



free and prior informed consent

Reflecting NCIP FPIC Guidelines:
Presentation of Selected Cases



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acronyms

ADSDPP	Ancestral Domain Sustainable Development Protection Plan
AO	Administrative Order
CA	Conservation area
CADC	Certificate for ancestral domain claim
CADT	Certificate of Ancestral Domain Title
CBFMA	Community-Based Forest Management Agreement
CBNE	Community-Based Non-timber Enterprise
CCP	Community carbon pools
CF	Community forest
CITEM	Center for International Trade Expositions and Missions
CL	Customary law
CP	Certification of Precondition
CSO	Civil society organization
DENR	Department of Environment and Natural Resources
DILG	Department of the Interior and Local Government
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DOT	Department of Tourism
DTI	Department of Trade and Industry
ECAN	Environmentally Critical Areas Network
EDO	Enterprise Development Officer
ELAC	Environmental Legal Assistance Center
EPR	Exercise of priority rights
EU	European Union
FAME	Furnishings and Apparel Manufacturers' Exchange
FBI	Field-based investigation
FFI	Fauna & Flora International
FLUP	Forest Land Use Plan
FMB	Forest Management Bureau
FPIC	Free and Prior Informed Consent
GHG	Greenhouse gas
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HCVF	High conservation value forest
HWET	Handwoven eco-textile
ICC	Indigenous cultural community
ICCA	Indigenous peoples and community conserved areas
IDEAS	Institute for the Development of Educational and Ecological Alternatives
IEC	Information, education, and communication
IKSP	Indigenous knowledge systems and practices
IP	Indigenous people
IPOs	Indigenous peoples' organizations
IPRA	Indigenous Peoples' Rights Act
IRR	Implementing Rules and Regulations
ITS	International Textile Standards
IUCN	International Union for Conservation of Nature
KBA	Key biodiversity area

LABTDWA	Lugo, Amqanad, Banaue Tie Dye Weavers Association
LGU	Local government unit
LITRA	Linao, Ipilan Tribal Association
LRA	Land Registration Act
MKRNP	Mt. Kitanglad Range National Park
MOA	Memorandum of Agreement
NATRIPAL	Naqkakaasang Tribu ng Palawan
NCIP	National Commission on Indigenous Peoples
NESSA	Non-extractive small-scale activities
NewCAPP	New Conservation Areas in the Philippines Project
NGO	Nongovernment organization
NIPAS	National Integrated Protected Area System
NTFP-EP	Non-Timber Forest Products-Exchange Programme
NTFP-TF	Non-Timber Forest Products-Task Force
PA	Protected area
PAMB	Protected Area Management Board
PanNature	People and Nature Reconciliation
PASu	Park superintendent
PCSD	Palawan Council for Sustainable Development
PDT	Provincial Delineation Team
PNRPS	Philippine National REDD-plus Strategy
PO	Peoples' organization
PTRI	Philippine Textile Research Institute
RA	Republic Act
RD	Regional director
REDD-plus	Reducing Emissions from Deforestation and Forest Degradation, and the role of conservation, sustainable management of forests and enhancement of carbon stocks
RRT	Regional review team
SAGIBIN-LN	Samahan ng mga Katutubong Aqta na Ipinagtatanggol at Binabaka ang Lupaing Ninuno
SAMAKANA	Samahang Katutubo ng Barangay Napsan
SCP	Sustainable consumption and production
SEC	Securities and Exchange Commission
SEP	Strategic Environmental Plan
SIIT	Samahan sa Iratag Irawan ng mga Tagbanua
SKPM	Samahan ng mga Katutubong Pala'wan sa Malis
SKPS	Samahan ng mga Katutubong Pala'wan sa Salogon
SPABP	Samahan ng mga Palawano sa Amas, Brooke's Point
SPAR	Social Preparation Activity Report
SPCK	Samahan ng mga Katutubong Pala'wan ng Cabangaan at Kamantian
SPTF	Special Provincial Task Force
TA	Technical assistance
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Value chain study
WCMC	World Conservation Monitoring Council
WFP	Work and financial plan

executive summary

Indigenous cultural communities and indigenous peoples (ICCs/IPs) manage around 8.2 million¹ hectares of forest lands in the Philippines. These ancestral domains represent around 52% of the forest lands and a significant portion of the remaining forested areas in the country. These are resource-rich areas, which attract projects and programs from various sectors for the development and utilization of natural resources found therein.

At present, the most concrete and basic safeguard for the recognition and protection of IPs' rights in the ancestral domain is the conduct of the Free and Prior Informed Consent (FPIC) process. This refers to the formal FPIC process facilitated by the National Commission on Indigenous Peoples (NCIP) or as pursued under the IPs' own customary processes.

The Indigenous Peoples' Rights Act (IPRA) of 1997 guarantees the right of the ICCs/IPs to freely pursue their economic, social, and cultural economic development.² FPIC operationalizes the constitutional recognition of the rights of ICCs/IPs over their ancestral domains and their right to decide priorities for their own development over lands they own, occupy, or use.

Under the IPRA, the ICCs'/IPs' right to FPIC gives them the right to be consulted and for their consent to be secured before projects and programs are implemented in their domains. This extends to having the power to negotiate the terms of engagement and to veto certain projects. The 2012 FPIC Guidelines lay down a uniform and mandatory procedure to ensure these rights, and the actual decision-making process varies depending on the customary law of the concerned ICCs/IPs from whom consent is being sought for, whether the community decision is to be given by the elders/leaders or by the community members involved through household representation or otherwise. However, note that there are also ICCs/IPs who have their own processes independent of the NCIP and that of the IPRA, or recognize only some provisions of the NCIP FPIC rules and of the IPRA. The case of Daraghuyan in Bukidnon featured in this report is an example.

The NCIP is the national government agency created under the IPRA with the primary responsibility of ensuring that rights to land and resources within ancestral domains of the IPs are recognized and respected. In carrying out this mandate, the NCIP has an important role in ensuring that ancestral domains are demarcated and that IPs secure tenure within these ancestral domains. In addition, NCIP has to ensure that any developments and projects to be implemented in the ancestral domain have complied with the FPIC requirements imposed on all proponents of the projects. The NCIP's role in the process is to facilitate the process and validate on the ground whether or not there was indeed genuine consent that is free and prior informed. This presupposes that the community has complete information, including background information on the project and the company. This information must not only be complete but also accessible, and must be understood by the IP community.

In 2011–2012, the Non-Timber Forest Products-Exchange Programme, together with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, and NCIP conducted a national assessment of the implementation of the FPIC in the Philippines. The assessment provided evidence-based recommendations for the improvement of the process, which were reflected in the revised FPIC Guidelines of 2012.

This report documents the FPIC processes in a number of projects on Community-Based Non-timber Enterprises (CBNEs), forest management systems like REDD-plus, and IPs and community conserved areas and ancestral domain titling. In sum, the reports showed that despite the high hopes that FPIC processes in these projects will be smoother and predictable, it turned out to be more confusing and frustrating to community partners and proponents. It also exposed the lack of competency of some NCIP field officers to facilitate the process. In addition, lack of trust and confidence by the community to the NCIP has also surfaced during these FPIC processes. Amid these issues, there are ICCs/IPs, like the Daraghuyan-Bukidnon Tribe, that had remarkably shown the practice of seeking consent as embedded in

1 These represent the areas covered by issued Certificate of Ancestral Domain Titles (CADTs; 4,691,758 ha) and CADT applications being processed (3,499,888 ha) as recorded by the NCIP Ancestral Domain Office as of April 2015.

2 Sec. 13, IPRA of 1997.

their culture—a customary norm of consent seeking—prior to the legislation of the IPRA Law and before any NCIP-issued FPIC Guidelines.

For the communities undergoing FPIC in their CBNE and forest management projects, a series of FPIC policy discussions were held to address the confusion and disappointment, and involve everybody in the process. The policy discussions were held in the provinces of Quezon and Palawan, and then a national forum in Quezon City. The forums were venues to further distill the issues and bottlenecks encountered during the FPIC process and find ways to address issues, in implementation and in policy.

This report, which documented the experiences of seven projects, aimed to do a continuing assessment of the FPIC process as it is envisioned under the NCIP Guidelines and implemented on the field. This is offered as a contribution to the increasing literature on the implementation of FPIC in the Philippines to further improve its implementation.

During the “Securing Community Livelihoods and Forest Management Systems: Distilling FPIC Experiences, Sharing Lessons Learned” national conference held on June 24, 2015 in Quezon City, the key findings and recommendations found in this report were shared and enhanced:

- NCIP Administrative Order (AO) No. 3, s. 2012, classifies livelihood and forest management systems under Non-Extractive Small-Scale Activities (NESSA). Other guidelines apply such as NCIP AO No. 1 (indigenous knowledge systems and practices [IKSP]), AO No. 2 (indigenous political structure [IPS]), and AO No. 4 (CADT Delineation Process);
 - Civil society organizations (CSOs) and/or assisting organizations follow the guidelines not only because it is required by law but also because they believe that FPIC is a strong social safeguard for ICCs/ IPs in deciding “yes” or “no” to a certain project;
 - Undeniably, there are bottlenecks in securing Certification of Precondition under the FPIC process—these hinder the implementation of projects despite partner communities having already said “yes” or expressed intent to the project;
 - Difficulties include lack of time lines, costs involved, lack of capacity of NCIP personnel to facilitate the process, and different interpretations of the guidelines (e.g. exercise of prior rights [EPR] vs. community solicited, IKSP vs. NESSA, etc.);
 - ICCs/IPs are confused as to the reasons why they need to undergo FPIC process in their own domain;
- The declaration of EPR is a tedious and costly process for IP communities. More importantly, this process can be an instrument of abuse for them; and
 - **Finally, following the FPIC Revised Guidelines of 2012 (NCIP AO No. 3 and other relevant guidelines) does not guarantee the securing of culture-based FPIC.**

Based on the above findings, key recommendations from the National FPIC Forum are the following:

A. Policy recommendations

- **Forest conservation, environment-related projects, and basic services should fall under projects requiring validation.** These, however, must be made with distinction from the corporate social responsibility initiatives of extractive industries;
- Revisit and simplify the process of declaration of EPR;
- Institute measure/s that define the time line for the steps of the process, and preparation and submission of reports, and install provision for sanctions;
- Provide standard costings for every step in the FPIC process; and
- Revisit the process of registration of IP organizations.

B. Operational recommendations

- Strengthen partnerships between NCIP and ICCs/IPs;
- Facilitate the process of IPS;
- There should be sufficient budget for NCIP to ensure delivery of services based on its mandate—CADT processing, facilitation of FPIC, support to proponent IPs, etc.;
- Adopt an operational policy within NCIP that will define and ensure building the capacity of NCIP personnel in the performance of their task and in the exercise of their duties in a competent manner;
- Popular information, education, and communication materials on the IPRA and the FPIC process should be made available to all ICCs/IPs; and
- Coordination of NCIP with the Department of Environment and Natural Resources, CSOs, and other agencies implementing forest conservation, environment-related projects, and basic delivery of services to ICCs/IPs through memorandum of agreement or working groups.

Almaciga permitting in Brooke's Point, Palawan

Katherine Mana-Galido & Manuel Uy



Resin from almaciga (Agathis philippinensis), also known as Manila copal, is one of the precious non-timber forest products (NTFPs) of the indigenous communities in Palawan. The Department of Environment and Natural Resources (DENR)-Forest Management Bureau data show that since 1992 until 2012, the almaciga resin is the second most important NTFPs in terms of export quantity and value, second to the elemi gum from Canarium luzonicum.

Almaciga is among a number of forest tree species protected under Philippine law because of its vulnerable status under the International Union for Conservation of Nature Red List of Threatened Species. One major problem is habitat degradation, which caused difficulty in regeneration of the almaciga population. There is now a total ban on cutting *Agathis* trees and collection of by-products in the remaining forests in the Philippines. However, in Palawan, indigenous communities are allowed to tap the resin.

Indigenous communities of Palawan are allowed to tap the almaciga resin because it is a recognized traditional livelihood activity. The traditional management of almaciga resin, when done without external factors such as increased production demand from outsiders, proves to be sustainable.

Sustainable management of resin from almaciga trees promotes forest protection and conservation while providing livelihood. However, given the benefits of tapping almaciga resin to indigenous communities, the road to sustainable harvesting is not an easy one. The long process will be discussed briefly, but the focus of this documentation is the experience of the indigenous communities in Brooke's Point, Palawan, in getting their National Commission on Indigenous Peoples (NCIP) validation.

Non-Timber Forest Products-Exchange Programme (NTFP-EP) Philippines started to assist the Nagkakaisang Tribu ng Palawan (NATRIPAL) and member indigenous communities in strengthening

the community-based almaciga resin enterprises since early 2013 in two cluster areas. These two cluster areas are in Brooke's Point municipality and Puerto Princesa City. The scope of this and Prior Informed Consent (FPIC) study is focused on the indigenous people (IP) communities of Brooke's Point, Palawan.

The almaciga resin endeavor started when NTFP-EP Philippines conducted the value chain study (VCS) for almaciga resin led by Dr. Ramon A. Razal. According to the study, Palawan is a major supplier of almaciga resin, owing to the traditional system of gathering almaciga resin by the indigenous communities in the province. Many indigenous community members earn from gathering and selling almaciga resin to concessionaires and local traders. The permit holders for the almaciga resin are usually the local traders, and they shoulder the annual cost of renewing the permit. The VCS shared that the estimated annual cost for renewing the permit ranges from PHP 30,000 to PHP 50,000.

One of the objectives of NTFP-EP Philippines in embarking on the almaciga resin is to free the indigenous community members from a meager income of a harvester to holding the permit for the sustainable management of almaciga resins. To become the permit holder as an indigenous group has been the request of the partner communities of NATRIPAL.

The partner indigenous peoples organizations (IPOs) that NTFP-EP Philippines and NATRIPAL have been assisting in Brooke's Point belong to the Pala'wan tribal group.

IPO	Tribal group	Location
Samahan ng mga Palawano sa Amas, Brooke's Point (SPABP)	Pala'wan	Amas, Brooke's Point
Samahan ng Katutubong Pala'wan ng Malis (SKPM)	Pala'wan	Malis, Brooke's Point
Samahan ng mga Katutubong Pala'wan sa Salogon (SKPS)	Pala'wan	Salogon, Brooke's Point
Samahan ng Katutubong Pala'wan ng Cabangaan at Kamantian (SPCK)	Pala'wan	Samariniana, Brooke's Point
Linao, Ipilan Tribal Association (LITRA)	Pala'wan	Ipilan, Brooke's Point

The history of Panglima and almaciga concession in Brooke's Point

According to the respondents, originally, the tribal leaders/elders were called *Pangebetan*, and the head of the leaders is called *Pangebetan et San*. The people perceive them as the wise people who have been given the wisdom to make decisions and resolve problems within the community.

The *Pangebetan* is believed to have handed down their knowledge to a righteous person of the tribe. It is not necessary to become one through bloodline; rather, they are chosen individually according to their character. However, most of the time, the knowledge is passed down to the children of the *Pangebetan* because they are properly mentored by their parents through storytelling. These stories became the basis of the decisions. It serves as proof that they have the proper knowledge. If in case the *Pangebetan* cannot make the decision, it is then endorsed to the *Pangebetan et San*, or the wisest person in the tribe chosen by all *Pangebetan*. The decisions made by these people are final and recognized by not just one generation but also by the next generations to come.

The selling of almaciga resin started when Datu Narasid came to the southern part of Palawan. Back then, almaciga resin was just used for light. Datu Narasid and a certain individual named Joll Keple then talked to the *Pangebetan* including the *Pangebetan et San* to sell the almaciga resin in exchange for goods or cash. Allegedly, during this time, Datu Narasid changed the title of *Pangebetan* to *Panglima* due to difficulty in pronouncing the word. Datu Narasid also employed the *Panglima* to be the intermediaries, or the *Kapatás*, to ensure continuous production of the resin. At this point, the name Sumrang Oka surfaced as the main intermediary, who eventually has been trusted for the whole management of the resin. After Sumrang Oka came Suaren Macario, who, according to the respondents, divided Salogon with other places, and the political boundaries were integrated with the traditional one. After Macario came Governor

Rodrigues-Perfecto, who took control of the almaciga resin trading. The respondents were not sure of how long after it took for him to give a portion of the rights to the Edwards family. The rights have been with the Edwards ever since, until the southern part of Brooke's Point was inherited by Mr. Thommy Edwards, husband of Laura Edwards. Through a special power of authority, it was managed/applied by Ms. Linda Lopez. The northern part of Brooke's Point was inherited by Mirna Edwards, and she has already given back the rights to the Pala'wan tribe residing in the area.

Nowadays, the *Panglima* serves as the tribal elder, who, with the people, makes big decisions. The *Panglima* are assigned to their respective sitios or cluster of sitios to help resolve conflicts and impart the traditional and cultural knowledge of their tribe. They could conduct cultural rituals for many occasions, most especially weddings. However, they cannot intervene with their own family disputes. If in case they are related to anyone in the party involved, the *Panglima* immediately invites other *Panglima* to mediate and give proper decisions to the issue. The council of *Panglima* convenes for bigger and difficult issues. In this council, the decision making is consensus. The council does not vote for decisions to be made; one by one, each will present opinions and recommendations. If the council fails to come to a consensus decision, then some of the *Panglima* are excluded including the sitios they covered. Ample time will be given to each *Panglima* to make a clear decision, and other *Panglima* talk to each other and try to convince others to come up with a consensus decision. Rituals are also done to help them with things needed to be done.

The *Panglima's* decision in their jurisdiction may be questioned by other members if they feel that the person has a personal interest and, at the same time, does not have the proper knowledge for the particular case. The *Panglima* has their own coverage of expertise, and these expertise are based on the stories they heard from the past. The *Panglima* cannot make decisions based only on their own experiences; they must be able to relate it to the past. According to them, this

is the main reason why the *Panglima* are having some difficulty making decisions with the modern problems because it comes with rather new reasoning that are sometimes conflicting with their traditional methodology.

Major bottlenecks in almaciga resin tapping: Harvesting permit

Even though the resin business is strong in Palawan, the road to getting an almaciga permit is not an easy one for the indigenous communities. So, what is the lengthy and costly road to finally allow an IP group to harvest?

Local government unit endorsements

The first step in the long list of requirements is the local government unit (LGU) endorsements from both the barangay and municipal councils. During the dialogue with the barangay and municipal representatives in Brooke's Point, ideally, getting a barangay endorsement will take at least 6 weeks, and municipal endorsement will take 4–8 weeks.

However, according to the indigenous communities that have experienced going through the LGU endorsements, it can take months to a year to get an endorsement. There was even a case where a barangay favored the renewal of permit of a non-IP permittee, and the barangay secretary did not accept the request for endorsement of the indigenous community.

NCIP validation

The 1997 Indigenous Peoples' Rights Act (IPRA) or Republic Act (RA) 8371 gave priority to indigenous communities to develop, control, and utilize the natural resources within their ancestral lands. Sections 7b, 56, and 57 of IPRA support the almaciga resin tapping of the indigenous communities, but the experiences of the communities proved otherwise.

Indigenous groups in Brooke's Point, Palawan, shared that the new FPIC guidelines are their major obstacle in getting the permit. NCIP Administrative Order No. 3, series of 2012, also known as the Revised Guidelines on FPIC, provided that FPIC is exempted for community-initiated and community-solicited projects but still subject to validation process.

SEP clearance

A special law to the last frontier province of the Philippines is the Strategic Environmental Plan (SEP) Law. RA 7611, or SEP Law, is unique in the province of Palawan. It contains the strategies that will protect and conserve the remaining natural resources of the province.

Any project that will have an impact on the natural resources and environment will need to get a SEP clearance from the Palawan Council for Sustainable Development (PCSD). Almaciga trees are naturally found in restricted zones of the Environmentally Critical Areas Network (ECAN). The ECAN is the major strategy of SEP that provides a graded system of protection and development control in the province.

Almaciga trees are also usually found at 500 masl elevation and above, which means it is in the Restricted Use Area and Core Zones under the ECAN zoning. The SEP Law provides that limited activities are allowed in these zones:

Section 18. Activities allowed by RA 7611. *In the law, activities allowed in each of the ECAN Zones are as follows:*

*i. Restricted Use Area: Limited and non-consumptive activities which shall include but not limited to gathering of wild honey, **almaciga tapping**, soft-impact recreational activities (i.e. hiking, sight-seeing, bird watching) and research.*

Another set of requirements is needed to get SEP clearance.

DENR guidelines

After getting the necessary LGU endorsements, SEP clearance, and NCIP validation, the final permit to obtain is given by the DENR. Even with the passing of IPRA, indigenous communities still needed to get the DENR permit through the normal permitting process for NTFPs.

The DENR permitting process for the indigenous peoples is similar for the non-IP permittee, which is very long and costly. According to indigenous communities in Palawan, the renewal of permit is annually, and they will need to spend, at the minimum, PHP 30,000 or more. With this situation, some indigenous communities choose to allow non-IP permittees in their ancestral lands.

Relying to non-IP permittees means having no say in the pricing and harvesting limits, and the traditional harvesting methods are not implemented, which can result in the unsustainable management of resin tapping.

The long process of securing NCIP validation for the community-initiated almaciga resin enterprise

To assist the IPO members of NATRIPAL in getting the almaciga resin permit, a series of consultations were held since March 2013. The consultations were aimed



to discuss the permitting policies and the process that IPOs will undergo. The experiences of IPOs who already started the processing of their permit before 2013 were shared. The following issues were raised during the consultations:

1. Unclear process of securing NCIP validation;
2. The barangay officials do not recognize the prioritization of indigenous communities over the almaciga resources; and
3. Lack of support of the NCIP provincial office in securing NCIP validation for community-initiated projects.

Case 1. SPABP and exercise of priority rights

The implementation of the new FPIC guidelines and SPABP renewal of almaciga permit commenced in 2012. The NCIP has chosen SPABP to pilot the conduct of exercise of priority rights (EPR). SPABP obliged to the new guidelines, hoping that it will help them with their application. However, 2 years passed and the EPR processing is still unfinished, and SPABP almaciga trading has come to a halt. Without the permit, SPABP was not able to deliver their almaciga, which reached up to 5 tons that amounted to almost PHP 200,000. With no deliveries, they cannot buy more resin, and their investment laid waste for 2 whole years. Under normal circumstances, their allowable harvest is 30,000 kilos per year, with the conventional

and conservative price of PHP 35 per kilo, but they lost PHP 1,050,000 in sales just for 1 year. That is PHP **2.1 million** lost in 2 years. Aside from loss of sales, SPABP incurred operational expenses for the transportation expenses to do follow-ups, which usually ranges from PHP 1,000 (Puerto) up to PHP 10,000 if the follow-up is made in Manila as NCIP started finger pointing who to ask. Therefore, instead of gaining income, they just incurred more debts to other people just to support their operation. If SPABP was able to operate, they would be able to purchase the almaciga resin of their fellow Pala'wan, which in turn could have bought rice, medicine, and other family needs. At the same time, SPABP is an IPO and cooperative implementing various basic services such as installation of water system, scholarship, etc.

They could have done more for the community, but because the EPR took so long to process, community members grew tired of waiting and lost their trust with their organizations' capacity to operate. A trust that took SPABP a very long time to establish was tarnished by the single event. In 2013, SPABP made numerous follow-ups to NCIP, reaching up to the national office. It came to the point that DENR themselves saw the lost opportunity for SPABP and that the cause was the NCIP's lack of action. The DENR approved and released the SPABP permit in good faith that NCIP will come up with the Certification of Precondition during the time of operation. However, another year has passed, and the SPABP almaciga permit was due again for another renewal last May 12, 2015. There is still no update on the results of the conduct of EPR.



Last April 24, as part of the FPIC documentation on almaciga, NTFP-EP Philippines requested the NCIP provincial office for a copy of the EPR report or any document available. However, NCIP staff claimed that the person who has conducted the EPR is no longer connected with NCIP, and they do not have any idea on the where the document is and might just ask for the regional office to provide the copy.

SPABP has again sent a letter of request to conduct a validation of their community-solicited or -initiated livelihood project to the provincial office of NCIP and now awaits for their response.

Case 2. FPIC, Panglima, and IPOs (SPABP not included)

The respondents claim that they really never experienced an actual FPIC activity nor have they been invited to one. Only few of them were able to learn what FPIC meant. It is one of the example issues that the Panglima had difficulty with, as their ancestors never really encountered anything with legal matters. At the same time, IPRA is still vague to them. They know that there is a law called IPRA and it is there to protect their rights, but they do not fully understand what is in the law.

Through the efforts of some *Panglima* and peoples' organizations (PO) leaders, they started to understand

that under the IPRA Law, they also have the right to land and given priority to use the natural resources therein. In 2012, IPOs submitted a letter of intent and application forms for the almaciga permit to the DENR and NCIP.

A series of meetings and consultations were conducted by the Panglima and IPO officers and members. Seeking support for their efforts for the almaciga harvesting permit, letters were submitted to announce their intent to apply independently for the permit. Each IPO was faced with different unique difficulties in processing their application. The following are the list of difficulties with the application:

1. The barangay will not endorse the IPO, on the grounds that Mrs. Anna Laura Edwards was only renewing her application;
2. The DENR will not accept the application on the same grounds that Mrs. Anna Laura Edwards is the current concessionaire;
3. The NCIP will not conduct an investigation and demand the FPIC process with Mrs. Anna Laura Edwards; and
4. The NCIP will not conduct a validation without other documents such as the barangay endorsement and DENR inventory.

According to respondents, they have sought for the validation from NCIP, and submitted petition and complaint letters to the NCIP, but they saw no action from the office. Recently, Panglima Boy Soda of Salogon submitted a letter of request for validation

just this March 18, 2015 in the community service center located at Abo-abo. He received a response from Mr. Rico Sanga of NCIP that the IPO first needed to complete other prior documents such as barangay endorsement and the inventory of resources, and then DENR will request for them to conduct the FPIC process. The same response was also received by Mrs. Junita Sarol, President of the Samahang Katutubo ng Barangay Napsan (SAMAKANA), from Provincial Officer Engr. Roldan Parangue when she tried to follow up her request letter for validation. During the validation of the application of almaciga permit of the Samahan sa Iratag Irawan ng mga Tagbanua (SIIT) last April 9, 2015, Mr. Doming Ofras of NCIP Puerto Princesa explained to the community that the validation is conducted after the whole inventory process of the DENR is done.

In connection to this, a dialogue with the IPOs, barangay officials, national government agencies, nongovernmental organizations, and LGU on the processing of almaciga permit was conducted last February 2014 in Maruyog Ridge Hotel, Brooke's Point. NCIP explains that they will start the conduct of the FPIC process only when the DENR endorsement is submitted to their office.

All are in contrary from the explanation given by Atty. Josefina Agusti of NCIP Region IV during the Almaciga Policy Forum in A&A Plaza Hotel. Under "The Revised Guidelines on FPIC and other related processes of 2012," Chapter 6, Section 39, community-solicited or -initiated activities do not require field-based investigation/FPIC requirements and shall be subjected to a validation process, and Section 43 of the same chapter explains the process it shall undertake.

The regional director "motu proprio" or upon receipt of the written request for validation shall constitute a team composed of not more than three from the provincial office or CSC, as the case may be, to conduct a field investigation.

In this case, it means that NCIP will no longer need to wait for other agencies or body to endorse the application. The NCIP should conduct the validation prior to any activity by other agencies, to better determine if the application is really community-solicited or -initiated.

Case 3. The Edwards and FPIC

The documents from the DENR show that Mrs. Anna Laura Edwards was able to obtain documents such as a certification from NCIP duly signed by NCIP Provincial Officer Engr. Roldan Parangue (2007 and 2009) and memorandum of agreement also signed by Provincial Officer Engr. Roldan Parangue on behalf of

Jannette Serrano-Reisland, Chairperson of NCIP in 2007, which is still being used by the applicant up to now as part of her FPIC documents.

They claim that the Edwards never conducted a meeting together with NCIP in the community up to this date nor has NCIP held a meeting, investigation, or any gathering to discuss the petitions submitted by the Panglima. They also never heard any call for consultation to ask them if they still want to let the Edwards continue their concession. The respondents shared that most of the tribes assume that it is an inherit right of their family (Edwards) as part of the agreements made with their ancestors, which was recognized by the government by awarding the permit as it was never questioned.

IP communities submitted numerous communications to the LGU, NCIP, and DENR since 2012 explaining the intent of the communities to apply for the almaciga permit and to not renew the Edwards' permit. A meeting with the DENR confirmed that the Edwards were able to secure another permit last June 2014 despite the letters against the renewal.

Urgent call to the government agencies

Sustainable utilization of natural resources is possible if indigenous communities will be truly allowed to manage their ancestral domains starting from utilizing the NTFPs. The following experiences on the existing policies on NTFP permitting do not support community empowerment:

- Stringent government regulations—lengthy and cumbersome permitting procedure for processing and renewal, many unnecessary requirements
- Bureaucratic muddle—unclear policies between the NCIP and DENR
- Varying interpretations and outdated policies on NTFP regulatory procedures
- High transaction costs—numerous expenses for permits and inventory
- Irregular transport regulations
- Forest charges are steep
- Standard operating procedures/checkpoints

The use of NTFPs is thought to provide an incentive for the conservation of natural forests. However, enabling and practical policies are needed that will support the greater role of indigenous communities in the management of natural resources while enjoying the economic benefits.

Enterprise development training: Weaving and production of natural dyes classified as indigenous knowledge systems and practices¹



Rex Edward dela Peña² & Olivia M. Melendrez

Weaving has long been practiced all over the Philippines and in neighboring countries. Traditional handwoven textiles, for instance, are produced in one-third of the provinces in the Philippines and throughout the Indonesian archipelago. However, traditional weaver groups, who want to increase their income from their products, often fail to meet buyer demands for quantity, quality, and timeliness due to poor product standardization, lacking technical capacity, limited access to quality natural dyes and eco-fibers, and limited knowledge of the market.

Wikipedia defines *ikat*, or *ikkat*, as a dyeing technique used to pattern textiles that employ a resist dyeing process on the yarns prior to dyeing and weaving the fabric.³ Although it is an Indonesian word, it is being practiced almost worldwide. In Ifugao, the practice has been in conjunction with development of the centuries-old Banaue Rice Terraces.

The Project

The project is entitled “Sustainable Consumption and Production (SCP) of Handwoven Textiles: Female Entrepreneurship in Some Parts of Indonesia and the Philippines.” In Indonesia, it covers eleven provinces, and in the Philippines, it covers twelve provinces, namely: (1) Aklan; (2) Bukidnon; (3) Misamis Oriental; (4) Negros Occidental; (5) Nueva Vizcaya; (6) Occidental Mindoro; (7) Oriental Mindoro; (8) Palawan; (9) Quezon; (10) South Cotabato; (11) Zamboanga; and (12) Ifugao.

The project involves the following:

1. Setting production and quality assurance standards;
2. Increasing production and sales by expanding markets; and
3. Collaboration with policy makers and the private sector toward supportive policies conducive to handwoven eco-textile (HWET) production among partner indigenous weaving communities in the Philippines.

Its overall objective is to contribute to economic prosperity and poverty reduction in Indonesia and the Philippines through promoting sustainable HWET value chain development. Specifically, the project aims to promote SCP of HWETs in Indonesia and the Philippines through scaling up successful SCP practices throughout the market chain, and development of an enabling policy environment. At the end of the project, it is expected that:

1. 7,000 entrepreneurs in the handwoven textile value chain have adopted product and quality assurance standards that reduce the environmental and social cost of production and consumption;

¹ A documentation report presented during the National Free and Prior Informed Consent (FPIC) Conference entitled “Securing Community Livelihoods and Forest Management Systems, Sharing Lessons Learned” on June 24, 2015 at Brentwood Suites, Quezon City.

² Non-Timber Forest Products-Exchanges Programme Philippines Enterprise Development Officer assigned to the Lugo, Amganad, Banaue Tie Dye Weavers Association, referred to this document as “the EDO.”

2. 50% increase in production and sales of HWETs from targeted entrepreneurs to provincial, national, and international consumers; and
3. Policy makers and the private sector have a more positive attitude to provide support for conducive HWET production policies, including natural dyes and fibers.

To be able to accomplish its objectives, component activities are the following:

1. Technical assistance (TA) to entrepreneurial groups and cooperatives to implement improved quality assurance and management systems;
2. TA to meet international textile standards (e.g. Global Organic Textile Standards, European Ecolabel for Textiles, EKO Sustainable Textile Standard, and OEKO TEX);
3. Develop and register a HWET standard with national standards bureaus;
4. TA to improve quality and stimulate supply of natural dyes, eco-coloring powder, and eco-fiber for handweavers;
5. TA for producers on handwoven textiles, natural dye and fiber production techniques, and eco-designing;
6. Build the capacity of entrepreneurial producer groups and cooperatives on quality assurance systems, marketing, shop management, and loan and credit services;
7. Support the opening of 25 new handwoven textile shops, distribution centers, and galleries at the provincial and national levels;
8. Develop linkages among entrepreneurial groups, cooperatives, and shops/distribution centers with wholesalers and retailers;
9. Marketing training for entrepreneurial groups and cooperatives on quality, quantity, and timely value chain delivery;
10. Conduct campaigns to promote HWETs and educate consumers on natural dye, fiber, and eco-design through media, exhibitions, shops and business matchmaking, and information units in existing textile knowledge centers;
11. Organize conferences, trade fairs, and exhibitions with government bodies to promote production and consumption of HWETs as a cultural heritage;
12. Advocate for the application of natural dyes and fiber in the green textile industry;
13. Establish a multi-stakeholder initiative to develop and advocate the conducive policies for SCP of HWETs; and
14. Advocate handwoven textile use with 30 district and provincial government bodies in both Indonesia and the Philippines.



The project is implemented by the Non-Timber Forest Products-Exchange Programme in the Philippines (NTFP-EP Philippines), a non-stock, nonprofit organization, which is registered under the Securities and Exchange Commission (SEC). It was recognized before as Non-Timber Forest Products-Task Force (NTFP-TF). NTFP-EP Philippines is under the umbrella of NTFP-EP Asia, which also operates in Cambodia, India, Indonesia, Malaysia, and Vietnam. As NTFP-EP is a network of nongovernment organizations (NGOs) and peoples' organizations, majority of the partner-beneficiaries are member partners of the network. The project, which is supported by the European Union (EU), will run for 48 months.



Master Ikat Weaver Dudduli - Dumangeng
87 years old, Sitio Pungot, Brgy Amganand,
Banaue Ifugao CAR

Specific target location: Ifugao

Ifugao was formerly a part of the old Mountain Province. It was created as an independent province on June 18, 1966 by virtue of Republic Act No. 4695, otherwise known as the "Division Law of Mountain Province." The total population of Ifugao as of May 2010 was 191,078, and it has a growth rate of 1.31 from 1990 to 2010. As of 2010, Ifugao's total land area is 2,506.3 square kilometers. A total of 27,083 hectares are classified as alienable and disposable, and 224,695 hectares are forest land.

The areas covered by the project are Barangays Poblacion, Amganad, Tam-An, and O-ong located in the municipalities of Banaue and Hingyon. The Lugo, Amganad, Banaue Tie Dye Weavers Association (LABTDWA) members can be found in these areas. The association was organized in September 2009 and was registered under the Department of Labor

and Employment in Ifugao with registration number 2009-014. The association was formed to consolidate the weavers' efforts and create a venue to find gainful endeavors and seek markets for *ikat* textiles to support their families and to uplift the economic condition of the association members.

The LABTDWA was organized for the purpose of reviving the old *ikat* weaving tradition and the tie-dye technique using natural dyes. The LABTDWA members are expert *ikat* weavers and dedicated women weavers. The associations' products have cultural value and easy to recognize due to its unique Ifugao *ikat* designs, which embodies the concern for ethnic and naturally dyed *ikat* textile.

The 28 members are local *ikat* weavers from the Ifugao Province, Cordillera Administrative Region, and residents of the municipalities of Banaue and Hingyon. The LABTDWA is engaged in *ikat* textile weaving

using natural dye source extracts to complement the Tinawon organic rice production (planting activity) while awaiting for the harvesting season.

Prior partnership of NTFP-EP Philippines with the LABTDWA

In 2009, *ikat* weavers were inspired to organize the LABTDWA after participating in a national crafts conference held by NTFP-TF at the University of the Philippines.

Partnership with government agencies

The project will undertake campaigns to promote HWETs and educate consumers on natural dye, fiber, and eco-design through media, exhibitions, shops and business matchmaking, and information units in existing textile knowledge centers. Conferences, trade fairs, and exhibitions with government bodies to promote the production and consumption of HWETs as a cultural heritage shall be conducted. Hence, government line agencies such as Department of Trade and Industry, Department of Tourism, Department of Science and Technology, Philippine Textile Research Institute (PTRI), Center for International Trade Expositions and Missions (CITEM)/Furnishings and Apparel Manufacturers' Exchange (FAME), and provincial and local government units shall be among the collaborators in the project.

Prior knowledge of the Indigenous Peoples' Rights Act and the Free and Prior Informed Consent of the LABTDWA

According to inquiry with the LABTDWA members, they have not undergone orientation on IPRA. More so, they are not aware of the FPIC process as other bigger projects, including tourism projects, in their

area did not undergo the process. They became aware of this when Mr. Edward Rex dela Peña, NTFP-EP Philippines staff, approached them on this project.

The SCP HWET Project is the first ever partnership that the LABTDWA participated in and was involved with. During the meeting of the Lugo, Amganad, Banaue Tie Dye Ikat Weavers Association on June 26, 2013 at the Banaue View Inn, Banaue, Ifugao, the association expressed its willingness to take part in the project through a resolution, stating that:

Therefore, IT IS HEREBY RESOLVED that the Board / Executive Committee of LAB Tie Dye Ikat Weavers Association:

- 1. Approves the participation of the association to the project entitled "SUSTAINABLE CONSUMPTION AND PRODUCTION (SCP) OF HANDWOVEN TEXTILES (SONGKET, ULOS, LURIK, HABI, IKAT) FEMALE ENTREPRENEURSHIP IN INDONESIA AND THE PHILIPPINES" (DCI-ASIE/2012/308-116) with project duration commencing from February 2013 and ending on February 2016;*
- 2. Agrees that the association's participation to the project shall be guided by a MOA [memorandum of agreement] where both parties shall agree to the duties and responsibilities stipulated therein;*
- 3. Appoints Jacinta G. Angayon to coordinate with NTFP-TF with regards to project implementation monitoring and evaluation which may be necessary for the completion of the project.*

This resolution, together with the letter of intent from the community, was then submitted to the National Commission on Indigenous Peoples (NCIP).

Aside from the communities mentioned above, project orientations were also conducted with the Barangay Council of O-ong and Amganad.



Table 1. Detailed activities conducted related to the FPIC process

Inclusive date/s	Activity	Details
June 25 to July 23, 2013	Series of project orientations	<ul style="list-style-type: none"> • June 25—Banaue • July 22—Brqy, Amqanad, Sitio Huyok • July 23—Brqy, O-onq, Sitio Lugo
December 17, 2013	NCIP Partners' Meeting	<ul style="list-style-type: none"> • NCIP Central Office invited NGOs and other government agencies for a meeting. • To facilitate FPIC process of non-extractive activities, it was proposed that partners who have a MOA with NCIP will just undergo project validation; hence, partners were scheduled to present programs and projects during the en banc meeting on January 2014.
September 27, 2013	First meeting with NCIP	<ul style="list-style-type: none"> • Met Ms. Jocelyn Kidayan of NCIP Banaue sub-office. • Copy of the SCP HWET project brief was provided. • Set initial meeting with the NCIP legal officer through Ms Kidayan.
January 21, 2014	NCIP en banc meeting	<ul style="list-style-type: none"> • The project was one of the initiatives of NTFP-EP Philippines that was presented during the NCIP Commission en banc meeting.
January 28, 2014	Meeting with the NCIP Legal Officer at NCIP Lagawe	<ul style="list-style-type: none"> • The project was classified as indigenous knowledge systems and practices (IKSPs) research under NCIP Administrative Order (AO) No. 1, NTFP-EP Philippines, however, looked at it as falling under non-extractive small-scale activities (NESSA). • Atty. Karen Joy Salvador Kalaw discussed Section 8.7 of NCIP AO No. 1, stressing that within 5 days from approval and signing of the work and financial plan (WFP), the IKSPs team shall schedule a conference between the community and the applicant (NTFP). The conference shall allow the applicant to present the following: (a) purpose of research; (b) parameters; (c) methodologies; (d) materials; (e) related information on the intended research; (f) benefits community may derive from the research and data gathering tools; and (g) research work plan. • The NCIP legal officer proposed number of members to be consulted per barangay. • The NCIP legal officer to submit the following on March 6, 2014: (a) letter of request to NCIP to conduct IKSP research of the LABTDWA; (b) proposal/project information; and (c) SEC registration and other legal documents of NTFP.
January 29, 2014	LABTDWA officers meeting and planning	<ul style="list-style-type: none"> • 5 officers of the LABTDWA proposed and agreed to meet with the NCIP Lagawe Office on March 6, 2014. • They took the initiative to finalize the proposed sites for validation.
February 17, 2014	Email with the NCIP Lagawe legal officer	<ul style="list-style-type: none"> • Upon consultation with colleagues at the NTFP-EP Philippines, the EDO clarified in his email that the project will not fall under IKSP research but instead fall under NESSA.
March 6, 2014	Meeting with the NCIP Lagawe, EDO, and LABTDWA officers	<ul style="list-style-type: none"> • Project document and NTFP legal documents were submitted to NCIP Lagawe. • During the orientation, the EDO explained that the project would not fall under AO No.1 because: (a) it is not aimed at documenting the <i>ikat</i> weaving of the LABTDWA; and (b) the focus of the project is to comply with international textile standards to improve market access by providing trainings and other planned activities to the members.
April 12, 2014	Provision of the WFP	<ul style="list-style-type: none"> • The NCIP came up with a WFP amounting to PHP 26,440.00.
April 22, 2014	Meeting with the NCIP Lagawe legal officer	<ul style="list-style-type: none"> • The NCIP presented two options First option is to submit the travel order, itinerary, travel report, certificate of travel completion and certificate of appearance. Second option is to deposit per diem to NCIP Regional Office to be able to secure an official receipt. • The EDO explained that NTFP will cover all the costs related to the FPIC process but not per diems as the funder (IEU) does not allow per diem payment particularly to government officials. Instead, receipts for meal expenses should be submitted. • The meeting ended with the final words from NCIP that NCIP personnel are entitled to per diem based on guidelines and that unless NTFP would produce such, the FPIC process will not proceed.
April 23, 2014	Meeting with the LABTDWA in Brqy, Amqanad	<ul style="list-style-type: none"> • The EDO shared the WFP to the LABTDWA members. • The group suggested that they are willing to cover the WFP per diem as the LABTDWA's counterpart to NCIP personnel. However, they can only afford 2 days for preparation and actual FPIC conduct, and not the proposed 4–5 days. • In the interest of time, the group decided to push through with the project with or without the FPIC process.
April 24, 2014	Meeting with NCIP	<ul style="list-style-type: none"> • The EDO provided an update to the NCIP about the position of the LABTDWA. • The NCIP reiterated that the project would fall under NCIP AO No. 1 as tie-dyeing is part of the Ifugao weavers' IKSP. Moreover, it does not fall under AO No. 3, Section 39 as there are only 24 members of the LABTDWA, which are further distributed to Brqys, Amqanad and Lugo.
May 8, 2014	Meeting with the NCIP and LABTDWA at the NCIP Lagawe Office	<ul style="list-style-type: none"> • The LABTDWA agreed to pay the 2-day per diem for NCIP personnel.

After the meeting with NCIP on May 8, 2014, the LABTDWA pushed to proceed with the activities with or without the Certification of Precondition granted by NCIP.

What guidelines are to be followed? Is it IKSP research or NESSA?

NCIP AO No. 1, series of 2012, is entitled “The Indigenous Knowledge Systems and Practices (IKSPs) and Customary Laws (CLs) Research and Documentation Guidelines of 2012.” Under these guidelines, IKSP research is defined as: “the gathering and analysis of data, information and facts, with the active and full participation of the ICCs [indigenous cultural communities]/IPs, on the ICCs/IPs’ IKSP and/or life ways for purposes of gaining knowledge and understanding for its advancement and enhancement, advocacy, basis for policy, plans and programs, decision making and for the continuity and protection of cultural integrity.”

Although NTFP-EP Philippines recognizes and respects that the weaving by Ifugao women has been part of their culture, the mere title and definition would define that the SCP HWET would not fall under IKSP research as no data will be gathered and analyzed from the project. The focus of the project is for the target communities to comply with ITS to improve product quality and—as an end result—to improve their market access. This will be done through a series of capacity building activities that would improve the LABTDWA’s skills on natural dyeing.

Recommendations

1. **NESSA projects, programs, and activities in partnership with NCIP should only require validation from the community.**

Clearly, the SCP HWET project can be classified as NESSA.

Although Section 41 of NCIP AO No. 3 states that “projects undertaken by international funding agencies or institutions by themselves⁴ or in cooperation with non-government organizations or institutions shall, however be subject to appropriate FPIC process as provided in the applicable provisions of the Guidelines or other pertinent NCIP guidelines,” NTFP-EP Philippines attempted to have a MOA with the NCIP Central Office when the project, along with other initiatives of the organization, was presented at the

NCIP en banc meeting on January 21, 2014. This was done because it was the same agency that organized the series of partners’ meetings in December 2013 and recommended presenting the project at the NCIP en banc meeting. Accordingly, the purpose of the series of meetings was to facilitate the FPIC process among partners of NCIP and that when the MOA was forged between NCIP and its partners like NTFP-EP Philippines, initiatives of partners would only require validation process from targeted IP communities.

2. **In cases where the communities themselves and not the proponent will benefit from the livelihood, only the validation process from the community should be required.** This, however, is different from the livelihood projects offered by extractive industries and projects offered under corporate social responsibility programs of private institutions.
3. **As the FPIC process is a mandate of NCIP, it should be budgeted by the agency** and not by the proponents and, more so, by the beneficiary communities.

⁴ In this case, the institution is the EU.

FPIC process in forest management projects: Experiences in REDD-plus demonstration sites and piloting of ICCAs



Edna N. Maquigad

In 2010, the Philippine National REDD-plus Strategy (PNRPS) was developed and adopted in the Philippine Development Plan 2011–2016¹ with the goal “to empower forestland managers and support groups that sustainably and equitably manage forestlands and ancestral domains with enhanced carbon stock and reduced greenhouse gases emission. Besides reducing forest degradation and deforestation, the strategy alleviates poverty, conserves biodiversity, and improves governance.”²

Forests of the Philippines have experienced extensive deforestation and degradation in the last century. Deforestation causes global greenhouse gas (GHG) emissions, a very significant contribution to climate change and the REDD-plus mechanism under the United Nations Framework Convention on Climate Change (UNFCCC), which means that reducing emissions from deforestation and forest degradation in developing countries, plus conservation, sustainable management of forests, and enhancement of forest carbon stocks can potentially address GHG emissions as well as conserve biodiversity and provide multiple benefits.

The Philippines had an initial three pilot projects (2010–2013); one was the Department of Environment and Natural Resources-Forest Management Bureau (DENR-FMB) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Project in the province of Southern Leyte, which covers the municipalities of Bontoc, Silago, Sogod, Tomas Oppus, and Maasin City. These are areas under the Community-Based Forest Management Agreement (CBFMA). The second pilot site was the municipality of General Nakar in Quezon Province identified by Fauna & Flora International (FFI) and that was co-implemented with Non-Timber

Forest Products-Exchange Programme (NTFP-EP) Philippines, Samahan ng mga Katutubong Agta na Ipinagtatanggol at Binabaka ang Lupaing Ninuno (SAGIBIN-LN), and Team Energy Foundation. The third site was in the municipalities of Narra and Quezon in Palawan Province led by FFI and NTFP-EP Philippines, and co-implemented with Environmental Legal Assistance Center (ELAC), Institute for the Development of Educational and Ecological Alternatives (IDEAS), Nagkakaisang Tribu ng Palawan (NATRIPAL), and the municipal local government of Quezon.

The piloting of indigenous peoples and community conserved areas (ICCAs) under the New Conservation Areas in the Philippines Project (NewCAPP) shared similar goals to REDD-plus on conservation of biodiversity. The project aims to expand and strengthen the terrestrial protected area (PA) system in the Philippines by developing new PA models and building capacity for the effective management of the system. These new management models for biodiversity conservation being piloted are the local government-managed areas, community-managed areas, and the indigenous people-managed areas. The latter, also called ICCAs, requires Free and Prior Informed Consent (FPIC).

¹ Chapter 10, Conservation, Protection, and Rehabilitation of the Environment and Natural Resources.

² Philippine Development Plan 2011–2016.

The REDD-plus demonstration sites in the Philippines and piloting of ICCAs are innovative mechanisms on forest management that are consistent to sustainable forest management and conservation of biodiversity while ensuring co-benefits for forest-dependent people.

These pilot areas are all in ancestral domains and are required to undergo the FPIC process under Indigenous People Rights Act (IPRA). In the Philippines, unlike in other countries, the written consent given by each community leader or assembly is not sufficient. The National Commission on Indigenous Peoples (NCIP), a government agency created by virtue of the IPRA Law, which is under the Office of the President, is tasked to validate and confirm if the consent given by the indigenous community for a project was indeed given according to their FPIC Guidelines embodied in a NCIP Administrative Order.

This report delves into the experiences of these three projects, all of which introduced innovations in forest management, on getting the FPIC of the indigenous peoples. Another commonality of these projects is that NTFP-EP Philippines was involved with all of them and was the FPIC proponent, except in the European Union (EU) REDD Project in Nakar that was headed by FFI. So far, only one project was issued a Certification of Precondition (CP) by the NCIP, whereas the others have yet to be completed after 2–3 years and counting.

Case 1

Profile of General Nakar, Quezon Province ancestral domain where the REDD-plus Project and ICCA were pilot tested

On December 8, 2008, the NCIP issued a Certificate of Ancestral Domain Title (CADT) No. 097 in the municipality of General Nakar, Province of Quezon, Island of Luzon, for the Dumagat-Remontado tribes covering a total area of 163,634.2498 hectares, where 144,880.8017 hectares are land, and the 18,753.4481 are ancestral waters.

A CADT refers to a title formally recognizing the rights of possession and ownership of indigenous cultural communities/indigenous peoples (ICCs/IPs)

over their ancestral domains identified and delineated in accordance to Republic Act (RA) No. 8371, or the IPRA, which was enacted in 1997. The ancestral domain is considered as private lands under the concept of Native Title.³

The Sanggunian Bayan or Local Legislative Council of the municipality of General Nakar issued Resolutions No. 2009-68 and 2013-48, opposing the issuance of CADT No. 097. The opposition is based on the premise that almost the entire land area including its municipal waters⁴ is claimed as the CADT area of the Agta, Dumagat, and Remounted tribes, which accounts for only 13% of the population. In addition, the Sanggunian Bayan alleges that there was no genuine consultation on the CADT process; that the survey and mapping employed by NCIP in processing the CADT claim was not in accordance with the Manual of Land Surveys in the Philippines; and that there is no Agta tribe since time immemorial but appeared as one of the claimants of the CADT.⁵ Lastly, the opposition was also because the CADT area falls within existing and overlapping tenure rights.

The total land area of the municipality of General Nakar is 161,640 hectares covering 19 barangays (villages, the smallest political entity). Around 94% of the area is forest land, and 6% of the area are privately titled land and/or alienable and disposable land.⁶ There are 35 tribal settlements scattered in the ancestral domain; these settlements are located in the nine barangays (villages) of General Nakar. The IP population of General Nakar is around 13%, and the rest, non-IPs called *Tagalogs*, also lived in the forest land. Forest lands cannot be privately owned except if there are ancestral domains, which are recognized as communal property of the tribe.

Prevailing issues in these forest areas have been the encroachment of the farmers and lowlanders; ongoing rebellion by the New People's Army, who has been involved in a number of encounters with the military and IPs/ICCs are caught in cross fire; and overlapping tenure of CADT, as portions of the domain have areas under the National Integrated Protected Area System (NIPAS), private titles, military reservation, and CBFMA. The most contentious issue being faced by all stakeholders is the security of tenure linked to the issuance of the ancestral domain title while there

3 Section 5b, NCIP Administrative Order No. 4, series of 2012. Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012.

4 The municipal waters, as defined in RA 8550, are marine waters 15 km from the coastline including streams, rivers, public forest, timberland, forest reserve, or fishery reserve within the municipality except those under the NIPAS Law.

5 Letter dated September 8, 2014 of the Municipal Mayor Leovigildo R. Ruzol to the Secretary of Department of the Interior and Local Government (DILG), and the Chairperson of the NCIP.

6 General Nakar Forest Land Use Plan (FLUP).



are internal issues like the identity of the Agta and intra-tribe dispute on the legitimacy of leaders. There is a documented indigenous political structure (IPS), but still, ongoing validation with the general assembly called Kasurot Surutan as the highest authority.

The projects in General Nakar: EU REDD Community Carbon Pools Programme and NewCAPP-ICCA (United Nations Development Programme)

The importance of natural resource management in General Nakar cannot be over-emphasized. The municipality has the largest remaining forest block in Southern Luzon, just 2 hours from Metro Manila. It also has one of the largest ancestral domain in the Philippines issued in 2008 under the Dumagat-Remontado tribes, although it has yet to be fully recognized and registered under the Land Registration Authority.

The overlapping land titles and tenure rights over the area must be addressed to facilitate development initiatives/projects and the protection of the remaining forest areas, among others. This situation has impacted negatively on the overall development of the area, and with this uncertainty, the forest area is still largely

treated as an open access area, and persistent illegal activities abound.

FFI's Asia-Pacific Community Carbon Pools and REDD-plus Programme, a 3-year program mainly EU-funded, also had experiences in the FPIC process. The program was active in Cambodia, Indonesia, the Philippines, and Vietnam. The project worked to strengthen laws and policies to facilitate the adoption of REDD-plus through pilot projects, partnering with the NTFP-EP and People and Nature Reconciliation (PanNature) of Vietnam.

The program aimed to build community carbon pools (CCP), which are groups of neighboring community forest (CF) areas undertaking REDD-plus in a common management and benefit-sharing system.

Community Carbon Pools Project

Donor

European Union

Countries

Cambodia, Indonesia, the Philippines, and Vietnam

Organizations

Lead: Fauna & Flora International

Partners: NTFP-EP and PanNature (Vietnam)

Duration

January 2011 to January 2014

Total budget

EUR 3.1 million including 25% cofunding

Objectives

- Develop national REDD-plus policies that strengthen community participation and the role of local governments in forest management.
- Develop subnational REDD-plus procedures and regulations in four pilot sites with active civil society participation.
- Establish CCPs, with benefit-sharing mechanisms, based on CF tenure in the four pilot sites.
- Ensure that high conservation value forests (HCVF) is protected in pilot project landscapes.

The FPIC process of EU REDD

On January 6, 2011, the Memorandum of Agreement (MOA) was forged among NCIP, NTFP, FFI, SAGIBIN, and the Tribal Governor for the formulation of the Ancestral Domain Sustainable Development Protection Plan (ADSDPP) of the area. The ADSDPP shall serve as the framework for REDD-plus readiness in the area, and although the MOA was not on REDD-plus, it was the foundation of a series of engagements by the said NGOs in the area. The following is a chronology of the tedious and very long FPIC process undergone by the project:

1. In 2011, FFI conducted community orientations in the domain and received a number of resolution of support.
2. On July 20, 2011, FFI applied for a CP for the EU REDD Project to the NCIP Regional Director (RD) for Region IV.
3. On August 12, 2011, a work order to conduct the field-based investigation (FBI) was issued by NCIP-RD; however, the FBI did not take place. When the proponent asked NCIP about this, there was no clear answer. There was an issue that the application was not treated as a proper application for FPIC because of the non-payment of the FPIC application fee of PHP 500. The applicable process for the FPIC was also not clear.
4. In the middle of 2012, the proponent requested a meeting with the RD to clarify the status of the FPIC process. The new FPIC Guidelines of 2012 was just issued and became effective in May of that year. In the said meeting, the sitting NCIP Commissioner for Luzon was present. In the said meeting, it was agreed that:
 - The 2006 FPIC Guidelines will be applicable given that the proponent originally filed the application in 2011, before the effectivity of the new guidelines; and the project is a demo site under the PNRPS and supports the ADSDPP process;
 - The proponent has issues with Section 19i of the 2012 FPIC Guidelines, where “carbon trading and related activities” is classified under Extractive, Large Scale and Intrusive Projects; and
 - The proponent was given 1 week to file supporting resolutions for the validation.
5. The Proponent conducted another round of community consultation in each village to secure resolution of consent.
6. In early 2013, after the submission of completed resolutions, a number of pre-FBI meetings were held between NCIP Regional Office and the proponent.
7. On May 23, 2013, NCIP issued a work order for the conduct of validation.
8. Between July and August 2013, a series of project reorientations were conducted in the 35 villages. The purpose is to prepare the community for the NCIP field validation and to orient newly elected tribal leaders.
9. In August to September 2013, the NCIP conducted the validation of the community resolutions issued endorsing the project. The FPIC Guidelines under the IPRA state that each community's consent shall be validated through a FBI by the NCIP.
10. In October 2013, a validation report was issued by the team and forwarded to the provincial and regional offices.
11. On February 7, 2014, NCIP returned the validation report with some additional comments, and a MOA was drafted.
12. On April 1, 2014, a general assembly was held in Infanta, Nakar, where representatives of the

35 villages were present, and they discussed the draft MOA and designated a representative to sign the MOA.

13. On April 2, 2014, the MOA between the IPs, FFI Philippines Program, 33 villages, and NCIP was signed. The MOA formalized the tribe's acceptance of the Asia-Pacific Community Carbon Pools and REDD-plus Programme. The tripartite MOA provides the details as per approval of the IPs and NCIP. It includes roles and responsibilities of the proponent and IPs, written in the local language and in English as well. One of the provisions in the MOA is that all generated data from researches must be shared and explained to tribe members.
14. The signed MOA was forwarded by the NCIP provincial office to the NCIP Region IV Office for review, and upon review, it was discovered that the MOA did not contain the standard grievance machinery provision of the NCIP. The MOA is with the NCIP for processing and signing of the Chairperson since June 2014. The project ended without getting the CP, and activities to be conducted inside the domain were not implemented.

Challenges and lessons learned in the EU REDD FPIC process

- The time frame on the part of NCIP to fast-track the processing of the FPIC was very relaxed. There is no urgency and diligence in handling the application despite verbal and oral demands from the community. The NCIP provincial legal officer often states that the amount of work assigned to him made him too busy to act on to FPIC documents.
- There were also differences on the interpretation of what is applicable between the 2006 and 2012 FPIC Guidelines.
- Lack of initiative of the NCIP to act on the application, unless there were calls from proponents and partners, was worrisome.
- Another indigenous peoples' organization (IPO) is questioning the legitimacy and identity of SAGIBIN-LN, the IPO partners of the project.
- There is no specific budget allocation for the FPIC process. Expenses incurred for the process were around PHP500,000–800,000 excluding staff time.



the project in a nutshell

Key biodiversity area/Site

Mts. Irid-Angelo, General Nakar, Quezon

Conservation area modality

ICCA

Legally recognized partner (partner NGO/DENR

NTFP-EP Philippines, Inc.

Implementation period

March 2013 to December 2015

Case 2

Piloting of ICCAs

This initiative was under the NewCAPP Project, which has an existing MOA with NCIP but still needs to undergo FPIC. The agreement on the process was through validation; however, this ended without the CP. The NCIP has not issued a CP for the project, although all the requirements have already been complied with. Community validation for the project has been conducted by the NCIP provincial office together with the REDD-plus project in early 2014. The outputs of the projects is the 3-D map and thematic maps of the ICCA of the Agta-Dumagat-Remontados, and the Community Conservation Plan, which were agreed upon by communities and now integrated with their ADSDPP specifically for the conservation of their ICCAs. The project accomplished and submitted documentary requirements for the registration of the Dumagat-Remontado ICCA at the World Conservation Monitoring Council (WCMC). However, project activities were affected by the military operations against a group of the New People's Army.

- Trust and confidence building are crucial in the success of the process. Sincerity of actions and intentions is also being tested by the community.
- Once the community gets to understand and appreciate the full process, activities and responsibilities, and objectives of the project, the flow becomes easier.
- The change of personnel is also a factor in the delay of the process. In the period between 2011 and 2013, the NCIP Quezon Province Office has changed the provincial officer four times.
- The project ended without completing the FPIC process, and project deliverables were compromised.

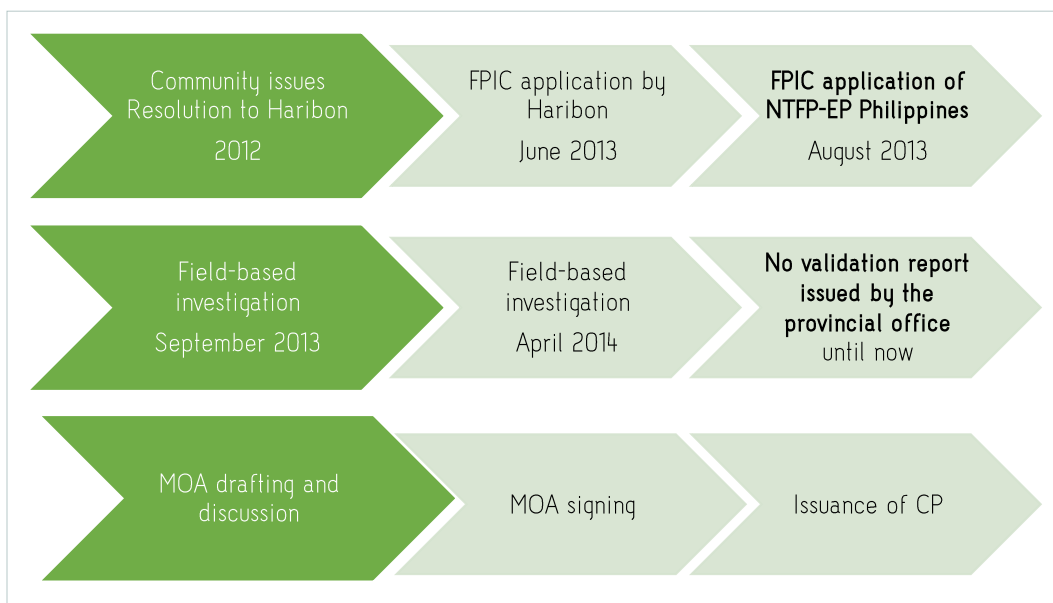


Figure 1. Identified steps of the FPIC process for the ICCA Project. The project ended without completing the process because of Step 6.

the project details

Project title

ADVANCE REDD Project

Donor and funding

European Union

Location

In the KBA of the Victoria-Anepahan Mountain Range:
In the municipalities of Narra and Quezon, Palawan,
covering 154,625 hectares

Duration

2010-2013

IPs/ICCs

Tagbanua, Pala'wan

Overall objective

To promote effective forest governance and sustainable upland development in Southern Palawan

Specific objective

To reduce the threats of deforestation and forest degradation through collaborative, local forest governance mechanisms, sustainable livelihood initiatives, and climate change mitigation financing in the municipalities of Narra and Quezon, Palawan

Key results area

Forest governance, forest carbon accounting and biodiversity assessment, sustainable livelihood initiatives, and water system development

Challenges and lessons for the ICCA FPIC process

1. There were, and still are, varying interpretations by the NCIP provincial and regional offices as to what process was applicable for ICCA.
2. There is inaction on the part of NCIP on the application as no validation report was issued despite many follow-ups from 2014 to 2015.
3. There has been changes with the NCIP provincial officer and RD of the NCIP .
4. The community and proponent felt that the process was disregarded by the NCIP because they did not receive/will not receive per diem during the validation.

Case 3

Improving Forest Governance and Sustainable Upland Development through Climate Change Mitigation Financing Strategies in Southern Palawan (Advancing the Development of Victoria-Anepahan Communities and Ecosystems through REDD (ADVANCE REDD Project))

The other ancestral domain that hosted a REDD-plus project is the province of Palawan, which is known as the last ecological frontier of the Philippines. The province has one of the largest remaining natural forest areas in the Philippines, with 46% forest cover.⁷ It also hosts over 1,500 species of flowering plants:

approximately 19% of the 138 plant families and 650 genera recorded throughout the country; at least 422 species of terrestrial and marine vertebrates that account for 38.6% of species in the country; and 40% of the Philippines' remaining mangroves.⁸ However, this province also hosts seven Mineral Production Sharing Agreements and nine small-scale mining permits, on top of some 429 mining applications that are pending all over the province covering about 651,000 hectares.

The municipalities of Narra and Quezon, Palawan, are also located within the key biodiversity area (KBA) of the Victoria-Anepahan Mountain Range. This is also where the Tagbanua and Pala'wan indigenous peoples group are found.

The ADVANCE REDD Project started in September 2010, aiming to promote effective forest governance and sustainable upland development in Southern Palawan. It focused on reducing threats of deforestation and forest degradation through collaborative, local forest governance mechanisms, sustainable livelihood initiatives, and climate change mitigation financing in the municipalities of Narra and Quezon, Palawan. Palawan was selected as a demonstration site based on the characteristics of the province: biodiversity and ecological importance; presence of NGO partners in the area; community and local government unit (LGU) support; being a key biodiversity area; and the status of intervention in the province.

⁷ NTFP-EP, ADVANCE REDD Project Presentation 2012.

⁸ Ibid.

Prior to the project start-up, a series of orientations and information drives on REDD-plus and the project were conducted among various local stakeholders (local officials, farmers, and IPs) to generate social acceptability.

Although two of the target barangays did not support the project through local endorsement due to their support to mining, the project focused on the barangays that gave full support to the project. The dialogues with barangay officials have enhanced a sense of project ownership and transparency. Community consultations on land and resource use patterns and trends, community mapping, and localized action planning workshops were undertaken among IPs and non-IPs as inputs to Forest Land Use Planning (FLUP) and Forest Local Governance body formation.

FPIC in the case of the ADVANCE REDD Project

In the case of Palawan, there are two processes involving two agencies, and one cannot work without the other. The first stage is the FPIC process based on the NCIP Guidelines (Figure 2). It took almost 2 years (October 2010 to August 2012), from community project orientations to issuance of CP from the NCIP RD.

Here, a CP was issued; hence, there was compliance with the FPIC process pursuant to the NCIP Guidelines of 2006. The second stage was the submission of the CP to the Palawan Council for Sustainable Development (PCSD) along with other requirements for the issuance of the Strategic Environmental Plan (SEP) Clearance from the PCSD.

The ADVANCE REDD consortium headed by NTFP-EP Philippines had extensively conducted project orientations among the IP and non-IP communities within the Victoria-Anepahan Mountain Range covering the municipalities of Narra and Quezon, Palawan.

Community project orientation and consultations

The project orientations covered the explanation about climate change and its impacts, history, the REDD-plus concept, and mechanisms. Other topics were on the implementation aspect of the REDD-plus preparedness project and objectives, components, and duration of the project. The project's potential positive contribution in sustaining the forest and biodiversity as well as reducing carbon emissions were also discussed.

project activities

Forest governance

- FLUP development
- Watershed establishment

Forest carbon accounting and biodiversity assessment

- Trainings on forest carbon mensuration and biodiversity assessment
- Actual biodiversity assessment and carbon monitoring

Sustainable livelihood initiatives and water system development

- NTFP-based local enterprise
- Water system development
- Agroforestry

After conducting an **extensive project orientation**, the team sought the consent of the indigenous communities for the ADVANCE REDD Project to be implemented within their ancestral domain areas according to the 2006 FPIC Guidelines of NCIP. In securing the IPs' FPIC, the team had to separately convene the general membership of the IPs of each of the concerned villages/ancestral domain area. The objective of the project and its components as well as the positive contribution and perceived negative impacts of REDD-plus were also presented and discussed. The team also reiterated the need for the communities to be prepared in terms of social safeguards as well as the benefit-sharing arrangements, if ever the community will engage in REDD-plus.

FPIC proper

At the end of each community assembly,⁹ the team had to secure their respective **community resolutions, which stipulated, among others, their endorsement of the project** and that also states that they are aware of the objectives, components, activities to be conducted, and duration of the project.

Validation by NCIP

The respective community resolutions that endorsed the project were submitted to NCIP through the regional office to validate the consent issued by the IP communities. During the validation process, which required another round of community assemblies especially for the individuals who signed the

9 A community assembly requires at least 50% plus 1 of the total number of IP residents living within the ancestral domain/land area.

Resolution of Endorsement, the NCIP required the assembly to pass another resolution appointing their respective leader-representatives to sign on their behalf.

Regional review team (RRT)

The validation report of the NCIP affirmed that the community resolution was genuinely made by the IP members present during the assemblies and endorsed the project for the issuance of CP by the NCIP. The report required the ADVANCE REDD team to execute an Affidavit of Undertaking that they shall, among others, provide the IP communities copies of the research document in vernacular and involve the IPs in the conduct of the research undertaking, among others.

However, the RRT of NCIP disagreed with the validation team’s recommendation for the ADVANCE REDD Project to execute just an Affidavit of Undertaking. Instead, the RRT asked the ADVANCE REDD implementers to secure a MOA with the concerned IP communities. The decision of the NCIP for the ADVANCE REDD to secure a MOA came almost half a year after.

Community assemblies to discuss MOA

In compliance with the RRT instruction, the ADVANCE REDD team, together with NCIP personnel, conducted another round of community assemblies and presented the draft MOA for comments, additions, or revisions. The draft was



Figure 2. The FPIC process in the ADVANCE REDD Project



just an improvement of the contents of the Affidavit of Undertaking but with more emphasis on the responsibilities of each of the concerned parties including the NCIP.

MOA signing

After conducting the workshops, which were attended by IP representatives endorsed by their respective communities, to finalize the contents of the MOA, the MOA signing was conducted in two areas. One was done in Quezon (Isugod) and another one in Narra (Princess Urduja).

The MOA was signed by NTFP-EP Philippines (as ADVANCE REDD Project representative), the IP leader-representatives of the IP communities, and the NCIP through Commissioner Banua. It was also witnessed and signed by the respective LGU officials of Narra and Quezon, and all the project partners of NTFP.

Issuance of the CP by the NCIP RD

After the signing of the MOA, it was forwarded to the NCIP regional office as basis for the issuance of CP. The Regional Director of NCIP Region IV signed the CP in August 2012.

Challenges and lessons learned in the FPIC process in Palawan

1. For the **proponents**, the duration of the process and the costs were not anticipated. The duration of the process in securing the FPIC and the CP, which took almost 2 years, was too long and was a bit overlooked by the team in the project design. The process of securing the FPIC took 1 year and 10 months from project orientations to the conduct of the actual FPIC process, validation, negotiations, signing of the MOA, and the issuance of CP. The process was too long, which made it more difficult to implement the major component of the project especially on biodiversity assessment and carbon monitoring.

Also, the schedule or time frame on the part of NCIP to fast-track the processing of the FPIC was a bit relaxed, and the application of the Guidelines was confusing.

The NCIP regional office took 6 months to respond to the project request for validation. About another 6 months lapsed before the RRT decision was made that the Affidavit of Undertaking, which was already prepared and signed, will not suffice and that a MOA was appropriate instead. This indecisiveness of the

On behalf of the Tagbanua tribe, Amay Julpino shared their experiences from the FPIC process. First, NTFP organized a series of consultations with the community to discuss the objectives and key elements of project. After this, tribal leaders and representatives from the IP community convened again, where the project was explained comprehensively. A final consultation with the tribal leaders, members of the IP community, and NCIP was conducted, wherein each was asked for their consent on the project.

To that effect, the series of consultations involving the IPs, LGUs, and the mandated agency helped in the decision making of the IPs in terms of giving their consent to the project.

Although it took a long time and process to get their consent and signing of the MOA, the important thing is that IP leaders, members of the tribe, and members of the local community have clearly understood the project alongside with recognition and respect to their rights throughout the entire process.

— Community sharing on FPIC by Amay Julpino Langbo, a Tribal Leader in Tagbanua
(Translated sharing during the regional learning visit by the EU REDD Community Carbon Pool Programme to the ADVANCE REDD sites in 2013)

NCIP caused so much delay in the project deliverables and was time-consuming and costly on the part of implementers.

The **RRT** was also not organized earlier to review the validation report, and the communication to the implementing partners was not regularly undertaken to update them on the status of the application for CP.

2. The process illustrated was also a little bit tedious for the communities because they needed to be present at all times during the FPIC activities, which were to be done supposedly once or twice. Their hope that the project, especially the component on biodiversity and carbon assessment, would start soon after giving their consent had not been met on time as they expected.

In some IP communities, the leaders were also demanding for an “entry fee” and per diem during meetings.

Reflections and recommendations

From the three FPIC processes shared in this report, the delay can be attributed mainly to the **NCIP’s lack of urgency and diligence** to respond to FPIC process applications and adhere to timelines in the steps for processing these applications. At some point in the process, proponents and communities were confused and doubted the capacity of NCIP to handle such process.

The process of securing the FPIC was too long.

Because of this, the interest and commitment of both the community and stakeholders waned. The major components of the project such as the biodiversity assessment and carbon monitoring cannot be done without FPIC.

From the projects’ experiences, there is also **no standard procedure on validation for projects**. The earlier efforts of NCIP to provide a manual on FPIC will be very helpful for its field personnel as well FPIC applicants.

A grievance mechanism, which is accessible and user friendly, is needed. This should be in place with proper explanation to ICCs/IPs.

The passage of the new FPIC Guidelines in 2012 ushered in a new confusion. There was a question on **where REDD-plus activities and related activities** like biodiversity research and carbon accounting, livelihood, and policy research fall.

The presence of other institutions like the LGUs and civil society organizations (CSOs) during the validation and field-based experiences are good practices and learning events that foster coordination and synergies in the process and beyond. **Inter-agency collaboration, where NCIP, LGUs, and other stakeholders work together in the entire process of FPIC, is also needed.**

The EU REDD Project developed two videos featuring REDD-plus and FPIC to help raise awareness on these topics for the IPs. There is a need for the development of more local **knowledge products on FPIC**, specifically a simplified and popular version like comics and posters.

For both REDD-plus and ICCAs, the continuous capacity building of government regulators like NCIP, DENR, and LGUs is needed to fully comprehend these types of projects. However, to ensure that the capacity building is sustained, these government institutions should be required to provide focal points for the trainings and plan for institutionalization and scaling up.

In the case of Palawan, there are unique processes that include LGU endorsement, FPIC, and SEP clearance. Given the need to secure all permits and consent from IPs, **a 3-year period is not enough for a REDD-plus project but rather 5 years** in anticipation of completing these processes as a project cannot push through without the FPIC and SEP clearance, which also requires the LGU endorsement and FPIC.

Legitimate representation of the communities was also an issue in all the projects here. In the FPIC process, the representation of the tribes should be respected and recognized; however, the proponent should also exercise due diligence and check whether these representatives are legitimate, genuine, and NCIP recognized. **Toward this end, NGOs should support processes toward the finalization and confirmation of their IPS.** Warring IP leaders and IP organizations challenging each other for legitimacy could be minimized.

Post-FPIC assessment with the community and FPIC is recommended to ensure transparency and accountability as the FPIC process can be divisive. This is also an opportunity to build the capacity of the community to understand the process that they have undergone and move to the next phase, which is project implementation.

Atty. Edna Maguigad would like to acknowledge the following for their support and contribution to this documentation: Edmund Leo Rico, Project Manager of the EU REDD Community Carbon Pools Programme, FFI; Datu Abdelwin Sangkula, Project Manager of the ADVANCE REDD Project, NTFP-EP Philippines; and Emmanuel “Boy” Marcelino, NTFP-EP Philippines Advocacy Officer for Quezon Province.

Consent seeking and giving in the case of ancestral domain claim making¹: Pala'wan Tribe



Roger V. Garinga

This paper presents the experience of the Pala'wan Tribe in two themes. These are the experience in claiming government recognition of ownership over ancestral domain through the Certificate of Ancestral Domain Title (CADT); and the experience of the tribe in consent seeking and consent giving as part of the CADT claim-making process.

The initiative of the Pala'wan tribal communities in Isugod and Aramaywan in the municipality of Quezon, province of Palawan, to seek government recognition of ownership of the tribe over ancestral domain through the CADT is pursued to secure their territory from encroachment by the non-tribal population as well as to develop it and sustainably benefit from the same, taking advantage of opportunities provided by the Indigenous Peoples Rights Act (IPRA) enacted by the Philippine Congress and relevant National Commission on Indigenous Peoples (NCIP) issuances as well as opportunities coming from support groups from civil society organizations and donors that made this process a reality after a long period of seeking possible support.

Although consent seeking and consent giving are prescribed in detail by the NCIP through Administrative Order No. 3, s. 2012, outlining the steps and the requirements for the Free, Prior, and Informed Consent (FPIC), this detailed procedure was not strictly applied but only its essence in the case of the CADT claim-making processes. This is because consent seeking and consent giving, as applied in the CADT claim-making process, followed the provisions of another guideline under Administrative Order No. 4, s. 2012, prescribed by the NCIP specifically for the delineation and recognition of the ancestral domain

ownership claim outlining the required proofs of ownership claim and processes, some of which that are relevant to required consent include the (a) consent/authority given to selected representatives to make official transactions with the government agencies and other stakeholders; (b) consent from adjacent CADT claim holders/owners; and (c) consent/recognition of support organizations.

Consents secured as part of the requirements were accomplished utilizing community assembly to ensure maximum participation of as many members of the community as possible, giving them a sense of importance and empowerment. The consents were secured smoothly, which were later on validated by the NCIP through the Provincial Delineation Team (PDT). Hence, the actual process of consent seeking and consent giving did not involve the NCIP personnel until after the PDT was formed and was tasked, among others, to validate these consents along with the other CADT application documents forming part of the proof of such claim.

Although the processes within the tribe were done smoothly as demonstrated by the ease at which the consent and other documentation were implemented and processed, the contribution of the NCIP was marred by very long delays in their response, seemingly without a sense of urgency and responsibility despite

1 An International Union for Conservation of Nature Environmental Assessment Project in Isugod and Aramaywan, Quezon, Palawan, Philippines.



their understanding that the funding secured by the support organizations is time-bound and may be put to waste if activities are not conducted and the funds not utilized within the time frame of the funding support. This is indicated by the very long process of acting on the work and financial plan (WFP), which took more than 2 years to process and approve. This was crucial in the process because the official commencement of the actual processing of the application for CADT by way of validating the proof of claim and information, education, and communication (IEC) campaigns will commence only once the WFP is approved and work order is issued forming the PDT, to start the actual fieldwork that involves a series of activities forming part of the social preparation and, as such, to prepare the Social Preparation Activity Report (SPAR). There are also indications of poor competency of the staff assigned to prepare the required documentation even in the preparation and submission of the SPAR. This was hinted by regional staff informing the proponents that submission of reports including SPAR of several CADT applications is one of the bottlenecks encountered by the provincial team in Palawan. With this information, the assisting organization took the initiative to offer the services of preparing the SPAR for the NCIP personnel that composed the PDT. Here, the NCIP personnel acted as the editors of the work that they were supposed to be doing. Nevertheless, these are the options left for the proponent and

assisting organization to ensure that the process of the CADT claim making will move forward and save the funds, which are difficult to source out. If NCIP will continue the business as usual, where limited funds are provided for the CADT application and the personnel have seemingly limited competence, sense of urgency, and accountability in the exercise of their function and in the performance of their duties, then it may not be far-fetched to believe that the agency tasked to look after the welfare of the indigenous peoples (IPs) may be the ones depriving the IPs of the justice they were seeking for a long time.

In view of the above, it seems to be proper and will be beneficial not only to the NCIP itself but also their public or constituents who are the IPs if NCIP will: (a) institute a measure that defines the time line for the steps of the work, preparation, and submission of reports, and install provision for sanctions and ensuring its implementation; (b) adopt an operational policy within NCIP that will define and ensure building the capacity of NCIP personnel in the performance of their task and in the exercise of their duties in a competent manner; and (c) adopt measures and/or mechanisms and resources to secure and provide technical support to the proponent IPs in the preparation of the documentary requirements for CADT application, if this technical capacity is not available within NCIP personnel.



Introduction

It is important to emphasize at the outset that this paper delved on the experience of the tribal community, being the proponent of the project, in the process of claiming government recognition of ownership over ancestral domain of the Pala'wan Tribe, describing the internal process among the tribe about the decision to seek the government's official recognition to ownership over ancestral domain through CADT, which is the focus of this case. However, it will also describe the cooperation with the Institute for the Development of Educational and Ecological Alternatives (IDEAS) in the process in support of this community initiative in the field.

The cooperation of IDEAS with the Pala'wan Tribe in Barangay Isugod dates back to 2002 when the program of IDEAS being implemented with lowland farmers since 1998 was expanded to cover upland farmers mostly belonging to the Pala'wan Tribe. Project cooperation and assistance were focused on complementing the livelihood and other basic and capacity building needs of the tribal community with programs revolving around community organizing, sedentary farming, health services based on nutrition and food security, and, later on, enterprise development. Eventually, the communities felt the need to secure their ancestral domain and their environment because of the continued encroachment

and occupation by non-IPs, prompting them to request IDEAS in 2009 to possibly include in its program a support for ancestral domain claim. In response, it was included as one of the possible areas of support that the IDEAS project can provide as part of its future project support to the communities. Some assistance was already facilitated, but funding for the bigger portion of the process was not yet secured until the Non-Timber Forest Products-Exchange Programme (NTFP-EP) was able to secure support for ancestral domain delineation through the financial assistance from the Ecosystem Alliance to complement the European Union (EU)-supported Advancing the Development of Victoria-Anepahan Communities and Ecosystems through REDD (ADVANCE REDD) Project in the Victoria-Anepahan Range, which was also co-implemented by NTFP-EP with IDEAS, Nagkakaisang mga Tribu sa Palawan (NATRIPAL), Environmental Legal Assistance Center (ELAC), Fauna & Flora International (FFI), and the municipal government of Quezon, partly covering Isugod and Aramaywan. IDEAS' cooperation with the Tribe of Pala'wan in Aramaywan came only when the ADVANCE REDD Project was implemented starting in 2010.

The application for the delineation and recognition of ancestral domain of the Pala'wan Tribe is a project of the community itself revolving around seeking official government recognition of ownership over

ancestral domain through a CADT with the NCIP, the government agency mandated to look after the welfare of indigenous peoples in the country.

Although the FPIC is generally applied to proponents of projects seeking consent of the tribe, this paper looked into consent seeking and consent giving within the community internal process of decision making that led to the decision to seek the government's official recognition through CADT issuance. It described how the community, who were involved in the decision-making process, arrived at a decision to apply for CADT and other relevant information that may be helpful in assessing the internal consent-seeking and consent-giving schemes and processes.

Documenting community and proponent understanding of FPIC under IPRA and/or consent-seeking and consent-giving processes

Republic Act (RA) No. 8371 known as the IPRA is not new among indigenous peoples in Isugod and Aramaywan, at least among leaders and some members. Without necessarily referring to the specific provision of the law and other issuances such as relevant Implementing Rules and Regulations (IRR) and other orders or issuances, they are aware of their rights as indigenous peoples especially over the ancestral domain, invoking IPRA as a strong basis. Decision making used to be governed by the traditional political system led by a *Maradja*² and, under him, the *Panglima*, who is assigned the task of mediating in solving problems and issues or conflicts within the community. This system is established throughout their civilization since time immemorial, but was interrupted and was even on the verge of total collapse when the government system was introduced, which dominated the system of community governance that effectively undermined the traditional system of governance as if the indigenous peoples are not capable of decision making. Because of these interventions (interruptions), the indigenous peoples in Isugod and Aramaywan are striving to revive the traditional system, invoking IPRA. Unfortunately, the indigenous political structure of the tribe is yet to be validated, and there are sectors within the tribe that assert competing claims over the leadership position within the tribe. Currently, the NCIP is validating the indigenous political system and structure of the tribe in the province of Palawan.

To the community, "consent," by tradition, means to allow certain projects or activities to be conducted in their areas or territory. It can be done individually or collectively depending on the issue and the extent of the issue to be decided on, which can be private in nature, that are negotiated among individuals from within and outside of the community or even within the family, or community public as a collective that revolve around issues that may affect the community or the tribe as a whole that may also involve parties within the community or parties involving the tribe negotiating with those from outside of the tribe. Although the individual or private nature of consent is negotiated among direct parties involved, the community or collective means of consent giving is exercised by the traditional leaders or the council led by the chief of the tribe or the *Maradja*, and no intervention or supervision from any government agency as customarily practiced and no documentation are needed. There is also women representation in the council.

Under Sections 44 (m), 46(a), 57, 58, 59, and 7 of RA 8371, otherwise known as IPRA, however, consent refers to the FPIC given by the community to proponents of certain projects classified, prescribed, and elaborated under the NCIP Administrative Order that prescribes guidelines on FPIC and related processes.³ This process is administered by the NCIP, which issues the Certification of Precondition (CP). The CP is the document issued by NCIP as a proof that FPIC was conducted and that the same was validated by the NCIP to be true. FPIC and its processes, in accordance with IPRA, are familiar to the tribe having been involved in the FPIC process for the carbon and biodiversity research of the ADVANCE REDD Project co-implemented by NTFP-EP, ELAC, NATRIPAL, FFI, the municipal government of Quezon, and IDEAS as partners. Rituals are done to seek guidance and protection from the spirits when entering the forest that was the subject of the research at least at the start of the field activity.

Although there is a traditional council of elders recently activated and led by the *Maradja*, major decisions, such as the official decision to seek government recognition of their claim of ownership over ancestral domain, are secured through community assembly following NCIP issued guidelines. These guidelines require community consent to be given to their representatives to officially transact with the government, especially NCIP, in processing their ancestral domain ownership recognition claim as

2 The *Maradja* is being claimed by the Pala'wan Tribe in Isugod and Aramaywan as the head of the tribe. Under his leadership are the *Panglima*, who assist in mediating resolution of problems in the community.

3 NCIP Administrative Order No. 3, s. 2012.

provided for in Section 1 of Part IV-A of NCIP Administrative Order Number 4.

Illustrating the actual FPIC/consent-seeking and consent-giving processes

The project “Application for the Delineation and Recognition of Ancestral Domain of Pala’wan Tribe in Isugod and Aramaywan” is an initiative of the said tribe following the provision prescribed under the Revised Omnibus Rules on the Delineation and Recognition of Ancestral Domains and Lands of 2012.⁴ Hence, the project is not categorized under those projects subject to the FPIC Guidelines as enumerated under the two major classifications requiring FPIC process such as (a) Extractive/Intrusive/Large Scale⁵; and b) Non-extractive/Small-scale Activities.⁶

The clamor of the tribe in Isugod to have their ancestral domain delineated was expressed through some of the leaders when they learned about other ancestral domains being delineated by NCIP as early as 2002. However, upon advice of IDEAS, the clamor was translated into a letter request by the *Maradja* addressed to NCIP in 2009. In a subsequent follow-up with the NCIP office, the *Maradja* was told by NCIP staff that the tribe should have funds or solicit the support of nongovernment organizations (NGOs) to fund the CADT processing. In 2010, IDEAS committed to provide technical assistance in the preliminary preparation such as gathering of information that will form part of the proof of claim as far as it can provide without specifically determining the extent of support because resources needed to carry out the process of complete delineation and recognition cost an enormous amount of funds, which the NCIP cannot or does not provide at this time. Within the same year, community consultations, which were assisted by IDEAS, were done in Isugod to confirm with the tribal community whether the plan to apply for government formal recognition through CADT is indeed the clamor of the whole community, and this was affirmed by the community assembly. In the same meetings, the community selected official representatives of the tribe for representation with the NCIP and other government agencies in pursuing the application. In one of the meetings, one of the observers, who was a leader of the tribe in Aramaywan, signified his request to include Aramaywan in the application of the tribe in Isugod. It was agreed to

include Aramaywan in the application of Isugod as it was adjacent to Isugod and the ancestral domain in Aramaywan is the remaining area not covered or applied because adjacent areas have already been applied for by another tribe known as Tagbanua, provided, however, that the leader should consult his constituents just as what was done in Isugod to make sure that the community really supports the idea to combine the application with that of the tribe in Isugod. This becomes then an advantage because it was during this time that NCIP started promoting the “One Tribe, One CADT” scheme where application for CADT should cover the entire tribe and consolidate all applications and intentions into one application for CADT. While waiting for the decision of the tribe in Aramaywan, a subsequent site ocular visit was conducted by a joint team from IDEAS and the tribal representatives assigned by the community who are knowledgeable about the domain, especially the forest area, to start gathering proofs of claim. Good news came in 2011 when NTFP-EP included Isugod and Aramaywan in its financial assistance plan through the support of the Ecosystem Alliance, which officially started in May 2011, to complement the ADVANCE REDD Project in Victoria-Anepahan that partially covers Isugod and Aramaywan. This gave assurance that the major part of the process of CADT application that requires the bulk of the budget can be covered by such support. Subsequently, a series of consultations and IEC campaigns in Isugod and Aramaywan were conducted to prepare the WFP to be worked out with NCIP, which requires approval from the NCIP Central Office. Securing approval of the WFP was a long and tedious process that took almost 2 years, the reason behind which both the community and IDEAS cannot fathom despite compliance by the community to the requirements in the preparation of the WFP and persistent follow up not only in the provincial office but it also to the level of the regional office and ancestral domain office in the NCIP Central Office. Nevertheless, while waiting for the final approval of the WFP, the team continued its data gathering and IEC work, and negotiation with the adjacent ancestral domain holders to settle boundary issues and conflicts, so that once the WFP is approved and the work order is issued to NCIP personnel to act on the application in the field, the bulk of the documentation required is ready for validation by the NCIP-constituted PDT. IEC campaigns and boundary conflict negotiations and resolution were conducted in 2012 through a series of community assemblies; two major activities of the IEC campaigns were conducted with ELAC as resource speakers, especially

⁴ NCIP Administrative Order No. 4, s. 2012.

⁵ Sec. 19, NCIP Administrative Order No. 3, s. 2012.

⁶ Sec. 24, NCIP Administrative Order No. 3, s. 2012.

on legal matters or aspects of the ancestral domain. To ensure that agreements about the boundaries are settled, the proponent IP representatives and IDEAS facilitated similar community assemblies in adjacent ancestral domains to inform the adjacent communities about the application of the tribe in Isugod and Aramaywan, and the proposed bounds of the claim. When boundaries are established and agreed on, the assembly selected their representatives through assembly resolution, who signed, on behalf of their tribe, the boundary agreements with the proponent tribe from Isugod and Aramaywan. When the WFP was finally approved in the third quarter of 2014, another stage of follow-ups had to be made to ensure that a work order will be issued soonest because even if the WFP is approved, the field staff of NCIP will not start fieldwork without the necessary work order as provided for in the NCIP Guidelines, which prescribed the procedure in the delineation process. A PDT shall be formed and tasked to lead in the processing of the application. The PDT was organized in October 2014, and the fieldwork commenced only before the end of 2014.

Standards: Free

FPIC means the consensus of all members of the indigenous cultural communities (ICCs)/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.⁷

Because of the nature of the project, which is clearly an initiative of the community, it was not difficult to arrive at consensus among the members of the tribe because it was their clamor to have their ancestral domain delineated and recognized by the government through CADT for a long time. Therefore, the consent in this aspect pertains only to the consent or authority assigned to the representatives for representation with the government agencies and other concerned parties in the process of the application for CADT. Other consent secured involved consent or agreement with the adjacent tribal community to settle boundaries of their ancestral domains. Also, although the community requested for assistance, consent was given and/or confirmed by the assembly to the assisting organization in compliance to the guidelines that required community resolution recognizing assisting NGOs or other organizations and entities.⁸

All necessary work from the communities who participated and joined the activities were all done on a voluntary basis, but some of the cost of transportation, food, and other necessary expenses were charged to the project funds when members and leaders of the tribe participate in the process and steps, and no personal incentives were given to the tribal leaders and members.

In dealing with the adjacent ancestral domain claimant-owners, the proponent tribe from Isugod and Aramaywan made sure that the whole community knows and understands the bounds of the application because they had spent time and effort not only to reach out and dialogue with the leaders but also give opportunities to members of the tribe through the community assembly, where the proposed project was presented with respect to the proposed boundary. The assembly agreed after exchanges of views, stories, and histories. Most of the boundary agreements use government administrative boundary as well as applied and/or processed CADT application by adjacent claimant-owners as reference in agreeing on boundaries. In the case of the Pala'wan Tribe in Maasin and the Tagbanua Tribe in Aramaywan in the municipality of Quezon, for example, because of the prior CADT application processed by NCIP, the proponent for CADT in Isugod and Aramaywan in the municipality of Quezon agreed to simply follow the boundaries established by the tribe in those barangays, and in Kalatagbak, Quezon, and Aramaywan, Narra, they agreed to use administrative boundaries of their respective barangays as their boundaries. There was also a special case where common access was agreed on. Between Isugod and Aramaywan in Narra, although the boundary was agreed to be based on the administrative boundary of the barangays, the two communities agreed that the Isugod Tribe can have access to the portion of the forest claimed/owned by those in Aramaywan, and it was declared as a common resource accessible to both communities and was stipulated in the boundary resolution.

Standards: Prior

Negotiations and decisions were done simultaneously during the community assembly, the schedule of which was agreed on between the proponent IPs and the IP leaders of the adjacent ancestral domain. Tribal leaders were informed about the proposed project of the tribe and that the tribal leaders were requested to facilitate the invitation to conduct the community assembly. The ease at which the decisions

⁷ Sec. 3(g), RA 8371.

⁸ Sec. 8(b), NCIP Administrative Order No. 4, s. 2012.



were reached and agreed on was facilitated by the two situations applicable such as the adjacent tribe having CADT application and prior boundary negotiations and agreements that were just confirmed, and using the government-declared administrative boundary of local government units as reference points. With those considerations, there was no case of a repeat assembly for the same purpose because decisions and agreements were reached within the same day during the consultation process.

Standards: Informed

Because of the nature of the project, the community is not only aware but also are in consensus of the clamor to have their ancestral domain delineated and formally recognized by the government through the issuance of a CADT. Therefore, the consent to apply for the CADT was not technically the issue but more of the consent given to the representatives for official representation with the concerned agencies and other concerned parties.

For the adjacent communities of the tribe, the consent was in the form of agreement with respect to boundaries of the claimed ancestral domain. The proponent and the adjacent tribal communities discussed the issue among themselves in their common language, which facilitated the process and, subsequently, in coming up with the agreement.

CADT application and consent monitoring

The IP community continued its support and cooperation in the processing of the ancestral domain claim through participation in the series of activities called for by the NCIP and the leaders/representatives of the claim-making process as authorized by them.

So far, the leaders/representatives have been exercising their authorities and performing their functions as representative of the tribe in dealing with the different parties especially the NCIP and local government to ensure that necessary cooperation and support are given by different parties involved. In support of



the selected representatives, the tribal organization in the community has formed a support group that helps in advocating for the CADT to help protect the interest of the IP community against several non-tribal individuals in the community who serve as critics to the CADT claim of the tribe.

As for the CADT process itself, after years of painstaking and persistent follow-up from the provincial to the regional and the central levels, the process has formally started as prescribed by the NCIP regulations. The approval of the WFP was the major hurdle, which was unfathomable despite the fact that the project has offered to shoulder the cost of the delineation process and not insisted on asking counterpart from the agency. Hence, the main bottlenecks rest on the NCIP where all the delays are rooted in the 2-year period of processing and seemingly sitting on the WFP. It was not understandable how and why the NCIP seemed to have been remised in performing its obligation to deliver justice to the tribe. It was not clear and was not explained to the community why it took that long except that the proponents were referred

to each other in the bureaucracy when one is asked about the status of the proposed WFP. This is the reason why the community and support organization did not wait for the approval of the WFP before documenting and compiling proofs of claims such as the IEC campaigns, genealogical survey, population survey, boundary negotiations and agreement, cultural practices, and initial zoning and management planning. Hence, when the work order was issued to form the delineation team and to start the fieldwork, their work was facilitated because the team had only to validate the work done earlier by the community and IDEAS, which is the bulk of the work. Another bottleneck is in the documentation of the reports of the PDT. The PDT is required to prepare and submit a SPAR⁹ to be submitted to the Regional Review Body (RRB)¹⁰ as a requirement to the next step, which is the actual delineation survey. Field personnel assigned to prepare the report seem not to have a sense of urgency and competency despite appeal from the tribe and the assisting organization to fast-track the preparation of the SPAR because it is a requirement before the higher authorities can provide a go signal to move on to the next step, and if these will not be fast-tracked,

9 Sec. 14, NCIP Administrative Order No. 4, s. 2012.

10 Sec. 4, NCIP Administrative Order No. 4, s. 2012.



funding support might expire and the remaining funds will have to be returned to the donor. As a mitigating measure, the assisting organization had to provide the help in the preparation of the SPAR, and the NCIP personnel tasked to prepare the SPAR became de facto editors of the work that they were supposed to be doing.

Lessons learned on the consent/FPIC and the overall CADT claim-making process

The project is deeply connected to their aspiration as a tribe to secure the ancestral domain not only for the present but also for the future, which is embedded in the mind-set of the tribal leaders and members. That is why it was not difficult for the tribe to agree to push for the CADT claim and assign leaders for representation with relevant stakeholders and parties. The tribe is happy that these decisions are reached through a series of community assemblies and in a transparent manner that increased their sense of importance and empowerment. The role of the NCIP is more for validation of the steps and confirming the contents of the documents presented during the validation process.

It is an advantage to involve as many, if not all, members of the tribe not only in the decision-

making processes within the community of the tribal applicant-proponent of the CADT but also in dealing with the adjacent tribal groups especially in working out the boundary negotiations to reach an agreement. In their eagerness to ensure a smooth result in the CADT claim, the tribe exerted effort to reach out to their brothers and sisters in the tribe adjacent to their applied area for CADT not only to the leaders but also to the members of the tribe so that decisions are known and agreed upon by all members of the tribe as much as possible.

In pursuing the application for CADT with the NCIP, it was proven to be beneficial and favorable to be persistent and cooperative with the support groups to sustain the follow-up and lobby work to ensure that the NCIP responds to the calls of the tribe and hasten the processing of the application, because without which, perhaps the WFP will still remain hanging or be shelved altogether.

The support organization and the tribal community should be ready to take on the task of the NCIP personnel who are supposed to do the work, such as the preparation and submission of the documentation necessary to move the application forward. Otherwise, the probability is high that these reports will not be prepared and submitted in time and that the time-bound funding support might expire; hence, the opportunity is lost for the community and, thereby, justice is denied.

In sum, consent seeking and consent giving are necessary in development work because it is where parties get to understand one another not only in the aspect of roles, responsibilities, and accountabilities, but also in building confidence and mutual support between and among leaders and members of the tribe, and also between the tribe and other non-tribal parties. However, a shift in the paradigm among NCIP personnel might be necessary to develop their sense of justice, urgency, and accountability to respond to the needs of the tribe on top of the need to provide resources to make it happen. It also matters to be persistent and ready to provide support in the delivery of the necessary outputs should this problem arise.

Policy recommendations on the FPIC Guidelines/consent seeking and consent giving, and CADT processes

The Guidelines pertaining to the CADT application and processing, and its consent-seeking and consent-giving elements are clearly stipulated and generally followed both by the proponent community and the NCIP. However, some bottlenecks that need to be addressed that have links to policy improvement are described as follows:

1. Institute a measure that defines the time line for the steps of the work, preparation, and submission of reports, and install provision for sanctions, ensuring its implementation. Conducted activities will be of no use if documentation or reports are not prepared and submitted because the process cannot proceed without the prerequisite documentation and reports;
2. Adopt an operational policy within NCIP that will define and ensure building the capacity of NCIP personnel in the performance of their task and in the exercise of their duties in a competent manner; and
3. Adopt measures and/or mechanisms as well as resources to secure and provide technical support to the proponent IPs in the preparation of the documentary requirements for CADT application, if this technical capacity is not available within NCIP personnel.

Culture-based consent seeking: The case of the Daraghuyan-Bukidnon Tribe of Mt. Kitanglad



Ma. Easterluna S. Canoy, Grace O. Galache, and Dominador D. Decano

This case study describes a cultural behavioral pattern in a particular tribal territory in the conduct of seeking consent with “authorities” for the use of, and access to, natural resources to ensure peoples’ survival and well-being. It demonstrates how indigenous people (IP) practice consent seeking based on traditional norms prior to the legislation of Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997. This study is premised on the fact that the tribes do possess knowledge and customs—their own kind of gatekeeping rules in securing their territories from outside interference.

Furthermore, this study also includes testimonial accounts of the authors and the tribal people’s experiences in dealing with outsiders—particularly, in the government and nongovernment organizations (NGOs) involved in establishing the protected area management in Mt. Kitanglad. Incidentally, the site of the study—the Mt. Kitanglad Range Natural Park (MKRNP)—was chosen as one of the priority areas for conservation and sustainable development in consonance with the National Integrated Protected Area System (NIPAS) Act of 1992. Prior to the re-classification of Mt. Kitanglad as national park or protected area, the mountain ranges are inhabited by the Talaandig, Bukidnon, and Higaonon tribes, who claim the park as their ancestral domain territory. Given the predominance of IPs in the area, the study will also include the tribe’s interactive journey that describes the dynamic interaction (on acceptance or resistance) when resource management and development policies, programs, and projects, whether local or national, enter into the ancestral domain or territory.

The IPRA is a progressive and enlightened state policy that aims to “recognize and promote the rights of ICCs [indigenous cultural communities]/IPs within the framework of national unity and development.”¹ Moreover, the IPRA provides the tribal rights to the ancestral domains and the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain, to recognize, respect, and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions, and institutions.

Furthermore, aside from the above-cited fundamental rights, the IPRA strengthened the tribe’s right to exercise to free and prior informed consent (FPIC). Accordingly, the FPIC is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use in their territory.²

1 Sec. 2(a-c) Declaration of State Policies, Indigenous Peoples’ Rights Act of 1997. <http://www.gov.ph/1997/10/29/republic-act-no-8371/>.

2 FPIC as a principle gives right to the tribes to say “no” to any development interventions. The FPIC, for years advanced by the Forest Peoples Program, is now a key principle in international law and jurisprudence related to indigenous peoples. See <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>.

Prior to the IPRA legislation, in Mt. Kitanglad, there is a practice on traditional acts of seeking consent done—in ritual form—on any activities or undertaking inside an ancestral domain. This practice is normalized and strongly invoked whether those accountable may be a member of the tribe or an outsider, i.e. migrant, government, NGO, investors, church, and any development interveners. The IPRA recognizes the tribe's utmost prerogative to assert their choices and decision; hence, in absence of such a clear level of consent, a project cannot proceed.

Yet there are varied opinions that subject the FPIC policy to both praises and criticisms. In theory, the FPIC prescription is the most progressive policy in dealing with IPs. In practice, however, FPIC had been undermined not only by enterprising business companies but also by legislation such as the 1995 Mining Code, which in many cases gives mining claims to the same indigenous land supposedly covered by IPRA. On the other hand, the Mines and Geosciences Bureau, as well as the National Commission on Indigenous Peoples (NCIP), had failed to effectively apply the law requiring the FPIC before allowing several mining operations to start.³ Many studies justify the absence of FPIC cases, which resulted to the burgeoning of movements in the continuing struggle to fight for IPs' rights.

Interestingly, the conduct of this case study generates important lessons in the field of cultural anthropology and development work that focuses on the advocacy for IPs' rights. For one, the study found that institutionalization of FPIC in the framework of "ancestral domain" does not necessarily result to IP empowerment without the use of their self-mobilization or agency. Local experiences showed that FPIC—though being an important part of the provision of IPRA law—has not put an end to the discrimination of IPs in their own ancestral lands. Despite its legislation, IPs had to continue to fight for their land specifically in preserving their ancestral territory. In most instances, the FPIC was even used as a tool for maneuvering in entering the IP area by enterprising outsiders through the use of force, money, and dole out. Instead of an instrument to uplift the suffering of the IPs, the FPIC became the source of

acrimonious relationship among some communities. In understanding traditional consent-seeking behavior both in thought and practice—the predecessor of what is now called FPIC—there are relevant terms that need to be highlighted as these form part of ascertaining the effectiveness on the policy as well as in examining its impact on the lives of the IPs in the context of their day-to-day existence. These terms include "ancestral domain," "power in natural resources and access," "empowerment," "agency," "structure," and "field."

Ideally, the exercise of FPIC is done in the context of ancestral domain, where abundant natural resources exist and the owners—tribal communities—exercise full ownership privilege on the use and disposition of resources. However, IP communities do not exist in a vacuum as there are other stakeholders like government or private individuals or groups who exercise different levels of authority—be it custom-based or policy-based regulations—to access and to utilize the given resources depending on one's needs, necessity, and authority. Community leadership, response, and assertion against those interested in the ancestral domain and its resources demonstrate the level of IP knowledge on one's rights, customary norms, values, and expectations.

These concepts are important themes that can help one to understand the dynamic and critical existence of indigenous communities living in one prominent protected area called the MKRNP.

Ancestral domains⁴

For purposes of discussion, ancestral domains constitute the conventional quantifiable physical resources that build socio-economic capital to ensure general well-being while at the same time demonstrate a complex multiplicity of "relationships" of its occupants and its surrounding networks. The scope of ancestral domains may go beyond the boundaries of an area or territory, but for the IPs themselves, "it is the source of their life ways." In fact, for the tribes, "[a]ncestral domains as gift from Magbabaya (Creator) constitute life in itself." Basically, ancestral domain is a source of existence for the IPs.

3 Vivoda, V. "Assessing Governance Performance of the Regulatory Regime Governing Foreign Mining Investment in the Philippines" (2008). http://paperroom.ipra.org/app/webroot/papers/paper_1894.pdf. Dr. Vivoda is a Research Fellow, Centre for Social Responsibility in Mining, Sustainable Minerals Institute and Centre for International Risk, University of South Australia.

4 Sec. 3 (a) of IPRA definition on ancestral domains—Subject to Section 56 hereof, refer to 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.

As a result, ancestral domain, as used in this study, is broadly defined as acquired material as well as socio-cultural resources/territory wherein the IPs can exercise their social, economic, and cultural and spiritual activities in adherence to their customs and tradition. In other words, ancestral domain is a common resource where IPs can exercise their ability to make decisions on their own kind of development based on culture.

Natural resource ownership and access entails *power*, and power necessitates the ability to make choices: “If a person or a community is deprived to make decision for itself in its own territory and resources, it follows that this person or this community would be bereft of powers over such territory and its resources and that they are denied of their own choices.” It is therefore only through empowerment that the IPs can exercise their own agency, which is the ability to decide for their own meaningful development. Therefore, the use of agency in this study includes the process of decision making, negotiation, and mediation through the exercise of FPIC.

To illustrate the above, this study also includes the reflective account in the exercise of the FPIC process particularly in the case of the Daraghuyan Ancestral Domain claim of the Bukidnon Tribe living in Mt. Kitanglad.

As there are few studies done on culture-based consent practices, there are two viewpoints to consider. On one hand, this case study does not justify the existence of non-FPIC cases as additional reference to FPIC studies but rather a documentation of the existence of diversity of the FPIC process done by the community—such as those of the Bukidnon Tribe particularly in the Daraghuyan ancestral domain. On the other hand, this case study also justifies that the recognition of FPIC depends on how certain the community fights for its right to enforce it—how confident are they able to demonstrate their rights. In the absence of people’s agency and empowerment, socio-economic and political development of IP communities would be constrained in the process.

The research context

The Daraghuyan is a specific subgroup of the generic Bukidnon Tribe of Bukidnon, Northern Mindanao. Daraghuyan comes from the word “daraghuy,” which means a soft crying of a voice that expresses the

history of human life on earth. It is in this place that their baylan hears this *daraghuy*.⁵ Thus, Daraghuyan is regarded until the present as one of the sacred mountains of MKNRP.

The Daraghuyan Tribe is led by Bae Inatlawan, who aside from being the overall chieftain and head claimant of their group also holds other leadership positions as a member of the Protected Area Management Board (since 2008) and Federation of Tribal Baes of Bukidnon (1997), and a chosen barangay mandatory representative (2014).

The Daraghuyan ancestral domain is an interesting case not only because it has a newly acquired certificate of ancestral domain title (CADT) in 2009, but it is also the lone ancestral territory that successfully obtained a collective title inside a protected area around the MKRNP. Moreover, the Daraghuyan is a relatively intact tribe where culture is highly articulated. Part of the culture they asserted is the exercise of FPIC as part of cultural consent seeking. As an inherent traditional practice, the art of seeking of consent, now known as the FPIC—it being the tribe’s cultural process—was freely exercised following customary norms and in deference to the protected area structure to achieve peaceful ends.

Moreover, the Daraghuyan have embraced diverse development perspectives, in view of the influences from the government and NGOs providing services to improve their welfare. On the one hand, considering that Mt. Kitanglad is both a protected area and a claimed ancestral domain territory, the challenge was how the Daraghuyan people had dealt with both laws—the IPRA and the NIPAS laws, how these policies were reconciled to ensure a harmonious and holistic development—and this provides an interesting viewpoint. Accordingly, the leadership of Bukidnon Tribe of Daraghuyan is reinforced as its head claimant is an active member of the Protected Area Management Board (PAMB)—the highest decision-making body of MKRNP.

Community understanding of FPIC

The consent process is a natural expression of their cultural tradition. It is practiced in the milieu of their everyday lives.

5 Modeno, H.M. ed. *Keepers of Dreams: Stories and Images of the Bukidnon Tribe* (Malaybalay, Philippines: Kitanglad Integrated NGOs, 2008).

FPIC for the tribe can be translated into *Babalawn*. In Binukid, *Pagbala* means to consult the spirits or to ask permission from the invisible beings that dwell in the territory. It also means to ask for their consent or seek permission from the spirits of the things that they are about to take and of the activities that they are about to do. Even in one's own land or in a clan's property, the tribe has to carry out "bala" to seek and ask consent of the guardian spirit of the area. The tribe believes that everything on earth is made by the Supreme Being called "Magbabaya," and guardian spirits are tasked to take care of it.

Seeking consent is part of our culture and tradition. Long before the IPRA law was passed, it has always been practiced. It is customary for us to ask permission from the spirits.

—Bae Inatlawan

The concept of humans being stewards of the universe and the gods/goddesses being the guardian of nature commands a great deal of significance in consent seeking for IPs. For example, *Bulalakaw* is the guardian spirit of the water. So, if man needs water, it is essential to ask permission from the spirit of *Bulalakaw* to drink the water.

More examples include situations like (1) when a person needs a tree to build a house, the person has to ask permission from the guardian of the tree to cut it down. He will ask the guardian spirit that he needs the tree to build the house; if a person needs to build a house, he has to ask the guidance of the spirit where to build his house. (2) When a person needs to till a parcel of land, the person needs to ask the permission of the keepers of the soil. Furthermore, (3) if the person needs herbal medicine for relief of illness, or needs to hunt and gather food, he still needs to ask the consent of the spirits that take care of such things.

As stewards of the universe, man was given the natural resources in his surroundings in order for him to survive. The respect for physical things evident in nature is to enable men to express their intention and show respect to the gods and goddesses in order to create a harmonious relationship between them, and avoid conflict and disasters. The aim in securing consent is not the destruction of these material things, because destruction means disrespect, and disrespect is asking for disaster. The IPs or *lumads* coexist with the spirits' realm. This means that the IPs' cultural tradition is not that of destruction of natural resources. IPs do not have to get from nature en masse; they only get what they need. This is basically what it means by humans being the stewards of the universe. The universe is man's home. No *lumads* would want to destroy their own home.

To understand it more clearly, the tribes believe that humans coexist with spirits that guard nature. For humans to have a harmonious relationship with spiritual beings, they have to follow certain laws or rules that govern such kind of relationship. Humans are primarily governed by laws—i.e. spiritual laws, physical laws, laws of the universe—and going against the law means breaking the natural order of things. For the Daraghuyan IPs, seeking consent is one of those laws necessary to be followed to avoid disasters and survival. That is why seeking consent is done through "Panalibagtu," ritual of permission and asking consent,

as a sign of respect to the entities that dwell or take care of creation.

There are various signs and omens that have to be observed if the *Panalibagtu* ritual is carried out. How will one know that the guardian spirits did not give their consent? In the consent-seeking process, it is very important to observe the surroundings (depending on what thing for which one asks permission or consent) for signs and omens. For example, if you get wounded as you start tilling the land, it signifies that consent is not granted for you to use that parcel of land. Or, if you ask permission to travel and a snake hinders your path, it may be interpreted as a bad time to make the journey.

"If you're starting to clean an area for *kaingin* and in the process you get wounded, or something gets stuck in your eye that proves hard to take out, or you and/or one member of your family gets sick, it means that the spirit in that area did not give you consent to use the land. While FPIC appears to be a modern term, its essence is that of an old cultural tradition practiced and observed, and handed down by our forefathers. And they did so because our ancestors believed that it was the right thing to do."

—Bae Inatlawan, overall chieftain

Ways of securing consent

The consent process at present provided by the NCIP Guidelines may differ in the context of implementation in diverse communities within Bukidnon. The provision provided in Daraghuyan, for example, is that the primary source of seeking consent starts with the community. For the community, it means making a decision if the project to be implemented will be to their benefit and will not be



Tribal youth Jonas Omarol leads the beating of the agong (gong) during their *Kaliga* sacred rite.

destructive to any aspect of culture and tradition of the tribe, be it social relationship, moral values and belief, or environment. In Daraghuyan, the process of seeking consent starts with distinguishing the extent of the project to be implemented. Smaller scale projects may not have to be submitted to the council of elders' approval. It can be done by the Chieftain of the tribe; the decision for that matter will be up to him/her. However, if the project will affect a lot of people, such will require the decision of the tribe's council of elders through an assembly meeting. The assembly will be attended not only by the council of elders but also the members of the community, including women and the youth. It further means that the councils' decisions are also influenced by the voice of the different sectors of the community.

The assembly includes introduction and information about the project and a series of deliberations. Then, after much consideration and discussion,

discuss the reasons why he/she has come up to such decision. A project is therefore deemed approved when the community has reached a consensus. This tedious process of making a decision in the community is to make sure that the project proposal presented to them will be equally beneficial to all concerned.

“The project should help each and every one in the community. There are some people who tell us that they want to help improve our lives but they are not really telling the truth. They only want to get from us, and helping us is the least of their concern. Most if not all of businessmen at present only want to have profit, that's what most businessmen wanted, only few businesses do something for the good of others. The nature of business is to make profit, and sometimes we need to bargain; most of the time we're always put at a disadvantage.”

—Datu Dumapal, tribal chieftain

The forest is our church, market and pharmacy, how can we destroy our own source of sustenance?

the community has to arrive at a most important decision: to approve or not approve the project or activities presented to them by the external sources. Disapproval would mean another round of deliberations. Sometimes, the discussion will last for as short as an hour or as long as a month. The approval or disapproval of the project will go on until the community will arrive at a decision. The process of making decision does not involve voting. The approval will include saying yes or no, but each person who approves or disapproves a certain proposal will have to explain his/her decision. He/she will have to

Significance of consent seeking

Seeking consent, on one hand, serves as a guide for what the tribe needs to do to deal with all circumstances at all times. It is a spiritual tool to help the tribe render judgment on things and see if these things are good or not. It further points the direction the members of the tribe should take. On the other hand, it functions as a mandate for the tribe in maintaining a peaceful and harmonious relationship within the community, as a deterrent to crime, as disciplinary measure for illicit acts, or even as

resolution to such problems. Another significance of FPIC is that it will help them evade the disasters and sickness. Most importantly, it authorizes the members of the tribe to inquire, investigate, and deny entry to people (if necessary), particularly those enterprising predators that plan to enter their territory.

“In general, if there is no FPIC, people will not be afraid to enter our territory and do anything they like. If that happens, the IPs will be disregarded and continue to be discriminated against. If we don't seek consent from our elders and from the spirits of nature, we will be destroyed: our culture, our tradition, our life as a people. Sometimes fear of something can help or destroy people. Most particularly, this kind of fear can help people. For example, in our clan, “pagbala” or to consult or seek permission or consent benefits us a lot because it prevented such crimes as thievery. I have never known an adverse relationship in my community. Our territory is relatively peaceful, it's not all the time that animals will get in our farm and destroy what we planted. Our carabaos and horses were not taken. We have heard about the loss of draft animals from neighboring villages and sitios, but not here in our place. This is very important to us.”

—Jonas Omarol, 20, tribal youth

For the elders, Pagbala directs them to make choices in their daily lives. It guides them on the things that they need to do and that may happen to them. It reminds them of their wrongdoings and warns them not to do them again. Various spirits give them warnings and guide them what to do. They tell them if their journey is not good. They will order them not to go out or to warn them of what will happen. For the tribe, life is easier if they followed the rules of the universe, such as seeking of consent.

“Pagbala gives us guidance in order to understand the future and heal our sickness. For example, it teaches us what to drink or herbs that would heal us in times of sickness. The spirits' guidance helps us a lot to make our life easier because they tell us what to do.”

—Bae Malugdang, tribal weaver

How such spiritual guidance is communicated across may come in many forms. It can be through rituals, dreams, and visions, or in the observations of signs and omens. However, if a person/supplicant has wronged the gods and goddesses by not following the rules, the spirits will withhold their guidance. If the person who has a mulin-ulin (spirit guide) committed a grave sin, his/her body becomes dark that he/she cannot be seen anymore by his/her spirit guide. If this happens, a Pamalas ritual will be performed to cleanse the body of its sins and take it out of darkness. During the Pamalas, the spirit will speak through the head ritualist. Pagbala may come in many forms depending on the issue at hand.

FPIC as material versus spiritual process

KIN has implemented programs in Daraghuyan way back in 1996, prior to the passage of the IPRA. When KIN started its program for Kitanglad IPs, it aimed for the cultural survival of the tribe. It is an organizational mandate included in the NGO's terms of reference to be culturally sensitive of their clients. In this reference, when KIN started implementing the CPPAP, its main goals were biodiversity conservation and sustainable development. It added another important aspiration—on cultural survival to guide the way it will implement its activities to the tribal communities.

The CPPAP executed projects such as non-destructive livelihood for IPs living in Mt. Kitanglad. It is in this context that even if KIN was not conscious about the consent-seeking process, there were relevant cases that made them realize that working with the tribe needs more than blessings. For example, as related, during the course of the project implementation, some of KIN staff met serious accidents. A ritual to mitigate future accidents was conducted as prescribed by the council of elders. This activity signaled the auspicious acceptance of KIN as recognized non-IPs carrying out a cultural task for, and in behalf of, the tribes of Mt. Kitanglad.

The idea of performing a ritual of acceptance was to relieve KIN—it being a part IP organization as its staff were both IPs and non-IPs. The prescribed ritual was to relieve KIN of its burden as assisting NGOs and considering that its work would greatly impact (or can impede) the tribal way of life. The serious accidents that befell KIN's leaders were omens that tribal elders interpreted to mean that to start working with the IPs and engage in “cultural functions,” KIN needed to have a ritual. As such, the imposition of the ritual of acceptance was a must and so started KIN's—working with IPs—essaying the long road to cultural learning.

For KIN, FPIC can be viewed with two different lenses. What was given by the law on FPIC is evidential (material) formal process. The FPIC stipulated in IPRA is already an active cultural tradition of the tribe that was just institutionalized by the government. The consent as defined by law as a legal process demonstrates a democratic expression that implicates the active participation of the community in making decisions, particularly those decisions that involve its members. Yet unknown to the public, the essential or cultural significance of the FPIC is that humans implement it with the guidance of spiritual entities; its goal is to maintain the harmonious relationship between men and spirits. This is primarily the main objective of a ritual, even it will invite the presence of both good and bad spirits. Once this relationship is lost, the community believes that there will be disasters and there will be problems not only with the community concerned but also with the ones that implement projects in the territory.

The job function for each of the KIN staff was also affirmed by cultural standards. For example, way back in 1996, during a Tagulambong (installation) ritual, Dominador D. Decano⁶ was named Datu Aligpulos, meaning “whirlwind.” In some cases, during this kind of ritual, a person can choose a name for himself/herself. The name designate as a “Datu” essentially defines one’s personality, skills, and functions in the tribe. For Decano, he had chosen his own name even before the ritual. He spoke of a wind that circled around Mt. Kitanglad and that it consolidated at a certain point. The metaphor was his function in KIN as its Senior Community Organizer, which enabled him to go around Mt. Kitanglad and mobilize the IPs, meant bringing them together and uniting them for a cause on Mt. Kitanglad. This perceived role was positively affirmed during the ritual as the *mulin-ulin* (spirits) manifested its consent through the element of air. In the course of his Tagulambong ritual, the “Aligpulos” (whirlwind) came; the rooftop of the baylan’s house was upturned. Sensing the signs, the late Datu Arapan spoke to the wind. For the lead ritualist, he had no second thought of affirming Decano’s title as “Datu Aligpulos.”

The youth are granted the opportunity for discussion. Their opinion on a project or an undertaking is given weight and consideration by the elders. The important thing is that the youth are not excluded in the decision making of the tribe.

environment. The ritual of acceptance is basically considered by both KIN and Daraghuyan as an exercise of FPIC.

“In our custom KIN had already undergone FPIC. All projects coming in our community should have FPIC. It is impossible not to have one. Officially at present, however, with the existence of IPRA, KIN on paper does not have FPIC.”

—Bae Inatlanwan

In this context, if KIN will need FPIC at present, it is more of fulfilling the material requirement rather than the spiritual. If KIN has to undergo again another FPIC ritual, it is more of fulfilling the legality of FPIC stipulated in the IPRA. KIN’s experience on the context of FPIC fits into the concept of prior rights; KIN was already organized and its goals conceptualized even before the existence of IPRA. As such, KIN was not yet subject to the rigidity in compliance of the State laws. However, as the projects are solicited by the community, there is no need to undergo the FPIC process as it was the community who asked for KIN’s support. For the NCIP, as long as programs and

—Jerald Sihagan, 21, youth artist

The most interesting part was the name given to Ms. Easterluna S. Canoy, the Executive Director of KIN. As related, Datu Dumapal, one of the Daraghuyan council of elders and the tribes’ historian, kept referencing her work similar to honeybees. Datu Dumapal called her Bae “Mangungulingot” or honey gatherer because her main function in KIN is to look for funds to be used in the project’s operations to help the tribes.

These incidents mentioned above were seen essentially as affirmation and acceptance of the NGO by the tribe. It means that as an outsider that committed itself to work for cultural communities, KIN became part of the structure of the community. It is a symbol of acceptance—a function that needs to be affirmed by the spirits through rituals. This ritual is part of resource mobilization of the tribe. For the tribe, KIN was seen as a constructive social capital. In addition, this adoption of outsiders and their being part of the community is seen as a cultural expression of creating harmonious relationship within the community’s

projects implemented in the area are not detrimental or dangerous to the lives of the IPs, the community’s decision of accepting the project of the organization is already enough evidence and bases for NCIP approval.

However, when KIN came back as supporting NGO of the Daraghuyan CADT application in 2003, the NCIP required the community to submit a resolution and validate the veracity of its claim that it was the community who really asked for help and not because of the imposition of KIN. Through such validation, NCIP did not anymore bother KIN on FPIC requirement; in fact, KIN and NCIP became partners in assisting and facilitating the Daraghuyan ancestral domain to pursue its claim. As a consequence, the Daraghuyan ancestral domain CADT was approved in March 19, 2009, and after another long period of waiting, its title was awarded to them on September 1, 2014, during the celebration of Bukidnon’s centennial as a province.

6 Dominador D. Decano is by birth is a descendant of a Talaandig mother and is also one of the founders of KIN assigned as its Senior Community Organizer.

KIN's officers Datu Aliqulos Dominador Decano and Easterluna Canoy took a portion of the offering during the *Panampulat* (communion) part of the *Pamalas* ritual, which concludes the acceptance rite of German visitors escorted by the Balay Mindanaw staff during their first visit to the Mt. Kitanglad Cultural Heritage Center in the early part of 2015. Daraghuyan overall leader Bae Inattawan and her tribal council keenly observe the conduct of their quests.



Asserting rights to ancestral domain within protected area (through imposition of cultural FPIC)

Asserting for the recognition of their rights to ancestral domain for the IP can be traced back to the time when the Spaniards colonized the Philippines. The Regalian Doctrine imposed by the Spanish crown to the Philippine Islands was established through the *encomienda* system. The *encomienda* lands were protected, and they could not be alienated because they belong to the king.⁷ Under American control, the Philippine Islands was considered a state domain. This was reinforced through various laws enacted by the US government. A series of land laws have encouraged private ownership. Lands that were privately owned were titled and registered under the Land Registration Act (LRA). This law facilitated the opening of Mindanao to resettlement of migrants from Luzon and Visayas, and the formation of corporate investments. These laws are mostly favorable to

homesteaders and corporations. Migrant homesteaders were given 16 hectares of lands, corporations with 1,024 hectares, and IPs including Muslims were given less than 10 hectares. This program resulted in the shift of the population with IPs becoming the minority comprising only 25% more or less of the total inhabitants of Mindanao.⁸ Most of the IPs who resisted colonization had fled to the mountains. From the 1960s to 1980s, government heightened their economic development programs with total disregard of the plight of IPs in most areas. In 1973, the Philippines recognized the tribal people with cultural characteristics and acknowledged their rights. Since 1986, the IP movement began to emerge with the demand for right to self-determination and governance of their respective ancestral domains in accordance with customary laws.⁹

Under the framework of national unity, the Article 2, Section 22 of the 1987 Revised Philippine Constitution provided for the recognition and promotion of the rights of ICCs. The Constitution

7 Saway, Migkeray Victorino, *Indigenous People's Rights and Constraints in Protected Areas Management*. Protected Area Management in Mindanao Workshop (Musuan Bukidnon: VSO, CMU, 1999), 32–38.

8 Rodil, R. *The Minoritization of the Indigenous communities of Mindanao and Sulu Archipelago* (Davao City: AFRIM, Mindanao Inc., 1994).

9 Ibid.



The symbolic blessing of international student visitors from the Ateneo School of Government during the first part of their *Pamalas* or welcome and acceptance ritual.

further stipulates in Article 7, Section 17 that “the State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their culture, traditions and institutions.” This statement provides the IP legal claim of their basic rights as stated in the Constitution. In an attempt to implement the constitutional mandate, in 1997, the IPRA Law was enacted as a means to recognize their rights and be completely respected. The law also created the NCIP office to take charge of government responsibility over ancestral domain applications.

Under IPRA, ancestral domains shall be managed and developed in accordance with customs and traditions, beliefs, and practices of ICCs concerned. It also provides for FPIC. FPIC is seen as a legal mechanism for the tribe to regulate entry to the protected area even without a certificate for ancestral domain claim (CADC). This instance triggers conflicting concerns or serious challenges to the management of the protected area.

Prior to IPRA, the NIPAS Act was enacted. Section 13 of the law provides for the rights of IPs to their ancestral lands. Along with this, the Department of Environment and Natural Resources (DENR) issued Department Administrative Order No. 2 to set guidelines for CADC. In 1995, under the leadership of Datu Migketay Saway of the Talaandig Tribe, the three tribes of Bukidnon, Talaandig, and Higaonon pursued their unified claim of Mt. Kitanglad, but it met objections from some members of the PAMB. Datu Migketay stressed, “[p]rior to the existence of IPRA,

the indigenous people were practically treated as mere subjects of the protected area management and not as principal stakeholders.”

For the Bukidnon claimants of Daraghuyan, instead of going against this myriad of laws in Mt. Kitanglad, the tribal leaders studied the park policies carefully, tried to understand them, and used these laws to advance their rights. As related by elders, the words “recognition of ancestral rights to territory” prompted them to pursue their claim on ancestral domain.

Owing to the encroachment of migrants in their area, ancestral domain is the last workable/legal concept enshrined in the laws; it is the last piece of stronghold and the last reason to protect their cultural integrity for their survival as a people.

The fight for the ancestral domain of Daraghuyan was started by Bae Inatlawan’s father way back in the 1930s but in the absence of legal remedies. It was in the 1970s, however, when territorial rights were being threatened by logging and migrant settlers that the tribes sought to obtain a legal title and formal recognition of their land ownership, this time done officially in writing. The establishment of Mt. Kitanglad as a protected area had alarmed the Daraghuyan community. It worried them that they can no longer protect the sacred spaces around their territory and they may again be squatters in their own land. Their purpose of the claim is not basically for material territory but for the purpose of continuing the task of guarding its sacred spaces. However, protecting



the material means protecting its cultural and spiritual significance. As the unified claim was not achievable, the Daraghuyan community gave even more tight security in the area. They organized themselves as a group and tasked the pagalad (cultural guards) to secure the areas of entry to their domain.

In 1999, when the Park Superintendent (PASu) issued an entry permit to a group of mountain climbers and bird-watchers in Mt. Kitanglad without seeking consent from the tribe, the IP community of Daraghuyan blocked their way. This incident, as related by Bae Inatlawan, illustrates how Daraghuyan used its agency to get their message across to DENR, particularly PASu, on FPIC before entering their territory.

When the customary laws were satisfied, Bae Inatlawan let them proceed to their destination. As she pointed out, the ritual was carried out so that the newcomers were introduced to the customs and tradition of the tribe and what they should observe when they get inside the sacred territory. However, the customary rules and tradition of the tribe inside the protected area should be observed and respected by protected area management. Although the protected area management goals include the recognition of the customs and tradition of the tribe, it was at that time scarcely practiced.

The effect of this incident is very telling. FPIC, as provided in IPRA, has been utilized to exercise their

identity. The satisfaction of FPIC as a custom provided a venue where they can apply their agency in a peaceful manner. Apparently, the tribe's goals for their territory are not to counter the government policies; in fact, it supported the government in fulfilling its promise to IPs. They want to secure peace in their territory, and the tribe always looks for means to solve them in ways that will not amplify violence. In other words, the tribes do not need force to assert their rights, but they also emphasized that the park management and the government should not violate their rights as people who live in Mt. Kitanglad.

For the Daraghuyan, this unexpected opportunity made them and the DENR become partners in the protection of the MKRNP. Accordingly, they were recognized as one of the primary stakeholders in Mt. Kitanglad and were given a seat in the PAMB. The PAMB is the decision-making body of the MKRNP. Through FPIC, they were able to assert their identity, protect their indigenous knowledge system, and advance their livelihood and development plans in the area.

Pursuance of CADT application

IPRA even extended its influence on the assertion of the Daraghuyans' rights in the pursuit of their CADT application. In 2003, Bae Inatlawan and her group revived their claim of their ancestral domain. They have solicited support from KIN for technical

and financial assistance. It was also on this year that KIN re-established its office to initially respond to the call of the Daraghuyan community. Together with the council of elders, KIN worked on documenting anthropological data in Binukid and translating these into English. Rituals and community meetings were held. As the data were already substantial, the council of elders, through Bae Inatlawan Adelina Tarino, filed a petition of application to NCIP. Compliance to the issuance of CADT requirements proved daunting to Bae Inatlawan and KIN as regulations and guidelines coming from NCIP changed almost every year.

Daraghuyan was also required to ask endorsement of the claim from different institutional bodies including those from the tribal leaders and elders of adjacent claimants, from the executive heads of adjacent barangays and municipalities, and from the PAMB. Conflicts of boundaries were initially resolved. Usually, endorsement was the most difficult part as institutions and local government units were not easy to convince in recognizing ancestral domains. The claimants had to conduct meetings with these particular bodies to come up with an endorsement letter for the claim. Endorsements are signed documents indicating the authorization of the claim.

In 2005, the Daraghuyans were required by NCIP to pass a resolution recognizing KIN as their assisting NGO. As this activity was solicited by the community, NCIP did not require KIN to go through the process of FPIC. Two years later, the Special Provincial Task Force (SPTF) for the Daraghuyan application was formed. It embarked on validation of the anthropological data, the elders' testimonies, and other documents (such as census data with pictures) that were presented by the claimants to the NCIP office. The SPTF pursued its validation of genealogy, elders' testimonies, census, and anthropological data that were accomplished. Validation basically includes field visits for community consultation that usually lasted for 3 days to 2 weeks, depending on the data being presented.

Conflicts were also needed to be resolved. Conflict involves boundaries of overlapping claims. Daraghuyan has been in conflict with the unified claim of Mt. Kitanglad and the Barangay Council of Dalwangan, where the claim is located. At first, Barangay Dalwangan was reluctant to give endorsement to Daraghuyan, stipulating that the claim is bigger than the land area of the barangay and that the tribe did not originate from the area. A series of meetings and consultations were done to clarify these conflicts that, as expected, took a long time to process.

On February 2006, KIN, NCIP, and the claimants had signed a memorandum of agreement (MOA) on the work and financial plan for the survey, which amounted at least a half million pesos. However, given

the uncertain outcome of the claim, it would be hard to convince donor agencies to support such an activity. Although the claimants could only offer free labor as their counterpart, KIN only allocated a relatively small amount from the grants as it was apportioned to target activities, which was not for CADT application.

Mapping has two components that needed to be delivered: the installation of boundary markers and the perimeter survey. The youth had been crucial to the completion of requirements. They were the ones who conducted the census survey in other villages. In view of this, KIN embarked on training the youth to learn basic computer use, cellphone use, geographical positioning system, and digital photography.

The difficulties in the processing of the CADT claim of Daraghuyan necessitated countless sacrifices from the community. The innumerable nights and days that they toiled finally paved the way to the awarding of the title in September 2014, 10 years since the day KIN and the tribe undertook the ambitious and difficult formal process of applying for a CADT. In victory, Bae Inatlawan stressed, "it is important to remember that any CADT-related activity would not have been possible without the consent of the spirit entities worshipped by their ancestors. It is a basic cultural requirement to ask the spirit of the sun, moon, stars, wind and the spirit of money without whom, many things would not have been fulfilled."

Collective decisions as important determining factors in the FPIC process

What is good about FPIC is that the tribes have the power to decide on their own. They can decide who and what project proposals they want to come in and how the project would go through the provision of the MOA between the tribe and the project proponents. Although seeking consent from the spirits is the common feature of the tribe in the FPIC process, the decision still rests on the community.

A project that solicits decision from the community is stipulated in the FPIC Guidelines. Projects can be categorized into the following: duration of the project (is the project short term or long term?), scale of the project (is the project small scale or large scale?), whether it is extractive or non-extractive, and if it is community solicited or enforced by proponents. These categories are important in the validation of the project of the NCIP. The NCIP will not decide for the community. The role of NCIP is to facilitate the FPIC process. NCIP has to make sure that the project would be beneficial to the community.

In Daraghuyan, the proponent or seeker of consent can be from the members of the tribe or from those

Daraghuyan-Bukidnon tribal community—
knowledgeable on culture and the proper conduct
of consulting the spirits in their surroundings.



that are not members of the tribe. The community procedure in the seeking of consent from the community basically involves the council of elders and members of the community. The seeker of the consent will approach the tribe leader who in turn will inform the community. Then, the seeker will inform the tribe about the project and its purpose through a general assembly. The community, in turn, will discuss the project presented to decide to accept it or not. Usually, deciding to agree on the acceptance of the project will take an hour or months. There will be a series of assemblies to deliberate on the approval of the community.

To consent or not to consent especially on large-scale projects rests upon the decision of the community. The democratic process is not the usual voting process where the majority (defined as 50% of the voters plus 1 vote) would approve a proposal by raising hands. Raising hands to vote, according to Bae Malugdang, invites a lot of trouble, and the decision is commonly not reliable. For the tribe, the usual procedure is that each person has to deliberate his/her reasons as to why he/she has a “yes or no” decision. This process, according to council of elders, will pave the way

to clear any doubts and more understanding upon the makers of the decision. These discussions will present an array of information and wisdom that might be useful in the approval of the project. After deliberations, the approval of the project will proceed if there will be no more dissent from the group.

Most of the approval and disapproval of proposals from consent-seeking individual or institution should undergo *pagbala* and ritual. Given the result of the *bala* as presented by the ritualist including its signs and omens, the deliberation for decision would commence. The *Pagbala*, or consultation from spiritual entities, would be given a lot of weight in the decision-making process. According to NCIP former Provincial Director Ma. Shirlene D. Sario, the *Pagbala* basically sought the guidance of the spirit, but the reflection and analysis of the community based on the *Pagbala* do bear significance in making decisions. The spirit will tell them the signs and omens to prepare them for what will happen in the future, but the baylan has to have the acumen for interpretation.

In the recent case, an investor from Davao—referred to as XYZ—wanted to establish a coffee plantation at



the Daraghuyan ancestral domain in over a thousand hectares; it sought consent with the community in 2013, through its chieftain Bae Inatlawan Adelina Tarino, who, since the CPPAP, had led in an abaca and coffee production project. Considering that the tribe wants expanded opportunities for their livelihood, the offer of XYZ seemed to connect to their aspiration; hence, the project was categorized as community initiated but required validation from NCIP. The NCIP facilitated the FPIC process. It was the NCIP who drafted the MOA for the community through a series of assemblies and consultations.

In the Daraghuyan consensus meeting dated October 22, 2013 and attended by its council of elders, the community demanded amendments to the MOA to satisfy the following conditions of the tribe:

- That Daraghuyan will accept the royalty of 5% for the project area; however, after 5 years, there should have been an increase of 1%.
- That both parties should sit down once every 5 years to evaluate if the MOA is reasonably satisfied.
- That the community will approve the project in the premise that they will fulfill their

promise to help the Daraghuyan ancestral domain with financial assistance on the projection of CADT to LRA in Manila so that it will be awarded to them.

- That the company will follow the customs and traditions of the tribe, particularly on conducting a ritual in planting and harvesting.
- That the tribe will be allowed to secure the area.
- That parents who work for the company should be allowed to bring their children to get inside the premises to fulfill their traditional parental obligation to teach their children on the work that they do.
- That the company would allow them to enter their domain and will not fence their path and trails.
- That the company will provide scholarship to the children of the tribal community who are interested to pursue their studies.

The above conditions were presented to the Filipino representative of the XYZ firm. However, when the final document of the MOA was recited to the community, accordingly, there were provisions that

were changed, and the community was not satisfied. It appeared that the conditions (above) specified by the community were disregarded. The community felt that the company did not realize the importance of their wishes. This made them hesitant to go about the project. It also worried them that during the ritual, there were negative signs and omens; thus, the community felt uncomfortable with the project as presented in the MOA. The tribe knew they are in an uncertain position in the agreement. With these events, they decided not to support the establishment of XYZ's coffee plantation in their CADT area. On that same day, they decided not to sign the MOA with the company. The disapproval of the project made the company representative disenchanted with the community. When they confronted Bae Inatlawan with the result, the chieftain clarified to them that she is only the leader of the tribe and she cannot alone decide for the community.

“I told them, ‘If you scold us, we will listen, but don’t force us to sign an agreement.’ We did not do anything wrong. We have not violated any of your rights. They called later after a week asking for another consultation. But I already put closure to that project. I don’t need to take on another agreement from people whose intentions are already questionable from the beginning.”

—Bae Inatlawan, 54, Overall Chieftain

With the XYZ firm, the reservations of the community were clearly logical. The MOA implied that if the community violated any of the provision, they will eventually be evicted off the place. The fact that they did not agree with the conditions demanded by the community is an indication that the company does not reflect the interest of the tribe. The community clearly pointed out that if the company did not allow the evaluation of the project after every 5 years, it would mean that the company could freely abuse and exploit them. As a result, any of their complaints would be easily ignored because they would have no basis for such claims.

In one of the consultations before the signing of the MOA, the XYZ firm had settled to give scholarship to the tribal students, but they found out that the final document of the MOA stated that the scholarship funds would be coming from the percentage of their royalty share. As related by the elders, they also asked the company to increase royalty fees by 1% yearly after 5 years. However, they also felt that 1,005 hectares (25%) of land to be used by the company in the buffer zone is too much. The community wanted the company to use only 500 hectares of land and to gradually use another 500 plus only after the community had harvested its own crops, but the company representative disagreed with such conditions.

“It means to say that all my crops I planted in my area will be pulled out so that they can plant their coffee. If I try to analyze this, the company wants to enter our house and pull out our plants in the garden. This could mean that we are going to lose authority in our own home. The MOA implies that it would be good for the tribe in the beginning but it would be disadvantageous to us in the long run.”

—Datu Dumapal, 75, tribal elder

In the focus group discussion, the youth also revealed that the ritual they have performed during the MOA signing was a blessing because it did not give them the signs to accept it; otherwise, they would probably be in a miserable situation in the future.

“The MOA stated that we will be given the opportunity to work for the company. We are not educated; if our contract would also be for 25 years, maybe in 2 years, we will be kicked out of our jobs because we don’t have a diploma to show them.”

—Jerald Sihagan, 21, tribal youth

The company was also disappointed with the NCIP provincial office. They have filed a complaint against them and told NCIP national office that they have intervened in the decision making of the community. However, the former provincial NCIP director replied that the work of the NCIP is to facilitate the FPIC process. NCIP cannot influence the decision of the community. Besides, as related, the Daraghuyan members are intelligent people; they studied the provision of the MOA properly, and they were not seduced by the high-paying job and money being offered.

However, when the MOA was read after the ritual, the community and NCIP were surprised that some provisions were changed, particularly, the provisions that involve an amount of money. It seems that the Filipino representative of the company was not honest about financial matters. In this case, the ritual yielded no positive signs; the tribe sensed that such omen was only an affirmation of something that was not right with the proposed project.

Findings and insights

The Daraghuyan-Bukidnon community demonstrated culture-based consent seeking in the act of doing things that involved the use and access to the natural resources found inside their own field—the ancestral domains. The tribe's behavior is influenced by their belief and spirituality in full recognition that there is a higher being that governs all of creations—and that following this belief will sustain life. This is how they were taught by their elders and ancestors, and their *Kagbataan* (culture) enables them to avoid disasters, while being able to protect their identity and integrity inside their territory.



The symbolic blessing of international student visitors from the Ateneo School of Government during the first part of their *Pamalás* or welcome and acceptance ritual.

Elders and parents taught every adult and child to be respectful and sensitive such that every member believes that there are spirits and deities assigned to a particular resource (e.g. land, water, trees/forests, etc.). The tribe's shaman communicates to the spirits, and they believed that these spirits coexist with them; hence, these beings need to be acknowledged such that every generation must be able to achieve a symbiotic and harmonious relationship. Crucial to the persistence of this practice was the ability of the tribe to distinguish signs and omens—the way spirits communicated its messages to the tribe. With the efficacy of the practice, even outsiders must need to follow the proper way in entering their domains even if those who are interested in their area have secured government permits.

The Daraghuyan community recognized the benefits in the exercise and assertion of consent seeking by themselves—as they pursued their economic activities that rely on nature's product and ecosystems services. To ask permission from the *mulin-ulim* (spirits) is taught as the proper way to do things and following it will ensure a means to sustain their means of living while maintaining community harmony where misbehaviors and conflict can be avoided.

Knowing that such behavior is the right thing to do, their culture-based consent seeking was enforced to all whether from the inside or outside. This belief founds the tribe's agency and being. The cultural belief and practice empower them to define their social purpose as guardians of the forest resources thriving inside their

ancestral domains, which is the reason why it can be classified as a protected area like Mt. Kitanglad. As the tribe demands outsiders to follow the ritual protocol, the members of the tribes themselves are no exception either. The tribe's current practices—even prior to the IPRA legislation that regulates the consent process—are strong evidence of practice of a vibrant culture that builds its internal strength and confidence as a community. This level of empowerment was achieved through practice, and assertion and negotiation (especially in dealing with the PASu and XYZ investor). The Daraghuyan people are committed to show their power in deciding and demanding what others must do when inside their territory.

Through the conduct of ritual—being an important prerequisite process and a demonstration of securing consent to use, or to access a resource—the tribe knows that nature spirits guide them in pursuing any undertaking without losing sense of courtesy and respect to one's fellows.

The presence of external institutions (like KIN and the PASu) was highly instrumental in accommodating and strengthening their culture that thereby reinforces their norm of gatekeeping. It was important that the NGO took culture very seriously such that it included cultural matters as part of its main working principles, and its sole strategy to earn people's respect was simply being culture-sensitive. Similarly, the PASu, through being open-minded and accommodating, was instrumental in normalizing the cultural trait of seeking permission when one enters the tribal domain.

Conclusion

The Daraghuyan-Bukidnon Tribe had remarkably shown the practice of seeking consent as embedded in their culture. For the tribe, such behavior is the primary expression as naturally, they aspire for peaceful coexistence not only among their fellows and with the non-IPs, but also with the spirits and nature elements.

The tribe believed that as stewards of the universe, securing consent means respect for the spiritual realm and avoiding destruction of nature as well as relationship between humans. Hence, the Daraghuyan-Bukidnon tribal community residents of MKRNP demonstrated a customary norm of consent seeking, prior to the legislation of the IPRA law. Done in a ritual form, the practice is vibrant and alive as it is applied to its own people and equally that of the outside world.

Moreover, the case illustrates that the FPIC policy sustained by cultural belief, even being asserted to be imposed upon outside authorities or other development agents, sometimes is equally important attribute toward empowerment. The insistent demand for FPIC compliance within the ancestral domain helps them realize their potential in the engagement with authorities, NGOs, and other development agents. The utilization of the FPIC process provided a venue where they could peacefully assert their right and identity as a Bukidnon Tribe. Thus, the FPIC process experienced by the Daraghuyan IPs support top-down policies that are sometimes dormant in its implementation. To help the government, NGOs and development agents should fulfill its social responsibilities to the IPs, although much of the work remains in the tribe as they employ their agency grounded by culture in order to be understood by the outside world.

The ancestral domain is a material resource where the tribe exhibits their cultural expression. The people's notions on ancestral domain are vital as it established the ground—from the people's core values on their spiritual relationship with unseen beings or nature spirits. This belief system greatly affected on how the tribes also behaved with external agents—the latter armed with the intention to help the tribe attain its skills and confidence to negotiate among others for their general welfare, survival, and sustainability. In a way, the ancestral domain is a vital field in establishing this emphatic reciprocal relationship so that both policies (IPRA and NIPAS) not only work for the State goals and objectives, but are also essential to the attainment of development that put premium on cultural integrity.



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