



Issue Paper 2004–03

USING THE
INTERNATIONAL
HUMAN RIGHTS
FRAMEWORK TO
EMPOWER
INDIGENOUS
COMMUNITIES IN
THE PHILIPPINES



LRC-KsK Issue Paper 2004-03

All publications of LRC-KsK are dedicated to the countless committed individuals and communities who struggle everyday for a more dignified existence. They are the primary source of our insights and inspiration.

The opinions and views that this paper carries do not necessarily reflect the official stance of the Center.

©2004 by the Legal Rights and Natural Resources Center, Inc.—Kasama sa Kalikasan (LRC-KsK/Friends of the Earth-Philippines). No part of this book may be reprinted without permission from LRC-KsK unless its reproduction will be for purposes of sharing its contents to local communities for free.

About the Authors

Naomi Onaga has a B.A. in sociology from Stanford University, and law degree and Master of International Affairs with a focus on human rights from Columbia University in New York. She has worked with various human rights organizations in the United States, Latin America, Asia and Africa. She assisted the Legal Rights and Natural Resources Center in legal research, investigation and reporting of governmental abuses against indigenous communities in Mindanao. She currently works in Oakland, California with the International Institute of the East Bay, a nonprofit community organization that promotes the protection and empowerment of immigrants and refugees.

Emily L. Manuel has a law degree from the University of the Philippines. She was a paralegal of the Direct Legal Services (DLS) Team of the LRC-KsK/FOE-Phils in February 1998. She later became a Research Paralegal of the Research and Policy Development (RPD) Team then a Staff Lawyer of the DLS Team wherein she eventually became the Team Leader from February 2004 to September 2004.

About the Cover

Sinoda: Matigsalug refugee, October 25, 1993



Issue Paper 2004–03

**USING THE INTERNATIONAL
HUMAN RIGHTS FRAMEWORK TO
EMPOWER INDIGENOUS
COMMUNITIES IN THE
PHILIPPINES**

INTRODUCTION

Since the onset of colonialism and the modern nation-state, indigenous peoples have been among the most vulnerable and exploited in the world. In the Philippines, the integrity of indigenous communities has historically been subjected to enormous pressure from the Spanish, American, and Japanese occupants, the government, Philippine society, and local and multinational corporations.

The Indigenous People Rights Act of 1997 (IPRA)¹ was adopted as a result of extraordinary efforts of indigenous communities and advocates. It constitutes an important step towards converting the legal system from exploiting and disenfranchising indigenous peoples, to providing official recognition and concrete protection for their rights. It set up the legal framework and institutional mechanism through which indigenous communities can officially register title for their ancestral domain,² strengthened the requirement of "free and prior informed consent,"³ and made the country's legal system one of the most progressive national systems in the world in the area of indigenous rights.

Still, even with the IPRA's enactment, the Philippine legal system is far from perfect. It has yet to guarantee justice for indigenous peoples so that it goes beyond being merely a token affirmation of their rights. The many abuses and injustices that continue to occur against indigenous communities in the Philippines emphasize this point. These abuses are predominantly rooted in the efforts of the government, mainstream society, and multinational corporations to displace indigenous communities

¹ Rep. Act 8371.

² Note that mechanisms to secure Certificates of Ancestral Domain Claims existed even prior to the IPRA, but these certificates were not equivalent to land titles under the Torrens System. The primary agency responsible for issuing these certificates was the Department of Environment and Natural Resources.

³ Note that the requirement of consent also exists in a number of laws, such as the Philippine Mining Act of 1995, and the National Integrated Protected Areas System Act, among others, but the consent requirements in these Acts were much weaker than that instituted in IPRA.

from their lands. Often, these acts are justified on tenuous and antiquated colonial legal theories, like the "Regalian Doctrine" (which holds that the State holds title to all lands, including indigenous ones, within the country), and fueled by newer economic and state-centered ideologies, such as neo-liberalism and national economic development.

As in the past, indigenous communities in the Philippines continue to face these challenges with courage. They mobilize to fight for justice, equity, and cultural survival through numerous creative strategies.⁴ Yet one potentially powerful strategic toolbox that appears to be underutilized is that of the international human rights protection system.

Why have indigenous communities, and advocates for indigenous rights, not fully utilized human rights mechanisms? The reasons vary; one is that there is a plethora of Filipino activist organizations, with each having a very diverse history, membership, ideology, approach, alliances, goals, and resources. As in many other countries, there has been greater or lesser cohesiveness or divisiveness between the various groups at different points in time, and while there have always been networks and coalitions of organizations that formed alliances to work toward common goals, no single national network has ever encompassed all these social justice groups. Indigenous communities and advocates have not fully explored utilizing international human rights mechanisms because it seems that they have had relatively little collaboration with the traditional "human rights" organizations and networks in the past. These traditional "human rights" organizations arose in the Marcos era to combat the horrific abuses caused by the dictatorship, and generally focused on issues such as torture, disappearances, arbitrary arrests, and extra-judicial executions

⁴ Strategies have included negotiating with government and military officials through holding meetings, community consultations, and hearings; launching media campaigns including through issuing press releases and holding press conferences; educating the public including through the production of literary and artistic materials, including photo collections, books, documentaries and videos; striving to influence academic and policy debates around the country by participating in policy discussions and forums, and creating print and online journals and publications; engaging in legal strategies including lodging litigation before the district courts and Constitutional court, and making submissions to other relevant litigation; educating people about their rights and how to defend them; engaging in grassroots strategies include organizing petitions and letter writing campaigns, protests and marches; and even engaging in armed self-defense and resistance.

(termed in the human rights framework as "civil and political rights" violations). In contrast, indigenous communities and their advocates have traditionally focused on land tenure as the central issue in their struggle.

This article will suggest that, as a result of changes in both the national and international political arena, it has become timely for indigenous communities and advocates to examine whether certain international human rights mechanisms may be useful and in fact essential to achieving their goals. It is possible that in the present age of globalization, and the ever expanding U.S. War on Terrorism, the international human rights paradigm, mechanisms, and networks can now offer one of the most effective and possibly safest channel through which indigenous activists can garner the international community's support. Indigenous communities and advocates in the Philippines may find it more and more crucial to communicate their message through a language that the international community can understand and have sympathy for. This is because at present, the real propellers of abuses are often international entities such as transnational corporations, the World Bank, the International Monetary Fund, and the World Trade Organization. In developing a strategy to challenge such international powers, there can be a huge benefit in being able to navigate through and harness the power of international human rights enforcement mechanisms such as international courts, United Nations bodies, and national courts of other countries. Further, in the post-September 11 world, all activists must struggle with risk of being dismissed as "terrorists" if they are unable to communicate their message in the moral battleground to a large, global audience.

This article does not suggest, however, that indigenous organizations convert themselves into human rights organizations. It seeks, rather, to present information and discussion for consideration by those indigenous communities and advocates who are interested in expanding their arsenal of knowledge and strategies in their struggle for justice and equity. The international human rights framework is certainly not perfect and cannot protect indigenous communities against all abuses. But like the IPRA, it is the result of many years of struggle on the part of activists, and has many aspects that can open doors and catapult greater efforts.

Part I provides a general introduction and overview of the international human rights protection system, including its historical origins, philo-

sophical and theoretical underpinnings, mechanisms and institutions, and strategic approach. It also provides an overview of the actual rights that are protected by the international human rights system, and flags some trends and developments that may signal more progressive protections in the future.

Part II provides a discussion on the why international support has become important to local communities, reviews some situations in which an international human rights approach can be particularly useful, and provides some discussion on the power, as well as the limitations, of the international rights paradigm.

Part III provides a more detailed look at the strategies and tools offered by the international human rights protection system.

Part IV provides a discussion on how these tools might be utilized to address specific problems confronting indigenous communities in the Philippines.

Part V outlines some of the issues to consider when evaluating whether to tools from the international human rights protection system should be integrated into a strategy for community advancement and protection.

I. INTRODUCTION TO THE MODERN INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEM

This section provides some information that is useful to starting to understand and utilize the international human rights protection system. However, before we proceed, two things should be considered. First, the information presented is not complete. The system is complex, and requires some study in order for all its possibilities to be understood. Fortunately, there are now many excellent websites and publications⁵, and a number of short and long-term training courses⁶ that can provide clear, well-organized information on the human rights protection systems. Second, ideas and philosophies about human rights are not agreed: the field is new, and is still being developed. The amorphousness of human rights serves as a barrier against its becoming a precise tool, but also leaves open more possibilities for the development of creative new strategies; this is both the beauty and bane of the human rights approach.

⁵ See for instance the following websites: UN High Commissioner for Human Rights, www.ohchr.org; Human Rights Internet, www.hri.ca; Derechos Human Rights, www.derechos.org, which focuses primarily on Latin America but also has excellent general information; Peoples' Movement for Human Rights Education, www.pdhre.org, which contains basic information on human rights education, and a helpful introductory compilation of provisions of human rights protection by topics; HURIDOCs, <http://www.huridocs.org/index.htm>, with human rights education and documentation information; University of Minnesota Human Rights Library, www.umn.edu/humanrts, which has an excellent collection of human rights documents and some educational materials; and, lastly, The Avalon Project at Yale Law School, www.yale.edu/lawweb/avalon/avalon.htm, which houses a superb collection of documents.

⁶ Some well-known human rights training programs include: the Geneva Training Course offered by the International Service for Human Rights (6 weeks in Geneva, Switzerland), in <http://www.ishr.ch/about%20ISHR/Training/gtc.htm>; the Institut Internationale de Droits des L'Hommes training course for activists (4 weeks in Strasbourg, France); and the Columbia University Human Rights Advocates Training Program (5 months in New York, USA), see http://www.columbia.edu/cu/humanrights/hradv_pgm.htm. For a more comprehensive list of training courses, see the Human Rights Internet website at <http://www.hri.ca/education/educationSearch.asp>. The Danish Institute for Human Rights also has links to research institutions and study-programs at <http://www.humanrights.dk/departments/Research/links2>.

What are human rights?

The basic human rights idea is that all people, by virtue of the fact they are human beings, have certain fundamental rights—"human rights"—that can never be violated. They are said to be universal, held by all persons everywhere, and inalienable, incapable of being over-ridden or annulled by anyone. The inalienability of human rights is such that it cannot be forfeited, even by agreement, by any individual. For example, if a person signs a contract stating that she gives up her right to freedom and agrees to become a slave, the contract will not be valid; she will continue to have the human right to freedom.

Where do human rights come from?

Views on the source of human rights vary. The question is essentially a philosophical one, about the nature of human beings, the world, and appropriate social structures. There are many different philosophies that put forth the idea that all people have certain universal and inalienable rights, and there is some disagreement as to where and when the "human rights idea" first originated. Many Western writers seem to place it in 18th century Europe and America, with writers like John Locke and Jean-Jacques Rousseau, and documents like the English Bill of Rights, the French Declaration on the Rights of Man and Citizen, the American Declaration of Independence, and the US Bill of Rights. Others however suggest that the concept has long existed in other societies even prior to its emergence in Western society.⁷

Whatever the origin of the human rights idea, it is the overall philosophy of life and the world that a person holds that continues to be the source of her view of what human rights are. It is not possible in this article to examine in depth all the different types of philosophies that underlie peoples' views of human rights, but a very cursory review of the popular theories will be presented below. For further study, a good place

7 Louis B. Sohn, a well-known jurist in the United States, stated in a lecture he gave at Harvard University in 1995, "Human rights are probably as old as humanity. Claiming rights is part of human nature, and early statements on the subject can be traced to ancient China, India, Greece and Rome." See Louis B. Sohn, "The Human Rights Movement: From Roosevelt's Four Freedoms to the Interdependence of Peace, Development and Human Rights," Edward A. Smith Visiting Lecturer, Human Rights Program, Harvard Law School, 1995 at www.law.harvard.edu/programs/hrp/Publications/sohn.html.

to start is Jerome Shestack's 1998 article in the *Human Rights Quarterly*.⁸ Shestack gives an overview of many of the perspectives that are popular today on the source of human rights, including religion, natural law, positivism, Marxism, sociology, utility, natural rights, justice, human dignity, and equality. But these are not clear categories, and Shestack also notes that many modern writers and activists now appear to have philosophies that are eclectic, and draw on many of these different traditions and ideas. We discuss only three here in any depth: human dignity, social justice, and positivism.⁹

In the modern human rights movement, one of the most popular perspectives on the source of human rights is the conception of human dignity. The idea of inherent human dignity can have religious sources, but can also be a secular belief. Once a person considers that all people have human dignity, it does not become difficult to believe that each person must necessarily enjoy certain rights that are essential to maintaining such dignity. Such rights are usually thought to include right to freedom from torture, freedom of thought and opinion, and freedom of expression, in addition to other rights related to dignity like the right to freedom from forced labor, the right to freedom from exploitation, and economic and social rights like the right to food, housing, health and work.

8 Jerome J. Shestack, "The Philosophical Foundations of Human Rights," *Human Rights Quarterly* 20 (May 1998).

9 To give a brief overview: some people believe that human rights exist because their religious views support it. For instance, the Catholic Church has at different times pronounced the existence of certain human rights (though its views have varied over time). There are many other churches and spiritual beliefs that consider that all people have certain inalienable human rights. Natural law theory considers that there is a natural law of the universe, and some believe that this natural law endows all human beings with certain rights. Natural rights theory is similar, though slightly different. It accepts the existence of certain natural rights that all people have, but may not have a view on the existence of an overall natural law. The utilitarian perspective may consider that there should be human rights because the respect for such rights will increase the happiness of the whole society. Equality theories consider that the society should be organized in a way that achieves equality, and that people have the rights necessary to guarantee this central principle. Marxist theories on human rights usually put forward that people have fundamental rights to economic equality, food, shelter, housing, work, and education, among other things. There are also other socialist views of rights that are different from Marxist views. The sociological theories are varied, but often talk about the construction of human rights through the evolution of thought and political movements.

Other theories hold that society should be structured in a way that guarantees social justice. People are thus held to have the human rights necessary for social justice. This includes all the rights necessary for human dignity, but also includes other rights, such as the right to economic equality and social equity.

Another very popular conception is the "positivist" view that human rights arises from law. Positivism in general refers to the perspective that rights become rights only when they are adopted through an official process into laws. This was a popular view before World War II, but lost popularity soon afterwards, due to the shocking nature of atrocities that were committed under Nazi law. Nazi laws were passed according to legal procedures in Germany, but were incredibly dehumanizing, and legalized torture and genocide by stripping targeted people of any rights. The modern human rights movement was sparked in great part as a reaction to positivism: it was driven by the conviction that there must be some fundamental human rights that superseded the Nazi law and made it illegitimate.

However, the relationship between the human rights movement and positivist law is a bit confusing. While most activists do not appear to subscribe to a purely positivist philosophy, they still seem to rely on existing international human rights law in order to advocate for the protection of human rights. In fact, many international human rights activists are less willing to advocate for a community if it cannot demonstrate violations of international human rights law. This is partly because of a fear that unless the community claims can be translated to the language and standards of international human rights law, there will be too much ambiguity and confusion, risk of erosion of human rights standards, and a diminishing of the credibility of their organization.

In any case, even for the activist who does not consider that human rights come only from positivist law, it is important to understand the positivist perspective because many policy-makers continue to subscribe to this view. Many government officials, for instance, will accept that a country must respect human rights, only because they are protected in international treaties. They will not accept, however, that governments are bound to respect human rights for which there are no international treaties or clear legal standards. The "right to peace" or the "right to a healthy environment" are examples of rights that are not codified in international

treaties and have become the subject of controversy as to whether to be accepted as human rights.

This reemphasizes the point that it is important for the advocate to consider her own moral philosophy of life and of human rights. It is also important for the advocate to take into consideration the moral philosophy of the people that she wants to convince to act. The job of the advocate is usually to convince policy makers, the media, the general public, and possibly the world that a human right has been violated, and that something must be done to correct it. She must, thus, understand and resonate with the philosophy of each of these actors. The difficulty, of course, is that people and policy-makers have vastly different moral philosophies. Further, many do not even know exactly what their moral philosophy is.

This amorphousness makes human rights advocacy difficult at times. But this is also one of the advantages of utilizing the human rights paradigm: it contains a large amount of flexibility and ability to appeal to many different populations. Often, it may be feasible to argue that a certain action violated a human right, even though there were no laws present at the time that the violation occurred. For instance, when international human rights law has not developed quickly enough to protect a community, as for instance in a situation where a community's survival is threatened because of environmental degradation, then even an appeal to morality and philosophical values such as human dignity, social justice, and equality can be successful in creating change for the community. In this process, the advocate can, through presenting compelling stories of human rights violations and providing a lens by which to see them, can both appeal to people's existing moral philosophy in order to seek a certain result, as well as strive to actually affect and shape people's moral philosophies.

Modern mechanisms for human rights protection

Wherever the origins and sources of the human rights idea are placed, there is general agreement that the modern international human rights mechanisms generally originated with the end of the World War II and the rise of the United Nations system. The devastation of the war, as well as the horror at the extermination by the Nazi government of over six million Jews, Sinti and Romani ("gypsy" peoples), homosexuals, and per-

sons with disabilities, inspired countries to make agreements to create laws and institutions to prevent wars and violations of human rights.

The United Nations system was created in 1945 as an intergovernmental organization by 50 member countries; it has grown to encompass 191 members. Its purpose is to prevent wars, foster economic and social progress, and protect human rights.¹⁰ Through its negotiations system, the United Nations has adopted a number of international treaties that set out concrete international laws on human rights, and set up institutions to monitor compliance. A quick overview of these will be given here, and more detailed information on strategies for utilizing these mechanisms will be presented in Section IV.

Other regional intergovernmental systems such as the Council of Europe, the Organization of American States, and the African Union have also developed laws and institutions for the protection of human rights. These are not directly accessible to indigenous communities in the Philippines because they only deal with violations within the specific regional territories in question. However, the laws, jurisprudence and principles that these organizations develop are indications of general development of international law. How this can be useful for Philippine indigenous groups will be discussed in Section IV.

Another important aspect of human rights protection system is the many non-governmental mechanisms that evolved in recent years. An incredible array of civil society organizations and networks has developed to provide powerful impetus for human rights protection. The international "human rights movement" consists of varied and widespread networks of non-governmental actors such as non-governmental organizations (NGOs), community activists, theorists, academics, artists, and others who utilize human rights theory and advocate for the protection of human rights. These have had amazing success since World War II, and the explosion of the information technology in the 1990s.

United Nations treaties and declarations

The crux of the United Nations system for the protection of human rights is a web of international treaties and declarations that outline the

¹⁰ United Nations Charter, arts. 1, 55.

content of specific human rights and the corresponding governmental obligations necessary for its protection.¹¹

International treaties are binding upon states that have agreed to them, and have different methods of being enforced.¹² International declarations, such as those by the UN General Assembly and the Commission on Human Rights, are not binding in the same way, but have some force and can be used to exert moral pressure on a government that is violating human rights.

Of all the international instruments, the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, is probably the best known and possibly the most important. While it is a non-binding declaration, it is considered the preeminent declaration of human rights in the world, and is widely cited and discussed. It has been incorporated into the legal system of some nation-states, including the Philippines, as part of their respective national laws. Even without such incorporation, some observers consider that it has achieved the status of "customary international law" (laws and principles that are so widely accepted and adhered to that they become binding upon all countries in the world whether or not they agreed to it).

The first two international human rights treaties to be drafted were the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR), both completed in 1966. Both went into force in 1976. These two documents, together with the Universal Declaration of Human Rights, are often called the "International Bill of Rights".

11 An index of these instruments and their texts can be found at the UN High Commissioner for Human Rights website at <http://www.ohchr.org>.

12 International treaties are binding when they complete all necessary stages: first, the text is drafted by a group of states, usually through the Commission on Human Rights, or through special conventions and conferences. Second, the treaty is opened for signature by states. The treaty will usually specify the exact requirements for it to become binding on the signatory states. Usually they must go through a system of ratification, in which the national legislature of the country must accept, or "ratify" the treaty. The treaty "goes into force" when it receives the requisite number of signatures and ratifications. The number is specified in the treaty itself. For countries that did not participate in the drafting process, they can "accede" to the treaty. The treaty is binding after it goes into force, but usually only on the states that ratified it.

The ICCPR seeks to protect "civil and political" rights, such as the right to life, the right to security of person, the right to freedom from torture and from arbitrary detention, the right to freedom of expression, and the right to freedom from discrimination. The ICESCR protects "economic, social and cultural" rights, such as the right to work, the right to food, the right to housing, the right to health, the right to education, and the right to language and participation in culture.

There is also a host of other international treaties and declarations that address specific topics or populations in detail. These include: the Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture, and the Convention for the Elimination of All Forms of Discrimination Against Women.¹³

Treaty-monitoring bodies

Both the ICCPR and the ICESCR, as well as all human rights treaties in the United Nations system, set up its own treaty-monitoring body mandated to oversee compliance of governments with the terms of the treaty.

Usually, the treaty-monitoring body is a group of around 18 "experts," who are required to work in their capacity as individuals (rather than as representatives of a particular government). The body works through a review system, in which a government is required to submit a report every few years on its compliance with a treaty, and the body reviews the report and criticizes the government performance if and when appropriate. The treaty-monitoring body usually goes through a process where it receives information from other sources about alleged violations of human rights in the country. It asks the government for more information when necessary, and requests government representatives to attend meetings in which they are asked to respond to questions and are given suggestions for change.¹⁴

¹³ For a list of the treaties and declaration and text of these, see the UN High Commissioner of Human Rights' website at <http://www.ohchr.org>.

¹⁴ For more information on treaty monitoring bodies, see the section on Treaty Bodies Database in the UN High Commissioner on Human Rights website at www.ohchr.org. The website also has a manual for human rights reporting in its training and materials section, as well as a multitude of useful information and publications.

For instance, the Human Rights Committee is the treaty monitoring body created by the ICCPR. The Committee is composed of 18 human rights experts, who are from different countries, and are charged with judging state compliance with the Covenant. It is also empowered to receive individual communications about specific complaints of violations of the treaty's provisions.

The Committee on Economic, Social and Cultural Rights is the treaty-monitoring body for the ICESCR. The Committee can consider, review, and issue reports on the performance of countries in complying with the treaty.

In addition to this reporting system, some treaty-monitoring bodies can also function as quasi-judicial forums in which individuals and/or groups can submit complaints about specific violations of human rights. In this process, the treaty-monitoring body acts like a court, by receiving a complaint, hearing information from both sides, and making a final determination on the merits of the case. While the determination does not have force in the same way as a national court (for instance, it cannot impose fines or prison sentences), many governments respond to the pressure created by this process, and try to rectify their practices to avoid censure by the Committee.

Within the International Bill of Rights, only the ICCPR has a treaty-monitoring body that has quasi-judicial powers. An Optional Protocol to the ICCPR¹⁵ added enforcement power to the treaty by allowing the Human Rights Committee to investigate and judge complaints of human rights violations from individuals in signatory countries. A similar protocol for the ICESCR is under debate, but progress appears to be slow.

Each of the other major international human rights instruments similarly provide for treaty-monitoring bodies. For instance, the Committee on the Elimination of Racial Discrimination is the treaty-monitoring body of the Convention for the Elimination of All Forms of Racial Discrimination.

¹⁵ An Optional Protocol is an addition to the original treaty, which has the status of a related but separate treaty.

The UN Commission and Sub-Commission on Human Rights

The UN Commission on Human Rights is a sub-group of the UN consisting of 53 countries that are elected by other UN member states. The Commission meets for six weeks every year from March to April in Geneva. It discusses human rights issues, including examining and questioning states about their human rights records. NGO and community representatives can attend the sessions and give information about violations occurring in their country. The Commission can produce resolutions and reports that are critical of the human rights practices of the country if it feels that the government is not meeting international human rights standards. While the Commission does not have any enforcement power, no country wants the stigma of a negative judgment of the Commission, and will often respond to international pressure when a violation of human rights becomes public.

The Commission can also appoint individual experts, representatives, and rapporteurs, as well as set up working groups on specific issues. These groups and individuals also do their own investigations and produce reports that critique a country's human rights record. They can ask government for information, conduct site visits to different countries, and hold interviews with victims of human rights violations and government officials.

The creation of a Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2001 demonstrates a developing interest in the plight of indigenous communities. This post was established through Commission on Human Rights resolution 2001/57. Rodolfo Stavenhagen, an indigenous rights expert from Mexico, was appointed for a term of three years. In April 2004, the Special Rapporteur's commission was extended for another three years. In December 2002, he visited the Philippines to gather information from governmental officials, indigenous peoples, non-governmental organizations and the United Nations system concerning the human rights situation of the indigenous people in the country. The details of his findings are contained in a report.

The Sub-Commission on Human Rights (formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities)

is a committee created by the Commission on Human Rights. It holds an annual session in Geneva for three weeks, and is composed of 26 individuals who are nominated by their governments and elected by the Commission. These individuals are intended to be impartial experts in human rights, and are normally more progressive and less subject to political pressures than the members of the Commission. It reports to the Commission on Human Rights, and can adopt resolutions regarding the human rights situation in countries, and statements regarding international human rights law and principles.

The Sub-Commission has six working groups, which serve different functions. One of them is empowered to receive and consider individual complaints under what is called the "1503 Procedure" if they show a "consistent pattern of gross and reliably attested violations of human rights." Other important working groups of the Sub-Commission include the Working Group on Indigenous Populations, and the Working Group on Transnational Corporations. These groups have produced drafts of texts of proposed UN Declarations. The Draft Declaration on the Rights of Indigenous Peoples, drafted by the Working Group on Indigenous Populations, was adopted by the Sub-Commission, and contains some powerful protections for indigenous communities.¹⁶ Its adoption as a UN Declaration or an international treaty would still entail a long process, i.e. the draft declaration is now being considered by the Commission on Human Rights, which would then forward it to the Economic and Social Council, which would have to approve it, before forwarding it to the General Assembly for possible adoption as a UN resolution. However, even without being adopted by all these bodies, it still has some authority as a statement put forward by the Sub-Commission on Human Rights.

UN High Commissioner of Human Rights

The High Commissioner for Human Rights is a United Nations official having principal responsibility for United Nations human rights activities. The mandate of the High Commissioner is to promote and protect human rights. The High Commissioner serves the function of a high level UN official who acts as a spokesperson and leader on human rights is-

¹⁶ U.N. Document No. E/CN.4/Sub.2/1994/2/Add.1 (1994).

sues. The High Commissioner can communicate with governments about human rights violations, and institute programs for the protection of human rights, including coordination of work among different UN agencies. For instance, there have been efforts by the UN High Commissioner of Human Rights to work with the UN Development Programme to make development programs more geared toward human rights protection. Justice Louise Arbour from Canada was appointed High Commissioner by the UN Secretary General in January of 2004.

International courts

At present, there are no international courts that indigenous communities in the Philippines can file a case with. It is worth mentioning that the International Court of Justice (ICJ), sometimes called the "World Court," is the judicial organ of the United Nations. It is established by the United Nations Charter, and is made up of 15 independent judges elected by the General Assembly and the Security Council. However, it does not have jurisdiction to deal with violations of human rights treaties against individuals. The ICJ, for the most part, deals only with disputes between states. It is possible for a nation-state to bring a complaint against another nation-state in the ICJ based on violations of human rights, but this has never happened because most of the time governments do not want to get involved with another country's human rights situation. However, the ICJ has on rare occasions taken decisions in either an adjudicatory or advisory capacity that have had impacts on international human rights law.¹⁷

It is possible that, in the future, indigenous groups can submit complaints to the new International Criminal Court (ICC). The ICC is the first permanent international judicial body capable of trying individuals for genocide, crimes against humanity and war crimes. The Court is now a functioning institution, with all senior officials (Judges, Prosecutor and Registrar) now in place. The Philippines signed the treaty creating the court in December 2000, but has yet to ratify it. Despite the approval of the Department of Foreign Affairs, of its ratifica-

¹⁷ The ICJ for instance issued an astounding Advisory Opinion in 8 July 1996 that the threat or use of nuclear weapons are illegal in most circumstances, based in part on international humanitarian law. See <http://www.fas.org/iuke/control/icj/text> for a summary of the Advisory Opinion and individual Justices' pronouncements.

tion in January 2003, and the willingness of Philippine Senators to ratify, President Gloria Macapagal-Arroyo is still unwilling to ask the Senate to ratify the Court.¹⁸

International agencies

The United Nations system has an array of agencies that are focused on specific populations or thematic issues, such as the UN Development Program (UNDP), the UN Population Fund (UNPFA), UN Food Program (FAO), and the UN Children's Fund (UNICEF). All agencies have their own internal rules, regulations and policies, and some adopt resolutions and even international treaties. One UN agency that has made an important contribution to the area of protection of indigenous right is the International Labour Organization (ILO), the UN agency charged with labor and employment related issues. The ILO is an intergovernmental membership organization, and has conferences which can adopt resolutions, declarations and international treaties. The ILO in 1989 adopted its Convention No. 169 concerning indigenous and tribal peoples in independent countries.¹⁹ The Convention outlines a number of important principles for the protection of indigenous peoples, including recognition of rights of ownership and possession of indigenous peoples over lands that they have traditionally occupied, the right of indigenous peoples to decide their own priorities in the process of development, and respect for customs and customary laws of indigenous communities in the application of national laws.

Unfortunately, the Philippines has not ratified Convention 169, so technically cannot be held to it legally. However, Convention No. 169 is an international treaty in force and can be used to represent moral principles accepted in the international realm.

¹⁸ For more information, visit the Coalition for an International Criminal Court website at <http://www.iccnw.org>, and contact the Philippine Coalition for the Establishment of an International Criminal Court, which is convened by Aurora Parang of Task Force Detainees.

¹⁹ ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries. 72 ILO Official Bull. 59, entered into force Sept. 5, 1991.

What rights are protected by the international human rights protection system?

What do we consider to be something that every human being has a right to? This depends on the evaluator's moral and philosophical perspective. Despite the fact that people have vastly different philosophies, there is some general agreement as to what rights constitute human rights. What follows is a list of rights that are generally accepted as human rights. While we do not take the view that human rights originate only from legal instruments, where appropriate, we provide references in footnotes to where the particular has been codified in an international treaty or an agreement.

Sometimes there are categorizations of rights that are made. Popular categorizations include "civil and political rights" as contrasted to "economic, social and cultural rights". Sometimes civil and political rights are referred to as "first generation rights" and economic, social and cultural rights as "second generation rights". There are also some rights that have been proposed that are referred to often as "third generation rights". Other categorizations include individual rights as contrasted to collective rights. These categorizations are mentioned here, because although they have been criticized and for the most part abandoned, they are still used in human rights discourse at different times. Examples from each category are presented below, but this list is by no means comprehensive. These rights are those that appear in the text of the International Bill of Rights, but other instruments have much more detail on these as well as other rights. It is necessary to examine other international and regional instruments (such as the International Convention on Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child) in order to identify the range of codification of rights that could be useful for indigenous communities and advocates in the Philippines, and further, in order to understand the rights and the scope of the protections that are offered by the international instruments, it is necessary to look at the jurisprudence of the relevant treaty-monitoring body regarding those provisions.²⁰ Aside from international treaties themselves, declarations of

²⁰ The jurisprudence of the treaty-monitoring bodies can be found on the UN High Commissioner for Human Rights website in its Treaty Bodies Database at <http://www.ohchr.org>.

and resolutions of the international bodies outlined above can add to the discourse on the existence and content of specific rights. For instance, for important discussions on nature of rights belonging to indigenous peoples, see the text and debates of the UN Draft Declaration on the Rights of Indigenous Peoples (see footnote 16 and accompanying text.)

“First generation rights”: Civil and political rights

- right to freedom from discrimination²¹
- right to life²²
- right to limitations on the death penalty²³
- right to liberty²⁴
- right to security of person²⁵
- right to freedom from slavery or servitude²⁶
- right to freedom from torture and cruel, inhuman, and degrading treatment²⁷
- right to recognition as a person before the law²⁸
- right to equality before the law and equal protection of the law²⁹
- right to remedy by competent tribunal for violations of fundamental rights granted by a constitution or by law³⁰
- right to freedom from arbitrary arrest or detention³¹
- right to procedural protections when arrested or detained³²
- right to freedom from arbitrary exile³³
- right to a fair public hearing by an independent and impartial tribunal³⁴
- right to be considered innocent until proven guilty³⁵

²¹ UDHR art. 2, ICCPR art. 2, ICESCR art. 2.2.

²² UDHR art. 3, ICCPR art. 6.

²³ ICCPR art. 6.

²⁴ UDHR art. 3, ICCPR art. 9.

²⁵ UDHR art. 3, ICCPR art. 9.

²⁶ UDHR art. 4, ICCPR art. 8.

²⁷ UDHR art. 5, ICCPR art. 7.

²⁸ UDHR art. 6, ICCPR art. 16.

²⁹ UDHR art. 7, ICCPR art. 26.

³⁰ UDHR art. 8, ICCPR art. 2.2.

³¹ UDHR art. 9, ICCPR art. 9.

³² UDHR art. 9, ICCPR art. 9-10.

³³ UDHR art. 9.

³⁴ UDHR art. 10, ICCPR art. 14.

³⁵ UDHR art. 11, ICCPR art. 14.

- right to freedom from interference with privacy, family, home, and correspondence³⁶
- right to free movement in and out of the country³⁷
- right to a nationality and freedom to change it
- right to marry and have a family³⁸
- right to own property alone as well as in association with others³⁹
- right to freedom from arbitrary deprivation of property⁴⁰
- right to freedom of thought, conscience and religion⁴¹
- right to freedom of opinion, expression and information⁴²
- right of peaceful assembly and association⁴³
- right to take part in the government of the country, including the right to be elected and the right to equal access to public service⁴⁴
- right to fair elections⁴⁵
- right to limitations on derogation of rights, even in public emergency⁴⁶

"Second generation rights": Economic, social and cultural rights

- right to social security⁴⁷
- right to work, free choice of employment, to just and favourable conditions of work, and to protection against unemployment⁴⁸, vocational guidance, training programmes, policies to provide full and productive employment⁴⁹
- right to a decent living for themselves and their families⁵⁰

³⁶ UDHR art. 12.

³⁷ UDHR art. 13, ICCPR art. 12.

³⁸ UDHR art. 16, ICCPR art. 23.

³⁹ UDHR art. 17.

⁴⁰ UDHR art. 17.

⁴¹ UDHR art. 18, ICCPR art. 18.

⁴² UDHR art. 19, ICCPR art. 19.

⁴³ UDHR art. 20, ICCPR art. 21 and 22.

⁴⁴ UDHR art. 21, ICCPR art. 25.

⁴⁵ UDHR art. 21.

⁴⁶ ICCPR art. 4, ICESCR art. 4.

⁴⁷ UDHR art. 22, ICESCR art. 9.*

⁴⁸ UDHR art. 23, ICESCR art. 6 and 7.

⁴⁹ ICESCR art. 6.

⁵⁰ ICESCR art. 7.

- right to form trade unions⁵¹
- right to rest and leisure⁵²
- right to adequate standard of living, including food, clothing, housing, and medical care, necessary social services, and the right to security in the event of unemployment, disability, widowhood, old age or lack of livelihood⁵³
- right to be free from hunger⁵⁴
- right to the enjoyment of the highest attainable standard of health⁵⁵
- right to education⁵⁶
- right of the family to social protection, and right of mothers and children and young persons to special protection⁵⁷

Cultural rights

- right to participate in cultural life of the community⁵⁸
- right to enjoy the benefits of scientific progress and its application⁵⁹
- right to a social and international order in which human rights can be realized⁶⁰

Collective rights

The rights listed above are generally considered individual rights. While traditionally, the human rights movement has focused on the rights of individuals rather than of communities or groups of people, in the last decade or so there have been advances in the area of recognition of indigenous rights. For instance, it is increasingly accepted within the human rights community that indigenous communities have the following rights as human rights: the right to self-determination, the right to free and prior

⁵¹ ICESCR art. 8.

⁵² UDHR art. 24.

⁵³ UDHR art. 25, ICESCR art. 11.

⁵⁴ ICESCR art. 11.

⁵⁵ ICESCR art. 12.

⁵⁶ UDHR art. 26, ICESCR art. 13 and 14.

⁵⁷ ICESCR art. 10.

⁵⁸ UDHR art. 27, ICESCR art. 15.

⁵⁹ ICESCR art. 15.

⁶⁰ UDHR art. 28.

informed consent before their lands are exploited, the right to environmental protection, the right to preserve their culture, language and customs, and the right to their own institutions. Examples of collective rights include:

- right of peoples to self-determination⁶¹
- right of peoples to freely dispose of their natural wealth and resources⁶²
- right of minorities to enjoy their own culture, profess and practice their own religion, and to use their own language⁶³
- right to trade unions to establish federations and confederations, to function freely, to strike⁶⁴

“Third generation rights”

- right to peace
- right to a healthy environment

Again, this is not an exhaustive list of the rights in the international human rights system, but merely some examples of the rights considered to be in the stated categories.

Regional Human Rights Mechanisms

Many of the different regional intergovernmental organizations have adopted human rights treaties and mechanisms.

The Organization of American States has adopted a number of human rights treaties and declarations, with the American Convention on Human Rights and the American Declaration of Human Rights acting as centerpieces. The system has an Inter-American Commission and Court of Human Rights which enforces these instruments.

The African Union (formerly the Organization of African Unity) adopted the African (Banjul) Charter on Human and Peoples' Rights in

⁶¹ ICCPR art. 1.1 and ICESCR art. 1.1.

⁶² ICCPR art. 1.2, ICESCR art. 1.2.

⁶³ ICCPR art. 27.

⁶⁴ ICESCR art. 8.

1981, and has an African Commission on Human and Peoples Rights. An Additional Protocol to the charter went into force in January 2004, starting the process of setting up the African Court on Human and Peoples' Rights to adjudicate human rights complaints.⁶⁵

The Council of Europe has a European Court of Human Rights, and has adopted the European Convention of Human Rights, as well as a number of other human rights instruments.

Unfortunately the Association of Southeast Asian Nations (ASEAN) has so far refused to deal with human rights, and has not adopted any instruments or institutions for the protection or promotion of human rights.

Each regional mechanism has been developing its own jurisprudence and approach, some of which have made important advancements in how international law views indigenous peoples' rights. The Inter-American Commission and Court of Human Rights, for instance, have produced jurisprudence that is very progressive in the area of indigenous peoples' rights.⁶⁶

⁶⁵ See www.africa-union.org for text of the Additional Protocol to the African Charter for Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights.)

⁶⁶ See for instance, its judgment in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-AM Ct. H.R. (Ser. C) No. 79 (2001).

II. THE POWER AND NECESSITY OF THE HUMAN RIGHTS APPROACH

Why international support has become more important to local communities

It is more necessary than ever for indigenous peoples to be able to communicate with an international audience. Because of globalization and changes in the world economy, the greatest threat that many indigenous communities face is the encroachment of multinational corporations into their lands. Multinational corporations often drive the abuses committed by the government and the military. These corporations make deals with the government and military of developing countries, including offering enormous incentives for officials to commit human rights violations in order to push through with the agreed plan.

Even when the government is unwilling to acquiesce to the corporation, it may have little ability to resist. Nation-states are increasingly losing power in the face of the onslaught of neo-liberalism, globalization of markets, and the growing influence of transnational corporations. Many transnational corporations have more money and power than the government itself, and can hold a country "hostage" by threatening to impact it adversely if it does not do its will, such as by withdrawing investment, maneuvering to have foreign aid withheld, or worse. There are even cases of revolutions and militias being funded by multinational corporations to destroy government administrations that do not do their will.

The support of the international community is important because transnational corporations are hardly subject to controls from anything. Multinational corporations are not subject to the power of the legal or governmental controls in a developing country. For instance, multinational corporations have usually been successful in avoiding suits in the courts

of a developing country in which they have wreaked havoc, by manipulating different legal principles and loopholes, such as forum non conveniens. There is also a general trend, such as in the WTO negotiations, towards fostering national legal "reform" that favor transnational corporations at the expense of environmental protection and peoples' rights in a developing country.

One of the few pressure points that seem to exist against multinational corporations is press and publicity which affect public opinion, and can influence the actions of consumers, shareholders, and potential investors. International campaigns that publicized the human rights violations caused by a corporation and aimed towards fueling consumer boycotts, shareholders resolutions, or negative impacts on the financial assessment of the corporation, have succeeded in generating changes in corporate policies.

Another possible method of exerting pressure on a multinational corporation is by filing a suit in the jurisdiction that has enforceable power over the corporation. For instance, suits filed in the jurisdiction of the corporation's headquarters (such as in New York) could result in the imposition of fines and injunctions. While these suits are not always successful in getting an enforceable judgement, they can still put pressure on the corporation by creating media interest, public pressure, and financial costs, due to the enormous cost of legal representation to defend against such suits in developed countries. There are of course enormous costs required to bring such a suit against a multinational corporation. This is another reason why it could be important for an indigenous community to be able to communicate their issues and get the support of international actors - it will be more likely to be able to enlist the support of a nongovernmental organization or a private law firm in the appropriate jurisdiction that is willing to take their case for free or for very low costs.

Another important reason why it is crucial for indigenous groups to be able to communicate in a way that the international community can understand is the onset of the age of September 11 and the US War on Terrorism. Because the US government is pushing for the labeling of all groups that criticize the government or neo-liberal economic theory as terrorist groups, it is important for social justice groups to be able to outline their issues in terms are understandable and accepted in the interna-

tional community. Articulating the nature of abuses suffered and the recourses demanded through the language of accepted international human rights law can help combat efforts by the national government or multinational corporations to paint indigenous activists and advocates as terrorists. This can strengthen the public perception of legitimacy of the struggle, and may provide a greater level of safety for the activist. The international community has long condemned retaliation against human rights activists; the United Nations General Assembly, for instance, has adopted a declaration specifically designed to increase protections for "human rights defenders."⁶⁷

Articulating issues within the language of human rights does not have to mean giving up core values. Many indigenous groups around the world are able to frame their demands in human rights terms. For instance, many of their demands can be embraced within the concept of right to self-determination. This right is enshrined in the ICCPR, and the ICESCR. Thus the utilization of international legal instruments can help strengthen an indigenous community's struggle.

Why the human rights approach is an effective way for local groups to communicate with the international community

Confronting the seeming monolithic power of multinational corporations is one of the greatest challenges that indigenous groups and all social justice activists face today. Although the human rights framework does not offer a perfect solution, it has been surprisingly successful in waging campaigns that yielded concrete results.

Human rights is possibly the most universally communicable and accepted theory that can be used at the present time to advocate in the international arena for an oppressed group.

This is in part because of historical events: the modern human rights movement blossomed after World War II, but became caught up in the Cold War battle between the ideologies stemming from Western liberal traditions, and those from socialist traditions. Both traditions claimed it

⁶⁷ See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, General Assembly Resolution 53/144

promoted social justice and human rights (many socialist ideologies held for instance that it was promoting economic and social rights). The end of the Cold War due to the fall of the Soviet Union in 1989 was cataclysmic in many respects, and numerous results have radiated from it; one of them was that social justice organizations working within a socialist paradigm suffered a significant blow, because of the erosion of belief in the viability of socialist economic system and Marxist theory, and the dwindling of their funding support. This decreased their ability to communicate with an international audience. In the wake of these and other events (such as revolutionary advances in information technology and the explosion of civil society organizations), human rights theory emerged as one of the most accepted and broadly utilized social justice ideologies.

While some see inherent contradictions between the human rights paradigm and the paradigms with socialist bases, not all do - many activists around the world that might traditionally have been labeled "leftist" because of their concern for the working class and the poor articulate their concerns in terms of "rights" language (such as the right to food, housing, education, health and work) because they find this to be the most effective method of reaching an international audience, as well as mobilizing local support.

For indigenous peoples in the Philippines, presenting the abuses that they suffer in human rights terms can make their demands more understandable to the outside world.

There have been successful human rights campaigns that have forced corporations to change their policies or withdraw from an area (though there are also situations in which the corporation was intractable and proceeded in the face of loud international outcries). Examples of indigenous movements around the world that are resisting corporate power include: the Ogoni in Nigeria, the U'wa in Colombia, and the Komoro in West Papua.⁶⁸

When international human rights tools can be especially useful

The challenges indigenous communities and advocates face are enormous. They will have to harness the power of all of their strategic

⁶⁸ See for instance Al Gedicks, *Resource Rebels: Native Challenges to Mining and Oil Corporations*, 2001.

resources in order to combat the power of the national government and multinational entities. Human rights tools cannot accomplish everything, but they may be able to contribute to the struggle when appropriate.

International human rights approaches can be useful particularly when:

1. The national laws and ideologies are retrograde and there is little possibility of changing them through national channels;
2. The national government is not responsive to cries of indigenous peoples, but is subject to international pressure;
3. The violators are international actors and are not subject to control by the Philippine government even if the government was willing to make an effort;
4. It is impossible to get press coverage because the media is unresponsive to indigenous peoples' demands

When national laws and ideas are retrograde

It is possible for human rights to combat retrograde national laws as well as ideas. Human rights theory holds that all people have certain rights that are inalienable and inviolable. This means that national laws cannot contravene human rights: if Philippine laws with regard to indigenous peoples violate human rights, they must be struck down.

There are several ways this can happen in the Philippines. First, the Philippine legal system recognizes international law as part of the national law. Thus, it may be possible to litigate a case of violation of an international human rights document within the national court system. The UDHR is part of Philippine national law.⁶⁹ If an indigenous community chooses to litigate a case in the Philippine courts for violations of the UDHR, it may be helpful to look at how the UDHR has been interpreted internationally. In addition, the previous work of the international human rights movement may also be helpful. Getting the involvement of international human rights bodies to pronounce that a violation of the UDHR has taken place may also be persuasive in the adjudication of the case by the national court.

⁶⁹ *Mejoff v. Director of Prisons*, 90 Phil. 70, No. L-4254 (1951). In this case the Supreme Court ruled to grant a habeas corpus petition by an alien based on articles 1, 2, 8, and 9 of the UDHR.

Even if it was not possible to litigate a case based on violation of human rights law in the national courts, international human rights law can serve as important principles in garnering the support of public opinion. International human rights theory has the potential to provide alternatives to the dominant paradigms of thought utilized by the Philippine government which has caused many abuses against indigenous communities, such as the development paradigm, the terrorism/national security paradigm, and the free trade and WTO paradigm. Human rights advocates around the world have been arguing and mobilizing to establish principles that demonstrate that each of these paradigms, if unchecked, violate human rights. Many have also been working to come up with alternative proposals and measures, which provide concrete suggestions on how a government can work toward development, national security, and robust trade - while respecting human rights principles at the same time. For instance, "human centered development" is the idea that progress in national development should not be directed towards macroeconomic indicators, but rather measured by the impact it has on human beings. The human rights paradigm has provided a counterpoint to the terrorism/national security paradigm for many years in many different countries: it has sought to ensure that each person is recognized as having human rights, including procedural rights, that protect against government abuses. The alternative to the free trade paradigm is that of fair trade, or trade that respects peoples' rights.

It may be possible that the international human rights framework can also assist in combatting other engrained aspects of the Filipino legal system and accepted paradigms of thought that are detrimental to indigenous peoples. These include the Regalian Doctrine and persistent discrimination against indigenous individuals and groups.

The Regalian Doctrine, which holds that the national government holds title to all lands in the country, has always been an enormous barrier for indigenous peoples in the Philippines in the assertion of their tenurial rights. If violations to fundamental human rights caused by the Regalian Doctrine can be identified and documented, it may be able to erode the acceptance and legitimacy of the Doctrine.

The international human rights framework may also provide tools for analyzing and attacking the persistent discrimination against indigenous

groups in Filipino society. The human rights paradigm holds as one of its most important principles, the right to equality and non-discrimination of all peoples, and there is a wealth of important analysis and jurisprudence on what constitutes discrimination, at both the individual and group level.

As discussed in Part I, the international human rights system has traditionally been much more focused on developing the content of individual rights rather than group rights, but in recent times there is an increasing interest in exploring the nature of collective rights. There are many discussions taking place now on the nature of the human right to self-determination, and it is possible that the analysis that come out of these can spark a paradigm shift, both internationally and in the Philippines, on the level of autonomy and respect for an indigenous community that is required by the human rights regime.

When the national government is not responsive to indigenous demands, but is subject to international pressure

An international human rights approach can be very useful when the national government is not responsive to local mobilizing efforts, but is susceptible to pressure from the international community.

Governments of "developing" countries typically tend to be susceptible to international pressure, perhaps because the country depends on foreign export, foreign work, trade relations, and international development aid.

The Philippines appears to be no exception, and international pressure may be particularly effective with the current Arroyo administration, which seems to be hypersensitive to external forces and appears to pander to both the U.S. government as well as to transnational corporations. The media in the Philippines also seems to be fairly responsive to covering international news. The international human rights system has the potential to exert effective pressure on the administration as well as interest the media.

When a government is susceptible to international influence, bad international publicity about its human rights violations against its vulnerable peoples can exert pressure against it because it can put at risk for-

eign aid, foreign investment, international trade, and its power and leverage in international organizations like the United Nations.

It should be noted that there is a debate within the human rights community on whether certain types of tools should be used to pressure national governments. Some human rights groups, for instance, have called internationally for the withholding of foreign aid to governments that violate human rights, and there have also been movements calling for economic sanctions or divestment from violating countries. Other activists have opposed the use of economic sanctions or withholding of foreign aid, arguing that the impact of these is to hurt ordinary and vulnerable people rather than the government. However, note that there are a range of strategies that can exert pressure on a national government through gaining support of international public opinion, that will not result in sanctions or the withholding of aid.

When the violators are international actors and not subject to Filipino control

The human rights paradigm may also be useful in situations where the human rights violators are actors that are not subject to control by the Philippine government. Multinational corporations are a case in point - they drive many of the human rights abuses that occur against indigenous communities, in part because they are not subject to control by the national government - they have more power, money, and sometimes even arms, than many national governments.

The human rights movement and international human rights mechanisms appear to be making some progress toward developing international law to hold multinational corporations responsible for human rights abuses. In the last couple of years, human rights movements have succeeded in getting several large corporations to adopt voluntary codes of conduct, in which they pledge to engage fairer labor practices. Though these voluntary codes are not perfect and have been criticized, they represent some increase in the accountability of multinational corporations.

The human rights movement is pushing for rules that can govern transnational corporations that go beyond voluntary codes of conduct. The UN Sub-Commission for the Promotion and Protection of Human Rights

adopted in August 2003 the "Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights."⁷⁰ While this is not yet a binding international instrument, because it must pass through several more steps and be adopted by higher-UN bodies, it still represents a major step forward in developing the idea that corporations must be held accountable for human rights abuses. The international human rights system was originally set up to protect against abuses by governments, and until now had not evolved quickly enough to deal with abuses by multinational corporations. Human rights groups hope that the Draft Norms will eventually be adopted by the Commission of Human Rights, and by the General Assembly, and perhaps lay the groundwork for an international treaty, which could provide for an enforceable code of conduct protecting individuals and communities from rights violations by private businesses.⁷¹ The Draft Norms go beyond the voluntary codes, arguing that all companies should be required to abide by basic human rights principles codified in treaties and conventions. The document calls, among other things, for companies to be "subject to periodic monitoring and verification" by the UN or independent agencies, implying a level of enforcement that goes significantly further than the Global Compact. A company's refusal to cooperate with such monitoring process, or a negative report on its performance could cause embarrassment or losses in sales. It also argues that all private businesses, not just multinational corporations, should be required to respect the guidelines.⁷²

The Draft Norms contain important principles for the conduct of transnational corporations in relation to indigenous peoples. For instance, its commentary calls on companies to respect the rights of indigenous peoples to their lands and other resources, and to their cultural and intellectual property. It also requires companies to respect the "free, prior and informed" consent of indigenous communities in development projects.

In addition to multinational corporations, another type of external pressure that is not controllable by the Filipino government is reemerging.

⁷⁰ UN Doc E/CN.4/Sub.2/2003/L.11 at 52 (2003).

⁷¹ See for instance, <http://web.amnesty.org/library/index/engior420022004?open=&of=eng-398> for an analysis by an international human rights organization on the Norms and their importance.

⁷² Jim Lobe, "Human Rights Groups Hail New U.N. Guidelines for Corporations", OneWorld US, August 18, 2003, <http://www.worldrevolution.org/article/986>.

The U.S. government has a bittersweet history with the Philippines, and even since the country's independence in 1946, has exerted significant influence in the economy and policies of the country. Now, the pressure weighing on the Philippine government have increased since the onset of the post-9/11 world. The U.S. War on Terrorism is pressuring the Philippine government to paint all those who complain against government action as terrorists. A case in point was the elaboration of the "terrorist list" shortly after the September 11 tragedy. There were many criticisms that the list in the Philippines included groups that really had nothing to do with terrorism or extremism. But the Philippine government was not at liberty to remove those groups from the list, because the list was controlled by the United States. Failure by the Philippine government to comply with U.S. demands to eradicate those groups could bring on severe consequences for the country, including economic sanctions and even invasion. Indeed, U.S. troops have already landed in the Philippines under the auspices of the "War on Terror".

The U.S. War on Terror is narrowing the openings through which indigenous groups and advocates in the Philippines (and all other activists around the world) can protest abuses. This is a phenomenon that all activists around the world must confront and overcome. While unfortunately it is doubtful that it will be a complete solution, the international human rights regime may be one of the most powerful tools to counter accusations against activists of being 'terrorists'. The international human rights framework was drafted and adopted with heavy participation by the United States, and much of the language of the treaties parallel the language of the U.S. Constitution and other legal instruments. Thus the international human rights system may be one of the most effective frameworks through which appeals to international, as well as U.S., public opinion can be articulated in order to make clear that an indigenous community is not "extremist" or "terrorist" merely because it is criticizing the government—it can explain the abuses as human rights abuses that violate established international (and U.S.) human rights law.

When the media is unresponsive to indigenous complaints

Oftentimes, the media is not interested when local communities complain. But when an international actor gets involved, they become interested and find the story newsworthy. For instance, if a community group

suffering a violation can get assistance by getting a UN official or an international NGO specialist to visit their community, it is highly likely to be able to get coverage in the press. Even if a foreign actor is not able to visit, sometimes pronouncements or even letters by reputable foreign sources can make the plight of an indigenous community more newsworthy.

The limitations of the international human rights system

The international human rights system has the potential to provide very useful tools that augment the arsenal of strategies for an indigenous community. But unfortunately, it is clearly now without its limitations.

Some limitations of the international human rights system include the fact that it is very slow and very bureaucratic. And predictably, intergovernmental mechanisms, like those of the UN, can be politicized because of the participation of governments.

There have also been criticisms of the content of international human rights. For instance, it has been a long-standing criticism of the human rights paradigm that it is ineffective in dealing with collective rights, as well as with economic, social and cultural rights. But in recent years, the human rights paradigm has also more effectively encompassed economic, social and cultural rights, and there have been more mechanisms (such as Special Rapporteurs) that have been set up to deal with violations of these rights.

The human rights framework is also very limited in that it was set up to deal with violations committed by governments. Increasingly, human rights violators are private actors, such as transnational corporations. While the human rights movement has been concerned about such violations for some time (and despite efforts that have been made such as with the Draft Norms on the Responsibilities of Transnational Corporations), at the moment, existing international human rights laws has not been extremely effective in holding corporations accountable. Normally, companies are not thought to be bound by the human rights paradigm, because the existing treaties and declarations were drafted precisely to produce checks against States.

But it is now well-accepted that even where transnational corporations are not accountable to international human rights mechanisms, the

governments of the country in which the violations take place are accountable. Governments have the obligation to protect its people from violations of human rights, whether these violations are committed by government officials themselves, or by actions of transnational corporations operating in their jurisdiction. Thus the international human rights system can be used to exert pressure on a national government which allows transnational corporations to cause violations of human rights in their territory.

Another limitation in the international human rights protection system that is worth mentioning is that it not surprisingly reflects in many ways the systems of global inequality. International human rights discussions and pressure points tend to be in Western centers of power like New York and Geneva (where UN human rights related bodies are based), and in Washington D.C. and Europe. Consequently the access that indigenous communities and advocates in the Philippines have to such arenas are limited because of time and cost of travel. While it is possible for Filipino advocates to make linkages with international nongovernmental organizations, it is not always easy to get their attention or their support. International NGOs have their own mission and agenda, and methods of work and communication. Thus collaboration with them requires an investment in resources and effort. For instance, many international NGOs have more detailed documentation and research requirements than many local organizations are accustomed to, but international NGOs will often not take local partners that cannot meet these requirements. An international partnership also requires fluid communication internationally, which must usually be done by email, fax or phone, and thus the local organization must have access to a stable office with minimum technologies. Further, because international NGOs tend to be relatively well-resourced and more powerful than local organizations in developing countries, disagreements in strategies and priorities can lead to problems if the local organization is not able to articulate and defend its views.

Despite these limitations, however, the international human rights paradigm is worth exploring for indigenous communities and advocates in the Philippines. If the tools that it offers are examined carefully, and appropriate ones are selected with care, they have the possibility of yielding powerful results.

III. INTERNATIONAL HUMAN RIGHTS STRATEGIES

There are a number of different types of international human rights remedies that are available to indigenous communities in the Philippines. These include:

1. Launching a media and public opinion campaign based on a claim of violation of human rights;
2. Filing a complaint with a judicial body;
3. Filing a complaint with a quasi-judicial body (a court-type system) at the United Nations;
4. Providing information to a human rights body in the United Nations on violations, so that the body can question the Philippines about the situation when it reviews the country's human rights record;
5. Getting a UN official or body concerned enough with the situation to intervene in some way, including visiting the community, reporting on the situation, and discussing the situation with the government; and
6. Getting international human rights organizations to advocate for the community by serving as a "partner" that investigates violations, reports on situations, and denounces violations, and through this trying to effect changes on government policy.

This last strategy can be done concurrently with the other strategies related to the UN, with all the other strategies usually working in conjunction with media and lobbying efforts within the country.

Launching a media and public opinion campaign

The international human rights framework can help craft a more powerful media and public opinion campaign, since an assertion that a certain practice is a violation of internationally accepted principles can add force to any campaign.

The first step in launching a campaign is looking at the situation and identifying the human rights violations that have occurred. If a violation of human rights law cannot be demonstrated, then the advocate can argue that there was a human rights violation based on moral values. If, on the other hand, there has been a violation of accepted human rights law, then the advocate can also pursue some of the other remedies outlined below.

The media campaign and public opinion campaign is most effective when it exerts the most pressure upon the appropriate policy makers. Usually, national public opinion exerts the most powerful influence on government officials. In addition, if government officials are subject to international pressure, it may also be useful to launch an international press campaign. This can be done by sending press releases and holding press conferences to international press correspondents in the Philippines, as well as at the United Nations and other international fora. Friends in the international arena can also be very helpful in this regard.

Filing a complaint with a judicial or a quasi-judicial body

Judicial remedies are those that involve filing a complaint in a court, which is empowered to make a decision about the case. Quasi-judicial remedies involve filing a complaint or report to a court-type forum, which reviews the information and makes a pronouncement, usually not binding, about the case. While quasi-judicial remedies usually do not have direct enforcement power, they can have a powerful impact, by propelling international moral pressure on a violator of human rights.

Judicial remedies

Indigenous groups in the Philippines can, technically, only make claims for international judicial and quasi-judicial legal remedies if the Filipino government, at one point, accepted the remedy in question, i.e. the government has to ratify international treaties. But even if the Philippines has not ratified or acceded to a particular international treaty, litigation using international human rights principles may be possible within the Philippines national courts themselves, because the Constitution incorporates "generally accepted principles of international law as part of the law of the land."⁷³ As noted in Part I, the UDHR has already been

⁷³ Article II of the 1987 Constitution of the Philippines, Section 2.

recognized by the Supreme Court of the Philippines as an enforceable part of Philippine national law.⁷⁴ It may also be possible to argue in Filipino courts that other international human rights treaties and principles are "generally accepted principles of international law" that are part of enforceable Filipino law.

It is also worth mentioning that certain national jurisdictions outside the Philippines have interpreted laws or adopted statutes that allow non-nationals to use their courts to sue government officials for grave violations of human rights.⁷⁵ For instance, there have been suits filed against Marcos in courts in Hawaii.⁷⁶ However, this has only been utilized for torture and genocide. It is also a strategy that is not without resistance and legal hurdles; it can also be very expensive. But a number of non-governmental organizations, private law firms and even universities in the United States and other countries accept cases for free for communities in other countries that have suffered human rights violations.⁷⁷

As noted in Part I, the International Court of Justice and the International Criminal Court, and other regional courts of human rights are not accessible to Filipino indigenous communities at this time.

⁷⁴ *Mejoff v. Director of Prisons*, 90 Phil. 70, No. L-4254 (1951). In this case the Supreme Court ruled to grant a habeas corpus petition by an alien based on articles 1, 2, 8, and 9 of the UDHR.

⁷⁵ For suits in U.S. courts on violations of human rights that occurred in other countries, see *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d. Cir.1980), the application of the Alien Tort Claims Act, 28 U.S.C.S. §1350, and the cases that followed. See also the Torture Victims Protection Act, 28 U.S.C.S. §1350. *Filartiga* was a case in which US district court allowed a Paraguayan dissident whose son had been tortured to death to sue the Paraguayan Inspector General of Police. The judgment awarded over \$10 million (though was never collected.) A number of complaints have been filed under the Alien Tort Claims Act on claims not involving torture, on environmental pollution, but have encountered various difficulties, with most not having been resolved definitely. A number of European national courts have accepted complaints against foreign nationals for grave human rights violations that were perpetrated in the Chilean and Argentinian dictatorships in the 1970s.

⁷⁶ See for instance *In re: Estate of Ferdinand E. Marcos Human Rights Litigation* *Agapita Trajano*, 978 F.2d 493 (9th Cir. 1992).

⁷⁷ For instance, the Center for Justice and Accountability located in San Francisco brings lawsuits in the United States against individuals as well as corporations that violate human rights, see www.cja.org.

Quasi-judicial remedies

There are various international quasi-judicial bodies that receive complaints. Unfortunately, the Philippines has not accepted many of them. While the Philippines has ratified most of the principal human rights treaties, it has for the most part not accepted the jurisdiction of their treaty-monitoring bodies to review individual complaints. This is true for: the Committee on Racial Discrimination, the treaty-monitoring body for the Convention for the Elimination of All Forms of Racial Discrimination,⁷⁸ the Committee Against Torture, which is the treaty-monitoring body of the Convention Against Torture,⁷⁹ and the Committee for the Elimination of Discrimination Against Women, which is the treaty-monitoring body of the Convention for the Elimination of All Forms of Discrimination Against Women.⁸⁰

The most important international quasi-judicial body for indigenous communities would probably be the Human Rights Committee (the treaty monitoring body of the ICCPR), since the Philippines has consented to allow its citizens to file complaints against the Philippines government with it.⁸¹ For a complaint to be admissible, it must not be anonymous, and domestic recourse must have been exhausted, i.e. all possible remedies within the national system have been attempted and failed. The situation in question must also not be in any other international proceedings. Further, it cannot be solely political, and cannot contain abusive or insulting language.

⁷⁸ The Philippines ratified the Convention on the Elimination of All Forms of Racial Discrimination on November 15, 1967, but has not accepted the power of the Committee to receive individual complaints, which would require a declaration under Article 14 of the Convention.

⁷⁹ The Philippines ratified the Convention Against Torture on June 18, 1986, but did not accept the power of the Committee to receive individual complaints by declaring under Article 21 and 22. However, the Philippines did not reject, by declaring so under Article 28, the power of the Committee to initiate an investigation when situation involving systematic and widespread torture is suspected.

⁸⁰ The Philippines ratified the Convention for the Elimination of All Forms of Discrimination Against Women in August 5, 1981, but has not yet ratified Optional Protocol 1, which would give the Committee the power to receive individual communications. While the Protocol has not yet gone into force, it is expected to do so soon.

⁸¹ The Philippines became party to the First Optional Protocol to the International Covenant on Civil and Political Rights on 22 August 1989, which allows communications from individuals alleging human rights violations to be received by the Human Rights Committee.

Once the Human Rights Committee receives a communication, it will inform the country concerned and ask for information from the government. The government response will be forwarded to the petitioner, and the petitioner will have the opportunity to respond. Then, the Committee will make a finding on whether human rights have been violated. The Committee usually decides if a complaint is admissible within 6 to 12 months. If a complaint is found to be admissible, the determination of the merits usually takes another 6 to 12 months.

Unfortunately, the UDHR does not have a quasi-judicial body for its enforcement. For the ICESCR, its treaty body (the Committee on Economic, Social and Cultural Rights) does not have the character of a quasi-judicial body because it is not empowered by the Covenant to receive individual communications. An international agreement to give such powers to the Committee is in discussion, but has confronted many obstacles. The case is similar for the Committee on the Rights of the Child, which monitors compliance with the Convention on the Rights of the Child.⁸²

Providing information to the UN to bring attention to the situation

Another widely used strategy is to provide information on human rights violations to the UN, through specific official procedures, in order to bring attention to the situation. The most commonly used strategy is to submit information to the UN when it reviews a country's compliance with international human rights treaties, and the 1503 Procedure.

Submission of information for review of a country's compliance with human rights treaties

A very popular way to bring the situation to the attention of the international community is to submit information to the UN when the country is up for "review" by human rights monitoring bodies. Most international human rights treaties create a body that is supposed to monitor state compliance with the treaty. For the ICCPR, for example, the Human Rights Committee not only receives complaints from individuals, but also conducts periodic reviews of each country and its compliance with the provisions of the treaty. It is possible for the community to submit infor-

⁸² The Philippines ratified the Convention of the Rights of the Child on August 21, 1990.

mation to the Human Rights Committee, when the Philippines is scheduled to be under review by the Committee.

The review is usually held over a two- or three-day period, when the Committee questions government representatives about the human rights situation in the country. In preparation for the review, the government must submit a report on their compliance with the human rights treaty. Human rights groups and aggrieved communities often review the government report, and submit additional information on human rights violations not reported by the government. Some organizations submit a comprehensive report on the government's compliance with the human rights treaty, often called a "shadow report".

If a community or a human rights organization submits such additional information to the Human Rights Committee, the Committee members will ask the government of the Philippines about the situation during the review. At the end of the review, the Committee produces concluding observations and makes recommendations on the human rights situation of the country. Many organizations also conduct media and lobbying campaigns in conjunction with these reviews.

This approach is possible with all of the treaty-monitoring bodies that correspond to the treaties that the Philippines has ratified. For the International Bill of Rights, such a strategy can be utilized with the Committee on Human Rights (for the ICCPR) and the Committee on Economic, Social and Cultural Rights (for the ICESCR). This strategy can be used in the other treaty-monitoring bodies applicable to the Philippines. These include the Committee on Racial Discrimination (for the Convention for the Elimination of All Forms of Racial Discrimination), the Committee against Torture (for the Convention Against Torture), the Committee for the Elimination of Discrimination Against Women (for the Convention on the Elimination of All Forms of Discrimination Against Women), and the Committee on the Rights of the Child (for the Convention on the Rights of the Child.). It does not matter if the Philippines has not accepted the quasi-judicial jurisdiction of these bodies.

The disadvantage to this approach is that the state reviews take place only once every several years. Thus, the community may have to wait for a considerable period of time before it can take advantage of this system.

1503 Procedure

A markedly different system is the "1503 Procedure," which is not designed to utilize public pressure the way that quasi-judicial and country review systems are, but nonetheless allows the United Nations to try to induce countries to remedy human rights situations in a confidential manner.

In the 1503 Procedure, an individual or a community can submit a communication to the United Nations, alleging that a consistent pattern of gross violation of human rights and fundamental freedoms is taking place in a country. The author cannot be anonymous, and the petition must state the facts, the purpose of the petition, and the rights that have been violated. The violations must be "reliably attested." Complaints that are politically motivated, or have abusive language and insults will not be considered. In addition, situations that are already being dealt with another international procedure will not be considered. Domestic recourse has to have been exhausted, unless it can be shown convincingly that solutions at the national level would be ineffective or would extend over an unreasonable amount of time.

If the communication is accepted, the 1503 Procedure puts the country in question on a list of the United Nations. The countries on the list are publicly announced every year. The United Nations contacts the country to ask about the situation, and will try to bring about a resolution of the situation. When the United Nations feels that the situation has been resolved, it will take the country off the list.

This is reported by some to be effective. Others are skeptical. This disagreement persists because it is difficult to tell, since the entire procedure is confidential. For many human rights advocates, this is the main disadvantage of the procedure: the communications between the United Nations and the country concerned is not released, not even to the author that submitted the original petition. Thus, the author of the petition merely receives a notification that their communication has been received, that the state in concern has been contacted, and that copies have been sent to the UN Commission on Human Rights and Sub-Commission on Human Rights.

It should also be mentioned that the 1503 Procedure also differs from the complaint systems under the quasi-judicial bodies, because it does not deal with individual complaints, but rather with the situations in which a large number of people are suffering from violations of human rights and fundamental freedoms, over a protracted period. The person that submitted the petition never receives a "ruling" in the way it does in the quasi-judicial body.

Getting a UN official or body to be concerned with the situation

It is also possible to get specific UN officials or bodies to become concerned with the situation, and intervene in some manner to try to resolve the situation. The Commission on Human Rights, for instance, can examine situations that present human rights violations, and pass resolutions condemning the violations. It often produces resolutions on specific countries and their human rights situation. The Sub-Commission of the Commission also takes similar measures. The Commission can also appoint "special rapporteurs", special representatives, or experts on a specific country situation, or a specific issue.

Special rapporteurs, special representatives, and experts investigate human rights violations within the sphere of their mandate: whether they are specific situations in a single country, or a worldwide investigation on a specified theme. They can visit a country to investigate allegations, and meet with victims and government officials. The visit itself often calls attention to the situation in the national media. These appointees will produce a report on the visit, which will be discussed at the United Nations.

The General Assembly of the United Nations also can adopt human rights resolutions, or appoint special rapporteurs or independent experts.

Similarly, the Secretary-General of the United Nations can make statements concerning human rights situations, or appoint special representatives or experts. The Secretary-General has also, in the past, performed confidential "good offices" functions, in intervening on behalf of particular human rights victims to try to obtain a remedy, such as the release of a political prisoner.

The High Commissioner for Human Rights can also exercise similar functions.

Getting an international human rights organization to advocate for the community

An important strategy to consider is to try to get the support of an international human rights organization, such as Amnesty International (headquartered in London), Human Rights Watch (headquartered in New York), Human Rights First (formerly the Lawyers Committee on Human Rights, headquartered in New York) or the International Federation of Human Rights (in French, the *Fédération Interancionale des Ligues de Droits de l'Homme* - FIDH - headquartered in France), and the International League of Human Rights (headquartered in New York). Of these, the first three are professionalized non-governmental organizations with a full-time staff who investigate, document and report human rights abuses, and engaged in policy analysis and campaigns. The last two are networks of human rights organizations around the world.

International human rights organization can assist the community by bringing international attention to the violations. Such organizations could produce regular reports on the overall situation of human rights in the country, produce special reports on specific situations of violations, and contact government officials at international fora like the United Nations to try to pressure them to improve the situation. They can conduct a fact-finding mission to the community, and contact government officials in the national capitol. The organization may also assist the community in seeking the mentioned UN related remedies. Such organizations may be able to access international media, which places more pressure on the government officials.

A "typical" scenario and response strategy

The foregoing illustrates how a human rights campaign might work. The essential point is that, currently, the international human rights system works on being able to mobilize international and national public opinion.

A company enters into an agreement with the government to mine in an indigenous community's lands. The government asks the community to consent to the mining operation, and the community's tribal council says no. Harassment by the military commences. It culminates in the detention

and shooting of some community members. The community reports the incident to the police, but nothing happens. The community reports the incident to a people's organization (PO) or non-governmental organization (NGO), which documents the incident. The PO/NGO contacts the media, and files a complaint in the national court by lodging the complaint with the police. The police still refuse to document. The government still refuses to respond. The community begins to receive anonymous threats and experiences further harassment by the military and police. The PO/NGO contacts an international human rights organization to ask for support. The international human rights organizations contact the government by writing a letter to the president and to the local police or military commander. The local NGO gives the letter to the media and holds a press conference. The threats are reduced, but the overall problem is not solved. After more complaints by the PO/NGO and the local community, threats increase once again. The local PO/NGO again contacts the international human rights organization. The organization decides to take further action by organizing a visit whereby an international human rights lawyer visits the country. The lawyer visits the community, interviews community members and the victim of human rights violations, the police and the military, speaks with government officials, sometimes very high ranking ones, drafts a report, and holds a press conference in the country. The organization also starts a letter-writing campaign in which members of the organization in other countries, such as the United States and UK, start writing 10-15 letters a week to the government in question. Meanwhile, the court case that had been filed in the local system is dismissed, and there is no further legal recourse that can be taken in the country. The local PO/NGO and the international organization collaborate to draft a petition to be filed with the United Nations system. The petition is sent to the United Nations system. The petition takes a long while, but eventually, the Department of Foreign Affairs of the country is contacted, and asked to speak before a human rights body about the situation. The representative of the Department of Foreign Affairs presents their side of the story, i.e. they did not violate any human rights at all and that all actions were in accordance with law. The local community presents arguments, with the help of the local PO/NGO and the international NGO that international human rights laws were violated, and that national laws do not conform to the international human rights law. The Committee deliberates, and finally issues a statement recommending that the country change its practices, because there appears to have been an inconformity with the international human rights law. Meanwhile, press coverage of the incident in the country has increased. Riding the wave of publicity, some members of Congress in the country decide to initiate a legislative proposal to change the law. The government decides to retract its position and cancel the mining project.

IV. POSSIBLE HUMAN RIGHTS STRATEGIES FOR INDIGENOUS COMMUNITIES IN THE PHILIPPINES

While the situation of each community is different and requires a carefully tailored strategy, the following presents a discussion on some possible approaches to specific types of problems. In the Philippines, there are a number of common patterns of human rights abuse that arise within many indigenous communities. These include:

1. Land-grabbing and resource extraction by the government, military, local businesses or individuals, and multinational corporations;
2. Government interference in tribal governance, decision making, custom, or lifestyle;
3. Environmental depletion, degradation, and pollution caused by mining, logging, industries, and projects within indigenous territories;
4. Harassment, threat, arbitrary arrest, unlawful detention, raids, shootings, and killings;
5. Economic strangulation of a community, including by destruction of crops or interference with crops, interference with transportation of goods to town to sell, prohibiting indigenous community members from harvesting or from picking up firewood, etc.
6. Generalized discrimination against indigenous communities, such as language discrimination, inequality in services, and discrimination in employment.

Land-grabbing and resource extraction by government, military, local business and individuals, and multinational corporations: violations of the right to self-determination and the right to freedom to dispose of natural wealth and resources

Land grabbing and resource extraction appear to be at the center of many abuses that occur in indigenous communities in the Philippines.

While the Philippines is more progressive than many countries in giving due legal recognition to indigenous land claims, customs and rights, indigenous peoples still continue to be vulnerable to government action. First, even though IPRA now has instituted a system through which indigenous communities can gain legal title to their lands, the process of registering title is slow and imperfect, and there are many disputes about legitimacy of tribal claims and the demarcation of boundaries. Second, even when legal title of the community is recognized under IPRA, local government and military officials and private entities often engage in human rights violations against tribal leaders and community members to drive them off their lands or to pressure them into ceding control of their lands. There are many ways that this is done, including:

- Local government actors do not recognize the legal right of indigenous communities to their land, and feels free to take the land, sell it, lease it out, or grant title to private individuals or corporations;
- Even if the government recognizes the indigenous community's ownership of the lands, it does not recognize the community's right to control the resources and minerals in the lands, so that it feels free to come and extract the resources, or grant concessions for corporations to do so on its behalf;
- Indigenous communities are tricked into ceding control of their ancestral lands;
- The government or the military forcibly removes people from the land;
- The military commits civil and political rights violations against communities, like raids, arrests, threats, intimidation, killings, shootings, and bombings, in order to drive them out or to pressure them into giving up control of their lands; and
- The government or other private entities try to impose economic strangulation on a community in order to drive them out or to pressure them into giving up control of their lands.

The lack of legal recognition for indigenous communities' ownership of their lands may constitute violation of international human rights law and principles. For instance, the UN Human Rights Committee appears to have considered it to be a violation of the ICCPR. It condemned practices against indigenous people in Canada, demanding that, "the prac-

tice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant."⁸³

The idea of the right to self-determination of peoples (contained in the ICCPR and the ICESCR) may be a viable alternative theory that can combat the Regalian doctrine and the neoliberal national economic development and global competitiveness ethic.

The right to self-determination has been taken up in human rights advocacy for indigenous peoples as a centralizing and overriding principle. However, the exact content of this right is under debate and is still being fleshed out. It should also be noted, that some argue that the right to self-determination of "peoples" contained in the ICCPR and the ICESCR is not meant to protect indigenous peoples. Some contend that the provision was initially adopted within the context of the decolonization of countries that continued to be under colonial administration at the time, and as such the right to self-determination is held only by those peoples that formed nation-states under colonization, which yearned to be free, such as many of the African, Asian, and Latin American countries. However, many indigenous movements argue that their communities hold the right to self-determination in the same way, and as a whole the claim seems to resonate with and be accepted by many members of the human rights community. The Draft Declaration on Rights of Indigenous Peoples states clearly in its article 3 that "Indigenous peoples have the right of self-determination."⁸⁴

The Draft Declaration also provides a view of the content of the right to self-determination. Its article 3 states that by virtue of the right to self-determination, indigenous peoples "freely determine their political status and freely pursue their economic, social and cultural development." In addition, it declares in article 31 that indigenous peoples, "as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and re-

⁸³ Concluding observations of the Human Rights Committee: Canada. 07/04/99, par. 8. UN Doc. CCPR/C/79/Add.105.

⁸⁴ UN Draft Declaration on the Rights of Indigenous Peoples, art. 3.

sources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.”⁸⁵

As such, it would seem plausible to argue that resource extraction without the consent of the indigenous community could be considered a violation of the right to self-determination and a violation of the right to freely dispose of natural wealth and resources contained within the ICCPR and ICESCR. Both land-grabbing and resource extraction may be violations of the right to property, which is protected in the UDHR.

Because land-grabbing and resource extraction can be argued to violate both the ICCPR and the ICESCR, indigenous communities can seek recourse under both Covenants. Here, the Human Rights Committee may be a more effective body to lodge a complaint with based on the violation of the right to self-determination or the right to freely dispose of natural wealth and resources. First, the Human Rights Committee is authorized to receive communications detailing complaints about specific allegations of violations of human rights, while the Committee on Economic, Social and Cultural Rights is not so authorized. The community can thus file an individual complaint with the Human Rights Committee for a violation for the ICCPR, and in addition, submit information to the Committee on Economic, Social and Cultural Rights when there is a country review of the performance of the Philippines. Media campaigns can be launched in conjunction with both strategies.

While a Philippine indigenous group cannot file a complaint with regional systems like the Inter-American Commission or Court of Human Rights, the African Commission and Court of Human Rights, and the European Court of Human Rights, the jurisprudence in these systems can feed important information to both national and international media campaigns. In addition, if the community decides to file a complaint with a Philippine national court, it may be able to present this jurisprudence as persuasive evidence.

Deceiving a community into ceding control of their land could also constitute a violation of the right to self-determination.

Forcible removal from land is a violation of both civil and political rights as well as economic and social rights. It could be said to constitute

⁸⁵ UN Draft Declaration on the Rights of Indigenous Peoples, art. 31.

a violation of the right to self-determination, as well as a violation of the right to property as well as the right to housing. The UN Committee on Economic, Social and Cultural Rights has condemned the practice strongly in its General Comment 4, and has pronounced in specific situations that the practice of forcible displacement constitutes a violation of human rights.

Other civil and political rights violations like harassment, detentions, torture and killing, and economic strangulation of the community, if done with the purpose of driving indigenous communities out of their lands or pressuring them to cede control would all constitute violations of the right to self-determination. They are also violations in and of themselves, and will be discussed in more detail below.

Government interference with tribal governance and decision-making, custom and lifestyle

In addition to land-grabbing and resource extraction, the government often interferes with in other affairs of indigenous communities, including in their tribal governance and decision-making, cultural and religious practices, custom, lifestyle, and livelihood.

Such interferences may be violations of the right to self-determination under the ICCPR and the ICESCR. The ICCPR and the ICESCR states, "All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."⁶⁶

The ILO Convention No. 169 concerning the Indigenous Peoples contains important protections, including that the social, cultural, religious and spiritual values of indigenous peoples shall be recognized and protected, and the integrity of the values, practices and institutions of indigenous peoples should be respected (art. 5), that indigenous peoples should have the right to decide their own priorities for the process of development (art. 7), that means for the full development of indigenous peoples' own institutions and initiatives should be established (art. 6), that due regard shall be given to the customs or customary laws of indigenous peoples in the application of national law (art. 8(1)), and the right to

⁶⁶ International Covenant on Civil and Political Rights art. 1, International Covenant on Economic, Social and Cultural Rights, art. 1.

retain customs and institutions, when they are not incompatible with fundamental rights in the national system and internationally recognized human rights (art. 8(2)).

While ILO Convention No. 169 is the most detailed binding international treaty in force and provides significant protections for indigenous peoples, it has also been criticized for taking more of a "consultations" approach rather than building the concept of the self-determination of indigenous peoples. The UN Draft Declaration on the Rights of Indigenous Peoples goes much further in clarifying the content of the right to self-determination. As noted above, it states in article 31 that indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources, management, environment and entry by non-members, as well as any ways and means for financing these autonomous functions.⁸⁷ The Draft Declaration also provides other protections for indigenous decision making and governance, including in article 26, which provides that indigenous peoples have the right to own, develop, control and use the lands and territories and the resources that they have traditionally owned or occupied or used, and that this right includes the right to full recognition of their laws, traditions and customs, and the right to effective measures by States to prevent any interferences upon these rights.⁸⁸

Environmental pollution: violations of the right to health, the right to a healthy environment, the right to life, and others

Another huge problem in many indigenous communities is the environmental pollution caused by projects of the government and multinational corporations. There are international human rights principles that prohibit environmental pollution and requires restitution, rehabilitation and compensation in the case of accidents that cause pollution. Environmental pollution can constitute violations of the right to health. The ICESCR guarantees in its article 12 the "right of everyone to the highest attainable standard of physical and mental health." If the pollution causes death, it could be a violation of the right to life.

⁸⁷ UN Draft Declaration on the Rights of Indigenous Peoples, art. 31.

⁸⁸ UN Draft Declaration on the Rights of Indigenous Peoples, art. 26.

If the pollution affects the ways in which the community can utilize their lands, such as by restricting their ability to use water or the soil, or destroys crops or game, then it may also be a violation of the right to freedom to dispose of their natural wealth and resources. It may in general be a violation of the right to self-determination, because it is encroaching on the way that the community can utilize the land and it can fashion a lifestyle.

If the affected community does not get compensation for the damages they suffered, along with adequate clean-up of their lands, it might consider utilizing international human right mechanisms by filing complaints in the United Nations system and sending information to the UN Committee on Economic, Social and Cultural Rights.

Even without these mechanisms, the community could utilize international support by doing a media campaign. There is a general international awareness right now about environmental damage caused by multinational corporations, and there is a particular sympathy for indigenous communities that are badly affected. In addition to the rights already outlined and others found in international human rights treaties, rights like the right to a healthy environment that have not yet been codified in an international legal instrument have still been used by some advocates successfully to mobilize media campaigns.

Harassment, threats, arbitrary arrests, unlawful detention, torture, killings: violations of civil and political rights

Many communities suffer horrible civil and political rights violations. In the report of Dr. Stavenhagen on his visit to the Philippines, he 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 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', (see para. 48 below) and appear

to form part of recurring patterns of human rights abuses committed against Philippine indigenous peoples in anticipation of the establishment of major development projects in indigenous areas."⁸⁹

— In addition, the Special Rapporteur also "received reports of arbitrary detentions, persecution and even killings of community representatives, of mass evacuations, hostage-taking, destruction of property, summary executions, forced disappearances, coercion, and also of rape by armed forces, the police or so-called paramilitaries. When indigenous peoples were involved in counter-insurgency operations they suffered indiscriminate firing, dispossession and destruction of their property, food blockades, illegal detentions, physical assaults, harassment, torture and threats. Such incidents have been reported in various parts of the country."

These incidents show strong evidence of abuses that could be considered violations of international human rights law.

Economic strangulation of a community: violations of economic, social and cultural rights

Indigenous communities in the Philippines are also subjected to practices, which violate their economic, social and cultural rights. For instance:

- A state university in Bukidnon, Central Mindanao University, has been attempting to displace a Manobo-Talaandig community from their lands. In order to pressure the community into signing documents that would cede their claim to the land, the university has engaged in severe human rights abuses. It has militarized the area through its security forces and an infantry battalion stationed inside the university, and these forces have perpetrated a variety of human rights violations. In addition to civil and political rights violations like detentions, harassment, and physical harm of community members and activists in the area, they have launched a plan of economic strangulation of the community. For instance, students accompanied by

⁸⁹ Addendum to the Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, 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.

university guards are made to plant gmelina seedlings amongst the community's crops in order to destroy the community's ability to make a living off the land. Gmelina are fast growing trees, which causes the soil to lose its fertility. The University forest guards do not allow the community members to destroy the gmelina seedlings, threatening to prosecute them if they do. Further, community members are prevented from collecting seedlings, wildlings, firewood, or anything from the forest. Security forces arrest them if they are seen collecting these things: in one incident, a pregnant woman collecting wood was shot. They are also prevented from transporting crops to sell in the town. The university, in several instances, confiscated the cattle and goats of the community on the pretext that they were trespassing on University land.

In addition to the civil and political rights violations involved here, the situation here also involves clear violations of economic and social rights, including the right to food, the right to housing as a result of the forced displacement, and the right to work because it interfered with the community's livelihood.

In this situation, the community can try to send a communication to the UN Committee on Economic, Social and Cultural Rights. While the Committee officially does not have the power of a quasi-judicial body, it has sometimes examined individual allegations of human rights violations that were submitted to it, and started an inquiry about it with the government in question. This has sometimes been enough to pressure the government to change its policies. The community could also ask the Committee, or perhaps the Special Rapporteur on indigenous populations, to visit. This has been seen to place enormous pressure on the government.

Discrimination

Discrimination against indigenous peoples by Philippine society includes general disrespect, discrimination in protection by the police, language discrimination, and insults, among others.

Discrimination is a violation of the UDHR, the ICCPR, the ICESCR, the International Convention for the Elimination of All Forms of Racial

Discrimination and Intolerance, and the Convention on the Rights of the Child.

Indigenous communities can try to litigate in national courts for violations of the UDHR or the human rights treaties, as well as submit complaints to the Human Rights Committee for violations of the ICCPR. Although an indigenous community in the Philippines cannot file a complaint with the Committee on the Elimination of Racial Discrimination because the government has not ratified the international treaty that would consent to this, the community can still provide information to the Committee in its periodic review of the performance of the Philippines under the Convention. It can also submit similar information the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

In addition, indigenous communities and advocates might at some time consider submitting the problem of the discrimination against indigenous peoples in Philippine society to the 1503 Procedure, alleging that there is a consistent pattern of gross violations of human rights and fundamental freedoms in the country. The submission would of course have to conform to the guidelines, including that it has to be "reliably attested" and would have to demonstrate that domestic recourse has been exhausted.

On ideas on how to construct litigation in domestic courts on discrimination, the jurisprudence of other countries including the United States may be of interest. The United States has adjudicated discrimination claims in national and local courts virtually since its creation, and in particular over the 50 years, with litigation that formed part of the strategy of the modern civil rights movement for Americans of African descent. Thus discourse and analysis about forms of discrimination within state systems is relatively sophisticated compared to many other countries. Unfortunately, note that these principles have to be used with care, as the jurisprudence in the United States protecting its native peoples has not been very good, and some of the principles developed within the context of racial equality have actually been used against indigenous peoples to erode their ability to exercise self-determination and autonomy under the claim that special treatment of Native peoples can constitute racial discrimination against others.⁹⁰

⁹⁰ See *Rice v. Cayetano*, in which the U.S. Supreme Court ruled that the Native Hawaiian peoples in the islands of Hawaii were a racial category and not a recognized Native American tribe, and as such could not discriminate against other races from participating in voting for state officials that were traditionally elected by members of the Native Hawaiian community. *Rice v. Cayetano*, 528 U.S. 495 (2000).

V. CONSIDERATIONS IN SELECTING A STRATEGY

Indigenous communities and advocates have been working for many years to mobilize and wage strategic campaigns in their struggle. This paper has sought to provide some information about the international human rights framework, which could serve as additional tools for them where appropriate. Here we present some final comments for indigenous communities and advocates that are considering whether or not to utilize some of the tools presented here in a particular campaign.

Step 1: Assessment of the problem and analysis of whether human rights violations have occurred

Indigenous communities and advocates already have a system of assessment whenever a problem or abuse is inflicted on the community by the government or other actors. This paper has put forth that in such assessments, it can be useful to analyze whether or not a violation of an internationally recognized human right has occurred. This can be useful for a variety of reasons, including:

- (1) It reassures the victims that what they suffered is considered wrong by the international community, and can give a name to the different aspects of the violations;
- (2) It can provide a preliminary analysis of whether the community might have a viable claim to present to a national court in the Philippines;
- (3) It can give an indication of what the reaction of the international community would be were the case to be made public. This is important if the community is considering trying to get international support because they are not protected sufficiently by their national government. International public support may or may not require that the community prove violations of international human rights law. For certain types

- of international support, it may be enough to assert violations of human rights as a moral ethic. But it should be kept in mind that intergovernmental organizations like the UN, or international human rights organizations like Amnesty International or Human Rights Watch tend to prefer that a community or victim demonstrate clear violations of international human rights treaties and declarations, before they commit to lending their support; and
- (4) It can provide a preliminary analysis of whether the community might have a strong enough claim to be presented successfully to a treaty-monitoring body at the United Nations that could pronounce officially that the Philippines violated an international treaty.

Conducting such an assessments provides insight into whether or not any international remedies would be available to the community's tool box if necessary.

Step 2: Make a list of possible strategies

The community should consider all possible strategies in considering a course of action, including all techniques that is has utilized in the past. Becoming educated about international human rights systems does not mean abandoning other methods that are effective. But international human rights strategies can often complement other strategies, and make them more powerful.

If the community is considering utilizing an international human rights strategy, it should obviously give careful consideration to the selection of human rights claims and remedies to be pursued. This will turn in part on what the community is seeking to achieve. For instance, is the community seeking restitution of the seized property and compensation for damages, or does it want a lasting commitment from the military and the national government that such military operations will not happen again? Does the community also want an assurance that a multinational corporation will not come into their area? Does it want changes in the police and judicial systems so that they can file complaints with more ease, such as being able to file complaints in their language, and so that

their complaints are investigated immediately, thoroughly, and without discrimination?

The list of possible human rights claims should include claims under international instruments that are in force for the Filipino government, as well as those instruments that exist but have not yet ratified by the Philippines. The rights contained in the latter treaties, as well as those that have not been codified at all into international instruments (like the right to peace or the right to a healthy environment) can also be listed as a possible claim, because they can be an indication of international moral values.

Step 3: Evaluating the available strategies

Once a list of possible strategies has been elaborated, the community evaluates them in order to come up with a cohesive plan. We provide the following comments for the evaluation of international human rights strategies:

Judicial v. Non-Judicial remedies

If a community is interested in engaging in a judicial or a quasi-judicial international human rights strategy, the strength of the claim, likelihood of success, and resources required must be considered. Making an admissible, successful legal claim in a judicial or even a quasi-judicial forum would require more detail and documentation of facts, and more thorough, focused legal analysis and argumentation, including review of case law. It is worth noting that the rules of admissibility and evidence of international quasi-judicial bodies are generally not as stringent as those of national courts. And while national judicial remedies must generally be exhausted before bringing a claim to an international quasi-judicial body, a claim of a human rights violation does not always have to go through all the national judicial processes available, in cases where they are deemed extremely ineffective, inefficient, or inaccessible because of lack of appropriate national legislation protecting the human right.

National v. international remedies

Remedies for human rights violations can be national (including local, state and federal) or international. Communities and victims should

almost always seek national recourse first, whether they are judicial or non-judicial, before they consider seeking international recourse. International recourse is usually only useful after national recourse has been proven ineffective. In particular, international judicial and quasi-judicial bodies usually require that national recourse have been exhausted before they will consider the claim.

National remedies are also preferable to international remedies in most situations because international remedies generally have difficulty exerting what is traditionally considered "real" enforcement power. For instance, they usually will not have power to make arrests, or to enforce payment of damages even when awarded. If they are able to do so, it is usually with cooperation of national authorities. International remedies essentially work through focusing public attention and international criticism for the practices by the national authorities, in order to pressure the national authorities to change their practices. Essentially, international remedies work as international campaigns and work best with focused media and lobbying efforts. But as with all campaigns, it will sometimes work, and it will sometimes have very little effect.

Probably one of the few areas where international remedy might be prioritized before a national one, is a situation wherein national efforts have already proved ineffective in the past, and an individual or community are under imminent danger and threat. For instance, in some countries, when activists receive death threats, some human rights defenders use a strategy of launching an immediate international solidarity campaign, where members of the international community such as UN officials, experts from international human rights organizations, and members of the public from other countries are asked to fax or call the appropriate authorities. Sadly, this is sometimes the most effective protection they might have, because it is already clear that it will be ineffective to call the police or the national authorities (for instance, because it is they that are responsible for the threats).⁹¹ Sometimes such international pressure

⁹¹ National strategies might be ineffective when the regime is corrupt or the police ineffective. International strategies are most effective when the phone calls and faxes will actually reach and exert pressure on the person having power to prevent the violation, as for instance, in cases where the threats are suspected to be made by the secret police controlled by the President.

can be more effective than national public pressure.⁹² This might be important to keep in mind if the threats against tribal leaders or community members become worse.⁹³

One other possible area where an international approach can be prioritized over a local one is when the violator is an international entity. Here, if an Australian mining company, for example, was perceived to be the fundamental driving force behind violations, it is possible for a public interest campaign aimed at the Australian public or a suit filed in Australia to be more effective than actions in the Philippines. Corporations can be influenced by public pressure, and some campaigns have been successful in stopping activities by multi-nationals that were causing human rights violations.

Mutually exclusive strategies

It should be noted that pursuing one of the mentioned UN-related strategies may require that the community forego other UN-related strategies. For instance, most quasi-judicial bodies do not accept complaints if the situation is being reviewed by other UN bodies. The 1503 procedure also cannot be used if the situation is being considered in other UN procedures.

It should also be noted that pursuing certain strategies may also be tend to be mutually exclusive of certain human rights strategies. For

⁹² For instance, dictatorships in "developing" countries seem to suppress national dissent very strongly, but can be subject to international pressure if they are dependent on international recognition to maintain their financial and political status. This seemed to be true, for instance, with Peru under Fujimori. (Though others like Mugabe seem very resistant to international pressure.) The Philippine government policy generally seems to try to maintain a good international public image, and thus might be responsive to international pressure.

⁹³ In the case of Salnaong, the community members already feel that the police and military authorities do not respond to their complaints, thus they have no protection when their tribal leaders are threatened. Should the tribal leaders come under imminent danger, it might be useful for international pressure to be exerted on the Philippine president, the chief of the military, and the commander of the military in the Salnaong region, as well as the chief of the police. But for such an "urgent action" system to work, the community would have to already have relationships with networks, internationally, that could respond quickly to their call. The community may try to consider trying to set up such a system now.

instance, if a community chooses to adopt a strategy utilizing violence, it may restrict the ability of the community to gain international support from certain sectors of the human rights community. For instance, Amnesty International, a major international human rights organization, will not "adopt" an activist in detention as a "prisoner of conscience" in order to launch efforts to free the person, if the person advocated violence in the past or promoted discriminatory practices. (Though the organization can engage in many efforts for the protection of human rights of that same person, and any other person, regardless of any actions that the person has engaged in in the past - after all, the entire premise of the human rights paradigm is that human rights belong to all people and individuals, and are inalienable.)

Step 4: Assess organizational capacity, likely outcome, consequences and risk

It should also be kept in mind that, as with any effort to seek recourse, there could be retaliation by the military or the government. Government officials tend to be very sensitive about the public image of the country among the international community. It affects, for instance, whether the government is able to get international loans, funding, or private investments. This is the reason international human rights pressure works: government officials feel threatened by exposure in the international community because it could jeopardize their standing or their interests. While international pressure can thus yield positive effects by changing government policies for the better, it can also have the negative effect of touching off further retaliation and repression by a regime that seeks to silence the complaints. Thus the community has to make a careful, strategic decision on whether or not it wants to seek international recourse, being informed of all the possible consequences. In choosing any strategy, it should evaluate the risks, try to minimize them as much as possible, anticipate possible reprisals, and try to set up a plan to protect against these.

CONCLUSION

Indigenous activists and their supporters should examine whether not the international human rights system may be useful to them, because it may offer additional tools to combat the power of the national government as well as international actors that drive violations in indigenous communities.

In such an examination, indigenous communities and activists in the Philippines should be aware that they can consider seeking assistance and collaborative relationships with the human rights organizations in the country, such as Task Force Detainees and others. These organizations have utilized the international human rights framework for a long time and thus have much experience and knowledge, and also have international contacts; many Filipino human rights organizations have a good reputation and are well-known internationally.

However, indigenous communities and activists do not necessarily have to seek to access the international human rights framework through the existing national human rights organizations. If they choose to seek such access, it may need to educate and empower themselves to be able to do so directly, because the traditional human rights organizations in the Philippines do not have the capacity to investigate or service every violation that occurs in a community, especially if the community is far away from urban centers (which is common for indigenous communities that suffer violations, because they are targeted for the unexploited natural resources in their lands). Further, it should always be kept in mind that each indigenous community has its own unique needs and methods of decision-making, and must be able to set their own strategies, and it partnerships should always be entered into with care because the partner can have different priorities and methods of work.

It may be, however, that some indigenous communities can establish a type of partnership with national or international human rights organizations, that will be highly effective in promoting mutual goals. The abuses that are occurring against indigenous communities in the Philip-

INTRODUCTION

Philippines are severe and dramatic, and will almost invariably harness international sympathy and support if they were publicized. Filipino human rights organizations may be interested in helping indigenous communities publicize such violations because they are indeed human rights violations, but also because it may help them get the message across to the international community that human rights violations continue to occur in the Philippines. This could benefit them because Filipino human rights organizations have been under pressure due to the shrinking of international funding support since the fall of the Marcos dictatorship, and the subsequent perception of the international community that there are no longer any problems in the Philippines. International human rights actors may be very interested in forging partnerships with indigenous communities in the Philippines, because many organizations are currently very interested in engaging in advocacy efforts to protect indigenous peoples, as well an interest in advancing concrete protections for economic, social and cultural rights.

We hope that this paper has provided some basic information and put forward some strategic questions to help indigenous communities and advocates start consideration of these options.

**Board of Trustees**

Atty. Marvic MVE Leonen
Atty. Augusto B. Gatmaytan
Atty. Antoinette G. Roco-Fay
Mr. Filomeno S. Sta. Ana
Ms. Maria Milagros M. San Jose-Ballesteros

Executive Director

Jocelyn M. Villanueva

Associate Executive Director

Norly Grace P. Mercado

Project Development Section (PDS)*Project Development Officer*

Luz Indah Abayan

Project Development Volunteers

Rica Matute-Dineros

Joanne Melanie P. Trinidad

Fund Research Management Section (FRM)*Finance Officer*

Estrellita Evangelista

Assistant Finance Officer

Lorielinda Rago

Direct Legal Services Team (DLS)*Team Leader/OIC*

Atty. Francis Joseph G. Ballesteros

Policy Advocacy Team (PAT)*Team Leader*

Lodel Magbanua

Staff Lawyer

Atty. Ingrid Rosalie L. Gorre

Staff Lawyer

Atty. Voltaire J. Veneracion

Cagayan de Oro Office*Team Leader/OIC*

Ruel S. Paculba

Staff Lawyer

Atty. Jarley D. Sulay

Campaigns Staff

Sundilyn B. Pedro

Paralegal Staff

Carl Cesar C. Rebuta

Finance Staff

Ma. Zherwinah Mosqueda

Davao Office*Team Leader*

Jean Marie M. Ferraris

Senior Paralegal Staff

Mario Jose B. Talja

Paralegal Staff

Meriam A. Bravante

Administrative Staff

Belinda B. Talic

Luzon Office*Team Leader/Staff Lawyer*

Atty. Melizel F. Asuncion

Staff Lawyer

Atty. Edgar dL. Bernal

Paralegal Staff

Rogelio D. Demelletes Jr.

Arthur Joseph Paul D. Alipio

Administrative/Finance Staff

Irma T. dela Cruz

Administrative Support Team (AST)*Team Leader*

Maria Anabel A. Julian

Administrative Staff

Richard Fabiano



**LEGAL RIGHTS AND NATURAL
RESOURCES CENTER—
KASAMA SA KALIKASAN
(LRC-KsK/FRIENDS OF THE
EARTH-PHILIPPINES)**

NATIONAL OFFICE

Unit 337 Eagle Court Condominium
26 Matalino St. Central East District,
Diliman, Quezon City 1100
Philippines
Tel: (63 2) 9281372 / (63 2)
4361101
Fax: (63 2) 9207172
E-mail: lrcksk@lrcksk.org
Webpage: <http://www.lrcksk.org>

CAGAYAN DE ORO OFFICE

Door 2 Espinueva Apartment
8th-17th Street, Nazareth,
Cagayan de Oro City, Philippines
Tel: (63 8822) 729853
Tel/Fax: (63 88) 8565045
E-mail: lrcddo@cdo.philcom.com.ph

DAVAO OFFICE

479-A General Luna Extension,
Davao City, Philippines
Tel/Fax: (63 82) 2213380
E-mail:
lrcmbo@ultimate.info.com.ph

LUZON OFFICE

87-B Madasalin Street
Teacher's Village, Diliman
Quezon City, Philippines
Tel/Fax: (63 2) 4344079
E-mail: lrcldo@philonline.com.ph

The Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KsK/Friends of the Earth-Philippines) is a policy and legal research and advocacy institution. It is organized as a non-stock, non-profit, non-partisan, cultural, scientific and research foundation duly registered with the Securities and Exchange Commission. It started its actual operations in February 1989.

It a member of the Alternative Law Groups (ALG) and the Philippine member of the Friends of the Earth International (FoEI)

The goal of the CENTER is to empower the marginalized and the disenfranchised peoples directly dependent on our natural resources so as to be able to effect ecologically sustainable, culturally appropriate, economically viable, gender-sensitive, equitable uses, management, conservation, and development of our natural resources.

The CENTER's main advocacy has been that recognition and protection of the rights of the indigenous peoples, rural communities and other long-term occupants of forests and uplands should be the main, if not the primary components of any program on sustainable development.

Empowerment is essential but is not the only requirement to achieve meaningful reforms. The people's aspirations must eventually be adopted, articulated, and implemented by the State.

Hence, the CENTER seeks to bridge the gap between the informal articulation of the aspirations of the peoples organizations on the one hand, and the formal, technical, bureaucratic and legal language used by the State.

To accomplish its goals, the Center maintains two major programs: Direct Legal Services and Policy Advocacy, which includes Policy Research and Campaigns. To bring the various services ad programs of the CENTER within their defined territorial areas of concern