

# IPRA and the Indigenous People in Mindanao

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## Introduction

The Philippines, considered to be one of the most ethnically diverse States in the world, has an estimated 12-15 million Indigenous Peoples (IPs) belonging to 110 ethno-linguistics groups; most of these groups are found in Mindanao (61%), in Luzon (33%), and in the Visayas (6%) according to the National Commission on Indigenous Peoples (NCIP).<sup>2</sup> These IP groups in the Philippines have long resided in various areas of the country. Cariño (2012) explains that common among the IP groups is their close attachment to their ancestral land, territory, and resources. They have a world view that “land is life” which is deeply embedded in their existence.<sup>3</sup> Hence, over the course of time, the IPs struggled and fought for their ancestral lands and domains against illegal settlers and intruders. Additionally, Molintas (2004) relates that embedded in the fight of the IPs to protect their land and resources is their struggle in the preservation of their indigenous culture and tradition, intimately connected to the land itself<sup>4</sup>.

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<sup>2</sup> ‘Indigenous Peoples of the Philippines,’ National Commission on Indigenous Peoples, available at <http://www.ncip.gov.ph/indigenous-peoples-of-the-philippines.html>, last viewed August 17, 2013.

<sup>3</sup> Cariño, J., ‘Country Technical Note on Indigenous Peoples’ Issues,’ Republic of the Philippines. International Fund for Agricultural Development, available at <http://www.ifad.org/english/indigenous/pub/documents/tnotes/philippines.pdf>, last viewed August 17, 2013.

<sup>4</sup> Molintas, J. The Philippine Indigenous Peoples’ Struggle for Land and Life: Challenging

The Government of the Philippines recognizes its role in the protection of the rights and the preservation of the cultures and traditions of the indigenous peoples in the country.<sup>5</sup> Consequently, Congress passed Republic Act 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA). IPRA pushes the important role of the State to recognize and promote all the rights of the Indigenous Cultural Communities and Indigenous Peoples. Furthermore, it establishes the National Commission on the Indigenous Peoples (NCIP), the primary government agency responsible for the formulation and implementation of policies, plans, and programs to recognize, protect, and promote the rights of the indigenous peoples (IPs).<sup>6</sup> IPRA is the Government's answer to provide avenues for the rights of the IPs to be protected and to recognize their importance in the country.

IPRA recognizes and protects not only the IPs' rights to ancestral domain but also their right of ownership to their ancestral lands<sup>7</sup> in accordance to Article XII Section 5 of the 1987 Constitution.<sup>8</sup> This is an indicator of the State's role in the protection of the culture and tradition of the IPs which Molintas relates is connected to the preservation of the IPs' traditions and cultures.

However, it seems that there is a contradiction between national land laws and indigenous laws in the Philippines. Both laws exist

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Legal Texts, *Arizona Journal of International and Comparative Law*, 21(1) (2004).

<sup>5</sup> 1987 Philippine Constitution, Article. II, Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

<sup>6</sup> Rep. Act 8371 (1997), sec. 2, par. K..

<sup>7</sup> Rep. Act 8371 (1997), sec. 8.

<sup>8</sup> Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

simultaneously but independently from each other.<sup>9</sup> Consequently, after Congress passed IPRA, retired Supreme Court Justice Isagani Cruz in Cruz vs. Secretary of Environment and Natural Resources<sup>10</sup> questioned its constitutionality claiming that the Act violated the right of the State to "control and supervise the exploration, development, utilization, and conservation of the country's natural resources."<sup>11</sup>

The seeming contradiction between the national laws governing lands and the indigenous land laws led to various instances of massive land grabbing in the IPs' domain. Many private companies, familiar with the formal registration of land title used such registration as a toll in converting communal ancestral lands into individually titled private lands.<sup>12</sup>

This paper focuses on the historical antecedents of the IPs' rights to ancestral domain and possession of their lands; it traces how the Supreme Court upheld these rights before the enforcement of IPRA. Thereafter, it looks at how the law continues to protect these rights. This paper localizes specific provisions of the law and records the narratives and experiences of the IPs in Mindanao in the enforcement of their rights to ancestral domain and lands.

## Discussion and Analysis

Are the Mindanao Indigenous Peoples' rights to their ancestral domain and lands protected? The Philippine Government's policy on land ownership contributed to the clash between the State's land ownership vis-à-vis the IPs claim to their lands and ancestral domain. The conflict between the IPs customary laws on their land ownership and the land laws of the State can be traced to pre-contact times. As

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<sup>9</sup> Supra, Note 3.

<sup>10</sup> G.R. No. 135385 (2000).

<sup>11</sup> 'New Law on Indigenous Peoples Faces Legal Challenge', Philippine Center for Investigative Journalism, available at <http://www.pcij.org/stories/1998/ipra2.html>

<sup>12</sup> Supra, Note 3.

explained by Molintas, the conflict began with the Spanish Colonial Government's concept of land ownership and of private property, the volume of agricultural production, and the way the different groups of people interacted changed drastically. The Spanish conquerors brought with them their own world view of land and its own system of ownership and use, a feudal theory known as the *Juria Regalia*, which then became the Regalian Doctrine. Succintly, the doctrine did not support the absolute ownership of the land but "by virtue of the conquest, all land in the archipelago belonged to the sovereign."<sup>13</sup>

The Regalian Doctrine remained even with the coming of the Americans when they required settlers on public lands to obtain deeds from the government.<sup>14</sup> The colonial government introduced laws that reiterated the State's control over public lands: the Land Registration Act No. 496 of 1902, declaring all lands to be subject to the Torrens system of formal registration of land title and empowering the State to issue any legitimate clamant secure proof over a parcel of land; the Philippine Commission Act No. 178 of 1903, which ordered that all unregistered lands become part of the public domain; the Mining Law of 1905, which gave the Americans the right to acquire public lands for mining purposes; and the Public Land Acts of 1913, 1919, and 1925, opening Mindanao and all other fertile lands that the State considered unoccupied, unreserved, or otherwise unappropriated public lands to homesteaders and corporations, despite the fact that indigenous peoples were living in these lands.<sup>15</sup>

The American Government clearly gave a directive providing for the protection of the IPs rights of ownership to their lands. In Cariño v. The Insular Government<sup>16</sup>, Mateo Cariño, an Igorot, went

<sup>13</sup> Supra, see Note 3.

<sup>14</sup> Supra, see Note 3.

<sup>15</sup> Supra, see Note 3.

<sup>16</sup> *Cariño v. Insular Government*, 212 US 449 (1909).

to the Court of Land Registration (CLR) to petition his inscription as the owner of a 146 hectare land he possessed in the Municipality of Baguio. He did not present any documentation of ownership but showed his possessory information under Igorot customs of inheritance stating that he and his ancestors held the land as owners for more than 50 years. The State opposed the petition averring that the land was part of the US military reservation. However, the United States Supreme Court through Justice Holmes ruled in favor of Cariño.

It might perhaps, be proper and sufficient to say that when, as far as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.<sup>17</sup>

Additionally, the Court stated that "our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain" and all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."<sup>18</sup> Furthermore, the older decrees and laws cited by the Government "seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant. In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers, or even tenants at will."<sup>19</sup> Hence, it would be unfair to expect the applicant to produce documents the colonizers demanded through processes he might not have heard of.

<sup>17</sup> Id.

<sup>18</sup> 212 US 458-9 (1909).

<sup>19</sup> Id.

Cariño's case created the time immemorial possession principle. In Ankron v. The Government of the Philippine Islands<sup>20</sup>, Ankron sought to register under the Torrens system, a parcel of land that was sold to him by Moros and Mansacas. The state opposed the said registration alleging that the land in question was the property of the Government of the United States under the control and administration of the Government of the Philippine Islands. Ankron presented the important prerequisites for land registration: (1) the land should be an agricultural public land as defined by Act of Congress of July 1, 1902; and (2) the land should be occupied continuously for a period of ten years by the one claiming ownership. Thus, if these requisites are complied with, registration should be granted to the claimant. Significantly, the applicant's predecessors –in- interest were a community of indigenous peoples and not an individual. Their occupation did not deter the Court from applying the time immemorial possession principle recognized in the case of Cariño.<sup>21</sup>

In the case of Susi v. The Director of Lands<sup>22</sup> the petitioners who were Igorots claimed ownership of a parcel of land which they said was given to them by the Gobernadorcillo. They lived on the land, cultivated it, improved it, and occupied it to the exclusion of all others for a period of 39 years. They claimed their entitlement to the same registration under the Torrens system. The Court applied the time immemorial possession principle to decide the case. The Court in Manarpaac v. Cabanatan<sup>23</sup> states, thus,

From the averment of facts in the complaint, it clearly appears that the plaintiffs have been, since time immemorial, in possession as owners of the disputed land, have declared the land for tax purposes in the names of two of them and have built their houses on the

<sup>20</sup> G.R. No. 14213 (1919).

<sup>21</sup> *Supra*, see Note 21.

<sup>22</sup> G.R. No. 24066 (1925).

<sup>23</sup> G.R. No. L-23300 (1967)

land, but that through fraud and irregularity, defendant Rosalino Cabanatan succeeded in securing for himself, the certificate of title in question. The foregoing recital of facts in the complaint are sufficient averment of ownership. Possession since time immemorial, carries the presumption that the land had never been part of the public domain, or, that it had been a private property even before the Spanish conquest.

However, even though the ruling of Cariño became the landmark case applied in subsequent cases, its authority is now questioned vis-à-vis recent legislation. The 1987 Philippine Constitution provides that all lands of the public domain belong to the State.<sup>24</sup> Chapter 1 Section 15 of the Revised Forestry Code<sup>25</sup> declared all lands 18% in slope or over are automatically considered as forestland and therefore not alienable and disposable unless released from the forest zone. It can be deduced that most of the IPs claiming rights to their lands are

<sup>24</sup> Article XII, Section 2 (par. 1). All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

<sup>25</sup> Section 15. Topography. No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: Provided, That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: Provided, further, That when public interest so requires, steps shall be taken to appropriate, cancel defective titles, reject public land application, or eject occupants thereof.

found within these areas.<sup>26</sup> These laws somehow extinguished the IPs' right in claiming their lands.

The enactment of IPRA became a landmark in the furtherance of the rights of the IPs in the Philippines. The law recognized the importance of ancestral domain and lands of the IPs and accorded them rights in claiming these. It also recognized the customs of Indigenous peoples and their right to self-governance and empowerment. IPRA somehow showed a legislative attempt to graft the ruling in *Cariño* into Philippine law.<sup>27</sup>

It is interesting to note that IPRA provided for the titling of ancestral lands and domains.

SEC. 51. Delineation and Recognition of Ancestral Domains. Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/ pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

Despite the declaration of the Supreme Court that IPRA is constitutional and that the rights mentioned in the law should be

<sup>26</sup> *Supra*, see Note 3.

<sup>27</sup> *Supra*, see Note 21.

applied, the Court still has to decide cases along the issues of rights of the IPs to their ancestral lands and domain.

In the *City of Baguio v. Masweng*,<sup>28</sup> the Court ruled in the negative on the issue of exemption from the IPRA. It explained that said exemption cannot ipso facto be deduced from Section 78 of the IPRA because the law concedes the validity of prior land rights recognized or acquired through any process before its effectivity. Further, NCIP Administrative Circular No. 1-03 provides that the NCIP may issue temporary restraining orders and writs of injunction without any prohibition against the issuance of the writ when the main action is for injunction. The power to issue temporary restraining orders or writs of injunction allows parties to a dispute over which the NCIP has jurisdiction to seek relief against any action which may cause them grave or irreparable damage or injury. In this case, the Regional Hearing Officer issued the injunctive writ because its jurisdiction was called to protect and preserve the rights of private respondents who are undoubtedly members of ICCs/IPs. However, in *Lamsis v. Dong-E*<sup>29</sup> the Court held that by virtue of the resolution of Community Special Task Force on Ancestral Lands (CSTFAL) of the DENR, the presented documents showed that for more than 30 years the property was never abandoned. Hence, these documents were sufficient proof of ownership and claim over the subject property. IPRA cannot overrule what the DENR has previously ruled because the law concedes to the validity of claims over land resolved before the effectivity of the IPRA.

It can be deduced that the problem on the assertion of the IPs' rights to ancestral domain and lands usually comes from the confusion on which law and its accompanying rule of evidence to apply. The IPs assertion of their rights to their claimed ancestral land

<sup>28</sup> G.R. No. 180206 (2009).

<sup>29</sup> G.R. No. 173021 (2010).

and domain are based on their customary laws and traditions; the state, however, wants documentary evidence to prove ownership. More so, the experiences of the IPs point to a conflict between progress and investment brought by investors and the state and the loss of their land and culture. Here, the IPs want more dedicated and committed legal minds to help them label the issues, educated them on their rights, and find resolutions to these violations of their rights.

In the Province of Sarangani, South Cotabato, the IPs shared their experiences of land loss through the construction of structures and facilities of big corporations that led to the destruction of their farms; the granting and operation of logging and mining concessions; the conversion of land along coastal areas into prawn farms; and an ongoing clash between government forces and the B'laans.<sup>30</sup> In Maguindanao, the IPs experienced harassment due to the entry of logging companies in the area, which dislocated them.<sup>31</sup> In Cotabato, the construction of the PNOC geothermal plant led to sickness and deaths of their children, of dislocation, of hunger and loss of livelihood, and of harassment.<sup>32</sup> The B'laans in Columbio, Sultan Kudarat narrated, thus,

Unfortunately, the perception and original practices related to the land of the B'laans, especially among the younger generations, have been affected by other concepts/practices introduced by outsiders. Disenfranchisement of lands from the B'laans came in several forms: onerous contracts offered to them by lowlanders but became irresistible because of their poverty and ignorance; and wide scale land grabbings which were made legal with the government's grant of pasture and timber lease agreement to a favoured few.<sup>33</sup>

<sup>30</sup> See "Consultation of Indigenous People's Rights Advocates Proceedings," November 23-26, 1992. Ancestral Domain Vertical File. Mindanawon, Initiatives for Cultural Dialogue, Ateneo de Davao University, Davao City.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> See "The La Bugal Tribal Association, Inc. and Tenurial Rights Issues in Colombio, Sultan Kudarat," Ancestral Domain Vertical File. Mindanawon, Initiatives for Cultural

Wetzlmaier (2012) documented the struggles of the B'laans against large-scale mining in Tampakan, Mindanao, the Sagittarius Mines Inc. (SMI) and Xstrata's plans and current project to establish mining in Tampakan. The affected area, a declared ancestral domain by the local community, required a free, prior, and informed consent (FPIC) from the B'laans before any mining operation. Some B'laan communities, however, were not consulted, or consultations were conducted only with selected village leaders who were offered incentives by the mining company.<sup>34</sup> A tribal leader of a B'laan community mentioned in March 2012 that "if the company does not leave, we will fight with arms."<sup>35</sup> Two months later, members of the B'laan finally took up armed resistance against these two companies.<sup>36</sup>

Corollary to this is the experience of the Subanen tribes in Zamboanga del Sur. The Subanen tribes claim some 23, 800 hectares of lands in the town of Bayog where several mining companies and small scale miners operated. Timuay Basilio Promon narrates,

Our present ancestral domain claim in Bayog is just a fragment of our original homeland which has been slowly grabbed from us. Six years after we applied for a title of our ancestral domain (with the National Commission on Indigenous Peoples), our application has never reach to the first stage because of various conflicts among us leaders that were instigated by groups who wanted to control us and our domain like mining companies protected by their fully-armed guards.<sup>37</sup>

Dialogue, Ateneo de Davao University, Davao City.

<sup>34</sup> Supra, see Note 39.

<sup>35</sup> Wetzlmaier, M. Cultural Impacts of Mining in Indigenous Peoples' Ancestral Domains in the Philippines, ASEAS - Austrian Journal of South-East Asian Studies, 5(2), 335-344 (2012).

<sup>36</sup> Sarmiento, R. S. 'Mining firm security guard killed in Tampakan attack', Businessworld Online, available at <http://www.bworldonline.com/content.php?id=53672&section=Nation&title=Mining-firm-security-guard-killed-in-Tampakan-attack>, last viewed October 5, 2013.

<sup>37</sup> 'Subanen tribes demand ancestral domain papers; halt to all mining operation in Zamboanga del Sur', Mindanao Examineer, available at [http://www.afrim.org.ph/m\\_news-](http://www.afrim.org.ph/m_news-)

Some corporate projects also conflicted with the Lumads or IPs in Malaybalay, Bukidnon. The conflicts involve companies that are using portions of their ancestral domains for business projects. As of August 2013, NCIP-X received about 22 cases, 18 of them in Bukidnon relating to conflicts between companies wanting to establish different businesses in the ancestral domain or lands of the IPs in the region. Fortunately, many of the IPs in Bukidnon possessed their Certificate of Ancestral Domain or CADTs; they are clearly fighting to assert such right against these private companies<sup>38</sup>.

**Conclusion**

Embedded in the history of the protection of the rights of the IPs in the Philippines, prior to the enactment of the IPRA Law, is the Philippine Government's recognition of the protection of the rights of the IPs in their ancestral land and domain. There have already been jurisprudence as early as the Spanish Occupation in the Philippines which took note of the protection of the right to ancestral domain of the IPs especially in asserting ownership over these domains and lands. However, with the enactment of subsequent laws focused on land registration, a conflict arose. The State, however, continues to see its role in protecting these rights; hence, IPRA was enacted in 1997. IPs can now have their lands titled to them which they can present as proof when a stranger intrudes and takes the land as his own.

However, some IP groups still experience alienation and disenfranchisement due to the entry of companies and big corporations with the goal of establishing businesses in their

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<sup>38</sup> Balane, W. (2013, September 27). 'Corporate Projects in Ancestral Domains causing Conflicts with Lumads', Mindanews, available at <http://www.mindanaotimes.net/corporate-projects-in-ancestral-domains-causing-conflicts-with-lumads-ncip-10/>, last viewed October 5, 2013.

localities. Most of these businesses are either large-scale mining, electricity generation, or other environmentally-related business or franchise. Their presence often lead to the violation of the rights of the IPs to their ancestral land and domain.

**Recommendations**

The NCIP in Mindanao should conduct researches or studies with regards to the protection of the IPs' rights to their ancestral land and domain. These studies should focus on the effects of the issuance of of the Certificate of Ancestral Domain Titles (CADTs) and Certificate of Ancestral Land Titles (CALTs) to companies or corporations wanting to establish businesses in the different IP lands. Specifically, the NICIP should also hold conversations or dialogues with potential and existing companies and corporations with the different IP leaders and representatives to identify and resolve these areas of concerns.

Additionally, the NCIP in Mindanao should urge the Office of the President to accord better implementation of the rules and regulations of IPRA to the IPs in Mindanao. A review of the IPRA's implementing rules and regulations vis-à-vis the current laws on land registration and establishment of business operations in specific areas where the IPs reside should be done to check existing and/or potential issues and their eventual solutions.

The Local Government Units (LGUs) in Mindanao must conduct their own measures as well to protect the IPs in their regions since they have an easier reach in providing for actions in the protection of the rights of the IPs. Certain LGUs have already enacted specific measures in relation to the protection of the rights of the IPs and a further review in order to strengthen these measures is but proper to accord better protection of the rights of the IPs.

Further, community extension programs of the Ateneo de Davao College of Law and other law schools in Mindanao should also be created to strengthen the law faculty and the law students advocacy for the protection of the rights of the IPs in their specific areas. Community extension programs can be in any or all of these forms: (1) providing legal services in the form of consultations; or (2) formulating a series of short legal lectures and forums to teach the IPs their rights and the procedure to assert these rights before the court and society; or (3) providing the necessary legal representation before the courts.