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HONORING MAMALO: TURNING A PARADOX INTO A PARADIGM SHIFT

Recognition of Non-Islamized Indigenous
Peoples' Rights in the ARMM



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A. THE DANCE OF HISTORICO-LEGAL PARADOX

It is 4:00 in the morning, a gong strikes on top of Tawantawan, Cotabato City's highest point. Slowly a couple of dozen figures dissociate themselves from the darkness and with outstretched arms they move, feet pulsating to the rhythm of thanksgiving that Land is Life. This annual tableau started 13 years ago when the Indigenous Peoples' Rights Act (IPRA) became state law. On that day, October 29, 1997, the concept of ancestral domain rights was recognized as the fundamental right of indigenous peoples in the Philippines. Native Title ceased to be regarded as legal fiction and became the operational term to claim traditional homelands by the country's 110 ethnic groups who were not colonized by Spain and America.

This is the cause for celebration of the Baglalan traditional leadership composed of the Timuay, Kefeduan, and Fintailan of the Teduray, Lambangian and Dulangan Manobo ethnic groups inhabiting the southwestern Cotabato-Sultan Kudarat (Daguma) ranges spanning Maguindanao and Sultan Kudarat Provinces. They are the descendants of Mamalo, a pre-Islamic ruler who together with his brother Tabunaway (the Magindanaon ancestor who converted to Islam), ruled the Pulangi delta and surrounding mountains until the arrival of Sharif Kabungsuwan circa 1462. At the mouth of the great river, the brothers agreed that the dominion of the hill country, referring to Tawantawan (presentday PC Hill) and beyond, would belong to Mamalo and his descendants. Tabunaway and his followers (the Dumatu social class) would inhabit the delta settlements and provide strong support to the Maguindanao Sultanate with the royal descendants of Sharif Kabungsuwan from his marriage with Fintailan Salabanon the brothers' princess sibling.

Mamalo's hereditary leadership system is practiced to this day. Evidence of this is the persistence of the Timuay form of governance among them. If there is any group that feels intensely the liberating impact of IPRA, it would be the Teduray, who continue to negotiate their participation in democratic governance and reenact history in the 21st century political arena known as the Autonomous Region in Muslim Mindanao. They are still in the margins of decision-making, having yet to fully exercise and enjoy the bundles of rights promised by the United Nations Conventions, the Constitution, IPRA and other landmark statutes. The Baglalan perform a ritual dance honoring Mamalo to turn the vagaries of the historical-legal paradox into a paradigm shift defining their survival as first peoples in the coastal and western highlands of South-Central Mindanao.

The focus of this paper is to assess the status of the IPs in the ARMM, particularly the Teduray-Lambangian struggle, to arrive at a durable solution that would mainstream their rights as part of the IPRA and ARMM constituencies, given the second decade of implementation of the IPRA and the third decade of operation of the Organic Act for the Autonomous Region in Muslim Mindanao. This paper adopts the usage of the OTLAC (Organization of Teduray-Lambangian Conference) referring to themselves and including the Dulangan Manobo, B'laan of Maguindanao, Higaonon Manobo in Lanao del Sur, and Badjao of Basilan, Tawi Tawi and Sulu, *as non-Islamized ethnic groups* within the scope of the ARMM.

Dance as a traditional performing art uses the rhythm of bodily movements to create an intelligible design, a motif embedded in the racial memory, recalling cycles of life, agriculture, and historical ties in a designated social space, oftentimes sacred, which might be perceived as mere empty space by the uninitiated. The accompanying music reflects the synchronicity of times past, present and future that beats according to the proper order of the lived worlds on earth, sky, water that exist in the psyche of the individual member and community of selves of the tribe. The dance honoring Mamalo far from being an ephemeral exercise of remembrance is a renewal of faith that the framers of IPRA intended the benefits and gains of the law, like the veritable sunrise would shine on everyone in the indigenous world, especially among the non-Islamized groups in the ARMM.

B. THE SITUATION: A SOCIO-LEGAL BLIND SPOT

The problem is that there is a blind spot in the socio-legal sense where the protection and promotion of rights of non-Islamized indigenous peoples in the ARMM are concerned. The situation renders the nearly half a million IP population, comprising 20% of the ARMM constituency (total of 2.5 Million) at a disadvantage and unequal before the law, specifically the landmark legislation, the Indigenous Peoples' Rights Act (IPRA) of 1997. The situation is ironical because the seat of the ARMM is located on a portion of the Teduray ancestral domain in Cotabato City, known as Datar Selongon.

To this day, the bundle of rights promised by IPRA, notably, rights to: ancestral domains/lands, cultural integrity, self-governance and empowerment, and, social justice and human rights, have not been fully enjoyed and exercised by the marginalized ethnic groups in the autonomous region. The problem stems from the absence of an enabling law that is supposed to be enacted by the ARMM Regional Legislative Assembly (ARLA) to render IPRA's applicability in the region. This state of inequality is illustrated in the case of the Teduray and Lambangian who have self-delineated 289,268 hectares of their homeland but are ineligible to obtain a certificate of ancestral domain title (CADT) because this power resides in the National Commission on Indigenous Peoples (NCIP). Under the law, it is the NCIP that is the competent authority to issue the CADT. Other instruments of empowerment such as Free and Prior Informed Consent (FPIC), and Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) are also facilitated by the Commission.

Previous to the 1997 enactment of IPRA, the office that looked after the welfare of IPs was the Office of Southern Cultural Communities (OSCC) in Visayas and Mindanao as well as the Office of Northern Cultural Communities (ONCC) in Luzon. IPRA merged these two offices, created a collegial body, the Commission composed of seven ethnographic commissioners, and formed 13 regional offices pursuant to the country's administrative regions with the exception of ARMM. The net result is that the only existing remnant of the old structure is the Office of Southern Cultural Communities-ARMM which was devolved in 1989 by Republic Act 6734, the first Organic Act. Thus, the recognition of IP rights in the present context of the ARMM is inchoate.

Still another law which was adopted by the ARMM is the Local Government Code of 1991 when the ARLA passed the regional version during the first five years of its existence. Both Codes uphold the right of

IPs to create tribal barangays which has not yet been realized while the ARMM has repeatedly redrawn the internal political boundaries of Maguindanao Province to accommodate influential political clans such as the Ampatuan and Sinsuat clans. These towns were also given commemorative names like Sharif Aguak, Datu Unsay, Datu Saudi, etc., derived from the family lineage, thus, causing recall of Teduray tribal toponyms into a fadeout.

One can imagine the consequences of the fragile socio-legal status of the IPs in the ARMM as the politico-administrative structure itself is flawed and can be a potential source of discrimination, unpeace, poverty and vulnerability of 20% of the population. 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, Tausug and Yakan, who belong to the power and economic elite. In Maguindanao, the downside is that the years of waiting for policy reform has created social displacement and loss of cultural integrity due to the government's anti-MILF insurgency campaign and the reduction of tribal territory to form the new towns ruled by the clans. However, rather than being immobilized by the stark social realities they are facing, the IPs in the ARMM have increased their resolve for affirmative action as seen in the efforts of the Teduray to revitalize their Timuay Justice and Governance systems, the Higaonon strides in agricultural productivity, and the Badjao achievements in managing their alternative learning systems

C. RIGHTS-BASED POLICY FRAMEWORK

The context of public policy with respect to the IPs in the ARMM indicates that there are three major interacting spheres of decision-making that impact on effective and accountable governance relevant to the pivotal issue of the genuine recognition of their right to self-determination. These three systems directly impact on the lives of indigenous non-Islamized population, cited by the ARMM Organic Act as "minorities" and "tribal peoples". The problem at hand is the operation of a patronage/spoils system that favors the Bangsamoro ruling elite that is supported by the central government anxious to establish a working sub-national autonomy in the conflicted areas of Mindanao. President Benigno Simeon Aquino III has articulated in his Social Contract that the key to peace in Mindanao is the settlement of the Moro insurgency. On the ground, a new alarm is raised because social disequilibrium from decades of neglect have spawned a new type of armed struggle in the non-Islamized homelands of IPs the ARMM, that of tribal insurgency.

To be sure, the IPs in the ARMM have participated and were actively consulted in the 10-year lobby that led to the enactment of the Indigenous Peoples' Rights Act from 1987-1997. The founding Organic Act (Republic Act 6734) that created the ARMM was passed in 1989 which anticipated the enactment of a law to uphold ancestral domain rights of IPs within its jurisdiction. There was no express provision as to the substance and shape of the government instrumentality that would recognize and implement these rights. When Republic Act 9054 amended the first organic Act in 2001 there was no clear provision on the NCIP devolution. It was only the Commission on Human Rights that was expressly devolved. The Baglalan, proceeded to work for the attainment of a rights-based policy framework bolstered no doubt by the advocacy in the international arena by the United Nations Decade of Indigenous Peoples (1994-2004).

While the IPRA lobby was being advanced by the Catholic Bishops' Conference of the Philippines, it was set into high gear through the Social Reform Agenda of the Ramos administration. By fortunate coincidence, the International Labor Organization embarked on a nationwide awareness campaign of ILO Convention 169 which widened the understanding of IP Rights Advocates on the international trends of the struggle for self-determination. The major issue that Teduray advocates raised then and now is whether or not they have the right to practice tribal autonomy within the autonomous region; if so, under what modality of governance?

The obvious answer to this impasse is in the formulation and implementation of a Rights-Based Policy Framework in an arena that speaks loudly of social inequity. Recent developments in this respect signal that with a robust political will, there is sufficient democratic space to craft a culture-sensitive political solution to this socio-legal blind spot.

In 2008, the ARMM Regional Legislative Assembly enacted Muslim Mindanao Act No. 241 which "reaffirms the policies" embodied in the 1987 Constitution, IPRA, Organic Act, and international treaties such as ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples. There are some advocates who believe that MMA 241 needs a set of Implementing Rules and Regulations to become operational. However, there are a few lobbyists who lament over the fact that the carefully worded regional law did not contain tacit provisions for the delineation and titling of ancestral domains. The single reference to ancestral domains is found in:

"Section 3. Declaration of Policy.-xxx

5. To protect the rights of the ICCs/IPs/TPs to their ancestral domain to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain."

Whether or not this provision would be adequate to address the policy gap, the law does not specifically mandate the creation of an NCIP-ARMM or the transformation of the OSCC as the implementer of MMA 241 and other right-based policies. The ARLA and other advocates now look to the formulation of the Regional Administrative Code as the venue to realize the much-needed reform perforce the Organic Act.

The situation could be analyzed from another perspective – that of the interface of three legal systems to ensure that the four basic rights, along with the major responsibilities of the IPs in the ARMM, can be invoked, exercised, and enjoyed according to this categorization:

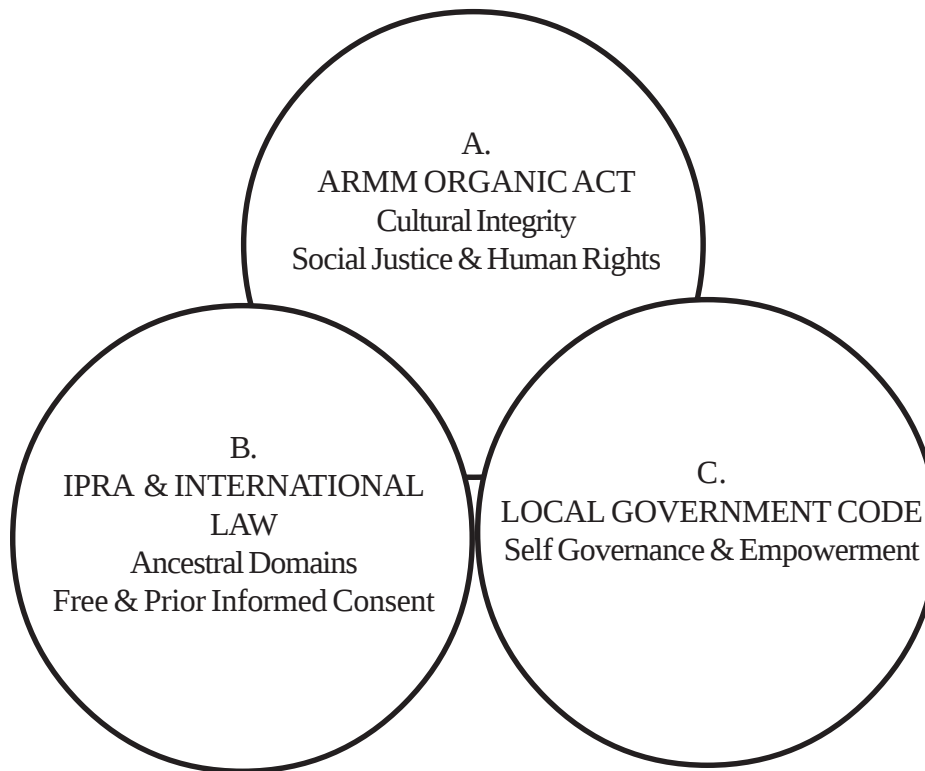
INTERACTIVE LEGAL SYSTEMS	GROUP OF RIGHTS TO BE ENJOYED BY IPS IN THE ARMM
ARMM Organic Act and Muslim Mindanao Act 241	• Cultural Integrity

	• Social Justice and Human Rights including Basic Social Services • Devolution of Commission on Human Rights (per RA 9054)
IPRA thru MOU and NCIP en Banc Resolution 119 International Conventions on IP Rights World Bank and Asian Development Bank Social Safeguards	• Ancestral Domains delineation and titling (CADT/CALT) • Devolution of NCIP-ARMM (transformation of OSCC, transfer of jurisdiction of Basilan NCIP Provincial Office from NCIP Region IX to OSCC/NCIP-ARMM) • Free and Prior Informed Consent (FPIC) • Prior Informed Consent
Local Government Code thru the ARMM Regional Government Code DILG Administrative Order 119 s. 2010	• Self-Governance, Empowerment/ People's Participation • Creation of tribal barangays and recognition of tribal justice system based on customary law • Mandatory Representation of ICCs/IPs in Policy Making Bodies and other Legislative Councils • Accreditation of Tribal Councils • Formation of Consultative Bodies per IPRA

Each of these laws has a mandate for the implementation of social safeguards the results of which can be made measurable using the RBAP framework. For heuristic purposes, the four basic IP rights, including the exercise of the right to Free and Prior Informed Consent may be grouped according to how the laws interact and reinforce this policy framework. There is an overlap in the mandates and consequently, in the implementation of these laws as these operate in the same social space within the autonomous governance.

This diagram shows the interface of the tri-systems where the non-Islamized indigenous cultural communities may be able to attain peace using the RBAP framework in their exercise of self-determination. The ARMM Organic Act (Republic Act 9054) occupies a central position because it is the modality of governance that State law has provided to govern the culturally diverse communities in the five provinces of Maguindanao, Lanao del Sur, Sulu, Tawi Tawi, and Basilan.

A. RBA-RELATED LAWS AND ISSUANCES



The rights-based approach for the development of indigenous peoples stands on solid grounds. There is no lack of legal basis to establish a policy environment that would lead towards a timely and lasting solution to remove structural discrimination in this area of public policy. These laws would include the following:

1.0 International Law: (United Nations Conventions)

1.1 ILO Convention 169 (September 1991)

- To decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible over their economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

1.2 UN Declaration on the Rights of Indigenous Peoples (UNDRIP, September 2007)

- Articles 1–2, and 5 proclaim the rights of indigenous peoples to equality, freedom from adverse discrimination and nationality.

- Article 3 provides that “Indigenous peoples have the right of self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development.”
- Article 4 recognizes the right of indigenous peoples to maintain and develop their distinct characteristics and legal systems, while participating fully in the life of the State.

2.0 National Laws and Issuances:

2.1 The Philippine Constitution of 1987:

- upholds the primacy of customary law
- recognizes the rights of IPs to their ancestral domains and their power of dominion over their lands and resources
- provides that the rights of IPs to natural resources pertaining to their lands shall be especially safeguarded, notably the rights of IPs to participate in the use, management, and conservation of natural resources
- recognizes and promotes indigenous learning systems

2.2 RA 7160, or the Local Government Code of 1991:

- IPs have the option to establish tribal barangays regardless of the population. (IPRA elaborates further, that they should be residing in “contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces, or cities where they do not constitute the majority of the population”

2.2.1 DILG Memorandum Circular 119, Series of 2010

- Implements the selection process for the mandatory representatives of ICCs to participate in policy-making bodies and other local legislative councils as intended by IPRA and IPRA-IRR

2.3 Republic Act (RA) 8371, or the Indigenous Peoples Rights Act (IPRA) of 1997:

- Defines Indigenous Peoples
- Enumerates the four basic bundles of rights of IPs: Right to ancestral domains and lands; Right to self-governance and empowerment; Right to social justice and human rights; and, Right to cultural integrity.

2.3.1 IPRA created the National Commission on Indigenous Peoples (NCIP)

- as the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of IPs and the recognition of their ancestral domains as well as their rights thereto (Chapter 7, Section 38). The procedures for delineation of ancestral domains are given in the IPRA-IRR.

- further, NCIP shall protect and promote the interest and wellbeing of the IPs with due regard to their beliefs, customs, traditions and institutions

2.3.2 With respect to NCIP-ARMM relations, the IPRA Implementing Rules and Regulations (IRR-1998) specifically states that:

- **Section 3. Office on Policy, Planning and Research.** The Office on Policy, Planning and Research shall:
 - g) For purposes of policy coordination, the Commission shall create a **Policy Desk** to serve as the organic linkage of the NCIP to the Office of the Regional Governor and Office of the Speaker of the Regional Legislative Assembly. This desk shall provide technical assistance to the ARMM on such policy matters as;
 - (1) Pertaining to the exercise of residual powers of the national government affecting the ICCs/IPs, such as, but not limited to: the protection of community intellectual rights; nationwide ethnographic research projects; census of ICCs/IPs, and the like,
 - (2) Formulation of policies, plans, and programs transcending the geographical boundaries of the ARMM and contiguous ethnographic regions, and
 - (3) Other policy issues as may be the subject of Memorandum of Agreement with the Office of the Regional Governor and the Office of the Speaker of the Regional Legislative Assembly;

2.3.3 Memorandum of Understanding between the NCIP and ARMM, 30 October 2003

- This MOU recognizes the partnership of the two agencies to set up the mechanism to ensure the application of IPRA to ICCs in ARMM until such time that ARMM shall have formulated its own IPRA as mandated by the Organic Act of ARMM. In order to immediately address the concern of IPs within ARMM, the NCIP and ARMM shall establish the mechanisms through the instrumentality of the OSCC. Therefore IPs in ARMM are within the purview of the OSCC, closely working with NCIP.

2.3.4 Commission En Banc Resolution No. 24, Series of 2004:

- Endorses to then President Arroyo the joint technical working group draft executive order creating the NCIP-ARMM, amending E.O. 462, series of 1991 and for other purposes.

2.3.5 Commission En Banc Resolution No. 119, Series of 2005

- Approves the implementation of ARMM Regional Legislative Assembly Resolution No. 269 for delineation

of ancestral domain/ancestral land claims of non-Moro IPs in the ARMM.

2.3.6 Other Relevant NCIP Issuances: As a quasi-legislative body, NCIP Commission en Banc has issued the following administrative orders:

- Administrative Order No. 2, Series of 2000: Revised Guidelines For The Conversion Of Certificate Of Ancestral Domain/Land Claims To Certificate Of Ancestral Domain/Land Titles Delineated Prior To R.A. 8371
- Administrative Order No. 1, Series of 2004: Guidelines On The Formulation Of The Ancestral Domain Sustainable Development And Protection Plan (ADSDPP)
- Administrative Order No. 1, Series of 2006: or the Free, Prior and Informed Consent (FPIC) Guidelines of 2006, enforcing procedures in conducting field-based investigation to secure a proponent's certification precondition, likewise providing for the validation of projects solicited/initiated by the IPs. (this AO replaced the FPIC Guidelines of 2002).
- Administrative Order No. 1, series of 2009 : Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils

2.4 R.A. 9054, or the Organic Act for the Autonomous Region in Muslim Mindanao (Amending R.A. 6734, March 31, 2001)

- Affirms the mutual respect for and protection of the distinct beliefs, customs, and traditions among its inhabitants in the spirit of unity in diversity and peaceful co-existence
- protects the ancestral domains/lands, defines "indigenous cultural community" as "Filipino citizens residing in the Autonomous Region who are Tribal peoples as well as Bangsa Moro people regarded as indigenous on account of their descent from the populations that inhabited the country or a distinct geographical area at the time of conquest or colonization and who, irrespective of their legal status, retain some or all of their own socio-economic, cultural and political institutions"
- Provides for the devolution of national government agencies particularly concerned with the delivery of basic services and the creation of a National Oversight Committee to monitor and evaluate the devolution of these agencies including the Commission of Human Rights.

3.0 Regional/ Sub-National Laws and Issuances:

3.1 ARLA (ARMM Regional Legislative Assembly) Resolution No. 269, dated August 15, 2003

- Approves IPRA as the legal framework to recognize the rights of the Indigenous Cultural Minority in the ARMM

3.2 Muslim Mindanao Act No. 241, Tribal Peoples Rights Act, passed by the ARLA on May 26, 2008

- An Act to Recognize, Respect, Protect and Promote the Rights, Governance and Justice Systems, and Customary Laws of the Indigenous Peoples/Tribal Peoples of the ARMM

3.3 Between 2002-2006, Various Muslim Mindanao Acts created new municipalities carved out from Teduray ancestral homelands, such as the Mt. Firis sacred mountain complex into the municipalities of Datu Unsay, Datu Saudi, Guindulugan, Sharif Aguak, and Talayan which were inevitably ruled by Maguindanaon Mayors. Recent regional laws also removed 12 coastal barangays of Upi to form the Datu Blah Sinsuat municipality, and renamed the Teduray ancestral domain portions of Dinaig town into the Datu Odin Sinsuat municipality.

B. UNFINISHED BUSINESS: IMPLEMENTATION OF IPRA IN THE ARMM

Efforts to implement IPRA for the well-being of non-Islamized IPs in the ARMM begun in 2003 when the Third NCIP Commission led by Chairman Reuben Dasay Lingating initiated a dialogue with then ARMM Regional Governor Parouk Hussin for that objective. The Commission was under the supervision of the Office of the Presidential Assistant on Indigenous Peoples' Affairs (OPAIPA) which created a Presidential Task Force (per Administrative Order No. 63) to resolve cases of indigenous communities whose ancestral domains were at risk due to encroachment, social conflict and unpeace. One of the cases dealt with the problematic application of IPRA in the ARMM. Through this initiative, the NCIP committed to enter into a Memorandum of Understanding with ARMM through the OSCC to draft an Executive Order to establish a mechanism for devolution.

A joint technical working group composed of technical staff of the OSCC and the NCIP recommended that the OSCC be devolved to the ARMM and be renamed as NCIP-ARMM. The draft Executive Order called for the transfer of personnel, budget, equipment, assets and liabilities, and properties of OSCC to the new office. It also stipulated the turnover of the NCIP office in Basilan (except Isabela City) to OSCC and the expansion of the latter's area of coverage to the provinces of Maguindanao, Lanao del Sur, Sulu, Tawi Tawi, and Basilan plus the city of Marawi. This was submitted to former President Gloria Macapagal-Arroyo but was not acted upon.

There were two tracks taken by the Third and Fourth Commissions to render IPRA applicable in the ARMM: 1) devolution of NCIP powers and functions to the ARMM through the transformation of the OSCC into an NCIP regional office; and, 2) delineation and titling of the "unified Teduray-Lambangian-Dulangan Ancestral Domain" in Maguindanao Province. As shown in the previous section, the NCIP Leadership from 2003 to 2005 pushed for the implementation of the IPRA in the ARMM through a series of executive fiat. From 2003 to 2006, former Central Mindanao Commissioner Jannette Cansing Serrano, attempted to advance the rights-based policy by proposing to process the CADTs of the IPs in the ARMM as well as CADTs of Islamized (Bangsamoro) IPs outside the ARMM, notably of the Maguindanaon in Central Mindanao and Zamboanga del Sur, and the Maranao in Lanao del Norte.

It was about the same time that ARMM sought a capacity building program from the Asian Development Bank to enable the autonomous government to accomplish the devolution of national offices. Former ARMM

Executive Secretary Nabil Tan, revealed in 2003 the state of the delivery system of autonomy and governance to the donor community in appealing for funds for capacity building:

“Although the ARMM remains an integral part of the Philippines, and the President exercises supervision over the regional governor, RA 6734 (1989), as amended by RA 9054 (2000), provides the basis for autonomy and governance in the region giving wide-ranging powers and functions to the ARMM regional government. These include its own executive, legislative, and judicial powers to impose and collect certain taxes and to exercise powers for the proper governance and development of the ARMM. In line with this, the ARMM government enacted a regional local government code (1993) to further define and enhance autonomy and governance within the region, particularly by local government units. Neither of these founding laws is well understood by LGU officials or citizens, nor fully implemented. For example, service delivery responsibilities have not been fully devolved and powers and functions remain vested in the regional government. The local government code has not been updated to reflect RA 9054, nor is it widely implemented, with most LGUs still using the national Local Government Code of 1991. One reason cited for the incomplete implementation of the legal framework is the inexperience of officials in both the regional government and the Regional Legislative Assembly (RLA) in translating the framework into policies and enabling regional legislation. The ARMM regional government is constrained in implementing its mandates under these laws by insufficient financial resources, weak institutions and processes, and limited human resource capacity.”

How can devolution be set into motion in a situation where the apparatus of public policy is not in place? In a recent lecture forum on at the University of the Philippines-Manila, DILG Secretary Jesse Robredo, the oversight of the ARMM, defined governance as simply the “relationship between the governed and those who govern” (February 9, 2011, Lecture on Governance and Accountability). Applying this adage to the case at hand would be like blaming the victim of a battered relationship rather than the perpetrator. What kind of constituency is being developed in the ARMM when the goal of responsible governance is obscured making nugatory the principle that “those who have less in life should have more in law”? Devolution strategies have to transcend institutional reform to evolve a rights-based policy framework.

A leading member of the Indigenous Civil Society, Froilyn Bandara Mendoza observes that tokenism is still apparent in the treatment of the ARMM of indigenous leadership. This could be traced from a lack of vision and purpose since the ARMM considers the role of a deputy governor for IPs as a political honorific rather than a vehicle for social empowerment:

“Yung nag-iisang position na deputy gov for IP ay para lang masabi na represented yung katutubo nagiging bunga pa nga ito minsan ng pagkahati hati din ng mga tribo wala namang nagagawa hindi nga nakaupo sa mga cabinet meeting so paano pa niya dadalhin young boses ng mga katutubo, o di kaya katutubo naman siya pero hirap naman siyang i-articulate yung isyu ng katutubo dahil malakas lang siya sa kung sino mang appointing authority na influential na nag-appoint sa kanya kaya nalukluk siya diyan dapat siguro makagawa ng mekanismo ang mga katutubo kung sino ba talaga ang maaring uupo as dep gov I-define yung kanyang job description at kakayahan dapat siyempre may natapos na sa pag-aaral

dahil mahirap din makilahok minsan kapag problematic yung ating competency o kakayan dahil pumapasok din tayo sa modernong pamamahala di tulad noong unang panahon na oral pa lahat..." (The only position [given to IPs] that of deputy governor is just lip service to show that there is an IP [official in the ARMM], this even creates division within the tribe because [the appointee] cannot even sit in the cabinet meetings, so how can the deputy governor carry the voice of the IPs or articulate on the IP issues when he/she is just there because he/she was placed there with the influence of the appointing authority. Maybe what is needed is a mechanism among the IPs to choose who should sit down as deputy governor, define the job description and the qualifications, it is a must that he/she should be educated, a college graduate because sometimes it is difficult to participate if the competency is problematic [inadequate] as we join or enter modern governance unlike before when everything was just oral [tradition]...Froilyn Mendoza in MindaNews comment on the postponement of ARMM elections,)

The challenge of devolution is both structural and substantial as can be gleaned from a comparison of the rights-based delivery systems. On one hand, this comparative matrix shows that the relationships of the structures of governance are asymmetrical and subsequently intractable where the objective is to build an accountable and inclusive autonomy. On the other hand, relationship between NCIP and ARMM may be redesigned as a complementary and reciprocal exchange of expertise, technology, information and services. Given the uneven terrain of public policy to promote the best interest of IPs in the ARMM, there is a danger that less than a systemic approach may lead to their further minoritization as communities at risk of being assimilated to the dominant Islamized societies. This was a major finding of an ADB study on the implementation of IPRA in Mindanao:

DELIVERY SYSTEMS OF RB POLICY FOR IPs IN THE ARMM	NCIP	OSCC	ARMM		
			EXECUTIVE	LEGISLATIVE	JUDICIARY
Legal basis of government institutions with bad framework	R.A. 8371 of 1997	Executive Order 462 of 1991; Muslim Mindanao Act 241 of 2008	R.A. 6734 of 1989 amended by R.A. 9054 of 2001 Muslim Mindanao Act 241 of 2008	R.A. 6734 of 1989 amended by R.A. 9054 of 2001 Muslim Mindanao Act 241 of 2008	R.A. 6734 of 1989 amended by R.A. 9054 of 2001 Muslim Mindanao Act 241 of 2008
Structure	Commission composed of 7 Ethnographic Commissioners assisted by a central office with 13 regional offices having technical, administrative and field offices	NCIP Precursor, devolved thru R.A. 6734 Set-up is a Regional Office not organically linked to NCIP	Office of Deputy Governor for IPs	Regional Legislative Assembly	Tribal Courts/ Sharia Courts

DELIVERY SYSTEMS OF RB POLICY FOR IPs IN THE ARMM	NCIP	OSCC	ARMM		
			EXECUTIVE	LEGISLATIVE	JUDICIARY
Powers and functions	Commission en Banc with Quasi Judicial, Quasi-Legislative, Executive/ Administrative	Executive/ Administrative with Plantilla positions protected by the Civil Service	Ministerial/ Political Office with co-terminous positions	Enacts Muslim Mindanao Acts and Resolutions applicable to ARMM	Currently Not Operational
Head	Chairperson / Regional Director	Regional Director	Regional Governor	Speaker of the Assembly	Currently Not Operational
Recognition of ancestral domains	• Delineation and Titling of Ancestral Domains/Lands • Issuance of CADT/ CALT • Facilitation of Ancestral Domains Sustainable Development and Protection Plan (ADSDPP)	• Requisition and monitoring of joint undertaking with NCIP-ADO on titling of ADs/ALs • Technical Assistance to community for Social Preparation and Preparation of Claim Book • Technical assistance to community for Formulation of ADSDPP	No express function	Authorization of Requisition for CADT delineation thru Memorandum of Understanding between ARMM and NCIP	Currently No Jurisdiction
Exercise of free and prior informed consent	• Conduct of Field-based investigation in communities • Processing of Certificate Precondition for Development Programs and Projects	• Monitoring function of Public Participation/ Consultations on social safeguards of development projects • Coordination with Local Government Unit and Tribal Councils	No express function	Acknowledgement of FPIC Process Concurrence with Public Participation/ consultations on Development Projects for IPs	Currently No Jurisdiction

In the Philippines, despite a fairly strong legal and institutional framework, there is still insufficient clarity as to which ethnic groups will be covered by the provisions of the IPRA. Full clarity will be needed if the Government carries out its pledge to accelerate the issuance of ancestral domain titles between 2002 and 2004. The issues are particularly complex in Mindanao, where the distinction between indigenous and Muslim identity is not always clear. Muslim groups might henceforth choose to identify themselves as indigenous in order to pursue ancestral domain claims. (Roger Plant, "Indigenous Peoples/Ethnic Minorities and Poverty Reduction Regional Report," Asian Development Bank 2002)

To achieve an optimal level of reciprocity and complementation, there is a need to amend the Organic Act to define and specify the structural and substantial features of an RBAP framework for the legal recognition of IP rights in the ARMM.

A. IMPACT ON SOCIAL COHESION

The ethno-history of the Teduray, Lambangian and Dulangan Manobo needs to be written from the point of view of the culture bearers. The same is true in terms of their worldview and experience in autonomy and governance. What has been shared so far from their engagement in the parliamentary struggle for the recognition of their basic rights at the sub-national level indicate that the “ARMM tribal peoples” would still choose a peaceful solution to the socio-legal impasse. It may just be described as a policy gap borne out of years of governmental neglect and weak governance. Ultimately, it is the indigenous constituency that pays the steep price of this lack of vision and purpose.

The cultural system has integrated peacemaking and peacebuilding in the conduct of the struggle for self-determination and identity. What transpired in the 15th century was an agreement for peaceful co-existence, a Tampuda hu Balagen, a major Peace Pact that enabled the establishment of Islamic beliefs and lifeways in Mindanao while allowing the persistence of indigenous culture and customary law. The Baglalan are still in the core of the struggle but there are social divisions that occur as they campaign for rights-based governance.

Social cohesion was exhibited when the traditional leaders, inspired by IPRA, converged in 2002 to affirm and ratify the validity of customary law to be implemented by the Timuay Justice and Governance (TJG) movement. Initially, the leaders were united in the revival of the Kitab Keadatan (tribal customary laws such as the ukit, tegudon and dowoy). However, this convergence became fragile and factionalism emerged with a dispute over advocacy methods, distribution of resources, and political partisanship, even as the goals remain in common. A few leaders sought appointive positions in both ARMM and NCIP to work, so to speak, within the power structure, but the issues related to devolution, security of land tenure, self-governance and social empowerment have barely progressed since 2006.

It would take a synergy of formal, informal and traditional socio-political forces to address the socio-legal blind spot regarding the non-implementation of a rights-based policy for the recognition of IP rights in ARMM. Earlier, this paper advanced that the interface of substantial provisions of the Organic Act, Local Government Code and IPRA could be harnessed to complete this unfinished business. There are pathways to peaceful solutions that for now must be stated in the form of questions to explore alternatives. For instance, can the *remfing fenuwo* (village cluster) be converted into a tribal barangay? Can the ADSDPP of the fusaka inged (ancestral domain) be done first while arrangements for requisition of NCIP-ADO delineation of the territorial boundaries are still subject to negotiation? Can the Teduray, Lambangian and Dulangan Manobo be consulted and their rights respected as arteries of infrastructure cut through their sacred grounds along the Upi-Lebak highway?

Can there be a moratorium to the creation of new towns with non-traditional names that undermine the operation of Timuay Justice and Governance? Can there be a review of conflicting policies regarding the use of water and forest resources in the watershed of Mt. Fakal? When can the displaced communities of Mt. Firis return to their farms and end their lives as *bakwit*? How long can the tribes be kept away by military campaigns from performing rites on sacred mountains in the Cotabato-Sultan Kudarat (Daguma) Ranges? How many tribal youth have to take up arms and die to correct historical injustice as official policy has pronounced non-Islamized IPs as having minority, therefore vulnerable, status in the ARMM?

These questions require indigenous societies to persist in the struggle for self determination with strong social cohesion to maintain their cultural integrity. Yes, it is still right for the Baglalan to dance and pay homage to Apo Mamalo on the IPRA anniversary. Truly, in this part of Mindanao peacemaking has a history, a worldview, an identity, and is a reality, a value.

CONCLUSION AND RECOMMENDATIONS:

The legal recognition of indigenous peoples' rights in the ARMM is both a goal and a process. The process itself is equally important as the goal because it should empower the people to be able to handle the nuances of mainstreaming the rights advocacy into a functional autonomy. These recommendations are geared at institutional and capacity enhancement to overcome the policy gaps and the time lag that elapsed the past two decades when the ARMM held the promise as the socio-political innovation to end discrimination in a culturally diverse setting.

- 1.0 Obtain legal recognition of the rights of IPs in the ARMM to be at par with IPs in other ethnographic regions covered by the IPRA; to enable the IPs in the ARMM to move from a status of inequality to equal protection before the law in the context of international and Philippine laws.
- 2.0 Capacitate the IPs in ARMM to a level of pro-active readiness to exercise their rights related to their entitlements and responsibilities as provided by the Constitution and statutory law, and other government policies/programs using the primacy of customary law and principles of self-governance.
- 3.0 Enhance skills for the research and documentation of their cultural integrity leading to self delineation of their ancestral domains/lands, recording of ethnographies and indigenous knowledge, and revitalization of their social organizations.
- 4.0 Ensure the substantial and mandatory participation of Indigenous Women in the abovementioned legal recognition processes, community organizing, entrepreneurial skills training, and formal accreditation of their indigenous roles, whenever applicable.
- 5.0 Learn and apply Environmental Resource Accounting principles for incorporation in the Barangay, Municipal, Provincial and Regional Development Plans; likewise sharpen skills on quality assurance standards to monitor clean air and safe water

6.0 Formulate a research-based Ancestral Domain Sustainable Development and Protection Plan (ADS DPP) involving all sectors pursuant to a rights-based approach to development framework (RBAD), including an FPIC Protocol.

7.0 Select Pilot Areas for full-blown implementation of rights-based policy and development.

STRATEGIC PROGRAM FOR IPS IN THE ARMM TO BE UNDERTAKEN BY THE INSTITUTE FOR AUTONOMY AND GOVERNANCE

AFFIRMATION OF CULTURAL INTEGRITY: 1.1 BASELINE SETTING	▪ Conduct Participatory Rapid Assessment: demographic survey, documentary analysis, SWOT analysis, FGD, key informant interviews, etc; Information gathered systematically to formulate OVIs (objectively verifiable indicators), and benchmarks. ▪ Design of a culture-sensitive data base on existing population, ancestral domains/lands and indigenous knowledge systems and practices(IKSPs) ▪ Setting up of Linkages with Local Authorities and NSAs
1.2 CULTURAL MAPPING:	▪ Conduct results-oriented community-based workshops/learning sessions on research and documentation of genealogies, ethnographic evidence, community mapping for self-delineation of ancestral domains (fusaka); ▪ Produce self-written field ethnographies on adat, collection of customary laws and other determinants of cultural integrity, social cohesion and survival ▪ Translations of ethnographies, ancestral domain claim books, adat ▪ Establish an indigenous knowledge network to promote IP education in the ARMM.
STRENGTHEN IP GOVERNANCE AND USE OF CUSTOMARY LAW:	▪ Conduct results-oriented community-based workshops/learning sessions on research and documentation of genealogies, ethnographic evidence, community mapping for self-delineation of ancestral domains (fusaka); ▪ Produce self-written field ethnographies on adat, collection of customary laws and other determinants of cultural integrity, social cohesion and survival ▪ Translations of ethnographies, ancestral domain claim books, adat ▪ Establish an indigenous knowledge network to promote IP education in the ARMM.

STRENGTHEN IP GOVERNANCE AND USE OF CUSTOMARY LAW:	▪ Collect Jurisprudence on decided cases using customary law. ▪ Train IPs on the systems and procedures of the judicial processes (ADR), the tribal barangay justice system, human rights documentation, and other para-legal training ▪ Support the accreditation of IPs in the ARMM to serve in judicial processes/systems, social services, environmental protection, local development initiatives and bodies, human rights action centers, and development of indigenous peoples' organizations. ▪ Consensus building for the Peace Process on the socio-legal status of IPs in the ARMM ▪ Incorporate IP Development priorities in the barangay development fund and in the allocation/management of the LGU internal revenue allotment (IRA)
ADVOCACY FOR LEGAL RECOGNITION OF IP RIGHTS IN ARMM AND ADMINISTRATIVE REFORM	▪ Construct Empowerment and Sustainable Development (ESDEV) Indicators adhering to MDG, Constitution, international law and IPRA in the form of an ESDEV Report Card to be incorporated in the ARMM development agenda. ▪ Enhanced capability of IP ancestral domain communities to lobby for the passage of the regional law or Indigenous Peoples' Rights Act applicable to ARMM. ▪ Conversion/creation of Tribal barangays for IPs in the ARMM. ▪ Increase awareness of the right to Free and Prior Informed Consent to apply to all public and private development interventions/initiatives. ▪ Increase efforts at administrative reform and establish linkages with the NCIP/NGAs.
SUSTAINABILITY AND ACCCOUNTABILITY:	▪ Formulate a rights-based, wholistic framework for the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), including Climate Change. ▪ Set up a Re-granting facility for community foundations to finance priorities contained in the ADSDPP such as small infrastructure, food production, environmental protection, organic farming, micro-finance, organization development, accountability and transparency systems.

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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.

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