

# ENHANCING

# *Indigenous People's*

ENGAGEMENT IN GOVERNANCE



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**SALIGAN**

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**SALIGAN**

SENTRO NG ALTERNATIBONG LINGAP PANLEGAL

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# INTRODUCTION

The right to participation of Indigenous Peoples is one of the fundamental principles enshrined in three documents crucial in promoting and protecting their rights, which are: First, the Indigenous and Tribal Peoples Convention No. 169 (ILO Convention No. 169), adopted by the International Labour Organization (ILO) to address the wide range of issues faced by the Indigenous Peoples, such as land rights, access to natural resources, health, education, training and conditions of employment; Second, the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP), which is a consolidation and affirmation of the policies of different governments concerning the rights of all Indigenous Peoples in the world; and Lastly, the Indigenous Peoples Rights Act (IPRA) of 1997, a legislation aiming to promote and protect the rights and well-being of the Indigenous Peoples in the Philippines.

Long after the enactment in the Philippines of the Indigenous Peoples Rights Act (IPRA) in 1997 and its ratification of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the government is still lacking in the full implementation of the guarantees provided in said legal documents. One of which is the right of the Indigenous Peoples to participate in the legislative and administrative matters, government programs and all matters that will affect their rights.

This Primer will discuss the legal framework for participation of the Indigenous Peoples in the Philippines and aims to achieve good governance by presenting the participatory mechanisms available to the Indigenous Peoples both at the national and local levels.

We hope that this Primer will be a good reference for the Indigenous Peoples themselves, community leaders, national and local officials and other organizations working for the interest of the Indigenous Peoples to learn and understand the existing venues for people's participation and the importance of implementing the Indigenous People's right to participation for the realization of their human rights. This primer can be a guide to individuals and organizations, too, in advocating for policies that will recognize and institutionalize the right to participation of the Indigenous Peoples and create a more enabling environment for them.

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# HUMAN RIGHTS AND THE INDIGENOUS PEOPLES RIGHT TO PARTICIPATION

## Q. What is Human Rights?

Human Rights, as contained in the Universal Declaration of Human Rights (UDHR), refer to the totality of rights of individuals, including their activities, conditions and freedoms, which they ought to enjoy by virtue of their being humans. Human Rights are based on the principle of dignity, equality and mutual respect which are shared across regions, cultures and religion.

The UDHR was adopted to set out the standards on how individual persons should treat, and live with, each other. It also governs relationship between individuals and the government and the obligation of the government towards its citizens. Numerous international human rights documents were adopted after the declaration of UDHR to deal with specific human rights concern of all peoples and specific group. Among them is the Convention on the Elimination of Discrimination Against Women (CEDAW), United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>1</sup>

## Q. What is the role of the government in the implementation of human rights?

The human rights framework is basically state-centered. Only the government, both national and local, including government agencies, are in the position to formulate laws and policies necessary for the protection and implementation of human rights. The government actors are the ones tasked to realise human rights and to abstain from human rights violation.

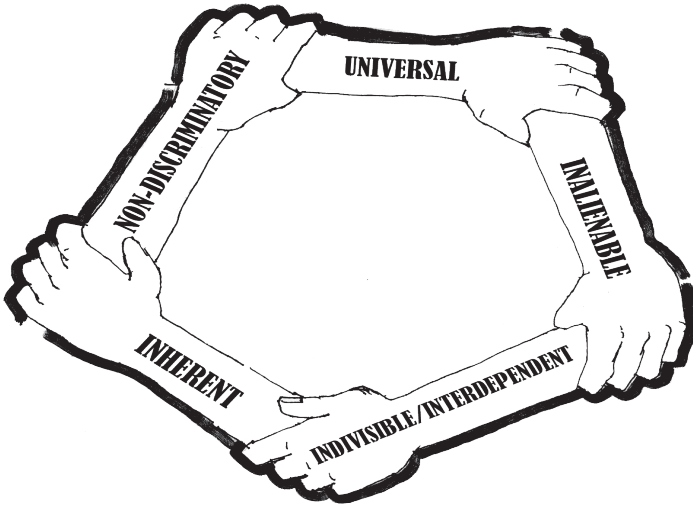
This can be done by the government through the formulation of laws and policies, putting in place measures, programs and activities that will realize the rights guaranteed under the human rights documents.

<sup>1</sup> UNICEF. "What are human rights?" UNICEF for every child, [unicef.org/child-convention/what-are-human-rights](https://www.unicef.org/child-convention/what-are-human-rights)



## Q. What are the fundamental characteristics of human rights?

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The following are the fundamental characteristics of human rights:

1. It is **UNIVERSAL**. Human rights are held by all persons equally regardless of age, sex, social status, religion, race, culture and belief. This means that even Indigenous Peoples are entitled to all the rights available to other people outside their communities. This is because the people are entitled to human rights, simply, by virtue of their being humans.

2. It is **INALIENABLE**. Individuals cannot give-up rights or their rights cannot be taken away from them just because they are not in the exercise thereof. For example, education is a human right which is inaccessible to most of the Indigenous Peoples but it doesn't mean that the government is relieved from providing quality education to them.

3. It is **INDIVISIBLE/INTERDEPENDENT**. Each of the human rights is equally important. This means that, for an individual to enjoy his or her political and civil rights, he or she must be ensured of his/her economic, social and cultural rights. For example, if a person is denied his/her right to health, that person is also denied his/her right to life.

4. It is **INHERENT**. Human rights are inherent to all human beings because everyone are born with, and possess, these rights. Human rights existed from the moment of conception. They are not owned by select people or given to them in exchange for something or by reason of generosity.

5. It is **NON-DISCRIMINATORY**. This means that human rights must be guaranteed to all people without discrimination of any form. The discrimination referred to do not only refer to acts performed by other individuals but also those by the government, such as protection from policies and practices which have discriminatory effect/s to any person.

### Q. What are the other principles of human rights framework?

The following are the other human rights framework:

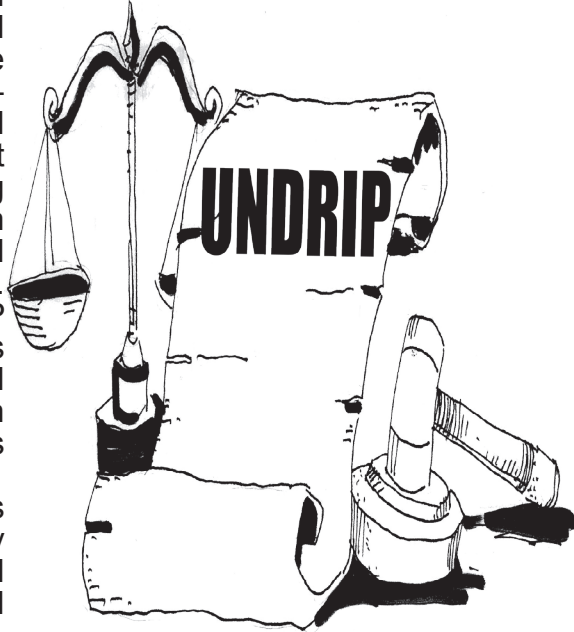
1. **PARTICIPATION**. Under this principle, all persons have the right to participate in all decision-making processes that affect their rights. This includes being consulted and their opinions considered before any program or policy is formulated and implemented.

2. **ACCOUNTABILITY**. The human rights framework demands not only implementation of policies and programs but also the creation of mechanisms or measures where the government can be held accountable due to non-implementation or violation of such policies and programs.

3. **TRANSPARENCY**. This means that the government, as the primary duty-bearer under the human rights framework, has the obligation to share information and decision-making processes affecting rights of the people. Because of this, any person must be able to freely know and understand how decisions affecting their rights are made.

## Q. What is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)?

The UNDRIP is a comprehensive statement addressing the human rights of Indigenous Peoples. The document emphasizes the rights of Indigenous Peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development in keeping with their own needs and aspirations. The UNDRIP represents a global consensus on the standards of IPs and it carries a heavy international legal and moral weight.



## Q. What is the significance of the Declaration?

Many of the rights in the Declaration require new approaches to global issues, such as development, decentralization and multicultural democracy. In order to achieve full respect for diversity, countries will need to adopt participatory approaches to indigenous issues, which will require effective consultations and the building of partnerships with Indigenous Peoples.

## Q. Is the Declaration legally binding?

No. The UNDRIP is not a legally-binding instrument and it does not have a supervisory mechanism to monitor its implementation. Although non-binding, the UNDRIP is considered as a key and

most complete international legal instrument on the rights of IPs. The Philippines is among those countries who readily adopted UNDRIP.<sup>2</sup>

**Q. What are the four (4) main themes of IP rights under the UNDRIP?**



The main themes are:

**Right to cultural identity.** This is also known as the right to be recognized as distinct peoples. Indigenous Peoples are equal to all other peoples, but they also have the right to be different and respected as such, for example in the way they dress, the food they eat and in the language they speak.

**The right to free, prior and informed consent.** This means that no programs, projects or any activity affecting the Indigenous Peoples may be implemented

2 Candelaria, Sedfrey M "Comparative analysis on the ILO Indigenous and Tribal Peoples Convention no. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and Indigenous People's Right at (IPRA) of the Philippines." International Labour Organization, June 2012, [ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms\\_171406.pdf](http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_171406.pdf)

within the ancestral land without first obtaining the consent of the Indigenous Peoples concerned. This also requires that all information relating to the programs to be implemented must be accessible to the Indigenous Peoples. This way they will be able to give their informed consent.

**The right to be free of discrimination.** The right to be free from discrimination means that governments must ensure that Indigenous Peoples and individuals are treated the same way as other people, regardless of sex, disability or religion.

**The right to self-determination.** This right intends to further improve the exercise of control by the Indigenous Peoples over their destinies. This can be done through the process of consultation and participation wherein they can freely determine their political system and pursue their economic, cultural and social development.

The focus of this Primer, which is the Indigenous People's right to participation, falls under this category.<sup>3</sup>

### **Q. What are the specific provision of UNDRIP relating to the Indigenous Peoples right to participation?**

Articles 5, 18 and 27 of the UNDRIP talk about the right to participation of the Indigenous Peoples.

### **Q. What does Article 5 says about the IP's right to participation?**

According to Article 5, the Indigenous Peoples have the right to preserve and strengthen their own political and legal system, including their own way of life. At the same time, they can exercise their right to fully participate, if they choose to, in the political, economic, social and cultural system of the State where they belong.

3. Dr. Cindy Blackstock. "Know Your Right; United Nation Declaration on the Right of Indigenous Peoples for Indigenous adolescents." United Nation's Children's Fund, January 2013, [files.unicef.org/policyanalysis/rights/files/HRBAP\\_UN\\_Rights\\_Indig\\_Peoples.pdf](https://files.unicef.org/policyanalysis/rights/files/HRBAP_UN_Rights_Indig_Peoples.pdf)

**Q. Should the IPs decide to participate, what are the points that should be taken into consideration for the proper implementation of the right to participation?**

Article 18 declared that the IPs have the right to participate in decision-making matters that would affect their rights. Their right to participate must be exercised in the following manner:

1. It must be through a representative chosen by them.
2. He or she must be chosen in accordance to their communal procedures in order to preserve and develop their own indigenous decision-making institutions.

**Q. What are the obligations of the State in the implementation of this right?**

Article 27 mandates all State-signatory, like the Philippines, to undertake the following measures in the implementation of the right to participation of the IPs:

1. Establish and implement, in conjunction with Indigenous Peoples concerned, a fair, independent, impartial, open and transparent process of decision-making;
2. Give due recognition to Indigenous People's laws, traditions, customs and land tenure systems; and
3. To recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories and resources.

**Q: Aside from the UNDRIP, is there any other document providing for the right to participation of the Indigenous Peoples?**

The Indigenous and Tribal Peoples Convention (ILO Convention No. 169) was adopted by the International Labour Organization (ILO) in 1989. ILO Convention No. 169 places emphasis on the principles of consultation and participation. It is a comprehensive instrument that covers a wide range of issues concerning Indigenous Peoples, including land rights, access to

natural resources, health, education, vocational training, conditions of employment, and contacts across borders. It is by far the only international legal instrument solely for the protection of Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs) that is open for the ratification by States. Once ratified, there is an obligation to apply all its requirements in law and in practice.

**Q: What is ratification? Did the Philippines ratify ILO Convention No. 169?**

Ratification of an International Convention (Treaty) is a sovereign and voluntary act of a State. By signing an international legal document, the government agrees to be bound by the contents of the treaty. Ratification of an ILO Convention is the beginning of a process of dialogue and co-operation between the government and the ILO. The purpose is to work together to make sure national legislation and practice agree with the provisions of the Convention. ILO Conventions, unlike other international treaties, cannot be ratified with reservations. They have to be accepted in their entirety. Therefore, it is important that governments, workers and employers, as well as indigenous and tribal peoples, learn about all the provisions of the Convention. The Philippines, however, until now has NOT ratified ILO Convention No. 169.

## LEGAL FRAMEWORK ON THE INDIGENOUS PEOPLES' RIGHT TO PARTICIPATION



### Q: Who are Indigenous Peoples?

Under IPRA, Indigenous Peoples are described as a cultural group of people continuously living together as organized community on a defined territory to which they claim ownership since time immemorial. This group of people share common bonds of language, customs, traditions and other cultural traits that are distinct from the other non-indigenous group of Filipinos.<sup>4</sup>

### Q: What does the Philippine Constitution says about the protection of the rights of the IPs?

Section 17 of Article XIV of the 1987 Constitution provides that the State is to recognize, respect and protect the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) to preserve and develop their cultures, traditions and institutions and is to consider these rights in the formulation of national plans and policies.

4. The Human-Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies. Adopted by UN Development Group in 2003.



**Q: What other guarantees are provided by the Constitution to promote the IPs?**

There are at least five (5) other provisions which insure the right of tribal Filipinos to preserve their way of life, these are:

1. Recognition and promotion of the rights of IPs within the framework of national unity and development [Section 22, Article II];
2. Allocation of one-half of the seats to party-list representatives shall be filled by selection or election from the ICCs and such other sectors as may be provided by law [Section 5, par. 2, Article VI];
3. Recognition of rights to ancestral lands and application of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain [Section 5, Article XII];
4. Recognition of rights to ancestral lands [Section 6, Article XIII]; and,
5. Creation of a consultative body to advise the President on policies affecting ICCs [Section 12, Article XVI].

**Q: What is Republic Act No. 8371 or the Indigenous Peoples' Rights Act (IPRA) of 1997?**

IPRA is a social reform legislation that contains a comprehensive enumeration of rights of the Indigenous Peoples, including their right to self-governance and empowerment. It recognizes the IPs right to their ancestral land and domains and provides measures for the realization of their human rights and social justice. It was enacted in October 29, 1997 as a means to correct the injustice that placed the IPs at a disadvantage compared to the rest of the society.

## Q: What are the operating principles of IPRA?

In implementing the policies enumerated in the Implementing Rules and Regulations (IRR) of R.A. 8371, the following six (6) operating principles shall be adhered to:

- a. **Cultural Diversity.** As the beginning of unity is difference, the diversity of cultures, traditions, beliefs and aspirations of Indigenous Peoples shall be encouraged and fostered in openness, mutual respect for, and active defense of the equal and inalienable dignity and universal, indivisible, interdependent and interrelated rights of every human being, in the spirit of inter-people cooperation;
- b. **Consensus and Peace-Building.** In resolving conflicts or disputes affecting or pertaining to Indigenous Peoples, any determination or decision thereon shall be reached through dialogue and consensus as far as practicable;
- c. **Cultural Integrity.** Within ancestral domains/ lands, the holistic and integrated adherence of Indigenous Peoples to their respective customs, beliefs, traditions, indigenous knowledge systems and practices, and the assertion of their character and identity as peoples shall remain inviolable;
- d. **Human Dignity.** The inherent and inalienable distinct character, sacred human dignity, and unique identity of Indigenous Peoples as human beings shall be respected;
- e. **Subsidiarity, Solidarity and Total Human Development.** In the pursuit of civil, political, economic, social and cultural development, the human person shall be the central subject thereof and its active participant and beneficiary. Everyone has his/her duties to the community. In the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by custom

or law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society; and

- f. Transparency and Capacity-Building.** The Commission shall perform its tasks on the basis of transparency and active support and participation by the ICCs/IPs, and shall take a proactive strategy in empowering ICCs/IPs and in the fulfillment of its mandate.

**Q: What are the Four (4) Bundles of Rights of IPs under the IPRA?**



The rights of ICCs/IPs provided for by IPRA can be grouped into four major categories, namely:

- a. Right to Ancestral Domains and Lands.** This right recognizes that the lands held by the ICCs/IPs since time immemorial are considered to have been their private properties and have never been part of the public domain. Pursuant to this, IPRA provided for a process of titling of lands through the issuance of Certificates of Ancestral Domain Titles (CADT) and Certificates of Ancestral Land Titles (CALT).

**b. Right to Self-Governance and Empowerment**

- This is the second set of rights that seek to ensure that ICCs/IPs have as much control as possible over their lives. To make this possible, IPRA grants ICCs/IPs the following rights, among others, the right to use commonly accepted justice systems, conflict-resolution institutions, peace-building processes, the right to participate in decision-making, to determine and to decide priorities for development and the right to form peoples organizations such right gave way to the recognition of Indigenous People's Organizations (IPO s), Indigenous People's Consultative Body (IPCB) and tribal customary laws for conflict-resolution where parties are IPs.(Sections 13-20, Chapter IV of RA. 8371).

**c. Social Justice and Human Rights.** As already discussed in the earlier part of this primer, human rights refer to those inherent rights of a person as a human being. Indigenous Peoples, alike, shall enjoy the same rights as the other people outside their community. They include the rights to life, liberty and property, the right to equal protection, non-discrimination and the right to equal opportunity and treatment, rights during armed conflict, right to basic services and the rights of women and children.

**d. Right to Cultural Integrity.** This right upholds the right of ICCs/IPs to adhere to their customs, religious beliefs, traditions, indigenous knowledge systems and practices, and to assert their character and identity as peoples. This category of right also includes the right to protection of indigenous culture, community intellectual rights, right to educational system and the right to religious, cultural sites, and ceremonies.

**Q: Are there provisions in IPRA mandating consent/participation of IPs in decision-making?**

Yes. As already discussed, IPRA recognizes the IPs right to take part in all activities affecting their rights. The following select provisions of the law highlight this guarantee:

- Chapter 1 of IPRA describes the concept and principle of Free Prior and Informed Consent (FPIC) as a prerequisite before any program, projects and activities may be implemented in their ancestral domain or those that will affect their rights.
- Chapter 2 of IPRA mandates the NCIP to facilitate the delineation and demarcation of Ancestral Domains of Indigenous Peoples taking into consideration the proper implementation of the principle of self-delineation as provided under NCIP Administrative Order. No. 4 Series of 2012.

**Q: Is there any pertinent provision from the IPRA relative to the IPs Right to Participate in Decision-Making?**

Yes. ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils (Section 16, R.A. No. 8371).



### Q: What is FPIC?

Free and Prior Informed Consent (FPIC) is defined 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 and coercion, and obtained after fully disclosing the intent and scope of the activity. The consent shall be obtained in a language and process understandable to the community. (Sec. 3(g), Chapter II of IPRA)

### Q: When is the FPIC necessary?

Under the provisions of IPRA, government agencies, private companies, organizations or individual persons intending to undertake any activity affecting the ancestral domain or the rights of the Indigenous Peoples, shall not be given concession, license, permit or lease or production-sharing agreement without going through the process of FPIC laid down under NCIP A.O. No. 3 Series of 2012 or the Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012.

**Q. What does the process of FPIC aims to attain?**

In requiring the conduct of FPIC, the government seeks to give utmost regard to the right of the IPs/ICCs to the management, development, use and utilization of their ancestral land and the resources found therein. It also seeks to actualize and strengthen the IP's exercise of the four categories of rights provided under IPRA.

**Q: Aside from the mandate on the conduct of FPIC, what other provision under IPRA requires the participation of IPs in the decision making process?**

Section 11 of RA No. 8371 guarantees the recognition of the Ancestral Domain Rights of the Indigenous Peoples. As such, NCIP A.O. No. 4, Series of 2012, Rule II, Section 1 provides that the ICCs/IPs shall, through their authorized representative/s, directly apply for the issuance of the Certificate of Ancestral Domain Title (CADT)/ Certificate of Ancestral Land Title (CALT). The authorized representative/s shall be chosen by the IPs/ICCs themselves in a manner acceptable to them. The chosen elders/leaders shall assist and take an active part in the filing and processing of their application and in all undertakings related to the delineation initiated by them and the concerned government agencies.

**Q: What happens after a particular area is certified to as an ancestral domain?**

Chapter VIII, Section 52(i), R.A. No. 8371 provides that upon certification by the NCIP that a particular area is an ancestral domain and upon notification to the following officials, namely, the Secretary of Environment and Natural Resources, Secretary of Interior and Local Governments, Secretary of Justice and Commissioner of the National Development Corporation, the jurisdiction of said officials over said area terminates.

Further, Section 57 states that the IPs/ICCs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains.



**Q: How should the Ancestral Domain be managed?**

The Ancestral Domain is communally-owned. Hence, all members of the particular Indigenous Cultural Communities must benefit from the produce. However, only few members benefit from the resources found within the Ancestral Domain.

**Q: What should be done to resolve the inequality?**

There should be a comprehensive Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) and there should be a well-planned and guided Community Royalty Development Plan (CRDP).



**Q: What is Ancestral Domain Sustainable Development and Protection Plan (ADSDPP)?**

NCIP A.O. No. 1 series of 2004, Section 6(a) defines the ADSDPP as the consolidation of the plans of ICCs/IPs within an ancestral domain for the sustainable management and development of their land and natural resources as well as the development of human and cultural resources based on their indigenous knowledge, systems, and practices. It is a long term, spatial and comprehensive development plan formulated by the communities and processed by the NCIP and thus are beyond the realm of LGUs.

**Q: What is the importance of having an ADSDPP?**

Section 9 of NCIP A.O. No. 1 series of 2004 mandates the incorporation of the ADSDPP into the Local Government Plans. After approval of the ADSDPP, the ICCs/IPs shall submit the same to the municipal, city or provincial government units having territorial and political jurisdiction over them for incorporation in their development and investment plans. The LGUs are also encouraged to provide financial and technical assistance in the implementation of the ICCs/IPs' development plans.

**Q: What is the specific State policy on ICCs/ IPs participation in the formulation of the ADSDPP?**

Article I, Section 5 of NCIP A.O. No.1, Series of 2004 enunciates the policy that in the implementation of the development and management of the ancestral domain, the NCIP (as the facilitating agency in the formulation of the ADSDPP) shall ensure that the ICCs/IPs shall be the ones to decide on all programs, policies, plans and projects within the ancestral domain and prioritize the same during the formulation.

Further, Section 8 of NCIP A.O. No. 1, Series of 2004, provides that the formulation of the ADSDPP shall primarily be guided by the principle of self-determination, participatory planning and cultural integrity with the main objective of ensuring the sustainable development and protection of ancestral domain resources and the enforcement of the rights of ICCs/IPs to their ancestral domain as well as their rights as a people and as citizens.

**Q. How can the IPs/ICCs actually participate in the formulation of the ADSDPP?**

NCIP A.O. No. 2, series of 2004 granted to the ICCs the responsibility of formulating their respective ADSDPP with guarantee that they may avail of the services and expertise of other agencies and support groups. To be able to do this, every IP should be familiarized with the basic steps in the ADSDPP formulation and the basic planning process as follows <sup>5</sup>:

- a. In preparation for the ADSDPP formulation, the NCIP field office shall conduct series of pre-planning consultations with the ICCs/IPs in order to:
  1. Fully inform and educate all IC/IP community members of their rights and responsibilities pursuant to existing policies and regulations.
  2. Get the commitment of concerned IC/IP community members to formulate their ADSDPP.
  3. Identify members of the working group to formulate the ADSDPP.
- b. A working group or planning team shall be organized which shall comprise the traditional leaders and recognized representatives from all ICC/IP sectors such as the women, youth, children, farmer/fisher folks of the tribe that owns the ancestral domain.

5. Section 8, NCIP A.O. No 2, Series of 2004



- c. The working group shall prepare a work and financial plan indicating the planning activities, specific outputs, schedules, responsible persons/groups per activity, and the budgetary requirements. This shall be done in consultation with the Council of Elders and other members of the community. The work and financial plan shall be endorsed to the NCIP, through the provincial and regional offices, for approval and possible funding assistance.
- d. The Working Group (WG) shall conduct a participatory baseline survey focusing on the existing population, natural resources, development projects, land use, sources of livelihood, income and employment, education and other concerns in the community. Thereafter, the WG shall assess the data gathered, identify and prioritize problems/issues and concerns and the underlying causes thereof, determine needs and gaps and how particular problems affect particular sectors of the community. The output shall be presented to the community for validation of its accuracy and reliability.

- e. Immediately after the validation of the assessed data, the community shall collectively formulate the framework for their development as a people and the sustainable development and protection of their ancestral domain. This shall reflect their collective vision, mission, general objectives or long-term goals, priority concerns and development strategies that will set the direction of the program/project identification and prioritization in the ADSDPP. The process shall involve the evaluation of alternative development options without compromise of the ICCs/IPs' duties and responsibilities to their ancestral domains. The framework shall be written in the language understood by all IC/IP community members, and translated in English.
- f. After completion of the IP/AD development framework other government agency, particularly the DENR, DA, DAR, DPWH and other concerned agencies, shall be invited to present their existing policies/plans/programs/projects so that ICCs/IPs will be fully apprised of development opportunities as well as limitations. The ICCs/IPs may also inform other government organizations (GOs) and non-government organizations (NGOs) their desires and aspirations for the latter to consider in the review and reformulation of their respective policies/plans/ programs/projects.
- g. Based on the development framework, the community shall identify and prioritize the programs/projects/ activities including basic services required in the community.
- h. After identifying the programs, projects or activities to be prioritized, the ADSDPP Implementation Strategies and Management Plan shall be formulated. It shall include the monitoring and evaluation tools that will be used in measuring and checking the progress of development programs and projects. The Council of Elders/Leaders shall oversee the implementation and management of the ADSDPP notwithstanding the visitorial powers of the NCIP. To assist the Council

of Elders/Leaders (CEL), the IC/IP community may institute special body or bodies that will take charge of specific tasks that will be identified.

- i. The working group shall conduct series of community assembly to present the draft ADSDPP to the ICCs/IPs for their validation and approval. The presentation shall be aided by visuals including maps and in a manner that is understood by all IC/IP community members.
- j. Upon validation and approval, the community through its Council of Elders/Leaders shall submit the ADSDPP to the NCIP through the Provincial Office (PO). The ADSDPP shall be incorporated into the Medium Term or Five Year Master Plan for ICCs/IPs, which shall be the basis of programs/projects to be identified in the annual and medium term budgetary proposals of the NCIP as well as other agencies concerned with the welfare of ICCs/IPs.

**Q. How can the NCIP assist the IPs/ ICCs in the formulation and implementation of their ADSDPP?**

Section 10 of NCIP A.O. No. 1, Series of 2004 mandates the Ancestral Domains Office of the NCIP to take the lead in assisting the IPs/ICCs, through the following manner:

- a. Help facilitate and document the planning process;
- b. Organize the ICCs/IPs and ensure that they are well-informed of their rights to effectively participate and successfully formulate their ADSDPPs;
- c. Provide and/or facilitate the provision of technical assistance in the formulation of ADSDPPs through the field offices, particularly the provincial offices;

- d. Provide information and assist the concerned ICC/IPs in tapping or utilizing external resources and accessing basic services of the different government agencies and other support groups;
- e. Ensure that the ADSDPPs include plans/ programs/activities in compliance to the ICCs/ IPs' duties and responsibilities to their ancestral domains;
- f. Ensure that the ADSDPPs are incorporated in the local development plans; and
- g. Install the mechanism to ensure that the ADSDPPs shall serve the purpose of certification precondition as provided in the NCIP Administrative Order No. 3, series of 2002.

**Q: What is the primary implementing agency of IPRA?**

The National Commission on Indigenous Peoples (NCIP) is the primary implementing agency of IPRA. It refers to the office established on 22 November 1997 pursuant to the R.A. 8371 which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/ IPs. NCIP has 7 Commissioners appointed by the President one for each ethnographic regions: Region I & Cordilleras; Region II; Rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao. The law gave jurisdiction of all ancestral domain claims to the NCIP, including those previously awarded by the DENR and all future claims that shall be filed.

Executive Order No. 1 (s. 2016) transferred the supervision of NCIP to the Office of the Cabinet Secretary for close collaboration, more participative governance and improved delivery of social services under the Office of the President(OP). Eventually, Executive Order No. 67 (series of 2018) transferred the supervision of the NCIP to the Department of Social Welfare and Development still under or attached to the OP. The NCIP shall harmonize its policies and coordinate its programs and activities with the DSWD as the supervising Department, as well as simplify its systems and processes, to ensure responsiveness and efficiency in the delivery of essential public services, and the attainment of the Administration's ten-point

socio-economic agenda and development goals as attributed in the Philippine Development Plan.

**Q: What are the powers of NCIP as a government agency?**

NCIP exercises quasi-legislative, administrative & quasi-judicial functions/powers. One of the major programs of NCIP is the enforcement of Human Rights and Empowerment of IPs. This administrative function/power covers, among others, the assistance in the resolution of conflicts thru customary laws tradition, practices and facilitation in obtaining the FPIC of IPs where needed.



**Q: What are the different Offices within the NCIP and what are their functions?**

The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided.

**1. Ancestral Domains Office** - This Office shall



be responsible for the identification, delineation and recognition of ancestral land/domains.

**2. Office on Policy, Planning and Research -**

This Office shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs as such, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs.

**3. Office of Education, Culture and Health -**

This Office shall be responsible for the effective implementation of the education, cultural and related rights as provided in the IPRA if 1997.

**4. Office on Socio-Economic Services and Special Concerns -**

This shall serve as the Office Through which the NCIP shall coordinate with pertinent government agencies specially changed with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to insure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary.

**5. Administrative Office -**

This Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services.

**6. Legal Affairs Office -**

This Office shall advice the NCIP on all legal matters concerning ICCs/IPs which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. (Section 46, R.A. 8371)

**Q: What Office is directly tasked to help ICCs/ IPs in fully exercising their right to participate in decision-making?**

The Office of Empowerment and Human Rights shall ensure that capacity-building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all level decision-making. It shall ensure that indigenous socio-political, cultural and economic rights are respected and recognized. (Section 46, R.A. 8371).

**Q: What are the key functions of the Office of Empowerment and Human Rights?**

1. Ensures that capability-building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making;
2. Ensures that the Basic Human Rights and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;
3. Assists ICCs/IPs work out an appropriate interface between customary political structures and self-governance with the mainstream machinery for governance including the establishment and administration of tribal barangays and support for autonomous regions;
4. Ensures that the basic elements of Free and Prior Informed Consent are present and are complied with in all instances when such must be secured;
5. Studies and establishes models for appropriate interface in tribal and non-tribal governance;

6. Facilitates the participation of ICCs/IPs in all national and international fora where their effective representation is required;
7. Conducts researches on the IP women and youth situation including their basic human rights situation and recommends programs for their development in accordance with indigenous practices;
8. Empowers ICCs/IPs through community organizing; and,
9. Performs such other functions as the Commission may deem appropriate and necessary.

## VENUES FOR PEOPLE'S PARTICIPATION IN LOCAL GOVERNANCE

**Q: What is the Local Government Code of 1991? What does it say about people's participation in local governance?**

R.A. No. 7169, otherwise known as the Local Government Code transferred control and responsibility of delivering basic services to the hands of local government units (LGUs). It defines the powers of provincial, city, municipal and barangay governments in the Philippines. It provides for a more responsive local government structure instituted through a system of decentralization whereby LGUs are delegated more powers, authority, responsibilities and resources. This Act enters into force on 1 January 1992.

The People's Participation is the active participation of the citizens in the society, which includes all forms of participation - political, social, cultural or economical, as well as the combination between them, for example, socio-economic or socio-cultural. People's participation in local governance involves ordinary citizens assessing their own needs and participating in local project-planning and budget-monitoring. To improve the possibility for people's participation in local government decision-making, there is a need to increase the proportion of functional Local Development Councils (LDCs).<sup>6</sup>

**Q: Are the ICCs/IPs included in the mandate for people's participation?**

ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through

6 Prof Bitonio, Jo "People's Participation in Local Governance." Linked In Learning, Nov, 3, 2018, slideshare.net/jobitonio/peoples-participation-in-local-governance

procedures determined by them as well as to maintain and develop their own indigenous political structures.

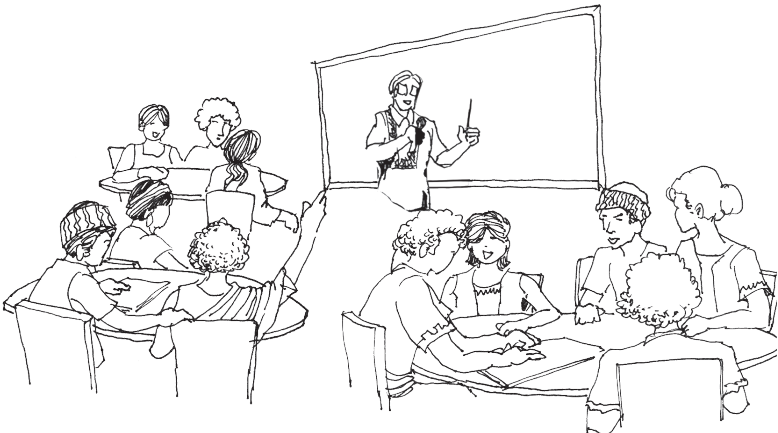
**Q: What are the venues for ICCs/IPs participation in local governance?**

The following are the venues for people's participation in local governance:

1. Mandatory Prior Consultation
2. Local Sectoral Representation
3. Representation in Local Special Bodies
4. PO-NGO-LGU Partnerships
5. Local Legislation
6. Initiative and Referendum
7. Disciplinary Action
8. Recall

**Q: What is Mandatory Prior Consultation?**

Mandatory prior consultation is a requirement to conduct PERIODIC CONSULTATIONS before any project or programs may be implemented by the national agencies and offices. The prior public consultation shall be conducted with the appropriate LGUs, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions (Sec. 2[c], R.A. No. 7160). The



ICCs are among those to be consulted if the national project or programs would affect the local government unit to which they belong.

**Q: What kind of project and program require Mandatory Prior Consultation?**

Projects or programs that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover and extinction of animal or plant species. The requirements apply only to national programs and/or projects which are to be implemented in a particular community (Sections 26 & 27, R.A. No. 7160).

**Q: What happens when there is a failure to comply with the requirements of law?**

The LGC establishes the duties of national government agencies in the maintenance of ecological balance, and requires them to secure prior public consultation with the affected local communities and prior approval by the appropriate Sanggunian. Absent either of these mandatory requirements, the project's implementation is illegal.

## PO-NGO-LGU PARTNERSHIPS

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**Q: What is the rationale behind PO-NGO-LGU partnerships?**

The LGC allows POs/NGOs to partner with the LGUs for the better delivery of basic services, capability-building, livelihood projects, creation of local enterprises.



**Q: Can the IPs/ICCs exercise political power together with those in public office?**

Yes, by joining People's Organizations (POs) or Non-Government Organizations (NGOs). This is authorized by Sections 34 and 35, Chapter 4 of the Local Government Code (LGC). Under Sec. 34, LGUs are mandated to "promote the establishment and operation of POs and NGOs to become active partners in the pursuit of local autonomy."

In Sec. 35, LGUs are empowered to establish linkages with People's Organizations and NGOs through: (a) joint ventures and (b) other cooperative arrangements, to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

**Q: What is a Non-Government/al Organization?**

Non-Government/al Organization refers to a private, non-profit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves (Section 3[m], Chapter II, R.A. No. 8371).

**Q: What is People's Organization?**

People's Organization refers to a private, non-profit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs (Section 3[n], Chapter II, R.A. No. 8371). It refers to an association of residents in a barangay, or barangays, established to promote public interest and with an identifiable leadership structure and membership. People's organizations are often formed among the disadvantaged sectors of society such as the farmer-peasant, artisanal fisher folk, workers in the formal sector and migrant workers, workers in the informal sector, Indigenous Peoples and cultural communities, women, differently-abled persons, senior citizens, victims of calamities and disasters, youth and students, children and urban poor (Sec. 19, R.A. No. 8371).

**Q: May LGUs provide assistance to People's Organization/Indigenous People's Organizations and Non-Governmental Organizations?**

Yes. Under Section 36 of the LGC (Assistance to People's and Non- Governmental Organizations), LGUs are authorized, through their local chief executive, and with the concurrence of the Sanggunian concerned, to assist POs/IPOs and NGOs, financially or otherwise, in their economic, socially oriented, environmental or cultural projects within their territorial jurisdiction.





### **Q: What does the Philippine Constitution provides about sectoral representation?**

Section 9, Article X of the 1987 Philippine Constitution mandates that all legislative bodies of local governments shall have sectoral representation as may be prescribed by law.

Following the constitutional mandate, the LGC requires that in addition to the regular elected member of the sangguniang bayan, sangguniang panlungsod or sangguniang panlalawigan there shall be three (3) sectoral representatives. One (1) from the women sector, one (1) from the agricultural or industrial workers, and one (1) from other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

The regular members of the Sangguniang Bayan and the sectoral representatives shall be elected in the manner as may be provided for by law (Sections 446, 457, 467, R.A. 7160).

**Q: Is IP sector representation good for ICCs?**

Yes, it is the ICCs/IPs who would benefit directly, and the nation, too, if their sectoral representatives are seated in local councils of the places where they are a member. Unfortunately, up to this very date, the sectoral representatives have yet to be elected. There were strong objections to seating them in the Sangguniang Bayan (as well as in other LGU law-making bodies).

**Q: Did the IPRA mention anything about Mandatory Representation?**

Yes. Section 6, Part I, Rule IV of the NCIP Administrative Order No. 1, Series of 1998, or the IRR of R.A. No. 8371 provides that the ICCs/IPs shall be provided mandatory representation in all policy-making bodies and in local legislative councils. It states further that ICCs/IPs representation shall be proportionate to their population, and shall have the same privileges as the regular members of the legislative bodies and/or policy-making bodies.

**Q: How do the IP mandatory representatives (IPMR) be chosen?**

Under the guidelines for the selection of the IPMR under NCIP Administrative Order No. 1, series of 2009, all IPs living within the territorial jurisdiction of provinces, cities, municipalities and barangays must be duly represented in the selection process of the IPMR which must be done through customary laws.



For LGUs with more than one (1) ICCs/IPs residing within its jurisdiction, all ICCs/IPs tribes in said LGU may agree on a term-sharing agreement based on population ratio, or on whatever local arrangement they may deem suited and applicable to address the cultural peculiarities in that LGU (Title II, Section 11, NCIP Adm. Order No. 1, Series of 2009).

**Q: What are the powers, duties and functions of IP mandatory representatives (IPMR)?**

The powers, duties and functions of IP mandatory representatives shall be the same as that of the regular members of local legislative councils as provided in the LGC of 1991 (R.A. No. 7160), and other applicable laws. However, IP mandatory representatives shall focus on the following:

1. Representation of the collective interests of ICCs/ IPs;
2. Ensure support for the sustained constitution and operations of the IPCB in their respective areas of jurisdiction; and
3. Maintain the development and practice of ICCs/ IPs traditional leadership titles and structures, justice systems, conflict resolution institutions, and peace-building mechanisms and processes that are compatible with the national legal system and with internationally-recognized human rights (Title II, Section 8, NCIP Adm. Order No. 1, Series of 2009).

**Q. What are the responsibilities of the NCIP in the implementation of the IP's right to representation?**

Section 4, of NCIP A.O. No. 1, Series of 2009 provides that the NCIP, as the office mandated to ensure that ICCs/IPs are afforded every opportunity,

if they choose, to participate in all levels of decision-making, shall facilitate the conduct of Information-Educational-Consultations (IECs) on policies relevant to the indigenous mandatory representation and the conduct of the selection proceedings and its documentation.

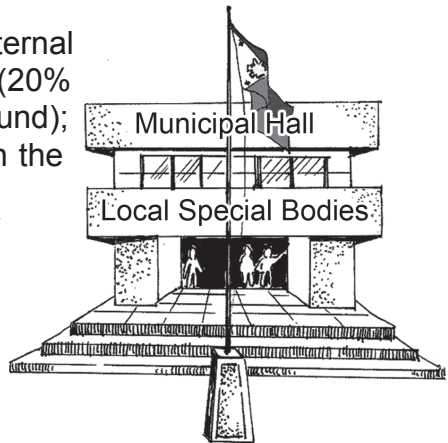
## REPRESENTATION IN LOCAL SPECIAL BODIES (LSBs)

### Q: What are Local Special Bodies (LSBs)?

The LSBs shall generally refer to the advisory and policy-making body in a particular local government unit. LSBs are seen as mechanisms to ensure the responsiveness of the LGU's programs, projects and policies to the actual needs of the community. LSBs also serve as one of the venues where people can directly participate in governance.

The LGC defines the arena of local participation in governance in the form of sectoral representation in the Sanggunian (Local Legislative Body) and membership in the LSBs. It is in the LSBs where sectoral representation can be realized to ensure inputs to planning and local policy development related to the following:

- a. the provision of basic services (education, health, infrastructure);
- b. the utilization of Internal Revenue Allotment (20% social development fund);
- c. utilization of share in the national wealth;
- d. access to commons/ natural resource management;
- e. revenue-raising/ resource generation



**Q: What are the LSBs that should be created under the law? What is their functions?**

Sections 106-116 of RA No. 7160 mandate the creation of the following LSBs, among others:

- 1. The Local Development Council** is a special body formed to assist the local legislative council of every local government unit to set the direction of the economic and social development of their respective jurisdiction and to coordinate all developmental efforts therein.
- 2. The Local School Board** is an advisory body of the local government unit to assist in allocating the Special Education Fund (SEF) to meet the supplementary needs of the local public school system and to make sure that the educational system is responsive to the concerns and priorities of the community.
- 3. The Local Health Board** is tasked to propose to the sanggunian concerned, in accordance with standards and criteria set by the Department of Health, annual budgetary allocations for the operation and maintenance of health facilities and services within the respective local government unit.
- 4. The Local Peace and Order Council** is tasked to coordinate efforts to effectively prevent and suppress criminality and to maintain public order and safety in the land.
- 5. The Bids and Awards Committee** shall be responsible for the determination of eligibility, conduct of bidding, evaluation of bids, post qualification of the lowest calculated bid and recommending award of contracts.

**Q: Who can participate as member in the LSBs?**

LSBs are expected to ensure representation of concerned sectors, NGOs, POs/IPOs, and the private sector. Further, the Magna Carta of Women mandates for women equitable participation and representation, which means 50-50 gender balance, in development councils and planning bodies.

**Q: What are the guidelines to follow in the selection of IP representatives in LSBs?**

The IRR of the LGC provides the procedure and guidelines for the selection of representatives of Civil Society Organizations (CSOs) in Local Special Bodies (LSBs). Pursuant to Article 64 of the IRR of the LGC, the LGUs, upon the assumption of the newly-elected Sanggunian, must have an accreditation of CSOs for purposes of representation in Local Special Bodies.

**Q: Is there a need for accreditation of ICC/IP representation to the LSBs?**

Yes. The DILG Memorandum Circular No. 2016-97 (July 19, 2016) contains the rules on accreditation process for the purpose of representation to the Local Special Bodies. This policy shall cover all provinces, cities and municipalities, and all civil society organizations intending to apply for accreditation and to seek representation in the local special bodies.

**Q: What is Indigenous Political Structures(IPS)?**

The IPS refers to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified and accepted by ICCs/IPs. The IPS shall be recognized as the highest governing body with the IPO as its technical arm.

**Q: What is an Indigenous People's Organization?**

This refers to a private, non-profit, voluntary organization of members of Indigenous Cultural Communities (ICCs) or Indigenous Peoples (IPs), which are accepted as representatives of such ICCs or IPs. (DILG Memorandum Circular No. 2016-97, July 19, 2016)

**Q: What are the Registration Requirements for Indigenous Peoples' Organizations?**

To be officially recognized, the IPs or the IPO under its direction shall apply for registration with the NCIP and shall submit the requirements listed under Section 14 of NCIP Administrative Order No. 2 Series of 2012.

**The IPS or the IPO under its direction shall apply for registration with the NCIP and shall submit the following:**

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1. Resolution stating to the effect that they are affirming that the applicant being registered is their duly organized IPO, which Resolution must contain the following information:
  - Purposes and goals of the IPO in relation to the collective aspiration of ICCs/IPs;
  - Target beneficiaries;
  - Roles and functions of IPO and IPS as far as coordination on working relations;
  - Location and area of operations;
  - Targeted major programs, activities and projects of the IPO.
2. Duly accomplished NCIP Application Form for registration signed by the duly authorized representative of the IPS;
3. Profile indicating the qualifications of the IPO leader/ Chairperson which includes, but not limited to, the following:
  - Proof of Tribal Membership;
  - Proof of actual residence in the domain/land for at least five (5) years immediately preceding his/her selection;
  - Resolution/affirmation by the ICCs/IPs endorsing that he/she is a practitioner/advocate of the customs and traditions; and narrative of his/her advocacy and struggle on IP rights;
  - Public knowledge of skills/expertise necessary to carry out the objectives of the IPO.
4. Written internal rules prescribing regulations binding the officer and members in accordance with the objectives of the IPO;
5. Grounds for voluntary dissolution of the IPO which are not limited to the following:
  - If it fails to adopt its written internal rules by resolution within 30 days from filing of its application as provided in this Guidelines;
  - Filing by the IPO, with the consent of the IPS, a petition with the NCIP to shorten its term;
6. Complaints mechanism and/or grievance procedure;
7. List of officers/leaders and members;
8. Latest Audited Financial Statement;
9. Other relevant requirements at the discretion of the NCIP Community Service Center (CSC) Head/Provincial Officer (PO)/Regional Director (RD)/Commissioner of the Ethnic Region.

**Q: What is the effect of IPO Registration?**

The registration of the IPO with the NCIP confers to it a juridical personality to represent the ICCs/IPs in pursuing and securing their collective rights over their ancestral domains.

**Q: What are the requirements to be submitted by an Indigenous Peoples Organization seeking for a new accreditation or renewal?**

The Indigenous Peoples Organization shall submit one (1) copy each of the following requirements to the Sanggunian:

1. Letter of Application;
2. Duly accomplished Application Form for Accreditation;
3. Board Resolution signifying intention for accreditation for the purpose of representation in the local special body;
4. Certificate of Registration (or in the case of IPOs, certification must be issued by NCIP);
5. List of current officers and members;
6. Annual Accomplishment Report for the immediately preceding year; and
7. Financial Statement, at the minimum, signed by the executive officers of the organization, also of the immediately preceding year, and indicating therein other information such as the source(s) of funds.

The Sanggunian shall issue a Certificate of Accreditation to every qualified CSO.



## LOCAL LEGISLATION

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The relevant provisions about local legislation on the functions of the Sangguniang Barangay can be found in Sections 48 to 59 (Chapter 3) of the LGC. The local legislative power shall be exercised by the Sangguniang Barangay for the Barangay.

### Q: What is local legislative power?

Local legislation as a power refers to the Sanggunian's authority to enact ordinances, approve resolutions, or appropriate funds designed to deliver basic services and facilities, and promote the general welfare.

#### Sangguniang Panlungsod Session Hall



### Q: Why is local legislation important?

Local legislation is a powerful and vital tool for:

- Addressing the problems of the citizens of the LGU;
- Promoting the general welfare and development of the LGU and its citizens; and,
- Attaining the vision of the LGU for its citizens.

**Q: Where is local legislative power vested?**

Section 48 of the LGC states that legislative power is vested in the Sanggunian as a collegial/collective body. Local legislators are more knowledgeable than Congress on matters of purely local concern, and in better position to enact appropriate legislation. Legislation therefore requires the participation of all its members by voting upon every question put upon the body.

**Q: What is an Ordinance?**

An Ordinance is a law passed by the Sanggunian concerned pursuant to the powers granted to a Local Government Unit by the Local Government Code.

**Q: What is a Resolution?**

A Resolution is an expression of sentiment or opinion by the Sanggunian concerned.

**Q: What is local legislative process?**

Local legislation as a process is the continuous interaction of the local legislative body with the executive branch, civil society including constituents, non-governmental organizations and the private sector resulting in ordinances and resolutions that promote the development of a local government unit. The products or outputs of this interaction are resolutions and ordinances.

**Q: What are the steps involved in local legislative process?**

1. Proposed ordinance is introduced by Sanggunian member.
2. Submitted to the Sanggunian Secretary (records proposal, sets calendar for business).
3. First Reading. Presiding Officer endorses same to proper committee for study.

4. Committee / Public Hearings. Deliberation, approval with or without amendments, substitution or consolidation, and preparation of committee report.
5. Second Reading. Presentation of committee reports, debates and amendments.
6. Third Reading. Sanggunian votes for the measure. Secretary registers each member's vote.
7. Every ordinance enacted by the Sanggunian (except barangay) shall be presented to the Local Chief Executive concerned for approval. Ordinances enacted by the Sangguniang Barangay shall, upon approval by the majority of all its members, be signed by the Punong Barangay.
8. Once approved, then there is a valid ordinance.
9. Ordinance become effective after ten (10) days from posting.

**Q: How can ICCs/IPs participate in the drafting of proposed Ordinance?**

The proposal may be the product of consultations with the sectors affected, such as the IPs/ICCs, or it may be crafted by the sponsor himself or herself.

**Q: Aside from the drafting of proposed Ordinance, where can IPs/ICCs participate in local legislative process?**

After the First Reading and without debating on the merits of the ordinance, the presiding officer shall refer the ordinance to the appropriate committee of the Sanggunian, or the committee which conducted a preliminary study of the proposed ordinance involving IPs/ICCs, for further study. The Chairperson of the concerned committee may call public hearing of the proposed ordinance, if necessary.

**Q: What is Lobbying?**

Lobbying is the act of educating and persuading key decision-makers to act in favour of one's agenda

through direct, face to face contact. It can also mean a set of activities that involve direct persuasion of key decision-makers to make actual actions that will effect the changes and aspirations wanted by the IPs/ICCs.



**Q: Can the Indigenous Leaders engage in Lupong Tagapamayapa?**

Yes. The reluctance of the Indigenous Peoples to use the Barangay Justice System (BJS) is culturally-rooted. The speedy dispensation of justice is more accessible in the informal justice system - Traditional-Tribal Justice System (TJS) than the formal justice system. However, tribal communities within an organized barangays have utilized and accepted the Katarungang Pambarangay as an alternative system of settling disputes. There is a significant difference between the TJS and BJS in terms of their organizational structure, mediation procedures and imposition of penalties. Despite its differences, the BJS & TJS did more to help in decongesting a huge backlog of cases in formal justice system by lines of communication, participation and influence in case dispensation.<sup>7</sup>

**Q: Is there an LGC provision on IPs/ICCs settling of disputes through datu or elders?**

Yes. Section 399 (f), Chapter VII of the LGC states that in barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of

7. Dr. Estopil, Josephine T. "Traditional-Tribal and Barangay Justice Systems among the IPs." SCRIBD Jan. 29 2014, scribd.com/document/322546346/8-3-4-JOSEPHINE-T-ESTOPIIL-pdf

datus or elders shall be recognized without prejudice to the applicable provisions of this Code.



Accordingly, the LGC provision to involve indigenous leaders in governance (as in the Lupong Tagapamayapa) tends to further undermine or weaken traditional structures where they are already being eroded by the larger and stronger forces of the market and the state. Thus, there are traditional leaders that are still able to wield significant influence over a larger domain of conflict resolution concerns on a routine basis. Meanwhile, the influence of traditional leaders in other ICCs is increasingly being confined to critical community-wide concerns, when the situation warrants their leadership, or to ceremonial functions (i.e., the performance of rituals) related to the life cycle.<sup>8</sup>

### Q: What is the Right to Practice Customary Laws?

The State also awarded the ICCs/IPs with the right to use their own justice system, conflict resolution institutions, and peace-building process as well as the right to participate in decision-making.

### Q: What are Customary Laws?

Customary Laws refer to a body of written or unwritten rules, usages, customs and practices traditionally observed, accepted and recognized by respective ICCs/ IPs. Customary laws are recognized by the LGC of 1991 in solving disputes among members of the indigenous communities (Section 412 (c), LGC). Also, Indigenous Peoples' customary practices are recognized in Chapter 4, Sections 13 to 20 of the R.A. No. 8371.

8. " Indigenous Peoples and the local Government; Building Good Governance in the Philippines." Cordillera People's Alliance, IWGIA, Jan. 2004, [researchgate.net/publication/305767430\\_Indigenous\\_Peoples\\_and\\_the\\_Local\\_Government\\_Building\\_Good\\_Governance\\_in\\_the\\_Philippines](http://researchgate.net/publication/305767430_Indigenous_Peoples_and_the_Local_Government_Building_Good_Governance_in_the_Philippines)

## INITIATIVE AND REFERENDUM

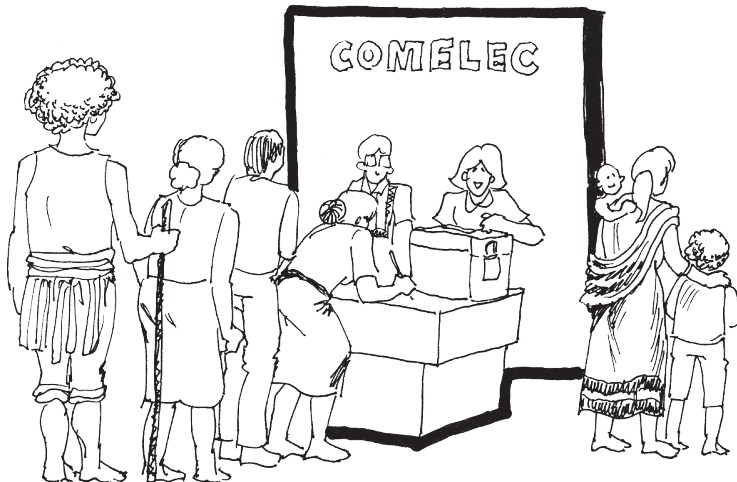
The power of local initiative and referendum may be exercised by all registered voters of the provinces, cities, municipalities, and barangays (Chapter II, Section 121, R.A. No. 7160). Both necessarily involve a plebiscite.

### Q: What is Local Initiative?

Local Initiative is the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance (Chapter II, Section 120, R.A. No. 7160). This is resorted to when local sanggunians do not come up with ordinances which address people's concerns.

### Q: What is Local Referendum?

Local Referendum is the legal process whereby the registered voters of the local government units may approve, amend, or reject any ordinance enacted by the sanggunian. The local referendum shall be held under the control and direction of the COMELEC within thirty (30) days in case of barangays (Chapter II, Section 126, R.A. No. 7160).



**Q: Are the legal provisions on initiative and referendum applicable to IPs/ICCs?**

Yes. Sections 120 to 127 of the LGC (Chapter II) are the provisions on initiative and referendum which can very much apply to registered voters of IPs/ICCs.

**Q: What are the processes involved in a Local Initiative?**

1. Filling of a petition by fifty (50) registered voters of a barangay with Sanggunian.
2. If no action within thirty (30) days, notify Sanggunian concerned of the exercise of Initiative.
3. Signing of petition (in front of Election Registrar)
4. COMELEC certification on requisite signatures.
5. COMELEC sets the date of Initiative (Plebiscite).
6. Actual Plebiscite.
7. COMELEC certification and PROCLAMATION of results.
8. Effectivity of approved proposal after 15 days.

## DISCIPLINARY ACTION AND RECALL

### Q: What is Disciplinary Action?

It is a process to discipline erring elected LGU officials.

### Q: What are the Grounds for Disciplinary Action?

Section 60 of the LGC of 1991 enumerates the grounds for which an elective local official may be disciplined, suspended or removed from office on any of the following grounds:

- a. Disloyalty to the Republic of the Philippines;
- b. Culpable violation of the Constitution;
- c. Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- d. Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;
- e. Abuse of authority;
- f. Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the Sangguniang Panlalawigan, Sangguniang Panglungsod , Sangguniang bayan, and Sangguniang Barangay;
- g. Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country;and,
- h. Such other grounds as may be provided in this Code and other laws. An elective local official may be removed from office on the grounds enumerated above by order of the proper court.



**Q: What is a Recall?**

It is a process to remove elected LGU official/s from post or public office prior to end of term.

**Q: Who exercise/s the power of Recall?**

The power of recall on the ground of loss of confidence shall be exercised by the registered voters, considering the IPs/ICCs, of a local government unit to which the local elective official subject to such recall belongs.

**Q: What are the policy gaps on governance?**

1. No official, reliable baseline information on the poverty profile and gender disaggregated data of the IP population.
2. Unstable policy environment and insufficient enabling conditions for genuine implementation of IPRA.
3. Need to increase awareness on, and recognition of, traditional socio-political institutions and structures and customary laws for civil peace-building.
4. Strengthening of institutional and human resource capacities of NCIP to fulfill its mandate is not fully addressed.<sup>9</sup>

9. Corpuz, Jennifer. "Indigenous peoples of the Philippines." Tebtebba, Aug. 20, 2014, [tebtebba.org/index.php/all-resources/category/135-participant-presentations?download=711:indigenous-peoples-of-the-philippines](http://tebtebba.org/index.php/all-resources/category/135-participant-presentations?download=711:indigenous-peoples-of-the-philippines)

## CONCLUSION

Fundamental challenges still confront the Indigenous Peoples today. The problems of non-participatory development are truly alarming. Indigenous Peoples are often severely affected by large-scale infrastructure projects, poverty and inequality, national oppression, internal displacement, environmental toxicity and pollution caused by extractive industries, abrogation of their treaty rights, grabbing of their lands, territories and natural resources, loss of culture via educational systems that denigrate their cultures and languages and other problems caused by non-inclusive policies, development and governance models. It is necessary to understand the vital role that indigenous movements undertake as political actors in order to resolve the challenges in the local, regional and national level of politics. Many indigenous communities are in fact adversely affected by policies, projects and programs, since their distinct visions of development, their concerns and way of life are all too often ignored by national or local level policy-makers or administrators.

Adequate information is needed for the right of participation to come into fruition. Such right becomes trivial unless there is ability and the resources to exercise it. Effective participation in decision-making requires involvement and representation in the political and legislative bodies at national, regional and local levels. It is also crucial that Indigenous Peoples are involved in consultative mechanisms on issues concerning them. This would enable them to develop their own initiatives.

The Philippine Government should ratify ILO Convention No.169 and should continue its peaceful dialogue with ICCs/IPs in efforts to achieve inclusive development. As such, the ICCs/IPs would be able to actively participate in community life and to feel engaged without having barriers or discrimination.

Finally, massive dissemination and interagency coordination of the IPRA is a must so that other government agencies shall also see and understand their significant roles in the IPRA implementation.

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