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## THE INDIGENOUS PEOPLES RIGHTS ACT

In October 1997, then President Fidel V. Ramos signed into law RA 8371, the IPRA. This legislation lays down the legal framework for addressing indigenous peoples' poverty. It seeks to alleviate the plight of the country's "poorest of the poor" by correcting, by legislative fiat, the historical errors that led to systematic dispossession of and discrimination against indigenous peoples. The Implementing Rules and Regulations (IRR) of IPRA were approved on 9 June 1998.

The IPRA law enforces the 1987 Constitution's mandate that the State should craft a policy "to recognize and promote the rights of indigenous peoples/ICCs within the framework of national unity and development,"<sup>31</sup> and "to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being."<sup>32</sup>

### KEY ELEMENTS OF THE INDIGENOUS PEOPLES POLICY

The IPRA provides that development programs, projects, and activities must be developed along the fourfold agenda of recognition and protection of ancestral domain/land rights, self-governance and empowerment, cultural integrity, and social justice and human rights.

#### Right to Ancestral Land/Domain

The law restores the rights of indigenous peoples over their ancestral lands and ancestral domains. The term *ancestral land* under the IPRA refers to lands occupied by individuals, families, and clans who are members of indigenous cultural communities, including residential lots, rice terraces or paddies, private forests,

swidden farms, and tree lots. These lands are required to have been "occupied, possessed, and utilized" by them or their ancestors "since time immemorial, continuously to the present." (Section 3 b).

Ancestral domains are defined as areas generally belonging to indigenous cultural communities, including ancestral lands, forests, pasture, residential and agricultural lands, hunting grounds, worship areas, and lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators. Ancestral domains also include inland waters and coastal areas and natural resources therein. Again, these are required to have been "held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present." (Section 3 1).

The law enumerates the rights of indigenous peoples over their ancestral domains/lands. These are the right of ownership over the ancestral lands/domain, right to develop and manage lands and natural resources, right to stay in territories and not to be displaced therefrom, right to regulate entry of migrants and other entities, right to safe and clean water, right to claim parts of reservations, and right to resolve conflicts according to customary law (Sections 1-8, Rule III, Part II).

Indigenous peoples also have the right to transfer (ancestral) land or property among members of their community, and to redeem those that have been acquired from them through fraudulent transactions (Sections 1, 2, Part III).

The law also stipulates that the indigenous peoples and their communities have the responsibility to maintain ecological balance, restore denuded areas, and "adhere to the spirit and intent of the Act."

## Right to Self-Governance and Empowerment

The IPRA upholds the right of indigenous peoples to self-governance and empowerment. The IRR further define the range of the exercise of these rights. These are the right to pursue their economic, social, and cultural development; to use commonly accepted justice systems, conflict resolution mechanism, peace building process, and customary laws; to participate in decision making; to maintain and develop indigenous political structures; to have mandatory representation in policymaking bodies; to determine their own priorities for development; to establish their tribal *barangay* (village) and equivalent voting procedures; and to organize people's organizations.

Indigenous peoples may now also utilize a vital instrument for their empowerment—the principle of free and prior informed consent (FPIC). Section 3, Part III of the IPRA states that

*The [indigenous peoples] shall, within their communities, determine for themselves policies, development programs, projects and plans to meet their identified priority needs and concerns. The [indigenous peoples] shall have the right to accept or reject a certain development intervention in their particular communities.*

*The indigenous peoples' decision to accept or reject a proposed policy, program, or plan shall be assessed in accordance with their development framework and their value systems for the protection of land and resources.*

## Right to Cultural Integrity

The IPRA and its IRR put forward procedures and mechanisms for the recognition of indigenous peoples' right to cultural integrity. They incorporate such provisions as the constitutional and legal framework for the right to cultural integrity, the conceptual framework for cultural integrity, the specific rights pertinent thereto, and the procedures for the recognition of these rights, including the right to indigenous culture, customs, and traditions; right to establish and control educational learning systems; recognition of cultural diversity; right

to name, identity, and history; community intellectual rights; protection of indigenous sacred places; right to protection of indigenous knowledge; and the right to science and technology.

## Social Justice and Human Rights

Recognition of and respect for fundamental human rights are also safeguarded by the IPRA. The law contains specific provisions that ensure that indigenous peoples, just like other human beings, will enjoy these rights: the right to life, development, and civil liberties; political rights; freedom of association; nondiscrimination; equal protection; and right to peace and social justice.

The law guarantees indigenous peoples' right to basic social services. The indigenous peoples have the right to employment, vocational training, housing, sanitation, health, social security, infrastructure, transportation, and communication.

## THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES

The IPRA, following a constitutional mandate (Art. 16, Sec. 12), created the NCIP as "the primary government agency for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and their ancestral domains as well as their rights thereto."<sup>33</sup>

The IRR spell out the procedures for the organization of the NCIP, including its creation, agency, composition, appointments, qualifications, tenure and compensation of personnel, appointment of Commissioners, powers and functions, and ethics and codes of conduct of its officers and various offices.

The IRR also define procedures to institutionalize indigenous peoples' participation in the NCIP through a Consultative Body as provided in Sec. 50 of the IPRA. A placement committee will oversee the merger of the Office of Southern Cultural Communities and the Office of Northern Cultural Communities in the NCIP organizational structure.

## Implementation of the Indigenous Peoples Rights Act

Four years after the enactment of the IPRA, stakeholder assessment of its implementation yields dismal results. The NCIP, the government body that is mandated to implement the law, has been unable to perform its tasks well. Participants at the Orientation-Planning Workshop for the New NCIP Commissioners, held on 22–25 August 2001 at Tagaytay City, assessed the current status of NCIP as follows.

- Lack of clear leadership has led to the absence or nonperformance of NCIP's policymaking and adjudication functions as well as coordinated delivery of basic services.
- NCIP's present structure and staffing have hampered the institution from carrying out its functions.
- NCIP officials are by and large not qualified or equipped with the necessary skills for NCIP to meet its mandate under the IPRA.
- There were indications that the processes of issuing titles and certificates to allow mining and other activities have been compromised if not corrupted.
- Past policies and decisions have been detrimental to the operations of NCIP and these should be identified and changed to better serve indigenous peoples.<sup>34</sup>

A concrete manifestation of NCIP's weakness has been the slow pace of processing and approval of Certificate of Ancestral Domain Title (CADT)/Certificate of Ancestral Land Title (CALT) applications. As of February 2001, the NCIP national office had approved only 9 of the 181 CADT applications, and 347 CALT applications. The Tagaytay workshop findings validate numerous reports of alleged irregularities in the issuance of CALTs.<sup>35</sup> These reports claimed that several CADT/CALT applications were haphazardly approved, and did not go through the procedures mandated by the law.

In September 1998, a Presidential Task Force on Ancestral Domains (PTFAD) was established. The PTFAD

was assigned to study the issues related to the composition, administrative set-up, and operations of NCIP. The memorandum also directed the Department of Budget and Management to withhold the release of NCIP's operational funds. These reduced the capacity of NCIP to process and approve ancestral domain titles.

After submitting its recommendations to the President, the PTFAD was dissolved. However, the Government created two new bodies, the National Anti-Poverty Commission on Indigenous Peoples and the Presidential Task Force on Indigenous Peoples. The former was instructed to address poverty-related issues affecting indigenous peoples while the latter was an advisory body on policy matters pertaining to indigenous peoples. These functions obviously overlapped with those of the NCIP.

In June 1998, NCIP produced the IRR. One of the most important and controversial provisions of the IRR is Section 5 (6), Rule II which states that "the ICCs/IPs shall have the right to suspend or stop any project or activity that is shown to have violated the process of securing free and prior informed consent, or have violated the terms and conditions of such previously granted consent."

The mining industry immediately expressed their apprehension over this NCIP rule. They also questioned the IRR's bias for indigenous peoples and their priority claims over the country's minerals and other natural resources to the detriment of other sectors like the mining and power industries.<sup>36</sup> The Chamber of Mines of the Philippines indicated that there had been an alarming exodus and withdrawal of foreign mining companies due to the "inherent vagueness of the IPRA" and the apparent "lack of commitment by the Government to actively support the development of the mining industry."<sup>37</sup> The mining industry even threatened to bring their issues against the IPRA to the Supreme Court.<sup>38</sup>

NCIP issued an Administrative Order (No. 3, 13 October 1998) exempting all leases, licenses, contracts, and other forms of concession within ancestral domains existing prior to the promulgation of the IRR, from the coverage of IPRA's provisions on free and prior informed consent. That Administrative Order also declared that all written agreements with and/or resolutions by indigenous peoples' communities prior to the IRR shall be considered as "free and prior informed consent." NCIP may also issue a temporary clearance to individuals

and companies pending resolution of conflicts within ancestral domain areas.

Advocates and indigenous peoples' organizations censured the new Administrative Order for being "onerous" and a "sell-out" to the interests of the mining industry. They posited that "property rights" as defined, while still being debated, seem to be interpreted in favor of the mining interests; that the short duration (30 + 7 days) allowed to secure FPIC is insufficient; that allowing "interim clearances" and any form of written agreements to pass off as consent is fraudulent; and that the idea of doling out "gifts" in the form of showcase development projects before and during the conduct of FPIC is divisive and deceptive.<sup>39</sup>

The greatest challenge against the IPRA came on 28 September 1998, when retired Supreme Court Justice Isagani A. Cruz, together with Atty. Cesar Europa, filed a petition before the Supreme Court. The petition contained three main points: first, that the law violates the constitutional principle that all natural resources belong to the State; second, that the law deprives the State of control over the exploration and development of natural resources; and third, that the law threatens to strip private owners of their properties.

After a thorough deliberation, the Supreme Court voted on 6 December 2000 to dismiss the petition. However, the separate decisions of the Supreme Court justices who voted to dismiss the petition expressed substantive points that essentially upheld the Regalian doctrine. They stressed that the IPRA merely gave indigenous peoples surface rights over their ancestral domains. The resources therein, they add, are still owned by the State.

On 20 February 2001, newly installed President Gloria Macapagal-Arroyo issued Executive Order No. 1, creating the OPAIPA, delineating its functions to ensure the effective implementation of the IPRA. The OPAIPA was assigned to review the performance, qualifications, and fitness of NCIP officers and staff and to institute a process for the proper selection of staff of NCIP, as mandated by RA 8371. Following nationwide consultations, the President appointed a new set of Commissioners in August 2001.

The appointment of the new Commissioners through a consultative process and the full support of several indigenous peoples' organizations, civil society, and President Macapagal-Arroyo has rekindled hopes for the successful implementation of the IPRA.

## Impact of the Indigenous Peoples Rights Act

Four years after its enactment, the IPRA has mixed effects on indigenous communities. What follows is an attempt to highlight the advantages as well as the disadvantages of the IPRA on indigenous communities.

The long years of legislative action leading to the IPRA's approval and the ensuing debate during its implementation have undoubtedly increased awareness of the public (including the indigenous peoples themselves) on the issues and concerns of indigenous peoples. They have drawn the attention of the State as well as civil society (nongovernment organizations (NGOs), churches, and academic institutions) to the "plight" of indigenous peoples, who had long been denied a space in national/mainstream Philippine politics.

Several new indigenous peoples' organizations (IPOs) and national federations and alliances emerged during the period. At the national level, organizations/alliances were established to give support to the IPRA. One of them was the *Katutubong Samahan ng Pilipinas*, which was formed through the initiative of the Philippine Association for Intercultural Development (PAFID) and the Legal Resource Center. Another broad alliance was the Coalition for Indigenous Peoples Rights and Ancestral Domains (CIPRAD). This is a network of 15 IPOs and five NGOs. Two of these NGOs are the lawyers' group known as *Tanggapang Panligal Alay sa Katutubo* (PANLIPI) and the Episcopal Commission on Indigenous Peoples of the Catholic Bishops Conference of the Philippines. The Manila Office of the International Labour Organization (ILO) played an important role in the establishment of CIPRAD. Lending "critical support" to the IPRA is the National Coalition of Indigenous Peoples of the Philippines. This was spearheaded by the Davao-based Lumad Mindanaw and supported by the *Sentro para sa Ganap na Pamayanan*.

At the community level, IPOs were organized and community solidarity enhanced as a result of community efforts to delineate ancestral domain and ancestral lands. A case of a "good practice" was the community-based Bakun Indigenous Tribes Organization (BITO) in Bakun, Benguet, supported by the ILO-Inter-Regional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and Self-Help Organizations (INDISCO). BITO was officially accredited to lead in managing the ancestral domain of the

Kankanaey and Bago peoples in Bakun who were awarded a Certificate of Ancestral Domain Claim in 1998. While they wait for the final approval of their CADT, the organization has come up with development activities like creating sustainable livelihoods and community-based businesses that do not harm or threaten Bakun's ancestral domain.<sup>40</sup>

While the IPRA has resulted in the proliferation of IPOs and support NGOs, it has also engendered disunities among the indigenous peoples. One source of discord is how to view the IPRA. The IPOs and NGOs that support the IPRA argue that, despite its imperfections, they are convinced that this legal instrument can be used as a stepping-stone toward a "more progressive level of political discourse."<sup>41</sup> The Cordillera Peoples' Alliance does not share this view. They labeled IPRA a "master act of deception." They decried the persistence of Regalian doctrine in the law.<sup>42</sup>

The negative effects of the IPRA are felt most at the community level. Since IPRA was promulgated, there have been many community-level disputes. In the Cordillera, for example, there has been an increase in boundary disputes over the past four years, attributed to longstanding conflicts over resources (e.g., water for irrigation) and territorial delineation. The IPRA exacerbated these conflicts. In the province of Abra, members of a clan who belong to the Masadiit tribe are fighting over the areas that should be covered by their respective "ancestral domains." One faction of the clan now resides in the municipality of Sallapadan, while the other faction lives in the municipality of Bucloc. Because IPRA stipulates that indigenous peoples should resort to customary laws to resolve conflicts, the two factions are "recreating" and retelling their respective version of their customary law. People of Bucloc have accused the Council of Elders (*lallakay*) of Sallapadan of being senile; thus, their genealogical reckoning and rendering of oral history should not be taken seriously.

The IPRA has also resulted in the "construction" or "imagination" of ethnic identities. In Romblon, for instance, the Bantoanons of Banton Island are now claiming that they are indigenous peoples. They assert that they should enjoy the rights enshrined in the IPRA. Some sectors have questioned this, saying that the Bantoanons are, in many ways, not different (not distinct) from the Batanguenos.

There is also the problem of ancestral domains being "imagined." This is a result of a generalizing concept of ancestral domain, that is, the notion that ancestral domain is a static or fixed concept of a communal territory, with persistence of indigenous sociopolitical institutions. In reality, many indigenous peoples have already adopted and adapted western property regimes and do not care about domains.<sup>43</sup> Some indigenous peoples have opted for Torrens titles and members of some clans are fighting each other for private titles.<sup>44</sup>

Still, some experts view the IPRA as an instrument that will lead toward privatization of the "commons."<sup>45</sup> For example, in Agusan del Sur in Mindanao, a certain Datu applied for some 76,000 hectares of ancestral land.<sup>46</sup> Indigenous peoples expressed fear that privatization will facilitate the entry of corporations and business persons who will just negotiate with one individual to be able to enter the indigenous communities.<sup>47</sup>

These different views suggest that while the framework for addressing indigenous peoples' concerns is already established by the IPRA, much needs to be done. For one, there is still a need to put in place monitoring and regulatory mechanisms to ensure that commercial interests do not unduly appropriate indigenous peoples' lands. There is also a need to adopt an area-specific and culture-specific ancestral land/domain policy that takes into consideration local nuances, processes, and tenurial systems.

The full text of the IPRA is given in the Annex.