

# Submission to the United Nations Universal Periodic Review - Philippines Third Cycle

*Submitted by the Network and partners of the Franciscan Solidarity Movement on Justice and Peace and Integrity of Creation, composed of the following organizations:*

Alyansa Tigil Mina (ATM)

BALAY Rehabilitation Center

Franciscan Apostolic Sisters IP Ministry

Philippine Misereor Partnership, Inc. (PMPI)

Save Sierra Madre Movement

Task Force Detainees of the Philippines

Workers Assistance Center (WAC)

Urban Poor Associates (UPA)

**INDIGENOUS PEOPLES**

<i>Right or area: 33. Indigenous peoples</i>			
Recommendation	Position	Full list of themes	Assessment/comments on level of implementation

<p>129.44. Implement the Indigenous Peoples' Rights Act to ensure that economic activity, in particular mining; does not negatively affect the rights of indigenous peoples (Mexico);</p> <p><b>Source of position:</b> A/HRC/21/12- Para. 129</p>	<p>Supported</p>	<p>33 Indigenous peoples 26 Rights to protection of property; financial credit <b>Affected persons:</b> - indigenous</p>	<p>The National Commission on Indigenous Peoples (NCIP) failed to ensure the implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs that includes the following:</p> <ul style="list-style-type: none"> <li>A. The process of Delineation and recognition of Ancestral Domain Rights of the ICCs/IPs that shall embodied in a Certificate of Ancestral Domain Title (CADT) is very slow.</li> <li>B. The indigenous people suffer most for the non-recognition of their ancestral domain due to the Joint-Administrative Order (JAO) during the previous administration that binded the NCIP to the DENR, DAR and LRA before it can recognize the Certificate of Ancestral Domain Title (CADT).</li> <li>C. Free Prior and Inform Consent (FPIC) are mostly violated by the mining companies and is manipulated by the NCIP especially the funds to conduct the FPIC process are coming from the mining proponents.</li> <li>D. Before the IPs can have recourse to the semi-judicial power of the NCIP to tilt the chances of the IPs to get justice against the powerful and moneyed lowlander, the Supreme Court has decided that lowlanders with cases against the IPs can have recourse to the ordinary court.</li> <li>E. There is a systematic elimination of the leaders of IPs standing and asserting for their collective rights. On October 2, 2014, a Community leader and member of the Supreme Council of Chieftains of the TJG was shot to death while walking with his wife and a son going home from their farm house.</li> <li>F. On November 14, 2014, another leader of the Teduray in Bahar Settlement area was shot to death while walking in front of the Philippine Episcopal Church in Awang, Datu Odin insuat, Maguindanao. Said leader is one of those who are preventing the Moro to occupy the resettlement area proclaimed by President for their group in 1973.</li> <li>G. The Philippine government has contracted Saguitarius Mines, Inc, (SMI) (foreign owned) to undertake the mine exploration and development in Tampakan, South Cotabato through the the Financial Technical Assitance Agreement (FTAA) for a period of 25 years. The Tampakan project is a premier mining project on account of investments and value of mining resources for extraction –copper and gold targeted to start commercial operation in 2018. The result of the human rights impact assessment (HRIA) of the Tampakan Mining Project indicated the following issues relating to the protection and promotion of the rights of the B'laan Indigenous Community: <ul style="list-style-type: none"> <li>1. Incoherent information and lack of meaningful participation for the Free Prior and Informed Consent (FPIC);</li> <li>2. Dependency of basic services on the future of the Project;</li> <li>3. Imbalanced power relationship between SMI and affected communities;</li> <li>4. Insufficiency of established grievance mechanisms;</li> <li>5. Accumulating grievances and triggers of Violent Conflict.</li> </ul> </li> </ul>
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And while it is the duty of the Philippine Government to address these issues, we also recommend that Australia, the home country of the Indophil which now owns 100 percent of the project should likewise address said issues. Since the publication and presentation of the result of the HRIA we are not aware of any concrete actions of the Philippine government to address the said issues. To date, the B'laans are persistently calling on the NCIP that they do not want to give their consent to the project.

Aside from the implementation of the IPRA, we also recommend for the repeal of the Mining Act of 1995 considering that there are a number of provisions which also underpins the protection and promotion of the rights of the IPs. There is now a pending case raising the constitutionality of Secs.80 and 81 of the RA 7942 (Mining Act of 1995) and DENR Admin Order 2007-12. Essentially, the case questions the financial regime of the contract entered into by the Philippine Government with mining companies due to the inequitable distribution of the financial benefits of approved mining projects as well as the inequitable distribution of the environmental, social and economic costs that are not fully taken into account in deciding the approval of the mining project.

The Mining Act of 1995, which lays down the policy for the government to attract foreign investors to invest in mining failed to consider the human and ecosystems well-being, the human rights of the indigenous peoples and the local communities, food security, local autonomy and the ecological integrity of our country.

We are recommending the passage of the Alternative Minerals Management Bill (AMMB) which has remained pending in Congress since 2010. The proposed bill provide among others the conservation of mineral wealth, rational needs based utilization and domestic use oriented mineral management; link to national industrialization and development of agriculture, establishment of no-go zones; respect and protection of human rights, recognition and establishment of ownership of indigenous peoples over their mineral resources, watershed system framework in looking at affected communities, establishment of corporate transparency and accountability, equitable sharing and human rights protection.

The government has no actual census of indigenous peoples in the whole country. Previous census cannot identify nor extrapolate the real number of IPs. How could the IPs be included in the government's program and services if their number is not yet known?

<p>129.11. Intensify its efforts to protect the rights of other vulnerable groups, especially persons with disability, minorities and indigenous peoples so as to allow them equal access to social, educational, health and other services (Thailand); Continue its work in relation to the promotion of the protection of the rights of specific vulnerable groups in society such as senior citizens, the poor and those affected by natural disasters (Trinidad and Tobago); Study the possibility to develop new measures so that programs to combat poverty include vulnerable people such as seniors and people with disabilities (Argentina);</p>		<p>Equal access to education:</p> <ol style="list-style-type: none"> <li>1. Lack of financial support for community based or privately managed IP schools.</li> <li>2. No IPED teacher education courses, programs and curriculum offered by colleges and universities both public and private especially in areas where there are large IP population.</li> <li>3. There are existing DEPED policies that support IP education but there is still a need for a legislation that will ensure institutionalization of IPED as program of DEPED.</li> </ol> <p>Health:</p> <ol style="list-style-type: none"> <li>1. DOH policy on PROHIBITING giving birth at home IS AN OUTRIGHT DISREGARD OF THE IPS IKSPS on health care.</li> <li>2. Hepatitis B are evident among the Indigenous Peoples in Mindanao and some part of Northern Luzon that the government should be addressed seriously.</li> </ol> <p>Social:</p> <ol style="list-style-type: none"> <li>1. Most of the Indigenous Peoples are not benefitted of a house that is typhoon resilient</li> <li>2. There is a need to review the guidelines in choosing beneficiaries for 4ps to ensure that the poorest of the poor like the ip s will be included in the program.</li> </ol>
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**Other Submission regarding Mining in Small-Islands in the Philippines**

We call on the Philippine Government to implement the provision of Executive Order 79. S. of 2012 entitled “Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources” Pertinent provision provides:

Sec 1 Areas Closed to Mining

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. e) Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter identify pursuant to existing laws, rules, and regulations, such as, but not limited to, the NIPAS Act.

Currently, large-scale mining is still being done in Manicani, an island several kilometers off the coast of Guiuan town in Eastern Samar, Philippines. Although there is a suspension order for any mining in the said Island, such suspension was never implemented by the Government through the Department of Environment and Natural Resources (DENR). Although the DENR has recently conducted a mining audit, as to the compliance the mining company with the rules and regulations, we believe that the Government should no longer allow mining in this small island of Manicani.. Protect Manciani Movement (PROMISI) a peoples organization based in Macani has filed the Petition for Continuing Mandamus to compel DENR to implement the suspension order of any mining activities in Manicani.

**On the decriminalization of libel and harassment of human rights defenders**

The Philippine Government reported (A/HRC/21/12) “25. In order to enhance the exercise of the right to freedom of expression, the Philippine Supreme Court has adopted a policy whereby libel convictions be punished only with fine. There is also a pending bill to decriminalize libel.”

In this regard, the Cyber-libel case filed against PMPI is a case in point. As part of its anti-mining campaign, PMPI in cooperation with the Catholic Diocese of Borongan supports the local initiative Save Manicani Movement (SAMAMO), which opposes the resumption of large-scale mining on the island because of its disastrous effects on the environment and the livelihood of the population. HMC started their mining operations on Manicani in 1992, but had to stop after a few years because of falling Nickel prices. SAMAMO fears that the company plans to revive its project despite an ordinance issued by the province of Eastern Samar which prohibits large-scale exploration or extraction of natural resources.

HMC filed a complaint for cyber libel against PMPI for allegedly making libelous statements on their website regarding an incident which took place on June 20, 2015, when a barge hired by the company destroyed three fisher boats when forcing its way into the port of Manicani Island. The case is now pending in Court pending the result of PMPI’s Motion for Reconsideration for the dismissal of the complaint.

It is meant to intimidate, silence and cow PMPI so that eventually they abandon their criticism and opposition to the mining company. Likewise, a libel case is a crime against individuals and not against public figures. The mining company being an entity that affects the public interest cannot be exempted from critics and comments by concerned citizens and should refrain from harassing citizens participating in public discourses.

It is therefore important that the government decriminalize libel. Otherwise, the current law will continue to stifle valid expression of dissent within the bounds of rule of law.