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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Populations
Third session
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Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF
INDIGENOUS POPULATIONS

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING
THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the Secretary-General

Addendum

The present document contains information received from the Governments of
Brazil, India and the Philippines.

WGIP 84 GOV/UNI/3

BRAZIL

[9 July 1984]

[Original: English]

1. Concerning the subject of land and other natural resources, the Indian Statute, Law 6001, dated 19 December 1973, contains the following provisions:

"Article 2, item IX: It is the duty of the Union, the States and the Counties (municípios), as well as the agencies of the respective indirect administrations, within the limits of their competence, for protection of the native communities and preservation of their rights, to ... Guarantee the Indians and native communities, in the terms of the Constitution, permanent possession of the land they inhabit, recognizing their right to exclusive usufruct of the natural wealth and all the utilities existing on that land.

Article 17. Native land is held to be:

I - The land occupied or inhabited by the forest-dwellers referred to in articles 4, item IV, and 198 of the Constitution.

II - The reserved areas dealt with in chapter III of this title.

III - The land belonging to native or forest-dweller communities.

Article 18. Native land cannot be the object of leasing or renting or any juridical act or negotiation that restricts the full exercise of direct possession by the native community or the forest-dwellers.

§ 1. In these areas, any person foreign to the tribal groups or native communities is prohibited from hunting, fishing or fruit gathering, and from engaging in any agricultural, pastoral or extractive activity.

§ 2. VETOED

Article 19. All native land, by initiative or under guidance of the Federal agency of assistance to the Indian, shall be delimited administratively, in accordance with the process established by decree of the Executive Power.

§ 1. The delimitation promoted in the terms of this article, homologated by the President of the Republic, shall be registered in a special book kept for the purpose by the Service of the Estate of the Union (Serviço do Patrimônio da União - SPU) and in the real estate register of the judicial district in which the land is located.

§ 2. Against the delimitation carried out in the terms of this article there can be no grant of possessory interdiction, the interested parties having the right to resort to petitionary or delimitative action.

Article 20. Exceptionally and for any of the motives hereinafter enumerated, the Union can intervene, if there is no alternative solution, in a native area, said measure to be determined by decree of the President of the Republic.

- § 1. Intervention may be decreed:
- (a) To put an end to fighting between tribal groups.
 - (b) To combat serious outbreaks of epidemics that may lead to extermination of the native community or any disease that may endanger the integrity of the forest-dwellers or tribal group.
 - (c) For the sake of national security.
 - (d) To carry out public works of interest to national development.
 - (e) To repress widespread disorder or dispossession.
 - (f) To work valuable subsoil deposits of outstanding interest for national security and development.
- § 2. Intervention shall be effected in the conditions stipulated in the decree and always by persuasive methods, and therefrom, according to the gravity of the situation, one or more of the following measures may result:
- (a) Restraint of hostilities, avoiding the use of force against the Indians.
 - (b) Temporary transfer of tribal groups from one area to another.
 - (c) Removal of tribal groups from one area to another.
- § 3. The removal of a tribal group shall only be resorted to when it is quite impossible or inadvisable to allow it to remain in the area under intervention, in which case the native community, on removal, shall be assigned an area equivalent to the former one, ecological condition included.
- § 4. The native community so removed shall be integrally compensated for any loss or damage arising from the removal.
- § 5. The act of intervention shall be supported by direct assistance from the Federal agency entrusted with tutelage of the Indian.

Article 21. Land spontaneously and definitively abandoned by a native community or tribal group shall revert, by proposal of the Federal agency of assistance to the Indian and declaratory act of the Executive Power, to the possession and full ownership of the Union.

Article 22. Indians and forest-dwellers are fully entitled to permanent possession of the land they live on and to exclusive usufruct of the natural wealth and all the utilities existing on that land.

Sole paragraph. Land occupied by Indians in the terms of this article is the inalienable property of the Union (articles 4, item IV, and 198 of the Federal Constitution).

Article 23. Possession by the Indian or forest-dweller is held to mean effective occupation of the land he holds in accordance with tribal usages, customs and traditions and on which he lives or exerts an activity indispensable to subsistence or economically useful.

Article 24. The usufruct assured to Indians or forest-dwellers comprises the right to possess, use and receive the natural wealth and all the utilities existing on land occupied by them, and likewise the product of economic exploitation of said natural wealth and utilities.

- § 1. Usufruct, which covers accessories and additions thereto, includes the use of the springs and waters comprised in the stretches of inland waterways within the boundaries of occupied land.
- § 2. The Indian is guaranteed rights to the practice of hunting and fishing in the areas occupied by him, any police measures that may possibly have to be applied being carried out persuasively.

Article 25. Recognition of the right of the Indians and tribal groups to permanent possession of the land they inhabit, in the terms of article 198 of the Federal Constitution, shall be independent of the delimitation thereof, and shall be assured by the Federal agency of assistance to the forest-dwellers, taking into account the current situation and the historic consensus of opinion on the length of time they have been occupied, without detriment to the appropriate measures that the powers of the Republic may take in the case of omission or error of the said agency.

Article 26. The Union may establish, in any part of the national territory, areas set aside for possession and occupation by the Indians, where they can live and obtain means of subsistence with the right to the usufruct of the natural wealth and goods existing therein, and due respect for the legal restrictions applicable.

Sole paragraph. The areas reserved as prescribed in this article are not to be confused with those in immemorial possession of the native tribes, and may be organized in one of the following forms:

- (a) Indian reserve.
- (b) Indian park.
- (c) Indian farming settlement.
- (d) Indian Federal territory.

Article 27. An Indian reserve is an area intended to serve as a habitat for a native group, with sufficient means for the subsistence thereof.

Article 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

- § 1. In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.
- § 2. The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use of persuasive means and in accordance with the interests of the Indians living there.
- § 3. The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.

Article 29. An Indian farming settlement is an area intended for crop and livestock farming, administered by the Indian assistance agency, where aculturated tribes and members of the national community live together.

Article 30. An Indian Federal territory is an administrative unit subordinated to the Union, instituted in a region where at least one third of the population is made up of Indians.

Article 31. The provisions of this chapter shall be applied, wherever fit, to the areas in which possession arises from application of article 198 of the Federal Constitution.

Article 32. The Indian or the native community, as the case may be, shall have full ownership of land obtained by any of the ways of acquiring property in the terms of civil legislation.

Article 33. The Indian, whether integrated or not, who occupies a plot of land of less than fifty hectares (123.6 acres) as his own for 10 consecutive years, shall acquire full ownership thereof.

Sole paragraph. The provisions of this article do not apply to land of Union domain occupied by tribal groups, the reserved areas referred to in this Law, or land which is the collective property of the tribal group.

Article 34. The Federal agency of assistance to the Indian can call on the Armed and Auxiliary Forces and on the Federal Police to co-operate in assuring the protection of the land occupied by the Indians and by the native communities.

Article 35. It is the duty of the Federal agency of assistance to the Indian to assume judicial or extrajudicial defence of the rights of the forest-dwellers and native communities.

Article 36. Without prejudice to the provisions of the preceding article, it is the duty of the Union to take suitable administrative measures or to propose, by the intermediary of the Federal Public Prosecutor, adequate judicial measures to protect the forest-dwellers' possession of the land they live on.

Sole paragraph. When the judicial measures provided in this article are proposed by the Federal assistance agency, or against it, the Union shall be an active or passive party to the suit.

Article 37. The tribal groups or native community are legitimate parties for the defence of their rights in justice, and in this case they are entitled to assistance from the Federal Public Prosecutor or from the Indian protection agency.

Article 38. Native land is not liable to usucaption (squatters' rights) and cannot be disappropriated, except as provided in article 20."

2. Concerning the definition of indigenous populations, including registration, the main provisions of the Indian Statute are provided by articles 3, 4, 12 and 13, as transcribed:

Article 3. "For all legal effects, the following definitions are hereby established:

- I - Indian or forest-dweller - Any individual of pre-Columbian origin or ascent who identifies himself and is identified as belonging to an ethnic group, the cultural characteristics of which distinguish it from the national society.
- II - Indigenous population or tribal group - A cluster of Indian families or communities, living either in a state of complete isolation from other sectors of the national community, or in intermittent or permanent contact therewith, but not integrated therein.

Article 4. The Indians are considered:

- I - Isolated - When living in unknown groups, or groups on which only a little vague information is forthcoming from fortuitous contacts with elements of the national community.
- II - Integrating - When in intermittent or permanent contact with alien groups, living to a greater or lesser extent in the conditions of their native existence, but accepting certain practices and ways of life common to the other sectors of the national community, of which they stand progressively more in need for their very subsistence.
- III - Integrated - When incorporated in the national community and recognizedly in full enjoyment of their civil rights, even while retaining practices, customs and traditions that are characteristic of their own culture.

Article 12. The births, deaths and civil marriages of the non-integrated Indians shall be registered in accordance with common legislation, taking into account the peculiarities of their condition as regards surname, given name and filiation.

Sole paragraph. Civil registry shall be made at the request of the interested party or the competent administrative authority.

Article 13. There shall be suitable books available at the competent assistance agency for administrative registration of births and deaths of the Indians cessation of their incapacity under the law, and marriages performed according to tribal rites.

Sole paragraph. Administrative registration shall constitute, when appropriate, a sufficient document to justify civil registration of the corresponding act, admitted, when the latter is lacking, as subsidiary evidence."

INDIA

[16 July 1984]

[English]

In the view of the Government of India the essential prerequisite for the Working Group on Indigenous Populations to undertake meaningful work, is to establish a definition on indigenous populations because without such a definition the Working Group would not be able to discharge its legitimate functions which is to provide protection and a forum for indigenous populations that are threatened with extinction in the course of the last two centuries.

We believe that the definition of Indigenous Populations given by the Special Rapporteur, Mr. Martinez Cobo, can form a good basis for evolving a definition of Indigenous Populations with some more specific elements built into such a definition. Thus the definition, "Indigenous Populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the World, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant", gives a basic definition of the subjects and "constituency" of the Working Group on Indigenous Populations. There are in our view two basic lacunae in this definition however. Firstly, such a definition which talks of one set of people displacing another set of people would be an amorphous and vague one if the term "original" inhabitants is not used to focus the attention of the Working Group to truly "Indigenous" populations. Secondly, the Special Rapporteur's definition should comprehend a certain time-frame for identifying the so-called indigenous populations because if the Working Group intends to go back into two to three thousand year old histories to determine who are indigenous populations in various countries in Asia and Africa which have old civilizations and which are ethnic melting pots, then the Working Group would have to enter the extremely complex and indeterminate realm of sociology, anthropology and history which are at the basis of these societies. Thus taking into account these two points, in our view, the definition of the Special Rapporteur, Mr. Martinez Cobo, (as given in document No. E/CN.4/Sub.2/1983/21.Add.8) should read as follows: "Indigenous Populations are composed of the existing descendants of the peoples who originally inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, and in the course of the last two centuries, overcame them, and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant".

There is another aspect of the definition which in our view the Working Group should take fully into account and that is that each and every minority, because it has distinctive cultural or social attributes or because it may be living in isolated geographical regions does not qualify for classification as Indigenous Populations. Thus, some indigenous populations in some countries may constitute minorities, all minorities cannot ipso facto be classified as Indigenous Populations. The Working Group should therefore have a clear perception of this distinction.

The basic criteria for dealing with questions of discrimination against indigenous populations should focus on the survival needs of these populations. In the last few decades Indigenous Populations in some countries have been subjected to ethnocide and decimation on such a large scale that their very survival is at stake. It is the survival needs of the Indigenous Populations that the Working Group should address itself to and we fully support the Working Group's efforts to draw up standards aimed at maintaining ethnic, social, cultural, religious, property rights and separate identities of Indigenous Populations.

PHILIPPINES

[12 July 1984]

[English]

Measures taken by the Philippine Government for the
protection of the human rights and fundamental
freedom of indigenous population

1. Article XV Section 11 of the Philippine Constitution provides: "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies." To carry out this provision, the Government has created the Office of Presidential Assistant on National Minorities (PANAMIN) with Cabinet rank, to look after the well-being of all cultural minorities in the Philippines and extend all possible assistance to them.
2. In order to promote the advancement and effective participation of the national cultural minorities, the Government enacted P.D. 1083 on 4 February 1977, for the promulgation of a code recognizing the system of Filipino Muslim laws, codifying Muslim personal laws and providing for its administration and for other purposes.
3. The Government created the Philippine Pilgrimage Authority as provided for by P.D. 1302 adopted 15 February 1978 that would supervise and look after the well-being of Filipino Muslims who would like to join the pilgrimage to Mecca, Saudi Arabia.
4. The Government enacted P.D. 291 on 12 September 1973 recognizing Muslim religious holidays and providing for the implementation thereof.
5. The Mindanao State University was established in Marawi City to enhance the educational and cultural development of the Muslims in Southern Philippines. The University aims to provide opportunities to deserving and qualified Muslims to fill up the administrative and teaching staff of the university.
6. To further the cultural development of Southern Philippines, the Government recognized the Arabic language as part of the official languages of Filipino Muslim communities.
7. The Government enacted P.D. 542 on 20 August 1974 which created the Philippine Amanah Bank intended principally to rehabilitate, develop, expand and promote the socio-economic conditions in the depressed areas in Southern Philippines.
8. In order to facilitate national integration and promote unity among various ethnic groups who were misled and joined the secessionist movement in Southern Philippines, the Government adopted P.D. 497 on 28 June 1974 granting amnesty to all secessionists who had committed acts punishable under existing penal laws.

9. With respect to the promotion of understanding, tolerance, and friendship among racial or ethnic groups, article XV, section 9 (2), of the Constitution provides that "Filipino culture shall be preserved and developed for national unity." As a consequence, the preservation and development of the cultures of different ethnic groups are encouraged and supported by the Government. The goal is not uniformity but unity in diversity so that the Philippines truly represents a mosaic of cultures.

Information with respect to land and other natural resources of indigenous population and definition of indigenous population

10. Twelve per cent or approximately 5.9 million of the total population of the Philippines belongs to some 150 ethno-linguistic groups known collectively as national cultural minorities. The "original Filipinos" who continue to live in the centuries-old lifestyle are indigenous to the country. The national policy being carried out by PANAMIN ^{#/} is to assist in raising living standards and to help them preserve their own distinctive identity. Their indigenous culture constitutes an essential part of the national patrimony. Hence, the PANAMIN programme is aimed at pursuing a sustained and intensive effort to bring them into the mainstream of progress without impairing their traditional culture. In line with this the President of the Philippines has declared that the culture of the non-Muslim cultural minorities, being the embodiment of the original Filipino culture, constitutes part of the national patrimony.

Land tenure

11. PANAMIN fieldworkers have long observed that land tenure is the most pressing problem of the cultural minorities. The programme of undertaking land distribution for the benefit of cultural minorities is vigorously pursued. Land ownership constitutes the corner-stone for the implementation of programmes to upgrade the quantity and quality of agricultural production.

12. With land tenure as the centre-piece, the Government's developmental activities in cultural communities include these components:

(a) Livelihood. The main thrust of PANAMIN projects has been directed towards agricultural productivity and livelihood, side by side with the preservation of the hill tribes' culture and traditions. In more than 500 ongoing settlement projects all over the archipelago, the minorities are intensifying agricultural production with PANAMIN providing assistance in technology, dispersal of work animals, poultry and livestock, distribution of farm tools and other agricultural inputs. More communities are growing cash crops such as coffee, sorghum, corn, beans, rubber, abaca and ipil-ipil. Cottage industries are revitalized through marketing assistance and training.

(b) Manpower development. The economic development of the cultural minorities will require a fully equipped organization to ensure the delivery of service required for the transfer of technical expertise, management knowhow, leadership skills, and programme implementation.

^{#/} PANAMIN (Presidential Assistance on National Minorities).

(c) Emphasis on agricultural development. The efforts of the Government are mainly directed towards the upgrading of agricultural productivity and livelihood opportunities. Through the gradual introduction of advanced agricultural techniques, at a level readily absorbed, the hill tribes are expected to advance from subsistence level farming to income generating levels. At the same time the programme has opened new opportunities for employment in agriculture related jobs.

(d) Implementation of viable self-sustaining and profit-generating ventures. In line with a Presidential directive to make the minorities a full productive force, profit-generating ventures are now being implemented, resulting in the organization of corporate-type ventures in many of the tribal areas in Mindanao and Luzon, such as industrial tree planting, cash crop production, handicrafts and other types of enterprise.

(e) Sustaining and expanding service coverage. There are now 585 service centres maintained and sustained while provisions are being made for the opening of 63 new centres in strategically-located tribal areas in Mindanao and Regions I and II in Northern Luzon. The organized linkages and co-operation between the Government and the private sectors, mark an increasing number of minorities who can now be reached by the development programmes.

PANAMIN PROGRAMME OF ACTIVITIES

Medical and health programmes

13. With respect to accomplishments for 1983, PANAMIN has opened 16 additional clinics in different areas bringing to more than 64 the number of tribal clinics servicing the health and sanitation requirements of more than 2.6 million members of minorities. Medical missions and paramedical training have been undertaken to improve the health conditions of the minorities. Medicines of various types designed to increase the resistance of the people to respiratory and gastrointestinal diseases were distributed in the amount of more than 86.5 million.

Education

14. Sixty-five school houses built on a self-help basis by the minorities from indigenous raw materials in the mountains have been put up to accommodate vastly increasing numbers of school children, specially in Mindanao, South Cotabato, Sultan Kudarat and Davac. As some of these tribal areas are inaccessible to some of the basic delivery services of most of the Government agencies, such as the Ministry of Education, the provision of teachers and textbooks was extended by PANAMIN from its own budget.

Legal services

15. Legal assistance and land-related development services are another major activity of PANAMIN which strives to protect the rights and interests of the cultural minorities. Settlement of land disputes, proclamations of reservations and titling of tribal lands to their rightful owners are among the services rendered under the programme.

Housing

16. This is a self-help shelter programme that strengthens the feeling of permanence and security of cultural minorities. Minorities are encouraged to build their own dwellings, using native ingenuity, skills, and indigenous

17. Without discouraging local initiative, PANAMIN extends counsel on the clustering and arrangement of dwellings and provides tools, nails, and other housing materials.

18. PANAMIN has so far built or given financial assistance for the construction of 65 housing units.

Cultural research and publication

19. This involves in-depth ethnological researches and studies together with proper documentation of minority cultures. This programme includes the following:

(a) Establishment of museums showing ethnic artifacts (Manila, Laoag City and Tacloban);

(b) Setting up exhibits on minorities;

(c) Publication of books and periodicals on minorities;

(d) Dioramas (tridimensional representation of significant aspects of ethnic culture).

20. This programme is geared to stir public interest in ethnic art, history and culture and revive Filipino pride in their rich cultural heritage.

Information and communication

21. The main thrust of PANAMIN's information is to make minorities realize they are part of the citizenry, thus enabling them to take an active role within the sphere of their respective communities and on a broader scale, in the context of national development. They are encouraged to vote in all elections and referenda in order to exercise their rights as full-fledged citizens of the country.

22. Information campaigns are carried out through periodic talks and interaction with local tribesmen and the installation of radio transceivers in strategic settlements to facilitate the speedy flow of outside and inside information.

23. PANAMIN has effected publication in the newspapers of various minority affairs and development news.

Stages for development

24. The approach to improving the lot of cultural minorities is set in a three-phased scheme. Phase one, survival, within a time-frame of one year, is concerned with medical and relief services in farflung tribal areas. Phase two, self-sufficiency, is geared towards building communities where the people may live in self-sustaining communities. At this stage, tribal people benefit from the integrated programmes of the Government in the form of settlement projects, housing, infrastructure, community protection, information, food production, medical and health services. The last phase, self-reliance, is concerned with

developing skills and providing opportunities to enable them to become economically independent. Programmes are geared towards agro-industrial development, education and manpower development. Commercial projects and livelihood activities aligned with the KKK ^{*}/ concept are pursued by the minorities to promote their self-reliance and income productivity.

25. All programmes for the minorities stress total human development, voluntary participation and indigenous forms of co-operation in the planning and implementation of community projects and the promotion of human dignity. Development is introduced at a pace the people can understand and assimilate without forcible integration into the mainstream of society.

26. The tribal councils continue to serve as the basic planning and implementation instrument of community-based programmes and projects. As the indigenous political organization, tribal councils are further strengthened, accredited and recognized as having a legal personality vis-à-vis the barangay councils.

Integrated tribal development

27. The integrated or multi-disciplinary development approach is carried out in tribal areas taking into account the relationships and interdependence of the different development factors. Detailed integrated development programmes peculiar to specific tribal groups continue to serve as guidelines for programme implementation.

Inter-agency approach

28. The multi-disciplinary requirements in the development of cultural communities rely on organized linkages and support of other government agencies and the private sector. The tapping of resources from international and local agencies is also optimized.

^{*}/ KKK - Kilusan, Kabuhayan at Kaonlaran (National Livelihood Movement).