



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

A Briefer on the Indigenous Peoples' Rights Act (IPRA)

DAVE DE VERA

Introduction

In October 1997, the country witnessed the passage of the Indigenous Peoples' Rights Act (IPRA), a landmark policy that puts indigenous peoples' rights in legislation and thereby provides indigenous peoples (IPs) and their communities legal recognition and protection. The IPRA Law is a product of the decades-old, or some may even argue centuries-old, struggles of indigenous peoples, their communities, and support groups towards recognition of IP rights on their ancestral domains and lands, their culture, and self-determination, among others.

The IPRA Law stands on the following foundations: (1) Right to Ancestral Domains and Lands; (2) Right to Self-Governance and Empowerment; (3) Right to Social Justice and Human Rights; (4) Right to Cultural Integrity; (5) Right to Enter to and Execute Peace Agreements; and, (6) the Establishment of the National Commission on Indigenous Peoples.

Right to Ancestral Domains and Lands

IPRA recognizes IPs and their communities' ownership over their ancestral domains and lands including but not limited to their sacred areas, livelihood sources, culturally- and historically-significant sites, forests, water sources, and seas.

IPRA provides the process where IPs and their communities can provide evidence and proof of ownership over their ancestral domains and lands. As part of the process, the lands will be measured based on indigenous communities' self-delineation where claims should be supported with corresponding evidence.

Under IPRA, there are two titles that can be issued: a) Certificate of Ancestral Domain Title (CADT), which typically covers the entire

ancestral domain that can span across multiple communities, and b) Certificate of Ancestral Land Title (CALT), which usually covers lands owned by certain clans. Thus, in relation to size or hectares covered, CALTs are smaller than CADTs.

Right to Self-Governance and Empowerment

IPRA also recognizes IPs and their communities' self-determination which includes their self-management systems rooted in their indigenous culture and practices. This is a very important provision as this provides legal recognition of IPs' traditional governance systems, which paves the way for respect to indigenous political structures (IPS) and institutions and ensures indigenous communities' self-initiated participation in economic and cultural development.

Under IPRA, IPS such as *Tuntungan* and *Dap-ay* in Cordillera, *Pagharampangan* in Mangyan communities, and *Dakula* in Mamanwa communities are now formally recognized. This also signifies that indigenous peoples are free to use these IPS as the basis for their involvement in the larger society.

Right to Social Justice and Human Rights

IPRA stipulates provisions on IPs and their communities' right to employ traditional justice systems, conflict resolution mechanisms, and other systems and mechanisms based on their indigenous culture.

IPRA, however, emphasizes that these systems and mechanisms should not exceed the rights enshrined in National and Global Principles of Human Rights. For example, indigenous communities cannot impose death penalty as this runs counter to State law. Punishments and penalties must adhere to national policies.

It must be noted that the Supreme Court has already provided a decision that indigenous justice systems can only be implemented over indigenous peoples of the same group. This means that non-IPs and cases where multiple IP groups are involved will not be subjected to indigenous justice systems.

Right to Cultural Integrity

IPRA also recognizes IPs and their communities' ownership, protection, and control over their indigenous knowledge, systems, and practices (IKSP). This also encompasses their indigenous technology and traditional manner of utilization of herbal medicine, agricultural produce, and wildlife.

IPRA also ensures the provision of recognition on and protection of the heritage in arts and culture of the IPs. Cultural products such as beadworks (as in the case of Mangyans), textiles (as in the case of T'bolis), and weaving patterns (as in the case of Blaans) cannot just be easily used by non-IPs for profits. With the right to cultural integrity, consent of IPs must always be provided before non-IPs can use, disseminate, and/or benefit from the IKSPs and other properties of IPs, be it natural resource, ecological service, or intellectual property. Should there be financial returns on these, IPs deserve to be recognized as owners of such and have their fair share of returns. Non-compliance will result in legal repercussions as provided for in national laws on intellectual properties. The Intellectual Property Rights Office of the Philippines (IPOPHL) has jurisdiction over these matters.

Right to Enter to and Execute Peace Agreements

Connected to their right to indigenous justice systems, IPs and their communities have the right to enter to and execute peace agreements as they have practiced since time immemorial. In Cordillera, there is the *Bodong* that encompass neighboring groups in Kalinga and Abra and other nearby areas. Essentially a peace pact agreement, the *Bodong* ensures peace among various communities. Under IPRA, this is considered legal.

The Establishment of the National Commission on Indigenous Peoples (NCIP)

IPRA stipulates that the NCIP will be the primary government agency that will ensure the implementation of all the mandates of the said law. The head of NCIP as well as its commissioners representing the seven ethnographic regions are presidential appointees, meaning the incumbent President of the country appoints them to their position. Ethnographic Commissioners have quasi-judicial and quasi-legislative powers.

With quasi-judicial powers, Commissioners become judges as they can listen and provide a verdict or decision over a case. As judges, Commissioners are at the same level as the Regional Trial Courts (RTCs) so their decisions can only be appealed through the Court of Appeals.

With their quasi-legislative powers, Commissioners also become legislators. During an En Banc Meeting, Commissioners can come up with Administrative Orders (AOs) that will automatically be part of the State laws. This is different to say, for example, the Department Administrative Orders (DAOs) of the Department of Environment and Natural Resources (DENR) that do not automatically become part of national law when issued. DENR's DAOs might only apply during the incumbent Department Secretary's term as the next Secretary can reverse or stop its enforcement. On the other hand, AOs of NCIP Commissioners will require hearings and meetings prior to revision and/or reversal.

IPRA on Adverse Claimant

As mentioned earlier, the Supreme Court has decided that indigenous justice systems can only be implemented over IPs of the same group. With this, there is the possibility that IPs can go into a situation where they sue an individual or a group, but they are countersued. When this happens, the case falls under the jurisdiction of a Regional Trial Court (RTC), and not NCIP. The same is true when different IP groups file cases against each other since the traditional justice system can only be implemented on IPs of the same group.

When the case(s) are under RTC's jurisdiction, this means that IPRA will not be the major basis of the verdict as to all State laws on lands, conflict resolution can be used. It must also be emphasized that there are only a few RTC judges who are well-versed when it comes to IPRA and that RTC trials are costly. In cases where IPs are suing each other, the NCIP cannot easily enter a case. Community elders and leaders must certify that all measures have been exhausted that is why they ask for NCIP's help. Even so, NCIP does not have the power to decide over the case but only has the power to resolve the conflict between tribes.

Conclusion

Even with the onslaught of other State policies that try to counter the provisions set forth in IPRA (e.g. IRR of ENIPAS, Joint Administrative Order 1 of 2012, Mining Act) and its limitations, IPRA remains a key policy for IPs and their communities as this provides the legal basis on indigenous peoples' rights recognition and protection in the country.

With all the injustices and rights violations IPs and their communities continue to brave, IPs and their support groups have hope that IPRA will remain strong, if not become stronger, with proper institutional support and funding of the NCIP.

The strength of IPRA, however, does not lie on the implementers alone. IPs and their communities must also do their part: they should memorize and take to heart the contents of IPRA and implement it in their ancestral lands so they will know when and where to use it to their advantage. □

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).

33 Mapagsanguni Street, Sikatuna Village, Diliman, Quezon City 1101 Philippines
Tel: +63-2 8351 0581 | Fax: +63-2 8351 0011 | Email: angoc@angoc.org
Website: www.angoc.org



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.

c/o PAFID: 71 Malakas Street, Diliman, Quezon City, Philippines
Tel: +63-2 89274580 | Fax: +63-2 84355406



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.

71 Malakas Street, Diliman, Quezon City, Philippines
Tel: +63-2 89274580 | Fax: +63-2 84355406
Email: pafid@skybroadband.com.ph, pafid@yahoo.com | Website: www.pafid.org.ph