(Lousy lawmaking comes into play in majority of laws pertaining to cultural and language matters in the Philippines or maybe it is entirely intentional. Just like having a defective constitution that cannot be amended, bad laws help to preserve the status quo in a perverse manner. Let us try this one for size, Republic Act No. 8371 - AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLE, CREATING A NATIONAL COMMISSION OF INDIGENOUS PEOPLE.)

http://groups.yahoo.com/group/DILA/message/4302

THE TRUTH ABOUT R.A. 8371

by **David Martinez**

R.A. 8371 defines Indigenous Cultural Communities [ICCs] / Indigenous Peoples [IPs] as follows: a group of people

[CATEGORY 1]
1] Identified by self-ascription AND ascription by others
2] Who have continuously lived as an organized community
3] On communally bounded and defined territory
4] And who have under claims of ownership since time immemorial
5] Occupied, possessed AND utilized such territories
6] Sharing common bonds of language, customs, traditions AND other distinctive cultural traits

OR

[CATEGORY 2]
1] Who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures
2] Became historically differentiated from the majority of Filipinos

OR

[CATEGORY 3]
1] Who are regarded as indigenous
2] On account of their descent from the populations which inhabited the country at the time of conquest or colonization OR at the time of inroads of non-indigenous religions and cultures OR the establishment of present state boundaries
3] Who retain some or all of their own social, economic, cultural AND political institutions BUT who may have been displaced from their traditional domains OR who may have resettled outside their ancestral domains.

PURPOSE OF DEFINITION

What this law attempts to do – rather poorly, in my judgment – is to create a political distinction between our “mainstream” and non-mainstream nations. The obvious intent is to fashion a category in which our Muslims and lumad, for instance, can properly “belong.” Without such a “box” in which they can be placed, no rights, claims, or interests can be legally ascribed.

PROBLEMS

The problem with all such definitions is that even in the hands of the most academically adroit, they seek to define, as they must, cultures in political terms, by which I mean words and phrases that courts can interpret with reasonable certainty and provisions that government can properly enforce. These definitions – like legal provisions that seek to define particular religions – almost always suffer from fundamental vagueness. As a lawyer by training, I doubt if an honest judge can make heads or tails of them. No law, Cicero teaches, is better than a vague law. Examples:

VAGUENESS IN CATEGORY 1

1] How is "ascription by others" defined? One-half of the neighbors of the Tasaday? One-third? Ten percent?
2] "Continuously lived" – Who decides if there was an interruption in continuity [e.g., war, disease, dislocation]? How does anyone determine if such an interruption is justified?
3] "Communally bounded and defined territory" – Wonderful for the Bontocs who maintained the rice terraces, not so for hunter-gatherer societies, like most of our Aeta nations.
4] "Claims of ownership since time immemorial" – The U.S. Supreme Court has consistently ruled phrases such as "time immemorial" totally incapable of construction.
5] "Occupied, possessed, AND utilized" – When, for instance, are hunting grounds "utilized" or not utilized? In other words, is hunting once a month, twice a year, once every five years, sufficient to constitute "use"?
6] "Sharing common bonds of language, customs, traditions AND other distinctive cultural traits." – This is the most troublesome. How does anyone determine if the degree of "sharing" suffices to meet the law's requirement? Exactly what constitutes "other distinctive cultural traits"? [BTW, the specialists I quote extensively in "Country" totally debunk the "cultural traits" myth – nations and societies are never defined by such "characteristics."

VAGUENESS IN CATEGORY 2

1] "Who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures . . ." – What in the world constitutes "resistance"? Now this may work well for our Igorots, who undoubtedly "resisted" both conquest and conversion during Spain's ascendancy in our islands, but did the B'laans "resist" by remaining inaccessible?
2] "Historically differentiated from the majority of Filipinos" – Between 1571 and the early 1880s, our Tagalog and Pampango nations stood solidly behind colonial Spain while our other nations didn't. Does this make them "historically differentiated" from our "majority"?
"Inroads of colonization" – Are we to limit this to colonization by Spain/America and possibly Japan [during WWII]? What about the internal colonization perpetrated by Imperial Manila through favored migrant groups, ranchers, plantation holders, logging concessionaires, and so on?

VAGUENESS IN CATEGORY 3

1] "Who are regarded as indigenous" – "Regarded" by whom, and to what extent?
2] "On account of their descent from the populations which inhabited the country at the time of conquest or colonization OR at the time of inroads of non-indigenous religions and cultures OR the

establishment of present state boundaries" – Virtually all of us are descended "from the populations which inhabited the country at the time of conquest or colonization . . ."
3] "Who retain some or all of their own social, economic, cultural AND political institutions BUT who may have been displaced from their traditional domains OR who may have resettled outside their ancestral domains." – I am unaware of a single nation in the Philippines [of which there are approximately 87] that does not retain "some or all" of its original "institutions" – and that's on the tenuous assumption that anyone can legally define what "institution" means. Most farmers in Negros Oriental [where I'm from] make an offering of seeds at the start of rice-planting season. I suspect the vast majority no longer comprehend the when, where, and why of this age-old practice, but the question is: Is this an "institution"?

CONCLUSION

Unless there exists a compelling need to distinguish between our Aeta and non-Aeta societies [since extant evidence suggests that the Aetas were already in the islands when the "Proto-Malays" first arrived from the Southern China/Taiwan area] – ALL OF OUR NATIONS ARE "INDIGENOUS."

This law confuses and misleads when it refers to a "majority" of Filipinos. No such "majority" exists – at least not in cultural terms. Many T'boli are "Born Again" Christians as a result of persistent missionary activity. Most of our Igorots became Presbyterians and Methodists during the first decades of American rule. This makes the majority of T'bolis and Bontocs Protestants. Does this make them part of the Filipino Christian "majority"? Some 90% of Pampangos are Catholic, as are some 90% of our Tagbanuas. Few will argue, however, that this commonality makes them part of the "majority."

The bottom line: "Indigenous Cultural Communities" and "Indigenous Peoples" are the current politically correct [albeit highly unsatisfactory] phrases [and definitions] of what are and have always been our CAPTIVE, MINORITY NATIONS, and nations [Chapter II of "A Country of Our Own" deals with this subject extensively], however large or small, are by their very nature self-defining. By analogy, if a group of people band together to practice "Christics" [let's say they believe in Christ the Man, not Christ the Son of God, and worship him accordingly], and by word and deed practice that faith, then they're a religion – and no government possesses the either the power or the prerogative to tell them otherwise.

R.A. 8371 became law largely to advertise to the world our central government's alleged commitment to the protection and preservation of our minority nations. It is bad law first because it is inherently [and very possibly, intentionally] vague, which means immense problems when it comes to interpretation and enforcement; and second because, like our Clean Air Act [which suffers from little vagueness], it is terribly underfunded, except for the wages, benefits, international travel and accommodations, and perks enjoyed by the hand-picked bureaucrats who are supposed to implement it. It's a well-groomed but toothless police dog trotted for show – a sight to behold until it grins.