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Recommendations for the Indigenous People's Rights Act (IPRA) of 1997:

Recentering Indigenous Communities and Organizations[1]

Jose Monfred Sy[1] and Ryan Joseph Martinez,[2] with the Ayta Mag-indi community in Porac, Pampanga; Talaandig indigenous women leaders of Maramag, Bukidnon; and students from Lumad Bakwit School

The struggle for land continues to be a theme in human-rights-based conflicts in the Philippines. In 2020, the country was once more named the most dangerous in Asia for environmental defenders—for the eighth consecutive year (Enano 2021; Fronda, Garafil, and Dulce 2020; PAN Asia Pacific 2019). Global Witness (2021) ranked the Philippines as third in the number of documented land- and resource-related killings amidst the global pandemic in 2021. According to the report, over half of the attacks are tied to the defenders' opposition to mining, logging, agribusiness, and dam projects in indigenous lands.

The Indigenous People's Rights Act (IPRA) of 1997, or the Republic Act No. 8371, sought to protect Indigenous peoples (IPs) and Indigenous cultural communities (ICCs) in line with the 1987 Philippine Constitution. It emphasized "self-governance" and "empowerment" over their ancestral land, social justice and human rights, and "cultural integrity" as core rights—bundled for IPs and ICCs under one legislation.

Despite its advances in introducing reforms, definitions, and institutions, the landmark legislation has taken the long route in recognizing Indigenous peoples' liberties and struggles (Bello 2020; Doyle 2020). For instance, the process of recognizing ancestral lands has remained perennially withheld by the technical and process-laden distribution of Certificates of Ancestral Domain Title (CADT), which undermines the core rights bundled by the law and strips Indigenous communities of prior protection against abuses.

This policy brief examines the delineation of ancestral domain rights within the context of the IPRA and several complementary laws. Furthermore, this paper acknowledges the "superpositions"—the presence and absence—of several key concepts in the IPRA with respect to its implementation and corresponding assertion of IP leaders and advocacy organizations.

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The Institutional and Legal Framework of the IPRA

The passage of the IPRA in 1997 meant that

> [t]he Philippines became the first country in Asia that recognized the struggles and aspirations of its Indigenous peoples by way of a legal instrument that spelled in black and white an acknowledgement of their historical marginalization and provided access to mechanism and redress. (Alamon 2017, 187)

The law took shape from the framework of the 1987 Philippine Constitution. The Constitution differentiates itself from prior constitutions by referencing IPs and ICCs in eight separate sections. This marks the defining moment of a shift in the Philippine state policy on IPs, from assimilation to recognition and protection (Puno 2000). The IPRA adopted the majority of these sections in the Constitution into its own framework. Article II, Section 22 states the policy to "recognize and protect the rights of IPs;" Article XII, Section 4 declares the obligation to protect the rights to ancestral domains (Molintas 2004).

The IPRA was always meant to be a comprehensive law. Not only did it introduce advanced concepts of Indigenous peoples and their rights at the forefront; it also aimed to operationalize their complexities. The enactment of the law marked an initial step in correcting past historical injustices and exclusion of IPs by recognizing, protecting, and promoting Indigenous communities' right to ancestral domains and lands; the right to "self-governance" and "empowerment," "social justice and human rights;" and the right to "cultural integrity" (IPRA 1997).

Moreover, the IPRA was meant to replace existing institutions that were based on Western prejudice and which were targeting the non-Christian population prior to former president Corazon Aquino's oath of office (Domingo and Manejar 2020). The IPRA oversaw the establishment of the National Commission on Indigenous Peoples (NCIP) as an implementing agency that would administer all issues and concerns of IPs and ICCs. Currently, the NCIP is an independent agency under the Office of the President, as mandated by the implementing rules and regulations of the IPRA.

The Political Project of the IPRA and Its Contradictions

During the presidential term of Fidel V. Ramos, the IPRA was finally signed into law on 29 October 1997. Ramos dubbed the passage "a triumph of political will" (quoted in Headland 1999, 2) in recognition of Congress's effort to pass the law. However, the IPRA was enacted alongside controversial and conflicting laws, which to this date hinders the full realization of IPRA. There is a prominent case of legal jurisdictional and ethical conflict between IPRA and the Philippine Mining Act of 2005 on several issues, which shall be discussed in the succeeding sections of the article.

For Ramos in 1997, there is a noticeable absence of the role played by civil society and Indigenous peoples' organizations towards its passage. In fact, the undying effort of Indigenous peoples' organizations (IPOs), nongovernment organizations (NGOs), and advocacy groups such as the Cordillera Peoples' Alliance (CPA), Coalition for Indigenous Peoples' Rights and Ancestral Domain (CIPRAD), Koalisyon para sa Karapatan ng Katutubo (KKK), and Katutubong Samahan ng Pilipinas (KASAPI), were not given recognition (Rico 2007). These organizations, among others, played a crucial role and provided critical contributions in the entire legislative process of its implementation.

By the late 1990s, there arose intense work for the implementation of the IPRA. However, its implementing rules and regulations (IRR) and the processes it prescribed divided the Indigenous movement in the Philippines. Those in favor of the IPRA opted to collaborate with the state, while others adopted a confrontational attitude. These attitudes recognized that even after the independence of former colonies, Indigenous communities that resisted colonial domination were forced to negotiate with a dominant society represented by a nation-state with its own framework of land ownership and distribution (Inguanzo and Wright 2016, 9). This paper zeroes in on two primary issues where conflicts emerged.

The Superposition of Ancestral Domain Rights within the IPRA

One of the key contributions of IPRA is its exhaustive articulation of ancestral domains in the legal text (Candelaria 2012). In fact, it is more advanced than similar laws elsewhere. The IPRA incorporates native titles and natural resources within ancestral claims in its definition and with respect to IP rights of self-determination and governance (Candelaria 2012; Doyle 2020).

Ancestral domains are defined as inalienable communal property granted to IPs and/or ICCs. Claimants must secure a Certificate of Ancestral Domain Claim (CADC) from the Department of Environment and Natural Resources (DENR) to formalize their claim. Through the NCIP, CADCs must be "converted" into CADTs (Cetrificate of Ancestral Domain Titles), which "formally recogniz[es] the rights of possession and ownership of IPs over their ancestral domains. [The CADCs must also be converte into] Certificate for Ancestral Land Titles (CALTs), which recognizes the IPs' rights over their ancestral lands" (IPRA 1997, Chapter II). Ownership is certified by a CADT/CALT and can be issued or transferred to individuals, family members, or clans in accordance with civil laws on property and customary laws of ICCs. The NCIP acts as the only institution mandated to grant CADT/CALT.

However, this is not always the case with claims made under different existing laws, including those that concern mining, logging, agribusinesses, and dams. IP partners in this study, particularly the women leaders of the Talaandig community in Bukidnon and Manobo students from Lumad schools, recalled how third-party entities conscripted certain IP leaders and organizations to represent corporate interests during negotiations between communities, businesses, and local government units. Some of them acted as brokers for extractive operations in the Indigenous ancestral domain. The screening and titling process places Indigenous peoples at a disadvantage because of the technicalities and language of documents, long turnaround times and transactions, and the proof of burden levied on IPs (Candelaria 2012). The lack of access to state services and welfare provisioning makes them even more vulnerable to such exploitation (Alamon 2017).

The evidence- and document-laden process of certification imposed on IPs reveals one contradiction between the rationale and reality of IPRA. For IPs, ancestral domains and all resources are the material bases embedded in their cultural integrity, which applies across all generations. They have long-held customary laws over land ownership that are passed from one generation to the next. Their local systems have been carried over when they traded their nomadic culture and settled for communal cultivation (Santiago 2020; Sy 2022). Despite the promotion of their self-delineation, they are still subject to submitting the necessary documents if they wish to develop or utilize existing natural resources in their domains.

The NCIP has yet to exhaust the distribution of legitimate CADTs/CALTs. Three years after ratification, the agency failed to issue a single CADT (de Vera 2007). In 2009, it was only able to distribute less than eight percent of the 7.5 million hectares of registered ancestral domains (Cariño 2012). Ten years later, in 2019, NCIP had only approved 247 CADTs, with 54 registered and 193 still pending completion of registration. That comprises only 17.19 percent of a total land area of around 5.74 million hectares.

Effectively, Indigenous peoples who have yet to receive their CADTs/CADLs are left displaced in the lands of their ancestors with little legal evidence to protect them against coercion by private firms.

The Superpositions of Free Prior and Informed Consent within IPRA 1997

The implementation of securing FPICs is not without problems, too. According to Pastor Benny Capuno (2020), a leader of the Ayta Mag-indi community in Pampanga and an Indigenous rights activist since the early 1990s, FPIC implementation in communities has been limited to the decision of barangay officials and elected leaders, not the consensus of the community. This contradicts the definition of FPIC in IPRA:

> the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. (Chapter II, Section 3g)

In a report prepared by Oxfam America, Magno and Gatmaytan (2013) enumerated some weaknesses of the FPIC implementation of the IPRA. These include:

> FPIC required only once (prior to 2012), and that is at the commencement of the project;
>
> No procedure for impugning consent once given or for suspending a project which has not complied with the rules for securing FPIC;
>
> Only consent from [I]ndigenous peoples required, even when the project can affect non-[I]ndigenous populations;
>
> No monitoring mechanisms on violations committed during the FPIC process and implementation of the Memorandum of Agreement (MoA) between the mining company and the Indigenous peoples;
>
> Signing of MoA outside the communities can contribute to mistrust by communities of their leaders/designated signatories. (2013, 9)

In principle, FPIC underscores the rights to self-determination and self-governance of IPs and ICCs, and to their ownership of ancestral domains and lands (Domingo and Manejar 2020). This process has been enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, according to the Indigenous community representatives who participated in this study, the application of consent has been transformed into mere consultation of IP communities. The NCIP has not only been criticized for corruption by many IPOs. Many have also recognized how the FPIC has not been duly applied, thus functioning as an additional level of bureaucracy (Inguanzo and Wright 2016, 12).

Lessons and Recommendations

The IPRA is a comprehensive attempt to rationalize the customary laws of IPs and ICCs within a national framework of development. The aggressive assertion of Indigenous peoples during and after the dictatorial martial law regime validates the existence of the IPRA as a correction of historical injustices, prejudices, and exclusion of Indigenous peoples as national minorities in the Philippine legal and policy environment. However, throughout its implementation, there have been challenges in expediting land distribution to IPs and ICCs. There have also been breaches in respecting their rights to self-governance and self-determination, such as careful administration of FPIC with IP and ICCs.

Thus, a process of effectively delineating CADT and CALT acquisitions must be operationalized. This process should encompass the existing norms, values, and lifeways of indigenous groups as anchored in their history and strong relations to land. Furthermore, the establishment of the Ancestral Domain Office must be expanded and devolved to local government units, with IPs and ICCs acting as an executive body—and not only representatives—in the distribution and enforcement of CADT and other transactions. This office should be composed of a majority of officials nominated by IP Tribal Councils and IPOs from members of IPs and ICCs in the locality.

The possibility of reforming NCIP as an independent commission—led solely and composed primarily of representatives of IPs and ICCs—must be seriously considered. That the NCIP does not embrace existing IPOs and communities introduces complications in the effectiveness of existing mechanisms in its mandate of promulgating the IPRA. In order to recenter IPs and IPOs in leadership, the NCIP must

1. Create new items for the commission to assist in streamlining IPs' validation process, and
2. Allocate items and positions in the inclusion of IPs and ICCs representatives among the department and commission representatives. The state, through a reformed NCIP, should

take immediate steps in streamlining the recognition process for IPOs, associations, and tribal councils to act as legal parties. This will effectively delineate the distribution of CADT and enforce local laws and decisions concerning the IPRA.

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