Issues on Customary Marriage and Its Registration in the Cordillera, Northern Philippines

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Abstract

One of the key debates surrounding the issue of marriage pertains to whether the act is to be considered part of the public or the private domain. As an institution widely regarded to be a foundation of society, marriage is primarily seen as a contract binding two equal and autonomous individuals who would then share the responsibility of reproducing and raising the next generation of citizens that would sustain society. The act of marriage, therefore, is usually publicized, registered and, to a certain extent, regulated by state authorities. Customary law on marriage in Cordillera, Northern Philippines typifies, in varying degrees and forms, the fundamental requisites for marriage recognition that are also found under national laws. Some divergences, however, are found specifically in the matter of solemnizing, witnessing, and registering the act of marriage. This paper thus aims to present a comparison of customary law vis-à-vis national laws on marriage and its registration, and how their similarities and dissimilarities can be rendered to inform policy recommendations. The comparison is conducted through an extensive review of related literature, ethnographies, government policies and official reports from the Local Registrar's Offices in the Cordillera. The paper also reports that a good number of indigenous peoples still perform customary marriage ceremonies together with civil law and/or canonical weddings. The former is

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done in order to express their cultural values, and the latter to comply with stringent legal requirements for securing related official documents to be used in claiming state-sponsored benefits and privileges. In conclusion, issues surrounding the registration of customary marriages are discussed along with policy recommendations on how existing laws on marriage and its registration may be improved for the benefit of indigenous peoples.

KEYWORDS: customary law, marriage registration, Cordillera, indigenous peoples

The concept of marriage between two supposedly equal and consenting individuals has been debated on extensively among liberal theorists and advocates. This contested nature of marriage mainly rests on whether it is within the public or private domain. The debates over marriage and its "proper sphere" are also complicated by the question of the requisite acts that make a marital union valid or invalid. The notions of equality and consent between the parties to this conjugal act are also matters for dispute. It bears noting, however, that while much of what has been written on the subject of marriage remains arguable today, it is clear that the *context* of marriage, both in time and in space, generally defines what—in form and in substance—it might become.

This paper aims to present a comparison of customary law vis-à-vis national laws on marriage and its registration, and how their similarities and dissimilarities can be rendered to inform policy recommendations. The comparison will be conducted through an extensive review of related literature, ethnographies, government policies and official reports from the Local Registrar's Offices in the Cordillera. Primary data was gathered through key informant interviews with local government officials.

In this light, the authors hope the paper will contribute to the discussion, if not the clarification, of some issues about marriage in general, and about marriage practices among indigenous peoples (IPs) in the Cordillera Administrative Region (CAR) in particular. The paper will proceed to meet the following specific objectives in order to provide insights on how policies regarding marriage registration in the Philippines may be improved:

1. To discuss practices on marriage among the IPs in the Cordillera Administrative Region, Philippines;

2. To discuss national policies or state laws pertaining to the act of marriage;
3. To present similarities or dissimilarities between indigenous practices on marriage and the national policies or state laws in operation today; and
4. To identify issues and present recommendations to improve existing laws on marriage and its registration.

For a clearer understanding and analysis of issues on marriage based on indigenous customary law, which also falls within the jurisdiction of Philippine national laws, a discussion of the contending notions of marriage and its "proper sphere" will now be provided.

Perspectives on the "Proper Sphere" of Marriage

The Liberal Theory posits that men are created equally in faculties of mind, in desires, and even in their ability to harm another. In John Locke's Second Treatise of Government, it is through this notion of equality, along with the fundamental belief in freedom and reason, that men are understood to have the ability, and more importantly the right, to give consent. Consent is the foundation of the social contract which, in turn, is what legitimizes civil government and society.

In liberal thought, marriage is an act founded on the notion that two people voluntarily give their consent to marry one another. As such, Locke conceives of marriage as a contract, "[c]onjugal society [as] made by a voluntary compact between man and woman" which he also refers to as "the first society." Locke further argues that from "the first society" comes the society "between parents and children;" to which, in time, comes that "between master and servant" eventually forming what he calls the "political society." Given that marriage in Locke's theory serves as the foundation of "political society," he also argues that,

> … tho' it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation; yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common off-spring, who have a right to be nourished, and maintained by them, till they are able to provide for themselves (Second Treatise of Government, Section 78).

John Locke, therefore, draws attention to the chief purpose of marriage which is to procreate so that offspring may be born, raised and educated to become the citizens that would sustain the political society. The idea of marriage as a contract with the chief end of procreation, however, is not without controversy. On the one hand, to view marriage as a contract may imply that it is something negotiable and even dissoluble. To claim that its primary purpose is for procreation, on the other hand, may lead one to conclude that procreation is a legal obligation that must be fulfilled to maintain society (see McCready 2001). These contentions then bring us to the question of whether marriage belongs to the public or the private sphere. Is it a contract that warrants recognition, enforcement and perhaps even regulation by the state? Or is it a matter only between a man and a woman, and which should properly be located within the private realm?

These issues are presented with clarity and authority in the article of McCready (2001, 77), which "examines the liberal distinction between public and private spheres by analysing civil and conjugal society in the work of John Locke and John Milton." The article contributes firmly to the interesting debate about the "proper sphere" of marriage and its primary function in society. She argues, for instance, that Locke's conception of marriage as a contract presupposes the direct involvement of the state in the affair because "contracts are enforced by the civil government" (78). As such, marriage is therefore clearly within the public domain as it is "a contract, governed by civil law, for an end identifiable by all (91)." What McCready further argues is that although marriage is a private union between two free and consenting individuals, its "public function," which is to procreate, tends to limit individual liberty for the better good of society. In the context of Locke's theory, conjugal society is therefore undeniably subsumed under political society which is public, and not private, in nature.

John Milton, on the other hand, has a different view on marriage and its domain, as also explained by McCready. The author distinctly presents Milton's conception of marriage as a "conjugal fellowship" with "a fit conversing soul (98)" which is strictly the affair of the man and woman in the union and whose validity they alone can determine (90). This conjugal affair, McCready stresses, takes on a "natural power" in the form of "domestic liberty," which the social contract

cannot change or even interfere with. Further, she states that "because marriage affects and indeed is defined by one's innermost self, it is inherently outside the bounds of civil society (90)."

John Milton's conception of marriage (even divorce) as a private matter has two very important implications. The first is that the state can neither legally nor morally encroach on such "conjugal fellowship" which has been conceived and received by free and rational individuals. The second implication has to do with the dissolution of the marriage. If marriage is to be regarded as a private affair validated by consent as Milton suggests, McCready summarises its matter of course in the following passage:

> If they do not sense the "souls union and commixture of intellectual delight" (Divorce, p. 339) that marks a true marriage, then they were joined by "error" rather than God, and "there is no power above their own consent to hinder them from unjoining" (Divorce, p.328) [as quoted in McCready 2001:90].

A compelling account of the way the marriage contract is viewed within the context of seventeenth century English liberal thought is provided by Shanley (1979). The issue of whether the marriage contract can or cannot be dissolved, revoked or changed is disputed by the Royalists and the Parliamentarians during the Civil War years in England. Royalists are supporters of Charles I who used the analogy between marriage contract and social contract to argue for the preservation of the monarchy. Parliamentarians or those who supported the parliament's right to rebel against the tyrannical monarchy, on the other hand, have also used the issue of marriage to argue that self-preservation warrants severance of contract.

In the article, Shanley (1979, 79) presents first the royalist view of marriage as "in its essence both hierarchical and irrevocable." This view stems from the royalists' belief that when a woman, who is the follower, consents to marry a man, who is the union head, a "contract of submission" is consummated and her rights effectively ceded to the husband. A marriage contract based on the royalists' view, Shanley explains, is therefore life-long and unchangeable. The Parliamentarians disagree, of course, saying that "if a husband transgressed those limitations [on his power], his wife had a right to oppose him and in extremity to separate herself from him (83)."

As such, parliamentarians believe that the power of the dominant can be "limited and even broken" by the right of the aggrieved party to revoke consent.

What these debates over the nature, function, and even irrevocability of marriage reflect is the larger question of whether it is within the public or the private sphere. While contending arguments all have merit as matters for theoretical discourse, what is more important is to view the issue of marriage within domains that are defined not only by scholarship but by lived experience and living accounts of societies, such as in the particular case of indigenous communities that still have customary marriage practices. It is in this way that a finer understanding of marriage and its role in the community may be achieved in the proper context of societies either old or new.

Customary Marriage Practices in the Cordillera

During the pre-conquest period in Philippine history, Filipinos from Northern Luzon to the Visayas and Mindanao appear to have been practicing indigenous customary laws, which included marriage and the dissolution of marriage. These practices have been documented in early ethnographies on sixteenth century Philippine culture and society (see Scott 1994). These accounts were based on early Spanish contact with natives of the islands, and documented by Spanish missionaries, government officials, and voyager's ship chroniclers, among others. The introduction of Spanish laws and the Catholic religion to the subjugated lowland population outlawed customary marriage and divorce practices. The customary practice of pre-conquest Filipinos such as marriage and divorce were not sanctioned or recognized by the Spanish government, and were thus replaced by Spanish laws on marriage. For most of the more than three centuries of Spanish rule, marriages were solemnized exclusively by Catholic Church rituals, and thereby registered. However, the non-Christianized and non-hispanized Filipinos whom the Spaniards were unable to conquer over three hundred years continued to practice their indigenous marriage and divorce practices. One area where such tribal or customary practices are still observed is the Cordillera Region. After the Philippine-American War, under the American administration, "tribal" marriages were recognized for the first time, as will be discussed later in this paper.

Ethnographic sources usually refer to seven major groups when referring to inhabitants of the highlands of Northern Luzon or the Cordillera Region. These groups include the Bontok, Ibaloy, Ifugao, Isneg (Isnag), Tingguian (Itneg), Kalinga and Kankana-ey (see Kroeber 1943, 59-61; Eggan 1954, 1). For the most part, each ethnolinguistic group developed its own particular rituals and processes in relation to marriage and divorce. Nonetheless, some similarities may be discerned despite these differences.

Marriages in the Cordillera for the most part are monogamous. Polygyny is allowed among the wealthy Isnags in Apayao (Keesing 1962, 14; Smart 1967, 207; Schadenberg, 1975, 158; Wilson 1967, 35; Reynolds and Keyes 1973, 125-126) and the rich and powerful in Ifugao (Barton 1919, 12). Some cases of concubinage have also been noted in Kankana-ey society, and in some areas in Kalinga where *dagdagas* (mistress/paramour) relationships are allowed, as long as there is consent from either the wife or parents (de Raedt 1993, 44; Dozier 1966, 86).

Courtship and marriage are often free choices contracted between the young man and young woman. However, child betrothals, especially among the wealthy, may also be arranged by parents—these appear to be almost pan-Cordillera, as they have been noted among the Bontok (Jenks 2005, 68), Ibaloy (Prill-Brett and Ramos 1998, 8), Ifugao (Barton 1919, 19; Hoebel 1954, 110; Dulawan 2001, 8), Kankana-ey (Robertson 1914, 480; Moss 1920,239; Eggan and Scott 1988, 89; Bello 1972, 97) Tingguian (Cole 1908, 207), and Kalinga (de Raedt 1993, 37-38; Dozier 1966, 98). There is no mention of arranged marriages among the Apayao in the literature reviewed.

Marriage among the Cordilleran groups is characterized by the performance of rituals—some elaborate, and undertaken in several stages. It usually begins when the young man sends or brings a gift to the girl's household. If reciprocated, succeeding stages of the ceremony are conducted over a period of time. The wedding ceremony itself is celebrated publicly in the presence of the couple's kin groups and/or the public (community), which serve as witnesses to the wedding. Feasting occurs as well (see Cawed 1972, 25; Keesing 1962, 13; Dulawan 2001, 10; Hoebel 1954, 110; Cole 1908, 208; Robertson 1914, 476; Eggan and Scott 1988, 92; Dozier 1966, 102). Weddings do not always have a solemnizing officer, as specified by the Philippine Civil Code. The closest personality to the idea of an "official" position is

perhaps the *mambunong* of the Ibaloy (Moss 1920, 241; Bagamaspad and Hamada-Pawid 1985) or the *mumbaki* of the Ifugao (Dulawan 2001, 10). Otherwise, the ceremony is performed by *ato* elders among the Bontok (Cawed 1972, 25), or an old man among the Kankana-ey (Robertson 1914, 480). Among the Sagada Kankana-ey, a *manokgong* is chosen by the parents to officiate at the major wedding ritual during the *babayas* or public wedding feast (Eggan and Scott 1988, 100).

Divorce is part of the customary law of all the Cordillera ethnolinguistic groups. The most prevalent reason is childlessness (Cawed 1972, 26; Botengan 1976, 199; Moss 1920, 247; Scott 1969, 102; Dozier 1966, 106; De Raedt 1993, 40), mentioned in all areas except Apayao and Tingguian. Adultery, laziness on the part of the wife or husband, or physical abuse can also become grounds for divorce (Reynolds and Keyes 1973, 128). The continuous death of children is an acceptable reason among the Bontok (Keesing 1949, 587) and Ifugao (Barton 1929). More specific reasons have also been mentioned. For the Ifugao, both Barton (1919, 29-30) and Hoebel (1954, 111-112) mention, among others, bad omens read from the bile sac during any of the wedding rituals, inability or refusal to engage in sexual intimacy, transfer of spouse's property without consent, legal offenses by spouse's relatives, insanity, and neglect.

No specific ceremony seems to be performed among the Kalinga and the Apayao. For the Apayao, the divorce is finalized when the couple return to their household of origin or go their separate ways (Reynolds and Keyes 1973, 128). Among the Ibaloy, divorce is known as *besak* or *sijan* (Prill-Brett and Ramos 1998, 9). The divorce case is brought before the *tongtong* (council of elders) and is decided upon by community elders, followed by the performance of a *kafe* ritual (Prill-Brett and Ramos 1998, 10; Leano 1958, 90). Similarly, among the Tingguian, "divorce is settled before all the village elders who wish to be present (de los Reyes 2007, 49)." In the case of the Bontok, a consultation is held between the couple and their families before the marriage may be dissolved (Botengan 1976, 180). The divorce ceremony of the Ifugao is called *honga* and is performed by the couple whose divorce is due to mutual agreement. There are no ceremonies if the separation is not amicable (Barton 1919, 31). In terms of settlement of properties, spouses usually retain property they have inherited prior to the marriage and conjugal property is divided equally. In addition, for the Bontok, the house is left with the woman

(Jenks 2005, 70). Among the Ibalois, however, the spouse requesting for the divorce spends for the *kafi* ceremony and his or her share of the conjugal property goes to the children of the couple (Leano, 1958, 90). Children born of the union are given to the custody of the aggrieved spouse. However, if the guilty spouse is the wife with an infant, the decision of the elders is for the infant to stay with the mother (Prill-Brett, 1992). The Kankana-eys also consider the cause for divorce. If such cause is grave, land belonging to the guilty spouse will be given to the wife or husband (Bello 1972, 103).

Quite differently, sanctions especially for unfaithful wives among the Apayao may be in the form of heavy fines or even a death penalty for the wife and her lover (Wilson 1967, 35). Infidelity that is caught in the act is also punished by the Tingguians. The wedding gifts and conjugal property are given away or kept by the offended spouse (de los Reyes 200, 49).

Indeed, married life in these Cordilleran communities is governed by strong institutionalized customary practices. Moreover, such practices reflect a high regard for community recognition of the partnership not only of the couple but of their kin groups. Rituals and reciprocal exchanges performed during the "engagement" (pre-wedding) until the wedding itself often involve kin members or elders in the community. The same is true also in cases of marriage dissolution. A prominent element of such proceedings is the disposition of property to ensure that the aggrieved party and children are prioritized. The proceedings of the disposition are conducted by family or kin members or by village elders. Clearly, marriage and its dissolution fall within the rubric of what may be considered public affairs.

Current Issues in Relation to Customary Law

Marriages following custom law are still being performed up to the present. Data gathered from the National Commission on Indigenous Peoples (NCIP) shows that it has issued a total of 317 Certifications of Tribal Marriage (CTM) so far. About 40% of the 317 cases occurred in Benguet, while Ifugao registered about 25%, Kalinga 17% , Abra 11% and Mountain Province, 7% (although data from this province is not complete).

The earliest marriage that was given a CTM by NCIP was for one that took place in Bontoc, Mountain Province in 1911. The most recent marriage took place in Kalinga between a man from Abra and a Kalinga woman. The wedding, however, was not registered with the Local Civil Registrar Office (LCRO). The failure to register this wedding is not an isolated case. Of the 295 out of the 317 CTMs reviewed, only eleven weddings were registered with the Local Civil Registrar (LCR). In Ifugao, couples are even advised to go through a civil or religious ceremony in addition to the customary one, due to the perception that a CTM will not provide all the legal advantages of the former.

Another issue involves the requirements for a solemnizing officer. As mentioned earlier, not all ethnolinguistic groups have solemnizing officers. Weddings may be officiated by a *mambunong*, an *ato* elder or any old man in the village, or family members. The requirement to name a solemnizing officer cannot possibly be met in all customary marriages. Moreover, in places where a person can be licensed as one, the costs of application as well as renewal of the license are deterrents. Lastly, a more fundamental question raised is the question of why solemnizers have to be licensed, when the community in fact already recognizes their authority to officiate the marital union.

As for the case of divorce, a total of 96 "dissolved" marriages were reported to the LCRO from 2004 to 2012 (see Mendoza et al. 2012). Although the specific details and circumstances of these cases were not available for review or validation as a matter of courtesy to the private individuals involved, it is of note that there are IPs in the Cordillera who used their customary practice to undergo marriage dissolution or divorce. This act is evidently a point of interest, given that there is no recognized divorce law in the Philippines at present. To further the discussion on laws pertinent to the act of marriage in the Philippines, the following section thus presents the evolution of marriage laws and its registration in the country.

The Evolution of Philippine Marriage Laws and Registration

Philippine laws since the colonial period have framed marriage and its incidents as falling within the domain of public action. The social institution of marriage, together with its consequences, has been constantly regulated by the government. This is made manifest when the laws outline who and at what age individuals could

contract marriage. The law likewise provides the procedures for when one wishes to marry. The public nature of marriage is also made manifest in the laws on at least two occasions: (a) the requisite of a ceremony, and (b) the requisite of registration of the marriage bond. As regards the ceremonial obligation for contracting a marriage, the laws on this require at least the presence of a solemnizing officer as well as witnesses. In terms of the dissolution of marriage, the laws have also laid down the reasons and the manner in which marriage contracts are severed. The legal requirements imposed by the state on the marital institution strengthen the proposition that, insofar as the state laws are concerned, marriages are public acts and are thus subject to state regulation.

The succeeding discussions, however, will focus only on the ceremonial requirement of marriage as well as its dissolution and the subsequent registration of these acts, all in the context of substantiating the earlier claim that marriages are by law treated as public acts.

Ceremonial Requirements

During the Spanish period, marriages that were recognized by the state were those celebrated by the clergy following canon laws. For most, if not for all, the time that the Philippines was a dominion of Spain, the celebration of marriage was under the sole authority of the Church. The monopoly of the Catholic Church on this matter was even formally recognized by the Spanish government through a "Royal Cedula dated in Madrid, July 12, 1554" (Fisher 2005, 10). This edict proclaimed that "[t]he requisites, forms and solemnities for the celebration of canonical marriages shall be governed by the provisions of the Catholic Church and of the Holy Council of Trent, accepted as laws of the Kingdom."

Based on canon law, the celebration of marriage therefore starts with the banns announced by the priest, followed by the celebration of the marriage in the presence of at least two witnesses, with the priest solemnizing the formalization of such marriage (Report of the Philippine Commission, 1901). There were attempts, however, to temper this domination of the Church on matters regarding marriage, especially at the time when Spain began to embrace the principle of freedom of worship. The effort toward liberalizing this control of the Church first emerged with the passage of

the Law on Civil Marriage in 1870. This new edict required that "all marriages must be performed by the civil magistrate." However, due to opposition from the clergy as well as the consequent result of denying previous church-celebrated marriages, this law never held traction in the Philippines (Fisher 2005, 10).

To rectify the anomaly presented by the Marriage Law of 1870, the Spanish Civil Code of 1889 was passed. Under this law, two forms of marriage were recognized, namely the canonical marriage and the civil marriage. The former refers to marital celebrations following the requirements set forth by the Catholic Church, while the latter is performed using the rules embodied in the Code. The addition of the civil marriage on top of canonical marriage was also an inclusionary effort to capture marriages of those who do not subscribe to the Catholic faith.

Civil marriages under the Spanish Civil Code also required ceremonial requisites similar to canonical marriages. As such, civil marriages were administered through a solemnizing officer and witnesses as a matter of legal requirement. The only difference was that instead of a priest, it was the judge who was tasked to celebrate the marital bond.

Notwithstanding however the passage of the Spanish Civil Code and its publication in the Philippines, the provisions of the code pertaining to marriage were not implemented. This owes again to the strong resistance of the clergymen over the introduction of a new mode of conducting marriage ceremonies (Report of the Philippine Commission, 1901). As Fisher (2005, 10) declares: "[T]his rule of the canon law was the law of the land in Spain and its dominions. It was the law in the Philippines as long as the Spanish flag flew over the Archipelago."

During the American Occupation, General E.S. Otis issued General Order No. 68, which came to be known as the Philippine Marriage Law of that time. Like the previous laws on marriage, General Order No. 68 did not deviate from the framework of considering marriage to be subsumed in the public domain. However, the Americans' emphasis on the doctrine of the separation of the state and the church found its way into this marriage law. This separation is clearly observed in the Order's directive that "marriages may be solemnized by a judge of a court inferior to the Supreme Court, by a justice of the peace, or by a priest or minister of the gospel of any denomination" (Fisher 2005, 13).

It is equally noteworthy that General Order No. 68 is the first state law that gives recognition to tribal or customary marriages. Even if this law provides the list of solemnizing officers, General Order No. 68 however added a significant section giving validity to marriages under customary law. Section IX of the law provides:

> Sec. IX: No marriage heretofore solemnized before any person professing to have authority therefor shall be invalid for want of such authority or on account of an informality, irregularity or omission, if it was celebrated with the belief of the parties or either of them, that he had authority and that they have been lawfully married.

This law, which was promulgated during the American period, was passed as a way to resolve the irregularity of having so many illegitimate children who are citizens of the Philippine state. Similarly, it was likewise passed as a means to legally recognize the succession rights of a native couple's offspring.

It took some time, however, before Section IX of General Order 68 was completely recognized by the Philippine Supreme Court, which was then composed of both Filipino and American Justices. In the case of "United States vs. Tubban" decided by the high court on 10 February 1915, Tubban, a man from Kalinga, found his "wife" cavorting with another man. Out of rage, Tubban killed the paramour of his wife, and thereupon was convicted of murder. Tubban used as a mitigating circumstance the fact that he was a lawful husband of the unfaithful wife, and thus may not be convicted of murder. Unfortunately, the majority of the Supreme Court Justices decided that since the marriage of Tubban to his wife was celebrated under tribal customs, such marriage was not valid under national laws. As a consequence, Tubban could not use as his defense the provision of the penal code extenuating the criminal liability of a husband who kills his wife's paramour.

In the same case, Justice Moreland issued his dissent, arguing that tribal marriages are as valid as civil marriages. In his words:

> I cannot agree to the decision in this case. I believe article 423 of the Penal Code should be applied. The refusal of the court to apply it and the grounds on which that refusal is based completely wipe out the marriage relations among the wild tribes as an institution and make the relations between those who have married according to their tribal custom adulterous and their children illegitimate.

On 3 March 1922, in the case of "Adong vs. Cheong Seeng Gee," the Tubban doctrine was vacated. Justice Malcolm, who was the *ponente* of the decision, declared:

> In moving toward our conclusion, we have not lost sight of the decisions of this court in the cases of United States *vs.* Tubban ([1915]) and United States *vs.* Verzola ([1916]). We do not, however, believe these decisions to be controlling… In neither case, in deciding as to whether or not the accused should be given the benefit of the so-called unwritten law, was any consideration given to the provisions of section IX of General Order No. 68. We are free to admit that, if necessary, we would unhesitatingly revoke the doctrine announced in the two cases above mentioned.

With this declaration, the Supreme Court then began to recognize the marital bonds that were performed outside of the requirements of civil marriages. The recognition of customary marriages continued in the latter case of "The People of the Philippines versus Alfredo Rosil (alias Libat)," which was decided by the Supreme Court on 31 March 1932. Libat, a Tagbanua, killed his wife who had a paramour, and thereafter declared that he was entitled to an extenuating circumstance since the act was committed against his wife who maintained an illicit relationship. In an obvious departure from the Tubban doctrine, the Supreme Court agreed with Libat. The court through Justice Villareal stated:

> The above statement of fact, proven beyond a reasonable doubt at the trial, leaves no room for doubt that the accused was the one who caused the death of the deceased Tomasa Magalito, to whom he was married according to the rites of the tribe of Tagbanuas to which both of them belonged, which rites sanctioned said marriage according to the admission of the accused…

In his concurring decision, Justice Malcolm declared:

> This means, I take it, the definite abandonment of the doctrine announced in the case of United States *vs.* Tubban ([1915], 29 Phil., 434), and United States *vs.* Verzola ([1916], 33 Phil., 285), refusing to recognize a tribal marriage ceremony — a doctrine which this court has heretofore declined to follow in the civil case of Adong *vs.* Cheong Seng Gee ([1922], 43 Phil., 43)... Marriage relations of non-Christians are just as sacred

> and should be just as much respected as are the marriage relations of individuals settled in more advanced communities and adhering to recognized religions. With the understanding, therefore, that the decision means a complete reversal of the attitude adopted in the two cases previously referred to, I concur in the result.

The recognition of tribal marriage by the Supreme Court during the American period was not only utilized by the indigenous peoples in court cases, but also in administrative proceedings to facilitate migration to the United States. To illustrate, in the case of "Matter of Agbulos" decided by the United States District Director on 3 October 1969, Agbulos filed a visa petition for his daughter. As proof of lineage, the petitioner "submitted as evidence of his marriage to beneficiary's mother joint affidavits subscribed by two unrelated Filipinos attesting to the fact that petitioner and his wife were married in the year 1919 before a tribe of people in Macaoayan, Burgos, Ilocos Sur, Philippines" (Matter of Agbulos 1969, 1). Finding it to be in order, the Director approved Agbulos's petition. Thus during the American occupation, national laws and institutions acknowledged the legality of tribal marriages, notwithstanding that these matrimonies did not follow the requirement of civil marriages.

In 1930, the Philippine Congress with the support of the United States passed Act No. 3613. This law maintained the requirements of publicity as well as the recognition of customary marriages found in General Order No. 68. More specifically, Section 25 of the law explicitly validated marriages among "non-Christian tribes" performed under their rites.

When the Philippines gained independence, President Manuel Roxas issued Executive Order No. 48 on 20 March 1947 creating a Commission tasked to draft and codify the Civil Laws of the Philippines. What came of the commission was Republic Act No. 386, otherwise known as the Civil Code of the Philippines. The Code took effect on 20 August 1950. It included statutory provisions on marriage. Like the previous laws, this post-colonial civil law followed the basic premise of the public nature of marriages. Thus, the ceremonial requisites for contracting marital relations were also found in the law.

Although the 1950 Civil Code does not require a solemnizing officer, it expanded the individuals who are allowed to celebrate the marriage to include the Chief Justice

and Associate Justices of the Supreme Court, mayors of cities and municipalities, municipal judges, ship captains, airplane chiefs, military commanders, and consuls, among others. Prior to this, the solemnizing officers were limited only to the priest and/or the municipal judge. In addition, the Code included additional requirements that further ensured publicity of the act of marrying. Article 57 specifically provides the venue for the celebration of marriage as follows:

> Article 57: The marriage shall be solemnized publicly in the office of the judge in open court or of the mayor, or in the church, chapel or temple, as the case may be, and not elsewhere...

Under Article 77 of the Code, tribal marriages were also recognized. Permission to use customary law for marriages was allowed by the Code until 1980, after which it required that all marriages be celebrated using the rules on civil marriages.

After around three decades of implementation, calls for the revision of the 1950 Civil Code relative to the family started to surface. As such, in 1979, the Family Law Revision Committee was created by the Integrated Bar of the Philippines for the purpose of producing suggestions for the amendment of the laws on the family as ingrained in the 1950 Civil Code. Accordingly, this was to attune the old Civil Code to the changes and developments in Philippine society. The draft prepared by the Family Law Revision Committee was thereafter turned over to the Civil Code Revision Committee of the University of the Philippines Law Center. The Civil Code Revision Committee took until May 1987 to revise and finish the draft submitted by the Family Law Revision Committee. All in all, "the draft of the New Family Code was completed after extensive work done by the aforesaid two committees for a period of seven years and eight months, during which the two Committees held 182 meetings (Sempio-Diy 2003, xxx)."

Considering that the New Family Code was finalized at a time when the Philippines was still under a revolutionary government headed by President Corazon C. Aquino, the passage of the New Family Code did not go through a separate approval by the legislative department. As both the legislative and executive powers were then temporarily situated with the Office of the President, President Aquino issued Executive Order No. 209 which effectively passed the New Family Code of the Philippines on 6 July 1987.

Despite the amendments, the New Family Code and the 1950 Civil Code are both in accord in their treatment of marriage as a public act. In fact, the provisions of these two laws regarding the celebration and the venue of marriage only have linguistic differences. For instance, with regard to the celebration of marriage, Article 6 of the New Family Code provides,

> No prescribed form or religious rite for the solemnization of marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age, that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the solemnizing officer.

In the same manner, the New Family Code also proclaims that when it comes to venue,

> The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere... (Article 8).

As regards the solemnizing officers, the only difference between the 1950 Civil Code and the New Family Code is that under the latter law, the mayors as solemnizing officers are intentionally omitted. Sempio-Diy (2003, 11) explains that "the family code removed the authority of mayors to solemnize marriages, since experience has shown that most violations of the law on marriage were committed by these politicians in their desire to please their constituents." But when Republic Act No. 7160 otherwise known as the Local Government Code of 1991 was enacted, the authority of the mayors to solemnize marriages was re-instated. This obliterated the initial distinction between the 1950 Civil Code and the New Family Code on this matter. When it comes to the recognition of tribal marriages, however, the 1987 Family Code is bereft of any explicit provision recognizing this social institution.

Dissolution of Marriage

Like marriage contracts, the termination of marriage under Philippine laws is strictly regulated by the government. The law narrowly limits the available reasons before a marriage is severed. The process that one needs to undergo to have the marriage dissolved is also provided by the law. The state in fact jealously guards against consensual dissolution of marriage. Failure to fulfill these legal requirements means that the marriage is still considered valid and existent. The state regulation of the dissolution of marriage dates as far back as the Spanish colonial period.

When the Philippines was still under Spain, marriage dissolution was "governed by *Las Siete Partidas* and by the provisions of Canon Law and of the Council of Trent (Reyes 1953, 42)." Under these laws, absolute divorce was prohibited. Reyes (1953, 430) quoting Law 7, Title 2, Partida IV mentioned, "So great is the tie and force of marriage, that when legally contracted, it cannot be dissolved." What was allowed during the Spanish colonial period was legal separation. In this case, the husband and wife may be allowed to enjoy separate board and lodging and their properties may be separated, but neither is permitted to re-marry (Fisher 2005, 15).

The Spanish laws on dissolution of marriage were in effect in the Philippines until 1917 when the Philippine Congress enacted Act 2710 or the Divorce Law. The grounds for the severance of a marriage contract under the Divorce Law of 1917 rest on the principle of infidelity. Act 2710 allowed divorce when either of the married parties committed adultery or concubinage. However, the law likewise provided that before the married complainant can avail of this remedy, the other party should have been criminally convicted first of the crime of infidelity (Reyes 1953, 45; Fisher 2005, 20-21).

During the Japanese occupation, the Divorce Law was repealed and the Philippine Executive Commission issued "Executive Order No. 141 providing a new divorce law (Reyes 1953, 47)." The new divorce law eased the process for the termination of marriage. It did not only increase the possible grounds for divorce, but likewise removed the condition precedent that one of the married parties be first criminally convicted. Under this law, the basis for divorce included, among others, absence or desertion as well as "attempt of one spouse against the life of the other… loathsome contagious diseases… impotency of either spouse… [and]

repeated bodily violence…" However, this Japanese-sponsored divorce law was repealed at the end of World War II, which consequently resulted in the reinstatement of Act 2710 (Reyes 1953, 47-48).

It must be emphasized that it was only during the Japanese occupation when the most relaxed laws on absolute divorce operated in the Philippines. Taking advantage of this new law, numerous individuals filed for and were granted the benefit of divorce. Reyes (1953, 48) quoting the newspaper *Evening News* (21 July 1948) mentioned:

> Official judiciary figures reveal that in 32 years since 1916, when the stringent divorce law was passed, only 200 divorces were allowed by our courts. Divorce, under a liberalized divorce law promulgated by the Philippine Executive Commission during the Japanese occupation numbered 600.

When the 1950 Civil Code was legislated, a new rule on dissolution of marriage emerged. Act 386 provided for the laws on void and voidable marriages, as well as legal separation. Void and voidable marriage provided an effect akin to absolute divorce. As such, after judicial declaration of the termination of the marriage, the parties were allowed to marry again. In all these, the law provided for the grounds as well as the procedure that one needed to follow in order to terminate the marriage.

The provisions on the severance of marriage found in the 1950 Civil Code were repealed, however, by the New Family Code of 1987. Like the old code, the present laws on the termination of marriage retain the different kinds of defective marriages. The New Family Code categorizes these flawed marital relations into void, voidable marriages and marriages subject to legal separation. Under the new law, void marriages are those that are considered null and inexistent from the beginning, such that after judicial declaration of the severance of marital ties, it is as if no marriage ever took place. Voidable marriages, on the other hand, are those that are recognized as valid at the time of their celebration. But because of some legal grounds that only existed at the time of the subsistence of the marriage, the relationship is severed by the court (Sempio-Dy 2003, 38).

In addition, the New Family Code also lays down the grounds as well as the procedural requirement for the termination of marriage. In other words, even up to this date, the state still considers marriage dissolution as properly within the public sphere, thus being a subject of governmental regulation.

Registration of Marriages

The legal requisite that marriage contracts and dissolutions be registered with the government lends credence to the opinion that the law treats marriage and its consequences as not only limited within the private domain, but within the public sphere as well. In a more practical manner, the registration of the civil relations and civil statuses also serves varied purposes. Aside from the fact that it provides government agencies with the necessary data to determine the population of the state, registration likewise operates as one of the possible proofs of claiming citizenship, which in turn attaches the rights and responsibilities of the state to the individual and the individual to the state. In the Philippines, where the general rule that is applied for claiming citizenship is *jus sanguine,* the registration of one's marriage and/or birth can provide the necessary proof for state membership.

A survey of the laws on marriage reveals that since the Spanish period, registration of marriage recognized by existing laws of the time was consistently practiced. For example, during the Spanish colonial period, marriages were registered with the Parish Registry (Report of the Philippine Commission, 1901). However, since marriages were only allowed under canonical laws, only those that were celebrated by the Catholic were registered in the parishes.

With respect to the registration of marriage with the government, it was only with the passage of the Spanish Code of 1889 that these canonical marriages were required to be registered with the government through the *Direccion General de Administration Civil* (Art. 329). This registration requirement was implemented, notwithstanding the fact that the provisions on marriage in the Spanish Code of 1889 were not enforced.

During the American period, registration of civil marriages was likewise observed. On 31 January 1901, the Philippine Commission passed Act No. 82, designating the municipal secretary "to keep a civil registry and shall record all ….

marriages with their respective dates… [H]e shall further record the previous residences of contracting parties, the name of the person solemnizing the marriage and the names of the witnesses."

Finally, on 26 November 1930, the Philippine Congress passed Republic Act No. 3753 or the Law on Registry of Civil Status, which is still the prevailing law of the land regarding civil status registration. This law mandates that solemnizing officers forward a copy of the marriage contract to the local civil registrar, as stated in Section 7 of the Act.

Aside from this, Republic Act 3753 also requires the registration of "annulment of marriages and divorces (Section 1)." Indeed, the laws strictly provide for the requirements of what is to be considered as a valid marriage, as well as a valid dissolution of marriage. But aside from setting forth the regulatory mechanism, the laws likewise ensure that knowledge on a couple's marriage is not confined to the contracting parties only. The laws demand that such contract be announced to a wider audience. The public announcement is made through the legal requisite of a ceremony and registration. In the Philippines, the public nature of a marriage is thus observed not only because the government regulates this contract, but also because the laws require the marriage to be made public.

Comparison between Customary Law and National Law

A review of the customary law and the national law on marriage would seem to indicate that both spheres underscore the public nature of marriages. In the case of customary laws, wedding ceremonies are publicized. The "public" involved in the ceremony, however, differs from case to case. In one instance, only the kin groups are in attendance; in another, the whole community is present. The same publicity is also required under national laws, which is seen when the state requires at least two individuals to witness the celebration.

With respect to the presence of a solemnizing officer, customary law practices are not clear on the requirements of who should officiate at the marriage ceremony. Historical accounts note that in most weddings under customary regime, one or more individuals may officiate at the wedding ceremony. On the other hand, the national laws have clearly indicated that civil marriages are necessarily celebrated by a

solemnizing officer. The difference, however, between the customary practice and the national law is that the latter strictly limits the authorities who are allowed to perform the solemnities of the marriage. As such, a civil marriage cannot be validly solemnized by just any individual. Where national law imposes formal and strict qualifications on who can solemnize marriages, solemnizers under customary law are determined not by formal legal prescriptions but by cultural values and norms.[1] This difference, however, does not appear to be too significant, given that marriage is indeed "solemnized" by a third party under the national law and even in customary law.

One point of interest is the fact that during Spanish colonial period, tribal marriages were totally unrecognized, rendering all children of those who married under customary law illegitimate. This was likewise the case during the incipiency of the American occupation (see US vs. Tubban), despite the existence of General Order No. 68 promulgated on 18 December 1899. The government, however, began recognizing tribal marriage starting in 1922, with the seminal Supreme Court decision penned by Justice Malcolm in the case of Alfredo Rosil (alias Libat).

Nonetheless, when one uses the requisite of witnesses and solemnizing officer to compare customary marriage practices from civil marriages, there appears to be no strong disjunction between the two. In principle, thus, there should be no difficulty in finding a common ground between customary law and national law when marriage is viewed in this context. This is because both regimes treat marriages to be situated within the public domain.

On the matter of dissolution of marriages, there are basic divergences between customary and national laws. The common reason for termination of marriage that keeps appearing under customary dissolution of marriage is "barrenness" or "infertility." This magnifies the importance of children under indigenous practices, because under customary laws, the presence of prospective heirs as well as the guarantee of security during old age is given primacy. This ground does not resonate in state laws, from the time of the Spaniards to the present, with the exception of the Divorce Law during the Japanese Occupation. During the war, the Divorce Law—which was passed under the guidance of the Japanese—included "impotency on the part of either spouse" as possible grounds for divorce (Reyes 1953, 47). Such provision, however, is conspicuously absent in all other national laws regarding the dissolution of marriages.

Aside from this, the disparity between customary law and national law with respect to termination of marriage is seen in the degree of its publicity. Under indigenous laws, the process of marriage dissolution is not made very public, except in cases where a third party is involved (e.g. adultery) or grave offences are committed (e.g. physical violence). Under national laws, the requirements for dissolving a marriage are also more stringent than those that are needed to enter into the contract of marriage. To terminate a marital relationship, state law requires that one must undergo public trial before the courts (see Act 2710, RA 386 and EO 209). To show further the extent of the state's involvement in the dissolution of marriages, EO 209 requires that the Solicitor General must appear as the lawyer of the government in all proceedings where termination of marriage is being sought.

Similarly, when it comes to the requirement for marriage registration and its dissolution, customary laws and national laws are situated on opposite poles. Under customary law, marriage is essentially witnessed by those who participated in the wedding feast. It is therefore in the collective memory of the kinfolk or community members who participated in the feast that the marriage is "registered". As formal documents are neither available nor required in the community, putting the contract of marriage into writing has not become a practice. Compare this with the condition imposed under national laws where all civil marriages need to be entered into the civil registry in order to be recognized by the state. The lack of registration in government agencies of customary marriages limits the breadth of recognition of these bonds. Because of non-registration, customary marriages are recognized only within the confines of the community where the marriage took place. On the other hand, civil laws that are properly registered are recognized within a wider public space.

This lack of registration of customary marriages, however, is not a new issue. As far back as the 1930s, the Americans were faced with the same dilemma. As Keesing and Keesing (1934, 146-147) observed:

> One regret, however, on the part of both the officials and the missionaries is that the new marriage law failed to provide for the compulsory registration by natives of their law marriages, as is now done with births and deaths, thus giving the first element of control.

With the passage of the Indigenous Peoples' Rights Act (IPRA), there are ongoing efforts to facilitate the registration of customary marriages under the national civil registration system. For instance, the National Commission on Indigenous Peoples (NCIP) issued Administrative Order No. 1, Series of 1998, which mandates the registration of human relations established under customary laws. The Office of the Civil Registrar General (OCRG) of the Philippines, in line with such directive arising out of the IPRA, issued Administrative Order Number 3, Series of 2004. This directs the offices under the National Statistics Office (NSO) and the OCRG to register marriages, their dissolution, and births and deaths among indigenous peoples in the Philippines.

Taking off from the premise that both customary practice and national laws regard marriage to be of public nature, it could thus be assumed that the registration of customary marriages should not be much of an issue among indigenous peoples. Unfortunately, however, in a survey among the LCRs in CAR conducted in the study of Mendoza et al. (2012), it was found that registration of customary marriages has been dismal. Such less-than-ideal state of customary marriage registration in the region could be attributed to various factors, as will be discussed in the next section of this article.

Issues Surrounding Registration

One of the serious problems faced by the registration of native marriages refers to the poor usage of the Registry Form specifically drawn for this purpose, as indicated during interviews with Local Civil Registrars and NCIP field officers of the Cordillera Administrative Region. For instance, one NCIP Field Officer claims that the form is not attached to the civil registration forms in Ifugao. In a related incident, the announced guidelines on registration (see City of Baguio official website link) in the City of Baguio do not even mention anything related to AO 3.

This indifference, or perhaps hesitation, toward the use of this Registry Form in the region could be affected by multifarious reasons. For one, the Registration Form for customary marriages is different from that which is widely used by non-IPs. This, accordingly, may emphasize the "difference" of the indigenous peoples

from the rest. Similarly, the minimal use or even non-use of the form appears to be intricately related with the conflicting interpretation of the provisions of AO No. 3. For example, one Local Civil Registrar claims that the form is specifically for late registrants only, and does not apply to those who are being registered within the prescribed period under the rule. This seeming confusion does not help in the proper implementation of the registration procedure.

One issue mentioned earlier which deters the registration of customary marriages relates to that which concerns solemnizing officers. For the National Statistics Office (NSO), the recognition of a solemnizing officer is a requirement. Since there are indigenous communities where the ceremony is solemnized not by one solemnizing officer but by the collective or by several individuals, there is confusion as to who would then be recognized as the "solemnizer" of the marriage ceremony. This may lead to a creation of an imagined sole solemnizing officer when there is none, based on some customary laws. In the same manner, there is a persistent question regarding the need to be licensed, when in the first place these persons have long been recognized by the community as the "solemnizers" in the case of marriage rituals. Aside from this, the prospective licensed solemnizing officers are discouraged from applying for a license because of the costs entailed as well as the inconvenience of license renewal.

One legal challenge may also be raised with regard to the act of calling or requiring a so-called "solemnizing officer" under customary marriages. Under Article 7, Chapter I of the Family Code, only the following individuals are authorized to solemnize marriages:

Art. 7. Marriage may be solemnized by:

(1) Any incumbent member of the judiciary within the court's jurisdiction;

(2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of written authority granted him by this church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

(3) Any ship captain or airplane chief only in the cases mentioned in Article 31;

(4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during military operation, likewise only in the cases mentioned in Article 32; or

(5) Any consul-general, consul or vice-consul in the case provided in Article 10.

Note that the Family Code does not include solemnizing officers as may be determined under customary laws. However, it could be noted that the Local Government Code (LGC) has expanded this list of solemnizing officers by granting the local chief executives, more particularly the mayors and governors, the right to officiate marriages.

Notice however that the LGC is one that was properly passed by the legislative mill of the Philippines. In effect, since it is the same governmental branch that made this expansion of the list, such amendatory act is considered valid because the branch can change its own acts. This, however, appears to be different in the case of "solemnizing officers" under customary law. As a reminder, it is AO No. 3 of the OCRG that finds and subsequently recognizes indigenous "solemnizing officers." Note that the OCRG falls within the executive branch of the government. As such, it could not possibly expand the list provided by the law since such act is the sole authority of the legislative department.

Considering these various issues surrounding the registration of customary marriages, a good number of indigenous peoples perform indigenous ceremonies together with the civil law and/or canonical weddings. The former is done in order to express their cultural values, and the latter to comply with stringent legal requirements for getting related official documents such as passports, Phil Health, GSIS or SSS IDs, and also claiming social benefits like pensions, insurance and inheritance. What is being registered in the end, however, is the marriage under civil or church wedding, making it appear that no customary marriage is performed when in fact this practice still exists. It must be said, though, that by continuing to practice customary wedding rituals, the IP communities are asserting the importance and relevance of traditional values and social structures in their lives, despite changes brought about, in this case, by the imposition of state policies.

Conclusion

The recognition of customary marriages in the Philippines is not something novel. During the American occupation, marriages under customary laws were already recognized by the government. However, registration of these native ceremonies was a challenge faced by the Americans during their occupation. At present, what adds difficulty to the registration of customary marriages is the policy of the government to expect that a solemnizing officer is present during the celebration of customary marriages. It is of importance to be reminded of the provision of General Order No. 68 issued by Gen. Otis in 1899 which provides that the authority of a solemnizing officer is of no consequence so long as, under traditional rules, the couple is recognized by the community to be married. In effect, government agencies today should consider refraining from requiring and licensing indigenous "solemnizing officers" as precondition for the recognition, as well as the registration, of marriages under customary law.

It must be noted though that at present, there are probably more cases of couples getting married either through civil and/or church ceremonies, but combined with customary rituals. The customary wedding is crucial for community recognition and is still necessary in the highland villages, while the civil and/or church wedding may be an offshoot of exposure to more mainstream practices. Moreover, as noted earlier, registration of civil or canonical weddings enable the spouses to secure the legal documents necessary to access institutional services.

Couples who opt for a customary marriage ceremony should therefore be assisted in the registration of their wedding. This, too, is not a new creation as there is a directive to NCIP officials to assist LCRs in this area. NCIP Administrative Order No. 1, Series of 1998 clearly states:

> Section 8 (Rule VI): **Recognition of Customary Laws and Practices Governing Civil Relations –** Marriage as an inviolable social institution shall be protected. Marriages performed in accordance with customary laws, rites, traditions and practices shall be recognized as valid. xxx Accordingly the NCIP shall coordinate with the Office of the Civil Registrar General (OCRG) to establish an appropriate procedure for the registration of marriages performed under customary laws xxx.

In the end, the issues surrounding the registration of customary marriages should not be a source of difficulty for indigenous peoples to gain recognition of the validity of their marriage and to claim access to services provided by law. Although there are differences in form, customary marriages, like civil or canonical marriages, are located within the public sphere. The requirement for witnesses is more than adequately satisfied when such ceremonies are performed and celebrated with the couple's kin or community. It has also been noted that such weddings are officiated by individuals or groups recognized by the community. As such, the only problem in registration lies in the requirement to name only one individual as the officiant, deterring IPs whose marriages are solemnized by more than one person from registering their marriage with the LCRO.

On the other hand, a major difference between the national law and customary practice is evident with regard to the dissolution of marriage. At present, the state recognizes only annulment and legal separation as bases for termination of a marriage. In the IP communities, divorce is an accepted part of the marriage process, and marriages can be terminated to allow the living spouse to remarry, especially if the cause of divorce is barrenness. The proceedings of divorce are more private in nature, unless offenses involve other parties, or are quite grave. Moreover, acceptable reasons are guided by principles that are located within the unique cultural contexts of each ethnolinguistic group. Nonetheless, since divorce is not an option for those married through civil or canonical rules, the complications arising from cases where a couple is married through both customary and civil/church ceremonies need to be further studied. What does divorce using customary practice imply for the marital relationship from the perspective of national law? Such a situation invites a re-examination of the private or public nature, in this case, of the termination of marriage.

Recommendations

On the Conferment of Substantial Civil Rights to IPs

1. Considering that the law is very restrictive on who are authorized to solemnize marriages, the venue of the marriage ceremony and other required conditions for the validity of a marriage, there is difficulty in ensuring that marriages under customary law are recognized under the existing legal framework. The NCIP has issued an order which claims that "[m]arriages performed in accordance with customary laws, rites, traditions and practices shall be recognized as valid (Sec. 8, Rule VI, A.O. No. 1, S. 1998)." However, a strict consideration of this directive would fall short of the requirement of the laws for its complete implementation. For one, this directive is issued merely by an administrative body and not by the legislative branch of government. Likewise, the Family Code that provides the requirements for a valid marriage does not mention any reference to marriages under customary laws. Note too that the IPRA is not explicit on the matter of customary marriage. In other words, what gave life to the "validation" of customary marriages is an Administrative Order of the NCIP. Putting a clear legislative act side by side with an administrative order, the former would definitely override the latter. It is therefore proposed that a clear legislative act that clearly recognizes and makes valid customary marriages should be passed.
2. Another related problem that appears to be experienced by the indigenous peoples regarding the institution of marriage is that which relates to divorce. Under customary practice, divorce due to barrenness is allowed. Infertility, however, has never been included in any government-issued laws, except for the Divorce Law that was passed during the Japanese Occupation. It might therefore be worth considering a separate legislative action on the recognition of customary law relating to the severance of marriage ties.

On the Registration of the Marriage Contract and Its Dissolution

1. Pending legislative action on the customary marriage institution mentioned above, government institutions could still work under the existing administrative order issued by the NCIP. A major paradigm shift, however, seems to be needed. For instance, government agencies today should refrain from imposing too rigid standards in determining whether customary marriages can be registered or not. Rather, government institutions, when recording native marriages, should ascertain the truth of such marriage using anthropological methods in close coordination with the NCIP.
2. Proper and effective implementation of Administrative Order No. 1 Series of 1998 "to establish an appropriate procedure for the registration of marriages performed under customary laws" must be ensured. Moreover, couples who opt for a customary marriage ceremony should therefore be assisted in the registration of their wedding.
3. As noted, couples now tend to go through both customary and civil or canonical marriage ceremonies as a means to address the cultural expectations in their community, and the practical and legalistic benefits acquired through formal marriage procedures. This implies that customary ceremonies are perceived to be not "legal," thus disenfranchising couples from enjoying the benefits of formal marriages. To remove such confusion and perhaps discrimination, the information required in the additional registry form (Mun. Form 97-IP Form No. 3) should be incorporated in the Certificate of Marriage Form, effectively making the form standard for both customary and formal marriages.

The recognition of customary marriage practices should not simply end in its formal registration by state agents, but in the acceptance of the general population of the cultural norms and practices of our indigenous peoples. This can be achieved if such norms and practices are more comprehensively and widely disseminated and understood.

Note

1 Among the Bontoc, Southern Kalinga and Northern Kankana-ey, the one who officiates the marriage must be an elder who is "not dirty" (*kadudugis*), meaning one who has never committed adultery and who has never lost a family member through violent death.

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INTERVIEWS

Interview with NCIP Field Officers of Ifugao and Benguet. 20 September 2012. Rajah Soliman Hotel, City of Baguio.

Interview with the Local Civil Registrar of Tublay Benguet. 2012. Municipal Hall, Tublay, Benguet.

Interview with the National Statistics Office (NSO) Provincial Statisticians from the Cordillera Administrative Region. 07 June 2012. NSO Office, City of Baguio.

Annexes

Municipal Form No. 97 (IP Form No. 3)
(Revised January 2004, attachment)

Province _____ Registry No. _____
City/Municipality_____

DATE OF MARRIAGE (Day) (Month) (Year)	MARRIAGE ORDER (whether first, second, etc) Husband:_____ Wife:_____
AMOUNT OF DOWRY Cash _____ Others (specify) _____	OTHERS STIPULATIONS TO THE MARRIAGE
CONTRACTING PARTIES: HUSBAND	WIFE
Signature: _____ Printed Name: _____	_____ _____
ETHNIC AFFILIATION OF THE HUSBAND	ETHNIC AFFILIATION OF THE WIFE

OATH OF SOLEMNIZING OFFICER

I, _____, solemnizing officer, do solemnly swear:

☐ That I have ascertained the qualifications of the contracting parties and have found no legal impediment for them to marry as required by Art. 34 of the Family Code;

☐ That this marriage was performed in articulo mortis;

☐ That the residence of one or both of the contracting parties: barangay/barrio/sitio _____ (and) _____, is so located that there is no means of transportation to enable the concerned party/parties to appear personally before the civil registrar;

☐ That the marriage was among Muslims or among members of the ethnic cultural communities, provided the marriage was solemnized in accordance with their customs or practices;

And that I took the necessary steps to ascertain the ages and relationships of the contracting parties and that neither of them are under any legal impediment to marry each other.

_____
Signature of Solemnizing Officer

SUBSCRIBED AND SWORN *to before me this* _____ *day of* _____, _____, *who exhibited to me his Community Tax No.* _____ *issued on* _____ *at* _____.

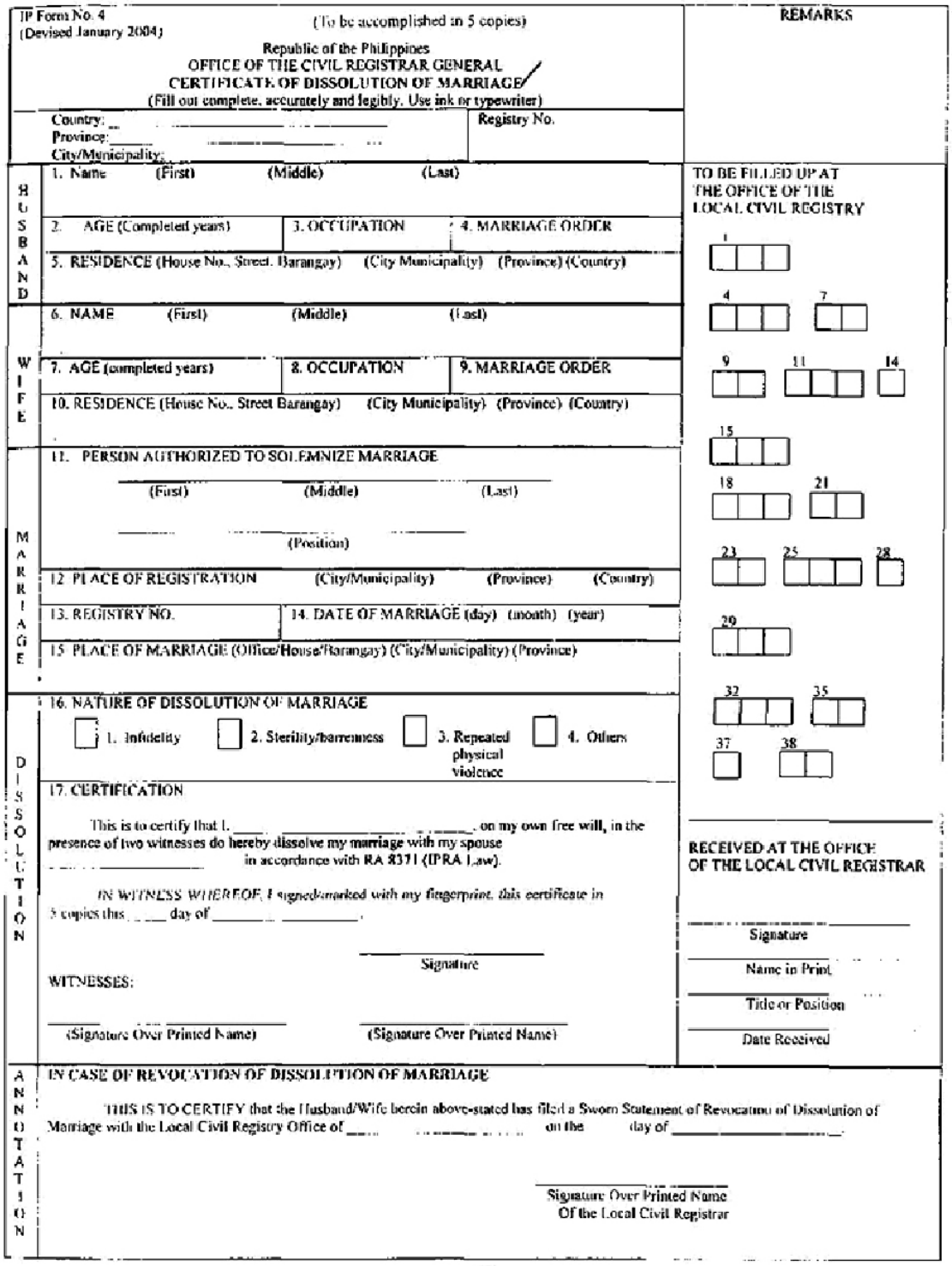
Doc. No. _____
Page No. _____
Book No. _____
Series of _____

_____
Signature over Printed Name of Administering Officer whose Commission Expires on _____

NOTE - In case of a marriage on the point of death, when the dying party, being physically unable, cannot sign the Instrument by signature or mark, it shall be sufficient for one of the witnesses to the marriage to sign in his name, which in fact shall be attested by the person solemnizing the marriage as follows:

I HEREBY CERTIFY that the contracting party _____ being on the point of death and physically unable to sign the foregoing marriage contract by signature or mark, one of the witnesses to the marriage signed for him or her by writing the dying party's name and beneath it, the witness' own signature preceded by the preposition 'By'.

_____
Signature and Printed Named of Solemnizing Officer



JP Form No. 4
(Devised January 2004)

(To be accomplished in 5 copies)

Republic of the Philippines
OFFICE OF THE CIVIL REGISTRAR GENERAL
CERTIFICATE OF DISSOLUTION OF MARRIAGE
(Fill out complete, accurately and legibly. Use ink or typewriter)

Country: _____
Province: _____
City/Municipality: _____

Registry No.

REMARKS

HUSBAND

1. Name (First) (Middle) (Last)

2. AGE (Completed years) | 3. OCCUPATION | 4. MARRIAGE ORDER

5. RESIDENCE (House No., Street, Barangay) (City Municipality) (Province) (Country)

WIFE

6. NAME (First) (Middle) (Last)

7. AGE (completed years) | 8. OCCUPATION | 9. MARRIAGE ORDER

10. RESIDENCE (House No., Street Barangay) (City Municipality) (Province) (Country)

MARRIAGE

11. PERSON AUTHORIZED TO SOLEMNIZE MARRIAGE

(First) (Middle) (Last)

(Position)

12. PLACE OF REGISTRATION (City/Municipality) (Province) (Country)

13. REGISTRY NO. | 14. DATE OF MARRIAGE (day) (month) (year)

15. PLACE OF MARRIAGE (Office/House/Barangay) (City/Municipality) (Province)

DISSOLUTION

16. NATURE OF DISSOLUTION OF MARRIAGE

☐ 1. Infidelity ☐ 2. Sterility/barrenness ☐ 3. Repeated physical violence ☐ 4. Others

17. CERTIFICATION

This is to certify that I, _____, on my own free will, in the presence of two witnesses do hereby dissolve my marriage with my spouse _____ in accordance with RA 8371 (IPRA Law).

IN WITNESS WHEREOF, I signed/marked with my fingerprint, this certificate in 5 copies this ____ day of _____.

_____
Signature

WITNESSES:

_____ _____
(Signature Over Printed Name) (Signature Over Printed Name)

TO BE FILLED UP AT THE OFFICE OF THE LOCAL CIcivil REGISTRY

1 ☐☐☐ 4 ☐☐☐ 7 ☐☐ 9 ☐☐ 11 ☐☐☐ 14 ☐ 15 ☐☐☐ 18 ☐☐☐ 21 ☐☐ 23 ☐☐ 25 ☐☐☐ 28 ☐ 29 ☐☐ 32 ☐☐☐ 35 ☐☐ 37 ☐ 38 ☐☐

RECEIVED AT THE OFFICE OF THE LOCAL CIVIL REGISTRAR

_____
Signature

_____
Name in Print

_____
Title or Position

_____
Date Received

ANNOTATION

IN CASE OF REVOCATION OF DISSOLUTION OF MARRIAGE

THIS IS TO CERTIFY that the Husband/Wife herein above-stated has filed a Sworn Statement of Revocation of Dissolution of Marriage with the Local Civil Registry Office of _____ on the _____ day of _____.

_____
Signature Over Printed Name
Of the Local Civil Registrar

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Devised January 2004)

Registry No. _____

Republic of the Philippines
STATEMENT OF REVOCATION OF DISSOLUTION OF MARRIAGE

O : _____
(Full Name of Spouse)

I hereby revoke the Dissolution of Marriage which was registered under Registry Num
_____ on the _____ day of _____ at the Local Civ
egistry Office of _____ and thereby reconcile with you as my
ouse.

Let this Statement be filed with the above-mentioned Civil Registry Office pursuant to
371 (IPRA Law).

IN WITNESS WHEREOF, I hereby sign (or mark with my fingerprint) this Statement
_____ day of _____ at _____, Philip

_____
Signature Over Printed Nam

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing Statement has been filed with this
the _____ day of _____ pursuant to RA 8371 (IPRA Law) and sh
notated in the Certificate of Dissolution of Marriage registered at the Local Civil Registry O
_____, _____ under Registry Number _____.

_____
Signature Over Printed Name
Of the Local Civil Registrar