Three Years of the Indigenous Peoples Rights Act: Its Impact on Indigenous Communities*

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It has been three years since the signing of the Indigenous People's Right Act of 1997. A landmark piece of legislation, it guarantees the rights of IPs to ancestral domain, self-governance and empowerment, social justice and human rights, and cultural integrity. A petition seeking that the law be declared unconstitutional has been filed with the Supreme Court, arguing among others that the granting of ownership over ancestral domains, which includes all natural resources found thereat, was unconstitutional, since all subsurface mineral resources belong to the State. The National Commission on IPs (NCIP) created by law does not enjoy funding support at all. The change in administration and consequent new appointments and creation of overlapping bodies have also disrupted its organizational functions. The mining sector resents the need for Free and Prior Informed Consent (FPIC) aside from the already tedious set of permits required by government. So far only two mining companies have secured this consent while several others have abandone investment plans. Although intended to uplift the quality of life and promote unity among IPs, the IPRA has so far brought more disunity and mistrust than upliftment. The IPRA spawned organizations both for and against it and encouraged corruption especially in the issuance of FPICs. As an ancestral domain law which primarily grants security of tenure to IPs through the issuance of Certificate of Ancestral Domain Titles (CADTs), the IPRA has failed miserably. In three years not a single CADT has been issued, a fact favorable to those with the opinion that the IPs were better off without the IPRA. But while the law has not made good its promises, the IPRA has succeeded in making IPs politically aware of their rights within Philippine society, certainly a positive step towards self-determination.

On October 29, 1997 then Philippine President Fidel V. Ramos signed into law Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA). During the signing ceremony, Ramos announced, "Through R.A. 8371, we accelerate the emancipation of our Indigenous Peoples from the bondage of inequity. This social injustice bred poverty, ignorance and deprivation among our indigenous cultural communities and further alienated them from people from the mainstream."[1]

The IPRA was viewed as landmark legislation not only in the Philippines but elsewhere in the world because of a nation-state's formal recognition of the rights of indigenous peoples over their ancestral domains. The only other country with a similar law is Australia, where the homelands of aborigines have been recognized as sovereign territorial units by the State.

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But how has IPRA actually been implemented at the ground level? What has been the reaction of various stakeholders on its implementation? Has it really led to the empowerment of indigenous peoples as what its lawmakers originally envisioned it to be?

Research Questions

It has been three years since the enactment of IPRA. Thus, it is but timely to assess the overall implementation of the IPRA in the country.

This study, therefore, aims to answer the following research questions:

1. To what extent has the Philippine government implemented the IPRA? What concrete measures have been undertaken by the National Commission on Indigenous Peoples (NCIP) to implement the specific provisions of the IPRA?

2. What were the responses of the various interest groups, e.g. the indigenous peoples, the mining sector, and non-governmental organizations, vis-à-vis the IPRA?

3. Has the IPRA contributed to the empowerment or disempowerment of indigenous peoples? In what manner has this been accomplished?

4. What are the factors that brought about the present status of IPRA implementation? What mitigating measures can be done to overcome the problems encountered during the course of IPRA implementation?

Methodology of Research

A combination of various social science research methods were used in the conduct of this study, namely: a) review of pertinent documents of the NCIP and other related literature; b) focused group discussions with members of indigenous communities; c) key informant interviews with NCIP officials, leaders of IPs, and members of advocacy groups on indigenous peoples' rights; and d) participant observation of family and village life in selected communities.

Fieldwork was conducted in the period of June to September 2000 in the following indigenous communities:

1. Agta Negritos of coastal Isabela;
2. Ibaloys of Itogon, Benguet;
3. Kalingas of Tinglayan, Kalinga Province; and
4. Bukidnons of Mount Kanlaon in northern Negros Island.

Salient Features of the IPRA

The IPRA is basically a magna carta of indigenous peoples rights. It defined "indigenous cultural communities" (ICCs) or "indigenous peoples" (IPs) as:

> A group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on 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, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on 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 religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.[2]

Among the basic rights that are guaranteed by the IPRA are the following: a) right to ancestral domain; b) right to self-governance and empowerment; c) social justice and human rights; and d) cultural integrity.

The Act also established the NCIP, which will be the "primary government agency responsible for the formulation and implementation

of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto."[3]

Probably the most controversial aspect of the law is its recognition of the rights to ancestral domains of indigenous peoples. IPRA defined "ancestral domain" as:

> All areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, 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 except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs 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.[4]

As provided by law, the NCIP will issue Certificate of Ancestral Domain Titles (CADTs) to the IPs. The possession of such a title guarantees the following:

1. right of ownership;
2. right to develop lands and natural resources;
3. right to stay in the territories;
4. right in case of displacement;
5. right to regulate entry of migrants;
6. right to safe and clean air and water;
7. right to claim parts of reservations; and
8. right to resolve conflict.

Thus, the CADT is a new corpus of land title that is distinct from both public and private lands. It is communally possessed but is not considered as owned by the State.

One requirement for the issuance of CADTs is that the lands should be held under a claim of ownership by the IPs themselves. The Department of Environment and Natural Resources (DENR) issued several Certificates of Ancestral Domain Claims (CADCs), based on its Department Administrative Order (DAO) No. 2 series of 1993, even prior to the enactment of IPRA. As of June 6, 1998 there were 181 approved CADCs distributed all over the country covering a total of 2,546,035 hectares.[5] This represents approximately 8.5% of the total land area of the Philippines. The distribution of these CADCs per region is shown in Table 1. It is these CADCs that are supposed to be prioritized by the NCIP in the processing of CADTs.

Formation of the NCIP

In early 1998, President Ramos organized the NCIP as an independent agency under the Office of the President. Ramos appointed five NCIP Commissioners, out of the seven mandated by law. Atty. David A. Daoas, a Kankanaey from the Cordillera, was appointed as Chairman. Also appointed were the following Commissioners: Datu Migketay Victorino L. Saway, a Higaonon from Bukidnon; Erlinda M. Dolandolan, an Ayta from Central Luzon; Mai T. Tuan, a T'boli from South Cotabato; and Castillo B. Tidang, Jr., a Kalanguya from Nueva Vizcaya. The election ban during that year prevented the President from appointing two other commissioners to represent Central Mindanao and the island provinces of central Philippines. It was only in July 2000 when Edtami Mansayagan, an Arumanon Manobo from Central Mindanao, was appointed as NCIP commissioner.

Only a few months old, the NCIP faced an organizational crisis when President-elect Joseph Ejercito Estrada appointed on July 15, 1998 Cesar Sulong, a Subanen from Zamboanga, as the new NCIP Chairman. Atty. Daoas protested this move as his tenure was intended for three years. Moreover, many people viewed Sulong's appointment as a violation of IPRA's provision on the composition of the NCIP. Section 40 of IPRA specifically stated that the seven NCIP commissioners should come from each of the following "ethnographic areas:" Region I and the

Table 1. Distribution of Certificates of Ancestral Domain Claims, Per Region, As of June 6, 1998

Region	No. of CADCS	Hectares
CAR (Cordillera)	23	578,366
Region 1 (Ilocos)	4	33,998
Region 2 (Cagayan Valley)	13	362,221
Region 3 (Central Luzon)	10	96,658
Region 4 (Southern Tagalog)	19	382,893
Region 5 (Bicol)	17	94,362
Region 6 (Western Visayas)	6	22,257
Region 7 (Central Visayas)	4	4,373
Region 8 (Eastern Visayas)	0	0
Region 9 (Western Mindanao)	10	72,179
Region 10 (Northern Mindanao)	19	184,178
Region 11 (Southern Mindanao)	18	398,573
Region 12 (Central Mindanao)	22	52,715
Region 13 (Caraga)	16	263,262
ARMM (Muslim Mindanao)	0	0
TOTAL	181	2,546,035

Source: Department of Environment and Natural Resources, 1998

Cordilleras; Region II; the rest of Luzon; island groups, including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and central Mindanao.

Since Sulong came from Western Mindanao while Datu Saway hailed from Northern Mindanao, they practically belonged to the same "ethnographic area." Sulong was allegedly recommended to President Estrada by his friend and province-mate, Secretary Antonio Cerilles of the

DENR. In the end, Atty. Daoas' chairmanship of the NCIP was affirmed while Sulong remained as a Commissioner.

Some indigenous peoples' advocates protested Estrada's appointment of Atty. Juris Dueñas as Executive Director on the grounds that he was "non-indigenous."

Towards the end of July 1998, President Estrada appointed Atty. Donna Z. Gasgonia as Presidential Assistant (PA) for Indigenous Peoples. Again, some quarters questioned this move because they believed that her duties and responsibilities as PA overlapped with the functions of the NCIP Chairman.

In September 1998, Executive Secretary Ronaldo Zamora issued Memorandum No. 31 creating the Presidential Task Force on Ancestral Domains (PTFAD) to be chaired by PA Gasgonia. The said ad hoc body was assigned to study the issues related to the composition, administrative set-up, and operations of the NCIP. Pending the results of the investigation, the memorandum also directed the Department of Budget and Management (DBM) to withhold the release of NCIP's operational funds. This order practically prevented the NCIP from performing its functions, especially with regard to the processing of ancestral domain titles.

In December 10 of the same year, Secretary Zamora issued Memorandum No. 42 directing the Department of Justice (DOJ) to investigate administrative complaints filed against certain NCIP officials, including Chairman Daoas. These complaints stemmed from Daoas' and other officials' previous stint in the now defunct Office of Northern Cultural Communities (ONCC) and Office of Southern Cultural Communities (OSCC), two government agencies that preceded the NCIP and were later merged to form the core of the newly established NCIP.

While the PTFAD was dissolved after submitting its recommendations to the President, two new bodies were formed by Malacañang which, more or less, duplicated the functions of the NCIP: the National Anti-Poverty Commission Indigenous Peoples (NAPC-IP) Sector and the Presidential Task Force on Indigenous Peoples (PTFIP). The former is mandated to address poverty-related issues affecting IPs while the latter is a recommendatory body on policy matters pertaining to IPs. According to one source, the PTFIP members are intended to replace the present

crop of NCIP commissioners when the tenure of the latter expires by February 2001.[6]

Implementing Rules and Regulations

Also in 1998, the NCIP came out with the Implementing Rules and Regulations (IRR) of the IPRA. One of the key points in the IRR is that any individual or company, whether government or private, that is interested in setting up a development project within an ancestral domain should first secure Free and Prior Informed Consent (FPIC) from the IP of the area.

The mining sector viewed this as an additional bureaucratic layer in the so many permits that they already have to secure from government agencies, such as the Mining and Geosciences Bureau (MGB) and the Environmental Management Bureau (EMB). The Chamber of Mines branded IPRA as anti-development. The group revealed that several mining companies have already pulled out of the Philippines because of IPRA. Among these are the Western Mining Corporation, an Australian company in Southern Mindanao, and the Newmont Philippines, a Canadian company that conducted exploration activities in the Cordillera.

As a response to questions on the FPIC, the NCIP later issued Administrative Order No. 3 series of 1998 called the "Supplemental Guidelines in the Issuance of NCIP Certification Precondition and Free and Prior Informed Consent in connection with Applications for Lease, Permit, License, Contract and Other forms of Concession in Ancestral Domains." This Order clarified that firms with approved contracts, licenses, agreements, and other concessions prior to the effectivity of the IPRA IRR are exempted from the FPIC requirement. Instead, the NCIP can issue a Certification Precondition.

From 1998 until the present, only two (2) companies were able to obtain FPICs — the Western Mining Corporation (WMC) and the Newcrest Exploration. The WMC was able to acquire an FPIC from the B'laans of Tampakan, South Cotabato after introducing several infrastructure and livelihood projects in the community. Similarly, Newcrest was able to secure an FPIC from the Kalingas of Lubuagan after pouring into the community several showcase projects, such as the building of schoolhouses, paved pathways, and waiting sheds. A geothermal

exploration project by the Philippine Geothermal, Inc. (PGI), also in Kalinga, is having difficulties in securing an FPIC despite the conduct of serious village consultations. One elder from Tulgao confessed to a PGI staff, "The government officials just want to prolong the process to get more money from you!"[7]

Such experiences reflect what Florence Umaming-Manzano,[8] one of the Convenors of CIPRAD, feared as a threat to IPRA:

> It should be noted that there are also indigenous peoples who are popularly referred to as "tribal dealers" who will readily become parties to undermining their community's Free Prior and Informed Consent (sic) in exchange for personal gain. A capitalist framework puts the right of indigenous peoples to Free Prior and Informed Consent (sic) and decision-making by consensus at risk to manipulation and bribery.

The Environmental Science for Social Change,[9] a non-governmental organization, expounded on the problems concerning the FPIC process:

> (T)hese activities are regarded as forms of bribery especially when carried out before or during the FPIC process. This perception seems justified in light of the fact that a royalty is only finalized upon the community's acceptance. To flaunt the royalties at the start could be pre-empting the FPIC process and disregarding the traditional systems by which the community evaluates the usefulness of certain activities or projects that were never part of its culture. Likewise, a gift — cash or kind — especially when given to individual members, distorts the communal orientation of the community. Moreover, because it tends to ignore the cultural process of authority based on consensus-building, a division among clan or community members is likely to occur.

Supreme Court Case Versus IPRA

In September 28, 1998, former Supreme Court Justice Isagani A. Cruz and Atty. Cesar Europa filed a petition with the Supreme Court seeking to declare the IPRA as unconstitutional.

Cruz and Europa questioned the granting of the right of ownership to indigenous peoples over ancestral domains, which, as defined, includes all natural resources found thereat. According to them, this violates the

Philippine Constitution, which provides that all subsurface mineral resources belong to the State.

The two petitioners also questioned the preferential use of customary laws within ancestral domains. Based on Philippine jurisprudence, all laws and ordinances should first be published before these are formalized into law. This is required so that anyone can contest the law before it is finalized. On the contrary, Philippine customary laws are unwritten. While the particular community where these laws are practiced may know these laws by heart, they deem it unfair that these laws are applied as well to outsiders who enter that domain.

Cruz and Europa also claimed that the IPRA provision on the right of IPs to limit migrants into their domains is also under question violates the Filipinos' basic rights to mobility and abode within the country.

The two lawyers also called for the abolition of the NCIP. The IPRA gives the NCIP the "jurisdiction over all claims and disputes involving rights of ICCs/IPs."[10] Since the NCIP is made up of seven commissioners, all of whom are members of indigenous communities themselves, Cruz and Europa believe that the NCIP cannot be impartial in cases of conflict between IPs and non-IPs. To prove their point, they argued that cases of violations of the rights of women are never decided upon by an all-woman tribunal. Juridical bodies are not constituted on the basis of sex, religion, or ethnicity.[11]

Based on the aforementioned arguments, the petitioners prayed for the issuance of a temporary restraining order (TRO) on the implementation of the IPRA. The Supreme Court, however, did not issue a TRO and has not made a final ruling on the case.[12]

Meanwhile, the DBM withheld the release of NCIP's operational funds for fiscal years 1999-2000 pending the ruling of the Supreme Court. The DBM argued that it could not fund something that may later turn out to be unconstitutional. This move further paralyzed NCIP's operations.

Disunity Among Indigenous Peoples

As a law intended to uplift the conditions of IPs, one would assume that the latter would band together in support of IPRA. Ironically, IPRA has brought about disunity among the IPs. There are those who expressed unconditional support to the law while others call for its outright repeal. In between the two opposing camps are organizations that lend critical support to IPRA, being aware of the law's limitations.

Two new alliances have sprung out in support of IPRA, namely: the KASAPI and the Coalition for Indigenous Peoples Rights and Ancestral Domains (CIPRAD). The latter is a network composed of 15 IPs organizations and five non-governmental organizations (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 (ECIP-CBCP).

Among the organizations calling for the repeal of IPRA is the left-leaning National Democratic Cordillera People's Alliance (CPA), the organization that is attributed to be the forerunner in the call for the recognition of the rights to ancestral domains. The CPA alleged that the IPRA is merely a tool of the "US-Estrada regime" to stem the growing IPs movement. The said organization believed that a genuine recognition of ancestral domain rights would only be possible within a "national-democratic" society.

On the other hand, lending critical support to IPRA is the most recently formed National Coalition of Indigenous Peoples of the Philippines (NCIPP). The Davao-based Lumad Mindanaw spearheaded the formation of this network of organizations.

There are other factors that contributed to the disunity of IP organizations. An important factor is the role of external agencies, political parties, and organizations that support these organizations. KASAPI, for example, was formed through the initiative of NGOs such as the Philippine Association for Intercultural Development and the Legal Rights Center (LRC). On the other hand, the Manila Office of the International Labor Organization (ILO) had an important role in the establishment of the CIPRAD. Meanwhile, the Sentro para sa Ganap na Pamayanan, headed by former Constitutional Commissioner Ponciano

Bennagen, had a strong hand in the formation of the NCIPP. It is also a known fact that the CPA is the legal front organization of the underground Cordillera People's Democratic Front (CPDF).[13] Because these supporting players have their respective political agenda, their client IP organizations also mistrust one another.

It should also be noted that the split among IPs organizations started with the demise of the former Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP) as early as 1996. Since the Communist Party of the Philippines (CPP) principally organized KAMP as well. After the split within the CPP between "reaffirmist" and "rejectionist" factions broke out, KAMPs member organizations parted ways. Lumad Mindanaw was one of the very first to bolt KAMP because they believed that the real aspirations of indigenous peoples were not being addressed by the organization. They alleged that IPs were only being used by the CPP for its own political motives.[14]

Of course, the greater majority of indigenous peoples are not members of formal people's organizations (POs). Most of them have remained apolitical in the debates on IPRA. As a matter of fact, many have not even heard of IPRA or what it is really about.

The Case of the Bukidnons of Mt. Kanlaon

The ensuing schism among the indigenous peoples because of IPRA is not only manifested in the different stance of existing national IP networks. These differences could be found even at the level of the village. Let us take the case of the Bukidnons of Mt. Kanlaon Natural Park (MKNP), located in the northern part of the Negros Island and one of the 10 priority Protected Areas in the country covered by the Conservation of Priority Protected Areas Project (CPPAP).

The Bukidnons of MKNP are found in Barangay Codcod, San Carlos City. They are a minority in the barangay, however, since the majority is composed of "non-indigenous" Sugbuhanons, Hiligaynons, and Kiray-a.[15] The Bukidnons have harmoniously lived together with these other Visayan ethnolinguistic groups and, as a matter of fact, intermarriage among these different groups is commonplace. Bukidnon households are interspersed with other households and there is no contiguous area that is predominantly Bukidnon.

Upon the initiation of the former Office of Southern Cultural Communities (OSCC), the Codcod Tribal Council (CTC) was organized. When the OSCC was transformed into the NCIP, its Coordinator in Negros encouraged the CTC to apply for a CADT. The CTC leadership, however, refused because they fear that their good relationship with other residents will be sacrificed. They believed that they could not impose their customary laws on the greater majority.

Because of this, the NCIP Coordinator organized a rival "tribal council," known as the Iliranan Tribal Council, named after the sitio where its "chieftain" came from. The ITC then advocated for the issuance of a CADT, not only for Iliranan nor Codcod but for the entire MKNP. This move alarmed the other residents of Codcod. The CPPAP Project implementers intervened and initiated the conduct of an ethnographic study on the Bukidnons of MKNP. The study, undertaken by the Multisectoral Alliance for Development-Negros (1998), showed that the Bukidnons were not originally from Mt. Kanlaon but from the lowlands. They only moved into the mountain lair during the Spanish colonial regime to resist the policy of *reduccion*. The Bukidnons and other Visayan communities in Negros trace a common ancestry. Thus, both the Bukidnons and non-Bukidnons have a claim to Mt. Kanlaon. The CPPAP implementers believed that all communities in the area, through the Protected Area Management Board (PAMB), could jointly manage the Park.

This prompted the ITC to announce its policy of non-cooperation with the CPPAP. They were very confident that a CADT would be awarded to them by the NCIP. The ITC leaders believed that once they have acquired a CADT, they could now resume slash-and-burn activities in the Park, something that has been forbidden by the National Integrated Protected Areas System (NIPAS) Act.

After almost three years of the IPRA, the Bukidnons belonging to the Iliranan faction became aware that their CADT remains an elusive dream and that they could not pin their hopes on the NCIP. Meanwhile, the CPPAP was facilitating the awarding of Community-Based Forestry Management Agreements (CBFMAs) to other Park occupants. Realizing this, the ITC cooperated once again with the CPPAP and was given representation in the PAMB, the policy-making body within the Park. The mistrust between the Iliranan and the Codcod tribal councils, however, remains.

Issuance of Ancestral Domain Titles

Former President Ramos also referred to the IPRA as an "ancestral domain law." This is because the granting of security of tenure to IPs through the issuance of Certificates of Ancestral Domain Titles (CADTs) is the most important objective of IPRA. Has this objective been met?

Unfortunately, the answer is "No." Not a single CADT has been processed and issued by the NCIP since the enactment of IPRA. In contrast, prior to IPRA, the DENR was able to award 181 Certificates of Ancestral Domain Claims (CADC) in the period of 1993-98.[16] This is the reason why Ka Wini, an Ayta from Bataan, opined that having no IPRA at all might even be better.

NCIP Chairman Daoas claimed that they could not process CADT applications because the DBM did not release its budget intended for this purpose. He argued that the conduct of ground surveys to delineate and validate domains is very costly. The Office of the Presidential Adviser on the Peace Process (OPPAP), another government agency, suggested that it could offer its own funds to process at least one CADT. So far, however, nothing has taken off the ground.

This has prompted some groups, such as the National Coalition of Indigenous Peoples of the Philippines (NCIPP), to go into self-delineation activities. Through the assistance of anthropologists from the Ugnayang Pang-AghamTao, Inc. (UGAT), they conducted their own ethnographic studies and developed Ancestral Domain Management Plans (ADMPs). According to Edtami Mansayagan, an Arumanon Manobo and the NCIPP Secretary-General, they would delineate their own domains with or without government recognition. For him, what is important is that the indigenous peoples themselves know the extent of their traditional territories and agree on how this area will be communally managed.

An Ayta Woman's Perspective

Was the IPRA able to improve the lot of the IPs? For Ka Wini, the answer is in the negative. She compared the situation in Bataan before and after the enactment of the IPRA:

> Prior to IPRA, we could approach the Municipal Agricultural Office when we were in need of seeds. We were assisted by the DSWD (Department of Social Welfare and Development) whenever we needed skills training. The local government unit was most willing to provide us with funds in cases of emergencies. However, when the IPRA was enacted, all of these offices told us that we had to approach the NCIP since it was now the mandated government office for indigenous peoples. When we approached the NCIP office, however, they told us that they don't have any funds. I think the situation before was more favorable for us.[17]

Ka Wini added that the NCIP office in Bataan was not doing anything. According to her, they do not even visit Ayta communities; they merely wait for the Aytas to visit them in their offices.

She was also critical of the idea of providing them with ancestral domain titles. She said, "Why do they insist in giving us communal titles? We don't want communal titles. What we want are individual Torrens titles. How come lowlanders could own private lands while we Aytas cannot?" While other IPs who still value communalism, such as those in the Cordillera, may not necessarily share Ka Wini's sentiments. This shows a basic weakness of the IPRA can be observed. The IPRA views the cultures of IPs as something static, i.e. living in the past, as if cultures do not change. The culture of the Bataan Aytas, for example is so acculturated that when you ask them about their "indigenous" music, they would point to the Sakala — a corruption of the English song "Boom Shakalak."

Moreover, there is a tendency to make sweeping generalizations about IPs of the Philippines. As a case in point, not all indigenous communities share a common notion of territoriality. On the one hand, there are groups, such as those in the Cordillera, who have concepts of ancestral domain. On the other, the nomadic Agta of northern Sierra Madre have a fluid concept of territoriality. Their "domain" moves as the band transfers from place to place. There is no concept of a permanent territory.

Conclusion and Recommendations

In a span of three years of implementation, the IPRA was able to attain both successes and failures. The following are the major

accomplishments of the said law: a) establishment of the NCIP; b) finalization of the law's implementing rules and regulations; and c) issuance of two (2) FPIC certificates for mining corporations intending to develop resources within ancestral domains. However, not a single CADT has been awarded to IPs in the period of 1997-2000 despite the fact that the recognition of ancestral domain rights is the cornerstone of the IPRA.

IPRA's impact on local communities is also two-fold. On one hand, IPRA has brought about heightened public awareness on indigenous peoples' rights and welfare and encouraged the organization of several IP organizations. On the other hand, differing attitudes toward the IPRA has brought about disunity among these organizations and within communities. There are several instances where the process of securing FPICs has encouraged a culture of bribery among these communities. In extreme cases, partisan differences relative to IPRA have led to tensions and conflicts in multi-ethnic communities. The initial euphoria by indigenous communities has paved the way to disillusionment because of the failed promises of IPRA.

The present state of IPRA implementation is but a product of the continuing conflict between and among various stakeholders, i.e. the government, IPs, private corporations, non-governmental organizations, and the political opposition. Each of these groups is using the IPRA to advance its own socio-political and economic interests. As a matter of fact, even the final version of the bill that was approved by the Philippine Congress is essentially a compromise document reached through negotiation between various interest groups.

No new accomplishments are expected from IPRA in the coming years if the legal challenges against it are not settled. The present impasse, marked by the immobility of the NCIP in implementing the law due to the absence of an operational budget, should be overcome. Thus, the Supreme Court's immediate ruling on the subject matter is most welcome for all parties concerned.

It is true that the IPRA has its flaws. It is not a perfect document. It was mainly patterned after the Aboriginal Land Law of Australia, which operates in a very different context from that of Philippine reality. Of course, experiences from the Cordillera were also incorporated into the drafting of the IPRA. However, the situation in the Cordillera is not

representative of the situation of all indigenous peoples in the Philippines. For example, there are varying concepts of territory among the different ethnolinguistic groups in the country. Warrior societies in the Cordillera have fixed and well-defined territorial boundaries while the Sierra Madre hunters-gatherers have a fluid concept of home ranges.

To totally disregard the IPRA, however, is out of the question. This move would definitely be a step backwards. What is needed is an improvement of the existing law through amendments and the passage of new implementing rules and regulations. More concretely, culture-specific ordinances should be adopted. There should be different guidelines for more acculturated groups distinct from those who have relatively maintained their traditional practices. A different approach should be applied for nomadic groups compared to those of sedentary agriculturists.

While the issue of the legality of the CADT has not yet been settled by court, the indigenous peoples should avail of other existing tenurial instruments such as the CBFMA. While the CBFMA merely offers stewardship and not ownership, it nevertheless provides right of tenure to IPs during this period of impasse until a better instrument has been developed.

Despite the many setbacks encountered in the course of IPRA implementation, many indigenous communities still consider the IPRA as an empowering instrument. Because of this law, they have become politically aware of their rights as a special sector within Philippine society. This awareness, however, has to be translated into actual organizational strength and to concrete mass mobilization. The IPRA will not, by itself, liberate the IPs from discrimination and exploitation. The IPs have to reckon with the State, the private sector, and other interest groups from a position of strength to be able to fully attain self-determination and democracy.

Notes

1 Fidel V. Ramos, "The Ancestral Domain Law: A Triumph of Political Will," in Coalition for Indigenous Peoples Rights and Ancestral Domains, *Guide to R.A. 8371: Indigenous People's Rights Act of 1997 (IPRA)* (Quezon City: CIPRAD, 1999), p. 56.

2 Indigenous Peoples Rights Act (IPRA), Chapter II, Section 3h.

3 IPRA, Chapter VII, Section 38.

4 IPRA, Chapter II, Section 3a.

5 The Department of Environment and Natural Resources has ceased awarding Certificates of Ancestral Domain Claims (CADCs) and Certificates of Ancestral Land Claims (CALCs) since the National Commission on Indigenous Peoples was established. They believe that this activity is no longer their mandate but that of the NCIP.

6 Interview with Edtami Mansayagan, member of the Presidential Task Force on Indigenous Peoples, June 9, 2000, Manila.

7 Interview with Ganagan of Barangay Tulgao, Tinglayan, Kalinga, March 17, 2000.

8 Florence Umaming-Manzano, "An Analysis on the Current Status of the IPRA Implementation," in Coalition for Indigenous Peoples Rights and Ancestral Domains, *Guide to R.A. 8371: Indigenous People's Rights Act of 1997 (IPRA)* (Quezon City: CIPRAD, 1998), p68.

9 Environmental Science for Social Change, 1999 *Mining Revisited* (Quezon City: ESSC, 1999), p 39.

10 IPRA, Chapter IX, Section 66.

11 Justice Isagani A. Cruz raised this issue during a roundtable discussion on the Indigenous Peoples Rights Act sponsored by the United Nations Development Program, Shangrila Hotel, July 26, 2000, Mandaluyong City.

12 After two rounds of deliberations, the Supreme Court was deadlocked at 7-7. The vote, at least for now, renders the IPRA a valid law.

13 For a discussion on the nature and history of the Cordillera People's Alliance (CPA) and the Cordillera People's Democratic Front (CPDF), please refer to Nestor T. Castro's *Ang Kilusang Komunista sa Kordilyera: Isang Antropolohikal na Pag-aaral sa Isang Kilusang Pampulitika.*

14 Early debates and tensions between indigenous peoples organizations and the political Left is discussed by Blum and Geiger (1992).

15 The categories "indigenous" and "non-indigenous" as used in IPRA are problematic as proven by the findings of the ethnographic study on the Bukidnons undertaken by MUAD-Negros. Upon the coming of the Spaniards, all of these groups – Sugbuhanons, Hiligaynons, Kiray-a, as well as the Bukidnons – are non-indigenous to Negros Island since the Ati were its original inhabitants, hence the name "Negros" (blacks). Yet all of these groups have maintained much of their indigenous practices, such as the worship of nature spirits. All are indigenous to the Philippines.

16 However, there are several problematic Certificates of Ancestral Domain Claims (CADCs) as well. There have been cases where CADCs were issued not based on ground surveys but on accomplishment targets of the Department of Environment and Natural Resources (DENR) since the awarding of CADCs was identified as one of the key results area of President Ramos' Social Reform Agenda. One such case is the 28,376-hectare CADC awarded to the Agta of Palanan and San Mariano, Isabela, which the Agtas themselves did not apply for. Thus, the awarded CADC did not match with the home range of the nomadic Agtas. Cf. Castro (1999).

17 Interview with Winifreda Ramirez of Morong, Bataan and Indigenous People's Representative in the Bataan National Park Protected Area Management Board, June 7, 2000, in Barangay Bangkal, Abucay, Bataan.

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