



PAFID



Strengthening the Role of Indigenous Peoples and Their Communities in Nature Conservation: A Project Ensuring the Full and Effective Participation of Indigenous Peoples in the Implementation of the Expanded National Integrated Protected Areas System

LEARNING MATERIAL

Expanded National Integrated Protected Areas System (ENIPAS) or Republic Act 11038: An Overview

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Introduction

Republic Act 11038 or the Expanded National Integrated Protected Areas System (ENIPAS) was enacted into law on 22 June 2018, amending Republic Act No. 7586 or the former NIPAS law. Almost a year later, on 30 May 2019, the Department of Environment and Natural Resources (DENR) released Department Administrative Order (DAO) 2019-05 containing the Implementing Rules and Regulations (IRR) of the ENIPAS.

Indigenous peoples and communities and NGOs have come together to forward their comments and concerns into the new law. While certain provisions were harmonized with certain rights of indigenous peoples under IPRA, this has not been carried through in the IRR.

What is a protected area?

There are different types and forms of protected areas (PAs). Some of these are forest parks and watersheds (e.g., national parks like Mt. Apo, Mt. Kalatungan and Mt. Kimangkil; as well as protected watersheds). It can be found on land and in the ocean (e.g., Tubbataha Reef in Sulu Sea and Apo Reef in Mindoro). Most of these are in areas protected by indigenous peoples or Indigenous and Community Conserved Areas (ICCA). It should be noted that the park is only one kind of PA.

Currently, there are around 240 protected areas throughout the country. Land-based PAs covers 4.07 million hectares or 13.57 percent of the Philippines' land area, while marine-based PAs equal to 1.38 million hectares or 0.63 percent of the country's oceans.

Legally, 120 PAs are in the early stages of proclamation, 13 sites have been proclaimed, and 107 PAs are legislated.

How does it affect indigenous people?

According to GIS mapping conducted by the Philippine Association for Intercultural Development (PAFID), about 26 percent of the country's remaining forests are located in PAs. Many of these forested areas are located in territories of indigenous peoples. In fact, 62 PAs overlap with at least one (1) Certificate of Ancestral Domain Titles (CADT) and 99 CADTs are affected (42 in Luzon, 18 in Island Groups and 39 in Mindanao). It is not uncommon that forests and sacred areas of indigenous peoples coincide with "Strict Protection Zone" of national parks, where which all kinds of activities are prohibited.

The Expanded National Integrated Protected Areas System Act/ENIPAS (RA 11038)

The ENIPAS act amends RA 7586. It has enacted additional 94 PAs located in various parts of the country. It extends the process of enacting parks or PAs, and expands the definition of protected areas, taking into consideration the practices from other countries.

Provisions of ENIPAS that Support the Rights of Indigenous Peoples

Section 2. Declaration of Policy. It recognizes the management practices of indigenous peoples.

TEXT: "The System shall recognize conservation areas and the management regimes being implemented by local government units (LGUs), local communities and indigenous peoples (IPs)."

Section 9. Management Plan. It recognizes the Ancestral Domain Sustainable Development Plan (ADSDPP). The national park plan will have to harmonize with the ADSDPP and CLUP of the community and LGU affected. The ADSDPP is an important basis for negotiation.

TEXT: "The plan shall be harmonized with the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) required under Republic Act No. 8371, or 'The Indigenous People's Rights Act of 1997', the respective Comprehensive Land Use Plans (CLUPs) of local governments required under Republic Act No. 7160 or the Local Government Code of 1991 and other local plans."

Section 13: Ancestral Domains and Customary Rights. Almost identical to Section 58 of IPRA, the State should recognize the right ancestral domain/land of indigenous peoples, and should provide full and effective support in the recognition, respect and promotion of this right.

TEXT: "Ancestral domains and customary rights shall be accorded due recognition. As part of heritage preservation and pursuant to the need to conserve biologically significant areas, the territories and areas occupied and conserved for and by IPs and communities shall be recognized, respected, developed, and promoted. The ICCs and IPs concerned shall have the responsibility to govern, maintain, develop, protect, and conserve such areas, in accordance with their indigenous knowledge systems and practices and customary law, with full and effective assistance from the NCIP, DENR and other concerned government agencies. A mechanism for coordination and complementation between the indigenous traditional leadership and governance structures and the NCIP, DENR, government agencies, concerned LGUs and civil society organizations shall be created."

Section 20. Prohibited Acts. Indigenous peoples living within the protected areas are allowed to collect certain resources given that it is carried out according to the recognized indigenous practices for their livelihood. The documentation of practices in the ADSDPP or claim book can help serve as basis of proving if one act is according to customary practice.

TEXT: "(b) Hunting, taking, collecting, or possessing of any wildlife, or by-products derived therefrom, including in private lands within the protected area without the necessary permit, authorization or exemption: Provided, that the PASu as authorized by the PAMB shall issue a permit, authorization or exemption only for culling, scientific research, the exceptions provided under Section 27 (a) of Republic Act No. 9147 (Wildlife Resources, Conservation and Protection Act) or harvests of non-protected species in multiple-use zones by tenured migrants and IPs; (c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes;"

Section 29. Construction and Interpretation. The contents of this law are understood to be in favor of the protection and rehabilitation of protected areas and for the conservation and restoration of nature while taking into account the needs and interests of qualified migrants and the rights of indigenous communities, as well as the benefits for the present and future generations. Nothing in this law shall reduce or repeal local autonomy or the IPRA. This law should not be interpreted against IPRA, but instead support it. ENIPAS cannot modify or change the rights of indigenous peoples under IPRA.

TEXT: "The provisions of this Act shall be construed liberally in favor of the protection and rehabilitation of the protected area and the conservation and restoration of its biological diversity, taking into account the needs and interests of qualified tenured migrants vested rights, IPs and local communities, and the benefits from ecosystem services and functions of protected areas, for present and future generations: Provided, that nothing in this Act shall be construed as a diminution of local autonomy or in derogation of ancestral domain rights under the Indigenous Peoples' Rights Act of 1997."

Implications of ENIPAS for Indigenous Peoples

- ENIPAS, in essence, supports the rights to land, territory, and resources of indigenous peoples under IPRA. ENIPAS states that indigenous peoples cannot simply be banned from harvesting resources in overlap areas of parks and CADT/ICCA, as long as these activities are done in accordance with indigenous knowledge, systems and practices. Although there has been changes in resource use practices of indigenous peoples, there are still indigenous practices and values that espouse sustainability, such as not taking more than necessary, and taking into consideration the condition and capacity of the environment to regenerate.

Furthermore, destruction, excavation, desecration of any kind of natural heritage, sacred places, historical places, etc. in the indigenous community, (including community cemeteries) are also prohibited. For example, the sacred stone/rock formation likened to the head of Apo by the Aetas in Pastolan, cannot be touched by others. It should be protected under ENIPAS. The same goes with the "lanaw" and other sacred forests of other indigenous peoples/groups.

- Indigenous peoples' documentation of their practices, planning and mapping are important tools to engage in the planning of protected areas. The ADSDPP is important as it serves proof and record of the type of indigenous systems of resource gathering and other livelihoods and practices, as well as the identification of sacred areas in the ancestral domain.

For example, in Sibuyan Island, there is a 2-part CADT area of the Mangyan Taga-Bukid indigenous peoples, covering an area of 8,408.4 hectares. It has an overlap of 3,322 hectares with Mt. Guiting-Guiting National Park, which is 43 percent of their CADT and 21 percent of park or protected area. The overlap includes their sacred place. Because of their mapping and ADSDPP, the community was able to display and negotiate for the recognition of their zoning. While this is a case still currently being resolved, it serves as a huge help for the community in their engagement with the Protected Area Management Board (PAMB).

In Mindoro, there are four (4) parks that overlap with the ancestral domains, the largest of which is Mt. Igit-Basco National Park. Because the zoning and plan of the community were clear, the superintendent expressed interest to engage with them in the planning. As of February 2020, it was agreed that the ADSDPP should be harmonized with the PAMB management plan.

How is ENIPAS being implemented?

ENIPAS will be managed by Protected Areas Management Board (PAMB) composed of:

- Chairperson is the DENR Regional Director with jurisdiction over the Protected Area;
- Governor or her/his official representative where the protected area is;

- Senator who resides in the area where the PA is, except if s/he does not want an appointment;
- Representative of the Congress in the District where the PA is, unless s/he does not want an appointment;
- Mayor or official representative of the city or town where the Protected Area is located;
- Chairperson of the Barangay where the Protected Area is located;
- Regional Directors of the following government agencies: DA, NEDA, DOST, PNP, DND;
- Three representatives of Peoples Organizations (POs) or Non-Governmental Organizations (NGOs) recognized or accredited by the DENR and Provincial Government and have five years of established and well-known knowledge of nature conservation; and,
- At least one but not more than three indigenous community representatives who are from the protected area and are recognized by the NCIP.

ENIPAS Implementing Rules and Regulation (IRR) provision that run contrary to the IPRA

Despite these promising provisions reinforcing the rights of indigenous peoples, they did not translate fully in the IRR of ENIPAS. Specifically, Section 13 of the ENIPAS IRR states: "Only indigenous peoples with CADT or CALT will recognize management in the event that their Ancestral Land has an overlap in the Protected Area."

This is contrary to Sec. 13 and 29 of ENIPAS. According to legal norm, the IRR cannot go beyond the mother law. Under the ENIPAS mother law, it is clear that there was no distinction of treatment between indigenous peoples/communities with or without CADT/CALT. With the help of PAFID, Bukluran, ANGOC, and Atty. Lingating, the NCIP has already made a formal inquiry to question this provision under ENIPAS IRR. Indigenous people who do not have CADT or CALT will be affected if this provision is not reviewed.

Further details can be found in the *A Critique on the Implementing Rules and Regulations of the Expanded National Integrated Protected Areas System Act and its Implications to the Rights of Indigenous Peoples* prepared by Bukluran, PAFID, ANGOC and other CSO support groups in <https://angoc.org/wp-content/uploads/2020/07/ENIPAS.pdf>

Conclusion

Many provisions of the ENIPAS law help and support the rights of IPs stated in IPRA. Because of this, the ENIPAS is a good law to study in order to maximize the rights of IPs, in particular to protecting their ancestral domain. Unfortunately, a number of provisions in the current version of the IRR run contrary to the spirit of the ENIPAS law. Hence, IPs and ICCs should continue lobbying for the proposed changes as submitted by BUKLURAN to DENR. □

This learning material was prepared by Dave De Vera for the project "Recognizing the Indigenous Communities behind the Conservation of Nature: A Project Pursuing the Full and Effective Participation of Indigenous Communities in the Implementation of the Expanded National Integrated Protected Areas System." Jointly implemented by ANGOC, Bukluran, and PAFID, this initiative is supported through the Sudden Opportunity Grant Facility of VOICE, an initiative by the Netherlands Ministry of Foreign Affairs executed in a consortium between OXFAM Novib, and Hivos.

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The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).



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The formation of Bukluran Para sa Pangangalaga ng Kalikasan ng Pilipinas (BUKLURAN, Inc.) or the Philippine Indigenous Peoples Community Conserved Territories and Areas Consortium (Philippine ICCA Consortium) is a nationwide network of community membership-based indigenous people's organizations (IPOs) of all ethnographic types. It is premised on bringing together indigenous peoples who assert and utilize traditional governance to protect community-conserved areas. Common to its members is the shared view that indigenous peoples' survival depends on the protection of valuable knowledge systems and the ancestral lands on which we thrive and persist. Our community-conserved areas can become the ultimate driving force in the conservation of biodiversity when our rights to our land and resources are respected and recognized.

Our main purpose is to carry out and realize the full recognition and respect for the rights, governance and self-management of our ancestral lands.

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Philippine Association for Intercultural Development, Inc. (PAFID) is a social development organization which has been assisting Philippine indigenous communities to secure or recover traditional lands and waters since 1967. It forms institutional partnerships with indigenous communities to secure legal ownership over ancestral domains and to shape government policy over indigenous peoples' issues. PAFID works exclusively with the indigenous peoples' sector, specifically upon written or signed requests for assistance from indigenous communities or their representatives. PAFID envisions indigenous communities as responsible stewards of their resources.

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