

Executive Summary:

A Survey of Jurisprudence Affecting Indigenous Peoples and their Ancestral Land and Resource Rights in the Philippines (2009-2023)

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This survey presents an overview of the current legal framework on indigenous peoples' rights in the Philippines. It historicizes the legal recognition of indigenous peoples' rights, including territorial rights in Philippine national laws and explores how this finds interpretation through a review of existing jurisprudence (presented as an enumeration of case digests) that relates to the Indigenous Peoples' Rights Act (IPRA). Some attention is provided for cases situated in Baguio City, Benguet and Mountain Province, presented as its own a section. As an outtake, it reserves a brief section on the observations of the Commission on Human Rights and its Indigenous Peoples Human Rights Observatory.

The survey is informative in what it implies of the issues that involve IPRA and indigenous peoples. The cases illustrate the conflicts that impede its implementation and the issues that beset indigenous peoples. These can serve to propose policy fixes and interventions to realize the aspirations of indigenous peoples.

There has been some shift in the appreciation of the Courts of the rights of indigenous peoples, from the early legal pronouncements exemplified in *People v. Cayat* almost a century ago (1939), where the court made a distinction on the rights of indigenous peoples, rationalizing “[t]his distinction is unquestionably reasonable, for the Act was intended to meet the peculiar conditions existing in the non-Christian tribes... cannot affect the reasonableness of the classification thus established” (pertaining to alcohol consumption), to the 1987 Philippine Constitution, which expresses the state policy to recognize, promote and protect the rights of indigenous cultural communities within the framework of national unity and development. While the legal recognition of indigenous peoples' rights has indeed progressed, it remains, however, not unchallenged.

IPRA. The Indigenous Peoples' Rights Act (IPRA) remains the primary legal framework that prescribes Indigenous peoples' rights. Upon its certification into legislation, it was challenged for its constitutionality and narrowly decided in favor of its validity. This would be a foreboding of the insecure status of indigenous peoples before the courts, seemingly out-of-place traditional figure in an era of legal modernity.

NCIP. The National Indigenous Peoples Commission's (NCIP) is given the mandate and task to implement the aspirations of the IPRA. To realize its mandate, it has quasi judicial functions to inquire into issues related to indigenous peoples. It is not surprising that it often finds itself a part of, if not a party to, many of the cases heard by the courts.

Right to land. The right to land and title to the land, arguably, is an indispensable foundation of indigenous peoples' rights, and a cornerstone of other rights—right to resources, to the management of the land, to the practice of traditions and cultures, among others. Indigenous peoples, in the exercise of these rights, have been recognized as key components in natural resources stewardship and protection. These have implications to the larger environmental issues that now more urgently beset the planet and humankind.

Courts have begun to acknowledge indigenous peoples' rights to ancestral domains and lands. Their right to exercise Free Prior Informed Consent has also acquired traction, with the Courts highlighting the importance of securing indigenous people' free, prior, and informed consent before executing development projects or activities that may impact their ancestral areas and resources. This acknowledgement, however, has not translated in an easy vindication of rights; contests forwarded by indigenous peoples are often decided in calibration with, if not limited by, the "framework of national unity and development."

Jurisdiction. The survey finds that most of the legal contest that reach the Court are at their core land disputes, as such much of the discussion center on the clarification of the jurisdiction of the National Indigenous Peoples Commission's (NCIP). The underlying implication of the cases is that legal appreciation of IPRA requires more clarity. The jurisdictional issue has been mostly resolved with the regular courts having cognizance of the controversies that also involve non-indigenous persons as another party in the case. What the national law and the Philippine state recognizes are those which pertain exclusively to customary laws and practices governing only the members of the same indigenous cultural community. In other words, despite the aspirations of IPRA to lend sensitivity, forward the interests of indigenous peoples, and to remediate their historical marginalization, legal contests relating to and involving indigenous peoples may not be interpreted to mean limiting the jurisdiction of the Courts, that is, it does it imply that NCIP has primary and sole jurisdiction over all ICCs/IPs claims and disputes to the exclusion of the regular courts.

Conflicts and overlaps. The legal controversies reveal a larger system inadequacy—an insecure tenurial process. It is this process that consequently results in land disputes—borne of overlapping and unclarified jurisdiction of various government departments—Department of Agrarian Reform (DAR), DENR, Land Registration Authority, and NCIP—particularly in the processing and awarding of tenurial instruments. Administrative Order No. 2012-01 was intended to reconcile the conflicts. However, the NCIP, restricted in how it was to delineate its coverage, opted out of the process thus resulting to the uncertain state of CADTs. If budget is to be an indicator of state support for indigenous peoples' concerns then it will be at a diminishing trend—the NCIP budget has been decreasing trend since 2012. As of 2021, only 251 CADTs have been approved.

The conflicting claims, often over untitled lands, involve:

- Applications for or issued Certificate of Land Ownership Award (CLOA) under Comprehensive Agrarian Reform Program (CARP) within AD;
 - Patents within CADT (e.g., patented mining claims issued prior to Mining Act and IPRA);
 - Resource instruments issued by DENR within AD (e.g., Integrated Forest Management Agreement [IFMA], Timber License Agreements [TLA], National Greening Program [NGP], protected areas);
 - Exploration permits/financial or technical assistance agreement (FTAA), mineral production sharing agreement (MPSA) within AD; and
 - Areas with existing and/or vested rights.
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The right to free and prior informed consent (FPIC) is inextricably related to the right to land—manifesting the right to self-determination. Thus, an insecure claim to land renders their self-determination at risk and tenuous making indigenous peoples vulnerable to the violation of their rights and usurpation of their land. The cases reveal controversies that stand to undermine FPIC. The violations of FPIC process straddles as a legal controversy and a human rights issue.

The conflicts that play out in the cases illustrate the condition of many indigenous communities who look up to the IPRA as the means by which historical injustice around land would be resolved. The limiting of the jurisdiction of the NCIP to land conflict to only between members of the tribe or among different indigenous tribes appear to gloss over the fact that majority of the land conflict and intrusion into indigenous territories which cause social division and displacement are done by non-indigenous and often corporate interests. Entry into indigenous territory by non-indigenous migrant rural poor families are often regarded with acceptance by indigenous peoples. Resort to the NCIP by indigenous communities whose rights are violated comes with the belief that the NCIP as a government institution dispensing quasi-judicial powers is more accessible and would understand the situation of indigenous peoples more.

The legal issues are illustrative of the implementation of the IPRA. They imply delayed and overdue concerted policy implementation across government bodies (resulting in policy overlaps and tenurial conflicts), the lack of support and recognition of IPRA beyond advocates and IP organizations, and, to some extent, NCIP's resource constraints.

Beyond the regular courts and the NCIP, the Commission on Human Rights (CHR) has been a viable avenue for indigenous peoples seeking redress for rights violations with its mandate to “conduct investigations on human rights violations against marginalized and vulnerable sectors. “ It has established programs within the commission specifically to address IP issues. Of note is the Indigenous Peoples' Human Rights Observatory (IPHRO), primarily a monitoring platform. While laudable in its efforts, its mandate is restricted, and its resources constrained. These fundamentally impacts how it can render urgent protection to ICCs/IPs. Its limited enforcement power and reliance on the government to take action on its recommendations also limits its efficacy. This has resulted in some human rights violations remaining unaddressed. The slow resolution of cases can result in victims not receiving justice or compensation. Nonetheless, where there is very limited avenue to seek redress against rights violations, the CHR serves as an avenue to buttress, drum support, and provide the highlight to reports of IP rights violations.

IPRA as a policy platform to assert indigenous peoples' rights continue to face various challenges. These challenges have been brought before the courts, not always resulting in ways that inure to the benefit and advantage of indigenous peoples. The following recommendations are forwarded:

Greater advocacy efforts to:

- Improving Implementation and Enforcement — Ensure that all levels of government fully implement and enforce the IPRA's provisions. This may necessitate increasing the awareness and training for government officials, local governments, and law enforcement organizations to ensure they understand and respect indigenous peoples' rights. This would also necessitate adequate institutional networking.
- Ancestral Domain and Land Rights — Acceleration of the process of recognizing and securing ancestral domain claims to protect indigenous groups' land rights. This involves resolving pending claims and resolving land use problems between indigenous people and other stakeholders.
- Free, Prior, and Informed Consent — Ensure FPIC in all projects and programs within ancestral domains.
- Evaluation and monitoring, and cyclical review — A robust monitoring and evaluation mechanism to examine the impact of policies and programs on indigenous peoples' rights. Review and update policies on a regular to ensure relevance and effectivity.
- Participation and involvement of IPs — Following the principles of self- governance and empowerment, the participation and involvement of indigenous peoples must be ensured and actualized in mechanisms that oversee regulatory activities and in program implementation; greater opportunities for indigenous peoples and their representatives to hold decision-making positions.

Strategic litigation

- Continuing to use the courts as an avenue to vindicate and seek redress for indigenous peoples' rights.
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