

Expert Mechanism on the Rights of Indigenous Peoples
Sixth Session
8-12 July 2013

Agenda Item 6: United Nations Declaration on the Rights of Indigenous Peoples
Statement by Tebtebba Foundation

My organization would like to thank the Expert Mechanism for its summary of the responses to the questionnaire on implementation of the UNDRIP. Tebtebba shares the concern of the EMRIP at the low number of State responses to the questionnaire. We are particularly concerned that the Philippines, where our organization is based, has not submitted a response, despite its rich experience in implementing the declaration.

The Philippines enacted its Indigenous Peoples' Rights Act ("the IPRA") in 1997, which is substantially based on what was then the Draft Declaration on the Rights of Indigenous Peoples. This law is celebrated as the most progressive instrument recognizing indigenous peoples' rights in the Region. On the occasion of the 15th anniversary of the adoption the IPRA, Tebtebba in cooperation with the University of the Philippines – Baguio conducted an in-depth assessment of how the law has been implemented by the Philippines' National Commission on Indigenous Peoples ("the NCIP") and other government agencies.

The existence of a significant "implementation gap" is a key finding of the study. The main mechanism identified by the NCIP for implementation of the IPRA is the delineation and titling of Ancestral Lands and Domains. Unfortunately, the Commission has struggled in meeting its targets for titling of indigenous lands and continues to make the titling process cumbersome and bureaucratic, contrary to the simplified procedure provided by the law. While the law requires only 1 type of proof of time immemorial possession by indigenous peoples of their land, the NCIP continues to require 10 "authentic documents" as proof.

Free, prior and informed consent (FPIC) of indigenous peoples is a legal requirement before the government can issue licenses for activities that impact on indigenous peoples' lands and rights. To date, the NCIP has issued more than 300 certificates of compliance to corporations, attesting to the fulfillment with the FPIC requirement. Almost 60% of these certificates were issued to mining corporations. The study finds, however, that the FPIC process defined by the Philippines is unnecessarily complicated and bureaucratic, and undermines, rather than supports, indigenous peoples' laws and institutions. Furthermore, there have been many complaints of irregularities in the FPIC process, such as creation of bogus councils of elders that give their consent, but no accessible or affordable grievance and redress mechanisms.

The NCIP continues to be underfunded by the Government. While the NCIP

receives significant foreign funds for implementation of the IPRA, it lacks the technical capacity to utilize these funds, frequently forfeiting second and third tranches of the allocated funds.

There are many other findings from the study, focusing on indigenous education, health and culture. The full study has already been published in a peer-reviewed journal and will soon be available on Tebtebba's website. It will be submitted officially to the EMRIP, so I will not belabor the details here. I would like to end this intervention by putting forth the following recommendations:

1. The Philippines should properly implement the law on the delineation and titling of indigenous peoples' lands and domains, providing appropriate levels of funding and fully involving indigenous peoples in the process.
2. The NCIP should seriously review the FPIC certificates it has issued, and investigate thoroughly and impartially allegations of irregularities. Accessible and affordable grievance and redress mechanisms should be provided, including the recognition of indigenous justice systems and institutions.
3. There should be an increase in the funding of NCIP, and intensive development of their capacity to utilize the funds.

Thank you, Chair, for the opportunity to present this statement.