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Innovative policy advocacy for indigenous peoples in the Philippines

1. GENERAL INFORMATION

1.1 Title of practice or experience

Innovative policy advocacy for indigenous peoples in the Philippines

1.2 Category of practice/experience and brief description

Documented here is a Philippine non-governmental group's experience and innovation in policy advocacy for the country's indigenous peoples.

As a legal policy advocacy institution, the group works closely and links up with institutions directly involved in or related to the formulation of national and regional/local policies and programs. The group mainly intervenes in the formulation of norms, standards and procedures.

1.3 Name of person or institution responsible for the practice or experience

Legal Rights and Resources Center (LRC)

1.4 Name and position of key or relevant persons or officials involved

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1.6 Name of person and/or institution conducting the research

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2. THE PROBLEM OR SITUATION BEING ADDRESSED BY THE PRACTICED INNOVATIVE EXPERIENCE

The Legal Rights and Resources Center or LRC was organized at a time when various advocacy groups had to redefine and redirect their focus and energy. The five lawyer-founders of LRC were trained under the civil-political rights movement, which championed human rights during the martial law reign of the late Ferdinand Marcos (1972-1986).

After the Marcoses were ousted in a civilian-backed military uprising in February 1986, several advocacy groups, many of which came from the human rights or civil-political rights movement during the Marcos years, sought other avenues for their advocacy. For its part, LRC chose to advocate and champion the socio-economic and ancestral land rights of indigenous peoples.

To LRC, the country's 17 million indigenous peoples (24% of the country's total 70-million population), who have long helped protect and conserve the country's forest ecosystem and biodiversity, have to be attended to. Despite their role in preserving and sustaining their environment, indigenous peoples have been marginalized, due to policies and laws which opened indigenous peoples' lands to loggers and big commercial miners.

As a result of these laws and policies, only over six million hectares (ha.) of forest cover are left in the Philippines. Only 700,000 ha. are believed to be primary or largely untouched forest. Another 3.4 million ha. of secondary forest remain. These are forests which have been logged, generally once, but still have commercial potential.

With the present rate of **loss** of the remaining primary forest, it is estimated that the biologically most diverse and economically most important

can be lost within the next decade.

A more recent independent assessment concludes that the natural resource base of the Philippines has become so depleted and degraded that the country faces the grim prospect of a decline in its agri-based economy and the weakening of its democratic institutions. Its once magnificent dipterocarp forests have been ravaged, its rivers polluted with silt and sediment of eroded soils, its coral reefs ruined by blast fishing, and its mangrove forests decimated. Unless these pressing problems and the long-term threats to the resource base are addressed, the country will slide further into the pits of poverty and despair.

To help make a difference, LRC has thus set its eyes on the lack of protection of the terrestrial ecosystem, especially the remaining dipterocarp forest – the backbone of most terrestrial ecosystems in the country. The knowledge, potential and creativity of those individuals and communities directly dependent upon and living in these ecosystems were not harnessed. They are the indigenous peoples whom LRC opted to work for.

When it finally began operations in February 1988, LRC aimed to focus on two main angles:

- (a) to help respond to actual crisis situations in indigenous communities; and
- (b) to try to change the “rules of the game” via policy advocacy.

Having a battery of highly competent, committed and “people-oriented” lawyers, LRC had helped litigate indigenous peoples’ rights cases. But, as LRC’s experience has shown, indigenous peoples will be confronted with the same type of cases over and over again unless the rules are changed.

LRC would realize later that policy advocacy does not only mean rules in black and white in the form of laws. Policy advocacy, rather, is a mix of other factors as well – political, institutional and financial (e.g., budget allocations).

Although it is a legal group, which has the capacity to even propose legal technical language for proposed laws and policies, LRC has engaged in other forms of lobby work. This is because LRC may have the special skill in advocating and proposing rules and policies, but these become ineffective when they are not taken up.

3. DESCRIPTION OF THE PRACTICE/INNOVATIVE EXPERIENCE AND ITS MAIN FEATURES

LRC’s main advocacy work is anchored to this rationale: The recognition and protection of the rights of indigenous peoples and long-term occupants of the forests and of the rest of the uplands should be the primary component of any program on sustainable development.

LRC recognizes that empowerment is essential. But it believes that it is not the only requirement for meaningful reform. It thus asserts that the peoples' aspirations must eventually be adopted, articulated and implemented by the State.

Hence, LRC seeks to bridge the gap between the informal articulation of the aspirations of peoples' organizations on the one hand, and the formal, technical, bureaucratic and legal language used by the State on the other. This is sought to be achieved through policy development and advocacy.

As a research organization, LRC scrutinizes changes in the formulation of norms, rules, standards and procedures. It also monitors changes in the "policy climate", which includes the political climate, and not necessarily ideological spectrums. LRC, for example, would attempt to uncover the identity of the operator of a mining or logging firm in an indigenous community. The operator's influential link, other key players, and their perspectives are among the information that LRC's research arm monitors. Knowing the key players helps LRC devise its policy development and advocacy gameplan, such as how to intervene in the National Congress.

Data for LRC's researches mainly come from clients (indigenous peoples) provided with legal services. Other data come from secondary sources such as academic and alternative research institutions. In special cases, LRC may have to do its own primary data gathering.

In its policy development and advocacy, LRC has five teams closely working together for a common thrust. Aside from its research arm, the Research and Policy Development (RPD) division, LRC has other teams such as the Direct Legal Service (DLS) division, the Campaigns Division (CD), and the Public Information and External Linkages (PX) division. It also has regional branch offices, which bring the various services and programs of LRC within their defined territorial areas of concern.

Each team may have its own focus of work. But the work of one team is not distinct from that of another. The teams mutually support and reinforce each other's work for a common focus. How all these teams work could be seen in LRC's experience with the processing of the Implementing Rules and Regulations (IRR) of a new law called the Indigenous Peoples' Rights Act or IPRA, which LRC also helped influence in its early stages.

The RPD division did the interpretation of IPRA. From the interpretation, LRC came out with "Series of Legal Opinion and Memo on IPRA", a critique of the law. The Series was further enriched and made authoritative by the experience of LRC's **DLS** division, which dealt with province-based advocacies of ancestral land claimants.

And before the CD went all out for its campaign on how to build on the IRR on IPRA, LRC's networks in the provinces and in Congress were prop-

erly informed about the Series. With all things well-considered before the campaign, LRC already had an idea on whom to ally and relate with.

This illustrates how LRC's various teams synchronize their efforts to produce the desired result.

Injecting new rhetoric

The rhetoric of "ancestral domain" and how it was finally institutionalized in a piece of legislation such as IPRA have a long history. When LRC began operations in 1988, the general advocacy was for State recognition of "ancestral domain".

One side of the advocacy was political recognition of indigenous political processes. This means allowing the village to legislate, and whatever the village legislates via customary processes becomes law for the indigenous village folk. This type of advocacy came out in the *Philippine Natural Resources Law Journal*, a strategic LRC publication respected by policy-makers. The *Journal* is regarded as authoritative because its contents are regarded as the statements of experts (i.e., lawyers).

But, according to LRC, whatever LRC's lawyers articulate in the *Journal* comes from the indigenous communities themselves. What LRC simply does is footnote the legal bases of its assertions. Other academic works also reinforce LRC lawyers' expert opinions and statements.

The *Journal* is vital in LRC's lobby work in Congress. Consultants of Congress representatives, who take up the cause of indigenous peoples, always get to do their homework. They study all significant material about indigenous peoples' causes and advocacies. When one traces the material that they study, one finds that most of it is from non-governmental advocacy groups such as LRC. **So** LRC's *Journal* is a long-term form of policy advocacy via education.

Another strand of the advocacy for indigenous peoples' rights to their "ancestral domain" is to get the national centers of power in Manila to recognize indigenous peoples' rights to their land through some form of title. Through LRC and other private legal institutions advocating for indigenous peoples, and with the blessing of a federation of indigenous peoples' organizations in the country, a bill was drafted. This was the Commission on Ancestral Domain Bill, one of LRC's first projects. The bill was given to the National Congress, and was picked up and filed by a senator. That the bill found its way into the hands of the senator did not happen by accident. LRC had key links within the circle of the senator's consultants. One of these links or contacts was a civil and political rights lawyer. **So** this is one vital consideration in the art of policy advocacy – having the right contacts.

Aside from the Commission on Ancestral Domain Bill, LRC helped draft and influence bills and policies on mining and forestry.

These earlier bills, however, reached only first readings in the National Congress and were soon shelved or “archived”. But to LRC, its efforts were not for naught. Although shelved, these bills generated debate and stirred public opinion from influential bodies such as the Integrated Bar of the Philippines. These bills’ strengths and flaws became the discourse of commentators, columnists and other influential opinion-makers. Later, they became the take-off points for other similar legislation in succeeding Congresses. Succeeding legislators picked up these “archived” bills and in no time, the rhetoric of “ancestral domain” finally became institutionalized in IPRA.

Global trends and LRC’s advocacy

LRC’s advocacy came at an opportune time when “environment and development” became a global question which was echoed in recent historic global conferences such as the United Nations Conference on Environment and Development (UNCED), also called the Rio Earth Summit.

UNCED translated into many things. One was how to integrate the “sustainable development” concept. One easy way was by developing communities’ empowerment. For LRC, it was clear that the communities which needed to be empowered were indigenous peoples’ communities because these were and continue to be environmentally vulnerable and critical. UNCED’s call reinforced what LRC had been advocating all along: recognition of indigenous peoples’ rights and environmental protection must go together.

Even global financial institutions rode on the trend set by UNCED. The World Bank, Asian Development Bank and other lending institutions suddenly incorporated the recognition of indigenous peoples’ rights in their agenda. This development gave some representatives of the Philippine Congress an idea.

Suddenly, these Congress representatives looked for bills touching on such issues which they could pass. They sought out past drafts which non-government organizations such as LRC had done, copied them, amended some parts, and finally came out with what was the Commission on Ancestral Domain Bill.

This time around, the Bill almost passed the Senate. But it did not make it at the Lower House. **Also**, the influence of interests such as mining and logging interests is a key consideration in the advocacy of indigenous peoples’ rights to their ancestral domain because the issue usually manifests itself as a conflict between an encroacher and ancestral land claimants.

But despite the shelving of the Commission on Ancestral Domain Bill, a

Lower House representative came up with another variation. The version was almost a Magna Carta for indigenous peoples.

The executive branch of government also picked up the indigenous peoples' cause. The State of the Nation Addresses delivered by former Presidents Corazon Aquino (1986-1992) and Fidel Ramos (1992-June 1998) incorporated one urgent priority – the passage by Congress of the Ancestral Domain **Bill**. The executive branch under President Ramos also pushed for what it called a “Social Reform Agenda”, which contained, among others, the recognition of indigenous peoples' rights. To LRC, all this helped push for the bills on indigenous peoples' rights in Congress.

There was another related development, which helped give LRC an opportunity to push for its advocacy. While the rhetoric on indigenous peoples' rights caught fire in the government, conflicts were raging in many indigenous peoples' communities. There was an attempt, for example, to institute a geothermal project on the land of indigenous peoples' communities in Mount Apo in Mindanao island in southern Philippines. Through its DLS division, LRC offered free legal services *to* the communities.

While it had its RPD division staff and contacts strategically placed in Congress, LRC had its lawyers on the ground, helping the community. LRC's RPD division staff would also go to the ground to assess how things were going at the grassroots levels, and at the same time briefing locals on any developments in Congress. Employing their legal and technical expertise, **LRC's** lawyers would also help in drafting bills, the substance of which would come from their direct experience with the community. This, again, shows how LRC's various teams work synergistically.

4. DESCRIPTION OF THE INSTITUTION RESPONSIBLE AND ITS ORGANIZATIONAL ASPECTS

LRC is a policy and legal research and advocacy institution. It is organized as a non-stock, non-profit, non-partisan, cultural, scientific and research foundation duly registered with the Securities and Exchange Commission. **LRC** is also the official Philippine affiliate of Friends of the Earth International.

It has a board of directors as its policy-making body. It also has an executive committee. **An** executive director, a lawyer, oversees LRC's five major programs – Research and Policy Development (RPD), Direct Legal Service (**DLS**), Campaigns Division (CD), Public Information and External Linkages (PX), and Geographical Extensions. Each major program is headed by a director or coordinator.

The RPD division develops and suggests culturally appropriate, ecologically sound and sustainable legal policy options derived from the experiences of the affected sectors and from relevant scientific researches. In developing and implementing these policy options, LRC requires the community or organization to be involved in the process.

The DLS division gives relevant and quality legal assistance to organized sectors and communities of the rural poor. It helps partner non-governmental and peoples' organizations, coalitions, federations and alliances in analyzing, reviewing, recommending or amending laws relating to the rural poor. It gives information as well as legal opinions whenever requested within specific areas within the mandate of LRC. Under special arrangements not inconsistent with its mandate, LRC also advises specific agencies of the government.

The CD manages and participates in task forces designed to implement national and international action plans on specific issues identified by LRC. It also strives to harness the capabilities and potential of communities, organizations as well as professionals, scientists and the academe.

The PX division produces the various publications of LRC. It also links up with institutions directly involved in or related to the formulation of alternative international and national programs and policies.

The Geographical Extensions division, which refers to regional branch offices, brings the various services and programs of LRC within their defined territorial areas of concern.

5. PROBLEMS OR OBSTACLES ENCOUNTERED AND HOW THEY WERE OVERCOME

One lesson LRC has learned in the **art** of lobbying and policy advocacy is to carefully calculate one's moves. One must know when and how **to** move forward and/or when and how to step backward. And the biggest consideration here is timing.

Another lesson: in the **art** of war, a warrior must know the battle terrain. The same holds true for the policy development advocate. LRC, for example, has learned that the Lower House and the Senate's work is done by committees. The committees are composed of Congress representatives, who conduct discussions and interviews. But LRC found that the actual nitty-gritty work (e.g., where **to** place commas and periods, and what to revise in some provisions) is done by the Technical Working Group. The Technical Working Group is "the most important intervention point" because the group's members do the actual writing of bills.

LRC has since been working closely with the Technical Working Group but has not become a formal member. In order to maintain its independence, LRC has opted to work from outside, adopting an uncompromising, take-it-or-leave-it working style with regard to its proposed provisions.

Although working from outside, LRC is also, in a sense, an insider. The members of the Technical Working Group are the professional staff of Congress. But they do not have many links with indigenous peoples or anthropologists who have worked with indigenous peoples. So when LRC gave well-researched proposals, the Technical Working Group was impressed. The Group recognized LRC's authority because LRC also spoke from experience. Despite its observer status, LRC's acknowledged authority has helped give direction to the Technical Working Group's work.

Third lesson: frustrations in policy advocacy can become opportunities. First proposals may be marginalized, archived or killed. But in the end, earlier proposals would be copied and recopied by succeeding legislators. A seemingly new advocacy cause such as indigenous peoples' rights will be taken up by succeeding legislators. But what was once considered "new" and "progressive" would be seen eventually as a mainstream proposal.

From the Seventh up to the Ninth Congress, for example, there were proposed bills on the creation of a Commission on Ancestral Domain. The bills did not succeed. But in the Tenth Congress – courtesy of the persistent lobbying of advocacy groups led by LRC – the previous bills were finally reincarnated in the form of the Indigenous Peoples' Rights Act or IPRA.

It was also timely that during the Tenth Congress, advocacy of a law for indigenous peoples was a very popular cause among non-governmental organizations. Some NGOs, LRC excluded, initiated nationwide consultations on the IPRA Bill.

There had been criticisms about the consultation process, such as that it was not perfect and was insufficient. Also, not everybody was happy about the substance of the IPRA Bill itself. But one flaw lay in the technical language of the Bill. In a proposed law, a period, a comma and the choice of terminology or phraseology would make a lot of difference. LRC recognizes this limitation. This is why, at the level of policy advocacy, LRC recommends the need for trained craftspersons.

From LRC's experience, craftspersons need not be lawyers. LRC had even assigned law students who had the potential to be trained in the basic principles of **statute construction**.

Despite the criticisms, IPRA came out. The Senate came out first with its final version, the Lower House's own final version coming out much later. From LRC's point of view the Act had some deficiencies.

So that was one lesson for LRC. LRC, therefore, had to be ever-watchful every step of the way: to criticize or commend, as the case may be. LRC's calls, along with the calls of other non-governmental and peoples' organizations, reverberated, catching fire also in the media.

LRC also furnished key Congress representatives with its statement on IPRA. In the halls of Congress, these Congress representatives read out the entire LRC statement as their statement. The Congressmen's questions during the interpellation came from the LRC statement. As a result, in the Lower House's version of the Bill, some portions were amended.

This was not the end of the process, though. The next stage was the Bicameral Committee, the proceedings of which were not open to the public.

With its strategically placed contacts, however, LRC, together with other advocacy groups, were able to talk to some individual legislators. This, according to LRC, was important because in the Bicameral Committee, an individual legislator could point out where to put a period or a comma, what sections to alter or delete, or what necessary phrases or sentences to provide.

The Bicameral Committee is the last venue for lobby work. Very rarely do legislators alter what the Bicameral Committee welds. Whatever output from the Bicameral Committee is as good as final when it goes to the plenary halls of the Lower House and Senate.

For the policy advocate at the national level, the Bicameral Committee is one important terrain where final lobbying and advocacy can be done.

But LRC wanted to point out that the coming out of a policy as vital as IPRA was not because LRC and other NGOs advocated it. To LRC, IPRA came out because of the collective histories and efforts in various aspects of policy advocacy.

LRC, however, was simply too humble to acknowledge its contributions. One aspect of LRC's operations that would-be advocates would do well to emulate is its high degree of authority and professionalism. How LRC synchronizes its various program divisions to produce an effective desired output and how it establishes its contacts in government, while taking root on the ground – in the communities – are vital lessons which can be replicated elsewhere.

6. EFFECTS OF THE PRACTICE/INNOVATIVE EXPERIENCE

Ten years after it began operations, LRC saw the fruit of one of its labors – the passage of IPRA, which seeks to institutionalize the rights of indigenous peoples to their ancestral lands. This, despite the Act's imperfections and some

criticisms from other groups which did not agree with LRC.

LRC's *Philippine Natural Resources Law Journal* (Philnajur), a legal journal written by lawyers, has also become an authoritative source of information and data for some legislators who are inclined to craft laws and policies for the country's indigenous peoples. LRC, in other words, has found its niche in policy development and advocacy by focusing on indigenous peoples.

7. SUITABILITY AND POSSIBILITY FOR UPSCALING

Should LRC expand its scope of policy development and advocacy work, its focus and targets are clear: indigenous peoples. To LRC, the indigenous peoples hold the key to the secrets of revitalizing the country's threatened ecosystems and resources.

Because advocacy for indigenous peoples is a global concern, LRC can also link up with other international NGOs with the same focus. In fact, LRC is the official Philippine branch of Friends of the Earth, an international environmental group concerned with both environmental protection and promoting the rights of indigenous peoples.

8. SIGNIFICANCE FOR (AND IMPACT ON) POLICY-MAKING

The significance and impact of LRC on policy-making are very clear. Because it knows its various "playing fields", LRC can utilize and maximize all its expertise and talents in devising appropriate gameplans.

This was shown in how LRC helped in the formulation and passing of **IPRA**. Without the likes of LRC, indigenous peoples' rights would have remained at the level of rhetoric. It was through LRC that the rhetoric of indigenous peoples' rights was concretized through **IPRA**.

9. POSSIBILITY AND SCOPE OF TRANSFERRING TO OTHER COMMUNITIES OR COUNTRIES

Any country or community can adopt some of LRC's policy development **and advocacy** work strategies. Those who are going to adopt LRC's strategies just have to carefully calculate their gameplans and understand the playing field.

10. OTHER COMMENTS

Policy and development advocacy may be a long, tedious and sometimes frustrating process. But the policy advocate must not easily despair and give up. As LRC's experience has shown, an introduced policy may have failed at first try, but others may pick up from it and pursue it later. A failed first attempt at policy advocacy, therefore, is not a total failure. It may just be the first building block of a successful policy change later.

References

1. Interviews with Marvic Leonen, Executive Director, and France Begonia, Research and Policy Development Division Coordinator, Legal Rights and Resources Center, Diliman, Quezon City, Metro Manila, 19 May 1998.
2. Legal Rights and Resources Center, Brochure.