

# Protection of Non-Moro Indigenous Peoples in BARMM

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## Background & Objectives

The establishment of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) in 2019 signified a major milestone in the peace process between the Philippine government and the Moro Islamic Liberation Front. A transition government was appointed and among other things tasked with passing priority legislation including a law for the protection of non-Moro indigenous peoples (NMIP). NMIP constitute about 2% of the BARMM population and are composed of 6 distinct indigenous peoples. Throughout the peace process, NMIP's concerns such as the delineation of ancestral lands have largely been sidelined. The upcoming indigenous peoples code therefore presents a crucial opportunity to effectively protect NMIP rights and contribute to lasting peace in Mindanao.

As part of its commitment to non-violent conflict transformation, forumZFD works to contribute to an inclusive peace process and to robust, peace-promoting institutions in BARMM. In order to better adapt its interventions, forumZFD conducted an applied peace research project on the specific needs of non-Moro indigenous peoples in relation to the indigenous peoples' code. For the purposes of the research, forumZFD staff analyzed draft versions of the proposed indigenous peoples code and interviewed NMIP advocates. Findings of the research study were presented at the Geneva Human Rights Week in November 2021.

## Legal Framework

Indigenous peoples enjoy special protection under both international and Philippine law. Acknowledging the history of colonization and nation-building that marginalized many indigenous peoples, international human rights law provides for a specialized protection regime based on indigenous peoples' right to self-determination. Apart from traditional notions of non-discrimination and minority rights protection in mainstream human rights treaties, the collective rights of indigenous peoples are codified in Convention 169 of the

International Labor Organization and more recently in the Universal Declaration on the Rights of Indigenous Peoples.

In Philippine law, the 1987 Constitution recognizes indigenous peoples' right to self-determination including to their ancestral domains and lays the foundation for a specialized rights protection regime. Internationally lauded as one of the most progressive domestic indigenous rights laws, the Indigenous Peoples Rights Act (IPRA) provides for four bundles of indigenous peoples' rights and creates the National Commission on Indigenous Peoples tasked with ensuring indigenous peoples' rights protection. However, IPRA was never applied in the Bangsamoro due to ambiguities regarding its status in the autonomous region and the reluctance of state bodies on the national and regional level. NMIP have therefore been de facto excluded from the rights protection enjoyed by indigenous peoples in the rest of the Philippines and their ancestral domains have not been delineated until now.

This discriminatory situation is meant to be remedied on the regional level as provided for in the Bangsamoro Organic Law (BOL). As a result of years of NMIP advocacy, the BOL contains 13 provisions related to the protection of non-Moro indigenous peoples, provides for the creation of the Ministry of Indigenous Peoples Affairs, and mandates the development of a regional indigenous peoples' rights law.

## Main Findings

The draft indigenous peoples code lays out a comprehensive set of rights operationalizing non-Moro indigenous peoples' right to self-determination and providing mechanisms for its implementation. The draft largely mirrors IPRA with a few significant additions such as the establishment of a tribal university and local peace negotiators.

However, despite its comprehensiveness, the draft law cannot function as an effective protection mechanism for non-Moro indigenous peoples in its current version. Rather than specifying its specific

applicability to “non-Moro indigenous peoples”, the draft law removes the qualifier “non-Moro” and defines its beneficiary population merely as “indigenous peoples”. By doing so, the law blurs the distinction between non-Moro indigenous peoples and the Moro regional majority. In fact, the draft explicitly extends coverage of the law to three Moro ethnolinguistic groups, and authorizes the Ministry of Indigenous People’s Affairs to recognize additional groups as indigenous peoples thereby opening the possibility of further extending the law’s beneficiary population. Given the previously advanced rhetoric of ‘one Bangsamoro identity’, the non-recognition of the distinct identity ‘non-Moro indigenous people’ adds to fears of assimilation and domination by the Moro majority. Additionally, the comprehensive set of rights provided for in the draft law cannot serve as a tool for NMIP rights protection if they are applied to the Moro majority as well. The draft law consequently lacks the primary precondition for the enjoyment of a specialized rights protection regime that acknowledges non-Moro indigenous peoples’ particular vulnerability.

### **Implications for NMIP**

For non-Moro indigenous peoples, the inclusion of Moro groups in the list of beneficiaries of the law has significant implications, particularly in the context of ancestral domain delineation and political participation.

The failure to limit ancestral domain rights to non-Moro indigenous peoples needs to be read in the context of previous instances and attempts of land grabbing by members of the regional Moro majority. In fact, representatives of the Moro majority have previously advanced the idea of a single Bangsamoro ancestral domain thereby denying the plurality of domains and diversity of indigenous peoples. The reluctance of BARMM officials to allow NMIP ancestral domain delineation was further confirmed by Bangsamoro Parliament Resolution No. 38 issuing a cease-and-desist order for the NCIP to stop delineating lands in the BARMM. Lastly, the draft law requires that MILF camps inside the ancestral domains of indigenous peoples need to be transformed into “productive areas”. This conflicts with the right of indigenous peoples to determine their

own development priorities within the ancestral domain. While non-Moro indigenous representatives are granted participation in decision-making processes related to the camp transformation, they are in practice frequently outvoted by the Moro majority. This is in clear contradiction with both indigenous peoples’ rights and minority rights protection, which acknowledge the disadvantaged position of an indigenous minority and aim to protect it from domination of the majority. Taken together, these factors highlight the risks inherent in an indigenous peoples’ code that also applies to the Moro majority and consequently the need for robust protection mechanisms for NMIP land rights.

The participation in decision-making bodies is another area where the negative implications of expanding the law’s coverage to Moro groups become apparent. The draft law provides for two mandatory seats for indigenous persons in the Bangsamoro parliament and for the lead staff of the Ministry of Indigenous Peoples Affairs to be composed of indigenous persons. However, these provisions become void when the definition of indigenous people is extended to Moro persons that already constitute the regional majority population and are therefore expected to dominate the parliament and ministry positions as well. The consequential weakening of NMIP representation mechanisms is particularly concerning considering the backlash faced by NMIP advocates that voiced critical opinions on the peace process in the past. Allegations of being “spoilers” of the peace process have led non-Moro indigenous peoples advocates to modify or silence their criticism and already limits their de facto opportunities of participating in decision-making processes.

The restrictions thus placed on NMIP’s exercise of their right to self-determination once again lead non-Moro indigenous peoples to experience discrimination as compared to the Moro regional majority and to other indigenous peoples in the rest of the Philippines. For the peace process to lead to lasting peace, it needs to not only comply with the indigenous peoples rights protection requirements of international and domestic law, but also address the structural violence and discrimination experienced by both the Moro majority and the NMIP minority.