

Philippines: Experts warn: Infirmities in proposed IP Code could undermine inclusive peace and development in BARMM

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Various human rights and governance experts warned that Bill 273 contain provisions that go against the spirit and the letter of the Constitution and indigenous Peoples Rights Act (IPRA), the national law on indigenous people's rights in the Philippines.

At the Manila leg of the public consultation on the proposed Indigenous Peoples Code (IP Code), the "Bangsamoro Indigenous Peoples Development Act (Bill 273)," in the Bangsamoro Parliament, various human rights and governance experts warned that Bill 273 contain provisions that go against the spirit and the letter of the Constitution and Indigenous Peoples Rights Act (IPRA), the national law on Indigenous people's rights in the Philippines.

Atty. Benedicto Bacani, Executive Director of the Institute of Autonomy and Governance (IAG), pointed out "a clash of frameworks," which is preventing the resolution of the most fundamental issues that the IP Code aims to address, namely the issues of identity, and ancestral domain.

"On the issue of ancestral domain, for example, the position of the Moro Islamic Liberation Front (MILF) is that there is only one, unified ancestral domain. The national government's position on the other hand is that the 'right to ancestral domain' is vested on Indigenous peoples under the IPRA," said Atty. Bacani.

The Supreme Court decision on the Memorandum of Agreement on Ancestral Domain (MOA-AD) is clear: You cannot confer rights on ancestral domains through an agreement or a subordinate law. Subordinate laws are always subject to national laws.

Atty. Bacani added that this "clash of frameworks" was resolved in the Comprehensive Agreement on the Bangsamoro (CAB) and the Bangsamoro Organic Law (BOL) through what he called 'constructive ambiguity.' The problem of mixing frameworks means that fundamental issues are left unresolved.

Atty. Rolly Francis Peoro of the Legal Rights and Natural Resources Center (LRC) pointed out two critical flaws of the proposed bill. "Bill 273 significantly fails to recognize the distinct identity of the Non-Moro Indigenous Peoples (NMIPs). In addition, the said bill's focus on 'development' alone neglects the purpose of crafting an IP Code – the primacy of recognizing the interconnected and collective rights of Indigenous peoples (IPs) in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM)."

In a joint statement presented at the consultation, the NMIP Indigenous political structures Gempe te Kelindaan ne Kamal te Erumanen ne Menuvu (Erumanen ne Menuvu), Më nubù Dulangan Tribal Justice and Self-Governance (Më nubù Dulangan) and Timuay Justice and Governance (Tëduray and Lambangian), expressed their "deep concern about the future of our ancestral domains and our

collective rights if the Bangsamoro Transition Authority (BTA) passes the Bill 273 as their proposed IP Code in the Bangsamoro region.”

In their statement, LOYUKAN decried that Bill 273 “diminishes the rights and benefits of the NMIPs in the Bangsamoro Autonomous Region under the Constitution, and national laws, particularly Republic Act. No. 8371, the Indigenous Peoples’ Rights Act of 1997.”

Representatives from the University of the Philippines (UP) Law Center and the United Nations High Commissioner for Refugees (UNHCR) likewise expressed similar concerns over the diminution of NMIP rights in the proposed IP Code.

Former United Nations Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP) Victoria Tauli-Corpuz acknowledged that there are “elements of IPRA that are in the bill.” However, she stressed the need to consider the serious concerns raised, particularly concerning NMIP rights.

LRC and LOYUKAN echoed the call of the IPS’ of Erumanen ne Menuvu, Më nubù Dulangan, and Tëduray and Lambangian for the passage of Bill 166 or “The Non-Moro Indigenous Peoples Rights Act,” a bill backed by the NMIP communities in the BARMM.

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