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# FULL RECOGNITION FOR INDIGENOUS PEOPLES' RIGHTS IN THE PHILIPPINES

## The Case of the Non-Moro Indigenous Peoples in the Bangsamoro and Lessons for Cordillera



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# FULL RECOGNITION FOR INDIGENOUS PEOPLES' RIGHTS IN THE PHILIPPINES

## The Case of the Non-Moro Indigenous Peoples in the Bangsamoro and Lessons for Cordillera

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### Author

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## 1. Introduction

Indigenous Peoples (IPs) constitute between 14 and 17 per cent of the population of the Philippines (IWGIA 2020).<sup>1</sup> The majority of IPs (61 per cent) are found in Mindanao, a further 33 per cent are found in Luzon and 6 per cent in Visayas (NCIP 2009). In the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), a unique identity is taking shape, known as the Non-Moro Indigenous Peoples (NMIPs).<sup>2</sup> This encompasses minority ethnic groups, including the Teduray, Lambangian, Menubu Dulangan, Blaan, Higaonon, and the Erumanen ne Menuvu, who are primarily concentrated in North Cotabato. These non-Islamized communities make up approximately 2 per cent of the overall population in the predominantly Muslim-majority Bangsamoro region.<sup>3</sup>

The NMIPs have been advocating for the recognition of their rights, as guaranteed by the 1987 Philippine Constitution, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and national laws, particularly the Indigenous Peoples Rights Act (IPRA) passed in 1997. The passage of the Bangsamoro Organic Law (BOL) in 2018, a product of the peace process between the Government of the Philippines (GPH) and Moro Islamic Liberation Front (MILF) that established the BARMM, provides further opportunities for the NMIPs to assert their rights to ancestral domain, self-governance, cultural preservation, social justice, and human rights.

**The passage of the Bangsamoro Organic Law provides further opportunities for the NMIPs to assert their rights to ancestral domain, self-governance, cultural preservation, social justice, and human rights. However, despite these developments, significant progress on the ground remains elusive.**

1. The 2019 NCIP Annual Report states that there are 100 ICCs/IPs, or 211 including sub-groups, in the Philippines.

2. Non-Moro Indigenous Peoples (NMIPs) are indigenous cultural communities in the Bangsamoro region that possess their own political structures, territories, and ethnicities. As defined in Section 5, Article I of Republic Act 11054, the Bangsamoro Organic Law, the term NMIP refers to individuals who, without ascribing or self-ascribing to the Moro identity, belong to tribes that have continuously lived as organized communities within communally bounded and defined territories. They have, under claims of ownership since time immemorial, occupied, possessed, and utilized such territories while sharing common bonds of language, customs, traditions, and other distinctive cultural traits. Among others, these include the NMIPs enumerated in Section 8, Article VII of the BOL, the Erumanen ne Menuvu tribes residing in the Special Geographic Areas of the Bangsamoro, and any other tribes as may be identified by the Ministry of Indigenous Peoples Affairs.

3. According to the 2020 PSA BARMM Statistical Survey, the total population of BARMM is 4,944,800, see <<https://rssoarimm.psa.gov.ph/>>.



**At this early stage of the Bangsamoro autonomy, the NMIPs believe there is no better time to push for the complete recognition and realization of their rights.**

However, despite these developments, significant progress on the ground remains elusive. Their identity as NMIPs is becoming increasingly blurred due to ongoing struggles for representative positions on local bodies, the recognition of their indigenous governance systems, and the lack of implementation of social services. This is compounded by human rights violations, including deaths and displacements resulting from land and politically related violence. The threat to the recognition and protection of their rights has intensified. At this early stage of the Bangsamoro autonomy, the NMIPs believe there is no better time to push for the complete recognition and realization of their rights.

## 2. Background

Before the establishment of the new Bangsamoro autonomy, the effective implementation of IPRA for the NMIPs in the former Autonomous Region in Muslim Mindanao (ARMM), which BARMM replaced, was already fraught with substantial challenges. The main issue stemmed from the fact that the ARMM was not under the jurisdiction of the National Commission on Indigenous Peoples (NCIP), which is the primary authority responsible for executing IPRA in the Philippines. Instead, the ARMM had its own agency, the Office for Southern Cultural Communities (OSCC), which had a narrower focus and authority compared to the NCIP. In an attempt to address this issue, former ARMM Governor Mujiv Hataman took steps in August 2013 and proposed the establishment of an NCIP branch within his office, recommending the formation of a Technical Working Group consisting of six members, with three representing ARMM and three from NCIP.

To fill the gap, the ARMM Regional Legislative Assembly enacted the Tribal Peoples Rights Act on 26 May 2008 (MMA no. 241).<sup>4</sup> This law provides for the rights of tribal people to self-governance, conflict resolution, Indigenous structures and rights during armed conflict. However, it does not address the rights of IPs to ancestral domains and other rights already recognized in IPRA, a law with national application. Moreover, it does not establish an office at the regional level, similar to NCIP-ARMM, to implement IPRA, nor does it mention the devolution of the tasks and functions of NCIP to the OSCC.

The NMIPs actively engaged in the GPH-MILF peace process, from the negotiating table to the legislative arena. During the negotiations, the NMIPs pressed for the inclusion of a minimum standard for the recognition of their rights in the peace agreement, alongside the IPRA and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>5</sup> However, this proposal faced strong opposition, and there was no specific mention of the IP agenda in the peace negotiations. The issues submitted were treated as informal documents and were not included in the discussions of the two panels.

In the legislative platform, the NMIPs proposed a separate Chapter, similar to the autonomy in the autonomous framework in the Bangsamoro Basic Law (BBL), but the Bangsamoro Transition Commission (BTC) inserted only provisions on IPs into the various articles and sections of the BBL. It was in the Philippines National Congress (the House of Representatives and the Senate, in particular Congresswoman Nancy Catamco in 2015 and Senator Joel Villanueva in 2018) that the IP provisions in the BOL that now serve as the basis for the legislation on a Bangsamoro regional IP law were crafted.<sup>6</sup>

**The NMIPs pressed for the inclusion of a minimum standard for the recognition of their rights in the GPH-MILF peace agreement, alongside the IPRA and the United Nations Declaration on the Rights of Indigenous Peoples. However, there was no specific mention of the IP agenda in the peace negotiations.**

4. An Act to Recognize, Respect, Protect and Promote the Rights, Governance and Justice Systems, and Customary Laws of the Indigenous Peoples/Tribal Peoples of the Autonomous Region in Muslim Mindanao was approved during the Fifth Assembly of the Regional Legislative Assembly.

5. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument adopted by the United Nations in September 2007. It upholds the rights that form minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.

6. There are 13 provisions scattered in different chapters of the BOL related to the protection, promotion and recognition of the rights of the indigenous peoples in the Bangsamoro.

**Clearly, there is a crisis in ensuring IP rights, which underscores the immediate need for comprehensive recognition of Indigenous Peoples' rights in the Philippines before events become even more critical.**

There are still many challenges facing the NMIP, such as delays in the enactment of the IP law and ongoing displacement from ancestral lands due to conflicts between armed factions. The fight for recognition of NMIP rights within the BARMM appears far from resolved. Elsewhere in the Philippines, even where the IPRA is in full effect, Indigenous communities are seeking additional protections beyond the act. Some are advocating for a new form of autonomy or even a distinct autonomous region within another. Some hope for a federal state specifically for Indigenous Peoples. Clearly, there is a crisis in ensuring IP rights, which underscores the immediate need for comprehensive recognition of Indigenous Peoples' rights in the Philippines before events become even more critical.

### 3. Analysis

The rights of the Indigenous peoples are guaranteed by the Philippines Constitution and international law, particularly the UNDRIP as further operationalized by the IPRA. The IPRA provides for four bundles of rights—the Right to Ancestral Domains, the Right to Self-Government and Empowerment, the Right to Social Justice and Human Rights, and Cultural Integrity—to ensure the economic, political and cultural well-being of the Indigenous peoples of the Philippines. These are upheld in the BOL, specifically under Section 9, article IV, and Section 3, article 19. Unfortunately, nothing significant has been done as far as the protection, promotion and recognition of these rights are concerned, due to compounding interrelated issues. The absence of a clear policy similar to the Bangsamoro IP code to operationalize the above-mentioned provisions restricts the capacity of the Bangsamoro Ministry for Indigenous Affairs (Ministry of Indigenous Peoples Affairs, MIPA) to effectively



implement programs and policies. This has resulted in lingering issues around the identity of the Non-Moro, non-recognition of Indigenous political structures, free prior informed consent (FPIC), delayed ancestral domain delineation, self-government and the application of the IPRA in the region.<sup>7</sup> Together, these constitute the struggle for the right to self-determination as NMIPs.

### Identity as Non-Moro Indigenous Peoples

There are specific rights and privileges intended only for Indigenous peoples included in the BOL. Given the diversity of ethnic groups in the Bangsamoro, and using the definition of the Bangsamoro as referring to all native inhabitants of Mindanao, there is apprehension from the NMIPs concerning possible misrepresentation. It is therefore necessary to determine who are the real Indigenous peoples in the Bangsamoro that should benefit from these rights. The seemingly blurred and ever-expanding definition of Bangsamoro people was questioned during deliberations on the Bangsamoro Basic Law (BBL, the predecessor of the BOL). Hence, Non-Moro Indigenous Peoples was proposed as a distinct identity of the non-Islamized natives that include the Teduray, Lambangian, Menubu Dulangan, Blaan, Higaonon and Erumanen ne Menuvu in BARMM's Special Geographic Area (SGA), to distinguish them from the Bangsamoro majority. Apart from those mentioned in section 9, article 4 and section 19, Section IX of the BOL, however, NMIPs were also included in the proposed chapter submitted by the two NMIP representatives on the Bangsamoro Transition Commission, but this proposal was rejected by a majority decision. NMIPs are thus named in only a few provisions of the BOL.<sup>8</sup>

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7. MIPA is the agency within the BARMM with primary responsibility for formulating and implementing policies, plans and programmes to promote the well-being of all indigenous peoples in the Bangsamoro Autonomous Region.

8. Section 9, Article 4, concerning recognition of the rights of the NMIPs; and sections 3 and 19 of Article IX; Section 2, Article XVI.

Elsewhere, the term 'Indigenous peoples' is used. This has led some to argue that the term Non-Moro should be confined to sectoral representation or, even worse, others to question its inclusion in the BOL at all.

## Protection of the Ancestral Domain

**Of the 247 Certificate of Ancestral Domain Titles (CADT), covering an area of 5,741,388,7468 hectares, approved by the NCIP as of 31 December 2019, not one was delineated in the Bangsamoro.**

Equally important to the struggle of the NMIPs is protection of their ancestral domain. Of the 247 Certificate of Ancestral Domain Titles (CADT), covering an area of 5,741,388,7468 hectares, approved by the NCIP as of 31 December 2019, not one was delineated in the Bangsamoro. Implementation of policies and programs for Indigenous peoples in BARMM is the responsibility of the MIPA.<sup>9</sup> However, the MIPA has no clear policies on the delineation of ancestral domain. Efforts were initiated by the NCIP but BARMM questioned its jurisdiction as manifest in BTA Resolution 38 (BARMM 2019). This jurisdictional gap has hopefully been addressed by a joint memorandum of cooperation signed between the MIPA and the NCIP, but there has been no further progress thus far. Pending the issuance of any title, reports of encroachment, as well as legal and illegal land grabbing are widespread in the IP communities, resulting in conflict and recurrent displacement. Not even the titled ancestral domain of the Erumanen ne Menuvu in the SGA has been spared this dilemma.

9. See the Mandate of MIPA (n.d.), <<https://mipa.bangsamoro.gov.ph/mandate-vision-mission/>>.

## Human Rights and Security Protection

Without definitive rights over their ancestral lands and lacking the means to protect themselves, Indigenous peoples find their territories targeted by rogue armed groups for illegal activities. This compromises the safety and well-being of Indigenous communities, which become caught in the crossfire between the military, on one side, and the armed factions, on the other. In addition, the introduction of development projects, such as mining and plantations, targeted at vast areas of these lands exacerbates the issue. As a result, death, displacement and other human rights abuses are becoming increasingly common in NMIP communities. The lack of safe and suitable evacuation areas further entrenches their plight.

## Free, Prior and Informed Consent

Free, Prior and Informed Consent (FPIC) is guaranteed internally and locally under the IPRA. It is a means for protecting Indigenous rights and interests and giving these a voice in matters that affect Indigenous peoples. Free means that no coercion, intimidation or manipulation is used to obtain consent. Prior means that consent is sought sufficiently in advance, with enough time given to respect indigenous peoples' consensus processes. Informed means that the information provided covers (as a minimum) the nature, size, pace, duration, reversibility and scope of the proposed project or activity (IFAD 2022). The granting of FPIC is initiated by the leaders/elders installed by the Indigenous Political Structures, in the presence of an implementing agency such as MIPA as witness. Nonetheless, NMIPs are facing huge challenges due to the non-recognition of the Indigenous Political Structures. Manipulation, coercion and even intimidation are still prevalent. The lack of clear guidelines, especially for MIPA, also hampers realization of FPIC.

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## Indigenous Political Structures as tools for NMIP Empowerment

The central issue revolves around recognizing the self-governance and empowerment of Indigenous peoples, specifically by acknowledging the governance structures of the Non-Moro Indigenous Peoples, known as Indigenous Political Structures.<sup>10</sup> Each tribe has its own structure, from the *Kesefananguwit Timuay* for the Teduray and Lambangian tribe, to the *Gempa Kalilintad de Kamal* for the Erumanen ne Menuvu, and so on. These structures govern the economic, political and cultural affairs of the tribes, ranging from ancestral domain-protection to traditional economic activities, customs and traditions, and maintaining peace and order in the community. Rather than offer recognition, however, alternative structures such as tribal councils are being established. Genuine tribal leaders are often side-lined, and sometimes even labelled leftist, causing further division among the Non-Moro indigenous communities. Moreover, no financial support has been provided for the operation of the Indigenous Political Structures. As governing bodies, financial resources are essential for their sustainability and functionality.

10. Chapter II, Section 3 (i) of RA 8371 defines Indigenous Political Structures as referring to organizational and cultural leadership systems, institutions, relationships, and patterns and processes for decision-making and participation identified and accepted by ICCs/IPs (e.g. Council of Timuays, Bodong Holders).

## 4. Conclusions and Policy Recommendations

Approval of the BOL, which acknowledges the rights of Indigenous peoples, presents both opportunities and challenges for the Non-Moro Indigenous Peoples (NMIPs), particularly in its execution. While it may offer more than the IPRA, its real-world impact remains unclear.

1

The Bangsamoro Transition Authority should fast track the passage of the Indigenous Peoples' Code with clear rights for NMIPs to give life to the different provisions that recognize the rights of the IPs in the Bangsamoro without diminution of those already recognized under existing law. This will help MIPA and other ministries with implementation of policies and programs to protect the rights of the NMIPs in the BARMM. An IP code could also help to define Non-Moro and Indigenous peoples to avoid confusion, ensure representation and improve delivery of basic social services.

2

The NCIP and the MIPA must work together to support the immediate delineation of the NMIPs' ancestral domain to prevent land dispossession, and address economic self-sufficiency and food security. Programs and policies should be implemented that will strengthen access to basic social services such as health, sanitation and education. Appropriate sustainable livelihood services are essential for these remote communities mostly involved in farming. A working mechanism between the NCIP and the MIPA is needed to improve delivery of programs and services for the benefit of indigenous peoples in the BARMM. The MIPA should provide funding for NMIP Ancestral Domain Sustainable Development and Protection Plans (ADSDPP) in the region and involve IPs in the installation of Indigenous Peoples Mandatory Representatives (IPMRs) in the region.

3

Indigenous peoples' rights are human rights. Mobilize the Bangsamoro Human Rights Commission, other ministries, local government units and the security sectors to address human rights violations and protect people from further displacement. Identify peace zones for the displaced and evacuees to stay, and provide them with sustainable livelihood sources while there. State and non-state actors should be held accountable for their violations. Ensure the protection of unarmed civilians, especially vulnerable groups such as women, youth, children, people with disabilities and the elderly.

4

Civil society, non-government organizations, and the international donor community should collaborate to foster people-to-people dialogues aimed at cultivating trust and facilitating peaceful coexistence among the diverse population of the Bangsamoro, which has often been fractured by conflicts.

5

The BARMM government and local government units should officially recognize Indigenous Political Structures as central leadership and collective decision-making bodies of Indigenous communities through confirmation of their status and provision of appropriate support for tribal leaders to effectively perform their internal functions without undue interference. Rather than excluding genuine leaders and organizing new structures, which contributes to internal division among tribal leaders, MIPA should recognize existing structures and initiate activities that would improve relations among leaders. Local government and other concerned agencies are encouraged to recognize and respect the role of Indigenous Political Structures in the selection of IPMRs to help ensure proper representation and genuine participation by Indigenous peoples in all decision-making bodies without undue political influence.



6

The IP Code should grant fiscal autonomy to Indigenous Political Structures for financing their development priorities. There must be a clear delineation of functions between the MIPA and the Indigenous Political Structures to avoid conflict. The role of structures in the selection of IPMR must also be recognized. Relations between the structures and local government units must be clearly set out. Explore a possible *Fusaka Inged*,<sup>11</sup> or ancestral domain-based autonomous governance, typically autonomy within the larger political Bangsamoro Autonomous Region, as a true expression of the full-inclusion of the rights of the NMIPs in the Bangsamoro.

11. *Fusaka Inged* is also referred to as ancestral domain. It was coined to address the difficulty of mentioning "Ancestral Domain" during the crafting of the BBL due to strong opposition from the MILF. It is one of the rights included in Section 3, Article IX of the BOL.

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