

**NOMAD IS AN ISLAND: A LEGAL FRAMEWORK FOR NOMADIC  
INDIGENOUS PEOPLE FOR CULTURAL INTEGRITY AND IN  
CASES OF DISPLACEMENT**

A THESIS PRESENTED TO THE

FOUNDATION OF LIBERTY AND PROSPERITY

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## ABSTRACT

No man is an island. Nomadic indigenous people and human rights advocates call for the protection of indigenous peoples' rights, such as inclusion, recognition, and respect for their identity and culture. There is also a call for the advancement of their rights in cases of displacement, the occurrence of which makes them even more vulnerable and neglected.

The right to Cultural Integrity of the nomadic indigenous people in cases of displacement are internationally considered as human rights. In recent years, the demands to protect these rights have risen globally and they continuously gain legal recognition for such rights. International laws and instruments have been in existence providing for higher standards of protection to nomadic indigenous people. In the Philippines, although there are domestic laws protecting the rights of indigenous people, such domestic laws specifically fail to protect their freedom of movement as part of their cultural integrity and their inherent human rights in cases of displacement. This study seeks to examine *whether the inherent human rights of Nomadic Indigenous Peoples are violated due to the failure of the Philippine Government to comply with international obligations in protecting their right to Cultural Integrity and other rights in cases of Displacement.*

The proponent finds that the Philippines' failure to comply with its international obligations constitutes a violation of such rights and borders on discrimination. Thus, an amendment to domestic laws, coupled with the creation of policies are proposed to ensure protection of such rights as it is only by recognizing their specific way of life and traditional form of landholdings can they realize freedom of movement as part of their cultural integrity and protected when displaced.

## **CHAPTER 1: INTRODUCTION**

“Law matters to those whose laws are real.”

-J. Marvic Leonen

### **A. Background of the Study**

“Distinct” would generally best describe indigenous peoples. Their unique way of living in terms of social, cultural, economic and political characteristics are distinct from majority of people in society.

Indigenous people may either be nomadic or sedentary. Those who are settled in a specific territory are called as sedentary. Others are nomadic or exhibit a nomadic lifestyle across a large territory, however they are associated with a specific territory on which they depend.<sup>1</sup> They often view territories as boundless and they move from place to place usually with usufruct of the land or pastures produced, or hunt and gather.

Although indigenous people around the world are distinct from each other, they all share a common problem related to the protection of their right as a distinct group of people. Indigenous peoples have sought recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years, yet throughout history, their rights have always been violated. Further, they are also often victims of displacement due to armed conflict and natural resources. Nomadic indigenous people also struggle to fight for their cultural integrity, their distinct way of life, and their property rights to be recognized. They also continue to fight against displacement to remain peacefully in their ancestral domain or in their place of relocation. Lately, there is an international increase in the outcry to recognize the rights of nomadic indigenous people which became case laws. There have also been initiatives and developments in the international sphere in recognizing their rights through crystalizing them in treaties and other international instruments.

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<sup>1</sup> Sanders, Douglas, *Indigenous Peoples: Issues on Definition*, INTERNATIONAL JOURNAL OF CULTURAL PROPERTY, 8:4-13 (1999).

Domestically, the rights of the indigenous people are recognized and enshrined in the 1987 Philippine Constitution, the highest law of the land. The Indigenous Peoples Rights Act of 1997 (IPRA) is meant to preserve the culture, traditions and institutions and to ensure equal protection and non-discrimination of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).

Despite the existence of national legislation, the existing laws fail to protect the rights of the nomadic indigenous people as to their cultural integrity and protection and aid in cases of displacement. IPRA was once criticized by one of the present Associate Justices of the Supreme Court, Marvic Leonen, who stated that such law is too general to address the diversity of the indigenous communities.<sup>2</sup> Currently, domestic law is also general, and lacking in addressing situations of displacement of indigenous peoples due to armed conflict and natural or man-made disasters, and also when their relocation carried out by themselves when they flee on their own accord and not due to act of the State. These inadequacies in domestic law leads to discrimination, intolerance, and marginalization to indigenous peoples' culture and result in their neglect victimization by displacement. They could easily be ejected forcefully or be easily tagged as informal settlers when they relocate, or subject of forced assimilation.

The international legal framework recognizes that special measures are required to protect their rights and maintain their distinct cultures and way of life such as: the International Convention on Civil and Political Rights (ICCPR); International Labour Organization (ILO) Convention 169; the Indigenous and Tribal Peoples Convention; and International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Guiding Principles was crafted for the rights of those who were displaced. It encompasses armed conflict, man-made and natural disasters as factors of displacement, and accord internally displaced persons of rights before, during, and after displacement.

There are different points of view pertaining to nomadic indigenous people and their rights. They are said to be ineffective occupiers of land

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<sup>2</sup> Marvic Leonen, Associate Justice of the Supreme Court of the Philippines, Human rights & indigenous people: a public forum, at University of the Philippines- Diliman, (1999).

because of their nomadic lifestyle, but international case law provides there are certain ties of a legal character with respect to the territories they occupy. It is stated that they should be considered as having, in the relevant period, possessed rights, including some rights relating to the lands through which they migrated.<sup>3</sup> Another different point of view is that the presence of nomadic indigenous people in different Italian Cities may be called as “emergency,” and thus, the Italian Government enacted measures to penalize the nomad, however it was criticized by the European Union and other International actors as discriminatory of their race and against their freedom of movement.<sup>4</sup>

A major outstanding concern for the Philippine government is the displacement of the indigenous peoples in Mindanao which dates back to the period of the Marcos dictatorship, where the Badjaos were forcibly displaced and flee from their homes because of these conflicts and reached the shores of Luzon through endless paddling and rowing of their boats. This is detailed in the case study part of this thesis (**Chapter 4**). Now, displacement remains pervasive mainly because of armed conflict, such as the Zamboanga siege in 2013 and recently the Marawi siege.

Studying the rights of indigenous people on one hand and the State’s responsibility to protect them on the other, is important in the preservation of traditional skill and cultures of indigenous people. In a way, this study also visualizes and aims that time will come that the societal narratives about indigenous people will not be exclusively pity for, but to proudly celebrate their colorful unique identities and culture.

## **B. Statement of the Problem**

International laws provide protection for nomadic indigenous people, specifically protecting their freedom of movement as cultural integrity (land right as cultural right), and protection against displacement upon the occurrence of armed conflict, natural and man-made disasters and economic reasons. Thus, this study seeks to address the legal issue on *whether the*

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<sup>3</sup> Western Sahara, Advisory Opinion 1975 I.C.J. 12 (Oct. 16)

<sup>4</sup> On the Census of the Roma on the Basis of Ethnicity in Italy, P6\_TA(2008)0361, European Parliament Resolution of 10 July 2008.

*inherent human rights of Nomadic Indigenous Peoples are violated due to the failure of the Philippine Government to comply with international obligations in protecting their right to Cultural Integrity and other rights in cases of Displacement.*

In answering the above-described legal issue, this study shall determine the following as well:

1. Whether there is a legal framework in the Philippines protecting the cultural integrity of the Nomadic Indigenous People? If there is, to what extent?
2. Whether there is a legal framework in the Philippines protecting the rights of the Nomadic Indigenous People in cases of displacement from their territories or when they become Internally Displaced Persons? If there is, to what extent?

### **C. Definition of Terms**

**Ancestral Domain** refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.<sup>5</sup>

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<sup>5</sup> An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Creating A National Commission on Indigenous Peoples, Establishing Implementing Mechanisms,

**Armed Conflict** may be defined in two terms: international armed conflicts, which is a conflict between opposing two or more States, and **non-international** armed conflicts, which is a conflict between governmental forces and non-governmental armed groups, or between such groups only.

**Cultural Integrity** refers to the guarantee of rights to the preservation of indigenous culture and is understood in a holistic sense. This covers and guarantees rights such as the preservation of indigenous culture, elimination of prejudice and promotion of tolerance in the recognition of cultural diversity, restitution of cultural, intellectual and spiritual property, etc. <sup>6</sup> For purposes of this study it encompasses the freedom of movement as way of living with the traditional landholding rights.

**Displacement** refers to the forced movement of people from their locality or environment and occupational activities.

**Indigenous Cultural Communities/Indigenous Peoples** refers to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership, since time immemorial occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions, become historically differentiated from the majority of the Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization, or at the time of inroads of non-indigenous religion and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may

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Appropriating Funds Therefor, and for other Purposes Chapter, [Indigenous Peoples' Rights Act or IPRA of 1997], Republic Act No. 8371, Sec. 3 (a) (1997).

<sup>6</sup> Atty. Sedfrey M. Candelaria, *Introducing the Indigenous Peoples Rights Act*, Ateneo Law Journal Vol. 47:569, 575, (2002).

have been displaced from their traditional domains or may have resettled outside their ancestral domain.<sup>7</sup>

**Internal Displacement** means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state border.<sup>8</sup>

**Internally Displaced Person** persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border;<sup>9</sup>

**Nomadic Indigenous People** are those specific class of indigenous people who exhibit a nomadic way of life or a nomadic lifestyle across a large territory however they are associated with a specific territory on which they depend. They often view territories as boundless and they move from place to place usually with usufruct of the land or pastures produced, or hunt they gathered.<sup>10</sup>

#### **D. Significance of the Study**

The primary purpose of this study is to determine the State's responsibility in protecting the rights of the Nomadic indigenous people when it comes to their cultural integrity and rights during emergency situations leading to their displacement such as armed conflict, natural disasters and economic reasons making them Internally Displaced Persons or IDPs.

It is the objective of this study to be a guidance machinery for the National Government, in crafting a legal framework, implement laws, or construing the laws with regard to rights of the nomadic indigenous people or the indigenous people in general.

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<sup>7</sup> IPRA, Sec. 3 (h).

<sup>8</sup> United Nations Guiding Principles on Internal Displacement, Introduction, June 2001.

<sup>9</sup> Id.

<sup>10</sup> Sanders, Douglas, *supra* note 1.

Academically, for future researchers who intend to do studies and research a similar topic, to guide them and to be able to update them of the latest development in the subject community and in the laws pertaining to the indigenous people.

For the proponent, this is an academic pill in enriching himself in the knowledge about indigenous people and the rights appurtenant thereto.

### **E. Scope and Delimitation of the Study**

The general scope of the study is the scrutiny and analysis of rights of the nomadic indigenous people as to their cultural integrity and to their rights during emergency situations such as armed conflict, natural or man-made disasters, and economic considerations, consequently became internally displaced person by using international laws and jurisprudence, Philippine Constitution, IPRA, and relevant laws.

Although the study will from time-to-time discuss indigenous people in general, the focus of this study is about the nomadic indigenous people.

This study will tackle the ancestral domain or property rights of the subjects and their present rights in their temporary settlement.

The case study conducted by the researcher is limited to the Badjao Cultural Community in Brgy. Malitam of Batangas City, for reinforcement of the legal analysis as to the displacement but may be hypothetically used for the application of their situation for their freedom of movement as cultural rights.

## **CHAPTER 2: LITERATURE REVIEW**

### **A. Nomadic Indigenous People**

#### a. Indigenous People

Indigenous Peoples are culturally distinct societies and communities.<sup>11</sup> They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live.<sup>12</sup>

ILO Convention 169 covers the concept of “Indigenous Peoples” which states:

“. . . peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.”<sup>13</sup>

Philippines’ Republic Act No. 8371 or the Indigenous People’s Rights Act of 1997 defines Indigenous Peoples or the Indigenous Cultural Communities as provided in the definition of terms.

#### b. Nomad

The first definition of ‘mobile peoples’ in the international context is given in the Dana Declaration which refers to a subset of indigenous and traditional peoples whose livelihoods depend on extensive common property use of natural resources over an area, who use mobility as a management strategy for dealing with sustainable land use and conservation, and who

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<sup>11</sup> The World Bank, Understanding Poverty, available at <https://www.worldbank.org/en/topic/indigenouspeoples>, (last accessed: Aug 18, 2019)

<sup>12</sup> United Nations, Department of Economic and Social Affairs, Indigenous Peoples, available at <https://www.un.org/development/desa/indigenouspeoples/about-us.html>, (last accessed: Aug 18, 2019)

<sup>13</sup> Article 1(1), Convention No. 169 on Indigenous and Tribal Peoples 1989, 1650 UNTS 383

possess a distinctive cultural identity and natural resource management system.<sup>14</sup>

Mobile boat-dwelling communities are divided into major groupings. One of which is Sama-Bajau or Badjao, known for their moorages or the communities of boat-dwellers who had a common place where they moored their boats. However, these intricately designed houseboats are now replaced by sedentary settlements along the shorelines, which may either be by choice or due to lack of option. They are stereotyped as poor and dirty, which emanates from other ethnic groups and city dwellers and now begging brought by extreme poverty.<sup>15</sup>

### c. Nomadic Indigenous People vis-à-vis collective right

The concept of collective rights emerged because individual human rights do not guarantee adequate protection for indigenous peoples and other minorities exhibiting collective characteristics. These groups face various and their very survival may depend upon the recognition and protection of their collective rights.<sup>16</sup> International law has a specific right to collective and customary form of land ownership to indigenous people and this could cover a nomadic approach to land ownership and usage.<sup>17</sup> However, there is a lack of acknowledgement on the part of the states to exercise of the nomadic indigenous people to their traditional use of land.<sup>18</sup>

## **B. Development and Demands for the protection of their Right throughout the year**

### a. National Sphere

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<sup>14</sup> Dana Declaration On Mobile Peoples And Conservation.” *Nomadic Peoples*, vol. 6, no. 1, 2002, pp. 205–208

<sup>15</sup> Lenhart, Lioba. “Recent Research on Southeast Asian Sea Nomads.” *Nomadic Peoples*, no. 36/37, 1995, pp. 245–260

<sup>16</sup> Friends of the Earth International, Collective Rights, <https://www.foei.org/what-we-do/collective-rights>, Last accessed: Aug. 18,2019.

<sup>17</sup> Atty. Sedfrey M. Candelaria, *Introducing the Indigenous Peoples Rights Act*, *Ateneo Law Journal* Vol. 47:569, 575, 2002

<sup>18</sup> GILBERT, *supra* note, at 7

In 1919, to promote Christianity and civilization, the case of *Rubi vs. Provincial Board of Mindoro* held petitioners as Indigenous People were held to be lawfully imprisoned or restrained of their liberty considering degree of civilization of the Manguianes is considered.<sup>19</sup>

However, there were political changes in the Philippines. The laws also changed and developed recognizing the rights of indigenous people especially to their liberty and cultural identity. The emphasis in the guardian-ward relationship shifted to the policy of recognizing the rights of indigenous people to their self-determination. These were evident in the Constitution, the Indigenous Peoples' Rights Act or IPRA.

i. 1987 Philippine Constitution

The constitution provides that: the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.;<sup>20</sup> the State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.;<sup>21</sup> the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.<sup>22</sup>

ii. Republic Act No. 8371 or Indigenous Peoples Rights Act

IPRA promotes and recognizes the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs), with a view to preserve their culture, traditions and institutions and to ensure the equal protection and non-discrimination of members.

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<sup>19</sup> *Rubi vs. Provincial Board of Mindoro*, 39 Phil. 660, 694-97 (1919).

<sup>20</sup> PHIL. CONST. art. II, Sec. 22

<sup>21</sup> PHIL. CONST. art. XII, Sec. 5.

<sup>22</sup> PHIL. CONST. art. XVI, Sec. 17.

In *Cruz vs. DENR*, its constitutionality was upheld and confirmed that ancestral lands and ancestral domains are not part of the lands of the public domain. They are private lands and belong to the ICCs/IPs by native title, which is a concept of private land title that existed irrespective of any royal grant from the State.<sup>23</sup>

It has the so-called four bundles of rights, which are as follows: a.) Rights to Ancestral Domains and Lands; b.) Rights to Self-Governance and Empowerment; c.) Rights to Social Justice and Human Rights; and d.) Rights to Cultural Integrity. It also has Right in Case of Displacement as a result of natural catastrophes. ICCs/IPs have the right to special protection and security in periods of armed conflict.<sup>24</sup> It also provides protection of Indigenous Culture, Traditions and Institutions.<sup>25</sup>

This law however was criticized by Associate Justice Marvic Leonen that, it being a national law, can be problematic as being too general to address the specific situation of nomadic people. He explained that the definition of the problem as well as the solutions or even the method to reach that solution differs from one culture to another.”<sup>26</sup>

## b. International Sphere

### i. International Labour Organization Convention 169

Nomadic Peoples were not mentioned in the first draft of the revised ILO Convention No. 107 did not mention nomadic peoples.<sup>27</sup> Many states national policies had been adopted to settle nomadic indigenous peoples. However, The Experts highlighted that ‘if programmes to settle indigenous and tribal peoples occur in situations where competing claims are being made to their traditional lands by outside colonists or developers, there is danger that these peoples may be compelled to change their lifestyles and lose

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<sup>23</sup> Cruz vs. Secretary of DENR, GR. No. 135385, Dec. 6, 2000.

<sup>24</sup> Id. Sec. 22.

<sup>25</sup> Id. Sec. 29.

<sup>26</sup> Marvic Leonen, Associate Justice of the Supreme Court of the Philippines, Human rights & indigenous people : a public forum, at University of the Philippines- Diliman, (1999).

<sup>27</sup> International Labour Conference, Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), 75th Session, Report IV (1), 1987 at 9.

effective access to their traditional lands.' This approach opened the door to further consideration of the position of nomadic peoples in the drafting of ILO Convention No. 169 and there was a strong focus on the specific situation of nomadic peoples as regard their right to use their traditional territories during the drafting debates.<sup>28</sup> The text that was finally adopted provides:

“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”<sup>29</sup>

## ii. United Nations Draft Declaration on the Rights of Indigenous Peoples

Under the UNDRIP, the Indigenous peoples have the right to self-determination, including their economic, social, and cultural development,<sup>30</sup> and the right to self-government,<sup>31</sup> including the right to maintain and strengthen their own governing institutions.<sup>32</sup>

Indigenous peoples have the right to life, freedom, peace, and security, and to exist as distinct peoples,<sup>33</sup> to belong to an indigenous community or nation, and to be free from forced removal, forced assimilation, or destruction of their cultures.<sup>34</sup> States must act to prevent taking of their lands, forced relocation,<sup>35</sup> and propaganda to incite discrimination.<sup>36</sup>

Indigenous peoples have the right to practice and preserve their cultural and spiritual traditions and customs, including their histories, languages, oral traditions, philosophies, writing systems and literatures. States must take

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<sup>28</sup> Id, at 65-6.

<sup>29</sup> International Labour Organization Convention No. 169, ILO 169 Article 14.

<sup>30</sup> Resolution 61/295, The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, art. 3.

<sup>31</sup> Id., art. 4.

<sup>32</sup> Id., art. 5.

<sup>33</sup> Id. Art. 7.

<sup>34</sup> Id. Art. 8.

<sup>35</sup> Id. Art. 10.

<sup>36</sup> Id. Art. 9.

effective measures to ensure protection of such rights, to ensure indigenous peoples can understand and be understood in certain proceedings, and to enable access to and/or repatriation of ceremonial objects and remains in the possession of States.<sup>37</sup>

iii. UN Guiding Principles for the Internally Displaced Persons

This is a guiding principle crafted by the UN to accord rights to those who are victim of displacement. This will be discussed more in the latter part of this chapter.

iv. International Covenant on Civil and Political Rights or ICCPR

This is a treaty protecting the rights people in their civil and political rights which includes their culture as provided in its Article 27 which will be discussed in the next section of this chapter.

v. International Covenant on Economic, Social and Cultural Rights or the ICESCR

This is a multilateral treaty adopted by the UN National General Assembly which commits the parties to work toward the granting of economic, social, and cultural rights. It encompasses the right of the indigenous people to their culture.

### **C. Cultural Integrity**

a. In general

‘Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of

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<sup>37</sup> Id. Art. 11.

indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.<sup>38</sup> Culture is not simply a matter of colorful dances and rituals, nor is it even a framework or context for individual choice. Rather, it is in the product of the association of individuals over time, which in turn shapes individual commitments and gives meaning to individual lives- lives for which individual choice or autonomy may be quite valueless.<sup>39</sup>

Atty. Candelaria explained that cultural integrity is understood in a holistic sense.<sup>40</sup> It covers and guarantees the rights to the preservation of indigenous culture,<sup>41</sup> establishment of indigenous educational systems,<sup>42</sup> elimination of prejudice and promotion of tolerance in the recognition of cultural diversity,<sup>43</sup> restitution of cultural, intellectual and spiritual property,<sup>44</sup> preservation of archeological sites and practice of spiritual traditions,<sup>45</sup> and protection of indigenous knowledge systems, medicines, plants, animals, archeological sites, and sciences and technologies.”<sup>46</sup>

#### b. The ICCPR vis-à-vis Cultural Rights and Property Rights

The International Covenant on Civil and Political or ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; and minority rights.

ICCPR includes the right to self-determination and by that virtue they can freely determine their political status and freely pursue their economic, social and cultural development. Also, the State parties shall promote the realization of this right because it is an essential condition for the effective

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<sup>38</sup> International Covenant on Civil and Political Rights, ICCPR, Sec. 27, adopted by the General Assembly of the United Nations, 19 December 1966.

<sup>39</sup> Kukathas, Chandran, *Are there any Cultural Rights*, vol. 20 no. 1, POLITICAL THEORY, 1, 122, (1992).

<sup>40</sup> CANDELARIA, *supra* note 6.

<sup>41</sup> IPRA, Sec. 29.

<sup>42</sup> *Id.* Sec. 30.

<sup>43</sup> *Id.* Sec. 31.

<sup>44</sup> *Id.* Sec. 32.

<sup>45</sup> *Id.* Sec. 33.

<sup>46</sup> *Id.* Secs. 34-37.

guarantee and observance of individual human rights and for the promotion and strengthening of those rights.<sup>47</sup>

### c. Traditional Form of Landholdings

By claiming their rights as indigenous peoples, nomadic peoples can assert their right to have their traditional forms of landholding recognized. In doing so, nomadic peoples can claim their right to maintain their nomadic lifestyle and their specific attachment to their territories as being part of their traditional way of life. A right for nomadic peoples to maintain their traditional nomadic way of life is crucial to modelling their *cultural and property rights*.<sup>48</sup>

The traditional form of landholding is sourced in the ILO Convention No. 169, Article 14<sup>49</sup> and The International Covenant on Civil and Political Rights 1966 (ICCPR), Article 27 which provides:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>50</sup>

This been interpreted by the Human Rights Committee (HRC) to extend to protecting indigenous peoples’ specific relationship with their territories because **culture manifests itself in many forms, including particular way of life associated with the use of land resources especially in case of indigenous peoples.**<sup>51</sup>

### d. International Case Law or Jurisprudence

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<sup>47</sup> Geir Ulfstein, *Indigenous Peoples’ Right to Land*, Max Planck Yearbook of United Nations Law, Volume 8, 2004, 1-48, 5.

<sup>48</sup> GILBERT, supra note 7.

<sup>49</sup> ILO 169, Art. 14.

<sup>50</sup> ICCPR, Sec. 27.

<sup>51</sup> GILBERT, supra note 7.

#### i. Lansman vs. Finland

The case is significant in establishing that the right of minorities to culture protects traditional economic livelihoods, that there is a right to consultation before development activities proceed and that no significant harm to culture can be caused by such activities.<sup>52</sup>

#### ii. Apirana Mahuika vs. New Zealand

The Committee emphasizes that the State party continues to be bound by article 27 which requires that the cultural and religious significance of fishing for Maori must deserve due attention in the implementation of the Treaty of Waitangi (Fisheries Claims) Settlement Act and must be carried out in a way that the authors continue to enjoy their culture, and profess and practice their religion in community with other members of their group.<sup>53</sup>

#### iii. Stewart v. Elk Valley Coal Corporation

Discrimination can take many forms, including ‘indirect’ discrimination, where an otherwise neutral policy may have an adverse effect on certain groups. There is no requirement to provide discriminatory intent. There is no requirement to prove stereotypical or arbitrary decision-making, since this would improperly focus on whether there is a discriminatory attitude. The focus is on whether there is a discriminatory impact. There must be a link or connection between the protected characteristic and the adverse treatment. The protected characteristic need only be “a factor” in the adverse treatment, not a “significant” factor or a “material” factor.<sup>54</sup>

#### iv. European Council vs. Italy

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<sup>52</sup> *Länsman et al v Finland*, United Nations Human Rights Committee, (13 February 2013), available at <https://www.escri-net.org/caselaw/2006/lansman-et-al-v-finland-communication-no-5111992-un-gaor-52nd-session-un-doc-ccpr-c-52d>.

<sup>53</sup> *Apirana Mahuika vs. New Zealand*, No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000), available at <http://hrlibrary.umn.edu/undocs/547-1993.html>.

<sup>54</sup> *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30, [2017] 1 S.C.R. 591, available at <https://www.canlii.org/en/ca/scc/doc/2017/2017scc30/2017scc30.html?resultIndex=1>.

European Union as well as different International actors condemns and criticizes the the government has declared a “state of emergency” in relation to the settlements of nomadic communities therein. There were exclusionary policies in the fields of human mobility and diversity and tagged as “*Emergency*” the presence of nomadic communities in Milan, Rome and Naples, and imposed penalty such as imprisonment. The Resolution of the European Court Justice (ECJ) states that the collection of fingerprints and forced ejection “would clearly constitute an act of *direct discrimination based on race and ethnic origin* prohibited by Art. 14 of the ECHR [European Convention for the Protection of Human Rights and Fundamental Freedoms] and furthermore an act of discrimination *between EU citizens* of Roma origin and other citizens, who are not required to undergo such procedures”.<sup>55</sup>

#### **D. Displacement**

Major reasons of displacement which resulted to forced migration and relocation and these are armed conflict, and natural disasters which makes a person either refugee or Internally Displaced Person.

##### a. Internally Displaced Persons or IDPs

The **displacement** of people refers to the forced movement of people from their locality or environment and occupational activities.<sup>56</sup> Displaced people are people who are forced to leave their homes, due to war, persecution or natural catastrophe.<sup>57</sup> It is a form of social change caused by a number of factors, the most common being armed conflict. Natural disasters, famine, development and economic changes may also be a cause of displacement.<sup>58</sup>

One of the major challenges today is the growth in the number of **Internally Displaced persons or IDPs** worldwide. **Guiding Principles on Internal Displacement** by UNCHR detail the rights and guarantees relevant

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<sup>55</sup> European Roma information office, *e-news*, 17.07.2008 (retrieved from <http://erionet.org/site/upload/publications/enews/e-news.%2017%20July%202008.pdf>).

<sup>56</sup> United Nations Educational, Scientific and Cultural Organization, Displaced Person/ Displacement, available at <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/> (Last accessed: Aug 21, 2019).

<sup>57</sup> Lynell Watts & David Hodgson, *Social Justice Theory And Practice for Social Work: Critical and Philosophical Perspective*, 5 (1<sup>st</sup> ed. 2019).

<sup>58</sup> United Nations Educational Scientific and Cultural Organization, *supra* note 51.

to the protection of IDPs from forced displacement to their protection and assistance during displacement up to the achievement of durable solutions.<sup>59</sup> It defines internally displaced persons to be:

"persons or groups of persons who have been forced to flee, or leave, their homes or places of habitual residence as a result of armed conflict, internal strife, and habitual violations of human rights, as well as natural or man-made disasters involving one or more of these elements, and who have not crossed an internationally recognized state border".<sup>60</sup>

#### b. Causes

One is armed conflict such as in Mindanao.<sup>61</sup> One involving the Moro Islamic Liberation Front (MILF) and a countrywide communist insurgency with the National Democratic Front (NDF) during Marcos' dictatorship.<sup>62</sup> This conflict affected the lives of many indigenous people like the Badjaos who paddled their way out of Mindanao in order to seek the peaceful life they are used to. The case study (Chapter 4) will describe more information about this.

Another is natural disaster. When customary physical and social systems are affected by climate or governance, herders can become 'environmental migrants', forced to migrate away from home territories, a process that often necessitates leaving pastoralism altogether.

#### c. Internal Displacement

The UN Guiding Principles is an international instrument that is a good source of the States' obligation. There are 3 phases of displacement which

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<sup>59</sup> Internal Displacement Monitoring Centre, Guiding Principles, available at <http://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement> (Last accessed: Aug 21, 2019)

<sup>60</sup> Guiding Principles on Internal Displacement, Introduction (2), June 2001.

<sup>61</sup> BBC, Guide to Philippines conflict, *available at* <https://www.bbc.com/news/world-asia-17038024> (Last accessed: Aug 21, 2019).

<sup>62</sup> Conciliation Resources, History of the Conflict in the Philippines, *available at* <https://www.c-r.org/programme/southeast-asia/philippines-conflict-focus> (Last accessed: Aug 21, 2019).

corresponds to States' responsibility and obligations to IDPs, they are: a.) **Pre-displacement**; b.) **During displacement**; c.) **Post-displacement**.

## **CHAPTER 3: LEGAL ANALYSIS**

This legal analysis is two-pronged. *First* is the discussion of the inadequacy of domestic law as to protecting cultural integrity specifically freedom of movement of the nomadic indigenous people. *Second* is the discussion the inadequacy of domestic law as to giving rights in cases of displacement of the nomadic indigenous people.

### **A. Freedom of Movement as Cultural Integrity**

Nomadic Indigenous People's mobile way of living is intimately connected with traditional form of landholdings and use of natural resources. One of their practice is shifting cultivation. They use a domain and its resources to utilize it by usufruct (not necessarily ownership), then leave it after some time. Their occupation may be transient, but they are still considered as effective occupier, having legal ties in the relevant period, possessed rights, including some rights relating to the lands through which they migrated.<sup>63</sup>

#### a. Domestic law as to freedom of movement

The Philippine Constitution *recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.*<sup>64</sup> The IPRA provides for the promotion and recognition of the rights of Indigenous Peoples with the so-called four bundles of rights: Rights to Ancestral Domains and Lands; Self-Governance and Empowerment; Social Justice and Human Rights; and Cultural Integrity.

**However, the abovementioned Philippine laws violate the right of cultural integrity of the nomadic indigenous people. First, the failure to comply with the international law and standards constitute a violation of their right to cultural integrity. Second, the inadequacy in the Philippine legal framework creates discrimination.**

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<sup>63</sup> Western Sahara, Advisory Opinion 1975 I.C.J. 12 (Oct. 16)

<sup>64</sup>PHIL. CONST.

IPRA is too general to address the diversity of Indigenous People. It does not define, classify, and narrow down some classes of indigenous people, such as the nomadic and the sedentary indigenous people. The definition and classification would have recognized the nomadic indigenous people's culture and would have afforded protection.

Although IPRA states specifically that land rights are cultural right as it states that ancestral domain are *material bases of cultural integrity*, but it only protects the rights of indigenous people that has a *defined and permanent ancestral domain*. Also, it only protects their cultural rights *within or inside such domain*. As discussed, some nomadic indigenous people view territory as temporary by relying on usufructuary, not necessarily ownership. Also, the definition of ancestral domain in the law *only deals with territorial identities* to be considered as their territories. Without defined domain, they cannot claim cultural and property rights. Even assuming a nomadic has defined domain, when they are outside of it, the law does not recognize their cultural rights as nomadic indigenous people. The law also does not provide *land right as cultural right*, it does not specifically provide for the protection of the Nomadic Indigenous People as to their cultural integrity or way of life as nomads and traditional landholdings. Without such protection, it is difficult to maintain collective identity of an indigenous group because land holding system constitute a cultural aspect of indigenous peoples' cultures. **It is only by recognizing their specific way of life and traditional form of landholdings can they realize freedom of movement as part of their cultural integrity.**

*Rubi vs. Provincial Board of Mindoro* hampers the liberty of nomadic indigenous people as it explained that by living nomadic life they are engaged in the works of destruction and a heavy burden to the State, thus should not be guaranteed liberty.<sup>65</sup> This ruling should be considered obsolete as it was decided in 1919, long before the existence of 1987 Constitution and IPRA which intent is to protect the culture of the Nomadic Indigenous people. Also, the ruling if applied today would not be non-compliant with international law and standard which protects and treats cultural integrity such as the nomadic life as a basic human right.

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<sup>65</sup> Rubi vs. Provincial Board of Mindoro, No. 14078. March 7, 1919.

Further, other existing Philippine laws such as the informal settlers act does not recognize the rights of the nomadic indigenous people of their specific land holding vis-à-vis their cultural rights. They can be easily tagged as informal settlers subject to eviction, or an intruder if not recognized of their cultural integrity, which is against the very purpose of IPRA and Social Justice and could lead to discrimination when the law turns blind eye as to their culture.

These above cited dilemmas, sprung from the inadequacy of IPRA. It bars the nomadic indigenous peoples' cultural rights and alteration of way of life or forced assimilation. The inadequacy in the law creates discrimination against nomadic indigenous peoples which manifests in various forms, including direct discrimination, where an otherwise neutral policy may have an adverse effect on certain groups, regardless of discriminatory intent or arbitrary decision-making, but the focus is in the discriminatory impact,<sup>66</sup> Similar of what happened in Italy, which will be discussed below.

b. International Law and Standards as to Freedom of movement as Cultural Right

The International Human Rights Law and Standards requires more. It provides for the protection of nomadic indigenous peoples' rights. International Law recognizes the dual nature of cultural rights which on one hand cover arts, sciences, and local knowledge, while on the other, the term respects cultural differences, which in the legal perspective, provides that culture is a way of talking about collective identities.<sup>67</sup> Under the International Convention on Civil and Political Rights, it states that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."<sup>68</sup>

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<sup>66</sup> Stewart vs. Elk Valley Coal Corporation, 2017 SCC 300.

<sup>67</sup> Anaya, S.J. 2001, The Protection of Indigenous People' Rights Over Lands and Natural Resources Under the Inter-American Human Rights System. Harvard Human Rights Journal. 14:33.

<sup>68</sup> ICCPR Art 27

Culture is not simply a matter of colorful dances and rituals, nor is it even a framework or context for individual choice. Rather, it is in the product of the association of individuals over time, which in turn shapes individual commitments and gives meaning to individual lives for which individual choice or autonomy may be quite valueless.<sup>69</sup> Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.<sup>70</sup> Thus, it encompasses, traditional form of property holdings. Since they are nomadic indigenous people, their traditional form of landholding such as shifting cultivation from one place to other is covered. It necessarily includes *freedom of movement*. They can claim this by collective right which is a concept that emerged because individual human rights do not guarantee adequate protection for indigenous peoples and other minorities exhibiting collective characteristics. These cultural groups face various threats to their livelihoods, to their environments, to their health and to their security, and their very survival may depend upon the recognition and protection of their collective rights.<sup>71</sup> Not only were the indigenous peoples afforded protection, the international community also recognized that these communities enjoy collective rights as a social groups on account of their *distinct characteristics*.<sup>72</sup>

There is also rise in the number of international case law that recognized rights as well as demanded protection for the nomadic indigenous people in the international level. In West Sahara case, the ICJ ruled that nomadic indigenous people are “considered as having in the relevant period possessed rights, including some rights relating to the lands through which they migrated.”<sup>73</sup> The ICJ added that territories inhabited by nomadic peoples living as “organized societies” were not to be considered empty nor open to state acquisition on the basis of occupation. In doing so, the ICJ rejected the application of an approach based on terra nullius by recognizing that nomadic tribes had legal ties with their territories.

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<sup>69</sup> Kukathas, Chandran (1992), *Are there any Cultural Rights*, Political Theory, 1992 (1), 122

<sup>70</sup> General Comment

<sup>71</sup> Friends of the Earth International, Collective Rights, <https://www.foei.org/what-we-do/collective-rights>, Last accessed: Aug. 18,2019.

<sup>72</sup> Atty. Sedfrey M. Candelaria, *Introducing the Indigenous Peoples Rights Act*, Ateneo Law Journal Vol. 47:569, 575, 2002

<sup>73</sup> Western Sahara, Advisory Opinion 1975 I.C.J. 12 (Oct. 16)

In Italy, the European Union as well as different International actors condemn and criticize when the Italian government declared a “state of emergency” in relation to the settlements of nomadic communities therein. There were exclusionary policies in the fields of human mobility and diversity and tagged as “Emergency” the presence of nomadic communities in Milan, Rome and Naples, and imposed penalty such as imprisonment. The Resolution of the European Court Justice (ECJ) states that the collection of fingerprints and forced ejection of nomadic communities “would clearly constitute an act of *direct discrimination based on race and ethnic origin* prohibited by Art. 14 of the ECHR [European Convention for the Protection of Human Rights and Fundamental Freedoms] and furthermore an act of discrimination *between EU citizens* of Roma origin and other citizens, who are not required to undergo such procedures”.<sup>74</sup>

The preservation of the culture of indigenous people was championed in various international case law and anchored the decision in the Article 27 of ICCPR which protects the *cultural way of life of indigenous people* in connection with land rights. A case warned that any future approval of large scale mining activities in the area used for reindeer herding may constitute a violation of a minority's right to enjoy culture.<sup>75</sup> Another case states that Canada had violated minority rights under Article 27 of the ICCPR by allowing the provincial government to sign industrial development leases on traditional native lands and held that historic inequities and recent developments on the Band's traditional lands threatened the Band's way of life and culture, and constituted a violation of article 27 as long as they continued.<sup>76</sup> It was also emphasized that in order to comply with article 27, measures affecting the economic activities of Indigenous people (Maori) must be carried out in a way that the authors continue to enjoy their culture, and profess and practice their religion in community with other members of their group.<sup>77</sup>

Another international instrument, ILO Convention No. 169 stresses in article 2 that governments must assume responsibility for developing

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<sup>74</sup> European Roma information office, supra note 55.

<sup>75</sup> Länsman et al v Finland, United Nations Human Rights Committee, (13 February 2013), available at <https://www.escri-net.org/caselaw/2006/lansman-et-al-v-finland-communication-no-5111992-un-gaor-52nd-session-un-doc-ccpr-c-52d>.

<sup>76</sup> Lubico Lake Band vs. Canada

<sup>77</sup> Apirana Mahuika vs. New Zealand

coordinated actions, with the participation of the indigenous peoples, to protect the latter's rights and guarantee respect for their integrity which include measures to ensure that they enjoy the same rights and opportunities as all other members of the population, on an equal basis. Also, it must promote the full realization of the rights of these peoples, and help eliminate socioeconomic differences.<sup>78</sup>

The right to free movement is highly valued right in international law. However, just like every right, it is not absolute. Concededly, these rights may be subject to limitations on the grounds of public policy, public security and public health. These derogations on the grounds of public policy or public security must be interpreted restrictively and its scope cannot be determined unilaterally by each member state without being subject to control by the institutions of the Community. It must be taken into consideration the culture of communities. First, there must be recognition of cultural integrity if not under the limitations. Second, there must be regulation, if needed. The inadequacy in the national law in recognizing the cultural right of the nomadic indigenous people outside their ancestral domain would not comply with the international standards. With that, there is a possibility that those gaps would leave the specific situation of nomadic indigenous people as unrecognized and in might be discriminatory if there would be future legislations.

## **B. Right in case of Displacement**

The second aspect of this analysis is the displacement due to factors outside their control such as armed conflict, man-made or natural disasters causing the involuntary movements of the nomadic indigenous people. Nomadic, although transitory occupier of territory can also be victim of displacement. As stated earlier that in the relevant period they possessed rights, including some rights relating to the lands through which they migrated.<sup>79</sup>

IPRA provides rights in case of displacement of the indigenous people as a result of natural catastrophes, and that the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life

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<sup>78</sup> Art.2, ILO Convention 169

<sup>79</sup> Western Sahara, Advisory Opinion 1975 I.C.J. 12 (Oct. 16)

support systems.<sup>80</sup> It also has provision about armed conflict, which provides for the special protection of indigenous people in case of armed conflict to not be recruited in the armed forces.

**However, the abovementioned Philippine laws violate the right in cases of displacement of the nomadic indigenous people.** *First, the failure to comply with international law and standards constitutes a violation of their right in cases of displacement. Second, the inadequacy in the Philippine legal framework creates discrimination.*

This national law again addresses limited situations. The provision pertaining to the right in case displacement under Philippine law only addresses the displacement due to natural catastrophes. It does not include displacement due to armed conflict. Also, it only provides for the right in case of displacement when the resettlement was made only by the State and does not provide for the right when the displaced indigenous people flee or voluntary relocate themselves in cases of armed conflict and natural disaster.

Although IPRA has provision about armed conflict, it just merely provides that International Humanitarian Law (IHL) such as Geneva Convention of 1949 will be applied in case of armed conflict.<sup>81</sup> Such can be subjected to cultural relativism. Further, it says nothing about how armed conflict will be addressed based specifically to nomadic or to indigenous people in general. It also does not state how our own specific national government agencies will act in case of armed conflict because it merely provides that IHL will apply.

The danger in such inadequacy in the law is that the nomadic indigenous people who are the victims of displacement due to armed conflict will not be able to avail the rights granted by IPRA because such law only acknowledges rights because of natural disasters, as exemplified in Chapter 4 Case Study. Also, there is danger when the law only speaks of the relocation made by the State, and not by themselves or when they do *voluntary relocation* due to calamities or armed conflict. They can be easily subjected to ejection and tagged as informal settlers. These inadequacy with the domestic law is addressed by the human right international instruments.

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<sup>80</sup> Sec. 79(d), IPRA

<sup>81</sup> Sec. 22, IPRA

Nomadic indigenous people who have been a victim of displacement whether because of armed conflict or natural disaster become an *internally displaced person* (IDPs). The international human rights instruments are comprehensive in recognizing and protecting the rights of IDPs. The International Covenant on Civil and Political Rights (ICCPR), which relates to life, liberty and security of the person, as well as the rights associated with participation in national public life; The International Covenant on Economic, Social and Cultural Rights (ICESCR), concerned with rights in respect of family, education, work, adequate shelter, food and clothing and healthcare.

United Nations defined **displacement** of people refers to the forced movement of people from their locality or environment and occupational activities.<sup>82</sup> Displaced people are people who are forced to leave their homes, due to war, persecution or natural catastrophe.<sup>83</sup> It is a form of social change caused by a number of factors, the most common being armed conflict. Natural disasters, famine, development and economic changes may also be a cause of displacement.<sup>84</sup>

The UN crafted the **Guiding Principles on Internal Displacement**. It represents the international normative standard for efforts to address internal displacement and was recognized as “important international framework for the protection of internally displaced persons”. It outlines the protections available to IDPs. They detail the rights and guarantees relevant to the protection of IDPs from forced displacement to their protection and assistance during displacement up to the achievement of durable solutions.<sup>85</sup> It defined IDPs as *“persons or groups of persons who have been forced to flee, or leave, their homes or places of habitual residence as a result of armed conflict, internal strife, and habitual violations of human rights, as well as natural or*

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<sup>82</sup> United Nations Educational, Scientific and Cultural Organization, Displaced Person/ Displacement, available at <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/> (Last accessed: Aug 21, 2019).

<sup>83</sup> LYNELL WATTS & DAVID HODGSON, SOCIAL JUSTICE THEORY AND PRACTICE FOR SOCIAL WORK: CRITICAL AND PHILOSOPHICAL PERSPECTIVE, 5 (1<sup>st</sup> ed. 2019).

<sup>84</sup> United Nations Educational Scientific and Cultural Organization, *supra* note 51.

<sup>85</sup> Internal Displacement Monitoring Centre, Guiding Principles, available at <http://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement> (Last accessed: Aug 21, 2019)

*man-made disasters involving one or more of these elements, and who have not crossed an internationally recognized state border".<sup>86</sup>*

The Guiding Principles also provides for the internal displacement consists of a *three-phase process*: Pre-displacement, when the State's focus should be on *preventing* the causes leading to displacement from occurring; During displacement, when the focus should be on *protection and assistance* for IDPs and affected communities, as well as steps to resolve the circumstances originally leading to displacement; Post-displacement, after such circumstances have been resolved, when the focus should be on finding *durable solutions* for the affected IDPs, delivering development and humanitarian assistance and building sustainable livelihoods. One of the key features of post-displacement is that IDPs have the right to choose between returning to their homes or settling in another part of the country (including integration within their new communities).<sup>87</sup>

The above cited international human rights instruments are more inclusive and encompassing in recognizing who are the victims of displacement because it comprehensively includes more relevant factors of displacement, unlike the domestic law. The standard rights granted and provided by the international instruments would ideally aid the underlying emergency of the nomadic indigenous people by detailing every aspect and stages of the situation and the corresponding rights. There are also provisions about the need for different government agencies to coordinate with each other to prevent, assist, and provide durable solutions in case of displacement. However, these standards are not met by the domestic law.

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<sup>86</sup> Guiding Principles on Internal Displacement, Introduction (2), June 2001.

<sup>87</sup> Principle 28, Guiding Principles

## **CHAPTER 4: CASE STUDY**

This is a case study about the displacement of Badjao Cultural Community of Barangay Malitam, Batangas City, nomadic indigenous people originally from Basilan in Mindanao. Meant to reinforce legal analysis and to solidify the conclusion and recommendation of the next chapters.

Sonny Alimane the Chieftain and a member of the Badjao Cultural Community in Barangay Malitam, Batangas City was the interviewee and he comprehensively shared in detail their displacement in Basilan and their perilous journey to Batangas to seek a perfect settling ground. **(See Annex A)**

Sonny and his family originated from Lamitan, Basilan in Mindanao where their life was prosperous until the armed conflict took place at the time of Marcos regime. The conflict was between the then government and the armed group led by Misuari. Their safety and livelihood were in great danger as they were often caught in crossfires. Since a typical Badjao house were stilt huts or boat houses on shallow waters, sometimes they would just dive in the water to hide from the war. During that time, they would be relocated from time to time having no permanent place.

The armed conflict persisted, so from their province they travelled to Zamboanga using, paddling and rowing their old boats. Upon their arrival they sold the boat so they can ride a ship to Cebu. When they arrived there, they stayed there for three months. They planned to go back to their province, but the armed conflict is not yet over. They just instead bought small boats that they can use to move to a place where they can live peacefully and economically.

From Cebu they paddled again and that led them to Dimasalang, Masbate. They did not stay there, so they travelled again. Using their boats again, they travelled to Batangas passing through Sorsogon. In 1989, they went back to Dimasalang, Masbate, and then back to Batangas. It took a year of going to and from Batangas. They settled in Sta. Clara. Batangas but they were paid to leave the place because of construction of a big company, so they were relocated to Brgy. Simlong. They were settled in Brgy. Simlong, when they

were again paid to leave the place, this time, for 5000 pesos. Then, they arrived in Barangay Malitam where they are currently settled.

Through their journey of going to different provinces, they experienced a lot of typhoons. Sometimes, they have to ask for alms when they ran out of food.

It was in 1982 when the first families of Badjaos first set foot in Batangas. One of them was the family of the interviewee. They are now settling at Sitio Badjaowan, Barangay Malitam which is owned by the government.

The Philippine law could hardly reach and address the situations of Sonny Alimane and the rest of Badjao Cultural Community of Barangay Malitam. The IPRA only provides for the right in case of displacement due to natural catastrophe and that it should be the State that shall provide for relocation. The provisions of IPRA are inadequate to recognize the right in case of displacement of nomadic indigenous people *due to armed conflict*. It is also inadequate in recognizing the situations where the victims of displacement were the one who voluntarily relocate themselves instead of the State. The law also does not include the rights during and after displacement, which should be focused on the right to durable solutions to assist and protect them. One of which is to stay in right to choose between returning to their homes or settling in another part of the country including integration within their new communities, without it they could be easily regarded as informal settlers or intruder and can be easily be subjected to ejection, thus the cycle of displacement goes on. The law fails to address the specific situation of Sonny Alimane and the whole Badjao Cultural Community in Malitam, Batangas whose rights may not have been recognized were it not for the tolerance and gratuity of the local government. The cultural integrity cannot be protected as they are outside their ancestral domain, have the law been specific, they could have been protected and to insulate them against discrimination.

The international framework is comprehensively applicable to the situation of such community. The definition of displacement is not only limited to the occurrence of natural catastrophes, but also includes armed conflict. It also provides that when Internally Displaced Person flees from their homes they could relocate when the emergency occurred even without

State's intervention. The Guiding Principle also discussed in the preceding chapter would have adequately provided for their protection before, during, or after displacement. Pre-displacement provisions would have compelled the State to prevent the situations leading to the displacement. During the displacement, a displaced and affected communities could have asserted *protection and assistance*, as well as steps to resolve the circumstances originally leading to displacement; After displacement, circumstances could have been resolved, and finding *durable solutions* for the affected IDPs, delivering development and humanitarian assistance and building sustainable livelihoods. One of the key features of post-displacement is that IDPs have the right to choose between returning to their homes or settling in another part of the country (including integration within their new communities).

## **CHAPTER 5: CONCLUSION**

The right to Cultural Integrity and rights in cases of Displacement of the Nomadic Indigenous Peoples are violated by Philippines' failure to comply with obligations under International Law and standards. Such non-compliance itself constitutes a violation. Current Philippine laws are inadequate and hardly reach the situations that are addressed by international laws. Further, the such failure to comply creates a distinct form of discrimination against a group of people.

Cultural Integrity as protected by the International Law is not protected in the Philippines as can be gleaned from its current legal framework. Further, the inadequacy in domestic law is discriminatory as to their cultural rights. Not to mention that they could easily be subjected to ejection which is contrary to international laws and standards.

In case of displacement, national law fails to comply with international law. Domestic law addresses limited situations and is inadequate. International human rights instruments are more inclusive and encompassing in recognizing who are the victims of displacement because it comprehensively includes more relevant factors of displacement, unlike the domestic law. The standard rights granted and provided by the international instruments would ideally aid the underlying emergency of the nomadic indigenous people, however, these standards were not met by the domestic law.

## CHAPTER 6 : RECOMMENDATION

### A. Amendment of IPRA

#### a. As to Freedom of movement

To address the generality of the law, the IPRA should be amended to be more specific with the classes of Indigenous People, such as the nomadic indigenous people as distinguished to the sedentary or settled indigenous people. Specifying these two classes of indigenous people would be essential to address the apparent invisibility of nomadic in the eyes of the law, recognize them and accord rights specially the rights such as freedom of movement as cultural integrity. **(See Annex B- Proposed Bill)**

Also, the concept of cultural integrity should be widened by including and recognizing the way of living and property rights of the nomadic indigenous people. It should also include that cultural integrity should also be recognized even outside the ancestral domain and recognize the freedom of movement encompassing a nomadic way of life. It should also specify the preservation of cultural integrity of the nomadic indigenous people. Admittedly, rights are not absolute so there should be limitations such as the when freedom of movement would be endangering the public health, public policy, and public safety as determined by the competent authority.

It should also usufructuary rights attached to the land and the rights to specific mobile movements, which is integrated in the nomadic lifestyle of these indigenous people. In international parlance this is called “Nomadic Lex Specialis” which literally means law governing a specific subject matter, which is the nomadic indigenous people in this case.

#### *i. Best Practices and proposed standards for cultural integrity*

The European Union has a legal framework that is, although not specific to the nomadic indigenous people, adequate to protect them as nomadic and pertinent to their freedom of movement cultural right. It is mainly based on the prohibition against discrimination. The EU Council has Racial Equality Directive which prohibits the union members to all forms of

discrimination on the grounds of racial and ethnic origin, such as when one is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin. The European Union also has European Convention on Human Rights which also prohibits the discrimination<sup>88</sup> and mandates the respect for private life.<sup>89</sup> EU Charter of Fundamental Rights also enshrines the fundamental freedom against racial discrimination. This was illuminated in the case of EC vs. Italy discussed in the legal analysis.

b. As to Rights in case of Displacement

The nomadic indigenous people are always subject of displacement. In the Philippines, there is currently no law dealing with displacement specifically. Although there are efforts in the legislative department to craft displacement-specific law, it did not reach enactment. For the displacement of the nomadic indigenous people, amending the IPRA would be necessary to meet the standards of international law, and to make the rights in cases of displacement as encompassing to relevant situations of nomadic indigenous people and indigenous people in general.

First, the scope of IPRA should be widening as **“displacement”** should not be limited to natural catastrophes but should also include those mentioned in the UN Guiding principles, which includes those who are displaced because of the armed conflict, and man-made or natural disasters. Also, because IPRA only provides for the relocation made by the State and does not tackle when the subjects flee and voluntary relocate themselves in cases of the above-mentioned emergencies that caused their displacement. In this aspect, IPRA should be strengthened and should include a specific provision about voluntary relocation in case of displacement. In this case, those who voluntarily relocate themselves would not be considered as informal settlers but should be plainly viewed as victims of displacement. In the places of where they are currently relocated, there should be due process and cannot relocate them or bring them back to their origin without prior consultation. If there would be relocation, preservation of their cultural integrity shall be considered. **(See Annex B-Proposed Bill)**

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<sup>88</sup> European Convention on Human Rights, Art. 14.

<sup>89</sup> Id., Art. 8.

The IPRA should also embody a domestic protection regime and commitment in strengthening and enhancing mechanisms to protect people on the move to improve management of relocation in case of displacement, while still respecting the sovereign rights of the State, and private rights in some cases. It should embody what is provided in the UN Guiding Principles the rights prior, during, and after displacement. Reducing the drivers of factors of displacement. It shall also embody the cooperation between LGUs and other actors. The law should be rights-base and people-centered to promote the well-being of the internally displaced person. After the displacement, they should have the right to choose whether to go back to their origin or remain in the place where they already have assimilation.

*i. Best Practices and Proposed Standards for Rights in case of Displacement*

African Union Kampala Convention enshrines the rights provided by the UN Guiding Principles defines internally displaced person and encompasses those who are victim of displacement due to armed conflict. It also provides for the rights for pre-displacement, during displacement and after displacement. The following are the proposed standards culled from the abovementioned international human rights instruments which reach the specific situations of nomadic indigenous people:

*1. Pre-Displacement*

State must **minimize** the adverse drivers and factors that compel people to leave their country of origin. Displacement should never occur in a **manner** that violates the rights to life, liberty, and security. States have a particular obligation to **protect** against the displacement of groups that have a special dependency on, or attachment to, the land. (Like the nomadic indigenous people or indigenous people in general)

*2. During Displacement*

Provide access to basic services and rights such as: Right to life, liberty and security of person, protection against violence; Right to food; Right to water and sanitation; Right to adequate housing; Right to medical assistance and healthcare; Right to property; protection against attacks on property; Freedom of movement; Right to be recognized as a person before the law; Right to family life and unity; Right to education; Right to work and an adequate standard of living; Right to freedom of expression, freedom of thought, conscience, religion or belief; Right to participate in the public affairs of the nation; and Right to humanitarian assistance.

Strengthen local government cooperation and partnerships for safe, orderly and regular relocation. Collect and utilize accurate and disaggregated data as a basis for evidence-based policies, as far as practicable; Provide accurate and timely information at all stages of migration; Ensure that all migrants have proof of legal identity and adequate documentation. (might be useful to claim their property rights); Prevent, combat and eradicate trafficking in persons; Manage areas in an integrated, secure and coordinated manner. Empower migrants and societies to realize full inclusion and social cohesion; Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration; Invest in skills development and facilitate mutual recognition of skills, qualifications and competences; Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries.

### *3. After Displacement*

IDPs have the right to choose between returning to their homes or settling in another part of the country (including integration within their new communities); Authorities should assist IDPs in recovering lost property or, where such recovery is not possible, provide mechanisms for compensation; There should be no discrimination against IDPs who have returned home or settled elsewhere; they should be entitled in particular to take part in public affairs and enjoy access to public services; Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration; Authorities should grant humanitarian and development organizations rapid and unimpeded access where needed to assist IDPs in returning home, resettling elsewhere or (re)integrating within their former or new local

communities. Authorities should make special efforts to ensure that IDPs can participate in the planning and management of durable solutions to their difficulties.

c. As to NCIP

These laws would not be effective without a body or agency that would efficiently protect the rights of nomadic indigenous people. Currently, the Philippines has National Commission on Indigenous People (NCIP) which is an agency that is created by IPRA and exercises power under such law. Policies such as assistance to freedom of movement would be essential to the protection of cultural integrity.

For the displacement cases, widening the powers of NCIP would be essential to protect the rights of the nomadic indigenous people in such cases. It is also essential that as discussed above to strengthen the cooperation of the agencies and local government units in cases of displacement. The IPRA should widen the powers to NCIP to create policies with coordination with the agencies and local government units to assist the nomadic in case of displacement.

## **B. Policies and Programs**

a. Inter-governmental agency Task Force

In connection with the proposed amendment of IPRA in improving domestic protection regime and commitment in strengthening and enhancing mechanisms to protect people on the move, a policy for the inter-governmental agency is essential. This policy should strengthen local government units, national agencies such as NCIP and DSWD, and non-government organization's cooperation and partnerships for safe, orderly and regular relocation for the victims of displacement and protecting their cultural integrity. **(See Annex B- Proposed Bill)**

b. Displacement and Quick Response Fund

This policy is intended to assist the victims of displacement when such emergency occurred. This will grant aid and assistance to those who need to be relocated when they are in the process of relocation. Also, this would grant rapid and unimpeded aid when needed to assist IDPs in returning home, resettling elsewhere or reintegrating within their former or new local communities.

c. Sustainable Programs

Livelihood and sustainable programs which builds up strength and capabilities of the victims of displacement or the nomadic indigenous people in general, to improve their socio-economic conditions by engaging and maintaining livelihoods, especially in the places where they are temporarily relocated because of the displacement.

d. Mechanism for International Humanitarian Assistance

Authorities should grant international humanitarian and development organizations rapid and unimpeded access or intervention to help nomadic indigenous people in cases of displacement. This mechanism would be essential in the feasibility of aiding, assisting, funding by programs in ensuring that fleeing indigenous people due to conflict or natural disasters have access to lifesaving services in the places where they are displaced or where they will be relocated.

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## ANNEX A

Interview conducted by Ronald Kevin Montellano, the researcher, with Mr. Sonny Alamane, Member and the Chieftain of Badjao Cultural Community of Brgy. Malitam, Batangas City.

**Date:** August 20, 2019

**Location:** Sitio Badjaoan, Brgy. Malitan, Batangas City.

### **Abbreviations:**

**KM-** Kevin Montellano (*interviewer*)

**SA-** Sonny Alamane (*interviewee*)

**KM:** Magandang tanghali po. Maari niyo po ba sabihin sa akin ang inyong pangalan?

**SA:** Ako si Sonny Alamane, bilang isang tribal leader ng community sa mga Badjao, kaya narito kami tungkol sa kahirapan sa mga panahon na iyon.

**KM:** Saan po kayo nakatira ngayon?

**SA:** Dito sa Sitio Badjaoan sa Malitam, Batangas.

**KM:** Okay po. So isa po kayong katutubo na Badjao. Saan po kayo nagmula?

**SA:** Sa Lamitan, Basilan province.

**KM:** Maaari niyo po ba ikwento sa akin ang inyong buhay doon?

**SA:** Ang pamumuhay naming sa lugar naming ay, dati talaga, maganda at ang hanapbuhay ay masagana rin. Kaso lang noong mgakaroon ng problema, panahon ni Nur Misuari at saka ni Marcos, medyo nagkaroon ng Martial Law at naipit din kami sa labanan noong maliit pa ako.

**KM:** Okay po. So, ang nag-aaway noon ay ang mga rebelde?

**SA:** Rebelde.

**KM:** Paano po kayo noong mga panahong iyon? Ano po ang sitwasyon ng inyong buhay noong pagkakataon na may giyera?

**SA:** Ah, kasi ang mga bahay naming nung mataas sa...mataas pero naka-ano kami sa tubig, yung bahay namin sa kadagatan kasi eh. Ah, noong nagkaroon ng giyera, minsan tumatalon na lang sa tubig, tapos nakasakay sa Bangka, kung saan-saan nga pumupuntang lugar. Ah, mayroon kasing mga bayan-bayan sa Basilan. Yung marami din kaming bayan..., Liburan, Buli-buli, Maluso, at saka Isabela. Kung saan-saan kami lumipat.

**KM:** Bakit po kayo palipat-lipat?

**SA:** Eh, 'pag nagkaroon ng giyera sa isang bayan, aalis kami sa lugar na iyon para hindi maapektuhan ang aming mga pamilya.

**KM:** Okay po. So, noong panahon po na ‘yon, wala po kayong permanente na bahay?

**SA:** Ah, wala.

**KM:** Ang dahilan po kung bakit kayo umalis sa Basilan ay ang giyera?

**SA:** Ang giyera.

**KM:** Natatandaan niyo po ba kung kalian kayo umalis? Kung anong taon?

**SA:** Hindi ko matandaan kasi maliit pa ako noon.

**KM:** Ah maliit pa po kayo. Paano po kayo umalis? Ano po ang inyong sinakyan? Paano po kayo nakapunta dito?

**SA:** Ah, noong galing kami sa aming bayan sa Lamitan, may mga bankang, sinaunang Bangka, yung parang kiamaya ng sagwan lang, papunta ng Zamboanga. Pagdating Zamboanga, yung Bangka din ay ibinenta. ‘Di ko rin makalimutan, yung benta nung aming benta [bangka], tumatawad ‘yan eh. Siguro ‘si na tataas sa otsenta pesos noong panahong ‘yun. Tapos sumakay kami sa barko, nung panahon nung barko na ‘yun ay MVG plus cargo, tapos doon kami sumakay ang mga pamilya namin. Ang pamasahe papuntang Cebu, kwarenta’y dos singkuenta centavos noong panahon na iyon. Pagdating naming sa Cebu, (inaudible) eh bumili rin ng maliliit na bangka.

**KM:** Ibig sabihin po, nanirahan po kayo sa Cebu?

**SA:** Sa Cebu, siguro umabot ng mga tatlong buwan.

**KM:** Bakit po kayo umalis doon sa Cebu?

**SA:** Sa Cebu? Eh naghahanap ng medyo ayos ang buhay. Sana pabalik na nga ulit kami ng Basilan eh. Kasi sabi ng nanay namin at tatay kasi tribal leader nung panahon ang tatay ko. Sabi nung tatay at nanay sa mga kapatid namin, babalik na lang tayo, kung may matira pa akong alahas, kasi noong alahas, benta natin para makabalik ulit tayo ng lugar natin kasi mahirapan tayo sa pagkain. Sa Cebu, nagpapalimos kami nung maliit pa kami, nagpapalimos talaga todo para makakain lang. Nung bumili ng bangka, nagsagwan another papuntang Kawit, Maya sa Bantayan Daan, sa dulo ng Cebu. Pagdating namin sa Maya, ah nag-isip din ang magulang namin, hanap tayo kaya ng ibang lugar, makatagpo tayo ng maganda-gandang pamumuhay at makakain ng mabuti ang mga bata. Nagsagwan kami, Masbate. Puro sagwan, maliliit na bangka, ang lutang sa dagat, mga ganun lang, Cebu to Masbate. Pagdating ng Masbate, nanirahan din kami sa Yangku Dimasalang, Masbate, mga tatlong taon. Tapos marami ring nagkwento sa magulang namin, mas maganda sa Batangas, doon gaganda ang buhay niyo. Sagwan na naman, another, dadaan ng Bulan, Sorsogon, tapos , Sorsogon. Isang buwan mahigit sinagwan papuntang Batangas City. 1982, Batangas, City na kami.

**KM:** Ano po ang mga panganib na napagdaanan niyo?

**SA:** Sobra. Bagyo. Kung saan-saan kami inabot ng bagyo. Puro sagwan eh. Kung naubusan kami ng pagkain, kaming mga bata pa noon, nagpapalimos kami, humihingi kami ng pagkain namin. ‘Yun, nakaipon kami mga isang sako na yung tawag na bigas na

mais, yung hindi bgas natin dito, yung mais talaga. Nakarating kami ng Batangas, walang nagpapalimos...

**KM:** Kailan po ulit kayo nakapunta dito sa Batangas?

**SA:** Bumalik kami nung 1989, bumalik kami ulit sa Dimasalang, Masbate pero nakarating kami dito sa Simlong, Sta. Clara. Ang bahay naming kubo-kubo lang, nakahiga lang kami sa ganito [points floor]. Walang permanente, yung isang taon pabalik-balik. Walang permanenteng [bahay].

**KM:** Alam niyo po kung sino ang mga unang pamilya ditto?

**SA:** Kami ang una. Ang unang pamilya, Alamani, Tubayani, at saka Illadi at (inaudible). Apat na apelyido 'yan.

**KM:** Tapos po dumami na lang.

**SA:** Dumami na lang.

**KM:** Kamusta naman po kayo dito sa Brgy. Malitam.

**SA:** Talagang dito, medyo, 'di lang medyo, nakapag-aral ang mga bata, malaking binago. Magandang-maganda ngayon, talagang maganda, proud kami sa Batangueño. Ayos. Natulungan kami ng gobyerno.

**KM:** Ano po ang mga ayuda na nakuha ninyo mula sa gobyerno?

**SA:** Marami. Mga anak namin eh maraming talaga. 'Pag ikaw isang tribo, sa mga Badjao, wala kang babayaran sa ospital. Basta lalabas ka na lang. Manganak halimbawa si misis mo, wala kang babayaran, basta tribo.

**KM:** Paano po kayo nakikipagtulungan sa gobyerno? Halimbawa po meron silang proyekto.

**SA:** Ah, mag-intay din kami ng move ng gobyerno. Kapag sabi ng gobyerno, 'Ito para sa inyo to, bayanihan lang dito.' At saka, 'Sumunod kayo sa gobyerno ng Batangas City.' Sumusunod naman kami, kaso lang, ang iba naman eh hindi rin naming masisi kung bakit medyo lumilihis pa rin sila, na hindi pa rin nagbabago ang iba, nagpapalimos pa rin. Pero pinilit naming na akayin na magbago. Hindi pa huli ang lahat para magbago.

**KM:** Pagkarating niyo po dito, dito na po kayo mismo nakatira?

**SA:** Hindi. Simlong kami, Brgy. Simlong.

**KM:** Paano po kayo napunta dito sa Brgy. Malitam?

**SA:** Kasi, nung binayaran. Una, napalipat kami sa Sta. Clara. Sta. Clara kami, hindi pa 'yang pier na yan, mga tao pang biyaheng papuntang Mindoro, Viva lines. Noong naibenta 'yan sa ginawang kumpanya, pinalaking pier, nailipat kami sa Simlong, nabayaran naman kami nung panahong iyon, 10,000 bawat isang bahay. Tinanggap naman namin. Ang mga Tagalog, hindi naman sa pag-aano, hindi pumayag. Umabot ng 40,000 tapos may lupa pang binibigay. Samin, nung sinabi, 'Ito para sa inyo. kailangan', umalis kami. Pagkarating ng Simlong, pinagawa naman nya ang JG Summit. Binigyan

kami ng 5,000, umalis kami. Pinalipat kami dito nung panahon na ‘yon, ex-mayor Bel Berabe, salamat sa kanya kahit na nasa kabilang buhay na siya.

**KM:** Kanino po ang lote na ito?

**SA:** Ang sabi lang, ‘di ko naman sigurado eh, kay Governor Mandanas daw ito. ‘Yun lang ang sabi samin, pero di naman naming alam kung totoo ba. Pero salamat sa kanya at nakatira kami ditto.

**KM:** Kamusta naman po ang inyong pagbabago ng buhay ng mula sa giyera, ngayon sa mas maayos na po?

**SA:** Kasi ngayon ang mga kabataan namin mas marami nang natutunan, kung saan-saan na sila dinadala ng mga NGO, papuntang Maynila, kung saan-saan lugar. Pinapasyal sila sa mga beach. Ang mga anak namin nakakapag-aral, nakapag high school na. Yung iba eh nag ibang bansa na rin eh. Kaya dito talaga pinaka the best dito sa Batangas.

**KM:** Iyon lamang naman po ang mga katanungan ko. Maraming maraming salamat po sa pagpapaunlak. Thank you po.

**ANNEX B- Proposed Bill**

**EIGHTEENTH CONGRESS OF THE )**  
**REPUBLIC OF THE PHILIPPINES )**  
*First Regular Session )*

**S E N A T E**  
**S. No. \_\_\_\_\_**

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**Introduced by \_\_\_\_\_**

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**AN ACT STRENGTHENING THE PROTECTION TO CULTURAL  
INTEGRITY AND RIGHTS IN CASES OF DISPLACEMENT TO INDIGENOUS  
PEOPLE, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8371,  
OTHERWISE KNOWN AS “INDIGENOUS PEOPLES RIGHTS ACT”**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

**SECTION. 1.** Section 3 of the Republic Act 8371 is hereby amended to read as follows:

“Section 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

“xxx

“h) Indigenous Cultural Communities/Indigenous Peoples — refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, nonindigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their

traditional domains or who may have resettled outside their ancestral domains; **INDIGENOUS PEOPLE MAY EITHER BE NOMADIC OR SEDENTARY.**

xxx

**“q. SEDENTARY INDIGENOUS PEOPLES- THOSE INDIGENOUS PEOPLE DEFINED UNDER SECTION 3 (H) OF THIS ACT, AND WHO ARE SETTLED IN A SPECIFIC TERRITORY.”**

r. **NOMADIC INDIGENOUS PEOPLE- THOSE INDIGENOUS PEOPLE DEFINED UNDER SECTION 3 (H) OF THIS ACT, AND WHO ARE NOMADIC OR EXHIBITS A NOMADIC LIFESTYLE ACROSS A LARGE TERRITORY HOWEVER THEY ARE ASSOCIATED WITH A SPECIFIC TERRITORY ON WHICH THEY DEPEND. THEY OFTEN VIEW TERRITORIES AS BOUNDLESS AND THEY MOVE FROM PLACE TO PLACE USUALLY WITH USUFRUCT OF THE LAND OR PASTURES PRODUCES, OR HUNT THEY GATHERED.”**

**SECTION 2.** Section 7 of the Republic Act 8371 is hereby amended to read as follows:

SECTION 7. Rights to Ancestral Domains. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

xxx

d) Right in Case of Displacement. — In case displacement occurs as a result of **ARMED CONFLICT, AND MAN-MADE OR NATURAL DISASTERS**, State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed; Provided, furthermore that **VOLUNTARY RELOCATION BY THEMSELVES DURING DISPLACEMENT, THE VICTIMS WOULD NOT BE CONSIDERED AS INFORMAL SETTLERS BUT SHOULD BE PLAINLY VIEWED AS VICTIMS OF**

**DISPLACEMENT. IN THE PLACES WHERE THEY ARE CURRENTLY RELOCATED, THERE SHOULD BE DUE PROCESS AND CANNOT RELOCATE, EJECT, OR FORCIBLY BRING THEM BACK TO THEIR ORIGIN WITHOUT PRIOR CONSULTATION. IF THERE WOULD BE RELOCATION, PRESERVATION OF THEIR CULTURAL INTEGRITY SHALL BE TAKEN INTO ACCOUNT AND SHOULD BE ACCORDED ASSISTANCE AS MENTIONED IN THIS PROVISION. THE VICTIMS OF DISPLACEMENT SHOULD BE ACCORDED RIGHTS IN ACCORDANCE WITH THE RIGHTS PROVIDED IN THE UN GUIDING PRINCIPLES. SUCH STANDARDS OF RIGHTS ARE AS FOLLOWS:**

**1. PRE-DISPLACEMENT**

**MINIMIZE THE ADVERSE DRIVERS AND FACTORS THAT COMPEL PEOPLE TO LEAVE THEIR COUNTRY OF ORIGIN. DISPLACEMENT SHOULD NEVER OCCUR IN A MANNER THAT VIOLATES THE RIGHTS TO LIFE, LIBERTY, AND SECURITY. PROTECTION AGAINST THE DISPLACEMENT OF GROUPS THAT HAVE A SPECIAL DEPENDENCY ON, OR ATTACHMENT TO, THE LAND.**

**2. DURING DISPLACEMENT**

**PROVIDE ACCESS TO BASIC SERVICES AND RIGHTS SUCH AS: RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON, PROTECTION AGAINST VIOLENCE; RIGHT TO FOOD; RIGHT TO WATER AND SANITATION; RIGHT TO ADEQUATE HOUSING; RIGHT TO MEDICAL ASSISTANCE AND HEALTHCARE; RIGHT TO PROPERTY; PROTECTION AGAINST ATTACKS ON PROPERTY; FREEDOM OF MOVEMENT; RIGHT TO BE RECOGNIZED AS A PERSON BEFORE THE LAW; RIGHT TO FAMILY LIFE AND UNITY; RIGHT TO EDUCATION; RIGHT TO WORK AND AN ADEQUATE STANDARD OF LIVING; RIGHT TO FREEDOM OF EXPRESSION, FREEDOM OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF; RIGHT TO PARTICIPATE IN THE PUBLIC AFFAIRS OF THE NATION; AND RIGHT TO HUMANITARIAN ASSISTANCE.**

**STRENGTHEN LOCAL GOVERNMENT COOPERATION AND PARTNERSHIPS FOR SAFE, ORDERLY AND REGULAR RELOCATION. COLLECT AND UTILIZE ACCURATE AND DISAGGREGATED DATA AS A BASIS FOR EVIDENCE-BASED POLICIES, AS FAR AS PRACTICABLE; PROVIDE ACCURATE AND TIMELY INFORMATION AT ALL STAGES OF MIGRATION; ENSURE THAT ALL MIGRANTS HAVE PROOF OF LEGAL IDENTITY AND ADEQUATE DOCUMENTATION. (MIGHT BE USEFUL TO CLAIM THEIR PROPERTY RIGHTS); PREVENT, COMBAT AND ERADICATE TRAFFICKING IN PERSONS; MANAGE AREAS IN AN INTEGRATED, SECURE AND COORDINATED MANNER. EMPOWER MIGRANTS AND SOCIETIES TO REALIZE FULL INCLUSION AND SOCIAL COHESION; ELIMINATE ALL FORMS OF DISCRIMINATION AND PROMOTE EVIDENCE-BASED PUBLIC DISCOURSE TO SHAPE PERCEPTIONS OF MIGRATION; INVEST IN SKILLS DEVELOPMENT AND FACILITATE MUTUAL RECOGNITION OF SKILLS, QUALIFICATIONS AND COMPETENCES; CREATE CONDITIONS FOR MIGRANTS AND DIASPORAS TO FULLY CONTRIBUTE TO SUSTAINABLE DEVELOPMENT IN ALL COUNTRIES.**

**3. AFTER DISPLACEMENT**

**IDPS HAVE THE RIGHT TO CHOOSE BETWEEN RETURNING TO THEIR HOMES OR SETTLING IN ANOTHER PART OF THE COUNTRY (INCLUDING INTEGRATION WITHIN THEIR NEW COMMUNITIES); AUTHORITIES SHOULD ASSIST IDPS IN RECOVERING LOST PROPERTY OR, WHERE SUCH RECOVERY IS NOT POSSIBLE, PROVIDE MECHANISMS FOR COMPENSATION; THERE SHOULD BE NO DISCRIMINATION AGAINST IDPS WHO HAVE RETURNED HOME OR SETTLED ELSEWHERE; THEY SHOULD BE ENTITLED IN PARTICULAR TO TAKE PART IN PUBLIC AFFAIRS AND ENJOY ACCESS TO PUBLIC SERVICES; COOPERATE IN FACILITATING SAFE AND DIGNIFIED RETURN AND READMISSION, AS WELL AS SUSTAINABLE REINTEGRATION; AUTHORITIES SHOULD GRANT HUMANITARIAN AND DEVELOPMENT ORGANIZATIONS RAPID AND UNIMPEDED ACCESS**

**WHERE NEEDED TO ASSIST IDPS IN RETURNING HOME, RESETTLING ELSEWHERE OR (RE)INTEGRATING WITHIN THEIR FORMER OR NEW LOCAL COMMUNITIES. AUTHORITIES SHOULD MAKE SPECIAL EFFORTS TO ENSURE THAT IDPS CAN PARTICIPATE IN THE PLANNING AND MANAGEMENT OF DURABLE SOLUTIONS TO THEIR DIFFICULTIES.**

**NCIP SHALL COORDINATE WITH LOCAL GOVERNMENT AGENCIES, OTHER NATIONAL GOVERNMENT AGENCIES SUCH AS DSWD, AND INTERNATIONAL HUMANITARIAN ORGANIZATION FOR THE EFFICIENT ASSISTANCE TO THE VICTIMS.**

**AN INTER-AGENCY TASK FORCE SHALL BE CREATED WHEN THE NCIP DEEMS IN NECESSARY THAT IMPENDING DISPLACEMENT IS ABOUT TO OCCUR. IT SHALL BE COMPOSED OF THE COMMISSIONER OF THE NCIP, THE MUNICIPAL/CITY MAYOR/S WHOSE JURISDICTION INVOLVES DISPLACEMENT, SECRETARY OF DSWD, AND MEMBERS OF INTERNATIONAL HUMANITARIAN ORGANIZATION, IF ANY.**

SECTION 3. A Section shall be added which shall be numbered as Section 8 which shall be read as follows:

**SECTION 8. LIST OF NOMADIC PEOPLE- IN LINE WITH THE RECOGNITION OF THE NOMADIC INDIGENOUS PEOPLE, THE NCIP SHALL MAKE A RECORD OF ALL THE LIST OF NOMADIC CULTURAL COMMUNITIES IN COORDINATION WITH THE DILG AND THE LGU INVOLVED.**

SECTION 4. Section 29 of the Republic Act 8371 is hereby amended by read as follows:

**SECTION 29. Protection of Indigenous Culture, Traditions and Institutions.** — The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. **IT SHALL INCLUDE THE WAY OF LIVING AND PROPERTY RIGHTS OF THE NOMADIC INDIGENOUS PEOPLE AND BE**

**RECOGNIZED AS CULTURAL RIGHT. THERE CULTURAL INTEGRITY SHALL BE RECOGNIZED EVEN OUTSIDE THE ANCESTRAL DOMAIN AND RECOGNIZE THE FREEDOM OF MOVEMENT ENCOMPASSING A NOMADIC WAY OF LIFE. THE SHALL PRESERVE OF CULTURAL INTEGRITY OF THE NOMADIC INDIGENOUS PEOPLE. THESE RIGHTS ARE NOT ABSOLUTE LIMITATIONS ARE WHEN FREEDOM OF MOVEMENT WOULD BE ENDANGERING THE PUBLIC HEALTH, PUBLIC POLICY, AND PUBLIC SAFETY AS DETERMINED BY THE COMPETENT AUTHORITY. THESE SHALL CONSIDER THESE RIGHTS IN THE FORMULATION AND APPLICATION OF NATIONAL PLANS AND POLICIES.**

**SECTION 4.** Section 31 of the Republic Act 8371 is hereby amended by read as follows:

**SECTION 31. Recognition of Cultural Diversity.** — The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural, educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that the State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values. **CULTURAL DIVERSITY INCLUDE RIGHTS THAT ARE ACCESSORIES TO THE NOMADIC WAY OF LIFE (SUCH AS HUNTING AND GATHERING) OR THE USUFRUCTUARY RIGHTS ATTACHED TO THE LAND AND THE RIGHTS TO SPECIFIC MOBILE MOVEMENTS, WHICH IS INTEGRATED IN THE NOMADIC LIFESTYLE OF THESE INDIGENOUS PEOPLE.**

*Approved,*  
August 29, 2019

Sgd.

President of the Philippines