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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: AL Food (2000-9) G/SO 214 (107-9) Indigenous (2001-8) G/SO 214 (33-27)
PHL 5/2012

31 October 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 13/4, 16/5, 15/14, and 17/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the situation of oil palm cultivation in Higaonon indigenous communities in the municipality of Opol, Misamis Oriental in southern Philippines, as well as the alleged killing of Mr. Gilbert Paborada, an indigenous Higaonon leader who had protested against the oil palm cultivation.** These allegations bear relevance to concerns previously expressed in a 29 February 2012 joint allegation letter and a 23 May 2012 joint statement issued by the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the right to food regarding the impacts of large-scale agricultural development projects on the Agta indigenous people in the Isabela region of the Philippines.

According to the information received:

The Higaonon are an indigenous people in the northern and central regions of Mindanao, southern Philippines. They have traditionally relied on hunting, gathering, and agriculture within the region's once lush forests. Within the Opol region, Higaonon people make up the majority population in the communities ("bangarays") of Bagooboc and Tingalan. According to the information, the Bagooboc community encompasses an area of 4,150 hectares and has a population of 428 families, and Tingalan covers area of 2,763 hectares with a population of 333 families.

The information received indicates that much of the Higaonon's traditional lands in Opol have over the decades been deforested and converted to pasture and agricultural lands by outside landowners and settlers. In 1991, a Forest Land Grazing Lease Agreement was granted by the Department of Environment and Natural Resources (DENR) to a private landowner over a 520 hectare area that includes traditional lands of the Bagooboc and Tingalan villages. That area was never developed by the landowner and Higaonon families reportedly reclaimed the area in 2002 and have used that area for their traditional agricultural practices.

The members of the Bagooboc and Tingalan communities have sought legal recognition for the lands they have traditionally inhabited. According to the information received, an "ancestral domain" claim was filed by Higaonon groups in 2002 within an area encompassing six villages, including the villages of Bagooboc and Tingalan. Under section 3 of the Indigenous Peoples Rights Act, ancestral domains constitute lands, inland waters, coastal areas, and natural resources therein held under claim of ownership or occupied and possessed by indigenous peoples since time immemorial and which are necessary for their economic, social and cultural welfare. The information received indicates that the Higaonon communities who filed the ancestral domain claim are still awaiting the issuance of a Certificate of Ancestral Domain Title. In addition, in 2008, the Bagooboc and Tingalan communities petitioned the local DENR office for recognition of their land rights over the 520 hectare area encompassing the 1991 grazing lease, but were assured by DENR that the government already recognised their right to till the land.

The presence of oil palm operations in Bagooboc and Tingalan

According to the allegations received, local government officials have actively promoted and facilitated oil palm plantations within Opol, Misamis Oriental without consideration of the land and natural resource rights of the indigenous peoples in the area. In this connection, in 2010 local officials of the DENR reportedly facilitated meetings between the A Brown Company, a Philippines real estate and oil palm company, and a select group of members of the Bagooboc and Tingalan communities, in order to discuss the establishment of an oil palm plantation within the area of the 1991 Forest Land Grazing Lease Agreement. The select group of community representatives were allegedly picked by DENR officials in order to form the Kahugpong sa Mag-uuma sa Barangay Tingalan organization, or KMBT. This is despite the fact that there was already an existing community organization in Bagooboc and Tingalan villages, known as the Sarahogon Bagooboc Farmers Association.

The meetings facilitated by the DENR officials allegedly resulted in a development contract between KMBT and A Brown Company which allowed the company to establish an oil palm plantation in the area of the 1991 Forest Land Grazing Lease Agreement. The Bagooboc and Tingalan community representatives that were not part of the KMBT were not consulted about nor did

they consent to A Brown's oil palm plantation, which reportedly began operating in 2010.

In addition, according to the allegations, A Brown Company has not obtained other authorizations required under Philippines law to operate an oil palm plantation in the lease grazing area, including authorization from DENR. In addition, because the Bagooboc and Tingalan communities have a pending ancestral domain claim, A Brown needs authorization from the National Commission on Indigenous Peoples, which it has not obtained. Under section 59 of the Indigenous Peoples Rights Act, government agencies are enjoined from issuing, renewing or granting any concession, license or lease without obtaining a prior certification from the National Commission on Indigenous Peoples stating that the area in question does not overlap with an ancestral domain, including areas for which there is a pending application for Certificate of Ancestral Domain Title. It further provides that in the areas determined to be part of an ancestral domain claim, the certification from the National Commission on Indigenous Peoples shall not be issued without the "free and prior informed and written consent" of the indigenous peoples concerned.

Effects of palm oil activities on the human rights of indigenous peoples in the Tingalan and Bagooboc communities

The information received alleges that the vast majority of members of the Tingalan and Bagooboc communities were not provided details of the nature of A Brown's operations and the extent to which their lands would be affected until a meeting held by A Brown and DENR representatives with community members in February 2011. In that meeting, community members were allegedly told that their lands would be needed for the expansion of the oil palm plantation and that those willing to give up their lands would be provided with 9,000 Philippine Pesos per hectare. Community members were also promised hospitals, scholarships and other services. Company representatives also reportedly assured community members that those who did not want to give up their lands for the plantation would not be forced to do so.

However, the subsequent expansion of A Brown's operations into the lands of Bagooboc and Tingalan community members did not occur on a voluntary basis, and community members were forced or coerced to sign waivers to give up their land plots. It has been alleged that community members who did not want to give up their lands were threatened and intimidated by company employees. In March 2011, company employees allegedly destroyed the houses and traditional crops of community members who refused to leave their lands. The information received indicates that very few Higaonon households have remained in the area of the 1991 Forest Land Grazing Lease Agreement where A Brown operates.

It has been alleged that Higaonon leaders who have actively opposed and criticized A Brown's oil palm operations have been threatened and assaulted by

company employees and in some cases by law enforcement officials. In this connection, information has been received regarding the shooting death of Gilbert Paborada, an indigenous Higaonon leader from Bagoceboc, by two unknown men that reportedly occurred on 3 October 2012 in San Nicolas, Puntod in Cagayan de Oro City. According to the information, Mr. Paborada had previously received death threats for his work in the community organization Pangalasag, which openly criticized A Brown's oil palm operations in Misamis Oriental. Due to the threats to his life, Mr. Paborada relocated from Bagoceboc to Puntod, where he continued his work with Pangalasag. It has been alleged that his death was connected to his opposition to oil palm operations in Bagoceboc.

In addition, allegations have been received that Higaonon sacred sites have been seriously affected by A Brown's operations. The company allegedly quarried a sacred hilltop used as a burial ground for the Higaonon's ancestors, in order to build a road. In addition, in an act which Higaonon elders considered to be a desecration, the company allegedly planted oil palm in a traditional Higaonon ritual area, known as Bagonsilibo.

The alleged removal of Higaonon community members from their lands has reportedly led to the serious disruption of their agricultural and other traditional practices in their ancestral lands. Higaonon people who left their lands due to the oil palm operations have reportedly faced hunger and poverty since they have not been provided with alternative sources of livelihood. Finally, it is alleged that efforts to bring the situation of the Higaonon to the attention of local regional and municipal authorities have not been successful.

While we do not wish to prejudge the accuracy of the above allegations, we would like to express our concern about the situation of Higaonon people, including with respect to their rights to lands and resources. Concern is also expressed at the alleged killing of Mr. Gilbert Paborada, and for the physical and psychological integrity of other indigenous leaders of the Higaonon community.

In this regard, we would like to refer your Excellency's Government to relevant provisions of the United Nations Declaration on the rights of indigenous peoples, adopted by the General Assembly on 13 September 2007 with a favorable vote from the Philippines.

In relation to indigenous peoples' right to own, use, develop and control their traditional lands, the Declaration provides in article 26 that indigenous people have the right "to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and prescribing that these lands, territories and resources be legally recognized with due respect to indigenous peoples' laws, traditions, customs and land tenure systems. Further, "[i]ndigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources" (Art 29). Under article 27, States are to establish a "fair, independent, impartial, open and transparent process giving due recognition to

indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.”

Article 32 of the Declaration provides for the right of indigenous peoples to be consulted “through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploration of mineral, water or other resources.” The Declaration provides that the forcible removal of indigenous peoples from their lands or territories shall not occur “without the free, prior and informed consent... and after agreement on just and fair compensation for relocation and, where possible, the option of return” (Art. 10). Furthermore, where indigenous peoples have been “confiscated, taken, occupied, used or damaged without their free, prior and informed consent”, article 28 provides that indigenous peoples “have the right to redress”, whether by “restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used”.

With respect to the right to food, article 25 of the Universal Declaration of Human Rights recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which the Philippines ratified on 7 June 1974 – stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, and requires them to “take appropriate steps to ensure the realization of this right.”

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, makes special note of socially vulnerable groups such as landless persons and indigenous population groups whose access to their ancestral lands may be threatened, as segments of the population who may need specific attention from governments. The right to adequate food may be under severe threat when land on which people depend for their subsistence is traded away, for instance for the development of large-scale agricultural or industrial projects. This is why the Special Rapporteur on the right to food has considered it necessary to restate the human rights obligations of States in this regard in a set of minimum principles and measures to address the human rights challenge, presented as an addendum to the annual report of the Special Rapporteur on the Right to Food to the Human Rights Council, at its 13th session (March 2010) (A/HRC/13/33/Add.2).

We would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive

for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to the alleged killing of Mr. Paborada and the death threats that he had reportedly received before his death, we wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified on 23 October 1986 by your Excellency’s Government. In this regard, we would like to refer your Excellency’s Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide “effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats”.

We would like also to draw the attention of your Excellency’s Government to the duty to investigate, prosecute and punish violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and

Summary Executions. In particular, Principle 9 stipulates that there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, while Principle 18 provides that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice”.

In light of the information and allegations contained in this communication, we would be interested in knowing your Excellency’s Government’s views on the accuracy of the information contained in this letter, and would be grateful to receive any additional information your Government may deem relevant. In particular, we would like to know further information about:

1. The legal status of the lands inhabited and used by the Higaonon indigenous people in the bangarays or villages of Bagoceboc and Tingalan, including the area encompassing the 1991 Forest Land Grazing Lease Agreement where A Brown Company’s plantation is located, and whether there was a determination by the Government about the status of those lands under the Indigenous Peoples Rights Act or other relevant legislation, prior to the initiation of oil palm cultivation by the A Brown Company;

2. In this connection, please explain if the A Brown Company has the legal authority to operate an oil palm plantation in the lands in question;

3. Whether the Higaonon indigenous people in Bagoceboc and Tingalan were consulted, through their freely chosen representatives and with the purpose of obtaining their free, prior and informed consent, prior to the initiation of oil palm cultivation in the lands they have traditionally inhabited and used;

4. Whether any assessment or study has been made concerning the human rights impacts, including impacts on the right to adequate food, that oil palm production would have on the indigenous peoples in the Bagoceboc and Tingalan communities, and the results, if any, of those assessments or studies. Similarly, please explain if mitigation and compensation measures were devised to address any adverse human rights impacts brought by the oil palm project;

5. Whether measures have been taken to investigate the allegations described in this communication concerning the alleged threats, intimidation and forcible displacement of Higaonon community members; the death threats and reported killing of Mr. Gilbert Paborada; and the desecration of Higaonon sacred sites. Please explain the results, if any, of those investigations.

6. In light of the alleged killing of Mr. Gilbert Paborada, what measures have been taken to guarantee the physical and psychological integrity of Higaonon community members and their families?

7. What measures have been taken to ensure that those who may be losing their land are offered alternative sustainable means to access sufficient and adequate food? What measures have been put in place to ensure that the enjoyment of the right to food by local groups, particularly those displaced for the project, has not been threatened by the project?

We would appreciate a response from your Excellency's Government within 60 days. We undertake to ensure that your Excellency's Government's response will be taken into account in our assessment of the situation and in developing any recommendations that we make to your Excellency's Government's consideration pursuant to the terms of our mandates.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the mentioned indigenous people are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Olivier De Schutter
Special Rapporteur on the right to food

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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