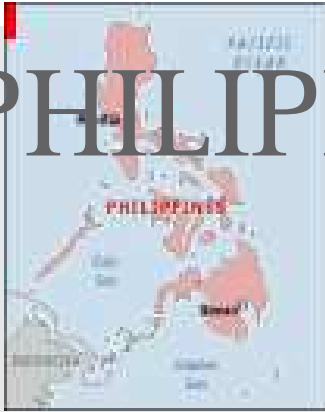


# PHILIPPINES



## *Reform in the land of People Power*

### **Political structure**

National government consists of the executive branch headed by the President, the legislative branch and the judicial branch. The executive consists of cabinet secretaries, the national bureaucracy and the military. The legislative branch or Congress comprises a 24-member Senate and a 220-member House of Representatives. The judiciary consists of a Supreme Court, the Court of Appeals, Regional Trial Courts and special courts (juvenile, family or sharia courts). The political sub-divisions of the state are provinces, cities, municipalities and villages.

### **Local government system**

The categories of local authorities in the Philippines are as follows:

- ▶ 1 Metropolitan Government;
- ▶ 1 Autonomous Regional Government;
- ▶ 1 Special Administrative Region;
- ▶ 79 Provinces;
- ▶ 115 Cities;
- ▶ 1,420 Municipalities; and
- ▶ 43,000 *Barangays*.

Specific income categories and population size govern the classification of local governments from one type to another. The legal basis for such requirements is provided for in the *Local Government Code*.

All levels of local government exercise the following general functions and powers:

- ▶ Efficient service delivery;
- ▶ Management of the environment;

- ▶ Economic development; and
- ▶ Poverty alleviation.

The various provisions of the *Local Government Code* on provinces, cities, municipalities and *barangays*, all cite these functions. Enabling legislation from local councils may be initiated where necessary.

The *Local Government Code* or *Republic Act 7160*, contains the following four local government laws, defining the functions and powers of local governments:

- ▶ Section 468 Functions and powers of provinces (*Provincial Law*)
- ▶ Section 447 Functions and powers of municipalities (*Municipal Law*)
- ▶ Section 458 Functions and powers of cities (*City Law*)
- ▶ Section 398 Functions and powers of *barangays* (*Barangay Law*)

The functions and powers of the Metropolitan Manila Development Authority is defined in *Republic Act 7924*, that of the Autonomous Region of Muslim Mindanao (ARMM) in *RA 6649* and *RA 6766*, and that of Cordillera Administration Region (CAR) in *RA 6766*.

All these sections have been standardized so that the respective functions and powers are similar. For example, provincial, city, municipal and *barangay* councils shall all enact ordinances and approve resolutions, appropriate funds, and pursue Section 16 (General Welfare Clause) of the *Local Government Code*.

Moreover, provinces, cities, municipalities and *barangays* shall:

1. Approve ordinances and pass resolutions necessary for the efficient and effective local government administration;
2. Generate and optimize the use of resources and revenues for the development plans, program objectives and priorities of the specific level of local government provided under Section 18 (Power to Generate and Apply Resources of the *Local Government Code*);
3. Subject to the provisions of Book II of the *Local Government Code* grant franchises, approve the issuances of permits or licenses or enact ordinances, and levy taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants;
4. Approve ordinances which shall ensure the efficient and effective delivery of basic services and facilities; and
5. Exercise such other powers and perform such other functions as may be prescribed by law or ordinance.

### **Local autonomy**

Philippine local governments are fully autonomous, with the central government exercising only general supervision. However, this general supervision is only applicable at the provincial- and highly urbanized city-levels. Lower class local governments, such as component cities, municipalities and *barangays* are being supervised both by the provinces and highly urbanized cities (HUCs). HUCs are independent from provinces and under direct supervision of the president and supervise *barangays* in their respective jurisdictions.

Territorial jurisdictions among local governments are usually defined by law. Functional jurisdiction is provided for in the *Local Government Code*, but the Constitution encourages inter-local cooperation, beneficial to all concerned, and can readily alter traditional function sharing to cover local authorities beyond traditional political jurisdictions. Philippine local authorities are empowered to provide services and assistance to other local authorities, which are outside their political boundaries. This means that two or more local governments can pull their resources in projects and activities that are mutually beneficial. The traditional notion that each local government takes care of themselves is thus passé.

Local authorities by tradition follow the national framework of development. However, this policy does not prevent local authorities from establishing their own development priorities.

Local governments perform the practice of development administration autonomously. Only in cases where development efforts affect national security and other environmental consideration, will higher levels of government review the local government's priorities.

Local government ordinances and resolutions are usually not reviewed by higher levels of government except when it concerns incurring debts or in floating local government bonds, requiring sovereign guarantee or the allocation of central government subsidies. Financial control is also partly exercised by the Commission on Audit and the Department of Budget and Management (DBM), as well as the Department of Finance (DOF) in the allocation of central subsidies to local authorities.

The most comprehensive official document that governs local government operations is the *Local Government Code*. This law defines how a local government can be created, and how it can be abolished, merged or upgraded to a higher category of city, municipality or province. Only an Act of Congress can dissolve cities, municipalities and provinces and any decision thereof will finally be decided by residents of local government concerns in a plebiscite or referendum. However, *barangays* can be abolished or created much more easily but are still subject to a *barangay* plebiscite just like any proposed abolition for cities, provinces or municipalities. Ordinances of cities and provinces create *barangays* and not an Act of Congress or Parliament.

### **Relationship between the central government and local governments**

Following the enactment of the *Local Government Code* in 1991, intergovernmental relations tilted more towards local autonomy and decentralization. Most departments of the national government are now primarily responsible for policy formulation and standards setting, in addition to implementing national sectoral or departmental programs in consultation with local governments. The codal provision applicable in this regard is Section 17 of the *Local Government Code*.

The power of general supervision by the President over local governments, as provided for in the Constitution, is now limited

and extend only to provincial governors and mayors of HUCs. General supervision over lower level officials is entrusted to the provincial governor and to some extent to the local legislative councils. The national government has no control over local governments except for the power of general supervision. The national government cannot abolish a local government. The legislature can pass a law abolishing a local government but only after the law is approved by the people through a referendum. Political jurisdictions are governed with full administrative autonomy.

### Local participation

The extent of public participation in local governance is a barometer of how democratic local governance is in the Philippines. Public-private partnerships at the local level are very much alive and well.

The Constitution and the *Local Government Code* have provisions on the concept of the three Ps (Public Private Partnership). The 1987 Constitution has a separate provision on the roles and rights of People's Organization (POs) in public affairs and in local governance. It states that the State shall respect the role of independent POs to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

POs are bona fide associations of citizens with demonstrated capacity to promote the public interest, and with identifiable leadership, membership and structure. The right of people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged, as provided for in the Constitution of 1987. The state shall, by law, facilitate the establishment of adequate consultation mechanisms. Likewise, the *Local Government Code* has provisions (in Sections 324, 35 and 36 of Chapter IV) entitled Relations with People and Non-Governmental Organizations, which states:

Local government units shall promote the establishment and operation of POs and NGOs to become active partners in the pursuit of local autonomy (Section 34). Local government units may enter into joint ventures and such other cooperative arrangements with POs and NGOs to engage in the delivery of certain basic services, capability-building and livelihood projects and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrializa-

tion, promote ecological balance and enhance the economic and social well-being of the people (Section 35).

A local government unit may, through its local chief executive and with the concurrence of the sanggunian concerned, provide assistance, financial or otherwise to such POs and NGOs for economic, socially-oriented, environmental or cultural projects to be implemented within its territorial jurisdiction (Section 36).

Civil society is represented in various local development councils. Several administrative orders of the central government, implementing the constitutional provision and the *Local Government Code* regarding public participation, require that all local councils at all levels should be represented by various NGOs and POs such as farmer cooperatives and fishermen's associations. Several sectors of society like youth, women, farmers and other special groups have voices in the process of public decision-making. A mandatory provision insofar as membership of POs and NGOs is concerned is that these groups should represent 25% of the total membership of the councils.

Local legislative councils do not execute local laws (such as ordinances with finality) unless public hearings are conducted first. The idea of consulting people before local legislative bodies adopt any taxes operationalizes the concept of representation by constituencies.

NGOs and POs are very active in local development activities and work very closely with local authorities in attaining mutual community interests. Up until 2003, some 16,000 NGOs and POs have undergone a process of accreditation that determines the types and classes of NGOs. This process also includes the determination of the issues and ideas NGOs advocate for, such as environmental protection, legal issues and rights to development, including lobbying efforts to protect/promote specific sectoral interests. It is noteworthy to mention that local governments and NGO/PO cooperation is increasing.

## Tribes governing themselves

The Philippine Government duly recognizes the legitimacy of tribal governance. The Indigenous Peoples (IPs)' right to ancestral domain and self-governance as a whole are enshrined in the Indigenous Peoples Rights Act (IPRA) and the tribal governance provision of the Local Government Code. But while there are enough legal bases for the IPs' self-governance, its operationalization and mainstreaming in the country's political system has always been hampered by various factors. Among these factors is the predominance of mainstream governance systems which undermines indigenous ones. Also, very few non-indigenous people are aware that there exists a system of governance among the IPs, which has, since time immemorial, effectively and efficiently governed the indigenous communities. This system of governance has been structured in a way that complements the workings of their justice system as well as their observance of customary laws.

### Tribal governance: concepts and perspectives

Tribal Governance in its broadest sense is the manner by which a tribe—through its *datu* or *timuay labi*, *bong fulong* or *gukom*, *bae*, *baylan*, *magsud*, and supporting tribal organs of authority—enforces its customary laws and manages its affairs.

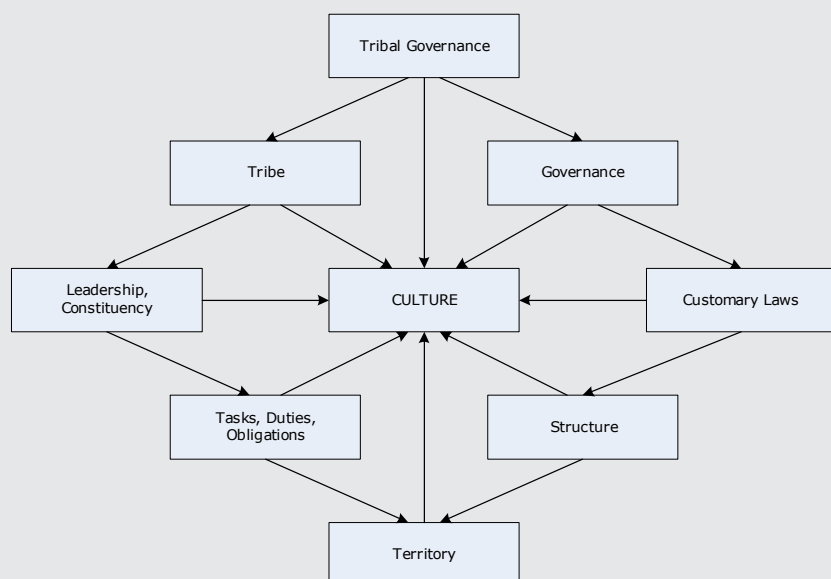
The starting point of tribal governance is the belief in a Supreme Being that created all, and belief in the spirits that guide elements of heaven and earth. Nature is sacred because *Manama*, *Magbabaya* made it and assigned spirits to preside over the various elements of nature for its efficient functioning. Everything has its proper place in the natural order, and the universal law (what the *Langilan-Manobo* and others refer to as *Gantangan Palabian*) ensures that this is so.

People, as stewards of the earth, are duty-bound to respect, protect, and

preserve what the Supreme Being created. Thus, not a single person can possibly own what only God could create. What is permissible, from the point of view of the IPs of Mindanao, is communal or shared management and administration of land and the resources above and below it; in a word, it is the historical, common and continuous occupation, use, protection, and preservation of territory or domain on which depends not only a tribe's existence, but also its cultural identity and continuity as a people and as a nation.

Because the world was made for all, the tribes have equal access to and right over territory that they can manage competently. To demarcate their domains, the indigenous tribes have natural landmarks such as rocks, mountains, rivers, and streams, and burial grounds. This avoids overlapping of territorial jurisdiction and allows for peaceful co-existence and non-interference between and among tribes; if for nothing else, this delineation of domains makes effective territorial defense possible.

It is on territorial integrity that the tribes' concepts and perspectives on governance rest; it is likewise territorial integrity that defines the shape and character of the structures, systems, mechanisms, processes, and standards and guidelines in



the enforcement and implementation of customary laws and tribal decisions. These structures and systems are defined according to the respective competencies, duties, and responsibilities of the members of the tribe. Thus, there are the tribal leaders, councils of elders, advisers, arbiters and mediators, healers and seers, tribal teachers, those in charge of the various aspects of economic and social life, and those who take care of peace and order and territorial defense.

Tribal governance also reflects the indigenous peoples' belief in the attributes of the *Manama*, *Magbabaya* and in the natural harmony and balance of the universe. As *Manama*, *Magbabaya* is just and not at all iron-fisted or dictatorial, so is the tribal leader. This is the reason for the existence of a council of elders and advisers whom the tribal leader consults on matters of justice, defense, and other serious concerns. The tribal leader also tries to emulate the benevolence, benignity, and magnanimity of *Magbabaya* by making himself accessible to his constituents for consultations, by being a good provider of the tribe, and by being compassionate even to those not of the tribe.

As the universe is governed by the principle of balance of relative opposites, so must relations between men and women in the tribe. Leadership of the tribe may by custom and tradition lie with the men, but it is the women who make that leadership possible.

### **The Women of the Talaandig in Governance<sup>1</sup>**

The role of women in tribal governance is a little understood aspect of indigenous life. Because this has received scant attention, most people outside the tribe believe that tribal women are a disadvantaged group, particularly in terms of rights, power, and participation in governance. But based on the history and culture of the Talaandig, the power and right of women in relation to governance are equal to those of men. This is manifested in the concept of the *Gantangan* and *Timbangan* as the basis of Talaandig customary law.

This does not mean that the men and women have identical responsibilities. Rather, the underlying principle is balance, the complementary character of the relationship between man

<sup>1</sup> Based on a presentation by Bai Nanapnay Liza S. Saway during the conference in April 2004.

and woman and of all relative opposites (light/darkness, life/death/, young/old, cold/heat, etc.). A true understanding of the role of women in governance is important, because on this rests the success or failure of the tribe in its striving for justice and equitability.

But on what lies the power of women with regard to governance?

*Competence as mothers and teachers.* The stability of a society springs from the capability and power of women to mold the minds and hearts of the youth, either toward the good or the bad. Ultimately, the kind of male or female leaders that tribal society will have depends on how well or how badly women, as mothers and teachers, guide children.

*Capability as healers/birth attendants/midwives.* In the Talaandig tribe, most healers/birth attendants are women. Because the lives of children (and indeed the continuity of the tribe) are in their hands, everyone accords women healers/birth attendants and their decisions the utmost respect. Even the best of the tribe's warriors would not dare go against the orders of a healer/birth attendant because this would invite a curse or some other retribution. In times of inter-tribal war, the healer/birth attendant need not flee. Whoever kills the *mananabang* becomes the enemy of the whole tribe.

*Mediation/Arbitration/Conflict Resolution.* Among the Talaandig, women settle differences that men cannot resolve.

*Defense.* In the history of the tribe, the women are the last line of defense and the saviors of the men during war. In times past, because of TALABUSAW, the patron *abyan* and spirit of tribal warriors, a woman routed a group of enemies *nga mibanhig sa tribo*. This is told in the *ulaging* (song-history), the exploits of women as warriors and saviors of the entire NALANDANGAN, the famous home of *Apo Agyo*.

*Food.* The women control all matters pertaining to the supply and allocation of food in the tribe. In times of gatherings, they take charge; the men are limited to seeing to the fields.

**Rights- Based Tribal Governance**

Tribal governance is rights-based, too. Thus, no member of the tribe, or anyone outside it, may suffer indignity or punishment without due process and appropriate recompense. More fundamentally, tribal governance for the IPs of Mindanao means:

The *right to self-governance*. That notwithstanding the presence and dominance of mainstream government and its various organs and instruments of rule and other interest groups, the tribes are independent governments in, by, and for themselves;

The tribes' *right to self-determination*. The tribes believe that they should be free from outside interference and compulsion and free to chart their political and economic future. As one datu puts it, "The Arumanons ask that they be left alone to govern themselves and their territory, and that no one—whether government, non-government organizations (NGOs) and other agencies—interfere in their affairs;" and,

The tribes' *right to self-sufficiency*. The tribes assert that they have the power and capability to provide for themselves economically, independence of mainstream government or any other external entities or groups.

**Status, issues, and concerns**

In their continuing efforts to assert themselves as a people, the indigenous tribes of Mindanao, over the years, have had to contend with internal and external challenges and threats to their political, economic and socio-cultural stability. The following is based on their accounts.

**Asserting the customary law and justice system:**

**The Talaandig experience**

The Talaandig recall an incident in mid-1995, when they confiscated 15 bags of botanical specimens which had been collected by the Philippine National Museum and the Botanical Research Institute of Texas without the informed consent of the Talaandig community. The collectors of the botanical specimens from the Philippine National Museum were eventually asked to pay eight carabaos, eight meters of red, white and black cloth, 26 chickens and One Hundred Fifty Pesos in coins (P150.00) to settle violations against the Talaandig.

The Talaandig maintain that what was involved was not only theft (of forest specimens) and community harassment.

TRIBAL GOVERNANCE ISSUES	
External to the Tribe	Internal to the Tribe
<p>I. Political</p> <p>A. Law/policy/leadership</p> <ul style="list-style-type: none"> <li>▶Government policies (Local Government Code of 1991) that doesn't recognize IP rights</li> <li>▶Existence of various forms, levels and structures of governance that continue to overlap traditional structure of indigenous communities</li> <li>▶Non-recognition of indigenous structure of the IPs</li> </ul> <p>B. Military</p> <ul style="list-style-type: none"> <li>▶Presence of armed groups and encounters between rebel groups and the military within ancestral domains of IPs</li> <li>▶Recruitment of IPs as members of paramilitary groups</li> </ul>	<p>I. Political</p> <p>A. Leadership</p> <ul style="list-style-type: none"> <li>▶Non-recognition of authority and leadership of traditional leaders</li> </ul> <p>B. Military</p> <ul style="list-style-type: none"> <li>▶Division within tribes due to recruitment to armed forces (CAFGU, CVO, NPA), and actual armed encounters within the ancestral domain</li> </ul> <p>C. Culture</p> <ul style="list-style-type: none"> <li>▶Cultural assimilation and non-practice of culture and tradition</li> <li>▶Western political orientation</li> <li>▶Non-recognition of the authority of genuine traditional leaders</li> </ul>
<p>II. Economic</p> <ul style="list-style-type: none"> <li>▶Entry of big business within the ancestral domain of IPs</li> <li>▶Non-recognition of both political and traditional boundaries of IPs</li> <li>▶Entry of development projects of the government, church and NGOs to the detriment of the tribes</li> <li>▶Land conversion (IPs vs. Christian settlers)</li> <li>▶Development aggression</li> </ul>	<p>Economic</p> <ul style="list-style-type: none"> <li>▶Depletion of the natural resources within the territory</li> <li>▶Massive poverty</li> </ul>
<p>III. Culture</p> <ul style="list-style-type: none"> <li>▶Influence of western ideologies</li> <li>▶Entry of different religious groups that further divides the tribes</li> <li>▶Presence of educational institutions and schools within the ancestral domain</li> </ul>	

The more serious offense was utter disregard for the right, authority, power, and dignity of the tribe. For the Talaandig, a person who shows no respect for others does not deserve to be regarded as a person.

Another case of violation of the customary law is the unauthorized entry into a Talaandig community of operatives of the National Bureau of Investigation on allegations that a criminal was hiding in the area. The NBI operatives fired their guns and started to search the houses. The Talaandig women responded by surrounding the NBI operatives and demanding that they prove their allegations. They asserted that these operatives violated the customary rights of the community. The case was brought to the attention of the Office of the Presidential Adviser on the Peace Process (OPAP); it has yet to be resolved to this day.

#### Action points to institutionalize tribal governance

##### 1. Political

- ▶ Putting into practice indigenous/tribal governance;
- ▶ Strengthening the traditional structure and defining their respective genealogies;
- ▶ Awareness raising among other IPs regarding the IPRA;
- ▶ Holding a peace forum;
- ▶ Dialogue with the military;
- ▶ Coordinating, dialogue and negotiation with the leaders of rebel groups;

##### 2. Economic

- ▶ Opposition to the entry of big plantations into ancestral domains;
- ▶ Enforcement of the principle of Free, Prior and Informed Consent (FPIC) among those who want to enter the tribes' territory;
- ▶ Protection of environment and natural resources;
- ▶ Self-reliance and resourcefulness in implementing community-based initiatives in place of dependence on outside assistance;

##### 3. Culture

- ▶ Setting up "indigenous schools of living traditions" to be run by the IP communities;

- ▶ Documentation of customary laws, culture/tradition and governance practices of the tribes.
- ▶ Strengthening and putting into practice the indigenous culture and governance of the tribes, especially by the traditional leaders/datus who are lead claimants of their ancestral domain.

#### Areas for improvement

The indigenous peoples of Mindanao realize that the issues and concerns that they face are not only many, but complex as well. To address these issues and concerns, they know they have to start somewhere, and they agree that the best place to begin is within and between their respective tribes.

The following is an outline of the area action plans that the IPs have drawn up.<sup>2</sup>

1. The *strengthening of indigenous spirituality*. To achieve this, the tribes agree to set up a tribal hall within every tribe. The hall is where tribal leaders could meet for conferences and other important gatherings. The tribes also propose to identify a central *panubaran* in Davao. Additionally, they intend to organize tribal cultural festivals in a bid not only to revive waning tribal identity, but to secure inter-tribal bonding as well.

2. The *teaching and inculcation of indigenous traditions, customs, conventions, practices, and mores on tribal youth*. For this, the tribes believe that it would be best to set up what they call "*Schools of Living Tradition*" to be handled by tribal community educators. They also agree to have the councils of elders take charge of the establishment of a center for indigenous education. The center will cater to all the indigenous tribes of Mindanao. The councils of elders would likewise be responsible for the development of both indigenous curriculum and the training of community experts. Each tribe expects to file a resolution with the DepEd for the integration of a curriculum on the indigenous culture, tradition, and language.

<sup>2</sup>The plans are based on the clustering of the IP delegates during the area consultations and conference.

3. The *strengthening of the enforcement of customary laws, justice system, and conflict resolution mechanisms and the upgrading of indigenous territorial defense and protection of the environment*. This is an ongoing activity of each tribe and is anchored on organizing tribal leaders, women, children, elders, and tribal *bagani*.

- a) *Capacity building for economic self-sufficiency*. Essentially, this involves the continuing application of indigenous knowledge systems in agriculture and other economic spheres.
- b) *The conceptualization and subsequent creation of the tribal barangay* (as provided for under the Local Government Code of 1991) in every municipality, city, and province within the CADT territories. The tribes expect to work on this via a census of the different indigenous groups and eventually through the lodging of resolutions and petitions with the appropriate government agencies.
- c) *The strengthening and consolidation of tribal leadership, conflict resolution among tribal leaders, and cultural preservation*. For these objectives, the tribes agree to hold regular dialogues and consultations between and among tribal leaders to: one, clarify the roles, functions, and accountability of these leaders, and two, identify the genuine datu, bae, bagani, and cultural guards of the tribes. The different tribes also agree to preserve their respective cultural legacies through the establishment of schools of living traditions, tribal halls, and leadership formation cen-

ters.

- d) *The strengthening of relationships and alliances with the other tribes in Mindanao*. This cluster of tribes has identified at least three broad activities to achieve this objective. One is the *sayuda* involving information dissemination and updating. The other is the *pangunga*, or visitations and cultural exchange between and among the various councils of elders. The tribes plan to hold the *sayuda* and the *pangunga* during festivals or during the holding of special tribal rituals. Additionally, the tribes also agree to the conduct of regular meetings between councils of elders for the settlement of inter-tribal conflicts or issues.
- e) *The mobilization of their respective tribes for the setting up of mechanisms* to facilitate the education of tribal communities on territories and boundaries.
- f) *The conceptualization and development of "cultural guards"* and awareness building and orientation for the military and government agencies on the duties and responsibilities of these cultural guards.
- g) *The drafting of policies and agreements* on tribal concepts of peace and justice within ancestral domains and the dissemination of the same among IP communities.
- h) *The holding of consultations among tribal leaders* on the mechanisms and processes of enforcing free and prior informed consent (FPIC) in their respective territories.

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