

# Office for Alternative Dispute Resolution

# ADR Insights

The Official Newsletter of the Office for Alternative Dispute Resolution  
Volume No. 01

Issue No. 002



## OADR Conducts 1<sup>st</sup> ADR Consultative Summit for IPs in CAR



City Prosecutors Mark Zinchri S. Esteban, Philip Randolph Kiat-Ong and Elmer M. Sagsago with former DOJ Assistant Secretary Cheryl L. Daytec-Yañgot and NCIP Director Esther Naliw-Licnachan

The OADR conducted the 1<sup>st</sup> ADR Consultative Summit for Indigenous Peoples (IP) Groups of the Cordillera Administrative Region from September 17-21, 2018 in Banaue, Ifugao. The Summit was conducted primarily for the integration and mainstreaming of customary justice systems

of the country's various IPs in the rules and procedures of the Department of Justice-National Prosecution Service (DOJ-NPS), as part of the ADR processes prior to the conduct of the preliminary investigation in criminal cases.

The event was spearheaded by the OADR Training Division, namely, State Counsel Ulyses A. Aguila, Prosecutor Rodan G. Parrocha and Prosecutor Charlie L. Guhit, together with the members of the IP Rules Technical Working Group.

Assistant Secretary Daytec-Yañgot's keynote presentation on Legal Pluralism set the tone for the Summit. She emphasized, among others, that the recognition of the use of IP customary justice systems in conflict resolution among IPs is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous Peoples Rights Act of 1997.

Director Esther Naliw-Licnachan of the National Commission on Indigenous

Peoples (NCIP) also gave a brief presentation on the several customs and traditions used by the IP communities and how it form part of their culture and their justice system. In the Open Forum, a panel composed of Baguio City Prosecutor Elmer Sagsago, Assistant Secretary Daytec-Yañgot, and Director Naliw-Licnachan, answered several queries from representatives of the IP groups about the draft IP Rules and how it can help de-clog the prosecution dockets.

The conduct of the 1<sup>st</sup> ADR Consultative Summit for IP Groups was a success as evidenced by the enthusiasm of the participating IP groups that appreciated the government's recognition of their traditional customs and ways of settling disputes.

The Summit was convened by the OADR, in collaboration with the DOJ-NPS, NCIP and Indigenous Peoples Groups and Cultural Communities of the Cordillera Administrative Region and other nearby provinces.

## That Thing Called Legal Pluralism

By: Assistant Secretary Cheryl L. Daytec-Yañgot

In *Zamoranos v People* (2011), the Supreme Court recognized that the Philippines is a multicultural and pluralist society. Among the Filipino people, there are peoples who exist as substates with their own political systems and are ethnolinguistically as well as historically distinct from the dominant population. Notable are the Moro people and the indigenous peoples. It is estimated that the latter make up 18% of the Philippine population.

For centuries, these substates resisted Spanish colonization. The American regime and subsequent Filipino-led governments attempted to annihilate their separate identities and repress cultural diversity through assimilation projects. The State imposed laws that marginalized their customary laws and worldview and threatened their cultural and even physical survival. These discriminatory

assimilation projects failed and only fuelled self-determination assertions that rocked the country's political stability. Holding fast to their peoplehood, they maintained and, to this day, still adhere to their customary laws that predate the national legal system.

To resolve intertribal and, in many cases, individual disputes, IPs still employ their traditional conflict resolution and peacebuilding mechanisms. In fact, customary laws retain more substantial influence over the IPs' daily lives and the communal preservation of nature's bounties. To them, restorative justice, the justice that heals and empowers parties to move on, is the goal rather than punitive or retributive justice which drives positive criminal law. Alternative dispute resolution programs of the government's justice sector draw heavily from indigenous practices which were mainstream before colonization.

Thus, legal pluralism is a feature of the Philippine legal system. In brief, it means that national law is not the only law in the country's legal system. Obviously, it

challenges legal centralism which argues that the state has monopoly in the crafting and imposition of laws through centralized state institutions, and applicable equally to everyone, exclusive of all non-state legal systems which should be rejected.

In contrast, legal pluralism insists that state laws co-exist with indigenous customary laws which should not be regarded as inferior. As Exhibit A to prove that customary laws are effective

*continue to page 6*



Atty. Cheryl L. Daytec-Yañgot was an Assistant Secretary at the Department of Justice. She is also a member of the Technical Working Group created to formulate the rules and procedures

integrating the customary justice system and alternative dispute resolution process of indigenous peoples and cultural communities in the conduct of preliminary investigation in criminal cases.

## OADR attends the UNCITRAL Trade Law Forum 2018 in Incheon, South Korea

OADR attends the UNCITRAL Trade Law Forum 2018 in Incheon, South Korea.

The United Nations Commission on International Trade Law (UNCITRAL), in partnership with the UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL-RCAP), the Korea Ministry of Justice, Korea Legislation Research Institute (KLRI), KCAB International and the Incheon Metropolitan City, organized the UNCITRAL Trade Law Forum held last September 10-12, 2018 in Songdo Convensia, Incheon, South Korea. As stated in UNCITRAL-RCAP's official website, the Trade Law Forum aims to be the key platform for discussions on a wide range of trade law topics.

The Forum was attended primarily by officials from states within the Asia-Pacific (AP) Region, as well as representatives from countries outside the AP Region, civil society organizations, non-government organizations and other representatives from the private sector.

Part of the recently concluded Trade Law Forum was the First UNCITRAL Working Group III Intersessional Regional Meeting on Investor-State Dispute Settlement (ISDS) Reform as well as various workshops on the recent trends in the international trade.

The objective of the First Intersessional Regional Meeting on ISDS was to hear the different views from states and other stakeholders within the AP Region on the possibility of ISDS reforms. The UNCITRAL Secretariat organized a roundtable discussion wherein participants were able to speak up, ask questions and share their views.

The UNCITRAL Intersessional Regional Meeting on ISDS became an avenue where discussions were made on the perspectives in the AP Region on possible ISDS reforms. These possible reforms seek to address issues concerning cost and duration of investor-State disputes, consistency, coherence, predictability and correctness of decisions by arbitral tribunals, concerns regarding the independence and impartiality of arbitrators and decision makers in ISDS,



from left to right: Atty. Melissa Anne M. Telan of DFA, State Counsel Jenny Rose G. Avellano-Catalo and Atty. Ma. Christian V. Abalos-Naig of OADR and Atty. Anthony S. Aguirre of DFA

appointment of arbitrators, among others. The second part of the Trade Law Forum focused on the recent developments in norm making in the field of international trade law. The topics included micro, small and medium-sized enterprises (MSMEs), electronic commerce, online dispute resolution, insolvency and secured transactions. UNCITRAL's work on MSMEs focuses on the importance of strengthening the economic role and position of MSMEs, creating a simplified legal business form tailored to facilitate the operation of MSMEs and facilitating cross-border trade for MSMEs.

The OADR was represented in this Forum by Director Maria Cristina V. Abalos and OIC Deputy Director Jenny Rose G. Avellano-Catalo.

## 7th Asia-Pacific ADR Conference: Innovating the Future of Dispute Resolution

Directors of the OADR participated in the 7th Asia-Pacific ADR Conference held in Sono Felice, Seoul, South Korea from November 5-6, 2018. This year's Conference, with the theme "Innovating the Future of Dispute Resolution", was co-hosted by the United Nations Commission on International Trade Law (UNCITRAL), the Ministry of Justice of the Republic of Korea (MoJ), the Korean Commercial Arbitration Board (KCAB), the International Chamber of Commerce (ICC) International Court of Arbitration, and the Seoul International Dispute Resolution Center (Seoul IDRC).

Among the topics discussed during the Conference were the challenges faced by arbitral institutions and its users, updates and developments in ADR and the future of ADR.

Issues on transparency were also raised. It was agreed that there must be a balance between convergence and divergence. Publishing of the full text of the challenged decision must be explored in accordance with what the rules allow. However, the HKIAC believes that in commercial cases, there must be balance between transparency and confidentiality.

The speakers shared the most notable developments in ADR over the years which include emergency arbitration and the introduction of expedited procedures. Possible reforms in Investor-State Dispute Settlement and impartiality on the part of the arbitrators and decision makers, appointment mechanisms, and the cost and duration were seen as promising developments for ADR. With regard to the future of ADR institutions, most of the panelists agreed on the idea of convergence while maintaining the identity of each institution.

The Korean panelists presented the Seoul Protocol on Video Conferencing. The Protocol explores the possibility of performing video conferencing for international arbitrations which primarily ensures parties' convenience as it may be held although the parties are not in the same venue. While this is a big development for ADR, questions were raised as to the suitability of the system and whether the users and institutions are ready for it.

The last part of the Conference was dedicated to mediation and its recent developments in the Asia-Pacific Region, noting that mediation is increasingly used in international and domestic practice as an alternative to litigation. The United Nations Convention on International Settlement



The PIPD Directors with the other participants in the conference from U.S.A., Papua New Guinea and Mongolia.

Agreements Resulting from Mediation or the "Singapore Convention on Mediation", which will be signed in Singapore on 07 August 2019 was introduced during the Conference.

Dispute avoidance and management were also discussed followed by a presentation on mediation for intellectual property disputes by the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center. The use of procedures other than court litigation in the resolution of commercial disputes is a recognized growing trend in intellectual property cases.

The OADR was represented in this Conference by State Counsels Albert Ignatius C. Abragan II, Mary Grace V. Pulido Sadian and Karla Izavella A. Nitura. Through the Conference, the OADR was able to gain additional knowledge on the prevailing trends in ADR as an alternative to litigation, which will be useful in the furtherance of the OADR's mandate.

## OADR Training Division Trains Government Personnel in ADR Skills

Pursuant to its mandate of institutionalizing the use of alternative dispute resolution (ADR) in the Philippines, the OADR, through its Training Division, has conducted over 30 ADR Skills Trainings nationwide. according to the Training Division, over 1,500 participants, consisting of government officials and personnel, participated in week-long training workshops to capacitate them in the practice of mediation and other related mechanisms of dispute resolution.

Part of the program is the conduct of the “Basic Skills Training on ADR” for the members of the Lupong Tagapamayapa under the Barangay Justice System. This

is in recognition of the significant role and contribution of the members of the Lupong Tagapamayapa in the speedy resolution of disputes through amicable settlement, which will ultimately lead to the declogging, not only of the court dockets but of the prosecution dockets as well.

From the time it started its operation in 2010, OADR was able to train over 1,200 members of the Lupong Tagapamayapa in the various barangays of 23 provinces, cities and municipalities around the country which include General Santos, Dipolog City, Dumaguete City, Aklan, La Union, Quezon City, Valenzuela City, Caloocan City, Taguig

City, Bulacan, Cebu, Davao, Cagayan de Oro, Samar, Tacloban, Camarines Sur, Palawan, Bacolod, Iloilo, Bohol, Bataan, Pampanga and Batangas.

Other provinces are scheduled to be visited by the OADR Training Division in 2019 for the continuation of this capacity-building activity for the members of the Lupong Tagapamayapa. This continuing program is done by the OADR, in coordination with the Department of the Interior and Local Government (DILG), thru the National Barangay Operations Office (NBOO) and the respective local government units (LGUs).



## Executive Order No. 97, s. 2012 Requires NGAs to Have ADR Mechanisms in Place

In 2012, Executive Order No. 97 was issued transferring to the OADR all powers, functions and duties previously vested upon the Office of the President (OP) over the development, management, and oversight of ADR programs and services in all National Government Agencies (NGAs) under the Executive Department.

Under this issuance, NGAs are mandated to have their own ADR programs in place and to continue to promote the use of ADR as part of their practice in resolving disputes filed before them. NGAs must also

regularly submit to the OADR a periodic report, information, feedback and the recommendations on their respective ADR programs, plans and policies.

In October 2018, the OADR, through its Compliance and Monitoring Division, requested two hundred forty (240) NGAs to submit their periodic report for the years 2017 to 2018. As of 31 December 2018, the OADR has received sixty-nine (69) periodic reports. Based on the reports received, thirty-one (31) NGAs have ADR systems in place, twenty (20) have grievance machineries institutionalized pursuant to the Civil Service Commission (CSC) rules, while eighteen (18) do not have any ADR or grievance machineries in place. The NGAs have expressed their willingness to learn more about ADR and have requested assistance from the OADR in setting up their own ADR mechanisms.

common forms of ADR mechanism the agencies have in place are mediation and conciliation.

Those who answered that they have grievance machineries in place are under the impression that a grievance machinery under the CSC rules is the same as the ADR mechanisms under Republic Act 9285. The grievance machinery under the CSC rules is a mechanism provided for the settlement of work-related grievances (not disputes) giving rise to employee dissatisfaction.

Pursuant to its mandate to promote, develop and expand the use of ADR in both the private and public sectors, the OADR, through its Public Information and Promotion Division, will conduct a conference on E.O. 97 in 2019. With the continued cooperation and support of the NGAs, we can make ADR the primary means of conflict resolution in the government sector.

Based on the reports submitted, the most



## Third-Party Funding in Philippine Arbitration

By: Atty. Donemark Calimon and  
Atty. Fidel Maximo Diego, III

Touted as the wave of the future, arbitration is highly encouraged due to its potential to unclog judicial dockets and to hasten the resolution of disputes. However, as arbitration continues to grow in prominence and complexity, so do the attendant costs. Although the cost to arbitrate in the Philippines may be less as compared to a protracted litigation, the amount involved is still substantial.<sup>1</sup> This poses as a barrier for potential claimants, who have legitimate and meritorious claims but lack sufficient financial resources, to seek redress. Innovative methods to hurdle the issue of cost in arbitration must be made available.

In some common law jurisdictions,<sup>2</sup> dispute funding, specifically third-party funding, is rapidly taking center stage in arbitration.<sup>3</sup> Third-party funding, in its simplest form, involves an entity, with no prior interest in a legal dispute, providing financing to one of the parties (usually the claimant).<sup>4</sup> The type of financing depends on the agreement, but customarily, the third-party funder advances all costs attendant to the arbitration such as the administrative and arbitrator fees. Generally, third-party funding is *sans* recourse, meaning that the third-party funder has no recourse against

the funded party if the case is unsuccessful.<sup>5</sup> If the case is successful, the third-party funder recoups his capital by having an interest in the amount awarded to the claimant.

In the Philippines, an agreement for third-party funding might be considered as a champertous contract<sup>6</sup> and is thus against public policy and void. However, it may be argued that third-party funding is viable in the Philippine arbitration setting. First, arbitration is a mode of alternative dispute resolution outside of the regular court system<sup>7</sup> and is technically not considered litigation.<sup>8</sup> Thus, third-party funding would not be champertous as the prohibition, in its truest sense, applies only to litigation.<sup>9</sup> Second, the Bill of Rights specifically states that free access to the courts and adequate legal assistance shall not be denied to any person by reason of poverty.<sup>10</sup> Balancing the Bill of Rights on the one hand, and the prohibition against champertous contracts, on the other, the scales must be tipped in favor of the former. No person shall be deprived of life, liberty, or property without due process of law.<sup>11</sup>

Increased access to justice has always been at the forefront of judicial reforms.<sup>12</sup> To encourage the use of arbitration, it appears high time that the Judiciary explore the viability of third-party funding and perhaps promulgate the necessary rules to make it an effective tool to ensure the proper administration of justice.

<sup>1</sup> A claimant who wishes to file a Notice to Arbitrate with the Philippine Dispute Resolution Center ("PDRC") would have to pay over a minimum non-refundable fee of Two Hundred Thousand Pesos (PhP200,000.00). This amount does not even include the fees paid to the arbitrator, which ranges from a minimum base amount of One Hundred Thousand Pesos (PhP100,000.00) to a maximum base amount of Three Million Five Hundred Pesos (PhP3,500,000.00) depending, among others, on the number of claimants, number of claims, and the complexity of the case. (See Article 3, Annex B of the PDRCI Arbitration Rules, & Article 1, Schedule A of the PDRCI Arbitration Rules)

<sup>2</sup> Australia, United Kingdom, Hong Kong, and Singapore.

<sup>3</sup> See Report of the ICCA-Queen Mary Task Force on Third-party Funding in International Arbitration, International Council for Commercial Arbitration (2018); & Arbitration in Singapore and Hong Kong, [https://chicagounbound.uChicago.edu/cgi/viewcontent.cgi?article=1056&context=international\\_immersion\\_program\\_papers](https://chicagounbound.uChicago.edu/cgi/viewcontent.cgi?article=1056&context=international_immersion_program_papers) (last accessed 29 January 2019).

<sup>4</sup> Report of the ICCA-Queen Mary Task Force on Third-party Funding in International Arbitration, International Council for Commercial Arbitration (2018), p. 18.

<sup>5</sup> Report of the ICCA-Queen Mary Task Force on Third-party Funding in International Arbitration, International Council for Commercial Arbitration (2018), p. 18.

cont. on page 8

## The 5<sup>th</sup> Asian Mediation Association (AMA) Conference in Jakarta, Indonesia

By: Francisco D. Pabilla, Jr.

The 5th Asian Mediation Association (AMA) Conference was held in Jakarta, Indonesia on October 24 to 25, 2018 Jakarta, Indonesia with the theme, "Can mediation survive in a world of Trumpian negotiators? Thought provoking - New thinking." Organized by Pusat Mediasi Nasional (PMN) or the Indonesian Mediation Center, the Conference was attended by a total of 286 delegates from 17 countries.

AMA was established in Singapore on August 17, 2007. It aims to promote the application of mediation and ADR and properly resolve business and commercial disputes through close cooperation between its members. Aside from the Philippines, AMA-members include China, Fiji, Hong

Kong, India, Indonesia, Japan, Malaysia, Mongolia, Singapore, and Thailand.

Since its establishment, the first four AMA Conferences were held in: Singapore, 2009; Kuala Lumpur, 2011; Hong Kong, 2014; and Beijing, 2016. The 6th AMA Conference is scheduled to be held in Manila in 2020.

The author's participation in the conference came following the AMA Conference Committee's selection of his paper entitled, "Learning from Experience: Travails of a Court-annexed Mediator," which he presented in one of the Breakout Sessions held in October 25. The author's experiences as a mediator during the early years of implementation of the court-annexed mediation (CAM) had shown that the active participation of the parties and their lawyers in the mediation process served as one of the keys to a successful mediation. At the institutional level, it was the timely provision of technical, financial and other logistical support that

had contributed significantly in sustaining CAM's implementation.

The other Filipino presenter was Judge Selma Alaras of the Makati Regional Trial Court, who gave an update on Judicial Dispute Resolution in the Philippines.

Four papers were presented during the Conference's Plenary Session: (i) Culture and Mediation; (ii) Neuroscience and Mediation; (iii) Trumpian Negotiators; and (iv) UNCITRAL and the Enforceability of International Commercial Mediation Settlements. There were two to three papers presented for each of the 12 Breakout Sessions:

The author considers the UNCITRAL and the Enforceability of International Commercial Mediation Settlements very significant given its potential long-term impact on the efficacy of commercial mediation with respect to the development of harmonious international economic

cont. on page 8

## OADR Celebrates the 7<sup>th</sup> National Alternative Dispute Resolution Day

The OADR celebrated the seventh National Alternative Dispute Resolution Day last December 19, 2018. This annual observance is mandated by Proclamation No. 518 issued by former President Benigno S. Aquino III on December 4, 2012, which declared December 19 of every year as National ADR Day.

At the 2018 National ADR Day Celebration, the maiden issue of OADR Insights: The Official Newsletter of the Office for Alternative Dispute Resolution was launched. OADR Insights will be the media arm of the OADR in its information dissemination campaign about ADR, latest updates and developments of ADR as well as updates on the activities and events of the OADR.

This was followed by the soft launch of the



OIC Executive Director Bernadette C. Ongoco delivering the OADR Year-End Report to the Secretary of Justice

OADR Institutional Video which showcases the functions and the role of the OADR. Both the newsletter and institutional video are in fulfillment of the mandates of the OADR through its Public Information and Promotion Division (PIPDI).

State Counsel Bernadette C. Ongoco, who is also OADR's OIC Executive Director, delivered the OADR's Year-End Report for 2018. She highlighted the accomplishments of the OADR for 2018 as well as the latest developments and updates on the OADR's programs. She extended her gratitude to the entire OADR Team, past and the present DOJ officials, and OADR's partners and stakeholders, who have supported and helped the OADR through the years.

Director III Ma. Christina V. Abalos of the OADR's Policy, Compliance and



The OADR officials and staff, the Secretary of Justice and other DOJ officials.

Monitoring Service, (PCMS), presented the plans and activities of the OADR for 2019.

Justice Secretary Menardo I. Guevarra, who was the Keynote Speaker of the event, expressed his support to fully operationalize the OADR under his administration. He also underscored that the OADR should continue to fulfill its mandate to promote the use of ADR as conflict resolution mechanism to help unclog court dockets and prosecution offices and help resolve conflicts through a win-win solution. Secretary Guevarra also highlighted that *"ADR is not merely an alternative in our present conflict resolution paradigm. It is a part and parcel of our entire institutional machinery designed to make the delivery of justice efficient and effective"*.



Secretary Menardo I. Guevarra delivers his Keynote Remarks.

## Major Accomplishments of the OADR for the Year 2018

1. Conducted Nationwide Conferences/Orientations for Students and Other Alternative Dispute Resolution Stakeholders in the cities of Batangas, Iligan, Tacloban, Cebu, Dumaguete and Bacolod.
2. Conducted Basic ADR Skills Trainings for the members of the Lupong Tagapamayapa in La Union, Aklan, Dumaguete City, Dipolog City and General Santos City.
3. Conducted, in collaboration with the National Prosecution Service (NPS), National Commission on Indigenous Peoples (NCIP) and Indigenous Peoples Groups (IPs) and Cultural Communities, the ADR Consultative Summit in Banaue, Ifugao, primarily for the integration and mainstreaming of customary justice systems of the country's various IPs in the NPS' rules and procedures as part of ADR process prior to the conduct of preliminary investigation in criminal cases.
4. Resource speakers and/or lecturers in various seminars involving ADR, such as the Seminar Workshop on Mediation for the DAR – MIMAROPA and several DAR Basic Mediation Trainings in Kidapawan City and Davao City.
5. Accredited two (2) private ADR Provider Organizations (APOs) and three (3) individual ADR practitioners and recognized six (6) mediators and eighteen (18) arbitrators.
6. Entered into a Memorandum of Agreement (MOA) with the Energy Regulatory Commission (ERC) for the conduct of Basic Mediation Skills Training Program as well as internship, for the members of its Consumer Affairs Services.
7. Participated in various conferences and meetings, in order to keep it abreast with the latest ADR trends in the international arena such as the:
  - a. Intersessional ASEAN Caucus Meeting of the Regional Comprehensive Economic Partnership-Working Group on Legal and Institutional Issues (RCEP-WGLII) in Manila
  - b. Trade Law Forum in Incheon, South Korea.
  - c. 36th Session of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on Investor-State Dispute Settlement Reform in Vienna, Austria
  - d. 7th Asia-Pacific ADR Conference in Seoul, South Korea

## New OADR-ERC MOA Jumpstarts ERC Mediation Trainings

The signing of the Memorandum of Agreement (MOA) between the OADR and the Energy Regulatory Commission (ERC) last November 9, 2018 revived a former collaboration between the two agencies in order to enhance the mediation skills of ERC's designated point-persons in addressing consumer complaints filed before the ERC.

Through the MOA, the OADR agrees to

### OADR Trains ERC on ADR

Following the conclusion of the Memorandum of Agreement between the OADR and the Energy Regulatory Commission (ERC) last November 2018, the first training under this initiative, dubbed as "ERC: Energy in Resolving Conflicts - Building ERC's Mediation Capabilities", was held last November 26-29, 2018 in Antipolo City. This was attended by representatives from the Consumer Affairs Service (CAS) of the ERC who are the frontliners in the ERC's conflict resolution administration concerning consumers' grievances against electricity distributor corporations.

These frontline employees of the ERC are tapped to act as mediators for possible amicable settlement and to prevent the grievance from ripening into a proper complaint cognizable by the ERC. Other participants in the

assist the frontliners in the ERC's Consumer Affairs Service by providing mediation training to ERC's designated employees. The MOA also includes assistance to ERC with respect to ADR program design and implementation of ADR trainings.

Justice Secretary Menardo I. Guevarra signed the MOA for the OADR while the ERC was represented by Chairperson and CEO Agnes VST Devanadera.



ERC Chairperson Agnes VST Devanadera and Justice Secretary Menardo I. Guevarra at the MOA ceremonial signing



OADR orientation training on Mediation for ERC

training included employees of the Office of the Chairperson and Commission Members (OCCM) and the Office of the General Secretariat (OGCS) of the ERC.

The training program was devised as an inter-active training tool that allowed participants to actively participate and learn from the facilitators. It is a combination of both discussion and practical exercises to ensure reinforced learning of both the

theory and concepts of mediation and mediation practice itself.

The four-day training started with OADR Director Leilani Fajardo-Aspiras and ERC Commissioner Alexis M. Lumbatan successively delivering the Opening Remarks, immediately followed by a discussion on understanding disputing parties in the energy sector and the applicable legislation facilitated.

*cont. Legal Pluralism... from page 1*

and reliable, indigenous peoples' adherence to their age-old laws defining their relationship to nature resulted in the preservation of resources and biodiversity in their ancestral domains, which could guarantee intergenerational sustainability. This is a feat which may not be claimed by many non-indigenous communities whose relationships to their natural environments are defined by state-sponsored laws.

The Indigenous Peoples' Rights Act of 1997 (IPRA) was passed to address historical injustice. But even as we are trying to correct past wrongs, IPs are suffering from new injustices which are no less harsh than those they suffered in the past.

Paradoxically, only legal centralism can give effect to legal pluralism because the former is the only paradigm within which the latter may be sanctioned. Customary laws of the Moro people and the indigenous peoples may have legal consequences when recognized by state-made laws. This is accommodation, an affirmative action which affirms the legitimacy of justice systems outside or below the national one, and is internationally recognized as a best practice in countries marked by ethnolinguistic diversity.

The Philippines ratified both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which identically provide

that all peoples have the right of self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The United Nations Declaration on the Rights of Indigenous Peoples adopted this to apply specifically to IPs. Various comments of the Human Rights Committee interpret indigenous self-determination to embrace the right to customary laws. In the domestic front, the Indigenous Peoples' Rights Act of 1997 mandates the recognition of legal pluralism by affirming the IPs' "right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of

*cont. on page 7*

*cont. Legal Pluralism... from page 6*

Justice whenever necessary." IPRA further provides that "IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities."

It is important for institutions and individuals belonging to the justice sector to acknowledge and give flesh to legal pluralism accommodated by national law. Failure to do so perpetuates injustice through forced legal assimilation and is legal imperialism. Thus, the policy environment must construct a relationship between the State legal system and the customary ones. It must provide or create institutional spaces for the implementation of non-state law within the Philippine legal system. The policy environment can bridge gaps, harmonize state law with customary law, or incorporate customary law into the law of "imperial Manila" as they apply to IPs. Respect and support for the customary legal systems can enhance efforts to promote a comprehensive and inclusive rule of justice.

What is perhaps not widely known is that the Department of Justice long recognized legal pluralism. In 2005, DOJ Secretary Raul M. Gonzalez and National Commission on Indigenous Peoples (NCIP) Chair Reuben Dasay A. Lingating, inked **Memorandum of Agreement Series 001-2005**. According to Atty. Lingating, what precipitated the MOA was the arrest of a grieving Lumad, a member of one of the IPs in Mindanao, for violation of PD 705 or the Revised Forestry Code. This was occasioned by his having cut a tree standing on his ancestral land to fashion a coffin for his dead wife, without a cutting permit. Under IPRA, this was a legitimate exercise of his right to traditional or non-commercial use of natural resources authorized by his customary law. The Arroyo administration, moved by righteous indignation, called out the DOJ and NCIP to rectify the wrong done to the Lumad. The two agencies responded through the MOA.

Under the MOA's terms, if the alleged criminal violation of an environmental law is essentially an exercise of the right to traditional utilization of resources, a fact the NCIP is in a position to determine better than DOJ, there should be no room for criminal indictment.

Subject to its control and supervision and if the need arises, the DOJ shall deputize NCIP Lawyers and Legal Officers in the conduct of preliminary investigations and prosecution of complaints or cases for alleged violation by IPs of environmental and natural resources laws.

The Lumad's narrative is by no means isolated. Indigenous peoples often lament that national laws legitimate the destruction of their ancestral domains and ecosystems through extractive projects. Environmental protection laws seek to oust them from the forests their ancestors built when evidence clearly shows that in those areas inhabited by them, biodiversity and resources are intact.

Fastforward to the present. I asked NCIP lawyers if they ever assisted DOJ in the preliminary investigation of cases covered by the MOA. Not one did. However, in discussions with prosecutors assigned in areas predominantly populated by IPs in Luzon and Mindanao, I learned they refer to indigenous justice institutions those disputes where the conflicting parties are IPs. Atty. Antonio Arellano, retired Regional Prosecutor of Region X, encouraged prosecutors to allow indigenous communities to resolve disputes first and, as a rule, respect the settlements arrived at according to customary law.

"Prosecutors must become problem-solvers and let communities take ownership of the settlement of conflicts involving them or their members," Baguio City Prosecutor Elmer M. Sagsago said. Like Atty. Arellano, he believes that referral of disputes involving IPs to indigenous mechanisms for conflict resolution can decongest jails, empower communities who take part in resolving disputes, and promote restorative justice by patching cracks in relationships and preserving goodwill. It is also less expensive, less drawn-out, and less cumbersome and, thus, increases access to justice.

Strangely, when I joined the DOJ in 2016, the agency did not have an authentic copy of the DOJ-NCIP MOA. We now have one which I obtained from NCIP. At our behest, the Prosecutor-General's Office issued a memorandum to prosecutors to observe it.

It is worth mentioning that the DOJ is capacitating its environmental prosecutors

to be sensitive of indigenous rights and to be conscious to not concentrate the use of prosecutorial powers against the frail and defenseless --- the subsistence fishers, indigenous peoples who depend on forests for their livelihood, and the small-time mangunguling and kainginero. It is legal bullying when we can only prosecute the small people. We must use our powers against the saboteurs of intergenerational sustainable development, many of whom masquerade as developers and investors. We must run after large-scale destroyers of our ecosystem who subject to peril lives and properties of communities. Current experiences show this fear is not apocryphal.

Meantime, the DOJ, through the OADR, has a Legal Pluralism Project. Briefly, this project will see how before criminal complaints involving IPs as parties will be resolved by the DOJ prosecution service, they will be subjected to indigenous conflict resolution mechanisms first. Essentially, it will mainstream customary modes of conflict resolution. The OADR conducted the first of a series of summits to harness from IPs, prosecutors, and other stakeholders inputs to the rules prosecutors will observe when parties to complaints before them are members of indigenous cultural communities. This project is expected to reduce the case backlog of the prosecution service, empower communities to harness back to the mainstream what have now become alternative dispute resolution mechanisms, and promote restorative justice that fortifies communal goodwill.

This OADR-led Legal Pluralism project is shived of the dominant mindset that regards customary justice systems as manifestations of indigenous backwardness. It is an affirmation that IP communities are as competent as the formal justice institutions in dispensing justice that restores broken relationships and promote communal peace.

The DOJ mission is to deliver "effective, efficient and equitable administration of justice." Respect for legal pluralism is in tune with this.



cont. *The Third-Party from page 4*

<sup>6</sup> A champertous contract is a contract between a stranger (the third-party funder) and a party to a lawsuit whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment (*Roxas vs. Republic Real Estate Corporation*, G.R. No. 208212 (1 June 2016)).

<sup>7</sup> *Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197 (23 November 2016).

<sup>8</sup> *Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197 (23 November 2016).

<sup>9</sup> *Roxas vs. Republic Real Estate Corporation*, G.R. No. 208212 (1 June 2016).

<sup>10</sup> Section 11, Article III of the 1987 Philippine Constitution.

<sup>11</sup> Section 1, Article III of the 1987 Philippine Constitution.

## Contributors



Donemark Calimon is a partner at Quisumbing Torres. He heads the firm's Dispute Resolution Practice Group and Industrials, Manufacturing; Transportation Industry Group. Donemark has 18 years of experience in dispute resolution, including civil, criminal, corporate and regulatory litigation, and commercial arbitration. He obtained his LLB from the University of the Philippines in 2000 and his degree in AB Philosophy from the Immaculate Conception Seminary in 1995.



Fidel Maximo Diego III is an associate in Quisumbing Torres' Dispute Resolution Practice Group. He obtained his JD from Ateneo de Manila University in 2016 and his degree in Bachelor of Arts in Journalism from University of the Philippines in 2011. Max's practice focuses on general dispute resolution, litigation and arbitration.

cont. *The 5th Asian Mediation... from page 4*

relations. Prof. Nadya Alexander of Singapore International Dispute Resolution Academy, and Mr. George Lim of Singapore International Mediation Center gave a very interesting update on the status of the Singapore Convention on Mediation (SCM), another name for UN Convention on International Settlement Agreements Resulting from Mediation. Once ratified, the SCM will facilitate the enforcement of international commercial settlement agreements resulting from mediation. The SCM is scheduled for signing in August this year in Singapore.

At this time, it would be apt for the Philippines to gear up on facing the challenges relating to these two important milestones in the history of mediation in our country, i.e., the ratification of the Singapore Convention this year, and the holding of the 6th AMA Conference in 2020.



Francisco D. Pabilla, Jr. served as a court-annexed mediator for 12 years and as the Executive Director of the Philippine Mediation Foundation, Inc. (PMFI) for almost the same number of years. He is now the Assistant Secretary General of the Philippine Dispute Resolution Center, Inc. (PDRCI).

He earned his bachelor's degree in Political Science at the University of the Philippines in Diliman and Master of Arts degree in Development Studies (specialization in public policy and administration) at the Institute of Social Studies, The Hague, The Netherlands.

## ADR 101

### What is Accreditation or Certification?

A process whereby an individual or organization engaged in, or a program relating to, the delivery of Alternative Dispute Resolution services undergoes evaluation for the purpose of determining whether it meets the minimum standards to those services.

### What falls under the coverage of Accreditation and Certification?

- (a) Private APOs (ADR Provider organizations)
- (b) ADR Practitioners
- (c) Public ADR Programs

### What are ADR services?

These include but not limited to, (1) serving as an ADR practitioner; (2) providing ADR trainings; (3) conducting program and system design; and managing, overseeing or administering ADR programs.

## OFFICIALS

Menardo I. Guevarra  
Secretary of Justice

Mark L. Perete  
Undersecretary-in-Charge

Bernadette C. Ongoco  
OIC, Executive Director

Chulo B. Palencia, Jr.  
OIC, Deputy Executive Director

Ma. Christina V. Abalos-Naig  
Director III – Policy, Compliance and Monitoring Service

Marlyn L. Angeles  
OIC, Director – Accreditation and Certification Division

Leilani R. Fajardo-Aspiras  
OIC, Director – Administrative and Finance Division

Ulyses A. Aguilera  
OIC, Director – Training Division

Charlie L. Guhit  
Rodan G. Parrocha  
Jerome I. Coronel  
OIC-Deputy Directors – Training Division

Albert Ignatius C. Abragan II  
OIC, Director – Public Information and Promotion Division

Mary Grace V. Pulido Sadian  
Karla Izavella A. Nitura  
Jenny Rose G. Avellano-Catalo  
OIC-Deputy Directors  
Public Information and Promotion Division

Jose Mario B. Uy  
OIC, Director – Records and Library Division

## DISCLAIMER

*The views and opinions expressed in this article are those of the guest contributors and do not necessarily reflect the official policy or position of the OADR.*

## MISSION

To promote, develop, and expand the use of alternative dispute resolution towards fast, accessible, convenient and economical administration of justice

## VISION

The OADR shall be the premier institution of excellence in the promotion, development and expansion of the use of ADR as a mode of resolving disputes towards the effective and efficient administration of justice