

LAG Policy Brief

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The Struggle Continues: Uphold the Rights of Indigenous Peoples



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The recognition and protection of indigenous peoples' rights is one struggle that has been carried out passionately for many years now. Over at the United Nations, the adoption by the general assembly of the declaration of the rights of the indigenous peoples on September 13, 2007 sparked worldwide jubilation among indigenous cultural communities and various support groups from civil society. While the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is not a legally binding instrument, it sets "an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet's 370 million indigenous people and assisting them in combating discrimination and marginalization," the UN says.



IAG with its partners, PIPVTR and KAS, gathered in the Makati RTD experts and authorities on IP issues in the hope of crafting a policy for the full recognition and inclusion of the indigenous peoples in the national agenda.

In the Philippines, the passage of the Indigenous Peoples' Rights Act (IPRA) on October 29, 1997 caused similar jubilation that reverberated even from the farthest outskirts of the Philippine society, home to approximately 14 to 15 million indigenous peoples sub-divided further into 110 ethno-linguistic groups. The common understanding then was finally a national law to protect and uphold the rights of the indigenous peoples has come at last.

IPRA with the four bundles of rights it swore to protect upon its passage into law came like a long-awaited rain. A downpour of celebration temporarily quenched lips that parched from shouting too long in the streets and legislative halls the aspiration for the recognition and protection of indigenous peoples' rights. These four bundles of rights include the right to ancestral domain and lands, right to self-governance and empowerment, social justice and human rights, and right to cultural integrity.

IPRA provides for the establishment of the National Commission for the Indigenous Peoples (NCIP) which the law mandates to "protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions." Unfortunately, as to what extent the NCIP has lived up to its mandate or how IPRA has been implemented since its passage in 1997 is another continuing sad story of the grievances of the indigenous peoples.

The indigenous peoples in the Philippines continue to figure in social discrimination, economic marginalization and political disempowerment, albeit the presence of IPRA and the existence of NCIP. Subject to socio-economic and political exclusion, they have remained the most disadvantaged peoples representing the poorest of the poor and the most vulnerable sector.

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*IAG's Ramie Toledo took note of the proceedings in Cotabato. Prof. Rommel Banlaoi of PIPVTR reported the proceedings from Makati.

The Institute for Autonomy and Governance (IAG) has kept abreast not only with the recent developments on the GPH-MILF and GPH-MNLF peace tables but with the current situation particularly of the indigenous peoples in the Autonomous Region in Muslim Mindanao (ARMM) as well.

Elena Damaso, development anthropologist and IAG consultant on IP matters captures the current situation of the approximately half a million indigenous peoples in the ARMM who comprise 20 percent of the population in the region. Damaso says: “The IPs in the ARMM are clearly in a situation of comparative disadvantage with reference to the dominant Islamized ethnic groups like the Maguindanaon, Maranao and Tausug who belong to the power and economic elite.” She adds that the four bundles of rights promised by IPRA “have not been fully enjoyed and exercised by the marginalized ethnic groups in the autonomous region.” The ethnic groups in the ARMM comprise the Teduray, Lambangian and Dulangan Manobo in Maguindanao Province, the Higaonon in two Lanao provinces, the Badjao of Tawi-Tawi and Basilan, among others.

IAG has taken on another challenge to mainstream the rights of the indigenous peoples in the ARMM in the regional governance and ultimately, in the national agenda. The institute has organized two events in March 2011 to bring forth issues and concerns of the IP sector on the discussion table. The round table discussion in Makati City on March 11 and the forum in Cotabato City on March 28 are aimed at generating ideas on how to make the existing mechanisms viable for the welfare and protection of the indigenous peoples. These ideas will hopefully inform policy makers in designing a roadmap towards full recognition and protection of indigenous peoples’ rights.

The round table discussion in Makati was co-organized by IAG’s partner institute, the Philippine Institute for Peace, Violence and Terrorism Research (PIPVTR) headed by Prof. Rommel Banlaoi. In Cotabato City, Prof. Shiela Algabre and her team at Notre Dame University assisted in the forum. Konrad Adenauer Stiftung (KAS) provided support for these events.

In the Makati round table, Department of Interior and Local Government (DILG) Secretary Jesse Robredo lauds the Indigenous Peoples’ Rights Act of 1997 that guarantees the protection of IP rights and welfare. However, Secretary Robredo has acknowledged that there is work to be done

to make IPRA truly work. He stresses the necessity to provide opportunities for affirmative action not only for IPs but also for other sectors that have been neglected. The Interior Secretary laments the partisanship of some local officials whose interests run counter to the interests of indigenous peoples. He says that there are local government units that are threatened by the idea of having an IP representative in the local legislative assembly.



The participants in the Makati RTD

IAG Director Fr. Eliseo 'Jun' Mercado recognizes the passage of IPRA as a milestone in the struggle of indigenous peoples. However he notes that implementing the law is another thing. Fr. Mercado stresses that it is high time to put IP issues and concerns right at the national table.

The issues and concerns put forward in the Makati and Cotabato fora mirror the general sentiment of indigenous peoples as they continue to wallow in their current situation of poverty, exclusion and disempowerment.

Jeovani Reyes, Secretary General of Koalisyon ng Katutubong Samahan ng Pilipinas (KASAPI) has presented the realities and prospects for IPs in the North in the Makati round table. Reyes has examined the issuance of Certificate of Ancestral Domain Title (CADT) and Certificate of Ancestral Land Title (CALT) as implemented in Baguio City.



Elena Damaso presented some possible actions on mainstreaming IP issues in the national agenda.

of indigenous people from their territory. Happy Hollow is an Igorot community lying on the extreme eastern side of Baguio City.

The Americans reached this part of the Philippines at the turn of the 20th century and carved an area that would later serve as their summer capital and health resort. The Americans also built a military camp that became part of Camp John Hay. By 1909, the entire Happy Hollow was declared part of the camp.

The passage of IPRA in 1997 resulted in the turnover of all ancestral domain claims from DENR to NCIP. Despite the IPRA, the period 1998 to 2000 saw a moratorium on land and ancestral domain claims. But in 2001, 197 “midnight” CALTs were issued to 757 claimants. In 2006, the CADT for Happy Hollow was issued. The Happy Hollow CADT was challenged because it excluded original Ibaloi inhabitants from their time immemorial ownership and replaced by non-Ibalois who are twentieth century migrants. According to Reyes, this happened through intricate processes and sometimes dubious genealogies.

CADT refers to the title formally recognizing possessory right of IPs over their ancestral domains. CALT, on the other hand, refers to a title formally recognizing ancestral rights. The NCIP is mandated to conduct survey and issue land titles. Prior to the passing of IPRA, DENR was given the authority to issue Certificate of Ancestral Land Claims (CALCs) and Certificate of Ancestral Domain Claims (CADC). With the implementation of IPRA in 1997, all CALCs and CADCs should have been converted into CALTs and CADTs under the NCIP.

Reyes cites the Happy Hollow Ancestral Domain as a glaring example of displacement

Reyes recommends the adoption of a pro-active process that demonstrates the viability of customary law and the role of knowledgeable elders in clearing claims. Paragraph A, Section 53 of IPRA says that “Allocation of lands within any ancestral domain to individual or indigenous corporate claimants shall be left to ICCs/IPs concerned to decide in accordance with customs and traditions.” Another provision – Paragraph F, Section 7 Part 1 Rule VIII of IPRA Implementing Rules and Regulations – states that “In case of conflicting claims, the NCIP shall refer the same to the Council of Elders/Leaders in the community for settlement.” In the meantime, Happy Hollow stands in the face of uncertainty and specter of rapid urbanization even as it keeps its Igorot identity.

Former NCIP Commissioner and now Chair of Derepa te Erumanen ne Menuvu (DEM) Governing Council Edtami Mansayagan stresses even further the need to mainstream indigenous peoples’ issues in the national agenda. In his presentation on the realities and prospects of IPs in the South at the round table in Makati, Mansayagan says that the indigenous peoples are still struggling to be recognized in their ancestral domain. The IPs are not viewed as co-equal stakeholders even in their own territory and ancestral lands. They are, oftentimes, victim of internal displacement. Worst, IPs who become internally displaced persons (IDPs) are not recorded. “If you are not recorded, you are not entitled to social services and therefore cannot be represented,” Mansayagan laments. Mansayagan states further that IPs are not only displaced as a result of armed conflict but also because of land grabbing.

There is also a need to look at the issues of the indigenous peoples from the context of the ongoing peace process between the government and the revolutionary fronts. Mansayagan says that the IP ancestral domain must be acknowledged within the framework of the peace process with the Bangsamoro and the CPP-NDF-NPA. Mansayagan has urged everybody to recognize the existence of IPs and their role in nation-building. Only then can the issues and concerns of indigenous peoples truly proceed in the national agenda. In Cotabato City, Organization of Teduray Lambagian Conference (OTLAC) Secretary General Deonato Mokudef has presented the IP position paper on the peace process between the government and the MILF. According to Mokudef, the position paper is a product of several consultations which OTLAC facilitated to capture the sentiments of IPs in the ARMM on the renewed peace negotiations. The position paper acknowledges the fresh mandate of the current administration under President Aquino. With the opening of the peace talks, “a portal of expectations” will also be opened, it says. The paper asserts for the recognition of the ancestral domain of the tribes covering an estimated land area of 289,268 hectares situated in Maguindanao, and portions of Sultan Kudarat Province and Cotabato City.

The position paper states further that the IPs uphold the principle of peaceful co-existence. They “recognize and support a broader territory for the Bangsamoro people as a nation for the sake of genuine and lasting peace development in Mindanao provided that the Bangsamoro shall recognize the Teduray, Lambangian, and Dulangan Manobo territory within the Bangsamoro Nation.” Side by side with their Muslim sisters and brothers, the IPs “want to have equal opportunities and representation in all levels of governance, from local to regional level.”

The legal landscape wherein the IPs can realize their well-being could have been better given the presence of IPRA. In the ARMM, however, IP sectors and civil society have repeatedly pointed out that the Regional Legislative Assembly (RLA) of the Autonomous Regional Government (ARG) has yet to enact an enabling law for the full recognition of indigenous peoples' rights as based on IPRA, the 1987 Constitution and international law.

Timuay Justice and Governance (TJG) of the Teduray and Lambangian tribes has noted the "low speed" and "hesitation" of some government agencies in the implementation of "certain provisions of IPRA that truly empower the indigenous peoples in the ARMM."

TJG outlines the issues and concerns that need actions and guidelines from the ARMM up to the national level. These include the immediate review and approval of the draft Implementing Rules and Regulations (IRR) of Muslim Mindanao Autonomy (MMA) Act 241 or the Tribal Peoples' Act in the ARMM, the implementation of DILG Memorandum Circular No. 2010-119 which provides for the mandatory representation of indigenous cultural communities/indigenous peoples in policy-making bodies and other local legislative councils, the authorization and support from the Regional Governor through DENR-ARMM for the 'deputization' of tribal forest guards for the protection of natural resources, support to community-based conflict management, and the implementation of Free, Prior and Informed Consent (FPIC) in projects affecting the IPs in the ARMM, among others.

NCIP Central Mindanao Commissioner Santos Unsad has told participants in the Cotabato forum that the possibility of devolving the functions of the NCIP to ARMM has been explored as early as 2003. This initiative has led to the Regional Legislative Assembly (RLA) passing a resolution in August 2003. A technical working group was formed to discuss and formulate an executive order to devolve the functions of NCIP to the ARMM. According to Unsad, the output of the technical working group was already submitted to Malacanang but no word has been heard ever since.

Commissioner Santos has lobbied for the devolution of NCIP in ARMM but his initiative has received 'cold shoulder' treatment from the other commissioners in the NCIP. This has saddened the participants from the Teduray, Lambangian and Dulangan-Manobo groups attending the forum in Cotabato City.

One Timuay (Tribal Chief) stood up to say he was hurting considering that the other commissioners that Santos was referring to were IPs themselves.

Teduray-Lambangian Women's Organization (TLWO) Secretary General Froilyn Mendoza is saddened that until now, the biggest issues of ancestral domain protection, development aggression and human rights have not been fully addressed. She advocates a proactive stance and prods her co-participants in the Cotabato forum to come up with doables to address 'deficits' in governance structures in addressing the concerns of indigenous peoples of the ARMM.

Development Consultants (DEVCON) Executive Director Raffy Nabre points out that the residual power and authority of national agencies such as the NCIP can be explored to move issues forward. Nabre adds that whatever the status of the implementation of IPRA in the autonomous region, at the end of the day, it is still NCIP that must resolve IP issues. As a good start, “Why not simplify the issue on ancestral domain according to evidence to determine where in ARMM is the IP ancestral domain?”

Office of Southern Cultural Communities (OSCC-ARMM) Director Fatima Kanakan, herself an advocate of the devolution of powers and functions of the NCIP to the ARMM to really empower IPs, notes that there is already a commission en banc resolution following the issuance of a resolution by the RLA in 2003. A technical working group was established to draft the executive order that would pave the way for NCIP devolution.



A timuay (tribal chieftain) reacts to the presentations in the forum in Cotabato City.

The RLA resolution was issued to proceed with the identification, delineation, and survey of ancestral domains of non-Moro IPs in the ARMM. Kanakan believes that the resolution remains valid despite after many years. She is hopeful that “we can move forward from this point.”

For all the criticisms being hurled at the Commission and the law that created it, NCIP Commissioner Zenaida Brigida Hamada-Pawid strongly believes that the IPRA law and the NCIP remain the “best chance” for IPs so that their issues and concerns will not disappear from the national agenda.

With an annual budget of half a billion pesos, the NCIP has still to perform its quasi-judicial function. The Commission is currently embroiled in a lot of litigation cases, most of which are cases filed in 2008 to 2010 that remain unresolved.

The challenges confronting the NCIP are, indeed, daunting. The ancestral domains of IPs are also battlegrounds of insurgencies. As such, IPs are caught in the crossfire. IPs are caught between many contradictions. They are told to preserve their patrimony but at the same time they are being told to share their lands for the development of natural resources.

Commissioner Hamada-Pawid admits that the NCIP has to regain the trust and confidence of the IPs. Second is the need to establish with other agencies the institutionalized pride in the NCIP. Third, laying the

solid foundation of the Commission is very essential. There is no need to duplicate the functions of other agencies particularly the Department of Social Welfare and Development (DSWD). The commissioner adds



The panelists in the Cotabato City forum: (From L-R) OSCC-ARMM Director Fatima Kanakan, OTLAC SecGen Deonato Mokudef, Development Anthropologist and IAG Consultant Elena Damaso and NCIP Commissioner Santos Unsad.

her voice to what has been pointed out many times that the NCIP develops its own databank so that it will not keep on relying on the statistics of other agencies. One step for this is to call for the general registration of all IPs in the country. The reactivation of the quasi-judicial function of NCIP is also necessary. In relation to this, ways must be identified on how to institutionalize customary law in IP governance.

ConCom Commissioner Ponciano Bennagen has stressed the important role of the Council of Elders in empowering IPs. Through the Council of Elders, IPs have developed a practice in resolving conflicts that need to be institutionalized in the current legal practice. They also have very rich concept of citizenship being citizens of their ancestral territory in which they have inalienable right. There is a need to go back to their

traditional concept to appreciate their current status. To empower the IPs and mainstream their issues in the national agenda, an IP constituency has to be built up. IP issues are already recognized by international law and the Philippines must pass a resolution to the UN Convention on the Indigenous People.

On the issue of peace and order and the role played by IPs, Retired Police Director Rodolfo Mendoza, Jr. underscores that IPs have an essential role they can effectively play in the promotion of peace and order. There is a need to mobilize IPs in promotion of peace and order because many crimes are committed in the IP domains. IPs are not only victims of traditional crimes but also of malpractices of multinational corporations (MNCs). Police Director Mendoza has raised the sad reality that the government is focused on the threats posed by New People's Army (NPA), Moro Islamic Liberation Front (MILF) and the Abu Sayyaf Group (ASG) but not on the threats posed by MNCs that victimize IPs in their own ancestral domain by exploiting their natural resources, particularly through the mining industry. Mendoza observes that some small-scale mining practices in IP areas are actually controlled by rich people in cahoots with MNCs. General Mendoza describes MNCs as exploiters of IPs.

Lieutenant General Raymundo Ferrer, Commander of the Western Command of the Armed Forces of the Philippines, says that there is no major security problem confronting IPs in Western Mindanao. However, in CARAGA region, there are IPs who have become victims of NPA activities. Thus, there were cases of arming the IPs by the military to protect them from communist rebels. There were also cases of communist rebels arming the IPs resulting to IPs waging war against fellow IPs. LtGen. Ferrer has clarified that NPAs are also located in IP areas thus their involvement in internal armed conflicts cannot be avoided. IPs have also their own *rido* or clan wars. There are also pro-government IPs and pro-NPA IPs.

Com. Bennagen has stressed the need to focus on policy matters. There is a need to go back to the precondition for legal pluralism in the Constitution. In the 1987 Constitution, there is the concept of autonomy within autonomy, which upholds the principle of legal pluralism. Implementing legal pluralism in the Philippines that concerns the IPs truly requires building capacity and capacity building must start now. The idea of IP mainstreaming is something that is good. But mainstreaming shall mean inclusion without assimilation. Sad to



The IP participants in the forum in Cotabato City.

say, IPRA has brokered the tradition of assimilation as in the case of CARAGA Region. There is, therefore, a need to broaden the notion of capacity building. IP desks in various departments of the government can be installed. This can also be applied to MNCs and NGOs. The NCIP can be re-arranged based on these configurations.

Elena Damaso says that the IPs have legitimate grievances that deserve attention from authorities. In the ARMM, IPs are found in conflict-affected areas. As such, their right to participate in the peace process must be recognized. The traditional governance systems and conflict resolution practices of IPs must be acknowledged and accredited. Aside from these long-standing issues, IPs are also increasingly being affected by the emerging concern on climate change. IPs in all eco-zones must be trained on climate change mitigation and local adaptation. In fact, IPs have a lot indigenous knowledge to share on many issues that fall within their ancestral domain.

The issues and concerns of the indigenous peoples in the ARMM and throughout other regions are issues and concerns of the Filipino people. They deserve space in the government agenda. The issues and grievances of the indigenous peoples must be heard and acted upon now if we are truly for genuine peace and development.

The views and opinions expressed in the policy paper belong to the writers. IAG as a platform for policy debates continues to publish articles and analyses from various authors to create more “tables” in our common search for genuine autonomy and governance.

Shaping Public Policy for Peace and Good Governance

The Institute for Autonomy and Governance (IAG) is an independent and non-partisan think tank founded in 2001 to generate ideas on making autonomy an effective vehicle for peace and development in the Southern Philippines. IAG is an institutional partner of the Konrad Adenauer Stiftung in the Philippines.

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