious group, who all have commercial interests and who all have benefitted from the exploitation of the resources in these ancestral domains.

Clearly, indigenous communities in parts of ancestral Mindanao are fracturing in conflict. In these conflict areas, three faces of the *Lumad* have emerged: that of the CPP-NPA; that of paramilitary groups supported by the military; and that of the largely uneducated, hapless *Lumad* majority, caught in the crossfires.

It would be simplistic to say that ideology is the single driver of conflict in the ancestral domains of Mindanao. Documentary, testimonial, and anecdotal evidence gathered during the Commission's inquiry point to the fact that land-use and the extraction of mineral resources are inextricably linked to insurgency. Unfortunately for most of the IPs, these natural resources, far from lifting them from poverty, have only added to their misery and oppression.

Fear and poverty, abetted by government neglect and decades of exploitation, have also contributed to making the *Lumad* vulnerable to displacement.

Indeed, even within their ancestral domains, the voices of the *Lumad* are rarely heard, their human rights never fully respected. And, whenever they are forced into displacement, their humanitarian conditions are quickly forgotten, if not readily sacrificed in the din of partisan debate among politicians, government agencies, NGOs, and religious organizations.

The recommendations in this Report are based on the results of field investigations, fact-finding missions, ocular inspections, oral testimonies and affidavits proffered during the public hearings and consultative dialogues held by the Commission, and motu proprio cognition of relevant public reports and documents up to the first half of 2018.

Roberto Eugenio T. Cadiz
Commissioner
Commission on Human Rights
of the Philippines
22 May 2018, Quezon City, Philippines

The Haran Report:

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The Mandate of the Commission

Pursuant to its duty to investigate HR violations and to monitor the Philippine government's compliance with HR, the Commission on Human Rights (CHR), through its Regional XI Office, investigated alleged violations and abuses against the *Lumad* and other Indigenous Peoples of Mindanao.

This Haran Report arose from two diametrically opposed position papers: the first, demanding the closure of alternative *Lumad* schools; and the second, calling for the pull-out of military troops in ancestral domains where these schools are located. Cries for help coming from evacuees displaced by the conflict who were encamped in the UCCP Compound in Haran, Davao City were also heard by the Commission. The cases were docketed as CHR-XI-2015-0247 and CHR-XI-2015-0248.

It must be mentioned that, under the 1987 Constitution and the Indigenous Peoples' Rights Act (RA 8371, otherwise known as IPRA), the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.[1] The State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.[2] The State also recognizes, respects, and protects the right of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It is constitutionally commanded to consider these rights in the formulation of national plans and policies.[3]

1 1987 Constitution, Section 22, Article II.

2 *Id.,* Section 5, Article XII:

3 *Id.,* Section 17, Article XIV

The Indigenous Peoples and the Lumad of Mindanao The IPRA

The IPRA describes IPs as "a group of people or homogenous societies, identified by self-ascription and ascription by others, who have continuously lived as organized community on communally-bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos."[4]

The term "*Lumad*," a Visayan word for "native" or "indigenous," was adopted by the delegates of the Lumad Mindanao Peoples Federation founding assembly in 1986 to distinguish themselves from the Christians and Muslims in Mindanao.[5] The *Lumad* have their own ancestral domains and distinct customs, traditions, and beliefs, which to this day, continue to be practiced.

Increasing HR Violations

In 2015, the CHR investigated eight cases of extra-judicial killings (EJKs) in Regions X, XI, and XIII (CARAGA), involving the killing of 21 *Lumad*. This is a marked increase from 2014, with three Manobo, Martino Sugian Dagodoy and Henry Arreza from Surigao del Norte, and Henry Alameda from Lianga, Surigao Del Sur killed. The killing of Alameda allegedly by a paramilitary group also displaced some 240 families from Lianga.

The figures for 2014 and 2015 are certainly not exhaustive, as they are gathered only from cases actually filed and investigated by the Commission's Regional Offices.

KARAPATAN-Southern Mindanao, a human rights organization, reported growing and widespread militarization in Mindanao. According to KARAPATAN, since July 2010 up to September 2015, of the 48 HR defenders killed, 18 belonged to the Manobo, Bagobo, B'laan, Makigsalop, Mansaka, and Mandaya tribes.[6]

How the Inquiry Came About

The Commission initiated an Inquiry into the situation of the *Lumad* in response to the humanitarian crisis experienced by those who sought shelter in the UCCP Haran Compound.

The CHR conducts its public hearings in accordance with Rule 7 of the Commission's Omnibus Guidelines and Procedures in the Investigation and Monitoring of HR Violations and Abuses. The inquiry proceedings are fact-finding and non-adversarial in nature, hearings are open to the public, and the participation of affected parties and sectors is encouraged.

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4 Section 3(h), RA No. 8371 or the "Indigenous Peoples' Rights Act of 1997."

5 Filpinas Heritage Library, The *Lumad* of Mindanao, accessed from http://www.filipinas library.org.ph/features/293-the-Lumad-of-mindanao.

6 TSN dated 24 September 2015 – P.M. Session, pp. 41-42.

Information Gathering

On 23 September 2015, CHR Chairperson Jose Luis Martin C. Gascon, Commissioner Roberto Eugenio T. Cadiz and Commissioner Leah Tanodra-Armamento met with the UCCP Bishops and IP tribal leaders and support groups, conducted an art session for *Lumad* children, and engaged the women in conversation.

UCCP's Bishop Hamuel Tequis clarified that the UCCP's involvement with the "evacuee" IPs is limited to providing the physical space, the "zone of peace," that is, the UCCP Haran Compound. The management of the Compound, including the clinic, was entrusted to support groups. Supplies came from different organizations, including the City Government of Davao, which provided medical supplies.

The Commission received, gathered, and studied position papers on *Lumad* issues from various organizations, as well as official reports of HR violations affecting the *Lumad*.

Public hearings were conducted on 24-25 September 2015 at the Apo View Hotel in Davao City. Prior to the public hearings, the Commission en banc also held a dialogue with *Lumad* victims and support groups at the CHR Central Office on 18 Sept 2015.

Material for this Report includes separate field investigations, dialogs, and fact-finding missions accomplished by the CHR's offices in Region XI, X and XIII.

"Evacuation" to the Haran Compound

HR violations and abuses reportedly drove hundreds of *Lumad* to evacuate to the UCCP Compound in Haran, one of several "sanctuaries and zones of peace open to all people" declared by the UCCP's Council of Bishops in 1990.[7]

The National Commission on Indigenous Peoples (NCIP) identified the evacuees as members of the Ata-Manobo tribe from Barangays Palma Gil, Dagohoy, and Sto. Niño, in Talaingod; Barangay Gupitan in Kapalong; and Barangay San Jose, in Santo Tomas, all in Davao del Norte, within the Pantarong Range, known as Mindanao's Central Cordillera, and identified as a mineral-rich area. The tribe occupies 114,000 hectares of land covered by a Certificate of Ancestral Domain Title (CADT).[8]

The Ata-Manobo tribe is divided into at least four organizations: the Katusagda from Santo Tomas; the Ammado from Kapalong; the Salugpongan Ti Tanu Igkanogon (Salugpongan) from Talaingod; and the Talakayan, also from Talaingod.

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7 Testimony of Rev. Gidol, TSN dated 24 September 2015 – A.M. Session, pp. 8-9.

8 Mindanews, *Gov't flaunts five "high interest" mining sites in Mindanao*, 27 October 2007, accessed from http://www.mindanews.com/c87-mining/2007/10/27/govt-flaunts-five-qhigh-interestq-mining-sites-in-mindanao/. *See also*, Indigenous Voices in Asia, *Philippines: Support to Mindanao people's defense of land, environment, urged*, 27 May 2014, accessed fromhttp://iva.aippnet.org/philippines-support-to-mindanao-peoples-defense-of-land-environment-urged/.

In September 2015, 141 *Lumad* families from Davao del Norte, Agusan del Sur and Bukidnon evacuated to the Haran Compound.[9] A similar exodus occurred in 1994, when *Lumad* families opposed to the entry of Alcantara and Sons, Inc., a logging company, sought refuge in the Haran Compound. The increased military presence again prompted Salugpongan members to evacuate to Haran in March 2014 and in February and May 2015.

Evacuees alleged that the AFP and the *Alamara*,[10] a paramilitary group, committed grave HR violations against *Lumad* in Davao del Norte, Agusan del Sur, and Bukidnon, involving massive militarization of ancestral domains, closure of schools, encampment of soldiers in schools, forced recruitment to the *Alamara*, rape, EJKs, harassments, and displacement, that forced hundreds of *Lumad* from Talaingod and Kapalong to leave their ancestral lands and to seek refuge in the UCCP Compound in Haran, Davao City.

In the UCCP Compound, the *Lumad* endured deplorable conditions of cramped spaces, insufficient health services, and inadequate water supply, among others.

Reports that some *Lumad* were held against their will prompted a rescue effort led by Congresswoman Nancy Catamco, Chairperson of the House Committee for Indigenous Peoples, the DSWD, and the PNP. The "rescue attempt" ended in a confrontation between the government and the "support groups" manning the Haran Compound.

9 Testimony of Rev. Hamuel Tequis, TSN dated 24 September 2015 – A.M. Session, p. 10.

10 *Alamara* as used by Datu Bontolan and other *Lumad* leaders inside the UCCP compound refer to a paramilitary group organized by the AFP. Rep. Nancy Catamco and the AFP disputed the existence of the *Alamara* as a paramilitary group and explained that *Alamara* in the context of Ata-Manobo culture refer to the congregation of *bagani* (warriors) from different tribes to address a common threat to IPs. According to the NCIP, there was an *Alamara* in accordance with *Lumad* customary law after the death of Mayor Jose Libayao allegedly at the hands of the NPA.

Findings and Conclusions

1. It must first be said that the government, with its vast arsenal of powers and as principal duty-bearer, is bound by the highest standard of responsibility and accountability in upholding HR. The Commission sadly notes the failures of the government in respecting the HR of the *Lumad* and behooves it to act more judiciously in ensuring that HR are, at all times, respected.
2. HR obligations, however, are owed by all. Non-government entities, too, cannot escape accountability for HR abuses. The Commission recognizes the nobility in the cause of the religious and civil society support groups, as well as their sacrifices, in seeking to protect the rights of the *Lumad*. The Commission also notes their transgressions – their own tendency to forget or ignore the basic rights of the very people whom they profess to support, perhaps in their passion to dramatize the plight of the *Lumad*.

Militarization and Military Encampment in Schools

3. In recent decades, armed conflict has blighted the lives of millions of civilians.[11] Serious violations of both International Humanitarian Law and International Human Rights Law are a common occurrence in many armed conflicts. Over the years, the UN General Assembly, the Office of the High Commissioner on Human Rights and, more recently, the Human Rights Council, have considered that, in armed conflict, parties to conflict have legally binding obligations concerning the rights of persons affected by the conflict.
4. According to the UN Working Group on Indigenous Issues, "wars and armed conflicts are a major concern for IPs."[12] In many cases, "IP lands become battlefields of internal wars and conflicts, and IPs are targeted by non-regular armed groups like *colons* or paramilitaries and threatened by regular military

11 UN Security Council. 2018. *Report of the Secretary-General on the protection of civilians in armed conflict (S/2019/373)*. Retrieved from https://reliefweb.int/report/world/report-secretary-general-protection-civilians-armed-conflict-s2019373-enarru

12 "Utilization of Indigenous Peoples' Lands by Non-Indigenous Authorities, Groups or Individuals for Military Purposes" Review of Developments, UN Commission on Human Rights, par.8.

forces."[13] It added that IPs are often caught in between opposing forces.

5. During internal conflicts, IPs may suffer violence from both sides involved, without being a belligerent party, themselves. Indigenous communities are often forced to help armed groups by providing them with food and supplies. When indigenous communities do so, the opposite armed groups often define those communities as "enemies," and commit serious human rights violations against them.[14]

6. In this Inquiry, allegations of militarization were raised through:

   a. The initial fact-finding report in Cateel, Davao Oriental, on 13-15 July 2015, the results of which were embodied in the position paper submitted by the SOS Network, and testified to by Mr. Ronnie Garcia of SOS during the Inquiry;

   b. The testimonies of the tribal and support group leaders encamped inside the UCCP Haran Compound, Davao City, during the Executive Session between the Commission and the UCCP Bishops on 23 September 2015; and

   c. The testimonies of the Datus and leaders of the support groups during the public hearing of 24 September 2015.

7. The SOS Network declared that alternative schools, particularly those run by the STTICLC and the Mindanao Interfaith Schools Foundation, Inc. (MISFI), have been the subject of militarization since the time the AFP implemented their peace and order and community development programs under *Oplan Bayanihan* in Talaingod. Soldiers and other armed groups, allegedly the *Alamara*, used these schools as temporary military camps, barracks, shelters, outposts, or storage of weapons and belongings.

8. The problem of militarization and encampment in schools compounded the neglect of the government to fulfill the right of IP children to quality education. SOS further alleged that, aside from the issue of militarization and encampment in schools, there were incidents when schools were burned by soldiers.[15]

9. The Army's 10th Infantry Division (10th ID), through its Commander, Major General Rafael Valencia, submitted its position[16] on the issues of: (1) alleged threats, harassment, and militarization in the areas of Talaingod and Kapalong, from January to May 2015; (2) alleged encampment by the AFP at the STTICLC schools and their role in the closure and non-renewal of permit to the SSTTICLC schools, from January to May 2015; and (3) alleged

13 *Ibid.*

14 "Utilization of Indigenous Peoples' Lands by Non-Indigenous Authorities, Groups or Individuals for Military Purposes" Review of Developments, UN Commission on Human Rights, par.21.

15 SOS Position Paper.

16 During the public inquiry, the Commission directed the AFP to submit pertinent documents relative to the issues subject of the CHR investigation and public inquiry, which was reiterated in a written Order issued on 10 October 2015. The AFP was also ordered to submit their position paper responding to specific issues raised against them as indicated in said order. On 12 November 2015, the Commission, thru the CHR-Region XI Office received the AFP compliance with the Order.

recruitment by the AFP of IPs to support the *Alamara*.[17]

10. Quoting the UN definition of militarization as the act of assembling and putting into readiness the society for war and emergency, the Army contended that there was no "militarization" in Talaingod and Kapalong. They argued that, their troops entered only in response to massive NPA activities[18] that were monitored and reported to them.

11. In 2012, the military monitored that the Headquarters of the Southern Mindanao Regional Committee of the NPA moved from the boundaries of Compostela Valley Province and Davao Oriental to Talaingod and Kapalong, after the devastation of Typhoon *Pablo*. They emphasized that the deployment of military troops was properly coordinated with the concerned local government units, tribal councils, and local residents.

12. Since 2014, in Kapalong and Talaingod, the military discovered 17 NPA camps;[19] figured in 27 encounters with the NPAs,[20] and recovered 12 high-powered firearms.[21] In the process, 89 NPAs surrendered, and 11 died from the said encounters.[22]

13. Although the Army's 10th ID, claimed 27 encounters with enemy forces/ NPAs,[23] Attachment "B" to the letter of Maj. Gen. Valencia shows 29 encounters, 20 of which occurred in 2014, and nine in 2015.[24] Of the 20 encounters in 2014, 11 occurred in Barangay Gupitan, Kapalong;[25] and six in Barangay Palma Gil and three in Barangay Dagohoy, in Talaingod.

14. Of the nine encounters in 2015 in Davao del Norte, five occurred in Barangay Palma Gil and three in Barangay Dagohoy, Talaingod; and one in Barangay Florida, Kapalong. No encounter was reported in the year 2015 in Barangay Gupitan, Kapalong.

15. The conduct of combat operations in Talaingod and Kapalong evidently showed that there were NPA forces in said areas. Thus, the express admission by the military of their entry into the area, albeit in response to massive NPA

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17 The 10th ID PA Commander also submitted additional documents, marked as follows: "A" – Number of IP who are CAFGUs from Talaingod and Kapalong; "B" – The number, frequency and nature of Peace and Development Outreach Program (PDOP) undertaken in Talaingod and Kapalong from January to August 2015; "C" – The cases filed against the forces of the Philippines within the AOR of 10ID and the latest update on their status; "D" – List of cases docketed before the 10th ID for disciplinary action and the status/result of APF Disciplinary action; and "E" – Updates and status of rape case allegedly committed by the AFP members in Davao del Norte.

18 It is settled that the term "war and emergency" may not refer solely to a full-scale war between government forces of two or more States that is international in character but includes internal armed conflicts or emergencies, such as that between the AFP and the NPA, the armed group of the CPP-NDF.

19 Tab "A" – List of Enemy Camp discovered attached to the letter/position paper of M/Gen Rafael C. Valencia, Commander, 10th ID PA].

20 Tab "B" – List of Encounters attached to the letter/position paper of M/Gen. Valencia.

21 Tab "C" – List of Recovered Firearms [attached to the letter (position paper) of M/Gen Valencia.

22 Tab "D" – List of Surrenders [attached to the letter (position paper) of M/Gen Valencia. Attachment "D" shows that from 2 January 2011 to 17 September 2015, there were 89 surrenderees. Of the 89, 16 surrendered in 2011, 13 in 2012, 20 in 2013, 11 in 2014, and 29 in 2015. Thirty-six are from Kapalong while 16 are from Talaingod.

23 Letter of M/Gen Valencia dated Oct. 29, 2015.

24 Refer to Attachment "B" to letter of M/Gen Valencia.

25 Barangay Gupitan, Kapalong: Encounters took place on March 10, July 29, Aug. 6, Aug. 11 (2 encounters), Aug. 27 (2 encounters), Sept. 14, Oct. 25, Oct. 26 and Oct. 29, 2014.

activities thereat. As can be gleaned from Attachment "A" to the 29 October 2015 position paper of Maj. Gen. Valencia, from February to September 2014, there were eight abandoned NPA encampments[26] discovered by the military in the course of five combat operations, one pursuit operation, and one combat clearing operation. From January to August 2015, nine abandoned enemy encampments/camps[27] were discovered in the course of seven combat operations, one focus military operation, and one combat clearing operation.

16. The foregoing facts not only speak of military presence, but also of militarization, justifiably in response to massive NPA activities thereat. The military response was in the form of combat operations, and combat clearing operations in certain areas in the municipalities of Talaingod and Kapalong. The implementation of the Peace and Development Outreach Program (PDOP) by the military in said areas, while primarily aimed to bring basic services and development in said communities, were intended to counter insurgency, with the end view of winning back those in the insurgency movement to the folds of the government.

17. Militarization in ancestral domains as a counter-insurgency strategy is employed with the intention of not only counteracting NPA presence, but of quelling people's movements and civil society organizations in them, as well. The AFP considers certain CSOs as "the political infrastructure of the revolution and the NPA's intelligence network" and that "attacking them is designed to blind the NPA and undermine the CPP's political progress."[28] NPA groups do not stay in one area and may or may not be present when the AFP deploys its own presence there. Military presence is a deterrent to rebel presence in the same space.

18. It is the same thing with paramilitary presence. This much is strongly suggested in the testimony of Lito Sampag, alleging that fellow *Lumad* were recruited by the military to join the *Alamara* and to fight the NPA. However, according to him, the real targets of the *Alamara* are not the non-IP insurgents, but fellow *Lumad* suspected of being NPA sympathizers or members.[29]

19. The Commission makes reference to a published report[30] of the International Federation for Human Rights and World Organization Against Torture,

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26 One abandoned enemy encampment in Sitio Taongatok, Brgy. Gupitan, Kapalong, on Feb. 1, 2014; two in Sitio Mangkay, Brgy. Gupitan, Kapalong on 2 February 2015; two in Brgy. Palma Gil, Talaingod on March 6, 2015, and another one on April 4, 2015; and one in Sitio Aninipot, Brgy. Gupitan, Kapalong on Aug. 7, 2015; and one in Sitio Ocampina, Brgy. Gupitan, Kapalong.

27 One abandoned enemy encampment in Sitio, Aninipot, Brgy. Gupitan, Kapalong on Jan. 23, 2015; one in Sitio Lumban, Brgy. Gupitan, Kapalong on March 1, 2015; one in Sitio Baho, Brgy. Gupitan, Kapalong on March 3, 2015; one in Sitio Pongpong, Brgy. Dagohoy, Talaingod on March 4, 2015; one in Sitio Aninipot, Brgy. Gupitan, Kapalong on Aug. 1, 2015; two in Sitio Bolo, Brgy. Dagohoy, Talaingod on Aug. 18 and 19, 2015; and two in Sitio Bato, Brgy. Dagohoy, Talaingod on Aug. 20 and 21, 2015.

28 Philip Alston, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Philippines*. A/HRC/8/3/Add.2 16, April 2008

29 Joint Affidavit of Lito Sampag, Dodong Malibato, Alvin Malibato and Jinky Malibato, 7 September 2015.

30 International Federation for Human Rights and World Organisation Against Torture, *The Philippines Human Rights Defenders at The Forefront Despite an Ongoing Culture of Violence and Impunity: International Fact-Finding Mission Report*, February 2015, available at http://www.omct.org/files/2015/07/23254/v1.3_en_w_rpprtphilippines_obs15.pdf.

quoting officers of the AFP and PNP who declared that the two agencies do not consider the deployment of the armed forces in communities as part of "internal security" or "counter insurgency operations" inconsistent with the Philippines' international HR obligations.[31] They were quoted to have justified such operations on the basis of RA 8551 of 1998, which gives such mandate to the AFP.[32]

20. Verily, the issue of militarization may be viewed from the perspectives of the two opposing groups of *Lumad*, namely, by those who have been accused of being sympathetic to the NPA on the one hand, and by those accused of being on the side of the government on the other. Many among the *Lumad* who encamped in the Haran Compound firmly asserted that their ancestral domains/communities were being militarized, as evidenced by the military encampment in their public schools and other public facilities. On the other side, the group of *Lumad* who opposed NPA presence in their communities insist that there was no militarization in their ancestral domains/communities.

21. The SOS Network Position Paper also mentioned that 20 DepEd schools were attacked and used as camps by the AFP in Mindanao, while 214 cases of attacks against *Lumad* community schools were listed. Most of the recorded incidents took place in 2013 and 2014.

22. Among the documented cases of alleged military encampments and harassments of STTICLC schools in Talaingod are the following: (a) military encampment in the STTICLC school in Sitio Km. 30, Barangay Palma Gil, Talaingod, by elements of the Army's 60th Infantry Battalion, who allegedly occupied classrooms and the teachers' staff house from 26-30 March 2014; (b) military encampment in the STTICLC school in Purok 12, Sitio Nasilaban, Barangay Palma Gil, Talaingod in April 2014; and (c) indiscriminate firing and strafing of an STTICLC school, also in Sitio Nasilaban, Barangay Palma Gil, Talaingod. Military encampments in STTICLC schools were allegedly not confined to Davao del Norte Province alone, but included those in the neighboring province of Compostela Valley.[33]

23. The military used schools found within the ancestral domains of the *Lumad* as military camps and barracks. The various pictures and videos presented by SOS during the public inquiry, together with uncontested testimony in that regard, clearly demonstrated that the AFP used school buildings for military purposes, in direct contravention of existing guidelines, such as DepEd Memorandum No. 221, and Section 22 (e) of RA 7610[34] prohibiting the use of schools for military purposes.[35]

24. After carefully reviewing the factual circumstances, testimonies, and evidence gathered during the Inquiry, the Commission concludes that there was,

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31 *Id.*

32 *Id.*

33 *See Video on military encampment in STTICLC School in Purok 4, Brgy. Mangayon, Compostela Valley.*

34 "Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992"

35 DepEd Secretary Br. Armin Luistro FSC Press Statement cited in News Article Entitled "DepEd affirms "No 'militarization' in schools," dated 6 December 2014. For more details, visit: http://www.deped.gov.ph.

indeed, militarization, and HR violations were committed by elements of both the military and the *Alamara*, within the ancestral domains of IPs in *sitios* and barangays of Talaingod and Kapalong.

Forced Recruitment to Armed Groups

25. Tribal leaders and support group leaders averred[36] that the military frequently suspected *Lumad* of being NPA members. To prove otherwise, they claim that the military forces them to bear arms against the NPA, either as members of the AFP or of the *Alamara*.

26. The military belies these charges and counters that it does not "organize, train or arm any group to fight against the NPAs."[37] They also deny that IPs are recruited as members of the *Alamara*. The military claims that it "has regular forces and Civilian Active Auxiliaries (CAAs) who are recruited and employed in accordance with existing AFP Regulations."[38]

27. The Commission is convinced that the *Alamara* is not a creation of the military. However, the Commission is also of the belief that there is clear cooperation between the military and the *Alamara* in fighting the NPA. The expensive firearms of the *Alamara* establish a reasonable ground to believe they are being supplied by the military. Thus, the Commission calls on the AFP to exercise its authority over the *Alamara* in upholding the spirit of HR law and international humanitarian law in the conduct of counter-insurgency operations.

28. The AFP admitted that there are IPs who voluntarily enlist themselves as members of the Civilian Active Auxiliary (CAA).[39] This fact is reflected in the document it submitted to the Commission, showing that, at that time, there were 255 IPs enlisted as CAA, of which 116 came from Talaingod, while 139 came from Kapalong.[40]

29. The Commission strongly cautions the AFP against violating the spirit behind specific provisions of the laws on engaging IPs, particularly RA 8371, RA 7610, and RA 9851. The AFP is reminded that IPs and ICCs are entitled to special protection and security during armed conflict,[41] and that the State is proscribed from recruiting members of the ICCs/IPs into the armed forces for the use against other ICCs/IPs.

30. The NPA is equally involved in recruiting IPs. Although massive discontent is a breeding ground for anti-government sentiments, as the Martial Law experience of the Filipino people validates, recruitment of IPs into insurgency, especially for use against other ICCs/IPs, is strongly proscribed.

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36 *See* paras. 23, 27, 47, 68 and 75.

37 Tab "I" – AFP Recruitment Policy and LOI *Tanggol Bayan* Delta.

38 *Id.*

39 *Id.*

40 Attachment "A" to the letter/position paper of M/Gen Valencia.

41 Section 22, RA No. 8371.

31. The recruitment of children into armed forces is absolutely prohibited by RA 9851. Children are declared as "zones of peace." State and non-state actors are responsible to resolve armed conflicts in order to guarantee children as zones of peace. Thus, they shall not be the object of attack and shall be entitled to special respect, nor shall they be recruited to become members of the AFP or its civilian units or other armed groups, nor be allowed to take part in the fighting.[42]

32. In view of the foregoing allegations of *Lumad* recruitment by both the AFP and the NPA, the Joint Monitoring Committee under the CARHRIHL is advised to honestly and seriously investigate this and enjoin the parties from continuing with this practice.

Closure of Schools

33. The Rural Missionaries of the Philippines established STTICLC schools. Talaingod has three high schools, six elementary schools, and three non-formal schools.

34. The SOS Network averred that the DepEd ordered the closure of STTICLC schools upon the prodding of the AFP. Worse, the DepEd proposed to utilize military personnel as teachers in public schools, thus strengthening their suspicion that the DepEd was in connivance with the AFP in effecting the militarization of the *Lumad* ancestral domains.

35. The AFP responded that the "Talaingod Tribal Elders" themselves "through a resolution dated 4 May 2015," requested for the stoppage of the operations of STTICLC schools in Talaingod. The resolution was based on the affidavits of former students of STTICLC schools who alleged that the "instructors teach the Lumad youths to hate the government and condition their minds to become future members of the NPA."

36. The military alleged that the CPP/NPA/NDF established such schools to get the people to support its struggle.[43] The STTICLC schools were branded as breeding grounds for recruiting new cadres, as well as for soliciting foreign funds. It was alleged that the *Lumad* students were taught to sing the Philippine National Anthem with altered lyrics that promoted rebellion and that a test questionnaire fomenting hatred against government and espousing armed resistance was recovered from the school.[44]

37. On the part of the DepEd, Dr. Fadul clarified during the public inquiry that she referred to DepEd Region XI Director, Atty. Alberto T. Escobarte, a letter from 88 Talaingod Tribal Leaders "requesting for the temporary closure or stoppage of operation of STTICLC schools in the entire municipality of

42 *Id.*

43 Assessment, Presentation by the Military, Memorandum for Chairperson Jose Luis Martin C. Gascon, Initial Report on the Alleged Militarization, Harassment and Encampment by the 68th IB PA and 25th IB PA at the Salugpongan School in Talaingod and Compostela Valley, p.4, September 4,2015

44 Report, *Lumad* Mindanaw Peoples Federation low-key fact-finding investigation on *Lumad* evacuation, 28September 2015, p.839

Talaingod" because STTICLC schools were allegedly teaching their children revolutionary tenets, to hate the government, and to join the rebel group. Dr. Fadul admitted her mistake of proposing the use of military personnel as para-teachers should the tribal leaders' request be granted.[45]

38. Atty. Alberto Escobarte, Regional Director of DepEd Region XI, clarified that the DepEd did not order the closure of Salugpongan schools, but merely issued a "Notice of Non-Renewal" to all schools which failed to submit their applications therefor. She clarified that the DepEd immediately renewed the permits of the STTICLC schools on 21 June 2015 after receiving the schools' application for renewal three days earlier.[46]

39. On 23 June 2015, CHR XI conducted its own investigation and held a dialogue with some IP leaders, their barangay captain, and some residents in Palma Gil, Talaingod.[47] Datu Pogsing of Sitio Nasilaban, Barangay Palma Gil, Talaingod, stated that NGOs coordinated in the building of the community school. He was also promised that schooling there would be free and that the IPs would provide the teachers. However, when the school was built, he lamented that the NGOs not only occupied it, but the teachers also came from the NGOs.

40. The Datus alleged that, during the construction of the STTICLC school building, it was guarded by heavily armed groups belonging to the NPA. Classes were only conducted twice a week, and that in the remaining days, the children were brought to the forest and taught how to assemble and dismantle firearms.[48] Such allegations were corroborated by Asinad Bago, a former student who studied at a STTICLC school in Talaingod for five years.[49] He claimed that, after classes, at a post near the school, they learned how to dismantle and assemble M16 armalite rifles.

41. The allegations that the schools are directed by the CPP-NPA-NDF, if true, are alarming. The schools operate within the DepEd's regulatory mechanism. If, indeed, they were established by and administered under the direction and control of the NPA and operated as training centers for future insurgents, the Department has legal grounds to close them.

42. The matter was brought by the AFP to the attention of the DepEd. As the agency with the legal mandate to regulate the operation of schools for basic education, the Department is presumed to have regularly performed its duty. That it temporarily closed the schools for technical, not insurgency, reasons, however, shows that the DepEd itself had not made a serious investigation as to the substance behind the allegations relating to insurgency.

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45 Position Paper of DepEd Schools Division Superintendent Dr. Josephine Fadul. See also summary of Dr. Fadul's testimony at paras. 105-108, pp. 33-34.

46 *See* summary of Dir. Escobarte's testimony at para. 104, pp. 32-33.

47 *Id.*, at 2,

48 *Id.*

49 Testimony of E. Bayani, Public Inquiry Conducted by the House Committee on Indigenous Cultural Communities and Tribal Filipinos and Indigenous Peoples headed by Cong Nancy Catamco, Nov. 5,2015

43. The allegation that schools are teaching matters outside of the DepEd approved curriculum and operating as fronts of the CPP-NPA-NDF are very serious. If proven, their closure would be warranted. However, the investigation must be comprehensive and independent and the evidence supporting closure must be clear and convincing.

44. The strong bias of this Commission, recognizing the basic human right to education, is towards the operation of alternative schools, especially in hardly reached areas.

45. The unilateral issuance of a Notice of Non-Renewal of Permit that led to the temporary closure of STTICLC schools could have fallen short of prescribed HR standards. IPs are guaranteed the fundamental freedoms recognized under international HR law, and among these fundamental rights is the right to due process.[50]

46. Based on the testimonies of DepEd representatives, the State did not provide the STTICLC officials the opportunity to contest the intended closure of their schools. It must be stressed that the IPs, particularly children, including those living outside their communities, have a right to education in their own culture.[51] The temporary closure of the subject facilities, no matter how brief, violated this right.

47. The Constitution guarantees the right of all citizens to quality education at all levels and commands the government to take appropriate steps to make such education accessible to all.[52] The State shall establish, maintain and support a complete, adequate and integrated system of education relevant to the needs of the people and society.[53] As regards IPs, the State encourages non-formal, informal and indigenous learning systems, as well as self-learning, independent and out-of-school study programs, particularly those that respond to community needs.[54]

Employment of Paramilitaries and Militias

48. As far back as Martial Law under Marcos, the AFP has been persistently linked to private militias and paramilitary groups.[55]

49. *Alamara* and paramilitary abuses figure prominently in the complex discourse of issues concerning the *Lumad* of Mindanao, particularly those who encamped in the UCCP Compound in Haran, Davao. *Alamara* was regarded by Datu Bontolan and other *Lumad* leaders as a paramilitary group organized by the AFP.

50. They described harassment in the hands of the *Alamara*. They identified it

50 Article 1, UNDRIP.

51 Article 14, UNDRIP.

52 *Id.,* Section 1, Article XIV

53 *Id.,* Section 2 (1), Article XIV.

54 *Id.,* Section 2 (4), Article XIV.

55 United States Department of State Bureau of Democracy, Human Rights and Labor, Philippines 2013 Human Rights Report *in* Country Reports on Human Rights Practices for 2013, at 10.

and the AFP as the author of harassments and abuses against them. They cited specific instances of abuse which prompted some of them to seek refuge in Haran.

51. Rep. Nancy Catamco and the AFP, however, disputed the existence of the *Alamara* as a paramilitary group. She explained that *Alamara*, in the context of Ata-Manobo culture, refer to the congregation of *bagani* (warriors) from different tribes to address a common threat to IPs. According to the NCIP, such a congregation of *bagani*, in accord with *Lumad* customary law, arose after the death of Mayor Jose Libayao, allegedly at the hands of the NPA.

52. Claims of military-paramilitary collusion in the violation of HR of the *Lumad* prompted the Department of Justice, under then Secretary Leila de Lima, to conduct a probe on the role of "paramilitary groups" in HR violations against the *Lumad*.[56] Disturbing reports reached the Commission, as well, concerning alleged paramilitary abuses against the Lumad.

53. From the time of President Ferdinand Marcos, paramilitary groups have been used to complement military counter-insurgency operations such as *Oplan Kalatagan*, *Oplan Lambat Bitag*, *Oplan Makabayan*, *Oplan Balangai*, *Oplan Bantay-Laya*, *Oplan Katatagan*, and *Oplan Bayanihan*.

54. On 10 July 1971, the Department of National Defense issued Department of Defense Order no. 445, creating the Barrio Self-Defense Units (BSDU) and other similar units. Placed under the direction of the Undersecretary for Home Defense, the BSDU was organized to assist the Philippine Constabulary in its counter-insurgency operations.

55. With massive and nefarious abuses ascribed to it, the BSDU was superseded by the Integrated Civilian Home Defense Forces (ICHDF), created by Presidential Decree 1016 on 22 September 1976. An integration of all paramilitary units,[57] it was created ostensibly for village defense, "capable of providing security to the community, helping to protect the lives and properties of the people against lawless elements, and assisting in the maintenance of peace and order, in coordination with the law-enforcement agencies and the military forces operating therein."

56. In 1986, Marcos was ousted during the People Power Revolution, installing Corazon Aquino as the new President. The present Constitution was ratified, which provided for "a citizen armed force which shall undergo military training as may be provided by law."[58]

57. The Aquino administration issued Executive Order No. 275 on 15 July 1987, disbanding the CHDF and other illegal armed groups or private armies not recognized by the duly constituted authority.

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56 Aries Joseph Hegina, *De Lima forms team to probe 'Lumad' deaths* in PHILIPPINE DAILY INQUIRER, 25 September 2015, accessed from http://newsinfo.inquirer.net/725750/de-lima-forms-team-to-probe-*Lumad*-deaths.

57 Section 2, Presidential Decree 1016.

58 Section 4, Article XVI, 1987 Constitution.

58. Ten days later, or on 25 July 1987, President Aquino issued Executive Order 264, creating the Citizen Armed Force Geographical Units (CAFGU).[59] Under the EO, the CAFGU was to be trained, armed, and placed under the command and control of the AFP,[60] to assist it in confronting all types of threats to national security,[61] including the mounting insurgency.

59. In the wake of Congress' act of cutting the budget for the military and the CAFGU program, the DND, in 1989, created the Special CAFGU Active Auxiliary (SCAA). The SCAAs are similar to CAAs in that they were subject to military discipline and the Articles of War, but differed in the primary function of protecting the property and interests of private corporations, business entities, or Local Government Units (LGUs) from the threats posed by criminality and insurgency in their areas of operation.[62] The allowances and salaries of SCAA are shouldered by the private corporations, businesses, or LGUs that call for its activation, instead of by the AFP.[63]

60. The institutionalization of SCAAs upset HR advocates, as can be gleaned from the latter's submissions and reports to HR bodies. With SCAAs not totally under State control, being paid for by private interests, there was no guarantee that they would not act against public interest. SCAAs were also criticized for legitimizing the employment of private armies which are proscribed by the 1987 Constitution.

61. In 1991, Congress passed RA 7077, also known as the AFP Reservist Act of 1991, which constituted the CAFGU as an integral part of the AFP reserve force. Unlike the CHDF of the Marcos era, the CAFGU is, by law, not a paramilitary unit and is convened only for purposes of counter-insurgency. It is integrated into the military chain of command and is subject to all applicable military laws, rules, and regulations. There are also well-documented reports of HR violations committed by the CAFGU.

62. The Local Government Code of 1991 affirmed the creation of the Civilian Volunteer Organizations (CVOs), which were first institutionalized as Civilian Volunteer Self-Defense Organizations by Executive Order No. 309, s. of 1987. Called barangay *tanod*, they do not have legal authority to carry guns[64] and should in fact be unarmed.

63. In 2006, President Macapagal-Arroyo's Executive Order 546 allowed local officials to employ members of the CAFGU and CVOs to purportedly address insurgency. Unarmed under the Local Government Code, CVOs were converted into armed paramilitaries. EO 546 also directed the PNP to

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59 Section 5, Executive Order No. 264.

60 *Id*.

61 *Id*.

62 Report on the visit to the Philippines by two members of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1991/20 + Add.1, E/CN.4/1991/20/Add.l 10 January 1991, at *https://documents-dds-ny.un.org/doc/UNDOC/GEN/G91/100/47/PDF/G9110047.pdf?OpenElement*.

63 *Id*.

64 Under the Local Government Code of 1991, only the Punong Barangay, among barangay officials, has express legal authority to carry firearms as provided in Sec. 389.

undertake active support to AFP on counter-insurgency measures and other serious threats to national security utilizing armed CVOs, and authorized the allocation of local funds to sustain these groups.

64. CVOs, using EO 546 as a legitimate cover, became private militias of local politicians and business interests to which various HR abuses have been attributed. The infamous Ampatuan Massacre brought to fore how EO 546 could be employed for HR abuses. The murder of 58 people, mostly journalists, was committed by a powerful political clan with the aid of CAFGUs and CVOs, as EO 546 justified the maintenance of a militia.[65]

65. Indictment of EO 546 was massive in the domestic and even international community. Thus, when then-Sen. Benigno Aquino III campaigned for the presidency in 2010, one of his major promises was to revoke EO 546.[66] However, he announced in November 2010 that his administration would professionalize the paramilitary groups, as disbanding them was not the solution.[67]

66. In the wake of insurgent attacks on mining operations, Pres. Aquino announced in October 2011 that "employing paramilitary units like CAFGUs is a viable solution to the lack of soldiers and policemen as the government cannot afford to hire more police and military personnel because their pensions would be a burden to the national coffers."[68]

67. Pres. Aquino approved the AFP's proposal to organize paramilitary groups into Special CAFGU Active Auxiliary units (SCAAs) to augment the security forces of the said firms, a decision occasioned by lack of military resources to protect investments.[69] The SCAAs would be organized, funded, and directed by the mining companies for deployment in areas of major mining operations.[70] Their allowances would be shouldered by the private companies that use their services to secure private investments.[71]

68. As things now stand, both the CAFGUs and CVOs as armed auxiliary forces are State-sanctioned and organized, and are provided weapons from government arsenals. Within the CAFGU are privately raised and organized groups or professionalized paramilitaries, armed and trained by the State, to serve what are undoubtedly private business interests.

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65 Rommel C. Banlaoi, CAFGUs, CVOs and The Maguindanao Massacre, 6 AUTONOMY & PEACE REVIEW 61, 69-71 (March 2010), accessed from http://www.kas.de/wf/doc/kas_20657-1522-1-30.pdf?110128055929; Human Rights Watch, Philippines: No Progress Disarming, Demobilizing Militias, 21 November 2012, accessed from https://www.hrw.org/news/2012/11/21/philippines-no-progress-disarming-demobilizing-militias; *See also*, Rappler, Aquino urged to revoke order on civilian militias, 22 November 2012, accessed from http://www.rappler.com/nation/16561-aquino-urged-to-revoke-order-on-civilian-militias.

66 *See* HRW, *Id.*

67 *Id*.

68 Jam Sisante, Aquino thumbs down abolition of militia forces, GMA Network News, November 23, 2010, available at http://www.gmanetwork.com/news/story/206685/news/nation/aquino-thumbs-down-abolition-of-militia-forces,

69 *Id*.

70 Office of the Assistant Chief of Staff for Operations, Philippine Army, Facts about CAFGUs in Cadre Need to Know on CAA Administration, at 25, http://www.army.mil.ph/Good%20Governance%20Conditions/cafgu/Cadre_Need_to_Know_on_CAA_Administration.pdf.

71 Office of the Assistant Chief of Staff for Operations, Philippine Army, Facts about CAFGUs in Cadre Need to Know on CAA Administration, at 25, http://www.army.mil.ph/Good%20Governance%20Conditions/cafgu/Cadre_Need_to_Know_on_CAA_Administration.pdf.

69. On the part of the State, the employment of CVOs and SCAAs is necessary for counter-insurgency, as the AFP force is not sufficient to combat several insurgency movements waged by the CPP-NPA, the MILF, the MNLF, and the Abu Sayyaf Group. Auxiliary forces can take responsibility for village defense from insurgents. Moreover, the counter-insurgency platforms have stretched the budget of the State and eroded its capacity to provide services to the public in general. The legitimization of private militias with their integration into the AFP unburdens the military from having to protect private investments.

70. However, armed auxiliary forces do not undergo trainings as much as the regular forces and, by AFP admission, do not necessarily possess the latter's discipline.[72] In the case of SCAAs, since they receive their salaries and allowances from private sources, they may be employed for purposes not sanctioned by law. Add to this the laxity of regulatory mechanism in accessing firearms. This contributes to the proliferation of privately armed militias which may be recognized as SCAAs, lending vigilantism some cloak of legitimacy.

71. In essence, these are actually paramilitary groups, armed by the government but largely uncontrolled by it. Their irregular or auxiliary status blurs the line of accountability of the AFP or other legally mandated authorities. The latter can disown or repudiate acts of the paramilitaries or militias which have implications on HR accountability. Private actors, not usually regarded as HR duty bearers, are generally not held accountable for HR violations, although held accountable under criminal laws of the state. This contributes to a culture of impunity where state security forces are actually implicated.

72. In its 2012 Concluding Observations on the Philippines, the UNHRC expressed alarm concerning privately-armed military auxiliary groups, as well as the high number of loose weapons in the country. Other member States of the United Nations expressed equal concern. During the second cycle of the Universal Periodic Review of the Philippines in 2012, some States recommended the revocation of Executive Order 546 and the dismantling or disarming of paramilitary forces, militias, and armies.[73]

73. Whether organized according to customary law or not, the *Alamara* is armed. It is alleged to be a paramilitary group with *Lumad* membership, taking orders from the AFP. It is implicated in egregious HR abuses against IPs,[74] including those who encamped in Haran.

74. The Commission reminds the AFP that, under Section 22 of the IPRA, it "shall not recruit members of the ICCs/IPs against their will into the armed

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72 Dona Z. Pazzibugan, Paramilitary force out in 4 years, says Army commanding general in Philippine Daily Inquirer, 15 May 2012, accessed from http://newsinfo.inquirer.net/203855/paramilitary-force-out-in-4-years-says-army-commanding-general.

73 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Philippines, A/HRC/21/12, 9 July 2012

74 Children's Rehabilitation Center, Child rights groups condemn *Alamara* and the AFP as vicious violators of human rights! 30 August 2013 accessed from http://www.childrehabcenter.org/news/ mediareleases/child-rights-groups-condemn-*Alamara*-and-afp-vicious-violators-human-rights.

forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/IPs into the armed forces under any circumstance." This includes recruitment into paramilitary groups that may be constituted to do directly what the military cannot.

Resource Extraction-Induced Armed Conflict

75. That *Lumad* territories are targeted for resource extraction is not without historical precedents. Atty. Jake Dumagan of the NCIP testified that the exodus of *Lumad* and their seeking refuge at UCCP Haran in 2015 was a repeat of what happened in 1994. Then, *Lumad* opposition to the entry of Alcantara and Sons, Inc., a logging company, into their ancestral lands, generated tension. This led Salugpongan members to evacuate and seek refuge in the UCCP Compound.

76. The military denies being employed by private investors operating in ancestral domains. It clarifies that it has always maintained an investment defense force, a unit that secures private investments. Lt. Col. Obligado testified that the AFP is under orders to protect flagship projects involving energy, roads, and other infrastructure projects.[75]

77. In its *Philippines 2014 Human Rights Report*, the US State Department lamented that indigenous lands "were often sites of armed encounters often related to resource extraction and tribal claims."[76] The EU representatives in an international fact-finding mission to look at the case of IPs in Mindanao agreed that commercial activities of mining companies and other extractive industries in IP areas would erupt into armed conflict.[77]

78. The CPP-NPA is also accused of being involved in mining operations within the ancestral domains. A briefing paper on *Lumad* issues published by the Center for Social Action and Concern of De La Salle University quotes the Army's 4th ID based in Cagayan De Oro, thus:

> The crux of the problem is the conflicting interests of parties to control the resources that are found in the IPs ancestral domain, particularly gold and other minerals. The communist NPA wants to control our IP communities because to them, they are a rich source of recruits. To them, the ancestral domain of our *Lumad* does not just give them men to fight for them but also the funds and other logistics to ensure their existence. The *Lumad's* territories are rich in natural resources, especially minerals. This is the primary reason why their ancestral domains are encroached

75 TSN dated 25 September 2015 – P.M. Session, pp. 101-102; 104.

76 United States Department of State, Bureau of Democracy, Human Rights and Labor, Philippines 2014 Human Rights Report in Country Reports on Human Rights Practices for 2014, at 34, accessed from http://www.state.gov/documents/organization/236682.pdf.

77 International Federation for Human Rights and World Organisation Against Torture, The Philippines Human Rights Defenders at The Forefront Despite an Ongoing Culture of Violence and Impunity: International Fact-Finding Mission Report, February 2015, at 20.

upon by outsiders and have been subjected to development aggression.[78]

79. In the Philippines, although IPs are estimated to make up 17% of the population, most of the country's remaining biodiversity is located in their domains, where most of the large-scale mining companies operate. This situation is not unique to the Philippines.

80. In several *Observations,*[79] the UN Committee on the Elimination of all Forms of Racial Discrimination (UNCERD) raised its apprehension about the impact of large-scale extractive industries on IPs and the HR abuses committed by the investors, in many cases, with the support of States who have put their security forces at the disposal of corporations.[80] The UNHRC[81] and the UNCESCR[82] had similarly decried corporate plunder of indigenous resources in their own Observations. Professor S. James Anaya, former UN Special Rapporteur on the Rights of IPs, said that "even the most isolated indigenous groups are now threatened by encroaching commercial, government, or other interests motivated by prospects of accumulating wealth from the natural resources on indigenous lands."[83] Professor Rodolfo Stavenhagen, also a former UN Special Rapporteur on the Rights of IPs, visited the Philippines to look into the situation of IPs. In his report, he claimed:

> The Special Rapporteur was informed that indigenous areas are frequently subject to sweeping military operations to clear the way for future development projects, be they mining, logging, or large-scale plantations on indigenous lands, while government sources claim that these military operations are part of the fight against the insurgents. Thus, tribal areas are combed by the military once or several times in anticipation of the activities

78 Center for Social Action and Concern of De La Salle University, A Briefing Paper on *Lumad* Issues, in PALASO (Vol. 1, Issue 1, October 2015), at 3, available at http://www.dlsu.edu.ph/offices/cosca/pdf/palaso-%20oct2015-*Lumad*-hq.pdf.

79 *See*, for instance, Committee on the Elimination of all Forms of Racial Discrimination, Concluding Observations/Comments on Nigeria, CERD/C/NGA/CO/18 01/11/2005; Committee on the Elimination of all Forms of Racial Discrimination, *Concluding Observations/Comments on Guatemala,* CERD/C/GTM/CO/11 15 May 2006; Committee on the Elimination of all Forms of Racial Discrimination, *Decision 1(68), United States of America, (Early Warning & Urgent Action Procedure)*. CERD/C/USA/DEC/1, 11 April 2006; Committee on the Elimination of all Forms of Racial Discrimination, *Concluding Observations/Comments on Guatemala,* CERD/C/GTM/CO/11 15 May 2006; and Committee on the Elimination of all Forms of Racial Discrimination, *Concluding Observations/Comments on Guyana*, CERD/C/GUY/CO/14 4 April 2006.

80 Committee on the Elimination of all Forms of Racial Discrimination, Concluding Observations/Comments on Nigeria, CERD/C/NGA/CO/18 01/11/2005.

81 *See,* for instance, UNHRC, Concluding Observations on Sweden, UN doc. CCPR/CO/74/SWE (2002); UNHRC, *Concluding Observations on the Philippines* , 1 December 2003, CCPR/CO/79/PHL; UNHRC, *Concluding Observations on Colombia*, 26 May 2004, CCPR/CO/80/COL; UNHRC, *Concluding Observations on Thailand*, 8 July 2005, CCPR/CO/84/THA; and UNHRC, *Concluding observations on Brazil*, 1 December 2005, CCPR/C/BRA/CO/2.

82 As, for instance, UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on Venezuela*, 21 May 2001, E/C.12/1/Add.56; UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on Panama*, 24 September 2001, E/C.12/1/Add.64; UN Committee on Economic, Social and Cultural Rights (CESCR) *Concluding Observations on Colombia, 30 November 2001*, E/C.12/Add. 1/74; UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on Brazil,* 26 June 2003, E/C.12/1/Add.87; UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on Ecuador*, 7 June 2004, E/C.12/1/Add.100; and UN Committee on Economic, Social and Cultural Rights (CESCR) *Concluding observations the Russian Federation*, 20/05/97. E/C.12/1/Add.13, at para. 29-30.

83 S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 4 *(2004)*.

> of certain economic enterprises, which may be resisted by the local indigenous communities. Such operations may result in land dispossession, forced displacement, physical abuse, torture, arbitrary detention, summary executions, destruction of houses, including the reported bombing of an indigenous village, as well as "hamleting," xxx and appear to form part of recurring patterns of HR abuses committed against Philippine IPs in anticipation of the establishment of major development projects in indigenous territories.[84]

81. The Commission notes, very sadly, that the natural resources which IPs preserved for centuries in their ancestral domains have only brought them oppression from conflicting forces. Instead of benefiting from these resources, their very own existence is put in jeopardy. The rush to control these resources by individuals and entities other than themselves is generating HR crises for them.

82. The Commission reiterates its warning[85] that, with the government's reliance on mining investments for development, there is a need for vigilance against HR violations, particularly of rights of IPs. The *Lumad*, whose issues are under consideration herein, are particularly vulnerable since their domains are within the resource-rich Pantaron Range.

83. The UNDRIP provides that IPs have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired[86] and prohibits the forcible displacement of IPs from their lands or territories.[87] The UNDRIP generally prohibits the conduct of military activities in indigenous lands or territories,[88] especially as a precursor to resource extraction. Moreover, IPs have the right to free, prior, and informed consent to all development projects that are proposed to be conducted within their ancestral domains.

Political Vilification and Red-Tagging

84. Many in the military present several civil society organizations as "fronts" of the CPP and its armed group, the NPA. The CPP allegedly directs the decisions and actions of these groups to harness support for the armed struggle that it has been waging since 1969. This is a belief based on the CPP's own official statement:

> Aside from waging armed struggle against the enemy, our Party uses the policy and tactics of the united front. In the main, the

84 Rodolfo Stavenhagen, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People, submitted in accordance with Commission on Human Rights resolution 2002/65: Mission to The Philippines, E/CN.4/2003/90/Add.3, 5 March 2003, at 17.

85 Commission on Human Rights of the Philippines (CHRP), Submission to the Universal Periodic Review – Philippines, June 2012, para. 33.

86 Article 26, UNDRIP.

87 *Id.*, Article 10.

88 *Id.*, Article 30(1).

> united front is for the armed struggle... Both the revolutionary armed struggle and the united front have their respective ways of arousing, organizing and mobilizing the broad masses of the people. The revolutionary armed struggle has made possible solid mass organizing and building organs of political power in the countryside. The united front has aroused, organized and mobilized the people in the entire country in order to facilitate their eventual organization by the Party. Legal united front work has directly helped in the organizational work of legal democratic mass organizations.[89]

85. The CPP also asserts that the "legal united front work has directly helped in the organizational work of legal democratic mass organizations"[90] and that its Party members are recruited "from the armed revolutionary movement and the legal democratic mass movement."[91] With this, it is a given that that the CPP would be recruiting leaders among the masses who would promote its ideological agenda.

86. To be sure, mere belief in the communist ideology is not a crime, with RA 7636, repealing RA No. 1700, or the Anti-Subversion Act of 1957.[92] What remains outlawed is the participation, in its varied forms, in rebellion against the state.

87. While some members of certain organizations may support the armed struggle, it is very likely that most of the other members recruited into these organizations have no idea on what communism or revolutionary struggle is about, or even that their leaders might be supporting the NPA. Many of them may be devoid of revolutionary ideology, joining movements merely to articulate discontent, or to advance specific advocacies, such as the preservation of ancestral domains, or the implementation of agrarian reform, or improvement in the delivery of justice, health care, education, and other social services. The existence of these groups and the freedom they exercise in articulating issues should be viewed as badges of a vibrant democracy, and not as attacks against the State.

88. Thus, it troubles this Commission that members of ICCs are quickly tagged as NPAs or sympathizers of the armed struggle, simply on account of membership in organizations which seek to defend ancestral domains. Tribal

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89 Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Philippines A/HRC/8/3/Add.2 16, April 2008, FN 16(*citing* CPP, Ang Bayan, Message of the Central Committee, "Further strengthen the Communist Party of the Philippines to lead the people's democratic revolution) at 31.85 Commission on Human Rights of the Philippines (CHRP), Submission to the Universal Periodic Review – Philippines, June 2012, para. 33.

90 *Id.*

91 *Id.*

92 Section 2 of the law provided that "the Communist Party of the Philippines [is] an organized conspiracy to overthrow the government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime and place the government under the control and domination of an alien power. The said party and any other organization having the same purpose and their successors are hereby declared illegal and outlawed."

Section 4 of the law punished "whoever knowingly, willfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successor or of any subversive association as defined in section two."

leaders and support group leaders complained[93] that *Lumad*, including some of those in Haran, were frequently suspected of being members of the NPA by the military. For instance, a *Datu* testified about having been intimidated, interrogated, and harassed into admitting NPA membership. To dispel suspicions, he was forced to join the *Alamara*. Denying ties with the NPA, he complained that he was forced to leave his home in April 2015 because of the military's relentless investigation of him.[94]

89. The Commission believes that red-tagging, rather than promoting democracy, erodes it. A healthy democracy allows anti-government views to surface in the marketplace of ideas and public discourse. If a democratic government is one which is *of* the people, then they should be free and unrestrained in expressing their discontent. Red-baiting subdues the articulation of issues, and strikes at the heart of democracy.

90. At the most extreme, red-tagging detracts from people's right to full protection under the law, as it renders them unfair targets of violence, arrest, disappearance, and even liquidation. This is not unknown in the Philippines. Professor Philip Alston, as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, found in 2007 that the killings and enforced disappearances during the Arroyo regime of hundreds of activists affiliated with organizations identified by the AFP as part of the CPP/NPA/NDF were preceded by red-tagging.[95]

91. Red tagging of *Lumad* leaders by other *Lumad* also waters down and disrupts the indigenous unity necessary for their continued existence as a collective. This has a deleterious effect on their ability to exercise their culture in community with others, guaranteed under Art. 27 of the ICCPR. The situation of *Lumad* telling on other *Lumad*, if unabated or further exacerbated, may lead to the erosion of their culture and the eventual dissolution of the community.

92. The Commission is compelled to remind all sectors to regard red-tagging seriously and to realize its potentially grievous impact on *Lumad* existence.

93. The AFP must refrain from red-tagging. If the AFP has evidence to prove that certain persons are members of the NPA or support NPA activities, the proper action is to take the lead in the prosecution of the latter, not political vilification or red-baiting which puts to peril people's freedoms, security, and lives.

Internal Displacement

94. Claims of massive exodus by the *Lumad* from their ancestral domains were disputed by fellow *Lumad*, who stated that the evacuations were relatively

93 *See* paras. 23, 27, 47, 68 and 75.

94 TSN dated 24 September 2015 – A.M. Session, p. 35-43.

95 Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Philippines A/HRC/8/3/Add.2 16, April 2008.

sporadic, small-scale, and involved only very few communities. But, massive or not, the fact remains that some *Lumad* were internally displaced.

95. From testimonies gathered during the hearings and executive sessions, it appears that one reason for the evacuation of some *Lumad* from their ancestral lands is the need to escape from military and paramilitary harassment. Of particular note is the statement of Datu Ginom and Datu Kaylo that, when the military encamped in their community, the time that they were allowed to work in their fields was limited to only two hours. Tension pervaded their area, forcing them to leave and seek refuge in Haran.

96. Others left because of red-baiting and military harassment arising from suspicions of their being supporters of the NPA or of being forced to be integrated into the *Alamara*.

97. On the other hand, it cannot also be denied that NGO members, capitalizing on the poverty of the IPs, misled some of the latter into joining the evacuation to Haran with promises of sacks of rice, cash, and farm implements, among others.

98. In its 2014 report on the HR situation in the Philippines, the US State Department made reference to the assessment of the Internal Displacement Monitoring Center, an NGO, which surmised that some internally displaced people remain in evacuation centers because they have better access to basic facilities and livelihood opportunities than in their home areas.[96] This is especially true in sites of violent conflicts or armed encounters impinging upon their exercise of self-determination. To the *Lumad*, as to other IPs outside Mindanao, their ancestral domains are the resource base for their sustenance. Unable to control the situation in their lands, their livelihood is adversely affected. Flight then becomes a "forced" recourse.

99. Whether massive or not, the exodus of some *Lumad* from their ancestral lands is a manifestation of their dire situation. Displacement is also clearly an issue of food security, a right guaranteed under the UNICESCR, as much as it is an issue of personal security, a right guaranteed under the UNICCPR.

100. The Commission recognizes that displacement also affects IPs' exercise of the right to self-determination and a host of other rights that come with it. Article 1 of the UNICCPR, as well as Article 1 of the UNICESCR, specifically provide for the right of all peoples to self-determination, including the right to determine their political status and economic, social, and cultural development. International law obliges every State to acknowledge that the right to lands, territories, and natural resources is the basis for their collective survival and is, thus, inextricably linked to their right to self-determination.[97] Removed from their ancestral domains, the

96 Bureau of Democracy, Human Rights and Labor, US State Department, Philippines 2013 Human Rights Report in Country Reports on Human Rights Practices for 2013, 2013, at 22, accessed from www.state.gov/documents/organization.

97 Erica-Irene A. Daes, *An overview of the history of Indigenous Peoples: self-determination and the United Nations*, 21: 1 CAMB. REV INT'L AFF. 7, 8 (2008).

Lumad could not exercise their right to culture in community with those who remained there.

101. Article 27[98] of the UNICCPR provides for the right of ethnic, religious or linguistic minorities to enjoy their own culture, profess and practice their own religion, and to use their own language.[99] These rights are held by individuals, but exercised "in community with other members of the group," thereby providing some measure of collectivity.[100]

102. Article 27 makes no literal reference to IPs. Although indigenous representatives assert that they are more than minorities,[101] UN practice shows it has been treating IPs as minorities. Their concerns have been taken up by the UN Human Rights Council's Sub-commission on Prevention of Discrimination and Protection of Minorities. Thus, the jurisprudence of the Human Rights Committee, the body that monitors States' compliance with the UNICCPR, deals mostly with claims raised by indigenous groups when interpreting Article 27.[102] In its own General Comment No. 23, the UNHRC said:

> With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, **especially in the case of IPs**. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.[103]

103. The content of the rights of IPs and minorities and their issues materially overlap and converge;[104] hence, an indigenous group may be simultaneously a people and a minority.[105]

104. The Commission further affirms, as did the Inter-American Court of

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98 The Human Rights Committee in interpreting Article 27 of the ICCPR issued General Comment 23 (par. 6.1) explaining that while the article is expressed in negative terms, it nevertheless recognizes the existence of a 'right' and a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

99 Other relevant ICCPR articles include: the right to life (6); freedom from torture or cruel, inhuman or degrading treatment or punishment (7); the right to liberty and security of person and freedom from arbitrary arrest or detention (9); the right of all persons deprived of their liberty, to be treated with humanity and respect (10); the right to be equal before the courts, including the right to a fair and public hearing and the right to free legal aid and assistance of an interpreter (14); the right to freedom of thought, conscience and religion (18), the right of every child to protective measures as required for minors (24).

100 Fergus Mac Kay, A Briefing on Indigenous People's Rights and the United Nations' Human Rights Committee, 2001, accessed on 5.12.2015 at www.forestpeoples.org/sites/fpp/files/publication/2010/10/unhrcfppbriefdec01

101 Patrick Thornberry, Minority and indigenous in 2 ETHNICITIES (No. 4) 515, 517 (2002). Gudmundur Alfredsson, *Minorities, Indigenous and Tribal Peoples and Peoples*, in MINORITIES, PEOPLES, AND SELF-DETERMINATION 163-172 (Ghanea and Xanthaki, eds., 2005) (arguing that IPs are minorities but more than minorities, they are peoples.

102 Martin Scheinin, *Indigenous Peoples' Land Rights Under the International Covenant on Civil and Political Rights*, Torkel Oppsahls minneseminar, Norwegian Centre for Human Rights, University of Oslo, at 4, 28 April 2004, *available at* http://www.galdu.org/govat/doc/ind_peoples_land_rights.pdf.

103 UN Human Rights Committee, General Comment No. 23: The Rights of Minorities (Art. 27), CCPR/C/21/Rev.1/Add.5 (04/08/1994), para. 3.2.

104 James Anaya, *International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State*, 21 AJICL 13, 21 (2004).

105 Alfredsson, *supra* note 260.

Human Rights in *Yakye Axa v. Paraguay*[106] and *the* African Commission on Human Rights in *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*,[107] that an IP's land is the foundation of the integrity of its culture, spirituality, and economic survival, and of posterity's heritage. The effect of displacement is to break up the collective, consequently abrading the exercise of culture which may be exercised only by a community, and further hampers the exercise of self-determination enshrined in Article 1 of both the UNIESCR and the UNICCPR, as well as Article 3 of the UNDRIP and IPRA.

105. Reference is made to *Dann v. United States*[108] where the Inter-American Commission on Human Rights pronounced that the "continued utilization of traditional collective systems for the control and use of territory are in many instances essential to the individual and collective well-being and, indeed, the survival of, IPs, and that control over the land refers both to its capacity for providing the resources which sustain life, and to the geographic space necessary for the cultural and social reproduction of the group." With the evacuation of *Lumad* from their ancestral domains, they lose that geographic space required for the perpetuation of their collective identity.

106. Evacuation for reasons introduced by different outside forces is displacement which, if not addressed by the State, is tantamount to denying protection to the Lumad's practices and characteristics to preserve their cultural identity, a treaty obligation under Article 27 of the ICCPR[109] and guaranteed under IPRA, which provides that "(t)he State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions."

Culture of Impunity for Abuses

107. Perpetrators of sexual abuses of women and burning of schools have yet to be made accountable. The continued failure on the part of the State to prosecute this promotes impunity.

108. It has also been reported that the *Alamara* have been harassing *Lumad*. As earlier pointed out, despite military denials of links with paramilitaries, HR groups and international fact-finding missions believe otherwise. During the hearings, testimonies credibly established a connection between the military and *Alamara* as far as fighting the NPA is concerned.

109. The Melo Commission, created by Administrative Order 167 issued by Pres. Arroyo in 2006 to investigate the killings of journalists and activists, did not

106 Indigenous Community Yakye Axa v. Paraguay, 2005 Inter-Am. Ct. of H.R. (ser. C), para. 131.

107 African Commission on Human Rights, 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya.

108 Dann v. United States, Case 11.140 (United States) Inter-Am. C.H.R., Report No. 75/02, OEA/Ser.L./V/II.117, doc. 1 rev. 1, para. 128 (2003).

109 Yanomami v Brazil, Case No. 7615 (Brazil), Inter-Am. C.H.R., Res. No. 12/85 (Mar. 5, 1985), O.A.S. Doc. OEA/Ser.L/V/II.66, doc. 10 rev. 1, at 24 (1985).

find the AFP institutionally complicit. But it was cited for its lackadaisical attitude towards reports on the involvement of individuals or groups associated with the AFP in the EJKs of activists under *Oplan Bantay Laya*.[110] Similarly, Philip Alston, then UN Special Rapporteur on Extrajudicial Killings, reported in 2008 at the conclusion of his mission that the AFP, sometimes conniving with paramilitaries, carried out a significant number of EJKs against journalists and political dissenters.[111] To that extent, in 2012, the UNHRC expressed its concern about unabated EJKs and enforced disappearances, and what it perceived as poor results of investigations and the lack of prosecution of culprits, including the slow progress in the prosecution of the 2009 Ampatuan massacre.[112]

110. However, the State must also be commended for having positively responded to certain articulated concerns raised by parties. For one, it created HR offices within the police and the AFP, such as under the Internal Peace and Security Plan of the AFP.[113] This was a move reported by the Philippines to the Human Rights Council during the second cycle of the Universal Periodic Review, a mechanism established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, during its thirteenth session in 2012.[114]

111. The AFP's Internal Peace and Security Plan textually provides that members of the security forces are to be trained regularly on international HR law and international humanitarian law.[115] The mere creation of institutional HR mechanisms, however, does not, by itself, fully foster a culture of HR within the AFP. The public deservingly expects to see further steps from the AFP toward cleansing itself of rogue elements who deviate from its prime duty as defender of the people and who contribute to its negative perception.

112. In 2012, the State's peers in the UN commended the Philippines for stepping up efforts to improve its HR record and for providing enhanced access to justice in general. But they also expressed concern about impunity in HR violations committed by security forces,[116] noting the existence of institutional barriers to fighting impunity.[117]

113. An international fact-finding mission report claims that the Human Rights Officers of the AFP which the mission interviewed revealed that no member of the armed forces had ever been convicted for a HR violation, including in cases of crimes such as torture or EJK. The Mission delegates were told of a couple of instances where armed forces personnel had been charged.

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110 Melo Commission, The Melo Commission Report, February 2007, available at http://www.humanrights.asia/resources/journals-magazines/article2/0601/appendix-ii-the-melo-commission-report.

111 Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Philippines A/HRC/8/3/Add.2 16, April 2008.

112 UN Human Rights Committee, Concluding Observations on the Philippines, UN Doc CCPR/C/PHL/CO/4, paras. 14-16.

113 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Philippines, A/HRC/21/12, 9 July 2012, para. 24, at 5.

114 *Id.*, para. 1, at 5.

115 *Id.*, para 24, at 5.

116 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Philippines, A/HRC/21/12, 9 July 2012, paras. 51, 57, 63, 116, at 8-9, 14.

117 *Id.*

However, moves to prosecute them at the level of the DOJ have been stymied.[118]

114. Earlier in 2008, the government was scored by the UNHRC in its views on the case of *Marcellana v. Philippines*.[119] Ms. Marcellana and Mr. Gumanoy, two activists engaged in HR advocacy work, were extrajudicially executed by individuals linked to the military. The UNHRC lamented that "though over five years have elapsed since the killings took place, the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with these events."[120] The Committee also urged the Philippine government to initiate and pursue criminal proceedings against the armed group linked to the killings.[121]

115. The Commission commendably notes the efforts of some military officials to improve the HR record of the AFP. But the desire to improve must be reflected in official actions of the institution. It must demonstrate concrete, decisive, credible, and transparent actions to address HR violations ascribed to members of its ranks.

116. The highest command in the AFP must seriously act to put an end to impunity to inspire public confidence. In *Aberca vs. Ver*,[122] the Supreme Court said that, while it is the duty of the AFP to prevent or suppress lawless violence, insurrection, and rebellion, "this cannot be construed as a blanket license or a roving commission untrammeled by any constitutional restraint, to disregard or transgress upon the rights and liberties of the individual citizen enshrined in and protected by the Constitution." The principle of accountability of public officials under the Constitution does not permit a superior official to "relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for the transgressions committed by the latter against the constitutionally protected rights and liberties of the citizen."[123] In the same case, the Supreme Court emphasized that Article 32 of the Civil Code makes the persons who are directly or indirectly responsible for HR transgressions joint tortfeasors.[124]

117. As a demonstration of the AFP's sincerity to enforce accountability, it is strongly urged to subject military personnel implicated in the issues of the *Lumad* evacuees to administrative and/or criminal actions. This includes the rape or sexual abuse of *Lumad* women, notwithstanding the settlement of cases with the victims. While victims may enter into compromises with the alleged violators, such cover only the civil liability and not their administrative and criminal liabilities.

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118 Human Rights Committee, Communication No. 1560/2007, Orly Marcellana and Daniel Gumanoy v. Philippines, Views adopted on 30 Oct0ber 2008, CCPR/C/94/D/1560/2007.

119 *Id.*, para. 7.3.

120 *Id.*, para. 9.

121 *See* Human Rights Committee, Communication No. 1560/2007, UN Doc CCPR/C/94/D/1560/2007.

122 G.R. No. L-69866, April 15, 1988.

123 *Id.*

124 *Id.*

118. The same goes for all other abuses committed by soldiers, upon proper investigation and finding of guilt.

119. The AFP must respect its constitutionally-assigned role as protector of the people.

The Deplorable Living Conditions in the Haran Compound as an Evacuation Camp

120. The UCCP Compound in Haran was not a conducive place for the evacuation of the IPs. It posed more risks to the health of the IPs, and the specific situation of those from vulnerable sectors, like women and children, was far from desirable.

121. Of the almost 700 *Lumad* encamped in the Haran UCCP Compound, 392 or 62% were children (210 boys and 182 girls). They belonged to the Manobo, Mandaya, Matigsalug and Tigwahanon ethnolinguistic groups.

Area of Origin	Ethnic Origin	Boys	Girls	Total
Talaingod, Davao del Norte	Manobo	80	72	152
Kapalong, Davao del Norte	Mandaya	77	57	134
San Fernando, Bukidnon	Tigwahanon	52	51	103
White Kulaman, Kitao-tao, Bukidnon	Matigsalog	1	2	3
Total IP Children		**210**	**182**	**392**

122. A child is defined by law[125] as a person below 18 years of age, or those over 18 but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. Having been encamped inside the Compound under such conditions for several months, the rights of *Lumad* children violated, abused, or derogated are:

123. **Survival Rights** – Survival rights refer to the provision of needs basic to the child's existence. From the Convention on the Rights of the Child (UNCRC),[126] Article 6 refers to the child's inherent right to life and development; Article 24 points to the highest attainable standard of physical health, food and water; while Article 27 mentions the right to adequate standards of living. *Lumad* children had been inside the Compound for more than five months at the time of the CHR visit. They were living in tents and other makeshift shelters. Obviously, given their encampment, they were separated from their original abode and natural environment (rivers, sources of water, forestry), cut off from the ties of their respective communities,

125 Section 3a, RA 7610.

126 Signed in 26 January 1990 and ratified by the Philippine Government on 21 August 1990.

and constrained from practicing their traditional customs. The standard of living inside the Haran Compound, as appraised by the Commission, was sub-human. While seemingly "safe" and housed in improvised shelters, they were cramped in narrow spaces and were constantly exposed to the elements amid changing weather conditions. The facilities were poor or inadequate. The number of toilets was disproportionate to the *Lumad's* number, and bathing facilities were set-up without regard for privacy. Poor sanitation and lack of garbage/waste disposals in the area contributed to the stench which permeated the Compound. Most children were not bathed, had "sunken" eyes and dry skin. Most had dirty clothes, if they were wearing clothes at all.

a. **Development Rights** – The encampment did not provide adequate resources and facilities necessary for the mental, spiritual, moral, social and psychological growth and development of the children. Article 23 of the UNCRC stipulates the right to special care, education, and training of children with special needs. Article 28 provides for the right to education and Article 31, to leisure, play, and rest.

b. **Right to Education** – While most of the 392 indigenous children were with their parents, their education in the original communities where they belong (Talaingod and Kapalong in Davao del Norte; San Fernando and White Kulaman, Kitaotao in Bukidnon) was disrupted. The children had to make do with "improvised classrooms," including the "multigrading" or the "collapsing" of five grade levels to two, due to lack of teachers (e.g., Grades 1-3 and 4-5). The usual six-to-seven-hour a day schedule in a regular school was reduced. Needless to state, multigrading affects the quality of education. The team observed two ongoing classes conducted under a tree. Each "class" composed of 25-30 children was taught by one teacher. The classes were exposed to anyone passing by within the Compound. Children had no individual tables and chairs, and each class only had a small blackboard.

c. **Play and Rest** – The Compound hardly had space for almost 400 children to roam around and freely play inside. An art session conducted by the Commission was a welcome respite for the children as they were able to feel a sense of normalcy. Nineteen children elaborately drew their community, their homes, a big basketball court, and green, spacious playground. Most of them requested the team to come back and that they be allowed to "draw and color" again.

d. **Newborns** – The Commission noted the presence of newborn babies inside Haran. While mothers were breastfeeding, it was uncertain whether the babies were given the prompt and special care needed, such as pre-natal and post-natal baby screening, immunization, and proper hygiene and sanitation. The encampment inside the poorly equipped Compound certainly had adverse effects on the physical, mental, emotional, and moral development of children.

124. Section 25 of IPRA provides a clear legal foundation for the protection of indigenous entitlement to basic social services:

> The indigenous cultural communities/Indigenous Peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention should be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electric facilities, education, health, and infrastructure.

125. Regardless of whether the *Lumad* chose to remain in the UCCP Compound in Haran or to return to their respective ancestral domains, they are entitled to the respect, protection, and fulfilment of the above rights. Their right to durable solutions is also ensured in the UN Guiding Principles on Internal Displacement.

Illegal Detention and Supplanting of Free, Prior and Informed Consent of the *Lumad*

126. Relevant to the discussion on whether the duty bearers forcibly entered the UCCP Compound on 23 July 2015 is the prior determination of whether all or some of the *Lumad* were detained against their will inside the Compound, hence necessitating the conduct of a rescue operation.

127. It was established that some people were lured to the Haran Compound with promises of money, goods, and other valuable considerations. They were made to believe that then-President Aquino, then-Rep. Pacquiao, and then-Mayor Duterte would be there to dialogue with them.

128. But at the same time, it is also clear that some of the *Lumad* left their ancestral domains to escape from threats and harassments in the hands of the military and the *Alamara*.

129. Apparent in the discourse of whether or not the *Lumad* should remain in Haran is the lamentable fact that it became more a matter for the government and support groups to decide. Although some *Lumad* did articulate their positions on the matter, the contending sides – to a considerable degree – supplanted their free, prior, and informed consent rights.

130. The providing of social services was dangled by the DSWD to influence the decision of the *Lumad*. For instance, a DSWD representative declared that the DSWD committed to establish a day-care center in the community once the *Lumad* decided to return home. She also stated that the agency's position was to provide assistance to the *Lumad* after they would have returned to their communities.[127] There was also a concern raised that some 58 families were pressured not to enroll their children in STTICLC schools under threat of removal from the 4Ps program.

127 TSN dated 25 September 2015 – P.M. Session, pp. 73-74; 77; 80-81.

131. The Commission, after carefully considering all the testimonies given during the hearings and the data it gathered, acknowledges that both the government and the support groups coming from civil society were motivated by concern for the plight of the *Lumad*. However, while they were forcefully arguing their positions on what was best for the *Lumad*, they may have forgotten that the *Lumad* – as a collective – could and would have spoken for themselves.

132. Verily, it was within the rights of the *Lumad* to do so, as actors and decision-makers in the discourse, rather than as objects whose fate was left to others who assumed the role of their protectors. In the end, the *Lumad* were disempowered.

133. The Commission reminds all the outside parties in the *Lumad* issue to respect the prerogative of the *Lumad* to determine their fate. At the most, they are encouraged to provide all information and assistance necessary for the *Lumad* to arrive at a well-informed decision, unadulterated by any agenda of which the *Lumad* have no part or relation.

134. The United Nations Committee on the Elimination of Racial Discrimination (UNCERD) pronounced in its 1997 General Recommendation No. XXIII[128] that to ensure non- discrimination in protecting IPs' rights, including their rights to their ancestral land, no decisions that relate to their rights and interests should be made without their FPIC.[129]

135. The UNDRIP "(affirms) xxx that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic, or cultural differences are racist, scientifically false, legally invalid, morally condemnable, and socially unjust."[130] It declares that "IPs and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights.[131] They should be left alone to make free and informed decisions to leave or return to their ancestral land, or remain or depart from the UCCP Compound, insulated from manipulation by any sector. Article 18 of the UNDRIP pronounces that IPs "have the right to participate in decision-making on matters which would affect their rights, through representatives chosen by themselves, in

128 Committee on the Elimination of all Forms of Racial Discrimination, General Recommendation No. 23: Rights of Indigenous Peoples, U.N. Doc. A/52/18, annex V at 122 (1997).

129 The General Recommendation provides in part:

4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of IPs are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide IPs with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of IPs 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;

130 United Nations Declaration on the Rights of Indigenous Peoples, Preamble.

131 *Id.*, Article 2.

accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

136. Under the IPRA and international law, the contemporary requirement for IPs' FPIC is primarily premised on their recognition as peoples who are vested with the right to self-determination and who have their own perspectives on matters affecting them. Within this HR framework, the requirement is also derived from the collective dimensions of their rights, including rights to property, to develop and maintain their cultures, to autonomy, and the associated practice of customary law and maintenance and development of their own institutions.

137. The Commission adds that, when the *Lumad* decide of their own free will to return to their ancestral domains, these must be guaranteed to be safe havens for them, their peace unmarred or undisturbed by armed conflicts and threats to their lives and security. All armed groups – military, paramilitary, and NPA – should respect the wishes of the *Lumad* for pull-out and/or cessation of activities that disrupt their collective existence. Only under an atmosphere of peace can they co-exist peacefully and maintain their cultural identity.

Attempt to Forcibly Enter the UCCP Compound

138. The support group of the *Lumad* inside Haran alleged that the police forcibly entered the Compound. From the video footage showing Atty. Kay V. Paquera and PSupt. Marvin Pepino discussing the rescue operation of the DSWD, the police invoked the mandate of the DSWD to rescue children and women. According to PSupt. Pepino, the police were deputized to assist and secure the way for those who wanted to go home. The lawyer insisted that UCCP is private property, and therefore, the police could not just enter.

139. Video footage also showed a man in civilian clothing who forcibly opened the UCCP Haran gate. Then a commotion ensued outside the Haran gate.[132] This resulted in the injury of one *Lumad* and two police personnel, with both sides accusing the other of initiating the attack.

140. As can be deduced from the video footage, the PNP forcibly opened the UCCP Haran gate, but did not enter the Haran Compound. When the gate was opened, the people inside the Compound blocked the entrance and prevented the police from entering. At this junction, the two groups clashed, resulting in injuries on both sides.

141. PSupt. Danao clarified[133] that they were originally not aware of the presence of *Lumad* in UCCP. They only came to know about this and the fact that the *Lumad* had already been in the Compound for more than a year during a meeting convened by Rep. Nancy Catamco after she visited Haran. They were also not aware that some had already died, with one committing suicide, inside the UCCP Compound. He explained that they were part of the inter-agency group which planned the rescue by way of assistance to the DSWD. He reiterated that they were there not to force the *Lumad* to

132 *See* video footage on the commotion at Haran gate.

133 *See* summary of PSupt. Danao's testimony, paras. 130-131, pp. 39-40.

get out of Haran, but to secure the exit of those who wanted to leave the Compound. He said that the entrance gate remained closed despite the long hours of negotiation with the support groups.

142. PSupt. Pepino,[134] ground commander of the rescue operation, testified that in accordance with the plan of the inter-agency group, they were to execute the rescue operation upon failure of the dialogue with the support groups. But when the DSWD signaled that the dialogue failed, the people inside the Compound threw stones at the police who were outside the gate. In their defense, the police fought back and, in the course of the melee, one *Lumad* and two police personnel were injured. PSupt. Pepino tried to prevent the untoward incident. The commotion stopped only when then-Vice Mayor Paulo Duterte arrived.

143. The DSWD,[135] for its part, argued that it was within its mandate to conduct rescue operations in cases where the best interest of children is at stake. They believed that the condition in the Compound was unsuitable and detrimental to the development and health of the IP.

144. This was also the observation of the CHR team when it visited those encamped in Haran. The group was housed in tents in a small space that restricted movement. They shared a common washroom and limited water supply. Some 20 newborns were not getting proper medical attention.

145. The Commission grants that the DSWD and the police acted out of good faith stemming from the conviction that the *Lumad* inside the UCCP Compound needed to be rescued from abject living conditions and, for some, from involuntary detention. It would have been better, however, if they had first obtained the necessary court warrants, especially since, as their testimonies revealed, the rescue operation was planned by an inter-agency committee. The police should have been mindful of the Constitution which requires, as a general rule, the necessity of a warrant prior to the entry of private premises.[136] The UCCP Compound is a private property.

146. Having said all the foregoing, however, it is also clear to the Commission that the Civil Society groups inside the Haran Compound did not provide at least some of the *Lumad* inside the Compound the opportunity to dialogue with representatives of the DSWD to express their decision on whether or not they wanted to remain inside the Compound. Whether some of the *Lumad* inside the Haran Compound needed rescuing was argued by parties from opposing camps. To the mind of the Commission, however, what is clear is that the Civil Society groups inside the Compound prevented an honest dialogue between some of the *Lumad* and government personnel from taking place, which would have resolved this issue. This was very unfortunate, especially in view of the allegation from a group of Manobo IPs that they were forced to remain inside the camp against their will, leading to one of their members to commit suicide out of depression from not being able to return to his family in their ancestral home.

134 *See* summary of PSupt. Pepino's testimony, para. 132, p. 40.

135 *See* summary of testimony of Ms. Pedrita Maquiling, paras. 115-119, pp. 35-37.

136 *See,* Art. III, Sec. __ of the Constitution.

Recommendations

The Commission strongly condemns the spate of human rights violations committed against the *Lumad* by all parties – the government and the military, private business interests, non-government organizations, church groups, and the Communist Party of the Philippines-New People's Army.

1. The Commission calls on the Armed Forces of the Philippines to subject all the soldiers and officers implicated in cases against the *Lumad* to genuine investigation. The Commission especially calls on the Armed Forces of the Philippines to fully investigate the 18 August 2015 brutal murders in Mendis, Pangantucan, Bukidnon of five members of an indigenous Manobo family, including a 72-year-old blind person and two children, by members of the Army. All those proven guilty or responsible should face serious disciplinary sanctions, including removal from the service, and prosecution in civilian courts.
2. The Commission recommends that investigations of military abuses, in keeping with principles of transparency, must, as much as possible, be open to the public. The progress or status of the cases, especially the serious or grave ones, must be published on their website and included in the institution's periodic reports to the public.
3. Random and short-lived initiatives within the Armed Forces of the Philippines cannot instill a culture of respect for human rights within its organization. Institutional mechanisms for upholding the rule of law must be strengthened within the Armed Forces of the Philippines. In this regard, the Commission strongly urges the Armed Forces of the Philippines to adhere to the doctrine of command responsibility, starting with its integration in the education and training of its members, and in its strict application against negligent military officers.
4. The Armed Forces of the Philippines should take strong steps to ensure that it exercises control over all Civilian Volunteer Organizations, private militias, and Special Citizen Armed Force Geographical Unit Active Auxiliaries and make them accountable for human rights abuses.
5. The Commission calls on State security forces and their agents to refrain from "red-tagging," as it violates the fundamental liberties of citizens engaged in legitimate advocacies, or even dissent, and undermines the foundation of democracy.
6. The Commission especially calls on the government to hold to account the killers of Alternative Learning Center for Agricultural and Livelihood Development Executive Director Emerito Samarca, *Maluhutayong Pakigbisog Alansa Sa Sumusunod* Chairman Dionel Campos, and his cousin, Bello Sinzo.

7. The Commission calls on the government, through the Office of the Ombudsman, to seriously investigate all other government officials implicated or complicit in violations of human rights of indigenous people - such as the facilitation and granting of illegal permits and licenses to private parties to operate within ancestral domains without the proper Free, Prior and Informed Consent - and bring them to justice.
8. The Commission calls on the government to be mindful of the Constitutional guarantee of recognition and promotion of the rights of indigenous cultural communities within the framework of national unity and development by creating genuine programs toward preserving their culture, traditions, and institutions. It should endeavor to protect not only the indigenous peoples' civil and political rights, but also their economic, social, and cultural rights.
9. The Commission especially calls on the government to be more proactive in protecting the rights of indigenous peoples to their ancestral lands. In this regard, the Commission calls on the government to facilitate the speedy issuance of Certificates of Ancestral Domain Titles and genuine implementation of the Ancestral Domain Sustainable Development and Protection Plan, in recognition of the struggle of the indigenous peoples for social justice, and to review issuances and orders related to ancestral lands to ensure that indigenous peoples' rights over them are protected.
10. The Commission calls on the Philippine government, through the Department of Education, Department of Health, and Department of Public Works and Highways, to provide basic services, especially education, health, water, and sanitation facilities to all indigenous communities.
11. The Commission calls for the promotion and protection of the right of indigenous peoples to physical and mental health. Indigenous women, especially, must be provided with full access to maternal and child care and nutrition services. As much as possible, they must have access to these and all other services in their own language.
12. The Commission urges the Department of Education to create a special, comprehensive program addressing the need of indigenous children to education appropriate to their culture. Beyond this, they must also be provided access, without discrimination, to all institutions of learning of the State.
13. To enable them to fully participate in all aspects of social life, indigenous women must also be provided access to vocational, technical, and other forms of training relevant to their economic, social, and cultural life.
14. The Commission calls upon the National Commission on Indigenous People to vigorously perform its mandate of protecting the interests of *Lumad* from land-grabbing, illegal mining and dislocation. Regarding business-induced displacement, the National Commission on Indigenous People must ensure that the conduct of securing Free, Prior and Informed Consent is transparent and inclusive, done with leaders chosen by the indigenous peoples themselves. Compelling and overriding public interest must be established before business projects that will cause displacement are allowed.
15. The Commission urges the National Commission on Indigenous People, and other agencies relating to indigenous peoples' rights, as well as civil society organizations, to closely monitor and intervene in the areas of Talaingod and Kapalong, Compostela Valley, Surigao, Bukidnon, and Upi, Maguindanao, including other areas of armed conflict, in ensuring the protection of indigenous peoples in their ancestral lands.
16. The Commission calls for the review of the Indigenous Peoples' Rights Act, with the view of strengthening and capacitating the National Commission on Indigenous People and, perhaps, elevating it to the status of an independent commission, so it can fully perform its mandate.

17. The Commission calls for the creation of an Inter-Agency Monitoring Group on the Human Rights Situation of Indigenous Peoples, including those of the *Lumad*, to facilitate immediate responses to issues concerning indigenous peoples' rights, including causes of conflict related to indigenous people ancestral domains, such as mineral extraction, logging and agro-industrial businesses. The participation of civil society organizations in this mechanism is highly encouraged.
18. Even as it recognizes the nobility in fighting for the rights of indigenous peoples, the Commission urges the organizers behind the Haran encampment to seriously examine their policies and methods, especially those that have led to transgressions of *Lumad* rights. The Commission views with serious concern the case of Lito Lundia and other members of his tribe, lured under false pretenses to Haran, and prevented from returning to their ancestral homes, despite already having expressed their strong desire or demand to be allowed to leave. Also, the humanitarian conditions that the indigenous peoples were made to endure inside the compound by the managers thereof, when help and facilities were offered to alleviate their situation, must give pause to the handlers of Haran to review their policies, system, and procedures, among others.
19. The Commission calls on all parties – state and non-state – to genuinely respect the rights of indigenous peoples to be consulted and to participate in all levels and on all matters affecting their civil, political, economic, social, and cultural rights. This includes their inherent right to self-governance and self-determination, as well as rights over their ancestral domains, including all ancillary rights attaching thereto.
20. The Commission calls on both the government and the New People's Army to refrain from coercion, intimidation, or deception and other acts that cause the *Lumad* to abandon or evacuate from their ancestral domains. Furthermore, the Commission urges all parties from supplanting – by force, intimidation, or deception – the indigenous peoples' decision to leave or return to their ancestral domains.
21. The Commission calls on all parties to especially ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence.
22. The Commission calls on the government and the Communist Party of the Philippines-New People's Army-National Democratic Front to refrain from recruiting indigenous peoples, especially children, for activities relating to the armed conflict. It reminds both parties that, under the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law, they have committed to respect customary and conventional International Human Rights Law and International Humanitarian Law.
23. The Commission recommends that the government and the Communist Party of the Philippines-New People's Army-National Democratic Front resume peace talks in good faith towards accountability, healing, and achieving peace for the country.
24. If peace talks at the national level cannot be immediately resumed, the government should hold peace dialogues at the local level, ensuring representation of indigenous peoples and respect for their rights.
25. Although some individual members of indigenous cultural communities may have committed themselves to partisan causes, the *Lumad* must be encouraged to dialogue and resolve conflict among themselves, using their own indigenous cultural mechanisms for building peace, without interference from outside forces. Dialogues should result in, among others, an acknowledgment of the universality of human rights, that indigenous cultural communities must be regarded by all parties as neutral, that ancestral domains are zones of peace, and that achieving transitional justice for the *Lumad* and other indigenous communities can be achieved by the commitment of all to attain peace through peaceful means.

GOVERNANCE IN JUSTICE (GOJUST)

HUMAN RIGHTS PROJECT

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