



September 2022

▶ **Laws, policies and institutions concerning indigenous and tribal peoples: Philippines**

▶ **Legal framework: Overview**

- [The Constitution of the Republic of the Philippines, 1987](#)
- Department of Environment and Natural Resources Administrative Order No. 1993-02 (Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims)
- [Republic Act No. 8371 of 1997 \(The Indigenous Peoples Rights Act\)](#)
- [Administrative Order No. 1, series of 1998](#) (Rules and Regulations Implementing Republic Act No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997" or "IPRA")
- [Administrative Order No. 108, series of 2000](#) (creating a presidential task force on indigenous peoples to ensure the immediate implementation of the Indigenous Peoples Rights Act and defining the functions thereof)
- [Executive Order No. 1, series of 2001](#) (creating the office of the Presidential Adviser for indigenous peoples' affairs, delineating its functions to ensure effective implementation of the Indigenous Peoples' Rights Act)

▶ **Issuances by the National Commission on Indigenous Peoples (NCIP)**

Pursuant to the powers of the NCIP to promulgate the necessary rules and regulations for the implementation of the Indigenous Peoples' Rights Act (IPRA), the following administrative orders were passed by the NCIP:

- [Administrative Order No. 1, series of 2002](#), Guidelines for the Review and Verification of the Certificate of Ancestral Domain Title (CADT) and Certificates of Ancestral Land Title (CALT) Approved by the First Commission on Indigenous Peoples were not Registered with the Register or Deeds nor Released to the Claimants - Owners
- [Administrative Circular No. 1, series of 2003](#), Rules and Pleadings, Practice and Procedure Before the National Commission on Indigenous Peoples
- [Administrative Order No. 1, series of 2003](#), Guidelines for the Constitution and Operationalization of the Consultative Body as Provided in Section 50, RA No. 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. 01, series of 2008](#), Omnibus Rules on Delineation and Recognition of Ancestral Lands and Domains of 2008
- [Administrative Order No. 001, series of 2009](#), National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils

- [Administrative Order No. 05, series of 2012](#), NCIP Guidelines of 2012 on the Merit-Based Scholarship (NCIP-MBS) and Educational Assistance (NCIP-EA)
- [Administrative Order No. 4, series of 2012](#), Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012
- [Administrative Order No. 3, series of 2012](#), The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012
- [Administrative Order No. 2, series of 2012](#), The General Guidelines on the Confirmation of Indigenous Political Structures and the Registration of Indigenous Peoples' Organizations
- [Administrative Order No. 1, series of 2012](#), The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines of 2012
- [Administrative Circular No. 1, series of 2014](#), The 2014 Revised Rules of Procedure before the National Commission on Indigenous Peoples
- [Resolution No. 06-099-2014](#), Resolution Amending Administrative Order No. 5, series of 2012
- [Administrative Order No. 1, series of 2018](#), 2018 National Commission on Indigenous Peoples (NCIP) Rules of Procedure
- [Administrative Order No. 2, series of 2018](#), Revised Guidelines on the Formulation of the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP)
- [Administrative Order No. 3, series of 2018](#), Revised National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils and Policy-making Bodies
- [Administrative Order No. 01, series of 2020](#), Rules on Delineation and Recognition of Ancestral Domains and Ancestral Lands of 2020 and Other Processes
- [National Advisory No. 2021-08-001, series of 2021](#), Compliance with the Mandatory Requirement for Securing the Free and Prior Informed Consent (FPIC) of the Indigenous Cultural/Communities (ICCs/IPs) and the Necessary Certification Precondition from the National Commission on Indigenous Peoples (NCIP) pursuant to Republic Act No. 8371

► Issuances by the NCIP and/or other Government departments concerning indigenous peoples

The NCIP and other government departments approved rules to harmonize and give effect to their respective mandates vis-à-vis the recognition of the rights of indigenous peoples under the IPRA:

- [Joint Department of Environment and Natural Resources \(DENR\)-National Commission on Indigenous Peoples \(NCIP\) Circular No 01-02](#), Joint DENR-NCIP Efforts on Policy Reconciliation of the National Integrated Protected Areas System (NIPAS) Act of 1992, Governing Protected Areas, and the Indigenous Peoples Rights Act (IPRA) of 1997, Covering Ancestral Domains/Lands and Rights Thereto of Indigenous Peoples/Indigenous Cultural Communities
- [Joint DENR-NCIP Memorandum Circular No. 2003-1](#), Harmonization of the Implementation of the Indigenous Peoples Rights Act (IPRA) and Environment and Natural Resources (ENR) Laws and Policies
- Joint Department of Agrarian Reform (DAR) - National Commission on Indigenous Peoples (NCIP) Memorandum Circular No. 15, series of 2003, Temporary Suspension of Land Acquisition and Distribution (LAD), and Ancestral Domain/Ancestral Land (AD/AL) Titling Activities in Contentious Areas
- [Office of the President Memo Order No. 179](#), Directing the Land Registration Authority Not to Impose Contributions to the Assurance Fund from Certificate of Ancestral Domain Title Applicants
- [Joint Department of Environment and Natural Resources \(DENR\) - Department of Agriculture \(DAR\)-Palawan Council for Sustainable Development \(PCSD\)-National Commission on Indigenous Peoples \(NCIP\) Administrative Order No. 1, Series of 2005](#), Guidelines for Bioprospecting Activities in the Philippines
- [Joint Land Registration Authority \(LRA\) - National Commission on Indigenous Peoples \(NCIP\) Memorandum Circular No. 1, series of 2005](#), Additional Guidelines on the Registration of CADTs/CALTs with Registry of Deeds

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- Joint LRA-NCIP Memorandum Circular No. 01, series 2007, Supplemental Guidelines on the Delineation/Titling and Registration of CADTs/CALTs
- [Joint DENR-NCIP Memorandum Circular No. 2007-01](#), Management of Overlapping Protected Areas and/or Their Buffer Zones and Ancestral Domains/Lands
- [Joint DENR-NCIP Administrative Order No. 2008-01](#), Guidelines and Procedures for the Recognition, Documentation, Registration and Confirmation of all Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of Indigenous Cultural Communities or Indigenous Peoples in Ancestral Domain /Land
- [Joint DENR-NCIP Administrative Order No. 2008-1, series of 2008](#), Guidelines Governing the Biofuel Feedstocks Production, and Biofuels and Biofuel Blends Production, Distribution and Sale under Republic Act No. 9367
- [Department of Agrarian Reform Memorandum Circular No. 04-08](#), creating the Indigenous Communities Affairs Unit (ICAU) in the Support Services Office in the Department of Agrarian Reform (DAR)
- [Department of Interior and Local Government Memorandum Circular 2010-119](#), Mandatory Representation of Indigenous Cultural Communities or Indigenous Peoples in Policy-Making Bodies and other Local Legislative Councils
- [Joint DAR-DENR-LRA-NCIP Memorandum Circular No. 01, Series of 2011](#), Creation of Joint Task Force Which Shall Determine Policy Direction in Order to Address Jurisdictional and Operational Issues Between DAR, DENR, LRA and NCIP Over Agricultural, Public, and/or Ancestral Lands
- [Executive Order No. 26, series of 2011](#), Declaring an Interdepartmental Convergence Initiative for a National Greening Program, as amended by [Executive Order No. 193, Series of 2015](#), Expanded National Greening Program
- [DILG-NCIP Joint Circular No 001, series of 2011](#), Guidelines for the Determination of the Minimum Threshold of IP/ICC Population in a Local Government Unit to Allow Mandatory Representation in the Local Sanggunian
- [Joint DAR-DENR-LRA-NCIP Memorandum Circular No. 05, Series of 2011](#), Extension of Time for the DAR-DENR-LRA-NCIP Task Force to Formulate the Joint Administrative Order on Addressing Conflicting Jurisdiction
- [Joint DAR-DENR-LRA-NCIP Administrative Order No. 01-12](#), Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority (LRA) and the National Commission on Indigenous Peoples (NCIP) in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies
- [Joint Department of Health \(DOH\)-National Commission on Indigenous Peoples \(NCIP\)-Department of Interior and Local Government \(DILG\) Memorandum Circular No. 2013-01 of 2013](#), Guidelines on the Delivery of Basic Health Services for Indigenous Cultural Communities/Indigenous Peoples
- [DOH-NCIP-DILG Joint Memorandum Circular No. 2015-01](#), Creation of Inter-Agency Committees on Indigenous Peoples' Health
- [Intellectual Property Office-National Commission on Indigenous Peoples Joint Administrative Order No. 001-16](#), Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of The Indigenous Peoples and Indigenous Cultural Communities
- DILG Memorandum Circular No. 065-18, Creation of Provincial Inter-Agency Committee on the Implementation of DOH-NCIP-DILG Joint Memorandum Circular No. 2013-01 Entitled, "Guidelines on the Delivery of Basic Health Services for Indigenous Cultural Communities/Indigenous Peoples"
- National Housing Authority Memorandum Circular No. 029-18, Updated Guidelines for the Implementation of the Housing Assistance Program for Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs)
- [Cooperative Development Authority - NCIP Joint Memorandum Circular No. 01, series of 2018](#), Guidelines Governing Promotion, Organization, Registration, Development and Regulation of Cooperatives to be Established by Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs)
- GSIS Resolution No. 070-18, Approval of The Revised Guidelines on Funeral Benefit
- DILG Memorandum Circular 2019-125, Series of 2019, Guidelines for the Local Government Units in the Implementation of Executive Order No. 70, Series of 2018

► **Government issuances on indigenous education**

- [Department of Education Order No. 42, series of 2004](#), Permit to Operate Primary Schools for Indigenous Peoples and Cultural Communities
- [Department of Education Order No. 101, series of 2010](#), The Alternative Learning System (ALS) Curriculum for Indigenous Peoples (IPs) Education
- [Department of Education Order No. 62, series of 2011](#), National Indigenous Peoples Education Policy Framework
- [Department of Education Order No. 103, series of 2011](#), Creation of Indigenous Peoples Education Office
- [Department of Education Order No. 51, series of 2014](#), Guidelines on the Conduct of Activities and Use of Materials Involving Aspects of Indigenous Peoples Culture
- [Department of Education Order No. 43, series of 2013](#), Implementing Rules and Regulations (IRR) of Republic Act No. 10533 Otherwise Known as the Enhanced Basic Education Act of 2013
- [Department of Education Order No. 32, series of 2015](#), Adopting the Indigenous Peoples Education Curriculum Framework
- [Department of Education Order No. 34, series of 2017](#), Guidelines on the Formation of Consultative and Advisory Bodies (CAB) on Indigenous Peoples Education in Regions Implementing the Indigenous Peoples Education Program
- [Department of Education Order No. 3, series of 2017](#), Multi-Year Implementing Guidelines on the Allocation and Utilization of the Indigenous Peoples Education Program Support Fund, as amended by [Department of Education Order No. 022-18](#)
- [Commission on Higher Education's Memorandum No. 2, series of 2019](#), known as the "Integration of Indigenous Peoples' (IP) Studies/Education into the Relevant Higher Education Curricula"

► **Laws and regulations acknowledging in part indigenous peoples or their rights**

- [Commonwealth Act No. 141 of 1936](#) (The Public Land Act)
- [Republic Act No. 3872 of 1964](#) (Amendment to Public Land Act)
- [Republic Act No. 1161 of 1954](#) (The Social Security Law)
- [Presidential Decree No. 1586 of 1978](#) (Environmental Impact Statement System)
- [Republic Act No. 10066 of 2009](#) (An Act Providing for the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and Its Affiliated Cultural Agencies, and For Other Purposes)
- [Republic Act No. 4846](#) (Cultural Properties Preservation and Protection Act) as amended by [Presidential Decree No. 374 of 1974](#)
- [Presidential Decree No. 410 of 1974](#) (Ancestral Land Decree)
- [Presidential Decree No. 705 of 1975](#) (Revised Forestry Code of the Philippines)
- [Republic Act No. 6657 of 1988](#) (Comprehensive Agrarian Reform Law or CARL)
- [Republic Act No. 7076 of 1991](#) (People's Small-Scale Mining Act)
- [Republic Act No. 7160 of 1991](#) (Local Government Code)
- [Republic Act No. 7586 of 1992](#) (National Integrated Protected Areas System)
- [Republic Act No. 7611 of 1992](#) (Strategic Environment Plan for Palawan)
- [Republic Act No. 7638 of 1992](#) (Department of Energy Act)
- [Republic Act No. 7942 of 1995](#) (Philippine Mining Act) and [Executive Order No. 79 of 2012](#) (Institutionalizing and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources)
- [Executive Order No. 247 of 1995](#) (Prescribing Guidelines and Establishing a Regulatory Framework for The Prospecting of Biological and Genetic Resources, Their By-Products and Derivatives, For Scientific and Commercial Purposes; and for Other Purposes)
- [Republic Act No. 8282 of 1997](#) (The Social Security Law)

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- [Republic Act No. 8423 of 1997](#) (An Act Creating the Philippine Institute of Traditional and Alternative Health Care (PITAHC) to Accelerate the Development of Traditional And Alternative Health Care In The Philippines, Providing for a Traditional And Alternative Health Care Development Fund and For Other Purposes)
- [Republic Act No. 9072 of 2001](#) (National Caves and Cave Resources Management and Protection Act)
- [Republic Act No. 9054 of 2001](#) (An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao) repealed by [Republic Act No. 11054 of 2018](#) (Bangsamoro Organic Law)
- [Department of Environment and Natural Resources Administrative Order No. 2003-30](#), (Implementing Rules and Regulations for the Philippine Environmental Impact Statement [EIS] System)
- [Republic Act No. 9710 of 2009](#) (Magna Carta of Women)
- [Comelec Resolution No. 9427 of May 17, 2012](#) (Rules and Regulations for the Registration of Members of Indigenous Cultural Communities/Indigenous Peoples)
- [Republic Act No. 10533 of 2013](#) (Enhanced Basic Education Act)
- [Republic Act No. 11199 of 2018 \(Social Security Act\)](#)
- [Department of Energy Department Circular No. DC 2018-03-0005](#) (Prescribing the Guidelines Recognizing the Rights of Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs) in their Ancestral Domains and Access to the Financial Benefits as Host Communities under the ER 1-94 Program and Rule 29 (a) of The Implementing Rules and Regulations of Republic Act No. 9136, Otherwise Known as, "Electric Power Industry Reform Act Of 2001")
- [Republic Act No. 11223 of 2018 \(Universal Health Care Act\)](#)

► General Information

The Republic of Philippines has neither ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) nor the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, it has ratified other ILO Conventions particularly relevant to the protection of indigenous peoples' rights.¹ Furthermore, in 2007, it voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples.

The Government stated in 2015 that "as it begins to implement the 2030 Agenda, governments should continue to engage in dialogue with and listen to the voices

of the country's indigenous peoples. In the Government's view, recognition of their rights and aspirations would go a long way towards national unity and equitable, inclusive and sustainable development".² In addition, the Philippine Development Plan 2017-2022 incorporates a plan for promoting Philippine culture and values. This includes a strategy on strengthening culture-sensitive governance and development, with a focus on strengthening the protection of the rights of vulnerable sectors of society (indigenous peoples, women, youth and children and persons with disability) so that they can access cultural resources and live a life free from discrimination and fear.³

¹ Philippines ratified the following fundamental ILO Conventions: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138) (minimum age specified: 15 years), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the Equal Remuneration Convention, 1951 (No. 100); and the following ILO governance Conventions: the Employment Policy Convention, 1964 (No. 122) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

² Stefania Errico, The rights of indigenous peoples in Asia: a human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction (ILO 2017), p. 9.

³ Philippine Development Plan 2017-2022, Abridged version, p. 18.

► Identification of Indigenous and tribal peoples

Article XII, section 5 of the Constitution of the Republic of the Philippines, 1987, recognised the right of “indigenous cultural communities” to their ancestral lands to ensure their economic, social, and cultural well-being. The rights of indigenous peoples were subsequently further given recognition in The Indigenous Peoples’ Rights Act of 1997 (IPRA, Republic Act No. 8371). The IPRA defines of

“Indigenous Cultural Communities/Indigenous Peoples as” (ICCs/IPs) follows:⁴ “a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures,

became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.”

The 2010 population census included for the first time an ethnicity variable.⁵ The 2015 census indicates that the country’s indigenous population is estimated at between 10% to 20% of the national population of 100,981,437, present in 65 of the country’s 78 provinces. According to the Government, in 2017, there are 112 indigenous groups in the country, constituting 15% of the population.⁶

► Constitutional provisions and general legislation concerning indigenous and tribal people

The 1987 Constitution of the Republic of the Philippines

The 1987 Constitution explicitly recognizes the rights of indigenous cultural communities (ICCs). However, it does not list the rights themselves, but directed the national legislature (Congress) to enact further legislation.

The Constitution recognizes ICCs in its Article II, section 22: “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”

Article XII, section 5 mandates that “The State, subject to provisions of this Constitution and national development

policies and programs shall protect the rights of the 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.”

Also, Article XIV, section 17, mandates that the State “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.”

In addition, Article X, section 15, mandates the creation of “autonomous regions in Muslim Mindanao and in the

⁴ Section 3(h) of the IPRA

⁵ IWGIA, *Indigenous World 2020*, p. 314.

⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Human Rights Council. Working Group on the Universal Periodic Review. Twenty-seventh session. 1–12 May 2017 (A/HRC/WG.6/27/PHL/1).

Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution". Sections 18 to 22 relates to the manner of creation and the powers of the autonomous regions.

The Constitution also recognizes other rights of ICCs in Article VI, section 5 (2), concerning the composition of the House of Representatives, establishing that "one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities".

Article XIII, section 6 relates to agrarian reform and disposition of natural resources recognizing the rights of ICCs to their ancestral lands.

Relating to education, science and technology, Article XIV, section 2(4) mandates the State to "Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent and out-of-school study programs particularly those that respond to community needs" while section 10 mandates it to "support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life."

Lastly, Article XVI, section 12 establishes that "The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities."

The Indigenous Peoples' Rights Act of 1997 (Republic Act No. 8371)

The Indigenous Peoples Rights Act (IPRA) was enacted to give effect to the constitutional recognition of indigenous peoples' rights. It contains an exhaustive list of indigenous peoples' rights, implementing mechanisms, and creates the main Office for the enforcement of these rights: the National Commission on Indigenous Peoples (NCIP), the primary government agency to carry out the policies of the IPRA.

The IPRA enshrines four main sets of rights:

- Right to ancestral domains and lands (Chapter I); right to self-governance and empowerment (Chapter II); right to social justice and human rights (Chapter III); and right to cultural integrity (Chapter IV).

The rights include: right to ownership of the land; right to develop and manage lands and natural resources; right against displacement; right to redeem ancestral lands lost through vitiated consent; right to free, prior and informed consent; right to resolve conflicts; right to self-governance; right to applicability of customary laws and justice systems; right to participation; right to self-determined development; right to equal protection and non-discrimination; rights during armed conflict; right to equal opportunity and treatment; right to vocational training; right to housing, sanitation, health, social security and basic services; right to protection of women, children and youth; right to integrated system of education; right to practice and protection of culture, traditions and institutions; right to the restitution of cultural, intellectual, religious and spiritual property; right to recognition of cultural diversity; right to religious and cultural sites; and right to indigenous knowledge systems and practices.

The Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao of 2018 (Republic Act No. 11054)

The Bangsamoro Organic Law (BOL) was enacted in 2018 and ratified in 2019, after a two-day plebiscite. The BOL provided for the establishment of the autonomous political entity known as the Bangsamoro Autonomous Region, replacing the Autonomous Region in Muslim Mindanao (ARMM). The Bangsamoro Autonomous Region is not populated solely by Muslims. The introduction of Islam split the people of Mindanao into two distinct categories, "Moros" who embraced Islam, and "Lumads", a term meaning "born of the earth". Lumads are regarded as the original inhabitants of Mindanao, and the term now additionally refers to any non-Muslim, non-Christian indigenous peoples of the region.⁷ According to article II, section 1 of the BOL, Bangsamoro People are those who, at the time of the Spanish colonization, were considered natives or original inhabitants of Mindanao, the Sulu

⁷ *Indigenous People/Ethnic minorities and poverty reduction*, Environment and Social Safeguard Division Regional and Sustainable Development Department, Asian Development Bank, 2002, p. 13.

archipelago and its adjacent islands, whether of mixed or full blood, including their spouses and descendants. Furthermore, article IV, section 9, mandates the Bangsamoro Government to recognize and promote the rights of non-Moro indigenous peoples within the framework of the Constitution and national laws.

The purpose of the BOL is to establish the new Bangsamoro “political entity, provide for its basic structure of government in recognition of the justness and legitimacy of the cause of the Bangsamoro people and the aspirations of Muslim Filipinos and all indigenous cultural communities in the Bangsamoro Autonomous Region in Muslim Mindanao to secure their identity and posterity, allowing for meaningful self-governance within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines” (article I, section 3).

Moreover, with regard to basic rights, the BOL mandates the Bangsamoro Government to recognize the rights of the indigenous peoples and to adopt measures for the promotion and protection of the following rights: “(a)

Native titles or fusaka inged; (b) Indigenous customs and traditions; (c) Justice systems and indigenous political structures; (d) Equitable share in revenues from the utilization of resources in their ancestral lands; (e) Free, prior and informed consent; (f) Political participation in the Bangsamoro Government including reserved seats for the non-Moro indigenous peoples in the Parliament; (g) Basic services; and (h) Freedom of choice as to their identity” (article IX, section 3).

Lastly, the BOL creates a ministry for indigenous peoples, responsible for formulating and implementing policies, plans, and programs to promote the well-being of all indigenous peoples in the Bangsamoro Autonomous Region in recognition of their ancestral domain as well as their rights thereto (article IX, section 3, paragraph 2). Any measure to be passed by the Bangsamoro Parliament should not diminish the rights and benefits of the non-Moro indigenous peoples in the Bangsamoro Autonomous Region under the Constitution, national laws, particularly, the IPRA, and in international covenants.

► Equality and Non-discrimination

The 1987 Philippine Constitution contains equality and non-discrimination clauses in its preamble: “We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.” Also, article II, section 14 mandates the State to recognize “the role of women in nation-building and shall ensure the fundamental equality before the law of women and men”, while section 26 mandates the State to “guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.” Article III, section 1 states that “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws” and section 13 states that “all persons shall have the right

to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”

In line with the provisions on equality before the law enshrined in the Constitution and with relevant international instruments, section 21 of the IPRA mandates the State to, “with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry”, as well as to “extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society” and to “ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.” Paragraph 2 of this section provides that “the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in the IPRA shall be interpreted so as to result in the diminution

of rights and privileges already recognized and accorded to women under existing laws of general application.”

A specific non-discrimination provision is included in section 23 of the IPRA, which provides that indigenous peoples have the right to be “free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment”, which may entail the need to “adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment”.

Furthermore, section 24 of the IPRA makes it unlawful to (i) discriminate against indigenous peoples on terms and conditions of employment, including an unequal pay for work of equal value, or (ii) deny or prevent indigenous people from enjoying any right or benefit granted under the IPRA. Section 26 states that “ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life.”

Concerning cultural integrity, section 30 of the IPRA mandates the State to provide equal access to various cultural opportunities to the ICCs/IPs through the educational system.

In addition, within general principles and policies of the Bangsamoro Organic Law (BOL), it is stated that “The Bangsamoro Government shall recognize and promote the rights of non-Moro indigenous peoples within the framework of the Constitution and national laws” and “Indigenous peoples shall have the freedom to retain their distinct indigenous and ethnic identity in addition to their

Bangsamoro political identity. There shall be no discrimination on the basis of identity, religion, and ethnicity.” (Article IV, section 10). In addition, with regard to basic rights, the BOL, states that “No person in the Bangsamoro Autonomous Region shall be subjected to any form of discrimination on account of creed religion, ethnic origin, parentage, or gender.” Furthermore, “Any measure enacted by the Parliament shall in no way diminish the rights and privileges granted to indigenous peoples by virtue of the United Nations Declaration of the Rights of Indigenous Peoples and the United Nations Declaration on Human Rights, and other laws pertaining to indigenous peoples in the Bangsamoro Autonomous Region”. Lastly, the BOL does not in any manner diminish the rights and benefits of the non-Moro indigenous peoples in the Autonomous Region of Bangsamoro under the Constitution and national laws (article IX, section 4, paragraph 3 and section 3, paragraph 3 and 4).

There also exists legislation containing equality and non-discrimination clauses that do not specifically mention IPs but nonetheless protect them from discrimination. The Labour Code provides that the State shall “ensure equal work opportunities regardless of sex, race or creed.” (Article 3). Furthermore, articles 135 and 248 regulate discrimination in terms of wages. The Republic Act No. 6725 of 1989, amending article 135 of the Labour Code, strengthens the prohibition on discrimination against women with respect to terms and conditions of employment.

The Republic Act No. 9710, known as the Magna Carta of Women of 2009, prohibits discrimination against women and expressly imposes liability for damages on the person directly responsible for such discrimination. The Magna Carta provides that any discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion are also considered discrimination against women (section 4 [b]).

► Indigenous women

Section 21 paragraph 2 of the IPRA ensures the right to equal protection and non-discrimination for indigenous women.

Section 23 of the IPRA, provides for the right to equal treatment in employment for men and women, including protection from sexual harassment. Section 25 mandates the State to guarantee the right of ICCs/IPs to basic services, in particular with regards to the rights and special needs of indigenous women, elderly, youth, children and differently abled persons.

Section 26 of the IPRA states that “ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.” The same section mandates the State to “provide full access to education, maternal and childcare, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.”

With regards to representation, section 40 of the IPRA provides for the appointment of at least two female Commissioners in the NCIP, while section 50 mandates the NCIP to constitute from time to time a consultative body consisting of traditional leaders, elders and representatives of the women and youth sectors of the different IPCs/IPC for the purpose of advising it on matters that concern them.

The Republic Act No. 9710, known as the Magna Carta of Women, adopted in 2009 seeks to eliminate discrimination against women by recognising, protecting, fulfilling, and promoting the rights of women in all spheres of society, without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status. The Magna Carta considers ethnicity as one of the additional components to further protect indigenous women against discrimination (section 4 [b]).

There are other specific laws that give due protection on the rights of women such as the Expanded Anti Trafficking in Persons Act of 2012 and the Responsible Parenthood and Reproductive Health Act of 2012. The latter seeks to ensure the delivery and access to reproductive health care services, and to promote, protect and fulfil women’s reproductive health and rights.

Further, the Philippines adopted the Women’s Empowerment, Development, and Gender Equality Plan (2013-2016) and the National Action Plan on Women and Peace and Security (2017-2022). In 1975, the Philippines Commission on Women (formerly the National Commission on the Role of the Filipino Women) was established by Presidential Decree No. 633. To date, it is the main policy-making and coordinating body for women and gender equality concerns. It monitors and oversees the implementation of the Magna Carta of Women and is under the direction of the Government. Lastly, the Magna Carta of Women designated the Commission on Human Rights as the Gender Ombud.

► Institutions

In order to carry out the policies set forth in the IPRA, section 38 provides for the creation of a National Commission on Indigenous Peoples (NCIP) “which shall be 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 the ICCs/IPs and the recognition of their ancestral domains”. Section 39 establishes its mandate “The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.” Section 44 lays down NCIP’s powers and functions, while Section 62 provides for NCIP’s quasi-judicial functions.

The NCIP is invested with quasi-judicial, quasi-legislative and administrative functions. It is composed of seven commissioners belonging to IPs/ICCs representing each of the seven ethnographic regions of the country and appointed by the President (section 40 of the IPRA). It has seven offices responsible for the implementation of the policies: Ancestral Domains Office; Office on Policy, Planning, and Research; Office of Education, Culture and Health; Office on Socio-Economic Services and Special Concerns; Office of Empowerment and Human Rights; Administrative Office; and Legal Affairs Office (section 46). Thirteen regional NCIP offices are spread in the country, including the provincial offices and service centres per region.

In 1998, the NCIP issued the Implementing Rules and Regulations (IRR) of the IPRA. Later, in 2003, it issued Administrative Circular No. 1 setting out the Rules of Procedure before the Commission.

Under the IPRA, the Office on Policy, Planning and Research of the NCIP has the responsibility to develop a five-year master plan for indigenous peoples (section 46(b)). The most recent Master Plan is dated 2012-2016.

The main areas of work of the NCIP are: Formal recognition of Ancestral Domains; Control and management of Ancestral Domains; NCIP’s capacity to deliver its mandate; Destruction of the ecosystems within Ancestral Domains; Non-compliance and violation of FPIC; Pagkawala ng kultura ng IPs; IP governance is weak; Impact of government services are not felt; Overlapping claims over Ancestral Domains; Di pagkilala ng mga aghensya sa mga IP leaders; Displacement of IPs from their Ancestral Domains; Kakulangan sa kaalaman sa karapatan; Discrimination of IPs; and Peace and Security.⁸ Furthermore, the mandates of the NCIP are divided into ten programs: Ancestral Domain/Land Recognition; Assistance to Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) Formulation; Culturally Appropriate Responsive and Gender Sensitive Socio-Economic and Ecology Development Protection Services; IP Education and Advocacy Services; IP Culture Services; IP Health Services; Gender and Rights-Based Services; IP Rights Advocacy and Monitoring of Treaty Obligations; Legal Services; and Adjudication Services.⁹

Some government agencies established Indigenous Peoples’ Desk within their respective Offices, in the Philippine National Police,¹⁰ the Department of Environment and Natural Resources Office,¹¹ and some local government units.¹² The Indigenous Peoples Master

⁸ National Commission on Indigenous Peoples (undated). *14 Major Thematic Concerns*. Retrieved on October 23, 2021, from <https://ncip.gov.ph/mandate-vision-and-mission/>.

⁹ National Commission on Indigenous Peoples (undated). *Programs*. Retrieved on October 24, 2021, from <https://ncip.gov.ph/programs/>

¹⁰ Responsible for the protection and promotion of the interest and well-being of indigenous peoples with due regard to their beliefs, customs, traditions, and institutions. Police Chief Inspector Helen I. Galvez (2018). *The Police Regional Office 9 establishes indigenous people (IP) desk in all provincial and city police offices*. Retrieved on October 25, 2021, from <https://pro9.pnp.gov.ph/index.php/public-relations/news-release/4100-pro-9-establishes-indigenous-people-ip-desk-in-all-provincial-and-city-police-offices>; <https://www.pro12.pnp.gov.ph/main/?p=8418>; <https://ncip.gov.ph/news/moa-signing-between-ncip-pnp-v-and-ip-affairs-desk-launching/>.

¹¹ The DENR shall strengthen its IP Desks which shall serve as the focal units on all matters pertaining to ICCs/IPs vis-à-vis Environment and Natural Resources laws, programs, and projects (section 7, JOINT DENR-NCIP Memorandum Circular No. 2003 – 01).

¹² Ordinance 10 series of 2017, An Ordinance Establishing The Indigenous Peoples (IPs) Assistance Desk in All Police Precincts, Barangay Halls, And Other Government Centers in the City Of General Santos, Providing Penalty, And Funds Therefor, And For Other Purposes. Retrieved on October 30, 2021, from <http://spgensantos.ph/ordinance-10-series-of-2017/>; Mankayan puts up IP desk in local government. (August 20, 2019), *Herald Express*, from <http://www.baguiheraldexpressonline.com/mankayan-puts-up-ip-desk-in-local-government/>

Plan (2012-2016) recommends the creation of IP desks in all government agencies.¹³

The Executive Order No. 70 (2018) creating the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) includes the NCIP Chairperson as one of its members.¹⁴ The NTF-ELCAC was created to implement the government's whole-of-nation approach in the pursuit of the country's peace agenda. The whole-of-nation approach seeks to address the root causes of insurgencies and armed conflicts and threats through the delivery of basic services and social development packages in conflict-affected areas and vulnerable communities, facilitate societal inclusivity, and ensure active participation of all sectors of society to attain inclusive and sustainable peace (section 1, EO 70).

In addition, in the Bangsamoro Autonomous Region in Muslim Mindanao, the Ministry of Indigenous Peoples' Affairs (MIPA) is mandated to protect and promote the interest and well-being of Indigenous Peoples and serves as the primary agency responsible for the formulation and implementation of pertinent and appropriate policies and programs in collaboration with the law-making body of Bangsamoro and National government to carry out policies

set forth in the law.¹⁵ According to the Bangsamoro Organic Law, the Bangsamoro Government, with the aim of preserving the history, culture, arts traditions, and the rich cultural heritage of the Bangsamoro people and the non-Moro indigenous peoples, shall create the Bangsamoro Commission for the Preservation of Cultural Heritage (article IX, section 24). It also provides for the creation of the Office for Traditional or Tribal System that will be responsible for overseeing the study, preservation, and development of the tribal justice system within the Bangsamoro Region (article X, section 18). In the Bangsamoro, there shall be a Council of Leaders that shall advise the Chief Minister on matters of governance in the Bangsamoro Autonomous Region, consisting of various members, including representatives of traditional leaders, non-Moro indigenous communities outside of the Bangsamoro communities outside of the Bangsamoro Autonomous Region (article VII, section 9). In the Parliament, reserved and sectoral seats are allotted for two (2) reserved seats each for non-Moro indigenous peoples (article 7, section 7[c]).

► Consultation and participation

The right to consultation and participation of indigenous peoples is not expressly recognized by the Constitution. However, it does provide that the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions" and that these rights be considered "in the formulation of national plans and policies" (Article XIV, section 17).

At the general level, section 13 of the IPRA provides for the self-determination and self-governance of indigenous peoples. Section 16 of the IPRA gives indigenous peoples the "right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights,

lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils". Section 17 of the IPRA provides for indigenous peoples' "right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use" and that "they shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them". Finally,

¹³ NCIP (2013). Indigenous Peoples Master Plan. Retrieved on October 25, 2021, from <https://www.ombudsman.gov.ph/UNDP4/indigenous-peoples-master-plan-012-2016/index.html>

¹⁴ See Atrocities Committed by The Communist Terrorist Group on The Indigenous People & Cultural Communities (IP/ICCs), <https://www.ntfelcac.org/atrocities>

¹⁵ Ministry of Indigenous Peoples' Affairs: <https://mipa.bangsamoro.gov.ph/mandate-vision-mission/>

section 20 of the IPRA mandates that the State “establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed”.

The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities (article XVI, section 12). Under the IPRA, the NCIP has the power to create various offices, including a Consultative Body “consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs(...) to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs” (section 50). The rules to set up, select and organize the Consultative Body were set out in Administrative Order no. 1, series of 2003, which plans for Coordinating Committees at the provincial, regional and national levels, to assist the NCIP in convening the Consultative Body (Title II).

Rule IV, Part I, section 6 of the NCIP’s Administrative Order No. 1, series of 1998, states that indigenous peoples shall be given mandatory representation in all policy-making bodies and in local legislative councils, in proportion to their population, and that they shall have the same privileges as regular members of these bodies. Administrative Order No. 1, series of 2009 was later issued by the NCIP to establish clear guidelines for the processes and mechanisms of this mandatory representation, and was then revised by Administrative Order No. 3, series of 2018. To effectuate this policy, the DILG passed Memorandum (DILG) Circular No. 2010-119, directing all local government units to observe the mandatory representation of indigenous peoples within their respective local councils.

In order to “ensure genuine participation of Indigenous Cultural Communities/Indigenous People in decision-making through the exercise of their rights to Free and Prior Informed Consent”, the NCIP also issued Administrative Order No. 1, series of 2006, setting out detailed guidelines on the process to be followed and the

various situations where “free and prior informed consent” is to be obtained. These guidelines were revised by Administrative Order No. 3, series of 2012. Recently, the NCIP issued National Advisory No. 2021-08-001, Series of 2021, enjoining all government agencies, local government units, and government-owned and controlled corporations to mandatorily comply with the requirement of securing the FPIC of the of the concerned indigenous community and the necessary precondition from the NCIP.¹⁶

The Bangsamoro Organic Law, regarding the classification and allocation of Seats of the Bangsamoro Parliament, states that reserved seats and sectoral representatives shall constitute at least 10% of the members of the Parliament, which shall include two reserved seats each for non-Moro indigenous peoples and settler communities. Women, youth, traditional leaders, and the Ulama shall have one sectoral seat each (article VII, section 7(c)). In addition, reserved seats for non-Moro indigenous peoples shall adhere to their customary laws and indigenous processes based on: “(a) Primacy of customary laws and practices; (b) Primacy of consensus building; (c) Acceptability to the community; (d) Inclusivity and full participation; (e) Representation of the collective interests and aspirations of non-Moro indigenous peoples; (f) Sustainability and strengthening of indigenous political structures; (g) Track record and capability; and (h) Gender equality” (article VII, section 8). The right of indigenous peoples to free, prior and informed consent in relation to development initiatives and exploration, development, and utilization of the natural resources within the ancestral domains covered by Certificate of Ancestral Domain Title shall be respected (article XIII, section 12).

Moreover, the government will ensure through the Philippine Development Plan 2017-2022 that overseas Filipinos; micro, small, and medium enterprises; and the vulnerable and marginalized sectors, such as indigenous groups and disabled individuals, are involved in development planning. It also will push for political and electoral reforms to integrate new election protocols such as the establishment of additional polling places for indigenous groups.¹⁷

¹⁶ National Advisory No. 2021-08-001, Series of 2021, *supra*.

¹⁷ Updated Philippine Development Plan 2017-2022, p. 77.

► Land and natural resources

The 1987 Philippine Constitution introduces a general principle by mandating the State, in Article XII, section 5 of the Constitution, to “protect the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.” To lay down this protection, it directed Congress to provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain.

Under the IPRA, ancestral domains is distinctly defined, to include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

The IPRA then sets out in more detail indigenous peoples’ collective rights to land and natural resources in sections 4 to 12. According to section 5, “The indigenous concept of ownership generally holds that ancestral domains are the ICCs/IPs’ private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed”. Section 7 stipulates that “the right to claim ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected”. Such rights include: right of ownership, right to develop lands and natural resources, right to stay in the territories, rights in case of displacement due to natural catastrophes, right to regulate entry of migrants, right to safe and clean air and water, right to claim parts of reservations, and right to resolve land conflicts. These rights come with certain responsibilities from the peoples, the obligation to maintain the ecological balance, restore denuded areas, and observe laws (section 9).

Section 51 of the IPRA states that “self-delineation shall be the guiding principle in the identification and delineation of

ancestral domains”, while sections 52 and 53 set out the identification and delineation process for the issuance of certificates of ancestral domain titles.

The indigenous peoples have priority rights in the development or exploitation of any natural resources within their ancestral domains (section 57). Non-indigenous peoples may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years, with the free and prior informed consent of the affected indigenous community (section 57). The IPRA also states that the Government may not issue licences or permits for the exploitation of natural resources unless the free and prior informed consent of the affected indigenous community was obtained, and the NCIP issues a certification precondition in this regard (section 46). In 2011, as part of the poverty reduction, food security, biodiversity conservation, and climate change mitigation and adaptation measures, the Government established the National Greening Program (NGP). The NGP aims to plant some 1.5 billion trees covering about 1.5 million hectares on selected public lands and ancestral domains (Executive Order No. 26). This was expanded in 2015, through Executive Order No. 193.

The indigenous peoples have the primary responsibility in the management of ancestral domains which overlap with protected areas¹⁸ with the assistance from the DENR and other concerned government agencies.¹⁹ The indigenous peoples may transfer this responsibility to the concerned government agencies, but the transfer should be temporary and would revert to the indigenous peoples.²⁰ The free and prior informed consent of the indigenous people should be obtained prior to the declaration or management of protected and environmentally critical areas, and other related undertakings (section 19, NCIP AO 3, series of 2012).

In order to guarantee the exercise, enforcement and realization of their right to self-determination and self-

¹⁸ Protected Area – refers to identified portions of the land and water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation, section 4 (h), Joint DENR-NCIP Memorandum Circular No. 2007 – 01

¹⁹ Section 10, Joint DENR-NCIP Memorandum Circular No. 2007 – 01, Management of Overlapping Protected Areas and/or their Buffer Zones and Ancestral Domains/Lands.

²⁰ Ibid.

governance, the NCIP issued Administrative Order No. 1 of 2004, in which it plans and sets out the guidelines for indigenous peoples to prepare their own Ancestral Domain Sustainable Development and Protection Plan (ADS DPP) in accordance with their customary practices, laws and traditions. These guidelines were revised by Administrative Order No. 2, series of 2018. The management plans of ancestral domains/lands shall be integrated into the CLUP of the LGU having territorial jurisdiction over them (Part II, Sec. 2d, Rules and Regulations Implementing RA 8371).

In 2020 the NCIP also issued Administrative Order No. 1, series of 2020, setting out the rules on delineation and recognition of ancestral domains and ancestral lands.

In the Autonomous Region in Muslim Mindanao (ARMM), the Bangsamoro Organic Law provides that, with respect to natural resources, the Bangsamoro Government shall have the power, authority, and right to explore, develop, and utilize the natural resources, including surface and subsurface rights, inland waters, coastal waters, and renewable and non-renewable resources in the Bangsamoro Autonomous Region (article XIII, section 1). The Bangsamoro Parliament “shall pass a law to establish protected areas, the procedure for the declaration and the management thereof, and the role of the Bangsamoro Government and other stakeholders in the process: Provided, that protected areas be declared within the ancestral domains shall be subject to the free, prior and informed consent of the non-Moro indigenous peoples” (article XIII, section 8, paragraph 4). In addition, article XIII also states that the Parliament “shall enact a law recognizing the rights of indigenous peoples in the Bangsamoro Autonomous Region in relation to natural resources within the areas covered by a native title, including their share in revenues as provided in this Organic Law, and priority rights in the exploration, development, and utilization of such natural resources within their area”, and that “the right of indigenous peoples to free, prior and informed consent in relation to development initiatives and exploration, development, and utilization of the natural resources within the ancestral domains covered by Certificate of Ancestral Domain Title shall be respected” (article XIII, section 12). Furthermore, the BOL states that “small-scale mining shall be regulated by the Bangsamoro Government to the end that the ecological balance, safety and health, and the interests of the affected communities, the miners, the indigenous peoples, and the local government units of the place where

such operations are conducted are duly protected and safeguarded” (article XIII, section 15). Article XII also states that “the Bangsamoro people, indigenous peoples, and resident marginal fisherfolk shall enjoy preferential fishing rights in the Bangsamoro regional waters” (section 23).

Regarding basic rights establishes in article IX, the BOL mandates the Parliament to “enact laws providing for adequate reparation to the Bangsamoro people affected by unjust dispossession of territorial and proprietary rights and customary land tenure, which may include payment of just compensation to and relocation of such people” (section 2).

Regarding fiscal autonomy, the BOL provides that, with respect to sharing in the exploration, development, and utilization of natural resources, “Indigenous peoples and communities shall have an equitable share of the revenues generated from the exploration, development, and utilization of natural resources that are found within the territories covered by a native, traditional, or customary title in their favor, which shall be provided by a law to be passed by the Parliament detailing the sharing mechanism and percentages” (article XII, section 36).

In section 9(b) of the Magna Carta for Women of 2009, the importance of the land for indigenous people is taken into consideration by prohibiting the State, in situation of armed conflicts, to “force women, especially indigenous peoples, to abandon their lands, territories, and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition”.

There are other laws that partly deal with indigenous peoples and their rights to land and natural resources, which contribute to the overall jurisprudence on indigenous peoples’ land rights: the Commonwealth Act No. 141 of 1936 (Public Land Act); the Forestry Code (Presidential Decree No. 705); the Presidential Decree No. 1586 of 1978 (Environmental Impact Statement System); the Republic Act No. 4846 (Cultural Properties Preservation and Protection Act) as amended by Presidential Decree No. 374 of 1974; the Republic Act No. 6657 of 1988 (Comprehensive Agrarian Reform Law or CARL); Republic Act No. 7076 of 1991 (People’s Small-Scale Mining Act); the Republic Act No. 7160 of 1991 (Local Government Code); the Republic Act No. 7586 of 1992 (National Integrated Protected Areas System); the Republic Act No. 7611 of 1992 (Strategic Environment Plan for Palawan); the Republic Act No. 7942 of 1995 (Philippine Mining Act); the Executive

Order No. 79 of 2012 Institutionalizing and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources; the Republic Act No. 11054 (An Act Providing for the

Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao); the Department Administrative Order 2003-30 (Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System).²¹

► Education

Article XIV, section 1 of the Constitution mandates the State to “protect and promote the right of all citizens to quality education at all levels” and to “take appropriate steps to make such education accessible to all”. In doing so, it must “Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs”. Derived from this obligation, the IPRA recognizes the State’s “obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities” (section 2(f)). This is also reflected in sections 21 and 25 of the IPRA which mandate the State to extend to indigenous peoples the same education rights and privileges available to every other member of society. Section 28 also explicitly mandates the State, through the NCIP, to “provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs”.

Chapter VI of the IPRA on cultural integrity requires the State to “respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions” (section 29) and recalls indigenous people’s “right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning” (section 30).

Finally, the NCIP’s Office of Education, Culture and Health is “responsible for the effective implementation of the

education, cultural and related rights”. The Office will (i) assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group, and (ii) administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education.

In 2011, noting that many indigenous peoples continued to lack access to decent basic social services and suffered from marginalization, partly due to the lack of access to culture-responsive basic education, the Department of Education adopted the National Indigenous Peoples Education Policy Framework, Order No. 62, series of 2011. The Policy Framework sets out, among others, the obligation of the Department of Education to: (i) ensure the provision of universal and equitable access of all indigenous peoples to quality and relevant basic education services towards functional literacy for all, (ii) adopt appropriate basic educational pedagogy, content and assessment, (iii) provide adequate and culturally-appropriate learning resources and environment, (iv) strengthen the hiring, deployment and continuous development of teachers and learning facilitators, and (v) implement stronger affirmative action to eradicate all forms of discrimination against indigenous peoples in the entire educational system. That same year, the Department of Education created the Indigenous Peoples Education Office (Department Order No. 103, series of 2011) to implement and coordinate all programs and projects

²¹ Josefo B. Tuyor, et al., (2007). *Indigenous Peoples Rights Act: Legal and Institutional Frameworks, Implementation and Challenges in the Philippines*. Discussion papers, East Asia and Pacific Region. Social Development, and Rural Development, Natural Resources and Environment Sectors. World Bank, pp. 14-16.

relating to indigenous peoples' education. In 2015, the Department of Education adopted the Indigenous Peoples Education Curriculum Framework (Department Order No. 32, series of 2015), and in 2016 it adopted the Hiring Guidelines for Teacher I Position in Schools Implementing Indigenous Peoples Education Effective School Year 2016-2017 (Department Order No. 50, series of 2016). The Enhanced Basic Education Act (R.A. No. 10533) acknowledges the Indigenous People's Education Framework as an integral part of the enhanced basic education.

With the objective of granting scholarships to "deserving ICCs/IPs who seek the opportunity and qualify for

educational advancement and/or skills development", the NCIP issued Administrative Order No. 5, series of 2012, in which it set out the conditions for the obtainment of such grants.

The Bangsamoro Organic Law mandates the Parliament to create a tribal university system in the Bangsamoro Government to address the higher educational needs of the non-Moro indigenous peoples, and to pass a law to recognize and support the indigenous peoples' educational system for its integration in the Bangsamoro educational system (article IX, section 19).

► Employment and working conditions

Under Article XIV, section 5 of the Constitution, "Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements". This principle is also reflected in section 21 of the IPRA, which mandates the State to extend to indigenous peoples the same employment rights and privileges available to every other member of society. Specific non-discrimination provisions are also included in the IPRA (sections 23 and 24) and summarised in detail in Section 3, Equality and Non-discrimination, above. Under section 25 of the IPRA, indigenous peoples "have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons".

Section 23 of the IPRA established the freedom from discrimination and right to equal opportunity and treatment in relation to recruitment and conditions of employment. This includes the right to enjoy equal opportunities for medical and social assistance, safety as well as other occupationally related benefits. It also provides indigenous peoples with "the right not to be subject to working conditions hazardous to their health,

particularly through exposure to pesticides and other substances."

The right to employment in Rule V, section 4(7) of the Implementing Rules and Regulations (IRR) of the IPRA includes the right to "Enjoy a wholesome and healthy working environment free from any forms of life hazards and dangers and other conditions hazardous to their health, in particular through exposure to pesticides and other toxic substances".

In section 20 of the Magna Carta for Women, which "recognizes the contribution of women to food production", the State is mandated to ensure that "indigenous practices of women in seed storage and cultivation shall be recognized, encouraged, and protected" (section 20(b)(11)). The State shall also "Provide economic opportunities for the indigenous women, particularly access to market for their produce" (section 20(b)(14)). Section 22, which establishes the right to decent work, provides that the State shall ensure "Respect for the observance of indigenous peoples' cultural practices even in the workplace" (section 20(b)(4)).

The NCIP's five-year Master Plan 2012-2016 contained, among other key strategies, the promotion of an overall ICCs/IPs development framework based on Decent Work principles which encompass the promotion of fundamental rights, income and employment generation, social protection and social dialogue.

► Social security

Under Chapter XV, section 4 of the Constitution, “The family has the duty to care for its elderly members but the State may also do so through just programs of social security.”

Section 25 of the IPRA relating to basic services, ensures that indigenous peoples enjoy the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the area of social security.

The right to employment in Rule V, section 4(4) of the Implementing Rules and Regulations (IRR) of the IPRA includes the right to medical and social assistance, occupational safety, social security and any other occupationally related benefits.

Under the five-year Master Plan 2012-2016, the NCIP shall work towards the establishment of IP Desks with various agencies for the delivery of basic services covering, among others, social security. The Master Plan 2012-2016 contained, among other key strategies, the promotion of an overall ICCs/IPs development framework based on Decent Work principles which encompass the promotion of fundamental rights, income and employment generation, social protection and social dialogue.

The Republic Act No. 1161 of 1954 known as the Social Security Law creates a social security system that provides benefits to workers in the event of sickness, unemployment, retirement, disability and death. The Republic Act No. 8282 of 1997 amended the Social Security Law. It further strengthened the Social Security System (SSS) and Social Security Commission, and provided for the administration thereof. The Republic Act No. 11199, known as the Social Security Act of 2018, repealed the Republic Act No. 1161 of 1954 and the Republic Act No. 8282 of 1997. It

made significant changes and innovations to the state-operated social security program, such as strengthening the Social Security System, increasing coverage for social pension, expanding maternity leave, and providing economic support to workers who have been involuntarily displaced. However, the aforementioned laws do not make explicit reference to indigenous peoples.

The Department of Social Welfare and Development (DSWD) is the primary government agency mandated to develop, implement, and coordinate social protection and poverty-reduction solutions for and with the poor, vulnerable, and disadvantaged. Moreover, the 4Ps is the Philippines' largest national social protection programme. It was launched in 2007 and one of its specific objectives is to promote the adoption and implementation of gender and development, and indigenous people's participation frameworks. Furthermore, to address the impact of the COVID-19 pandemic, in 2020 the Government adopted the Act No. 11469 known as Bayanihan to Heal as One Act that with the aim to allocate resources to indigenous peoples, inter alia.

The Universal Health Care Act aims to provide health care coverage to all Filipinos, by automatically enrolling all Filipinos in PhilHealth's National Health Insurance Program (NHIP) and it seeks to ensure that all Filipino citizens have access to a comprehensive set of health services without having to bear huge financial burden.

The Government Service and Insurance System (GSIS) passed Resolution No. 070-18 which allowed alternative documentary requirements for the claim of funeral, survivorship, and death benefits of both Indigenous and Muslim members of the GSIS.

► Health

Article II, section 15 of the Constitution, mandates the State to “protect and promote the right to health of the people and instill health consciousness among them.” Article XIII, section 11 orders the State to “adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.” Under section 12, “the State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems”, and under section 13, “The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

Section 2(f) of the IPRA states that “The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Section 25 of the IPRA, relates to basic services, and ensures the right of ICCs/IPs to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of health and social security; and it mandates the State to “guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electrical facilities, education, health and infrastructure.” The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans, and programs affecting the indigenous peoples to ensure that the same are properly and directly enjoyed by them.

The Department of Health (DOH) is the primary agency mandated to deliver basic health services. In 2013, the DOH, the NCIP and the Department of the Interior and Local Government (DILG) signed the Joint DOH-NCIP-DILG Memorandum Circular No. 2013-01 that provides the Guidelines on the delivery of basic health services for ICCs/IPs, as part of its national initiative called Universal Health Care (UHC).

► Access to justice and customary law

Section 7(h) of the IPRA provides that the right to ancestral domains includes the “right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice”. More generally, section 15 provides that “The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights”.

When disputes involve indigenous peoples, customary laws and practices shall be used to resolve the dispute (section 65). Customary laws, traditions and practices of the indigenous peoples of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes (section 63).

The NCIP, through its Regional Hearing Offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs, Provided, however, that no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of

Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP (section 62).

Section 72 of the IPRA, read in conjunction with section 5 of the NCIP Administrative Circular No. 1, series of 2003, provide that claims and disputes involving indigenous peoples and all cases regarding the implementation or violation of the IPRA shall be settled by the NCIP's Regional Hearing Offices, with the exclusion of criminal proceedings.

Section 3 of Administrative Circular No. 1, series of 2003, provides that in interpreting the provisions of the IPRA: (i) doubts shall be resolved in favour of indigenous peoples, (ii) primacy of customary laws shall be upheld, and (iii) customary laws, traditions and practices of the ICCs/IPs in the ancestral domain where the conflict arises shall first be applied with respect to property rights, claims of ownership, hereditary succession and settlement of land disputes. Decisions of the Regional Hearing Offices may be appealed to the NCIP (section 47), and decisions of the NCIP may be appealed to the Court of Appeals (section 69).

The Bangsamoro Organic Law (BOL) states that "The Bangsamoro justice system shall be administered in accordance with the unique cultural and historical heritage of the Bangsamoro" and "the traditional or tribal laws shall be applicable to disputes of indigenous peoples within the Bangsamoro Autonomous Region" (Article X, section 1, paragraph 1 and 5). Further, "The Parliament shall enact laws to promote and support the traditional or tribal justice systems that are appropriate for the indigenous peoples.

The indigenous peoples shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms, and order customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights. The traditional justice systems are the mechanisms to determine, settle, and decide controversies and enforce decisions involving disputes between members of the indigenous peoples concerned in accordance with the customary laws of these communities." (article X, section 17).

In addition, the BOL provides the creation of the Office for Traditional or Tribal System that shall be responsible for overseeing the study, preservation, and development of the tribal justice system within the Bangsamoro Region (article X, section 18).

Lastly, concerning basic rights, the BOL states that the Bangsamoro Parliament shall enact a transitional justice mechanism to address the legitimate grievances of the Bangsamoro people and the indigenous peoples, such as historical injustices, human rights violations, and marginalization through unjust dispossession of territorial and proprietary rights and customary land tenure (article IX, section 1). It also provides for the reparation for unjust dispossession of territorial and proprietary rights and customary land tenure, which may include payment of just compensation to and relocation of such people (article IX, section 2).

► Application of penal law

Under section 7 of the NCIP Administrative Circular No. 1, series of 2003, criminal proceedings and penal sanctions imposed for violation of the IPRA “shall be prosecuted before the Regular Courts of proper jurisdiction”.

Section 72 of the IPRA is the penal provision of the law. It states that, any person who commits violation of any of the provisions of the IPRA, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI of the IPRA, shall be punished in accordance with the customary laws of the ICCs/IPs concerned, however, no such penalty shall be

cruel, degrading or inhuman punishment, nor should the death penalty or excessive fines be imposed. This provision is without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws.

The Development Plan 2017-2022 includes as a strategy the exploration of measures to further expand and mainstream the use of Alternative Dispute Resolution (ADR) in relation to criminal justice, specifically to include law enforcement agencies, indigenous, and community-based justice systems and restorative justice. The Penal Code of the Philippines does not contain any specific provision regarding indigenous peoples.

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