

# **FULL INCLUSION OF THE RIGHTS OF INDIGENOUS PEOPLES IN THE PROPOSED BANGSAMORO BASIC LAW**

**(Position Paper on the H.B. 4994 Formally Submitted on October 22, 2014<sup>1</sup>)**

**The Teduray, Lambangian, Dulangan-Manobo and Erumanen ne Menuvu have deep respect for the struggle of the Bangsamoro for their rights to Identity, way of life, territory, self-determination and self-governance. This deep respect is unavoidable because they share in the historical struggle to assert their rights to their existence against all foreign colonizers and against those who have been so thoroughly colonized that they have lost touch with their indigeneity and have learned the foreign ways that view land as a commodity or a mere tool for development.**

**The Tribes suffered the same fate as with their “Moro” brothers and sisters IPs in the sufferings brought by colonization and discrimination. Throughout Philippine history since the nation-state was established, the tribes have resisted government policies of integration and assimilation so that their jealously guarded culture and their rich natural resources within their Domains are not lost in the illusion of development that destroys the Domain instead of nurturing its capacity to sustain future generations.**

**Perhaps too late, the governments of the world now acknowledge that their way of life that is in complete harmony with creation is the better path to development.**

**But now, with the proposed Bangsamoro Basic Law (BBL), they feel that they face another kind of Discrimination; another form of Assimilation this time with brother fighting brother in a mad scramble for territory and natural resources; another source of tension where the right to regulate the entry of migrant settlers guaranteed by the Indigenous Peoples Rights Act (IPRA) attains a new dimension in guarding their Ancestral domains (AD) borders against incursions for a possible 10% petition or guarding their LGU executives from the temptation of big projects in exchange for passing a resolution seeking inclusion within the new political entity.**

## **CLARIFY THE PROPOSED PROVISION ON IDENTITY; RECOGNIZE THE DIVERSITY OF INDIGENOUS COMMUNITIES AND PEOPLES**

**The proposed BBL’s text that is currently being deliberated upon by Congress provides an unclear and confusing definition of “Bangsamoro people” particularly insofar as the proposed BBL text defines this as “...*Those who at the time of conquest or colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands including Palawan, and their descendants, whether of mixed or of full blood, shall have the right to***

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<sup>1</sup> ***This position paper is a product of a series of consultations and discussions on the BBL conducted by the study group composed of leaders of the Indigenous Political Structures of the Teduray and Lambangian and Erumanen nu Menuvu, known as the Timuay Justice and Governance and Gempa nu Kamal te Kalindaan ne Erumanen ne Menuvu respectively, and leaders from civil society organizations working for human rights, social justice, and peace.***

*identify themselves as Bangsamoro by ascription or self-ascription.*” Not all “natives” or “original inhabitants” of Mindanao at the time of conquest or colonization or their descendants ascribe as Bangsamoro; they in fact ascribe or identify themselves as belonging to indigenous communities or peoples called and known by different names. The last sentence of Section 1, Article II of the proposed BBL is likewise unclear and confusing insofar as it provides that — “*Spouses and their descendants are classified as Bangsamoro.*” From this language of the proposed BBL, it appears that through legislation, i.e., the BBL, “spouses and descendants” of the “natives” and “original inhabitants” of Mindanao and their descendants are automatically classified as “Bangsamoro.” This provision in the proposed BBL is confusing and unclear and must, therefore, be changed and clarified because in reality and truth not all “spouses and descendants” of “natives” or “original inhabitants” of Mindanao ascribe or identify themselves as “Bangsamoro” and in reality and truth or fact identify themselves as belonging to indigenous communities or peoples that have different names or are known and called by different names.

The text of the proposed BBL is unclear about the intent and legal effect of this “identification-by-legislation” especially as regards those who in fact do not subscribe to the identity proposed in Section 1, Article II of the proposed basic law.

Further, the BBL proposes a loose umbrella definition of “Bangsamoro People” wherein all indigenous peoples of Mindanao are given the OPTION to ascribe to, via the mechanism of 10% petition and plebiscite in “contiguous areas”. This mechanism is supposed to be limited by “contiguity” with the existing “core” areas of the Autonomous Region in Muslim Mindanao (ARMM) but is in actuality UNLIMITED because it is not bordered by a legislated timeframe and it encompasses the entirety of Mindanao, Sulu and Palawan. In short, it is an ever expanding territory that is envisioned by the BBL and *this is not a formula for peace. It is a formula for increasing the tension and insecurity in the protection of the Ancestral Domains.*

The assertion by Indigenous Peoples of their collective rights as peoples cannot be belittled by their conscious attempt to use the ways of peace in the struggle to attain local and international recognition.

The non-Moro indigenous peoples have consciously and deliberately refrained from taking the armed option and opted to engage the State in laborious dialogue and lobbying to craft a piece of legislation that is the IPRA that antedated the UNDRIP by ten years.

After such a successful and peaceful struggle, they believed they are now within their rights to demand from everyone and both State and non-state actors equal respect for obtaining similar success by peaceful engagement.

*“Nothing about us [Indigenous Peoples], without us [Indigenous Peoples]. Everything about us, with us.”* ON  
OUR ANCESTRAL DOMAINS AS SUBJECT OF  
AND COVERED BY CONTRACT BY OTHERS

After the difficult struggle of winning the admission of the Philippine State that Native Title antedates the creation of the nation-state so that their Ancestral Domains have never been part of public domain under the Regalian Doctrine, they believed they are entitled to no less than the same recognition and respect.

With all due respect to the Office of the President (OP), the Office of the Presidential Adviser on the Peace Process (OPAPP), and the Bangsamoro Transition Commission (BTC), under the same legal framework where the Philippine State cannot lay claim to their Ancestral Domains as ever having been public land, their Domains and the natural resources found therein cannot be a concession obtained through peace negotiations. They believed that the DAANG MATUWID of this administration is not only a crusade against government corruption but an inclusive path to growth that can accommodate the aspirations of all the diverse indigenous peoples over their respective ancestral domains.

The IPRA is by far the best legislation for the affected tribes because it recognizes their birthrights without which they lose their identity. These rights are: the right to ownership/stewardship of Ancestral Domains and the natural resources found within or the right to indigenous territory; the right to freely govern themselves according to their customary laws and traditions or the right to self-governance; and the right to determine the best path to development of their Ancestral Domains that preserves their culture and resources for unborn generations. This last right is the right to self-determination. Without these three rights to land and territory, governance and self-determination — they lose their identity as indigenous peoples.

Deprivation/Derogation/Denial of their birthrights are a violation of the Philippine Constitution, the IPRA and international covenants such as the UNDRIP and the UN Convention for the Prevention of All Forms of Racial Discrimination.

**SUBJECT TO THE CONSTITUTION AND  
NATIONAL LAWS, BBL SHALL PROVIDE FOR  
LEGISLATIVE POWERS;**

**INDIGENOUS PEOPLES' RIGHT TO FREE, PRIOR  
AND INFORMED CONSENT**

Section 20, Article X on Local Government of the 1987 Constitution provides that:

“Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

1. Administrative organization;
2. Creation of sources of revenues;
3. Ancestral domain and natural resources;
4. Personal, family, and property relations;
5. Regional urban and rural planning development;
6. Economic, social, and tourism development;
7. Educational policies;
8. Preservation and development of the cultural heritage; and
9. Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.”

**This provision of the Philippine Constitution limits the BBL's legislative powers over Ancestral domain and natural resources to what is already provided in existing national laws, ie., the IPRA.**

**The Constitution frowns upon the circumvention of existing laws by the organic act or the BBL. It must attempt to harmonize with the IPRA instead of repealing it by implication because the BBL cannot rise higher than the Constitution which already guarantees the right of indigenous peoples to Ancestral Domain and natural resources found therein.**

**The Teduray, Lambangian and Dulangan Manobo of the two municipalities of North Upi and South Upi voted during the 1989 plebiscite against inclusion of their Ancestral Domains in the ARMM, but, votes were tallied at the provincial level, province of Maguindanao, where the Muslim population outside the Ancestral Domains overwhelmed the expression of the sentiments of these three indigenous peoples. Thereafter, their ancestral domains were included in the core territory of the ARMM under RA 6734. The assimilationist/ discriminatory act of tallying votes at the provincial level that defeats the concrete expression of assertion of indigenous peoples rights is the inevitable result of the historical marginalization and minoritization of indigenous peoples.**

**Under RA 9054, another round of plebiscite was conducted in 2001 for the expansion of the ARMM as a result of the GRP-MNLF Final Peace Agreement. Thirteen (13) provinces and nine (9) cities were consulted among which Basilan and City of Marawi and 39 barangays of North Cotabato and six (6) municipalities in Lanao del Norte. Within these areas are the Ancestral Domain of the Erumanen ne Menuvu in two (2) barangay of Carmen, North Cotabato.**

**When the second round of plebiscite was conducted in 2001, the IPRA was already in effect (1997) and yet there was no certification secured from the NCIP that the plebiscite area coverage did not overlap with ancestral domain. There was no Free and Prior Informed Consent secured from the Erumanen ne Menuvu prior to the conduct of the plebiscite.**

**The NCIP rendered a flawed legal opinion that it had no jurisdiction over ADs found within the ARMM but years later it reversed this opinion and passed an En Banc resolution approving the application for delineation of the three IPs Teduray, Dulangan-Manobo and Lambangian.**

***This failure to obtain a certification of no overlap with AD and/or FPIC for the plebiscite renders the 2001 plebiscite ineffectual as far as its effect of annexing a territory that is claimed as Ancestral Domain by virtue of Native Title.***

**It bears emphasis that the national law IPRA recognizes Native Title and considers the CADT as a mere formalization of the Native Title.**

**Section 11, of the IPRA, provides:**

**“SEC. 11. Recognition of Ancestral Domain Rights. The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/ IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.”**

*This lack of FPIC is a legal prerequisite that extends to any plebiscite, past or future, conducted within Ancestral Domains under the expansion mechanism proposed by the BBL and held during 2001 plebiscite.*

*Finally, the Teduray, Lambangian, Dulangan-Manobo and Erumanen ne Menuvu propose to the Ad Hoc Committee that the BBL define its Constitutional limits as organic law this early by providing in the BBL that:*

*(1) "The IPRA remains in full force and effect in Ancestral Domains within the Bangsamoro territories in its present and/or future form and scope of jurisdiction..."*

**and that**

*"Ancestral Domains shall be excluded from eligibility for 10% petition and plebiscites for expansion or annexation"*

**OR**

*"Any area included within Ancestral Domains shall be excluded from expansion of Bangsamoro territory by petition and plebiscite".*

**(2) By necessary implication, they propose that the BBL provide under the Exclusive Powers section that:**

*"Where development and exploitation of natural resources found within Ancestral Domains are proposed by the Bangsamoro, the matter shall be subject of negotiation between peoples with equal rights to self-governance and self-determination..."*

**and**

*"No legislation enacted by the Bangsamoro Parliament shall have the effect or be interpreted to have the effect or implemented to have the effect of derogation or any form of surrender of basic inalienable rights of indigenous peoples".*

**They hold, as do the community of nations by virtue of its adherence to the UNDRIP, that these rights are non-derogable as they define them and without which they cease to exist as peoples.**

**In addition to the specific proposals for additional provisions in the BBL that they attach to this Position Paper, they propose that :**

**(3) The "freedom of choice" to adhere to the Bangsamoro identity or retain their own be DELETED in Sec. 2, Art II of the proposed BBL because as far as indigenous peoples are concerned they can sooner drain the blood from their veins than change their birthright by legislative grant of such illusory "freedom".**

**(4) The "reserved seats" for indigenous peoples be REMOVED or DELETED from the provision in the BBL for Sectoral Representation because, by reason of identity as IP or Indigenous Peoples, they are not "sectors" within any larger**

social grouping but indigenous peoples with the concurrent non-derogable birthrights of self-determination and self-governance over their respective domains and no tribe or IP person can legally represent any other tribe and therefore their domains cannot be a matter of mere sectoral concern.

The proposal is that reserved seats are allocated as representatives of the following indigenous peoples but not limited to the Teduray, Lambangian, Dulangan-Manobo.

*(5) "During the period while the BBL is undergoing Congressional Bicameral consultation and deliberations prior to ratification of the BBL and during transition, and/or prior to the enactment of any regional law concerning indigenous peoples, in order to give full force and effect to the IPRA, the NCIP shall be the government agency that shall have authority to implement the IPRA."*

**(6) Finally, they also propose that a short timeframe for the decommissioning of firearms of the MILF provided in the CAB be set in the BBL and it should be well before the information campaign and the plebiscite ratifying the BBL to ensure that the votes garnered in said ratification plebiscite are the free and voluntary acts of the Bangsamoro's proposed constituents.**

For even if the IPRA proposals are successfully adopted in the BBL draft, the proliferation of high-powered firearms operate to defeat the aspirations of all indigenous peoples, as demonstrated by their struggle for the passage of IPRA, of obtaining prosperity through peaceful co-existence and mutual respect between the diversity of peoples that is the true character of Mindanao and the true heritage of the Filipino people.

**We believe that the harmonization of the proposed BBL with IPRA is the only way that BBL can hurdle its constitutional limitations.**

**If BBL is illegally imposed upon the Indigenous Peoples, it is ethnocide and a violation of the law of nations embodied in UN conventions. If they agree to the BBL as drafted, it is suicide.**

*At this juncture, it is in the hands of the women and men of this Congress to pass a law for peace, that will actually forge a lasting peace. Let it be this Congress' legacy to enact a Bangsamoro Basic Law that is based on the recognition of human rights of all people, and anchored on justice — a law that will correct historical marginalization and exclusion.*

*October 19, 2014*

**SIGNED BY:**

- 1. Timuay Justice and Governance (TJG)**
- 2. Gempa ne Kamal te Kelindaan ne Erumanen ne Menuvu (Kamal)**

- 3. Teduray, Lambangian Women's Organization, Inc (TLWOI)**
- 4. Teduray and Lambangian Youth and Students Association (TLYSA)**
- 5. Mamalo Descendants Organization (MDO)**
- 6. Lumad Development Center, Inc (LDCI)**
- 7. Mindanao Indigenous People's Peace Forum (MIPPF)**
- 8. Manobo Lumadnong Panaghiusa sa Arakan (MALUPA)**
- 9. Pasacaday Manobo Association (PAMAAS)**
- 10. Mindanao Peoples' Peace Movement (MPPM)**
- 11. Purple Action for Indigenous Women (LILAK)**
- 12. Legal Rights and Natural Resources Center – Kasama sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/Friends of the Earth Philippines)**