

The subversion of the Philippines' Indigenous People's Rights Act

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The following paper was presented under the title *The Philippines' Indigenous Peoples' Rights Act of 1997: Challenges to Realizing the Full Potential of a Progressive Law* at a discussion on the crafting of a law to advance the rights of indigenous people in Thailand, hosted by the Chulalongkorn University Social Research Institute on September 18, 2020.

Thank you for inviting me to share my thoughts on an important topic. I must say, first of all, that I am not a specialist in indigenous communities, and I am not a lawyer. However, having co-authored a number of progressive laws while serving in the House of Representatives of the Philippines, I have some familiarity with the framing and implementing of laws.[efn_note]The author would like to thank Judy Pasimio of LILAK (Purple Action for Indigenous Women's Rights) for her invaluable assistance in helping me understand the IPRA. I would also like to express my gratitude to Atty Ipat Luna for the insights she shared during the discussion of the paper.[/efn_note]

Indigenous peoples are said to comprise some 15 percent of the Philippines' population of 110 million, or some 16.5 million people. Collectively, they are often referred to as Lumad and are commonly distinguished from lowland Christian Filipinos, the dominant majority, and Muslim Filipinos.

The Philippines' Indigenous People's Rights Act of 1997 is said to be one of the most progressive laws of its kind with respect to the treatment of indigenous people in the world. It was a direct result of a progressive provision that was enshrined in the Constitution of 1987, which was created and ratified after the ouster of the dictator Ferdinand Marcos.

Section 5 of Article 12 of the Constitution states: "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."

Rights of Indigenous People under IPRA

IPRA, passed 10 years later, provided that indigenous peoples had the following rights to their ancestral domain:

1. right of ownership over lands, bodies of water traditionally and actually occupied by them, sacred places, traditional hunting and fishing grounds, and improvements introduced thereon;
2. right to develop lands and natural resources, subject to pre-existing property rights within the ancestral domains;
3. right to stay in their territories, except when they have given their free and prior informed consent, and subject to the Philippines' power of eminent domain;
4. right to be resettled in suitable areas should they be displaced through natural catastrophes;

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 land conflicts in accordance with the customary laws of the area where the land is located. [1]

Whatever the deficiencies of IPRA when it came to implementation, it was a major step forward in terms of legal recognition and protection of the rights of indigenous people. The Philippines is one of the few countries where the tenurial rights of indigenous people are explicitly protected by law. IPRA was, in fact, quite radical, for it “sought to give effect to the profound philosophical shift from previous conceptions of indigenous peoples as recipients of State grants who would eventually be assimilated into broader society, to self-determining groups vested with inherent decision-making rights that the State was bound to respect.” [2]

Assessing IPRA

So let's go to the assessment of IPRA. Let me share the good news first:

In the two decades since the IPRA's adoption, 221 Certificates of Ancestral Domain Titles (CADT) have been issued spanning some 5.4 million hectares.[efn_note]Ibid.[/efn_note]

The bad news is that IPRA has proven to be a very weak protection on the ground for indigenous communities who continue to be displaced. In 2017, representatives of 39 indigenous peoples from across the country, claimed that “[o]ur right to ... FPIC [Free, prior and informed consent] is continuously manipulated, violated and undermined. The ... CADT process is tedious, expensive, complicated and problematic and does not guarantee land tenure security.”[efn_note]Ibid.[/efn_note]

What are some of the key factors that have prevented the effective implementation of IPRA?

First, institutional rivalries among agencies that are tasked with promoting exploitation of natural resources and that which is supposed to promote the interests of indigenous peoples. Land titling of the lands of indigenous people is the task of the National Commission on Indigenous Peoples (NCIP). Yet it is a small commission, staffed for the most part by bureaucrats, whose decisions are easily disregarded or vetoed by more powerful central government or provincial agencies. In 2012 and 2017, Joint Administrative Orders were issued by the Department of the Environment and Natural Resources, which promotes mining interests, and the NCIP, to the effect that the titling process of a contested area can only be continued if an agreement is reached between all government agencies involved; and that boundary delineation must be conducted by composite DENR-NCIP teams. Effectively, these two orders resulted in a freeze on ancestral land titling procedures throughout the country.

Second, the process of delineating and titling ancestral domains is an extremely tedious one, and it is expensive, with costs coming to at least \$20,000. According to the head of an indigenous peoples' advocacy group, “there are a lot of cases where corporations who have interest over the area, would provide financial support for the delineation process and the entire CADT process. What then do we expect of the relationship between the community and the corporation, when the CADT was granted?”[efn_note]Judy Pasimio, LILAK (Purple Action for Indigenous Women's Rights). personal communication, September 9, 2020.[/efn_note]

In short, money skews the delineation process towards the results desired by the one that provides the cash.

Third, the principle of “free, prior and informed consent” enshrined in IPRA has been used by external forces to divide communities, often leading to violence. As the same informant told me, “FPIC is now a commodity...a result of coercion, manipulation, violence within the communities...FPIC has become “yes” with a lot of conditionalities, with “no” not being an option. FPIC has also been a way to further divide the community, building up an elite of leaders, creating or strengthening a power structure over the other members of the community. It has also further marginalized indigenous women from the decision-making processes.” [3]

A study of the FPIC process as it was used to justify road construction by state authorities on land belonging to hunter-gathers, the Agta, in northeastern Luzon Island illustrates how external forces can use FPIC to get their way:

“A key challenge here is representation, as significant heterogeneity in attitudes towards land use may exist within communities, and individual preferences do not simply aggregate into a collective viewpoint. Meaningful representation in FPIC procedures is specifically problematic among hunter-gatherers, who often do not recognize formal leadership. While individuals are selectively appointed by project proponents as representatives or spokespersons of the larger Agta community, they lack real authority or political power. The Memorandum of Agreement between the Provincial Government of Isabela, Agta and NCIP about construction of the Ilagan-Divilacan road is presented as proof of FPIC, even though this involved only 14 Agta signatories from a limited area, whose ability to represent the wider affected Agta population is questionable.

“Moreover, there is no evidence that the Agta signatories have been presented with the full range of possible consequences of road construction. During an interview in August 2014, one anonymous informant who witnessed the signing of the agreement said he regrets it: “We did not think about the negative sides, and nobody told us. [T]he representatives of the government said the road would allow us to sell our fish at a good price in Ilagan [across the mountain range].” [4]

In short, from being potentially an instrument to protect indigenous peoples’ rights to land, FPIC has become in many cases a mechanism of accumulation by dispossession.

A fourth challenge to IPRA’s effective implementation is that it is treated as lower down in a hierarchy of laws that are often ambiguous, if not actually in conflict, in their relations to one another.[efn_note]Pasimio.[/efn_note] Moreover, there is a lack of understanding of or lack of agreement with the principles of IPRA among those trained in traditional jurisprudence. For instance, IPRA’s granting indigenous communities ownership rights of natural resources “was interpreted narrowly by the Philippines Supreme Court in 2000 as not ‘granting’ ownership rights over subsoil resources, as to do so was contrary to the Regalian doctrine, which since Spanish times, the justices held, vested this ownership in the State.” [5]

Fifth, related to this, the mining industry is very powerful. Despite his anti-mining rhetoric while he was a candidate, President Duterte has favored mining interests, who ousted his first Secretary of the Department of the Environment and Natural Resources, the late Gina Lopez. Key decisions made by her that involved the revocation or suspension of licenses to mine, many of which were in indigenous lands, have been reversed.

Sixth, the truth is that the law is not enough to protect indigenous peoples’ land. Having been regarded as inferior peoples by the lowland Christian community, they have been subjected to systematic displacements by local economic elites that are also in control of local governments. These elites’ first resort is to violence or the threat of violence to drive indigenous communities from their lands.

Conclusion

In sum, IPRA is one of the world's most advanced laws when it comes to the rights of indigenous people. It clearly states that lands and forests that they have traditionally used for their existence, as well as the resources under them, belong to these communities. The problem lies in the implementation of the law, which has been subverted by powerful external interests that have exploited provisions of the law such as FPIC or the contradictions of the law with other laws or simply used force to displace these indigenous peoples. When there comes into existence a relatively progressive government that puts its authority in support of indigenous peoples, then IPRA will become an invaluable mechanism to preserve and advance their rights and interests.

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P.S.

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Footnotes

[1] Sara Mae D. Mawis, "[Understanding the Indigenous People's Rights to their Ancestral Domain](#)," Philippine Daily Inquirer, April 4, 2020. Accessed September 9, 2020.

[2] Cathal Doyle, "[The Philippine Indigenous Peoples' Rights Act and ILO Convention 169 on Tribal and Indigenous Peoples: Exploring Synergies for Rights Realization](#)," International Journal of Human Rights, Vol 24, Nos 2-3 (2020). Accessed September 16, 2020.

[3] Pasimio.

[4] Renee Hagen, "[Displacement in the Name of Development. How Indigenous Rights Legislation Fails to Protect Philippine Hunter-Gatherers](#)," Society and International Resources, Vol 33, No 1 (2020). Accessed September 16, 2020.

[5] Doyle.