



Policy Brief

PHILIPPINES

May 2019

RIGHT TO SELF-DETERMINATION

Harmonize Legal Instruments and Customary Practices in the Right to Self-Determination

Introduction

The right of the indigenous peoples to self-determination is a fundamental right. The inability to practice self-determination in the context of traditional systems does not only mean loss of freedom but is a threat to survival as well. The legal bases of this right are enshrined in the Universal Declaration on Human Rights (UDHR) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Philippine Indigenous Peoples' Rights Act (IPRA) provides legal protection for indigenous peoples' rights to self-governance and self-determination and respects the integrity of their values, practices and institutions. The State also guarantees the right to freely pursue their economic, social and cultural development.

The urgency in strengthening and protecting the right to self-determination will safeguard the future of indigenous children. At the moment, the youth of Guinaang, Pasil, Kalinga want to eventually practice this right. This is expressed in their career aspirations geared towards leadership and service such as, president, barangay captain, soldier, police, teacher, nurse, and doctor.

This policy brief summarizes key findings and recommendations on the right to self determination in a study done by Tebtebba, entitled "*Pagsasalinlahi*:"





Asserting and Safeguarding Indigenous Peoples' Rights for the Next Generation."

Right to Self-Governance

In Guinaang, Pasil, Kalinga boundary disputes are resolved by means of customary laws. Though this has proven effective on many occasions, on the downside, conflict may result in harm whenever the disputes are not resolved. When a *bodong* or peace pact is broken, the lives of an entire tribe is at risk, including the young Guinaang who study in the cities such as Tabuk. In these situations, harmonizing customary laws and legal instruments allows for the resolution of conflicts without the extra legal aspect.

Other laudable customary practices among the Guinaang is the ideal of the collective spirit. This is shown in the practice of rectification wherein the whole community contributes to the needs of those disenfranchised, from family members of murder victims to contributions for the replacement of lost shoes.

There exists a traditional sense of individual obligation to the tribe: a crime done by a member is tantamount to a crime done by the whole tribe. In relation to self-governance, members therefore are answerable to the whole tribe. In return, the whole tribe ensures the compliance with measure/sanc-

tions that are decided upon. Strengthening this practice will be advantageous for the youth as this instills not just discipline but responsibility or accountability for any action that may have an implication for the community.

The challenge in self-determination when it comes to governance is the disconnection of the Philippine local government's system of political subdivisions within a territory. The governments system of land declaration is not aligned with the existing traditional method of land declaration. This compromises the ability of indigenous peoples to practice self-determination.

It is necessary to increase information and awareness among the youth in terms of knowledge about their lands and territories. At the moment, the youth in Pasil do not know local terms and legal terms as basic as the Certificate of Ancestral Domain Title (CADT) and ancestral domain. Knowledge of terms and concepts, whether legal or tribe-specific, related to their struggle for official recognition of the territory will empower the youth and prepare them for the time when they themselves will govern their own communities within their ancestral domain.

Right to Effective Participation in Decision Making

Another traditional practice that some of the youth are not knowledgeable about is the *bodong*. The tribal elders do not include the children in the discussions on the resolution of conflicts. This is unfortunate because, though not informed about governance decisions, the youth suffer the consequences of these decisions.

In a positive light, the leaders have declared their determination to transmit to the younger generations the meaning of importance and process of *bodong*, a centuries old tradition.

Among the Tagbanua of Aramaywan, Palawan, there are some mining concerns as DENR approved an old mining claim. The children fear that the expansion of the mining site will jeopardize their fu-

ture as there will no longer be arable lands left for them to cultivate. There is also fear of erosion and other ill effects of mining. These fears should be acknowledged by the current leaders of the community.

Self-determination is manifested within the legal framework of the Indigenous People's Mandatory Representative (IPMR) and the Free, Prior and Informed Consent (FPIC) process. As such, these mechanisms need to be strengthened.

In Guinaang there is a lack of recognition of the right to FPIC, although they recognize the importance of having an IPMR. The FPIC process is considered flawed in Aramaywan as voting is not the traditional way of decision making. Although, there is recognition for the IPMR when it comes to indigenous peoples' concerns, this recognition is conditional because when it comes to development projects, they do not consult with the indigenous peoples.

Customary laws on natural resources are still being observed among the Tagbanua and the elders want to ensure that their indigenous knowledge is passed on to the younger generations.

A mechanism for the transfer of knowledge to the youth is essential. The Guinaang elders recommend combining the oral traditions with the written word. Traditions should also be infused into the official school curriculum. Emphasis should be given to indigenous peoples' education.

In Guinaang, Pasil, it is lamentable that many culture bearers have already passed without having transferred the Indigenous Knowledge, Systems and Practices (IKSPs) to the younger generation. The lack of emphasis is revealed by the dearth in written work relative to Kalinga culture, specifically the Guinaang.

The entry of extractive industries into ancestral domain have limited the capacity of indigenous peoples to self-determination. The youth are now susceptible to, at the most, militarization and, at the very least, they are enticed to side with pro-mining factions due to offers of scholarships and employment. Loss of their connection to their ancestral domain due to the values of capitalist enterprises is a big threat to the right to self-determination.

Policy Recommendations

Right to Self-Governance

Despite the existence of legal bases to this right, the government needs to further emphasize this right in the creation of an Administrative Order (AO). The AO should indicate the government's support for the indigenous youth and should include parameters in the strengthening of indigenous peoples' organizations and community and youth organizations. In this light, it must be emphasized that indigenous peoples should be superior to the indigenous



peoples' organization. This will ensure protection of customary laws and that politicization of the indigenous peoples' organization will be avoided.

The lack of proper representatives for indigenous peoples has weakened the customary mechanisms for self-determination. Only the genuine leaders knowledgeable about their customs and who are given the trust and confidence of the community can determine the survival of the indigenous peoples. Indigenous peoples should address the violations thereof by using existing government complaints mechanisms.

Right to Effective Participation in Decision Making

It is necessary to augment the lack of a government organization/ mechanism giving them a voice. The National Youth Commission (NYC) should strengthen engagement with indigenous youth in their programs. The National Commission on Indigenous Peoples (NCIP) should institutionalize the relationship between the IPMR



and the indigenous youth. The Department of Social Welfare and Development (DSWD) should recognize the aspirations and fears of the children and should develop fora where their voices can be heard, while ensuring the best interest of indigenous children and youth in its various interagency programs in indigenous territories.

This policy brief is developed and based on the findings of the 2017 study entitled “Pagsasalinlahi: Asserting and Safeguarding Indigenous Peoples’ Rights for the Next Generation,” a research led by Wilfredo Vidal Alangui with component reports from Leah Enkiwe-Abayao, Corazon L. Abansi, Maria Victoria P. De Guzman, Bernice A. See, Maria Teresa Guia-Padilla with James Israel Alim and Abigail Kitma and commissioned by Tebtebba, with support from UNICEF and OHCHR. The statements in this publication are the views of the author(s) and do not necessarily reflect the policies or the views of UNICEF and OHCHR.

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