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Customary Dispute Resolution: The Case of the Indigenous Cultural Communities of NAMAMAYUK in the Philippines

Context

Land disputes may take years or even decades to resolve. In the Philippines, the mechanisms and processes of settling land disputes may be categorized into three: judicial, administrative, and mediation. The selection of dispute resolution mechanism will depend on the type and enormity of the conflict. The cost involved will also have to be factored in including out of court expenses such as attorney's fees and litigation expenses which many smallholder farmers find prohibitive.

In the interest of lightening court dockets in the formal Judicial Courts, complainants are highly encouraged to settle disputes amicably. Courts even require, as a pre-condition for filing a complaint, a certification from the *Pangkat*² Secretary that mediation or conciliation has been conducted but no settlement has been reached (Sec. 412, RA 7160).

Overview of the Mechanisms in Settling Disputes

Judicial Courts

Land disputes may be filed at the Municipal Trial Court (MTC) which handles land cases that involve title to or possession of real property or any interest therein where the assessed value of the property or interest therein does not exceed twenty thousand pesos (P20,000.00)² exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs.³

For cases beyond this amount, they are lodged at the Regional Trial Court (RTC). All judgments at the RTC can be appealed at the Court of Appeals (CA). Similarly, CA decisions may be petitioned to the Supreme Court (SC) where final judgments are rendered.

Administrative Mechanisms

Government agencies handling land matters are bestowed with quasi-judicial powers to settle land disputes as mandated by law. Though their jurisdictions are limited to their specific mandates, they can receive complaints, ascertain, and verify circumstances, establish legislative and legal basis, and decide on the case.

The Department of Agrarian Reform (DAR), for example, has the "primary jurisdiction to determine and adjudicate all agrarian

disputes or matters except those pertaining to the determination of just compensation and resolution of criminal offenses arising from the implementation of agrarian laws."⁴ DAR has also established mechanisms in implementing its quasi-judicial functions. Under the Office of the Secretary is DAR Adjudication Board (DARAB) and this setup cascades down to regional and provincial Offices (DAR Executive Order No. 129-A, 1987).

Similar mechanisms and procedures are being carried out by the Department of Environment and Natural Resources (DENR) and the National Commission on Indigenous Peoples (NCIP) in their own primary jurisdictions as mandated by law.

Alternative Dispute Resolution Mechanisms

Given the numerous and the diverse nature of conflicts, alternative mechanisms have been established by the government. Law has also recognized local systems of settling disputes such as cultural dispute mechanism of indigenous peoples without prejudice to the laws of the land. Some ADR mechanisms are elaborated below.

- **Philippine Mediation Center (PMC).** Pursuant to Supreme Court "en banc" Resolution A.M. No. 01-10-5-SC-PHILJA, dated 16 October 2001, and in line with the objectives of the Action Program for Judicial Reforms (APJR) to decongest court dockets, among others, the Court prescribed guidelines in institutionalizing and implementing the mediation program in the Philippines. The same resolution designated the Philippine Judicial Academy as the component unit of the Supreme Court for Court-Annexed Mediation and other Alternative Dispute Resolution (ADR) Mechanisms and established the Philippine Mediation Center (PMC).

Mediation is a process of settling disputes with the assistance of an acceptable, impartial, and neutral third party called a mediator. The mediator helps parties identify issues and develop proposals to resolve their disputes. Once the parties have arrived at a mutually acceptable arrangement, the agreement becomes the basis for the court's decision on the case.

- **Katarungang Pambarangay.** The *Katarungang Pambarangay* or the Barangay Justice System (BJS) is an alternative dispute resolution mechanism established under the Local Government Code (RA 7160). It is a community-based mechanism for dispute resolution of conflicts between members of the same community.

¹ *Pangkat* refers to the *barangay* (village) committee composed of the *Punong Barangay* (village chieftain), as chairman, with 10 to 20 members from the community.

² Approximately USD417 (as of April 2021)

³ Sec. 33 (3), B.P. 129, as amended

⁴ DAR. FAQs on Rules and Procedures of DARAB and ALI. Diliman, Quezon City, Philippines.

It covers all types of cases, including land disputes, but with some exemptions. It cannot handle, for example, offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000.00, where one party is the government or any subdivision or instrumentality thereof, or where the dispute involves real properties located in different cities or municipalities (RA 7160).

- **Customary Laws and Practices.** The cultural, social and ethnic dimensions of conflict resolutions especially among the indigenous peoples and cultural communities (*lumads*) even in this modern times are still very much widely practiced and observed. Customary practice has the advantage of understanding better the conflicts because the *lumads* speak their own language and they respect the authority of their tribal leaders. Disputes are most likely to be resolved because they put high primacy on preserving harmony and peace in their communities.

The use of customary laws and processes is anchored on Section 65 of the Indigenous Peoples' Rights Act/IPRA (RA 8371) on the primacy of customary laws and practices which states that *when disputes involve indigenous cultural communities/indigenous peoples (ICCs/IPs), customary laws and practices shall be used to resolve the conflict.*

NAMAMAYUK's Customary Dispute Resolution (CDR)

Brief profile of NAMAMAYUK

The *Nagkahiusang Manobong Manununod sa Yutang Kabilin, Inc. (NAMAMAYUK)*, is an Indigenous Peoples Organization (IPO) formed in pursuit of economic growth, conservation of the environment and natural resources, as well as to preserve their culture and empower people living within their ancestral domain.

NAMAMAYUK is duly registered as a legal organization under the Securities and Exchange Commission (SEC) with a Company Registration No. CN 201964184. The organization is composed of about 220 member-households spread over four hamlets namely Bugwak, Balmar (in *Barangay Nabaliwa*), and San Guinto and Megbadiang (in *Barangay Bacusanon*), from the municipality of Pangantucan, province of Bukidnon, Philippines.

Customary Dispute Resolution of NAMAMAYUK

The customary dispute resolution of the IPO is being handled by the tribal elders composed of the *Datu(s)* and the *Bae(s)*. They are the men and women leaders who specialize in conflict and dispute resolution and are trusted by the community members. They are the key persons to call on whenever problems occur within their community.

The entire tribe selects the person who is designated to handle key concerns or issues. One of which is *Datu* Pendulunan Junrey Cemente. He is mainly in-charge of the conflict affairs in the community. The *Bae(s)* usually handle the concerns of women in the community.

Common disputes

NAMAMAYUK's approach to handling disputes or conflicts in their community would mainly depend on the "gravity" of the problem. The simplest form of problem experienced is conflict due to

drunkenness among individuals. There are also conflicts among members of different families due to land boundary issues, and finally, there is the sensitive type of conflicts due to heinous crime committed.

Mechanism

Simple issues can be resolved without the presence of the *Datu* or *Bae*. However, if the issue or problem is heavy for the conflicting parties, this will be brought to the attention of the *Datu* or *Bae*.

Given this, a customary action called "KAKAP" will be performed. This is an essential step to investigate and/or negotiate with the conflicting parties. Given that the situation has various sides of the story, a *kakap* is done by someone who is mostly not involved or related to the conflicting parties. If ever they are of the same family, usually the farthest relative to the fourth degree will do this.

Once the *kakap* is done, the *Datu* will then ensure to understand the situation first, provide advice, and try to resolve the conflicting emotions brought by the issue or problem to individual parties, before the parties are brought together to talk about it. Once the conflicting parties are ready, a customary ritual "LAYAG BAGKUS PAKURAB" is performed which means: *layag* (free), *bagkus* (bind), *pakurab* (offering/debriefing). This ritual ensures that the conflict has been resolved by way of praying and offering to stop the conflict.

After the ritual, the one who initiated the conflict, a "HAWID" is done. This is the enjoinder of the conflicting parties together with the *Datus* and *Baes* which finalizes the end of the conflict.

However, if the problem re-occurs with the same persons, this is a turn against the *Datu* or *Bae* who has given the "BANSULAT." The process then calls all the *Datus* and *Baes* to communicate the agreement to the entire Manobo tribe. If the crime or problem is committed in another area, the "BANSULAT" will be recalled by the tribal leaders where the incident happened.

A *Sumagayan* or a person in-charge of liaison with other communities will communicate issues or problems to other concerned Manobo communities. He serves as the right-arm of *Datu* Pendulunan.

In 2018, a Manobo leader was killed by a Maranao. A "kakap" was done. The Maranao group submitted themselves to the Manobo community. They requested the Manobo community to fetch them from the crossing entrance and stayed at the house of Datu Imbay-ao to discuss what happened. It was a complete submission for the Maranao group. They have left all their weapons as a sincere and complete surrender of their wrongdoings.

The essence of the surrender is to provide support to the grieving family. That despite the presence of the community, the guilty person must also take responsibility in sustaining the family. This is part of the agreement of both groups – the Manobo and the Maranao tribes.

In the context of the Manobo, this process of decision-making and tribal governance must be done within the day. It should not see the sunset because they believe that tomorrow is a new day, a different time and a different plan by *Magbabaya* (God). They should honor the plans of *Magbabaya* and they believe that the feeling(s) of the one slighted and in conflict grows everyday, and if this is not being resolved within the day, the problem will grow.

Processes

The NAMAMAYUK tribe follows to this date the value of urgency in solving any issues, conflicts or problems that arise in the community. They believe that if a person visits their place and would require the presence of a *Datu or Bae*, they should not be shunned away.

The person concerned will express to the *Datu or Bae*, “I will clothe you, I will give you light, I will give you this knife, I will give you this coin, or if it is a money bill it should be with a piece of coin” of which these expressions mean the need to come without hesitations. The *Datu or Bae*, even with their respective personal work, must oblige and prioritize the request.

The *Datu or Bae* sees it that it is their primary role and responsibility to handle the affairs of their community especially if these are cases that would need wisdom, ritual, and customary mitigation to avoid further conflict. However, it is not only applicable to conflict resolution, for instance, in marriage. If a couple is subject to marry, and more specially if either the bride or groom is from the same tribe, the families would seek the presence of the *Datu or Bae*. They will go together with the heads and elders of the marrying family to visit the future in-laws. There will be a ceremony and ritual held to solemnize the future union of two families.

This process will allow the *Datu and Bae* to learn more about the other party's culture and traditions. It provides them in-depth background of the families concerned, and that in future misunderstanding or conflicts, they can reflect and refer to each family's way of life as well as how to approach them in mitigating or resolving conflicts.

Impact on the community

The NAMAMAYUK community continues to practice their cultural traditions especially in dispute resolution. Through the *Datu or Bae*, they could travel to other communities and be exposed to other cultural practices. This in turn provides them better understanding and knowledge of how other communities – *Lumad* or non-*Lumad* handle societal concerns.

They also can seek the advice of the tribe in terms of their customs and traditions. In a way, people from other communities also have a better understanding of how cultural practices and traditions of the *Lumad* community is being done. People are more conscious to observe the ways and practices of the community.

Given this customary practice in dispute resolution, the NAMAMAYUK community has established a clustering system of approaching a problem. For the NAMAMAYUK members in *Sitio* (hamlet) of San Guinto, the households are grouped into clusters composed of 10 to 15 households and are categorized further into zones then to the *sitio* level.



Conflicts in the community are first being addressed at the cluster level, if still unresolved it will move up to the zone level, then further up to the *sitio* level. This system was found by the *Barangay Bacusanon* local government officials as effective way of resolving conflicts. They have also instituted the same system at the *barangay* level.

Moving Forward: Sustaining NAMAMAYUK's customary dispute resolution through generations

The NAMAMAYUK community's cultural practices and traditions are still very vivid and highly observable to this date. They live up to their organization's name which means “The United Manobo Successors of their Ancestral Domain.” Their cultural ways are expressed through the examples of the tribal elders – the *Datu and Bae* of the tribe.

Young people are part of the ways and practices, they openly observe how the elders practice their traditions and share their thoughts as well. They are viewed by the community as vital members as they are the successors for the generations to come.

Another form of sustaining the cultural practices includes delegation of authority among community members. A *Datu or Bae* as head of their respective families allows their household members to take responsibility of family concerns while the *Datu and Bae* fulfill their responsibility in the community.

This unique social relationship among the indigenous cultural communities of NAMAMAYUK made them stronger and better members of the society especially in preserving their tribal governance systems including their cultural dispute resolution mechanism and processes.

The NAMAMAYUK's CDR experience is a rich resource of best practice in resolving conflicts as well as mitigating them. It works together with the country's justice system, that before community conflicts are brought to the courts, these are first addressed at the community level. Recognition of this type of conflict resolution mechanism would greatly encourage the ICCs/IPs in resolving conflicts among themselves or with other IP groups.

NAMAMAYUK has also taken on opportunities, in this time of digital technology, to integrate innovative systems into their traditional system in mitigating and resolving conflicts. In 2018, the Social Tenure Domain Model (STDM) which is a land tool designed to recognize the social relationships among individuals, families, and communities particularly on land-related issues and conflicts like boundary disputes were introduced to the community and embraced by the NAMAMAYUK.

In the process of participatory enumeration, land disputes were unearthed as owners and boundaries of housing and farming lots were identified with the involvement of all community members, increasing the transparency of land information. As such, STDM impacted the community's relationship with one another through the issuance of Certificate of Customary Land Occupancy. This certification may not be a legal title, but it offers community recognition within the boundaries and landscapes of those concerned individuals, families, and communities and even local government officials. This in turn allows them to strengthen their tenure over their respective land within their ancestral domain.

Resolving a four-decade-long disputed area

Rufinito Tumopas, a local farmer of *Sitio* Dagtan, *Barangay* Bacusanon had long been toiling up to reclaim a parcel of land – a forty-year dispute that began in 1980. The case surfaced when a neighboring farmer had started claiming a 3-hectare portion of Rufinito's 10-hectare farmland. In 2012, it continued to spur contention when an agro-industrial company developed its banana plantation operations in the area that allegedly urged his neighbor to extend his claims flouting the land boundary mark. This neighbor had been occupying a portion of the land for so long, long enough to claim ownership of it; nonetheless, in October 2020, the IP youth enumerator Romerey Suclatan facilitated a dialogue among them that significantly resolved the long-standing dispute. Land delineation was made to set clear boundary indicators leading to the two parties to reconcile their differences and agreed into terms to end the dispute.

Land tenure security with migrant settlers

In the late 1940's several settlers from Luzon and the Visayas migrated in Mindanao, particularly in the province of Bukidnon where mostly IP reside. Out of compassion to others and in reverence to their belief to "*Magbabaya*" -- that all resources must be shared, the IP communities have lent portions of their ancestral lands to these migrant settlers. However, it was unforeseen before that this will give rise to competing land claims in the ancestral domain.

As in the case of *Datu* Isabelo Tandjeon, Bacusanon Tribal Chieftain, who went through hard-fought struggles to reclaim a 5-hectare family-owned property since 1998.

The current occupant is claiming that the property has been sold to the -- this was found to be false.

The SALaR project initiated land delineation, mapping, and participatory enumeration, of which both parties had the opportunity to meet and discuss the issues. Through the support of the *Barangay* Local Government Unit, the other tribal elders, and project staff, the conflict was resolved with an agreement to eventually divide the lot where two hectares were awarded back to *Datu* Tandjeon and the rest remained with the other claimant.

Datu Herminio "Tumanod" Guinto, NAMAMAYUK's Board of Adviser said, that the certificate document shows the families' profiles with photos, that even a baby carried by his/her mother or father can one day say to his/her children or grandchildren [showing the document] "*this is our land, and this is our neighbor's land.*" It will be so for the other families as well, and thus will result to recognition of land rights embedded in the community for generations to come. □

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Concerns over food insecurity in developing countries are reflected in the Sustainable Development Goals (SDGs) to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture by 2030. Given that land plays an important role in the livelihoods of most people in developing countries, food security and poverty reduction cannot be achieved unless issues of access to land, security of tenure, and the capacity to use land productively and in a sustainable manner are addressed. Thus, the Global Land Tool Network (GLTN) is implementing "Secure Access to Land and Resources (SALaR)" through the support of Germany's Federal Ministry of Economic Cooperation and Development (BMZ), with the overall goal of improving land and natural resources tenure security of rural smallholder farmers in Uganda, the Philippines, and Laos. In the Philippines, while a number of land laws are being implemented, several gaps need to be addressed to improve the situation of their intended beneficiaries. Hence, *Recognizing land rights and enhancing capacities of Smallholder Farmers in Pangantucan, Bukidnon, Philippines* aims to contribute to the goal of SALaR. This project is implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) in partnership with Xavier Science Foundation, Inc. (XSF), with technical and financial support from Global Land Tool Network (GLTN) and Germany's Ministry of Economic Cooperation and Development (BMZ).



The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional coalition of national and regional CSOs in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development.



The Xavier Science Foundation, Inc. (XSF) is a legal, non-stock, non-profit, non-government organization advocating programs and projects that will alleviate poverty and promote social empowerment. XSF serves as a conduit of funds to support development projects, innovative programs, fora, and dialogues.



With more than 200 members, the Nagkahiusang Manobong Manununod sa Yutang Kabilin, Inc. (NAMAMAYUK) is an indigenous peoples organization established to preserve their culture, conserve the environment and natural resources, and empower its people living within their ancestral domain.



The United Nations Human Settlements Programme (UN-Habitat) helps the urban poor by

transforming cities into safer, healthier, greener places with better opportunities where everyone can live in dignity. UN-Habitat works with organizations at every level, including all spheres of government, civil society and the private sector to help build, manage, plan and finance sustainable urban development. Our vision is cities without slums that are liveable places for all, which do not pollute the environment or deplete natural resources.



The Global Land Tool Network (GLTN) is an alliance of global, regional, and national partners contributing to poverty alleviation and

the Sustainable Development Goals through increased access to land and tenure security for all. The Network's partnership of organizations is drawn from the rural and urban civil society, international research and training institutions, bilateral and multilateral organizations, and international professional bodies. GLTN takes a more holistic approach on land issues and improves on global land coordination through development, dissemination and implementation of pro-poor and gender responsive land tools. These tools and approaches contribute to land reform, good land governance, inclusive land administration, sustainable land management, and functional land sector coordination.



The German Federal Ministry for Economic Cooperation and Development (BMZ) is the primary State development body in Germany. BMZ's governing principle is the protection of human rights, which includes the right to live in peace and freedom, and to help address the poverty issues in the world.

For more information about this project:

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