



ARMM ROUNDTABLE SERIES

No. 7 March 4, 2004



The ARMM Roundtable Series brings together academics and leaders in the Autonomous Region in Muslim Mindanao to a discussion and analysis of critical issues in the autonomous region. This paper builds on the output of the discussions. Views expressed in this paper do not necessarily reflect those of Notre Dame University and the Konrad Adenauer-Stiftung.

Resource persons were Assemblyman Tommy Ala and Timuay Gumbalia T. Gunki. This paper was written by Ester O. Sevilla and Estrella Cantallopez. The discussion was facilitated by Dean Benedicto R. Bacani, Executive Director of the Center for Autonomy and Governance. Lay-out by Grace S. delos Reyes

The holding of this roundtable series is made possible through the grant of the Konrad-Adenauer-Stiftung. The foundation is in 3rd Floor, ALPAP I Building, 140 Leviste Street, Salcedo Village, Makati City, Metro Manila, Philippines. Tel. (63)(2)894-3427.

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CONTENTS

- 2 The Indigenous Peoples of the ARMM
- 3 State of the Customary and Tribal Laws of the IPs of the ARMM
- 3 The Relationship between the Tribal Law and the Shariah Law
- 4 Initiatives to Codify Customary Laws
- 5 Issues Raised Regarding the Codification of Tribal Laws
- 5 Initial Steps in the Codification Process
- 5 Conclusion

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CODIFYING THE CUSTOMARY AND TRIBAL LAWS OF INDIGENOUS PEOPLES IN THE ARMM

INTRODUCTION

The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (IPs), Rodolfo Stavenhagen, reported that indigenous organizations that he conferred with during his December 2002 visits to different places in the Philippines, Mindanao included, complained that legal practitioners and judges are usually not inclined to refer to indigenous customary laws, traditions, and practices in cases of conflicting interests regarding claims within ancestral territories. Stavenhagen said that this is perhaps because the national legal system has not contemplated their incorporation. But he welcomed the initiative of the Philippine Supreme Court to train judges on the rights of IPs as recognized in the Indigenous Peoples Rights Act (IPRA) of 1997, and encouraged the Philippine judiciary to adequately address the issue of indigenous customary law in the application and interpretation of law. “Hopefully,” Stavenhagen reported, “this could bring a shift in the mindset of legal practitioners, including judges and lawyers, in such a way that they recognize indigenous customary law as part of the national legal system.” (IP Report-UNCHR, March 2003),

The IPRA, however, is not the only document that upholds the promotion of customary laws. The 1987 Constitution itself has two provisions directly beneficial to tribal communities all over the country. Article XII, Section 5 states:

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Article XIV (Education; Science and Technology; Arts, Culture, and Sports), Section 17 states:

The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

For those groups which are included in the autonomous region in Muslim Mindanao (ARMM), the relevant provisions are to be found in the *Organic Act for the Autonomous Region in Muslim Mindanao* (Republic Act No. 6734). This Act carries one full article (Article IX) on Ancestral Domain. Tribal customary laws, too, shall at last be codified and become part of the law of the land (Rodil, in Turner, 1992).

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The roundtable discussion on “Codifying the Customary and Tribal Laws of Indigenous Peoples in the ARMM” sought to find answers to the following questions:

1. Who are considered the Indigenous Peoples of the ARMM?
2. What is the state of the tribal and customary laws of these IPs?
3. How do we proceed in codifying these tribal and customary laws?
4. What should be the form and substance of this Code?
5. How will this Code relate to the Shariah Law and our national civil law?

The session was held on March 4, 2004, at the College of Law, Notre Dame University. Guests were Hon. Tommy Ala of the Regional Legislative Assembly (RLA) and Deputy Governor Gumbalia T. Gunsí. Among the participants were Director Victoria Kanakan of the Office of Southern Cultural Communities (OSCC-ARMM), and representatives of the Timuway Justice and Governance (TJG), NDU Peace Center, BPI-ARMM, DepEd-ARMM, and other IP organizations.

The Center for Autonomy and Governance is grateful to the Konrad-Adenauer-Stiftung for funding the conduct of this roundtable session.

THE INDIGENOUS PEOPLES OF THE ARMM

There are only two groups of indigenous peoples within the ARMM. These are the Teduray and the Lambangian. The latter is known to be a cross between the Teduray and the Dulangan Manobo. Stuart Schlegel, an American anthropologist who has written extensively about the Teduray, describes them to be a hill people who live in the northern part of the Cotabato Cordillera, a range of mountains which curves along the southwestern coast of Mindanao, facing the Celebes Sea, in the province of Maguindanao. They are referred to as the “traditional Teduray” (those that live the old way) and the “peasant Teduray” (those who have had close contact with Christian and Muslim lowland peasants).

Based on a recent survey conducted by the Indigenous Peoples' Ministry of Cotabato Archdiocese, The Teduray population in ARMM are as follows: North Upi – 12,164; South Upi – 37,697; and Datu Odin Sinsuat- 4,100 (Ra, 2000).

STATE OF THE CUSTOMARY AND TRIBAL LAWS OF THE IPS OF THE ARMM

The Teduray society is governed and kept together by *adat* or customary law, and by an indigenous legal and justice system designed to uphold the *adat*. The legal and moral authority is exercised by an acknowledged expert in customary law, called the *kefeduwan*. The main responsibility of this person is to see to it that the respective rights and feelings of all the people involved in a case up for settlement are respected and satisfied. As Deputy Governor Timuay Gunsi puts it: “Tribal justice is based on a win-win solution. Victory is achieved when both parties feel that they have won.” He said that among the Teduray, prisons do not exist, since it is not part of their practice to put people behind bars. Blood money can be exacted, fines too, like a carabao and some amount of money is exacted from one proven to be guilty of misdemeanor, but conflicts are generally settled peacefully.

Dir. Kanakan added that prior to the coming the Spaniards, laws were already practiced by their ancestors. Although they were transmitted only by word of mouth, they were binding. No one disobeyed them for fear of being cursed (“magabaan”). Whatever the *kefeduwan* (traditional judicial leader) said had to be followed, so even cases such as wife-grabbing and murder could easily be resolved then. And once resolved, it remained such because the words of the *kefeduwan* were so powerful.

Consuelo Ra spoke of a time when a tribal chieftain could exact respect and obedience from his people. “When there was conflict, only one spoke (just the tribal chieftain), not everybody.” She also said that in the early days they could not speak the name of their ancestors because if they did they would be punished by their ancestors. Her main worry now is that there are few barangays in Upi that are inhabited by Teduray. The rapidly increasing acculturation of her people really calls for the codification of the tribal laws.

The other participants agreed with her. They believe that the Tribal Laws have to be codified soon for the sake of the Teduray. One even expressed fear that if these laws do not get codified, some groups might use religion as an escape goat, especially if the problem is between a Muslim and a Teduray. This might cause the rift to widen between the two. Codifying the Tribal Laws would provide not only the IPs, but the Muslims as well as the Christians, with direction.

THE RELATIONSHIP BETWEEN THE TRIBAL LAW AND THE SHARIAH LAW

While the laws of the IPs have been derived from the customary laws of their ancestors, the Islamic laws were based on the Qur'an. Despite this difference in the respective origins of these laws, no conflict exists between the two. Tribal laws are recognized and respected by the Shariah Laws. One can choose which one to follow. Dep. Gov. Gunsi however explained that if one party is a Muslim and the other is IP, it is the national law that prevails.

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INITIATIVES TO CODIFY CUSTOMARY LAWS

As early as 1998, data gathering already started. Those that have been collected reveal, among others, the closeness of the tribe to nature, the practice of collective leadership, communal ownership of basic resources, especially land, the concept of justice based on good feelings, and the ability of the IPs to stick to their customary ways despite the onslaught of modernization. There is now the Timuway Justice and Governance, which was established in October 1995. This was an offshoot of the Teduray's long years of struggle against the national government's non-recognition of their right to self-governance.

The participants complained that although the Indigenous Peoples Rights Act (IPRA) was passed into law in 1997, its impact is not yet felt by the IPs of the ARMM.

ISSUES RAISED REGARDING THE CODIFICATION OF TRIBAL LAWS

- Codification of these laws will make things "final". A Court Commission must be created which will ensure that the Tribal Laws are in keeping with the national laws.
- Prof. Cantallopez maintains that there may be customary and tribal laws that may be violative of human rights. The Universal Declaration of Human Rights which came about as a meeting of minds of heads of states all over the world has branched into more and more instruments and documents that have explored well the minutest aspects of human life. They all therefore respect everybody's context and as such, they should be the basis for examination of what should go into the body of codified laws. The case of the Teduray practice of betrothal of young female children to much older men is also in question. Human rights lens sees this as child abuse. Also, at present there are already discussions on their brand of polygamy that allows a man to take as many as ten wives. There are observations that there is a high frequency of men not being able to sustain many families. These, and many more, need to be carefully studied.
- Deputy Gov. Timuay Gunsi says that there is a need to look at Tribal Laws in their entirety, not just those that pertain to personal laws, like the Shariah. It is only later that we can "sift" those that are not acceptable to the mainstream society. He also sees the need to study tribal laws especially on marriage among minors, parental arrangement, polygamy, divorce, etc. What is no longer applicable should not be perpetuated. The problem now is that IPs are required to present marriage contracts, birth certificates, baptismal certificates, and others when they make transactions with government or with other institutions.
- Mrs. Gunsi points out that regarding the practice of dowry, there should be some ways to stop some parents from asking very prohibitive dowries from their prospective sons-in-law.

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INITIAL STEPS IN THE CODIFICATION PROCESS

Every participant agreed that the process to be employed should be as participatory and as transparent as possible. It should not only be the recognized leaders that should be consulted. It was also decided that the following activities be undertaken:

- A Technical Working Group (TWG) be organized, the members of which will come from those who were present during the March 4, 2004 round table discussion session. The objective is to conduct wide consultations with people on the issue of codification of Teduray customary laws.
- Director Kanakan's office, the OSCC-ARMM, will temporarily serve as secretariat. The Timuway Justice and Governance will also help in the consultations. To serve as consultants to the TWG are Dir. Kanakan and Deputy Gov. Unsi.
- The final draft of the codified customary laws is due in August 2004.
- If funding is needed, the Center for Autonomy and Governance of the NDU College of Law will help access it.
- Finally, it was decided that a training on the codification of tribal laws should be given to members of the TWG. .

CONCLUSION

Culture is dynamic. The cultural practices are always subjected to strains and stresses that determine retention or selection for change. Some of the customs may be on the way out, but codification would enshrine and therefore provide corridors for their return. Deliberate efforts should be done by the people themselves to scrutinize what should and should not be made part of the codified customary and tribal laws. The codification process should be made to tread on the right track.

If ever the codification of Tribal laws in the ARMM is realized, it will perhaps be the first codified tribal law in the country. It can then provide valuable insights and lessons to other indigenous groups in their quest for the codification of their own laws. The power of ARMM Regional Legislative Assembly to codify tribal laws in the ARMM must be utilized in full for the benefit of the indigenous people in the areas of autonomy.

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The Center for Autonomy and Governance acknowledges the participation of the following in the roundtable discussion.

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