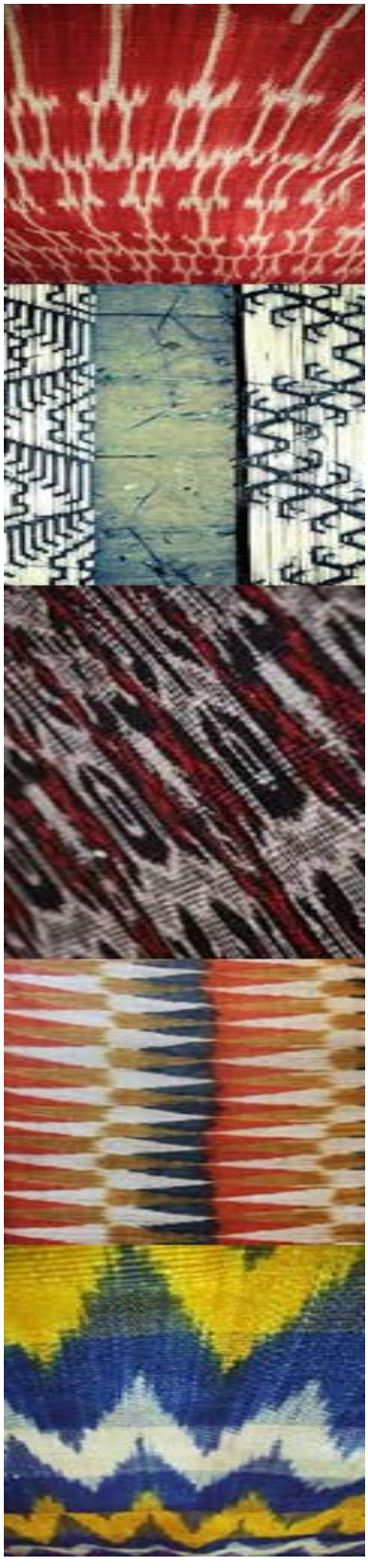
COMMISSION ON HUMAN RIGHTS
Philippines



2017 National Inquiry on the Human Rights Situation of the INDIGENOUS PEOPLES in the Philippines

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Executive Summary

This is a report of the 2017 National Inquiry on the Human Rights Situation of Filipino Indigenous Peoples (IP) convened by the Commission on Human Rights (CHR). The Key Findings of the Inquiry are:

A. On right to ancestral domains and lands

1. Joint Administrative Order Number 1 Series of 2012 constitutes a violation of IP rights to be awarded Certificates of Ancestral Domain Titles (CADT) that sets the metes and bounds of their domains and allows them to assert rights within those boundaries against those operating to deny them the exercise of priority rights in developing said domains.
2. Pending congressional enactment of the National Land Use Act and an act to finance the ADSDPPs (Ancestral Domain Sustainable Development Protection Plan), there is no clear State assistance to development of Ancestral Domains along the planning done by the IPs through their ADSDPPs.
3. No effort has been made to study the disestablishment of government reservations in order to restore Ancestral Domains.

B. On the right to self-governance and empowerment

4. The FPIC requirement has been uniformly violated by both State & non-State duty bearers[1].
5. Remedies appropriate to IP cultures are hindered by the State when IPs are forced to litigate in adversarial courts of justice.
6. Police power and law enforcement for customary law decisions and domains protection as a measure of IP empowerment is not recognized and supported by the State. There is no provision in the IPRA or its implementing rules on customary law enforcement through traditional enforcers who are inherent in the societal structures of every tribal society.
7. The peace process in the ARMM and efforts toward federalism render IP Rights nebulous and require re-definition of IP political status and relations with the State. Both islamized and non-islamized IPs affected by the peace process should enjoy the protection of the IPRA (Indigenous Peoples Rights Act). Passage of the BBL (Bangsamoro Basic Law) must include mechanisms to protect IP rights such as those endorsed to Congress by the MIPLA (Mindanao IP Legislative Assembly) for the creation of an independent IP commission and for a transitory committee to establish rules for its creation and definition of its powers.

C. Right to social justice and human rights

8. The state is deficient in gathering and dis-aggregating data on IP women, IP youth & children, internally displaced IPs and IP elderly to render them specific targets of government assistance and expenditures. There is insufficient monitoring of IP rights to access to basic services as well as IP collective rights to ancestral domains development.
9. Displacement of IPs and extrajudicial executions of IP and IP rights defenders are at alarming levels and government remedies and prosecutions are slow to respond to this.

[1] **Duty-bearers** are those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers.

The Right to Cultural Integrity was not sufficiently covered during the national inquiry producing no substantive findings. It is an area where continuing process of the human rights inquiries should focus on.

I. Background

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 has attained universality with the four (4) states who previously voted against its adoption reversing their positions in 2014 at the World Conference in Indigenous Peoples. The UN then adopted a System-Wide Action Plan for the IPs in 2016 and the 2030 Development Agenda and Sustainable Development Goals setting targets and indicators relevant for the IPs. More recently, an IP Policy was approved for accessing the Green Climate Fund.[2]

In the Philippines, the Indigenous Peoples Rights Act (IPRA) or Republic Act No. 8371 was enacted in 1997, ante-dating the UNDRIP by ten years. It was a product of a collaboration between IPs and civil society organizations when the IPs were threatened by the development thrust of the Arroyo presidency of attracting large-scale foreign investments into open pit mining. The IPRA immediately underwent constitutional challenge before the Philippine Supreme Court and was upheld thereby enriching jurisprudence and legally entrenching native title and the collective rights of IP of the Philippines.[3]

It is the policy gaps in IPRA and its implementation by myriad government agencies that bears closer examination after twenty (20) years of effectivity. It bears asking, has the State duty bearers gone any further than issuance of a limited number of certificates of title in the promotion of IP rights?

Among the recent hopeful developments in the Philippine IP Situation are:

a) The National Land Use Bill has been approved by the lower house of Congress and is now pending before the Senate. The said bill makes mandatory the adoption by all local government units in whose jurisdiction lies Ancestral Domain/s, the ADSDPPs into their Comprehensive Land Use Plans (CLUPs).[4] This effectively enacts a partnership between the LGUs and the IPs in the development of Ancestral Domain;

b) President Duterte's creation of an IP Peace Panel (IPPP) through the Office of the Presidential Adviser for the Peace Process (OPAPP) which has coordinated dialogues between the Bangsamoro Transition Commission (BTC) and MIPLA and has drafted an enhanced BBL which proposes the creation of an Independent Mindanao IP Commission. The enhanced BBL has been submitted to Congress and anticipated passage is in May 2018[5]; and

c) The DENR has banned open pit mining as well as continued the total log ban imposed by the previous administration.

[2] UN Special Rapporteur on Indigenous Peoples Victoria Tauli-Corpuz's Report to the Third Committee of the UN General Assembly, 12 October 2017
[3] Cruz vs. Secretary, G.R. No. 135385, December 6, 2000
[4] National Land Use Act, a policy brief published by the International Land Coalition, 2017
[5] Resolution No. 001 September 1, 2017 of the MIPLA

II. Methodology, Scope and Delimitation

The CHR conducted a series of public hearings and workshops to assess the implementation of IPRA in 2017:

a) May 25-26, 2017 Iloilo City;
b) August 15-16, 2017 in Puerto Princesa City
c) August 22-23, 2017 in Tagaytay City
d) September 27-28, 2017 in Davao City;
e) October 26-27, 2017 Tagoloan, Misamis Oriental.

66 IP tribes (out of 120+ ethnolinguistic tribes nationwide) were represented by 180 IP leaders. These tribes were the:

- *Akeanon Bukidnon*
- *Ati Tumalalod*
- *Ati Tina Hamitic*
- *Iraynun Bukidnon*
- *Panay Bukidnon*
- *Sulod Bukidnon*
- *Eskaya*
- *Ata/Ati*
- *Tribu Bukidnon*
- *Tagbanua*
- *Cagayanen*
- *Palaw'an*
- *Bukidnon*
- *Sibuyan*
- *Mangyan*
- *Taubuid Mangyan*
- *Tagabukid*
- *Ati*
- *Bantoanon*
- *Cuyonan*
- *Batac*
- *Dumagat*
- *Ayta/Agta*
- *Dumagat-Remontado*
- *Kankanaey*
- *Sama Dilaut of Silangkai*
- *Sama of Jolo*
- *Yakan of Basilian*
- *Sama of Simunul*
- *Tausug of Jolo*
- *Talaandig of Talakag*
- *Bukidnon*
- *Banwaon of Agusan del Sur*
- *Higaonon*
- *Abeling*
- *Bago*
- *Ilongot*
- *Manide*
- *Kalanguya*
- *Ayta-Abellen*
- *Teduray*
- *Lambangian*
- *T'boli*
- *Erumanen ne Menuvu*
- *Tagakaulo*
- *Matigsalug*
- *Dulangan-Manobo*
- *Bagobo-Tagabawa*
- *Manobo-B'laan*
- *Dibabawon*
- *Mansaka*
- *Mandaya*
- *ATA-Manobo*
- *Kalagaan*
- *Ata*
- *Obo-Manobo*
- *Bagobo-Kalayaan*
- *Sama*
- *Sama Tandubas*
- *Bajau of Bangas Island*
- *Kolibugan of Zambaoanga Sibugay*
- *Sama Bajao of Zamboanga City*
- *Sama Banguingui of Zamboanga City*
- *Kolibugan of Zamboanga del Norte*
- *Umayamnon of Bukidnon*
- *Mamanwa Kaotawan of Surigao del Sur*

In order for implementation to be properly assessed, representatives from all government agencies with projects and programs affecting IPs were also invited to the public hearings.

Among those who rendered reports during the Inquiry were the

1. National Commission on Indigenous Peoples (NCIP)
2. Philippine Statistics Authority (PSA)
3. National Commission for Culture and the Arts (NCAA)
4. Department of Environment and Natural Resources (DENR) – Main Office
5. DENR-Land Management Bureau (LMB)
6. DENR-Mines and Geosciences Bureau (MGB)
7. Department of Agrarian Reform (DAR)
8. Department of Agriculture (DA)
9. Department of Interior and Local Government (DILG)
10. National Economic and Development Agency (NEDA)
11. National Anti-Poverty Commission (NAPC)
12. Department of Education (DepEd)
13. Department of Social Welfare and Development (DSWD)
14. Palawan Council for Sustainable Development (PCSD)
15. Department of Tourism (DOT)
16. Mindanao Development Authority (MinDA).

There were several other government agencies such as the Department of Labor and Employment (DOLE), the National Housing Authority (NHA); the Social Security System (SSS) the Department of Health (DOH), the Philippine National Police (PNP), the Armed Forces of the

Philippines (AFP) and Indigenous Peoples Mandatory Representatives from Regions in Luzon who participated in the Baguio Conference on the Indigenous Peoples Rights to Development held on March 2-3, 2017 where the design for the National Inquiry was originally deliberated. In all, there were 424 participants to the National Inquiry, 41% of which were women and 10% were young adults.

The national inquiry is developed and applied by the National Human Rights Institutions

(NHRI) within the Asia Pacific Region. It has been found especially useful in enabling a broad examination of a complex, systematic pattern of human rights violations. It deals with large situations rather than individual complaints. While it can still result in recommendations that provide remedies for individuals, its principal focus is the systemic pattern of violation.

“Systemic” or “historic pattern of human rights violation” refers to a complex situation subsuming two or more continuing or recurring instances of reported human rights violations resulting from causes attributed to the actions or inactions of either state or non-state actors over a certain period of time. Action or omission of the state pertains or refers to certain policies and programs that have impact on a large group or sector of the population or community deemed marginalized, disadvantaged or vulnerable.

The national inquiry comprises several methodologies such as desk research, review of existing records, individual case conferences, submission and evaluation of written inputs, individual key informant interviews, focus group discussions, workshops, community dialogues, immersions, ocular inspections and follow-up sessions.

Conduct of public hearings is a very important part of the whole inquiry process, albeit it is not by itself the national inquiry. In addition, while originally developed as a mechanism to inquire on systemic human rights violations, the national inquiry also included workshop sessions to identify the specific solutions to the problems and to plan for their implementation.

The invited resources persons, particularly the complainants, were also asked to provide recommendations, while good practices were shared and recognized. Being a consensus-building mechanism, the national inquiry is truly a venue for both the rights-holders and the duty-bearers to engage in a partnership to resolve the issues.

While based mostly on the results of the national inquiry, cited in this report are not just data and information from the actual testimonies and submitted documentations of resource persons but also other sources to ensure rigors of analysis.

III. The Human Rights Based Perspective

Indigenous Peoples are imbued with both collective and individual rights. The indivisibility of the collective require a different approach in the protection and promotion of these rights.

IPs cannot be treated as a sector of society without running afoul of their political rights to self-governance and self-determination. Government must realize that they are dealing with a political unit with territorial jurisdiction and boundaries much like a local government unit in the municipal or provincial or even regional levels.[6]

Neither is there homogeneity among the various tribes.

Therefore all duty bearers must be ever aware of the political and collective nature of IP rights as well as the inherent diversity between the rights bearers and their domains. The *caveat* is for government and civil society both to anchor themselves firmly on the beneficiaries who are peculiar in that they are site-specific. The exercise of the rights to self-determination and self-governance within ancestral domains will vary from site to site and one program for all may not have the same impact due to many attending factors.

By the term “peoples” under international law, there arises inalienable collective rights of nations to self-governance and self-determination, territory and citizenship. Thus, IPs must always be approached through IP designated “diplomatic” channels. Their political processes of decision-making should be respected and not viewed as inferior to our western-shaped democracies. They are not passive target beneficiaries of government programs, they are rights-bearers who have dominion of large tracts of land they lay claim to as private lands.

[6] The Matigsalug CADT, one of the largest in the country spanning an area in excess of 500,000 hectares, is found in 3 provinces of Mindanao, namely Davao, Bukidnon and parts of Cagayan de Oro.

That is the concept of "Native Title" in Philippine jurisprudence[7], i.e., those lands that were never public land subject to the Regalian Doctrine having been held under a claim of private ownership by indigenous peoples since time immemorial and well before the dawn of the nation state.

The key to respecting IP collective rights is securing their free prior and informed consent (FPIC) for private and public interventions that affect their lands, customs and traditions.

Collecting data for national policy-making will inevitably fall short of realizing IP rights if this "limited sovereignty" of IP is not taken into consideration.

Any project or program devised by the technocrat will fail without bilateral negotiations beginning with FPIC and culminating in a Memorandum of Agreement (MoA) with provisions for voluntary mediation/ arbitration either under customary law or other mutually agreed upon arbitration processes. This is because the concepts of development will inevitably vary between government technocrats to IP elders from tribe to tribe and from domain to domain. And this right to alternative development is at the very core of the advocacy for IP rights.

Through hundreds of years this concept of development which lives in physical and spiritual harmony with the domain has been viewed by colonial and neocolonial governments as leaving wide swathes of land "idle" and "unproductive" and therefore wanting of government efforts to "develop" the same through settler cultivation of cash crops; through corporate farming and corporate extraction of mineral and timber resources.

The violations of these rights manifested themselves in government efforts at integration, assimilation, and displacement through government sponsored land grabbing.

IPRA Implementing Rules define IP as a collectivity who have "resisted the inroads of colonization" and "became historically differentiated from the majority of the Filipinos" or people who have "been displaced from their traditional domains or who may have resettled outside their ancestral domains" ***without assigning any responsibility to the State for the displacement, impoverishment and marginalization of IPs.***

Only the study conducted by the Transitional Justice and Reconciliation Committee in the context of the peace process has assigned such responsibility to the State.

In tracing the roots of conflicts it accounts for four (4) waves of migration to Mindanao all under government programs supported by statutes such as the Land Registration Act of 1902, the Public Land Act No. 926 of 1903, the Cadastral Act of 1907 and the Phil Commission Act No. 2254 which allowed Christian settlers and corporate interests from Luzon and Visayas to migrate and secure land titles to vast tracts of land in Mindanao.[8] In short there was a systematic and deliberate intent behind these programs to marginalize IPs and Moros under the regalian doctrine and in violation of native titles.

Within the legal framework created by the IPRA, therefore, there is State failure to acknowledge responsibility and failure to take community experiences of IP mass displacement, land-grabbing and consequent destitution and political marginalization.

[7] *Carino vs. Insular Government*, G.R. 2869, 41 Phil. 935
[8] Annex 2, Land Report 2017, TJRC

Thus, there is no provision for reparations in the IPRA. The IPs are expected to find financing for the ADSDPP other than State sources. The IPRA conferred no right to access state funds for domain development either in the concept of reparations or as remedial development assistance.

The National Land Use Bill which has yet to pass into a law, provides some access to public funds by mandating the incorporation of the ADSDPPs into the local governments' comprehensive land use plans. Otherwise, no funds access has been provided by the State to the IP apart from the funding for delineation given to the NCIP whose power to award titles has now been undermined by JAO 1, Series of 2012.

In assessing IP rights, it must be inquired into whether local and national government projects have complied with the obligation to secure the FPIC requirements and whether IPs have enjoyed priority rights in developing their ADs and received an equitable share in the revenues and profits of such projects.[9]

It must be determined whether the State duty bearer is addressing the collective rights and not just individual rights to health, education, social security, employment that are rights enjoyed by all citizens, regardless of indigeneity.

The title instrument CADT (Certificate of Ancestral Domain Title) is made a pre-condition for enjoying some measure of benefit from resources within the domains while the competing claims emanating from other government tenurial instruments such as the Industrial Forest Management Agreements (IFMAs) issued by the DENR, or the Certificate of Land Ownership (CLOA) of the Department of Agrarian Reform continue unabated and registration of CADT is held in abeyance indefinitely under the JAO 1 Series of 2012 while government agencies "reconcile" their competing mandates.

This was amply demonstrated to the CHR during the Inquiry.

JAO 1 Series of 2012's effects of indefinite stoppage of any further issuance of CADTs strongly suggests to the CHR that the State has not fully abandoned its regalian claim to ancestral domains notwithstanding IPRA and fails in its duty to realize IP aspirations through the promotion of collective rights.

[9] The IPRA Sec. 7 (b) provides IPs priority rights in development of natural resources found within their ADs. "(B) Right to Develop Lands and Natural Resources. Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project, and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights".

IP rights are reduced to mere lip service as demonstrated by the string budget given to the NCIP for delineation of more domains. Lip service adherence to IP rights is demonstrated by the absence of budget appropriations to pursue domain sustainability and development.

The State duty bearers cannot stop at mere recognition of IP collective rights through delineation and issuance of certificates of domain titles, the State duty bearer must provide the rights holders, the means as well as the mechanisms and remedies for the exercise of their collective rights.

> The UNDRIP provides in Article 8 par. (2):
>
> *States shall provide effective mechanisms for prevention of, and redress for: (a) any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) any form of population transfer which has the aim or effect of violating or undermining any of their rights; (d) any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination against them.*

As State duty bearers, the fulfilment of their public mandates require transparency, accountability, responsiveness, efficiency and good impact on the IPs. Moreover, it requires a process that respects their collective human rights.

This process is recommended as the direct partnership between duty bearer agencies, civil society and the indigenous peoples and the forum for this process is through the IP Human Rights Observatory at the CHR.

As for Non-State actors like civil society, their efforts can only be rewarded by more sharing as the CHR stands ready to police the executive in the proper implementation of their bureaucratized mandates among IPs. In addition, their technical expertise and experience in working among IP shall prove invaluable in FPIC processes refereed by the CHR in the multilevel partnership mechanism envisioned here.

Some of the advantages that the CHR; uniquely positioned as an independent constitutional commission and organized in all regions of the country with a mandate for protecting and promoting IP rights, can provide include:

a) The sharing of data, consistent with the freedom of information Executive Order Number 2 Series of 2016 of this administration
b) The possibility of adopting common indicators and tools to analyze data; the cost-efficiency that will result from avoiding duplication of efforts and public spending along the lines of monitoring and evaluation
c) The facility of inter-agency and civil society coordination for greater accountability and responsiveness to IP concerns

The recommendations contained in the final section of this Report proposes a three (3)-layer monitoring mechanism: CHR-national government agencies, CHR-civil society and CHR-IPS as **working partnerships** convened by the IP Human Observatory to:

a) Produce a working IP agenda which technical working groups (TWG) within the partnerships may address; as the need arises or as the feedback mechanism calls for; urgent concerns in the area of extrajudicial executions of IP rights defenders;
b) Foster a culture of accountability and good impact through IP-generated Monitoring and Evaluation mechanisms for the agencies to adopt and which the CHR's Regional offices can validate generating periodical validation reports;
c) Develop more mechanisms responsive to the needs of IPs for the protection and promotion of IP Rights such as:
    i. Mediation and arbitration services in alternative dispute resolution (ADR) between IP and Non-IP entities like government, civil society, business and/or migrant settlers;
    ii. providing community assistance in accessing government programs/ development funds such as the Green Climate Fund;
    iii. providing a website venue (online database system) for IP to share their success stories, difficulties and facilitate direct communications and partnering between and among themselves; and
d) To build a databank of reliable data from primary sources to help inform policy and academic research to craft better programmatic interventions for the IPs and their Ancestral Domains.

Guidelines will have to mark the parameters of the three level engagements but as the entire CHR migrates to Human Rights Observatory (HRO) work these efforts will provide a modelling function for other CHR divisions such as those involved in gender; children; conflict and Internal displacement; climate change; political detainees and jail management; migrant workers, etc.

IV. Key Findings & Discussions

1. Joint Administrative Order No. 1 Series of 2012 constitutes a violation of IP rights to be awarded Certificates of Ancestral Domain Titles (CADT) that sets the metes and bounds of their domains and allows them to assert rights within those boundaries against those operating to deny them the exercise of priority rights in developing said domains

JAO 1, Series of 2012 came about when the Land Registration Authority (LRA) refused to register CADTs/CALTs unless the NCIP, DAR or DENR issued the corresponding certificate of non-overlap. The intention of the agencies in implementing JAO1 is to ensure that private land titles are segregated prior to the registration of CADTs/CALTs.

IPRA respects titles already extant within Ancestral Domains as of November 22, 1997 when IPRA came into effect recognizing Native Titles all over the country, to wit:

"Sec. 56. Existing Property Rights Regimes. Property Rights within the ancestral domains already existing and/or vested upon effectivity of this Act shall be recognized and respected."

Vested right is some interest in the property that has become fixed or established and is no longer open to doubt or controversy at the time of effectivity of another law such as the IPRA establishing another right over the same property.[10]

Legally, therefore, there is no problem presented by private titles or other private property regimes within Ancestral Domains. The fear that there will be "double titling" over the same property is essentially groundless because there is already a statutory provision guaranteeing respect for vested rights. It is legal for the LRA, DENR and DAR to perform their mandates but the provision of JAO 01-2012 that holds issuance of CADTs while these agencies take their time reconciling their conflicting jurisdictions is a violation of the collective rights of indigenous peoples to their lands, territories and resources.

The NEDA conducted research on the processes of JAO 01 and reports that the bottleneck is in the DENR whose targets for issuance of patents are large and in undertaking the survey plan required for issuance of patents, continuously add applications requiring new rounds of validation to be conducted by the NCIP for certifications of non-overlap which is a legal requirement for the survey plan to proceed. It is also NEDA's findings that the DENR and the NCIP have varying definitions of the "survey plan".

The NCIP definition is based on the approved plans of the DENR as of 1997 when the IPRA came into effect while the DENR's definition encompasses all existing land classification plans, e.g., timberland, cadastral lands, alienable and disposable lands, government resettlement areas, government declared protected areas.[11] The DENR definition thus violates the 1997 cut off provided in Section 56 of the IPRA.

Given the varying concepts of "survey plan", there arises the questionable authority to continue issuance of tenurial instruments and land titles by the DENR and DAR beyond the cut off period of 1997 when the IPRA came into effect.[12]

Of the said CADTs issued by the NCIP to date, less than 50 have been registered with the Land Registration Authority (LRA).[13] This renders it difficult for IPs to secure permits from the DENR to harvest resources found within ADs as existing government regulations require.

There are two grounds for declaring the JAO1 Series of 2012 a violation of IP rights to ancestral domain:

a). The indefinite delay in registration of CADTs/CALCs caused by DENR, DAR, LRA operational difficulties; and

b) The illegal additions to survey plans for issuances of tenurial instruments made after the legal cut-off period of November 22, 1997 when vested rights were recognized under the IPRA.

The IPRA recognition of native title is meant to prevent further incursions into Ancestral Domain and the JAO1 Series of 2012 is facilitating these by not respecting the cut-off date for further issuances of tenurial instruments by the DENR and the DAR. These are clear violations of IP

[10] Heirs of Gabriel Zari vs. Jose Santos G.R. Nos. 21213 and L-21214, March 28, 1968.
[11] Report rendered by Judy Mae Masangkay of NEDA during the IP Inquiry public hearing in Puerto Princesa City, Palawan
[12] Presentation of NCIP Commissioner Basilio A. Wandag during the Baguio Conference on the IP Rights to Development
[13] Submission to 59th session of UN Committee on ESCR, www.tebtebba.org

collective rights over land and resources guaranteed under both national and international human rights law in IPRA and the UNDRIP.

2. Pending congressional enactment of the National Land Use Act and an act to finance the ADSDPPs (Ancestral Domain Sustainable Development Protection Plan), there is no clear State assistance to development of Ancestral Domains along the planning done by the IP through their ADSDPPs.

Existing government programs only go so far as to provide basic services in health; education and agriculture addressing individuals who may incidentally be IP but not the collective rights of IP which should entail budget appropriations for direct development assistance to IPs

Existing government programs that were reported during the inquiry include:

a) NCIP-Human, Economic, Environmentalists Development and Protection Services, Education Assistance Program, Merit-based scholarship, Health Program;
b) NAPC- representation of the IPs in Bottom Up Budgeting, Grievances Redress Committee and the Local Poverty Reduction Action Teams in the Citizens and Municipalities;
c) NEDA-CAR-Regional Development Council-program for the social preparation of the Cordillera into Autonomous Region;
d) DA- Special Agricultural Area Development Project wherein priority beneficiaries are IPs; Rice Program; Corn Program; High Value Commercial Crops Development; Organic Agriculture Program; Agribusiness and Marketing Assistance; Agricultural Competitiveness Enhancement and Fund Scholarship Program;
e) SSS- Accreditation program under the Cooperatives and Informal Sector Group including IPs, Subsidy program; AlkanSSSya Program; JO-KaltaSSS Program;
f) DOH- IP Health Program;
g) NHA- Resettlement assistance programs in partnership with LGU;
h) MGB - Administration and disposition of mineral resources;
i) DepEd/NCIP- IP Education;
j) DOLE - IP Desks;
k) DENR- IP Desks, conduct of survey of alienable and disposable lands, National Greening Program; net granted Natural Resources and Environmentalists Management Projects; Forestland Management Project; Philippine Biodiversity & Watersheds for Stronger Economy and Ecosystem Resilience (B&WISER); Reducing Emissions from Deforestation and Forest Degradation; IP Conserved Areas; Protected Area Management Enhancement;
l) PSA- delivery of relevant reliable statistics and civil registration services;
m) DSWD - Pantawid Pamilya; Kalahi-CIDSS; Sustainable Livelihood Program; Listahanan; Social pension; Supplementary Feeding Program; Disasters Response Operations; Payapa at Masaganang Pamayanan (PAMANA); Protective Services Program; Adoption and Forster Care; Gender and Development Program; Modified Conditional Cash Transfers for IPs;
n) DAR - Land Tenure Improvement Services; Program Beneficiaries Development Support Services; Agrarian Legal Services; Land Distribution and Acquisition.

It should be noted that among all these government agencies' programs there is none dedicated to the development of ADs pursuing ADSDPPs.

The closest to an AD development fund is the Payapa at Masaganang Pamayanan or PAMANA fund. PAMANA is the government's peace and development framework that aims to respond and strengthen peace building, reconstruction and development in conflict affected areas (CAAs) as well as sustain all on-going governance and development initiatives on the ground. Its main strategy is to bring back government in these communities by ensuring that they benefit from improved delivery of basic social services and are served by responsive, transparent and accountable governments on resource allocation and utilization, alongside economic development efforts.

The Government is adopting a two-pronged approach: (1) negotiated political settlement of all armed conflict through peace negotiations; and (2) undertaking programs aimed at addressing the root causes of armed conflict through interventions on the ground to strengthen peace-building, reconstruction and development in conflict-vulnerable areas.

The PAMANA Program, as embodied in the Philippine Development Plan for 2011 to 2016, was launched as the National Government's framework for intervention in conflict vulnerable areas to complement the peace negotiation efforts in line with its commitment to address the causes of conflict and issues affecting the peace process. The Program will be implemented within the 5-year period from 2011 to 2016.

The program has distributed monetary assistance packages in the ARMM and other areas of Mindanao worth PhP 360,355,502.65 from 2013-2015.[14]

The Office of the Presidential Adviser on the Peace Process (OPAPP) has asked and received a budget increase of over 1,000% in 2017 – from more than P700 million in 2016 to P8 billion in 2017. Secretary Jesus Dureza said the huge jump in allocation is due to the agency's implementation of the PAMANA program, which costs P7 billion in lump sum funds.

Website reports do not indicate a monitoring mechanism to gauge impact. OPAPP's oversight functions covers facilitation of program planning from the ground up and monitoring of project implementation while actual implementation is undertaken by national government agencies, while local governments as implementing partners.

Moreover, it is not clear whether IPs have been recipients of said funds. As of writing of this report, the CHR is only aware of only one tribe that has been a recipient of PAMANA funds, the Matigsalug of Bukidnon whose CADT cover a wide expanse in excess of 500,000 hectares in Mindanao. Finally, no monitoring tools were mentioned in the PAMANA website.

Relatedly, there is need for regular support from the State to Indigenous Peoples Organizations or IPOs to complement the proposals above pursuant to pertinent provision of IPRA under Chapter IV section 19 and 21 on the right to self-governance and empowerment where it is clearly stated that to the "(t)he State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests

[14] Department of Agriculture and Fisheries website

and aspirations through peaceful and lawful means" and that to provide the means for development/empowerment of ICCs/IPs "the Government shall establish the means for the full development/ empowerment of the ICCs/IPs own institutions and initiatives and; where necessary, provide the resources needed therefor."

3. No effort has been made to study the disestablishment of government reservations in order to restore Ancestral Domains

The instances of government reservations preventing registration of ADs during the Inquiry include:

1. The CADT of Aklanon Bukidnon covering more or less 19,000 hectares cannot be registered due to overlap with a military reservations in Capiz[15];
2. The Panay Bukidnon tribe with a pending CADT application prevented by an AFP claim of a military reservations within the AD[16];
3. Another Panay Bukidnon CADT claim overlaps with a military reservations called Camp Peralta[17];
4. Bago, Ibaloi, Dumagat, Aplai, Bukidnon, Isneg and Kankanaey claims against a military reservations in Palayan City, Nueva Ecija;
5. Ongoing relocation of Dumagat of San Jose Bulacan due to overlapping claims of the Bangko Sentral ng Pilipinas (BSP);
6. Displacement of Agta in Casiguran, Aurora due to overlapping claims of Certificates of Land Ownership (CLOAs) holders;
7. Ati Tamulalod AD claim was 1,225 hectares but CLOA holders reduced it by 500 hectares[18]

These government reservations can be subject of review for purposes of possible executive disestablishment by a technical working group within the government agency partnerships to be convened by the IP Human Rights Observatory.

[15] Report of Guillermo Colas (Aklanon) during the public hearing in Iloilo City.
[16] Report of Concepcion Diaz (Panay Bukidnon) during the public hearing in Iloilo City.
[17] Report of Herminio Sapeda (Panay Bukidnon) during the public hearing in Iloilo City.
[18] Report of Pablito Escola (Ati Tamulalod) during the public hearing in Iloilo City.

4. The FPIC requirement has been uniformly violated by both State & non-State duty bearers

One of the mechanisms for exercising the right to self-governance and self-determination is that of the requirement of securing FPIC. FPIC is a mechanism for the expression and attainment of the right to self-determination of the IPs. It is defined by the IPRA as "the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community." It is enforced primarily by the NCIP through NCIP Administrative Order No. 03 Series of 2012.

The reports of IPs in the National Inquiry of the CHR, however, show that the NCIP and all State duty bearers implementing projects or programs affecting IP, have been wanting in enforcement of and compliance with this right.

Testimonies during the public hearings across all regions covered reported lack of FPIC for natural resource extraction businesses, government power generation projects and tourism projects. Moreover, despite complaints filed by IP with the NCIP, no remedies were forthcoming.

Specific complaints on failure to secure FPIC reported during the public hearings include:

a) The DENR's National Greening Program in Capiz was implemented by the DENR[19];
b) Ecotourism projects in AD areas near Montilano Falls in Iloilo[20];
c) LGU construction of commercial water reservoir in Bohol[21];
d) The policies and implementing regulations of the Bottom Up Budgeting, i.e., Assistance to Disadvantaged Municipalities Program did not have FPIC[22];
e) The San Andres Corporation, Lionheart, Green Palawan Power Agriculture Corporation and Aguilar Philippines pursue agribusiness in palm oil, corn oil and Coconut oil in certain parts of Palawan without securing FPIC[23];
f) Citinickel Mines and Development Corporation operates in Sofronio and Narra, Palawan have violated FPIC and royalty Agreements with IP[24];
g) Aboitiz geothermal project in San Marcelino, Zambales in Aeta Domain[25];
h) Ore Mining and Development Corporation operations in Dona Remedios Trinidad, Bulacan in Dumagat Ancestral Domain;
i) Quarrying operations in Mabalacat, Pampanga affecting Aeta;
j) Utilization of the Masungi Georeserve in Brgy. Cuyambay, Tanay, Rizal and the National Greening Program in Montalban, Rizal affecting Dumagat-Remontado;

[19] Report of Atty. Rosette Ferrer (DENR Centralized Office) during the Iloilo public hearing
[20] Report of Val Talavero (DENR Region VI) during the Iloilo public hearing.
[21] Report of Robert Datahan (Eskaya) during the Iloilo public hearing.
[22] Report of Dino Ponsaran (DILG-Region VI) during the Iloilo public hearing.
[23] Report of Motalib Kemil (Tagbanwa) during the Palawan public hearing.
[24] Report of Joel Limsa (Tagbanwa, IPMR-Narra, Palawan) during the Palawan public hearing.
[25] Reported during the Tagaytay City public hearing.

k) LGU Ecotourism project in the crater of Mt. Pinatubo in Botolan, Zambales affecting Aeta communities numbering 3,000 families;
l) Quarrying operations in Montalban, Rizal;
m) Renewal of Integrated Forest Management Agreements in Saranggani, Bagumbayan, Esperanza and Sultan Kudarat affecting the Dulangan Manobo[26];
n) National Grid Corporation negotiations for right of way over ancestral lands of the Tagkaulo and B'laan[27];
o) Saggitarius Mines, Inc. Mining exploration in Tambacan and Malungon, Saranggani[28]

There is one instance reported when a government geothermal energy project resulted in the IP being resettled in an area outside their AD. This violated the IP right to stay in the AD and not to be removed therefrom under Sec. 7, (c) of the IPRA, even in case FPIC for relocation is granted it is subject to certain conditions of equal quality relocation lands and compensation for loss or injury. Moreover, government power generation projects are not an acceptable ground for displacement of IPs from their ADs. A cursory reading of the IPRA will show that the only recognized ground is in the face of natural calamities (such as the catastrophic eruption of Mt. Pinatubo) and even then the IP have a right to return to their ADs after the calamity has subsided[29].

Failure to secure FPIC, however, is penalised under the IPRA at:

> "Section 72. Punishable Acts and Applicable Penalties. Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and 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 hereof shall be punished in accordance with customary laws of the ICCs/IPs concerned: Provided, that no such penalty shall be cruel, degrading or inhuman punishment; Provided further That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the rights of any ICC/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished with imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine not less than (P100,000) or more than (P500,000) or both such fine and imprisonment upon. The discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act."

The failure to document and provide institutional remedies for these unauthorized incursions into ancestral domains prompts the recommendation for an inter-agency process for securing FPIC convened by the CHR providing for dispute settlement through voluntary arbitration supervised by the CHR. An inter-agency thematic working group can also address the prosecution of violations of the IPRA and monitoring the award of damages through arbitration.

[26] Report of Ruben Dalimbang (Dulangan Manobo) in the Davao public hearing.
[27] Report of Leo Ingay (Tagkaulo) during the hearing in Davao City.
[28] ibid.
[29] Tagaytay CHR IP Inquiry Documentation.

5. Remedies appropriate to IP cultures are hindered by the State when IPs are forced to litigate in adversarial courts of justice

The quasi-judicial functions of the NCIP, specifically the jurisdiction over Non-IP litigants has been clarified and limited by the Supreme Court in the case of *Lim vs. Gamosa*, G.R. No. 193964, December 02, 2015 which upheld *Unduran et al. v. Aberasturi et al.* where it was ruled that Section 66 of the IPRA does not endow the NCIP with primary and/or exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs. Based on the qualifying proviso, the Supreme Court held that the NCIP's jurisdiction over such claims and disputes occur only when they arise between or among parties belonging to the same ICC/IP.

Since two of the defendants therein were not IPs/ICCs, the regular courts had jurisdiction over the complaint in the case.

Given this, the IPs are compelled to litigate before regular courts for violation of their MoAs with Non-IPs. Litigation is culturally, financially and geographically prohibitive for the IPs. The adversarial nature of the litigation process is a totally alien concept to the IPs being familiar only with the dispute resolutions of customary law.

The recommendations seek to provide arbitration services for IPs so they may settle disputes with non-IP entities in a manner that is more accessible and culturally appropriate than adversarial and highly technical litigation.

6. Police power and law enforcement for customary law decisions and domains protection as a measure of IP empowerment is not recognized and supported by the State. There is no provision in the IPRA or its implementing rules on customary law enforcement through traditional enforcers who are inherent in the societal structure of every tribal society

Enforcement is intrinsic in every legal regime, i.e., any law requires enforcement for its proper implementation.

IPRA recognition of customary law is clear in Sec. 15, IPRA: “The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions and peace building processes or mechanisms and other customary laws and practices within their respective communities as may be compatible with the national legal system and with internationally recognized human rights.”

IPs have reported frustration in enforcement of their customary laws within the AD especially with non-IPs. They report illegal logging and no official actions are taken[30]. In the Haran public hearing

[30] Palawan City CHR IP National Inquiry Report

they explain that the “Alamara” and “Alimaong” are not military creations but traditional enforcers of customary law and peacekeepers within the domain.

These are under the authority of the Indigenous Political Structures (IPS)[31]: Moreover, efforts of the IPs to declare their ADs as zones of peace require a monitoring mechanism on the ground level. This mechanism has to have a capacity to defend the integrity of the AD through communication equipment, sea and land patrol vehicles, proper training and duly registered firearms.

An internal body authorized to conduct arrests for violations of customary law and national laws for the conservation of resources such as the total log ban within ADs is a natural prerequisite of self-governance. It is also necessary in enforcing the right to regulate entry and authorized activities of migrant settlers and other entities.

If the IP are to assert this right, it would be an exercise in futility without the assistance of some form of traditional law enforcement. Moreover, the IPRA sets down obligations for the IPs to maintain ecological balance and restore denuded areas which also require Law enforcement.

The IPRA provides no recognition of such traditional peacekeeping police function despite its repeated recognition of customary law. It does not even provide that the IP may call on the PNP to enforce its dispute resolutions and for police assistance in maintaining ecological balance within the ADs.

It is a glaring gap in the law that needs to be addressed.

It is direct empowerment to recognize the IP mechanisms whereby they traditionally enforce customary law, conserve remaining natural resources and maintain peace and order within the ancestral domain.

Past experiences of the army recruiting IPs have led to violent factionalism within the IP societies, especially if there are IPs who have joined the armed rebellion in their area. This is the violent experience in Agusan where the IPs where nearly evenly divided between tribe members who have joined the NPA and tribe members who have joined the Army. Traditional society is dissolved and the IPS is no longer the source of authority in the area.

Recent efforts at peace dialogues between the parties the conflict have yielded preliminary promising results with both factions reportedly abandoning their affiliations in favor of re-asserting their IP identities.

Moreover, peacekeeping and territorial defense concerns are not within the mandate of the Philippine Army as these are matters internal to the IPs and can only be dealt with by providing the Indigenous Political Structures (IPS) a mechanism to protect and defend its territory and peoples.

Neither are these concerns within the mandate of the Philippine National Police, as these will require the authority, direction and supervision of traditional leaders/elders and are for the enforcement of another set of laws, i.e., customary laws.

[31] Transcripts of CHR Haran public hearing

The only remedy for this is to legally recognize the indigenous character of defensive forces traditionally embedded in all IP societies, provide for their registration and training by the army but provide that they are exclusively within the authority of the IPS and that they may not be relocated or given military assignments because they function exclusively as defense force of the ADs as well as provide sanctions and penalties for unlawful use of the defense force.

The CHR endorses formal recognition and support for these law enforcement mechanisms already embedded in IP societies.

7. The peace process in the ARMM and efforts toward federalism render IP Rights nebulous and require re-definition of IP political status and relations with the State. Both islamized and non-islamized IPs affected by the peace process should enjoy the protection of the IPRA. Passage of the BBL (Bangsamoro Basic Law) must include mechanisms to protect IP rights such as those endorsed to Congress by the MIPLA (Mindanao IP Legislative Assembly) for creation of an independent IP commission and for a transitory committee to establish rules for its creation and definition of its powers

The Non-Moro IPs and even the Moro IPs of Mindanao are asserting rights already "vested" under IPRA in an effort to carve out a separate regime of rights under the new political entity that the BBL seeks to establish, the Bangsamoro political entity. The IPs are asserting the principle of non-derogation and non-diminution of rights enjoyed under IPRA[32]

This assertion is rendered more urgent by the fact that a large portion of the Teduray/ Lambangian Domain is presently within the "core territory" of the Bangsamoro.

In the presentation of Mr. Dave de Vera of PAFID before the Indigenous Peoples Peace Panel (IPPP), AD in excess of 270,000 hectares which span 2/3 of the province of Maguindanao including the entire coastline facing the Moro Gulf was successfully delineated. The CADT application is still pending before the NCIP.

The conduct of plebiscites within ADs to ask for a democratic vote on inclusion into Bangsamoro territory is a violation of the rights to ADs of the IPs. The concept of AD communal ownership which prohibits alienation of any part of the AD contemplates that no other entity may exercise dominion over the same.

Plebiscite seeks the vote of the majority in ADs where the IPs have been minoritized but notwithstanding this are given special protection by the Constitution, the IPRA and the UNDRIP as "peoples".

The AD, under the concept of Native Titles, has been recognized in Philippine jurisprudence as privately owned by IPs since time immemorial and since before the Nation State came into existence. Therefore, it is *ultra vires* for the GRP to negotiate the acquisition of Bangsamoro territory albeit through the conduct of periodic plebiscites.

[32] Resolutions of two MIPLA proceedings held in Davao

It is also an act of State discrimination to give preference to one people in derogation of the rights of another. The Convention on the Elimination of All Forms of Racial Discrimination defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, color, descent or national or *ethnic origin* which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

If the BBL is passed into law by Congress, it would be an act of preferential treatment of the Bangsamoro impairing and/or nullifying the rights to self-governance and self-determination of IPs by allowing the Bangsamoro, through plebiscites, to annex portions of ADs.

The definition of the Bangsamoro people which eliminates the dichotomy between Moro and Non-Moro IPs as well as negates the diversity and multi-cultural character of IPs in Mindanao is violative *per se* of the rights to cultural identity of all IPs.

The BBL, although it manifests recognition of Native Titles and the rights of indigenous peoples, does not mention IPRA implementation inside Bangsamoro territory. Instead, it projects a 25-year period wherein periodic plebiscites recurring every 5 years will be conducted to increase its territory.

The BBL, however, repeals the previous dichotomy between Moro and Non-Moro Indigenous Peoples and subsumed this to a homogenous "Bangsamoro people" ignoring the international definition of IPs and the basic realities of Mindanao, i.e., that there are 21 Non-Moro IP tribes and 8 Islamized IP tribes with historically delineated ADs.

This is indicative of an agenda of integration and assimilation of Non-Moro IP for the purpose of increasing Bangsamoro territory. These are addressed by Article 8, UNDRIP: "States shall provide effective mechanisms for prevention and redress for: (d) any form of forced assimilation or integration".

To conduct a plebiscite within ADs will have the potential effect of surrendering the rights to self-determination and self-governance over any or all of the ADs to another political entity such as the Bangsamoro government. It is a form of forced assimilation, especially in view of the political and economic marginalization and minoritization of the IPs within their own ADs. It is also a form of gerrymandering[33] where the plebiscites are conducted in areas where the demographics, such as the minoritization of IPs within their own ADs, would yield a result that supports the political agenda of the Bangsamoro for territorial expansion.

Thus, the CHR would strongly urge Congress to pass the version of the BBL which contains the proposals of the Mindanao IP Legislative Assembly (MIPLA) to create a Mindanao IP Commission and a Transitory Commission to establish the rules and parameters of new political relations with the Bangsamoro.

[33] Gerrymandering is a practice intended to establish a political advantage for a particular party or group by manipulating district boundaries.

8. The state is deficient in gathering and disaggregation of data on IP women, IP youth & children, internally displaced IPs and IP elderly to render them specific targets of government assistance and expenditures. There is insufficient monitoring of IP rights to access to basic services as well as IP collective rights to ancestral domains development.

IPs enjoy both individual and collective rights. Thus, monitoring should focus on both rights.

Except for the DepEd, DOLE and DOH, government agencies were consistent in reporting that there are no formal monitoring mechanisms being utilized to monitor impact of their projects.

The IPs have registered their vehemently opposition to the "no home birthing" policy of the Department of Health. Although it is intended to lower the rate of maternal deaths in the country, it has the effect of violating the right of IP women to traditional birthing methods. The IP women are affronted by the strangers in birthing hospitals and clinics that witness the birth.

Moreover, pregnancies in geographically isolated and disadvantaged areas (GIDAs) result in mothers dying from the trip to the nearest birthing facility[34]. Despite these complaints, there is no feedback mechanism built into the Health program that will allow for monitoring and evaluation.

It is always good policy to have a monitoring mechanism with solid measurable indicators already in place once a program or project is implemented, otherwise there would be no basis for advancement in terms on building on gains or correcting errors. The IP Human Rights Observatory can head this monitoring function through an inter-agency body.

An inter-agency body in the IP Observatory should continually develop monitoring tools to help in the assessment of government programs and projects among IP. Monitoring must have a good feedback mechanism so that programs perceived as oppressive or discriminatory such as the DOH prohibition on home-birthing among IPs, must be immediately re-formulated.

Overtime, the Observatory shall have its own data-bank that is necessary for policy formulation, assessment and planning.

Another value of monitoring is that it ensures that IPs have access to basic services in the areas of health, education, employment, social security, disaster mitigation and prevention, poverty alleviation from their respective LGUs. Discrimination in the delivery of basic services should also be a particular subject of monitoring.

IPs have reported that they were denied equal opportunity to avail of government services such as the 4Ps program of the DSWD due to discrimination[35].

[34] Report of Roldan Babelon (Erumanen ne Menuvu) and Linda Midal (Lambangian) during the Davao City public hearing.
[35] Tagaytay CHR IP Inquiry Documentation.

During the drought brought about by La Niña in 2016, no government assistance was forthcoming despite appeals for help posted by the IPs in the media.

There were social media appeals for help with the posting of monkeys descending from the mountains due to the drought and photographed at national highways in Sultan Kudarat. Promises of sacks of rice distribution was the primary reason for IP participation in the mass protests of Kidapawan and the encampment in Haran.

There is no government mechanism that deals with IP displacement despite its periodic occurrence in conflict areas of Mindanao. Aid is rendered by primarily by non-governmental and church organizations and secondarily by local governments. Government resources should be accessible during these times of man-made calamities.

Overall, there is no culture for monitoring and evaluation existent among State duty bearers to enable the IP to provide feedback on the projects and programs and obtain redress should these be deleterious or cause of damage to the IP communities.

The recommendations seek to remedy these through direct partnership to produce Monitoring and Evaluation systems and to establish FPIC procedures for government programs.

9. Displacement of IPs due to conflicts in ancestral domains and extrajudicial executions of IPs and IP rights defenders are at alarming levels and government remedies and prosecutions are slow to respond to this.

During the inquiry, the IP leaders reported many cases of displacement due to eruption of conflicts within the ancestral domain as well as extrajudicial execution of IP leaders and IP rights defenders. The various testimonies points to the root of these conflicts within the AD as follows: a) development aggression driven by resource conflicts, b) external conflicts of opposing armed groups brought in the ADs causing division among IP community members.

Many of these killings were documented in the report of the CHR of the Haran incident. The encampment at the Haran compound itself was one such displacement cause by conflicts in the ancestral domains.[36]

However, the Haran report noted that

> *"It would be simplistic to say that ideology is the single driver in the ancestral domains of Mindanao. Documentary, testimonial, and anecdotal evidence gathered during the Commission's inquiry point to the fact that land-use and extraction of mineral resources are inextricably linked to insurgency. Unfortunately for the majority of the indigenous peoples. These natural resources, far from lifting them from poverty. Have only added to their misery and oppression. Fear and poverty, abetted by government neglect and decades of exploitation, have all contributed to making the Lumad especially vulnerable to displacement."*

[36] Report on the Human Rights Situation of Indigenous Peoples of Mindanao in the Midst of Conflicts, including those who have encamped in Haran, Davao (May, 2018. CHR)

V. RECOMMENDATIONS ARISING FROM KEY FINDINGS

The Report lists many urgent concerns among IP that should awaken the State duty bearers to their responsibilities. It also summarizes the remarkable efforts of civil society at addressing government lapses in IP Rights protection and promotion.

From a discussion of the CHR Perspective, it is clear that the only way in which government as State Duty Bearer can deal with IP giving full respect to their collective rights, is for a forum to be created and refereed by the CHR, wherein the relationship of direct partnership is established bring the GRP (Government of the Republic of the Philippines) on equal footing with every self-governing IP structure.

Moreover, the over-all recommendation for an IP Human Rights Observatory in the CHR takes advantage of the CHR's being an independent Constitutional Commission organized in all regions of the country as well as being an NHRI enjoying an international Class A status at the UN. It is thus uniquely positioned to perform coordinating as well as oversight functions in a qualitatively higher stage of IP Human Rights Protection and Promotion that is tailored to fit Philippine IPs.

The IP Observatory consciously seeks to avoid being just another layer of bureaucracy. It seeks to rationalize government services to maximize measurable effects on its service beneficiaries.

It seeks to build a central data bank for IP for more informed policy-making, for academic research, and to allow IPs to effectively access government services as well as local and international funds for development of their Ancestral Domains. Overall, it seeks to create an appreciation for the alternative paradigm for development inherent in the IP which has protected their domains for millennia and which is now universally praised and prized with the onslaught of Climate Change.

It seeks to overcome the attitude that objectifies the IP as "target beneficiaries" that serves the government, civil society organizations, or other non-State entities more than it serves the beneficiaries. Finally, it seeks to promote a culture of mutual benefit partnerships that saves on valuable resources in terms of time, effort and taxpayers money that, while acknowledging the unquantifiable contributions of all partners, raises the need for quantifiers to establish an acceptable mean in the relationship with the IP given the mandatory character of State obligations and laws enforcing the same.

With the IP Human Rights Observatory refereeing the partnership — government, civil society and IP will have pooled their efforts for the national benefit.

It is government's duty to periodically assess itself for its performance and they do this internally as civil service rules require but they have yet to assess their relevance to the public they serve.

One way for this to be done is by institutionalizing a Human Rights-Based Monitoring and Evaluation mechanisms in government services. Currently, this attitude and service is in its seminal stages among government agencies as this Report has documented.

Objectively gauging performances with indicators that the IP service beneficiaries themselves have set after a process of securing their free and informed prior consent, is here envisioned to guarantee good impact, responsiveness, efficiency and accountability.

An oversight body, the IP Human Rights Observatory, working towards achieving the afore-mentioned goals can oversee and referee three (3) partnership mechanisms: 1) the inter-agency partnership; 2) the civil society partnership and the 3) IP partnership convened by an independent Constitutional Commission (the CHR) that anchors itself on IP community-set indicators will result in more responsive and effective remedial mechanisms as well as cost saving benefits to government that comes with data sharing; Monitoring and Evaluation tool sharing and interagency coordination for remediation.

V.a. Recommendations addressed to State Duty Bearers

a) The CHR recommends the review and amendment of the provision in the JAO 1 Series of 2012's that indefinitely holds the issuance and registration of CADTs by the NCIP in order to protect the Ancestral Domains from further encroachment.

   It also advises the DENR and the DAR to adopt the cut-off date of November 22, 1997 effectivity of the IPRA to stop further survey plans for issuances of all manner of tenurial instruments and other land titles beyond said cut-off date. Said review and amendment of this JAO should be undertaken no later than ninety (90) days to be monitored by the CHR so that no further delays violates the rights of IPs to own their ancestral domains.

b) The CHR endorses to Congress, the enhanced version of the BBL wherein the Mindanao IP Legislative Assembly (MIPLA) made substantial recommendations for the creation of an Independent IP Commission in Mindanao to protect IP rights in the establishment of the Bangsamoro political entity.

c) The CHR advises all government agencies and instrumentalities that the FPIC requirement is the IPRA-created mechanism to guarantee the rights to self-governance and self-determination of the IP and applies to all public and private actions that affect IP communities as an indivisible whole. They are advised to seek FPIC before implementing their projects and programs or risk prosecution under the penal provisions of the IPRA. They are advised to participate in the partnership building with the IPs and Civil Society to facilitate the process of seeking FPIC and adopting a common Monitoring and Evaluation system as well as sharing of data relevant to IPs.

d) In the case of IP displacement and killings due to conflicts within the ancestral domain, the CHR reiterates the recommendation from the Haran incident report that "calls on both the Philippine Government and the NPA to refrain from creating conditions that cause indigenous people to evacuate from their ancestral domains…(such as)…coercion, intimidation or deception that will cause the (IPs) to leave their ancestral domains." Further that this includes " refrain(ing) from recruiting indigenous peoples, especially children for activities relating to the armed conflict". CHR further calls on the state to investigate all parties in these conflicts for possible violations of relevant laws and make the report of this investigation public.

e) The CHR recommends that Congress, particularly the Committees on IP, draft a bill amending IPRA to provide for budget appropriations to answer for claims for reparations of indigenous peoples based on documented displacement and other acts of marginalization brought about by historical State policies and programs and to create an IP rights violations claims board.

   In the alternative, Congress may provide for budget appropriations for AD development along the parameters set out in the respective ADSDPPs of the IPs that ought to be developed considering the rights-based approach to development planning[37]. CHR further recommend the enactment of an Ethnic Origin Act (Senate Bill Number 912 and House Bill Number 00579) to protect indigenous identity including those IPs outside their ADs

f) The CHR calls upon the NCIP to ensure the validity of the selection process for the IPMRs (IP Mandatory Representatives) by their respective Indigenous Political Structure (IPS) with the DILG ensuring that the concern LGU recognizes these selections.

g) The CHR enjoins all government agencies to establish and designate IP Desk/focal points in in order to ensure that proper attention is given by the state duty bearers on IP rights pursuant to IPRA and to inform the CHR within 30 days of related actions taken by relevant agencies

h) The CHR calls on the Senate to ratify the ILO Convention 169 or the Indigenous and Tribal Peoples Convention to further enhance and as a testament of our commitment to international standards on IP rights.

V.b. Other Recommendations for the establishment of an IP Human Rights Observatory

a) Emergency Response Mechanisms and Thematic Technical Working Groups

With advances in technology comes the responsibility for its proper uses. Capability Building within IP communities over the years have enabled them to document events as they occur and transmit them electronically in order to access private and government assistance.

In the event of extrajudicial executions of IP rights defenders and internal displacement of IP communities, for example, a private, secured section of the CHR IP Human Rights Observatory Online Platform in the CHR website can function as emergency alert/notification. Both CHR and NCIP Regional offices can coordinate to follow through on investigation while the interagency partnership can convene a technical working group (TWG) for that specific category of IP Rights violations.

The old system of referrals may just go around in circles with each bureaucratic agency washing its hands citing other agencies' failures but that does no one any good, least of all the human rights victims.

[37] CHR recommends the use of the guidelines in the Rights-Based Ancestral Domain Sustainable Development & Protection Plan (ADSDPP) Primer

The DOJ, OPAPP, DILG, PNP, AFP, OP, CHR-RHRC and the CHR can pool resources to work out specific responses for violation of individual rights of the victims amid the worsening spate of killings among IP. The CHR can go a step further from investigation and recommendation for prosecution to inter-agency monitoring on follow-thru arrests and prosecution. This thematic working group can also study the possibility of disestablishment of government reservations in order to restore Ancestral Domains.

Also, the value of the CHR being convenor of these partnerships is that recalcitrance or failure to perform official duties can be dealt with using the oversight function which includes Ombudsman complaints for public officers who fail to perform or is grossly negligent in the performance of duty.

For private or non-State offenders, violations of the IPRA can give rise to DOJ criminal complaints under the penal provisions of the IPRA. The CHR, as independent Commission, can also offer mediation/voluntary arbitration services among State or Non-State offenders/ public or private persons and entities who have caused civil damages in IP communities.

This emergency response mechanism is also envisioned for other emergencies arising from natural or man-made calamities such as drought or civil unrest documented in the 2017 IP Inquiry as well as previous Inquiries[38].

B*ut the primary emphasis and working arrangements with government agencies, civil society and IP communities, will be based on the sharing of data and pooling of efforts and resources to comply with State obligations to serve the IP beneficiaries in their self-empowerment efforts at asserting individual and collective rights.*

b) Adoption of a common M& E system with a built-in process for FPIC.

The IP Human Rights Observatory will craft a Human Rights-based M&E system that the three (3) levels of partnerships[39] can commonly adopt.

Upon adoption of a common M & E system, all government projects affecting IPs and using the three (3) layer partnerships as forum, can have an efficient process of electronic exchange of program/ project notes for comments of the representatives of the 3-level partnerships with the objective being to clarify the project sufficient for the exercise of free and informed prior consent by the IP. Changes on the project components may be made with all the input collated for a series of notes exchanges.

If there are fundamental objections to the project, a round table discussion can be called. Needless to state, a rejection by the beneficiaries for irreconcilable and fundamental objections during the process must yield to withdrawal of the project for their respective areas. A separate discussion on site-specific and beneficiary-generated indicators for Monitoring and Evaluation will accompany the acceptance of the project by the IP. Thenceforth, all ongoing and planned gov't projects will be required to undergo this process to secure free and informed prior consent. Policy

[38] Haran Transcripts of Public hearing and Kidapawan Rally Resolutions of CHR

[39] These three (3) layers of partnerships for the IP Human Rights Observatory (IP-HRO) will include: 1) the inter-agency partnership; 2) the civil society partnership and the 3) IP partnership convened by an independent Constitutional Commission (the CHR)

Advisories will be issued to private entities engaged in business within ADs to undergo this process or else risk prosecution and penalty under the IPRA.

Thereafter, each processed project/program becomes a mutually held responsibility which should be formalized through appropriate Memoranda of Agreement with mandatory contract provisions for submission to Mediation as a grievance procedure and Voluntary Arbitration by the CHR or through its accredited pool of arbitrators in the event of fraud, malice or negligent mis-implementation and this requires documented civil damages directly arising therefrom.

c) Protection and Promotion of IP Rights through Mediation and Arbitration

Under prevailing laws and jurisprudence, the mediation/arbitration award is a form of out of court settlement and no matter that is discussed or given in evidence therein may be used in adversarial judicial proceedings by any party, to encourage free discussion to facilitate settlements. The award cannot be cited as precedent as it is binding only on the participating parties; the arbitral award, however, may be deposited in the Regional Trial Court by the parties for execution purposes[40].

It is proposed that the CHR senior lawyers and the Regional Directors in all the Regions be capacitated for Mediation and Arbitration. NCIP-endorsed senior lawyers, ex- Commissioners, and Civil Society lawyers may also be invited to the capacity building seminars, *provided these are all duly recommended by partner IP communities*. The seminars apart from cultivating technical expertise, will have advocacy components such as IP and Business Human Rights, IPRA, UNDRIP and jurisprudence legal framework as well as IP Rights to Alternative Development components and shall actively promote IP Rights advocacy. The UP Human Rights Institute will be invited to join the government agency partnership.

Thereafter, the CHR-NCIP shall jointly accredit a List of Mediators/Arbitrators that IP complainants and their respondents nationwide may freely choose from for alternative dispute resolution involving Non-IP. The CHR convenes the process of Mediation and Voluntary Arbitration where there is a dispute between IP and Non-IP especially when it is based on a MOA which authorizes Mediation and/or Voluntary Arbitration. This, however, does not mean that the CHR automatically sits as member of the Panel. The Panel may result in a different mix of Arbitrators after the parties choose their respective arbitrators and agree on a 3rd member of the Arbitral Panel.

It is not vital for CHR to sit as Arbitrator. It is only important that it supervises the accreditation process by setting guidelines designed to create a Pool of technically competent yet reputable arbiters that can effectively settle disputes and resolve conflicts without sacrificing IP's interests. The IP Human Rights Observatory can invite ex-NCIP Commissioners; senior Human Rights Lawyers of good repute among IP; etc. etc. until a good pool is created and publicized at the CHR-NCIP website.

Thereafter, the CHR IP Observatory shall: i) convene the process of mediation/ arbitration; ii) sit as 3rd Arbitrator if mutually acceptable to both parties to the Arbitration and iii) monitor the progress of the Arbitration proceedings until the arbitral award is duly executed.

[40] As provided for in Republic Act 9285 An Act to Institutionalize the use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for other

The MOAs with government agencies should provide for suspension of the project/program while mediation and/or arbitration settles the dispute. MoAs involving royalties for exploitation of natural resources may contain similar provisions as a pre-condition for consent of the IPs.

d) Training and Capacity Building of IP Stakeholders through the IP Human Rights Observatory

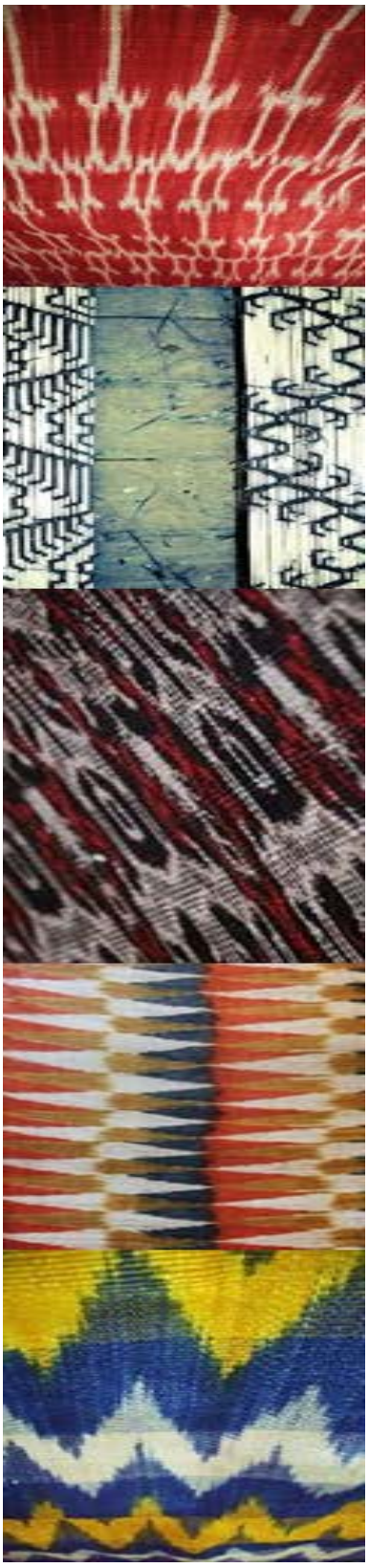
Strengthen Capacity of IP leaders including IPOs, IPS and IPMRs. Detailed training needs were identified by IP representatives during the national inquiry. This will also include engaging and supporting the Mindanao IPMR leagues, and the formalization IPMR league all throughout the country in linkage with IPHRO.

e) Financial Support by the State to the IP Human Rights Observatory and Fiscal Monitoring of other IP-related Budget Allocations

Full operationalization of IPHRO should be properly and sufficiently finance through GAA allocation within CHR and other relevant government agencies as well as funded from external sources. Furthermore, Fiscal Monitoring of IP-related public expenditures to track budget, net worth and resources of IPs, including a government-wide tagging of IP-related budget allocation & utilization for the supply side as well as the full accounting of the financial requirements of all ADSDPP for the demand side of fiscal monitoring ought to be done.

f) Establishment of a PARTNERSHIP for a core group of government agencies in the management of the IP Human Rights Observatory.

These agencies are NCIP, DENR, DAR, DSWD, NEDA, NHA, DOH, DepEd, NCCA, PSA and this partnership will be convened before the end of 2018



This is supported by the **GOJUST HUMAN RIGHTS PROJECT** – a joint endeavor of the **European Union (EU)** and the **Spanish Government** through the **Spanish Agency for International Development Cooperation (AECID).**