

# THE CORDILLERA INDIGENOUS PEOPLES' RIGHT TO LAND

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## I. INTRODUCTION

The Philippines is composed of 1,107 islands and islets. It is an archipelago that is rich in natural resources, history, diverse cultures, and many linguistic groups. There are more than 100 indigenous peoples (IP) groups distributed in these islands. The Philippines is the only country in Asia that uses the term "indigenous people".

Indigenous People have been accorded with certain set of rights, one of which includes their rights to their land. This may be individual or collective. The land is the most imperative asset of the IPs. Most of them establish their homes in forest areas and they depend on the natural resources that surround them as it supplies their daily needs. Gathering of forest products, hunting, fishing, and establishments of small gardens are their types of livelihood. They are interrelated with the land and all things that are found therein. They consider their land as sacred as shown by their rituals that are connected to it.

Due to the foregoing, for them, losing land means losing everything - their identity, integrity, customs and traditions, rituals, and self-determination. That is why what is more significant to them is the protection, sustainability, control, and responsible use of the natural resources rather than the direct ownership of the land itself. Yet to guarantee their access to these resources, land ownership is a must.

Nowadays, there are many problems/issues associated with ancestral land of the IPs. Some of these are the Philippine laws, declarations and administrative orders which are in conflict with the needs and practices of the IPs, the tedious process of land titling, the entry of "development" projects that are not defined by the IPs, and "development aggression" which is manifested by projects that are not consonant with their needs as original owners of the land.

It is for these reasons that Republic Act 8371 or the Indigenous Peoples Rights Act (IPRA) was instituted and implemented. Nonetheless, the said law seems to provide a little glimmer of hope to the IPs in reclaiming their rights to their land.

## II. THE INDIGENOUS PEOPLES –

According to the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) the term 'indigenous people' is used to refer to a distinct social and cultural group that has the following distinctive characteristics:

- (a) Self-identification as members of a distinct indigenous social and cultural group, and recognition of this identity by others;
- (b) Collective attachment to geographically distinct habitats, ancestral territories, of seasonal use or occupation as well as to the natural resources in these areas;
- (c) Customary cultural, economic, social, or political systems that are distinct or separate from those populations of mainstream society or culture; and
- (d) A distinct language or dialect, often different from the official language or languages of the

country or region in which they reside. This includes a language or dialect that has existed but does not exist now due to impacts that have made it difficult for a community or group to maintain a distinct language or dialect.

According to IPRA (Indigenous People's Rights Act 1997), Indigenous Cultural Communities /Indigenous Peoples (ICCs/IPs) pertains to a group of people or homogenous societies identified as self-ascription and ascription by others, who have continuously lived as organized community or communally bounded and defined territory, and who have, under claims of ownership since time-immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, costumes, traditions and other distinctive cultural traits, or who have, through resistance to political, social, and cultural inroads of colonization, non-indigenous religions and cultures, became historically, differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous in account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religion and cultures or the establishment or present state boundaries, who retain some or allow their own social, economic, cultural and political, traditions, but who have been displaced from their traditional domains or may have resettled outside their ancestral domains.

The IPRA adds an additional element: resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, that has resulted in the historical differentiation of Indigenous Peoples from the majority of Filipinos

### **III. THE ANCESTRAL DOMAIN**

The term 'ancestral domain' as stated in the Indigenous Peoples Right Act refers to all areas generally belong to Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs) comprising lands, inland waters, coastal areas and natural resources therein, held under a claim of ownership, occupied possessed by ICCs/IPs by themselves through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects and private individuals/ corporations and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forest, pasture land, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting ground, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/P but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and or shifting cultivators.

Ancestral Land refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest under claims of individual or traditional group ownership, continuously, to present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as consequence of government projects and other voluntary dealings entered into by government and private individuals/ corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots. (Source: R.A. no. 8371 of 1997)

### **IV. THE INDIGENOUS PEOPLES' VIEWS ON LAND USE, OWNERSHIP AND LAND CONTROL**

According to Molintas, (2015), there is a general consensus that the distinct characteristics of the indigenous peoples are: (1) the conservation of their vernacular languages, traditional socio-economic institutions, and cultural and religious practices; (2) self-identification as distinct societies; (3)

subsistence-oriented economies; and (4) a special relationship (connectedness) with their ancestral lands. The last two characteristics are crucial because they define the struggle of the indigenous peoples for self-determination and their existence. What essentially distinguishes the indigenous peoples from the rest of the population is their concept of land as granted and entrusted by one Creator for everyone to harness, cultivate, sustain, and live on. This land concept has become distinct because it adheres to the spirit of collectivism and rejects the idea of private property. Because of this, the similarities and differences of their concept and world view of land, and the conflict arising from it will be discussed extensively to show the significance of land and its complexities to the indigenous peoples. Since time immemorial, Philippine ancestors believed in a cosmology where the Creator (known by various names such as Bathala, Kabunian, Magbabaya, Apo Sandawa) was linked with other deities and spirits. In Philippine Mythology, the land and everything connected to it were created by this deity. Because land was of divine origin, it was sacred. Being sacred, it was not subject to ownership, sale, purchase, or lease.

Among indigenous peoples in the Philippines, there was a widespread belief that land was held usufruct; it could not be removed from the community's use. The interaction of the ancestors with the land varied according to how they produced what they needed for food. When they were nomadic and sea-foragers, they shifted their habitation from place to place and gathered whatever food they could from the land and the waters. When they settled into a life of sedentary agriculture, they established a system of communal ownership. The indigenous peoples still possess this belief in the sanctity of the land, especially when confronted with the threat of losing control over their homeland.

## V. THE CONCEPT OF LAND AMONG THE CORDILLERA PEOPLE

The Cordillera is located in Northern Luzon. It is a mountain range comprising one-sixth of the total land area of Luzon Island; it is home to around 1.2 million indigenous peoples collectively known as Igorots. The Igorots include a number of ethno-linguistic groups, among the major groups of which are the Bontok, Kankanaey, Ibaloy, Kalinga, Tingguian, and Isneg. Like other indigenous territories, the Cordillera is rich in natural resources but its indigenous peoples remain poor.

The discourse in land and resources among the Cordillera peoples can only be understood within the context of their beliefs and day-to-day practices.

*“To claim a place is the birth right of every man (sic). The lowly animals claim their place, how much more man. Man is born to live. Apu Kabunian, lord of us all, gave us life and placed us in this world to live human lives. And where shall we obtain life? From the land. To work the land is an obligation, not merely a right. In tilling the land, you possess it. And so land is a grace that must be nurtured. Land is sacred. Land is beloved. From its womb springs our Kalinga life.”*

These were the words of a Kalinga warrior chief, Macliing Dulag, explicitly describing the Cordillera peoples' concept of land. Like most indigenous peoples worldwide, the Cordillera peoples equate land with life, both of which are given by the Creator (personified in the local context as Kabunian, Lumauig, Umayayong, Mah-nongan, or Wigan for the Ifugaos). Land in this sense includes all the resources below and above the earth surface.

### 1. Territoriality

The plurality among the Cordillera peoples can be gleaned not only from cultural variations, but is also explicitly indicated by each community's claim to a territory. The *ili* is the local concept of people and territory among the Cordillera peoples which may be defined as “the communal territory of an indigenous settlement,” similar to the concept of homelands among tribal peoples. Prior occupation,

use, and development of the land is the basis for defining the boundaries between *ilis* (ancestral domains). Territorial boundaries (*beddeng* in Mt. Province, *bugis* in peace pact forging areas) have been established between *ilis* and recorded in collective memories of the people. Boundary markers are usually the natural geo-physical features like mountain ridges and water bodies.

## 2. Rights to Access and Use

There are three prevailing land and resource access and use patterns in the Cordillera. These are the communal, the clan or family properties, and the individual private properties. a) Communal properties refer to the land and resources commonly owned by the tribe or *ili*. Communal properties usually include the forests and hunting grounds, water bodies (even if located upon individual private lands), ritual and sacred grounds, and mineral lands. Although use and access to resources in these types of land are open to all members of the *ili*, custom law frowns upon the abuse of these rights. People traditionally partake of the resources as needed and are all equally responsible for its regeneration. b) Clan properties include *uma* (swidden farms), pasturelands and reforested areas (*muyung* in Ifugao, *batangan* and *tayan* in Mt. Province, etc.) acquired from the common properties through prior occupation and usufruct rights. c) Individual private properties: These include the rice fields (*payew*), home lots, and backyard gardens. Private properties may be bequeathed to individual family members. The nearest kin are given priority when these properties are sold or mortgaged.

## 3. Land Acquisition

In the past, no member of an *ili* was without a piece of land to till. Land and property within the *ili*, especially individual private property was acquired primarily through inheritance. Other modes of acquisition were sale, barter or compensation.

*Inheritance*: Inherited properties are the most prized possessions among the Cordillera peoples. These are usually the individual and privately held lands like rice fields and residential lots. Rights to communal and clan lands are similarly inherited but ownership remains with the clan (*dap-ay*).

*Sale*: This is usually a last resort among the Cordillera peoples. Sale is traditionally permitted only in times of extreme need and emergency. Only individual private properties can be sold. Priority is given to the immediate family members when properties are offered for sale.

*Compensation*: Property may also be acquired as a form of compensation for harm or damage done to another member of the community. Among the peace pact holding areas, these properties may not necessarily be given to the directly aggrieved party but to the community as a whole.

## 4. Indigenous Governance

Customary law, which, in the past, was consciously inculcated among the youth, pervades the day-to-day dynamics in a Cordillera *ili*. It is intricately woven into the value and belief system. A rich repository of custom law, which is traditionally oral, is found in the various indigenous socio-political and justice systems. (*Bodong/Peche*): This term literally means 'peace pact'.

Among the warring groups in the Cordillera like the Kalinga and some groups in Bontoc and Ifugao, the *Bodong* is the basic institution by which life, territory and integrity are protected.

*Dap-ay/Abong*: This refers to the physical location of the center of governance in the *ili* which also serves a social function. It is here where the council of elders usually meets and community matters and affairs are decided. *Lallakay/Amam-a/ E-emmed*: This is the traditional council of elders who govern the *ili*. Membership on the council is not only based on age but also on elders' wisdom as a function of their accumulated experiences.

## 5. Resource Management

The concept of sustainable development is not new to the Cordillera peoples. It is a principle that their ancestors inculcated in them. The present abundance of mineral and water resources as well as the biodiversity in the region in spite of the plunder done by mining companies, the timber industry, and urbanization testifies to the peoples' past commitment to sustainable development. Among these indigenous systems of resource management are the Ifugao's *muyung*, the Bontoc's *tayan*, and the Tingguian's *lapat* systems.

#### **a. Forest/Watershed Areas**

*Muyung* refers to privately held woodlots among the Ifugao's Tawali subgroup. The privatization of the woodlots ensures that forested areas are maintained not only for fuel wood and timber but also, and most importantly, for the agricultural economy. Management includes the obliged *hikwat* or clearing the *muyung* of undergrowth and creepers, as protection from encroachment and abuse of resources therein. Among the Ayangan subgroup, this is called the *pinugo*. *Batangan/lakon/saguday* are the woodlots under ownership of a clan, family or the *dap-ay* in western Mountain Province. *Tayan* refers to the corporate property among the Bontoc Kankanaeys. It consists of forested lots managed and exclusively used by a clan, specifically a bilateral descent group.

*Lapat* is the indigenous resource management system among the Tingguian in Abra and the Isneg of Apayao. The system is closely associated with death rituals where a family can designate a specific area under *lapat*. The *lapat* is the custom of declaring a specific area (i.e., river, creek, portion of the forest, etc. closed to human activity and exploitation for one to two years. Violation is punished under customary law. The underlying purpose of the *lapat* is to ensure the regeneration of the biodiversity of resources within the declared area.

#### **b. Agricultural Land**

Agriculture has always been the main livelihood of the Cordillera peoples, with rice and *camote* (sweet potato) as the main staples grown. The skills and knowledge the peoples developed through the ages facilitated their efficient adaptation to their mountain homelands. Many of these adaptations include traditional agricultural systems and practices that still exist, if somewhat improved upon, today. A very important aspect of the agricultural practices of the Igorots is their intricate relationship with the peoples' belief system. Among all Igorot communities, agriculture, especially rice production, is the focus of most religious rituals.

Fallowing and organic farming are two of the most distinctive features of agriculture among the Cordillera peoples. Fallowing allows the regeneration of soil nutrients lost during its use for food production. A fallow period, varying from one to five years, is observed by all the Cordillera peoples in *kaingin* (swidden) agriculture. The Cordillera peoples practice organic farming in both the *uma* (swidden farms) and the rice fields. Organic farming includes the techniques we refer to today as multiple cropping, composting, and integrated pest management.

#### **c. Water Resources**

*Dapat* and *mananum* technically refer to the traditional irrigators' associations that have recognized rights and access to a water resource. Conceptually, the *dapat* and *mananum* are traditional systems of water resource management that ensure a reliable water supply through cooperative rehabilitation, quality and quantity maintenance, and above all, respect for life.

Customary law dictates the need to regenerate aquatic resources; this necessarily imposes a mandate to sustain the quality and quantity of water. Potable water sources are specifically maintained as such by observing pollution prevention regulations. Regulations on fishing and other aquatic biodiversity are similarly imposed by the *dap-ay* or *abong*.

Water is a resource that cannot be owned by any private individual even if it is found in privately held property. The landowner can only be accorded the right to prior use. Rights to water according to customary law belong to those who first tapped the source for their use but do not include a right to divert water from its natural flow and depriving those who claim 'natural rights' by virtue of being located along the natural course of the water. In agricultural areas, the *dumapat* system is still being practiced today. The *dumapats* are groups of rice field owners sharing a common water source for their irrigation use. Aside from these, *dumapats*, today's equivalent of formal irrigators' association, claim their right to a water source based on prior claim and natural flow. Water sources found in privately held lands for example *Kapusean* in Suquib, Besao, cannot be privatized. The landowner may have prior right to use the water but may not to stop or divert it from its natural flow.

Maintaining water supply needed for *dumapat* are cooperation, labor, and resources. Cleaning, weeding and rehabilitating canals and intakes to facilitate water flow are responsibilities of all members of a *dumapat*. Each member family sends a representative to offer *labor* in cases where major rehabilitation works are needed like the annual cleaning during the dry season. When the water supply is depleted, especially during the dry season, the *dumapats* take turns directing the water flow to their fields as agreed among themselves and without prejudice to other fields. The process of taking turns is referred to as *banbanes* and ensures that each one gets his or her turn. Field owners keep vigil at night to make sure that their fields are watered according to schedule. Local water disputes are taken to the *dumapat* level. If not resolved at this level, they are brought to the *dap-ay*.

Besao residents, however, cannot recall any major water dispute among themselves. Community rebuke and taunting are seen as enough punishment for abusive *dumapat* members. An important aspect of the water management in Besao is sustaining the forestlands. Approximately 69% of Besao's land area is classified as forestland. This is further sub-classified into two types based on use. One is the *batangan* or the pinewood forest and the other is the *kallasan* or mossy forests. The *batangan* is generally used for fuel and timber needs while the *kallasan* serves as the hunting and gathering grounds. To sustain these, local ordinances like banning logging for commercial use, have been imposed. People are also very conscious of preventing forest fires so that even in the cleaning of the *uma*, fire lines are established before any burning is done. In cases of fire, community members voluntarily mobilize themselves to put it out and secure valuable properties like houses, rice granaries and animal pens. Religious practices contribute to water management as well. Traditionally, the *legleg*, a sort of a thanksgiving and propitiating ritual, is performed in water sources yearly in Besao. Performance of the *legleg* is believed to please the *nakin-baey* (the household performing the ritual), and prevent it from leaving. Such traditional rites reinforce the high value and regard for water, thus, maintaining its quantity and quality through culturally prescribed and environmentally sustainable use as well as reaffirming man's relationship with nature. (Molintas, 2015)

## **VI. HISTORY: THE INDIGENOUS PEOPLES SLOWLY LOST THEIR LANDS**

### **A. Struggles on Land Ownership**

Before the Spaniards came to the Philippines, the peoples of the Philippines enjoyed the richness of the country's resources. Though there were different tribes or ethnic groups in the Philippines, the people had their way of settling disputes or conflicts and resource management.

#### **1. Colonization Period**

##### **Spanish Time**

On March 26, 1521, the Spaniards conquered the Philippines. This is the start of the Spanish Empire in the Philippines. Since they conquered the Philippines, they applied the Regalian Doctrine. The Regalian Doctrine unilaterally declared all lands discovered and explored by Spanish trades and

conquistadores as under the ownership and exploitation of the Spanish crown. It set forth the management and ownership of all lands and natural resources to be under the Spanish Government as well as the private ownership of title emanating from it. In effect, it treated ancestral domains and lands as part of the public domain owned by the King of Spain.

On April 25, 1898, the Spanish American war began. The Spanish soldiers were defeated. On June 12, 1898, Aguinaldo issued the Philippine Declaration of Independence day from Spain. On August 10, 1898, The Spanish governor general agreed with American commanders to surrender Manila. and on December 10 1898, the Treaty Paris was signed ending the Spanish-American War and selling the Philippines to the United States for USD 20 M. With this treaty, the Spanish rule of the Philippines formally ended.

### **The American Period**

In 1902, the Land Registration Act No. 496 was passed. This declared that all lands subject to the Torrens system of formal registration of land title and empowered the state to issue to any legitimate claimant secure proof of title over a parcel of land. This law made land into a commodity that could be traded by the exchange of a piece of paper. In 1903, The Philippine Commission Acts No. 178 was approved. This act provided that all lands without formal Torrens titles will become part of the public domain. The state had the sole authority to classify and exploit it. This was followed by the Registration Act of 1905 which enforced that the basis of that land ownership in the Philippines would be only the Torrens title. The Public Land Acts of 1913, 1919, 1925 opened Mindanao and all other fertile land that the state considered unoccupied, unreserved, or unappropriate public lands to homesteaders and corporations, despite the facts that the IPs were living in these lands. Source: Molintas, (2015)

In 1905, the Mining Law of 1905 was declared. It states that all public lands are free and open for exploration, occupation, and purchase by the citizens of the United States.

Commonwealth Act No. 137 of 1935 provided for the limitation and punishment for cultural communities who engaged in native mining or gold panning. Source: Molintas, (2015)

Proclamation No. 217 of 1929 declared national minority lands as forest reserves, parks, and reservations. Declaring an area of 697 hectares, 138 hectares of Central Cordillera as forest reserves to include Mt. province, Ifugao, Kalinga Apayao, Benguet and portion of Abra, Ilocos Sur, Ilocos Norte, Pangasinan and Nueva Viscaya. Two –thirds (2/3) of the total area affects the province of Benguet. (Wasing Sacla)

## **2. The Land Laws in the Philippines**

When the Philippine became independent in 1946, the Constitution still stated all resources in the Philippines are owned by the State. Article XIII of the 1935 Constitution states that *“all agricultural timbers and mineral lands of the public domain, waters, minerals, oils, all forces of potential energy and other natural resources of the Philippines belong to the state. Their disposition, exploitation, development or utilization shall be limited to the citizens of the Philippines, or to Corporations or associations at least sixty 60% of the capital is owned by such citizen, subject to existing rights, grant, lease or concession of the time of the inauguration of the government established under the Constitution.”*

This has been echoed in Administrative Order No. 11 (Bureau of Forestry, 1970), which provided that *“all for forest were subjected to all private rights.”* (Molintas: 2015)

Presidential Decree No. 511 which took effect on March 11, 1974. Section 8, states that *“Occupants of ancestral lands as defined under this decree are hereby given a period of 10 days from the date of approval within which to file application to perfect their titles to the lands occupied by them; otherwise they shall be open for allocation to other deserving applicants”.*(Sacla)

1975 Presidential Decree also known as Revised Forestry Code of 1975 declares that “all land 18% in slope or over are automatically considered as forest land not alienable or disposable unless released from the forest zone. Most of the ancestral people claiming rights to their lands are found within these areas.” (Molintas, 2015:13)

Republic Act 7942 or Mining Act of 1995 was passed into law. – It is an act instituting the new system of mineral resources exploration, development, utilization and conservation. It states in Section 16 on Opening of Ancestral Lands for Mining Operations that “No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned. MGB (2020, p.1, p.11)

Aside from the national laws and proclamations, the following are the Proclamations in Cordillera Administrative Region that affect the Indigenous Peoples on their land ownership.

a. Proclamation No. 217 issued on February 16, 1929 declaring an area of 697 has,138 has of Central Cordillera as forest reserves to include Mt. province, Ifugao, Kalinga Apayao, Benguet and portion of Abra, Ilocos Sur, Ilocos Norte, Pangasinan and Nueva Viscaya. Two –thirds (2/3) of the total area affects the province of Benguet.

b. Proclamation No.15, issued on April 27, 1992 declaring an area 38.58 has, of Busol Watershed Reserve. 250 hectares are within La Trinidad Benguet, 86.58 has. are within Baguio.

c. Proclamation No. 354, issued on April 19, 1940 declaring Mt. Data and Mt. Pulag as National Park starting from Km. 14, Acop, Tublay, following the Halsema Highway Road up to Km.100 at Mt. Data covering an area of 5,512 has. of which 3,675 has fall within Benguet. The Mt. Pulag National Park covers 11,550 has.of which 3,312 hectares also within Benguet.

d. Proclamation No. 677 was issued in February 5, 1941 declaring an area of 2,168 has. as Asin Forest Reserve situated in Tuba and portion af Sablan, Benguet.

e. Proclamation No. 58 was issued on February 5, 1941 as Santo Tomas Forest Reserve with an area of 3.114 has. situated in Tuba, Benguet.

f. Proclamation No. 120, Issued on November 25, 1968 declaring 9,700 has. as Ambuklao Forest Reserve located within a portion of Atok, Bokod, La Trinidad and Tublay. Proclamation No. 120 is within Proclamation No. 217, so there is an overlap.

g. Proclamation No. 548, issued March 9, 1971 declaring an area of 73.350 has of Ambuklao-Binga Forest reserve with portion of Atok, Bokod, Kabayan, Buguias, Kabayan, Kibungan, La Trinidad and Tublay, all of Benguet. A hundred thousand more hectares within Hungduan, Kiangan and Kayapa, Nueva Viscaya were included as critical watershed.

h. Presidential Decree No.511 took effect on March 11, 19 74 and it stated in Section 8 of



said decree that “occupants of ancestral lands as defined under this decree are hereby given a period of 10 days from the date of approval within which to file application to perfect their titles to the lands occupied by them, otherwise they shall be open for allocation to other deserving applicants”. The very decree is very unreasonable because of the too short period given to applicants.

i. Proclamation No. 1794, Issued on June 8, 1978 declaring the entire length of Marcos Highway, from Agoo, La Union to Baguio City of five kilometers from both sides of the highway as Forest Reserve. People living along the road had been legally denied their right over their own lands.

j. Proclamation no. 158, Issued on September 27, 1987 declaring an 295 hectares as Kapol -agan Reserve located at Sapid, Mankayan, Benguet by continuous legislation and proclamation.

k. Experimental Forest Reserve with an area of 6,045 has. located at Bokod Municipality.

l. Presidential Degree No. 410, issued on March 11, 1974 declaring ancestral lands occupied by National Cultural Communities as A & D but Benguet Province was excluded from the privilege. Source: Sacla (Unpublished)

1991- The Local Government Code was passed, a law enabling the strengthening of the local government unit to manage the affairs in the local. This localizes the power of the national government in the local. The Local Government Units fully implement the laws and degrees in the control and management of the IPs.

1997- The Indigenous Peoples Rights Act (IPRA) R.A. 8371- The law was passed to promote, protect and recognize the rights of the indigenous peoples. This includes the right to ancestral domain/lands, right to self-governance and empowerment, right to cultural integrity and right to social justice and human rights.

## **OBSERVATIONS AND COMMENTS ON THE APPLICATION OF THESE LAWS**

Before the colonizers came to the Philippines, the Filipinos were considered IPs; they owned their land and all the resources found in it. They have their own way of managing their resources using their IKSPs (indigenous knowledge, skills and practices). They used their culture as the primary source of governance, resource management, and conflict resolutions. The colonizers considered them as barbarians or unlearned. They disregarded the way of living of the IPs in their own land.

When the Spaniards colonized the Philippines in 1521, they started the removal of the rights to land from the IPs. The Spain carried with them the Regalian Doctrine which states that the resources are owned by the Royal Crown of Spain. So to fully manage the land, they created a mechanism using the *encomienda* system which similar to the feudal system in Medieval Europe. One of their priorities was the reduction and relocation of the IPs to establish their legitimate sovereignty in the Philippines. They used Christianity to acquire the land of the Filipinos. At that time, the Spaniards were not able to fully implement their system of government in the Cordillera because this area was far from the center. Although *cedula* (identity certificate) were required of the IPs, the IP did not follow the Spaniards' way of managing and controlling their land. So the IPs in Cordillera still maximized the indigenous way of living and managing their land but unknowingly these were already 'owned' by Spain.

The establishment of American government in the Philippines continued to favor the colonizers. The American government used policy requiring settlers of the public land to acquire deed from the government. Regalian doctrine still prevailed. The laws that they passed were used to easily control and manage the natural resources of the IPs. The Land Registration Act in 1902 declared that all lands subject to the Torrens System of formal registration of land title empowered the state to issue to any legitimate claimant to secure proof of title over parcel of land. This was followed by the Philippine Commission Acts No. 178 which considered that all unregistered lands become part of the public domain and that the state had the only authority to classify or exploit the same. The Cordillera IPs were not aware of these laws and since the Cordillerans had no means of knowing these laws, they did not register their land. Since their land was not registered, it was then considered public land. There were a few who registered their land, but majority of the land was not registered. In addition to this, Public Land Acts of 1913, 1919, and 1905 opened other lands that were not occupied, unreserved, or inappropriate public land to homesteaders and corporations, even though there were IPs living in these lands. This opened not only to mining but all other kinds of business.

Since most of the land were not registered during this period, the implementation of the Mining Act of 1905 was easy because most of the IP lands that were minable were public land. This opportunity to purchase minable areas was granted to American citizens who then started mining operations. This was the beginning of the mining operations in the province of Benguet and other IP communities. This law removed the right of the IPs to their unregistered lands located within those areas. Added to this was the burden of the Commonwealth Act no. 137 of 1935 that provided for the limitation and punishment for cultural communities who engaged in native mining or gold panning which restricted the IPs right to maximize the natural resource in their ancestral domain. The American government meted punishment to the IPs who violated this law, hence, the Americans benefitted from these resources mined from the said communities. The Presidential Degree No. 410, issued on March 11, 1974 declared ancestral lands occupied by national Cultural Communities as alienable and disposable (A&D) however, Benguet Province was excluded from the privilege. The law intended to exclude Benguet because it is rich in gold and other minerals. The law opened up the ancestral domains as alienable and disposable which implied that ancestral land was opened up for any development.

Aside from the above-mentioned laws, the government continued to remove the IP rights to land by proclaiming the proclamation No. 217 of 1929. This declared that national minority lands as forest reserves, parks, and reservations. This declaration covered areas in Central Cordillera as forest reserves including Mt. province, Ifugao, Kalinga Apayao, Benguet and parts of Abra, Ilocos Sur, Ilocos Norte, Pangasinan and Nueva Viscaya where two-thirds (2/3) of the total area affects the province of Benguet. These laws continued to limit the management and control of their land by IPs. Because the IPs were not aware of this proclamations and laws, they continued to manage their land using their Indigenous Knowledge Systems and Practices (IKSP).

The Philippine Independence did not grant IPs to own their land; rather it was a continuation of the Regalian system established by the colonizers. The Philippine Constitution still states that all lands/resources are owned by the government. Land is private land when it is titled and considered public land or domain if it is not titled. This is simply the transfer of management from the US government to the Philippine government. The Regalian system still continues. As a result, so-called development projects continue to be easily implemented in IP communities despite the indigenous population not understanding what and why projects are being implemented in their areas. This has resulted in displacements, misunderstandings, and divisions of IP communities. When it comes to "development" such as mining, dams, concessions, and hydro projects, the people are perplexed why others (developers) use their resources without their prior knowledge and consent. Hence, resistance sets in. Though the IPs have their own way of resolving conflicts, their system is only applicable among and between IPs. This is seldom applicable to non-IPs. Most of the time, the rights of IPs over their land get to be sacrificed.

In 1970's-1980s, the experience of Kalinga, Mt. Province and Abra shows that they had been using IKSP and peaceful means in settling conflicts, however, the government did not see the significance during those times. The IPs resorted to armed struggle in protecting their rights to their land. The armed struggle ended through a "Sipat" peace pact/agreement between the Cordillera Peoples Liberation Army (CPLA) and the Philippine Government.

Another Law that does not favor the IPs is Presidential Decree No.511, which took effect on March 11, 1974. In Section 8 of this decree, it states that "Occupants of ancestral lands as defined under this decree are hereby given a period of 10 days from the date of approval within which to file application to perfect their titles to the lands occupied by them; otherwise they shall be open for allocation to other deserving applicants". While this law is supposed to be for the IPs, the provision that 10 days from the date of approval is not practical. How would the IPs in the mountains with no radio, newspaper, and TV know such a provision and process it within 10 days? The law is not practical for the IPs since 10 days due to distance and lack of communication; besides, 10 days would not be enough for them to process their application.

The IPs who were not displaced remained in the ancestral domain. As time went on, new laws have been approved for the easy management of the Philippine territory. One way is the approval of the Local Government Code of 1991. This strengthened the presence of government in IP territories by creating the local government units. The national government decentralized some of their functions to the local government unit (LGU). Part of the LGU's function is the implementation of these laws on the local level including taxation. The implementation of the law was slowly embraced by the IPs especially in the urbanized IP community. This facilitated some development projects of the IP communities.

The Mining Act of 1995 or Republic Act 7942 is a threat to IPs. It is a law that opens the ancestral domain to mining investors. Though it is clearly stated that no ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned, the issue is the level of awareness on the FPIC by the communities. During the passage of the law on Mining, the Indigenous Peoples Rights Acts (IPRA) R.A. 8371 was not yet approved but the need for 'prior consent' was already stated in this law.

In 1997, the Indigenous Peoples Rights Act (IPRA) was passed into law. This is an act to recognize, protect, and promote the rights of the indigenous peoples. The IPs consider IPRA as one of the laws that would help in the protection of the ancestral domains/lands, promotion of their cultural beliefs and traditions and the pursuit of self-determination. The law was passed to recognize, protect and promote the right of the IPs hence the concept of free prior and informed consent (FPIC). This is a process by which the IPs are given the time to participate in all matters affecting the ancestral domain.

IPRA was passed and it was good for the IPs. This should have facilitated the land titling of the IPs, however, until this day, there are only 219 CADTs (Certificate of Ancestral Domain Title) issued in the whole Philippines. Some observations why there are only 219 CADTs issued are:

1. The lengthy and tedious process and voluminous requirements that the IPs has to go through and comply with testimonies, historical accounts, photos, genealogies, IKSPs, written accounts, maps, census, many supporting documents and write ups.
2. The Ancestral Domain Boundary Conflict Resolution (ADBR).
3. The NCIP (National Commission on Indigenous Peoples) has no common understanding of how this will be implemented.

In the Cordillera, the implementation of the CADT is applied to one ancestral domain per municipality even though it has two or three tribes. Due to this, there are difficulties in the identification of boundaries because one tribe actually stays in two or more municipalities. To define their boundaries on the basis of municipality which is a political boundary is very difficult to do because long time ago the same tribe was divided by municipality and now they are separating them again for the purpose of implementing the CADT of the granting of a title or certificate for the ancestral domain.

In some CADT areas (where one ancestral domain is located in one municipality), there is no difference in the Local Government Code, because the governance is still managed by the Local Government Unit even it is a CADT area. However, the management of the tribe as owner is not given to them as stated in the IPRA.

Aside from difficulties encountered in land titling, “development aggression” is an additional burden to the IPs related to land ownership. Currently, there are projects and program being implemented and operated in the Cordillera without the consent of the IPs. Securing and ensuring FPIC or Free and Prior Informed Consent is a good process when it comes to understanding the projects entering the IP communities but there is no common understanding in the implementation of the IPRA law. This has brought confusion to the IPs. The following were the terms and part of the process that have caused a problem:

1. The Free Prior and Informed Consent: Doesn't this mean that IPs has to give their consent every time the FPIC is conducted?
2. Primacy of the customary laws/ consensus building: Most of the time the IPs end up voting using the majority rule instead of using their IKSPs in decision making.
3. One domain as one unit: This is the most confusing because even though all the barangays/villages have undergone consultations, they are required to decide as one AD (ancestral domain) and according to barangay/village. Most of the time, in the processes of FBI (Field-Based Investigation), CCA1 (First Community Consultative Assembly; CCA 2 (Second Community Consultative Assembly) until the decision making, the barangays decide by themselves with no consensus as one domain.
4. The documents required before the FPIC proper in the IPRA states that all resources are owned by the IPs, but when it comes to water permit, it is granted by the National Water Board and not by the IPs. This is one of the major issues in the IP community when it comes to hydro projects.
5. The documents needed and required from other government agencies before the FPIC are not clear.
6. The FPIC is conducted without the reviewing the ADSDPP (Ancestral Domain Sustainable Development Project Plan). The ADSDPP serves to be the most important document of IPs where 'development' is defined. However, more often this is not considered as the basis of FPIC/ project implementation. One thing more is that, the ADSDPP should be prepared genuinely by the IPs which is not the case many times.
7. The National Commission on Indigenous Peoples does not have adequate fund for the process of obtaining FPIC, the proponent will fund the whole process. This must be reviewed by the NCIP commissioners.

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