

**FREE AND PRIOR INFORMED CONSENT (FPIC) AND THE
TAGBANUA OF CORON ISLAND: IMPLEMENTATION ISSUES AND
CHALLENGES**

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I. INTRODUCTION

This paper is an overview of Free and Prior Informed Consent (FPIC) in the context of the Philippine implementation of the Indigenous Peoples Rights Act (IPRA) of 1997. It looks into how the FPIC is implemented in the Philippines and describes the national context under which the FPIC as a legal principle is being recognized in the Philippines. It describes the legislative history of the IPRA, the National Commission on Indigenous Peoples (NCIP), and the general status of how FPIC is being implemented at the national and local levels.

It also looks closely at the experience of the Calamian Tagbanua indigenous peoples of Coron Island, Palawan, Philippines in the implementation of the FPIC process. In particular, it describes the specific Coron context of FPIC such as a general description of the environment and other physical attributes of the territories covered by the ancestral domains of the Calamian Tagbanuas; their characteristics, customs, governance processes and economic activities; and the economic activities

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being undertaken by non-Calamian Tagbanuas within the ancestral domains. It provides a history of their efforts to gain recognition of their ancestral domains, leading to the granting of their Certificate of Ancestral Domain Claim and Ancestral Domain Title. It describes the positive benefits and negative consequences, whether economic, political, cultural, and environmental, experienced by the Tagbanuas as a result of having the right of FPIC on Coron Island and the challenges to implementing it – including the difficulties of enforcement.

The Calamian Tagbanua case study was conducted by the Environmental Legal Assistance Center, Inc. (ELAC) as part of the new initiative on Distributional Equity and the Environment (DEE) of the Institutions and Governance Program of the World Resources Institute (WRI). The objective of the DEE is to reduce poverty by promoting fair and equitable distribution of natural resource benefits, principally revenues; and, encourages governments to develop and adopt new policies that will increase the poor's share of revenues from the extraction of natural resources and the utilization of ecosystems.

The ICCs/IPs have long been disenfranchised, displaced and marginalized by development programs and projects undertaken within their territories without their consent. The concept of FPIC reinforces their right to manage, develop, and use their own land and resources. The Arroyo administration recognizes the major role played by the ICCs/IPs in nation-building and has enjoined national and local governments, including international funding institutions to provide resources to facilitate implementation of key programs and projects to empower ICCs/IPs, with locally available indigenous resources as the ICCs/IPs' counterpart. More importantly, the role of ICCs/IPs has increasingly been recognized as critical in decisions concerning programs and projects which affect them.

This paper addresses the question of whether FPIC, as a legal and governance tool available to indigenous peoples, can be effective in ensuring equity in distribution of benefits arising from the utilization of natural resources, and particularly emphasizes issues concerning implementation of the FPIC process. Recommendations on the challenges in implementing FPIC are included in this paper.

II. BACKGROUND ON FPIC

The introduction of the doctrine of Jura Regalia into the Philippine legal system by the Spanish colonizers had virtually converted most, if not all of the indigenous cultural communities (ICCs)/indigenous peoples (IPs)¹, to squatters in their own traditionally owned and possessed lands which by virtue of native title was already vested in them. Due to the ICCs/IPs' lack of documents or papers coming from the government, their lands were overtaken by developers and mining firms which literally displaced them from the territory to which they had cultural ties.

It is worth noting that not all lands in the Philippines became a property of the state. As early as 1909, in the landmark case of *Cariño vs. Insular Government*², the court has recognized the long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which in legal concept is called "native title". Based on this concept, the pre-conquest right to property of the ICCs/IPs in all the conquered or colonized territories are respected and recognized and the only variation would be on the substance of this right.

Notwithstanding this settled jurisprudence however, the government failed to accord the ICCs/IPs the propriety rights and recognition they deserve. Such government neglect was articulated by Senator Juan M. Flavio, in his sponsorship speech of Senate Bill No. 1728 on October 16, 1996, thus:

¹ Refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains (Chapter II, Section 3h, IPRA).

² 41 Phil. 935 (1909).

But the executive department of the government since the American occupation has not implemented the policy. In fact, it was more honored in its breach than its observance, its wanton disregard shown during the period of the Commonwealth and the early years of the Philippine Republic when government organized and supported massive resettlement of the People to the land of the Indigenous Cultural Communities.

For several decades since the Spanish colonization, the ICCs/IPs' plight was virtually unheard of amidst their struggles. Though there were several laws and similar instruments enacted by the government expressly or impliedly recognizing ICCs/IPs' rights in the Philippines, said laws were never observed nor implemented. Government's indifference to their cause, especially in the recognition and protection of their ancestral domain, had caused the lives of many members of ICCs/IPs in the Cordillera and Mindanao region.

Although the struggle of the ICCs/IPs in the Philippines in asserting their right to their ancestral domains and lands is centuries old, it was only in recent years that the current generations of ICCs/IPs have participated in the legislative process. In 1986, the Cordilleras Peoples' Alliance (CPA), caught at that time by a dominant fervor towards establishing a Freedom Constitution, led the aggressive lobbying that resulted in the 1987 Constitution's provisions on the ICCs/IPs' rights to their ancestral domains. The 1987 Constitution also provides for the application of customary law in determining ownership and extent of ancestral domains.³

In light of the Constitutional provisions, ancestral lands are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. No Filipino citizen, regardless of tribal affiliation, shall *"be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws"* (Section 1, Article 3, 1987 Philippine Constitution). Additionally, Section 5, Article 12 of the Constitution

³ Florence Umaming Manzano, MSW, An analysis on the current status of the IPRA implementation, p. 66 on Guide to R.A. 8371

guarantees that "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being."

HISTORY OF IPRA

While the recognition of the rights of the ICCs/IPs in their ancestral domain and cultural integrity is explicitly provided under the Constitution, the lobby for an enabling statute to implement the Constitutional mandate was a very long and difficult process. It took a decade to pass the Indigenous Peoples' Rights Act (IPRA). IPRA was first filed in the Congress sometime in 1987 during the 8th Congress, and was finally enacted in October 1997 during the 10th Congress.

During the 8th Congress, Senate Bill No. 909 was filed as a response to the Constitutional mandate to Congress to enact a law that will protect the rights of the ICCs/IPs. The bill was subjected to deliberation in the Senate floor but was not enacted into law. Subsequently, during the 9th Congress, Senate Bill Nos. 1029, 1849 and 2056 were successively introduced. These bills, however, were never sponsored and deliberated upon.

Finally, the 10th Congress, through the sponsorship of Senator Juan M. Flavio, introduced Senate Bill No. 1728. After exhaustive deliberation, both houses passed the bill into law. Republic Act No. 8371 or IPRA was signed into law by the President Fidel Ramos on October 29, 1997. It became effective on November 22, 1997. Its Implementing Rules and Regulations were approved on June 9, 1998.

IPRA provides the framework for implementing the Constitutional guarantees on the right of ICCs/IPs to their ancestral domains⁴ and lands⁵

⁴ 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

by virtue of native title. The category of ancestral domains and lands as privately owned and outside of the public domain is evident from the provisions of Section 12 of IPRA which gives the option to secure title under Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, or the Land Registration Act 496. Moreover, even in instances where the ancestral domain forms part of a government reservation, the rights of the ICCs/IPs to their ancestral territory is recognized and protected.

IPRA is considered by many as a landmark legislation that recognizes, protects and promotes the rights of ICCs/ IPs, particularly their rights to ancestral domain and lands, to self-governance and empowerment, social justice and human rights, and cultural integrity.

FPIC AS AN INSTRUMENT OF EMPOWERMENT

One of the most important provisions of the IPRA is the provision on FPIC. FPIC refers to the "consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community⁶. It is given by the concerned ICCs/IPs upon the signing of the Memorandum of Agreement containing the conditions/requirements, benefits as well as penalties of agreeing parties as basis for the consent"⁷.

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 (Rep. Act No. 8371, Chapter II, §3a).

⁵ Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of

individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots (Rep. Act No. 8371, Chapter II, §3b).

⁶ Rep. Act No. 8371, §3(g) (1997) and Rule II, §1(k), Rep. Act No. 8371 IRR.

⁷ Sec. 5 (d) of NCIP AO No. 3, Series of 2002

This legal concept gave the ICCs/IPs' the right to deny or allow entry of development projects into their ancestral domain. By virtue of such right, they now have the prerogative of determining their development priorities and deciding the acceptability of projects or programs that may affect the community. The FPIC process does not only provide IPs' with an avenue for deciding the acceptability of projects or programs that may affect the community, financially, economically or culturally, but also enjoins the NCIP to refrain from issuing certification to any project proponent without the FPIC of the ICCs/IPs concerned. All government agencies or departments are also strictly enjoined from issuing, renewing, or granting any concession, license or lease or entering into any production sharing agreement with any person without the certification from the NCIP that the area where the project is to be introduced does not overlap with any ancestral domain. Such certification can only be issued after a field-based investigation by the Ancestral Domains Office of the area concerned to determine if the area applied for overlaps an ancestral domain or not.⁸

In 1998, the NCIP issued procedures and guidelines for the implementation of IPRA in order to facilitate compliance and achieve its objectives.⁹ This was further supplemented with the issuance of AO No. 3, Series of 1998 setting guidelines in the issuance of NCIP Certification Precondition (CP) and FPIC in connection with applications for lease, permit, license, contract and other forms of concession in ancestral domains. The Order reiterated the standing policy that any certification from the NCIP that the area applied for does not overlap with any ancestral domain shall only be issued after a field-based investigation by the Ancestral Domains Office of the area concerned, and if there is any overlap, the FPIC of the concerned ICC/IP shall be required and a Memorandum of Agreement be undertaken between and among concerned parties. However, applications filed prior to the effectivity of NCIP AO 1, Series of 1998, shall be recognized and shall have priority in securing the NCIP Certification, upon endorsement by the concerned agency such as the Mines and Geosciences Bureau. Further any formal written agreement and/or resolution issued by the concerned ICCs/IPs prior to the effectivity

⁸ Rep. Act No. 8371, §59 (1997).

⁹ NCIP Administrative Order (AO) No. 1, Series of 1998.

of NCIP AO 1, Series of 1998, shall be deemed as consent by the concerned ICCs/IPs; and, that requests for NCIP Certification Precondition shall be acted upon by the NCIP only upon the endorsement of the concerned agency such as the Mines and Geosciences Bureau.

In 2002, NCIP AO 3 was revised to include operation of programs/projects/plans/business or investments including other similar or analogous activities or undertakings that do not involve issuance of license, permit, agreement or concession but requires the FPIC of ICCs/IPs in ancestral domain areas. The said Order clearly defined Certification Precondition as the certification issued by the NCIP that the site covered and affected by any application for concession, license or lease, or production-sharing agreement does not overlap with any ancestral domain area of any ICC/IP, or if the site is found to be within an ancestral domain area, that the required FPIC was properly obtained from the ICC/IP community concerned in accordance with the provisions of the guidelines.¹⁰

KEY FEATURES OF FPIC GUIDELINES

Coverage

The FPIC guidelines cover the following programs/projects/activities:¹¹

- Exploration, development, exploitation and utilization of natural resources for commercial purposes within ancestral domains/lands, by IPs and non-IPs;
- Research on indigenous systems, knowledge and practices related to agriculture, forestry, watershed and resource management systems and technologies, medical and scientific concerns, biodiversity and bioprocessing, including the gathering of biological and genetic resources;
- Archeological exploration, diggings, excavations and access to religious and cultural sites;

¹⁰ Sec. 5 (c), NCIP AO No. 3, Series of 2002.

¹¹ Sec. 6, NCIP AO No. 3, Series of 2002.

- Activities that impinge on spiritual and religious traditions, customs and ceremonies, including ceremonial objects;
- Programs, projects and activities that lead to the displacement and/or relocation of indigenous peoples;
- Entry of migrants and other entities who intend to do business or engage in development activities inside ancestral domains;
- Management of protected and environmentally critical areas, and other joint undertakings within ancestral domains;
- Implementation of government reforestation and infrastructure projects;
- Policies affecting the general welfare and the rights of ICCs/IPs; and,
- Occupation of military or paramilitary forces or establishment of temporary or permanent military facilities within the domains; Military operations traversing ancestral domain areas may be allowed without the required FPIC only when the same is made in connection with hot pursuit operations and the duration is not exceed the period of seven (7) days.

FPIC procedure and process requirements

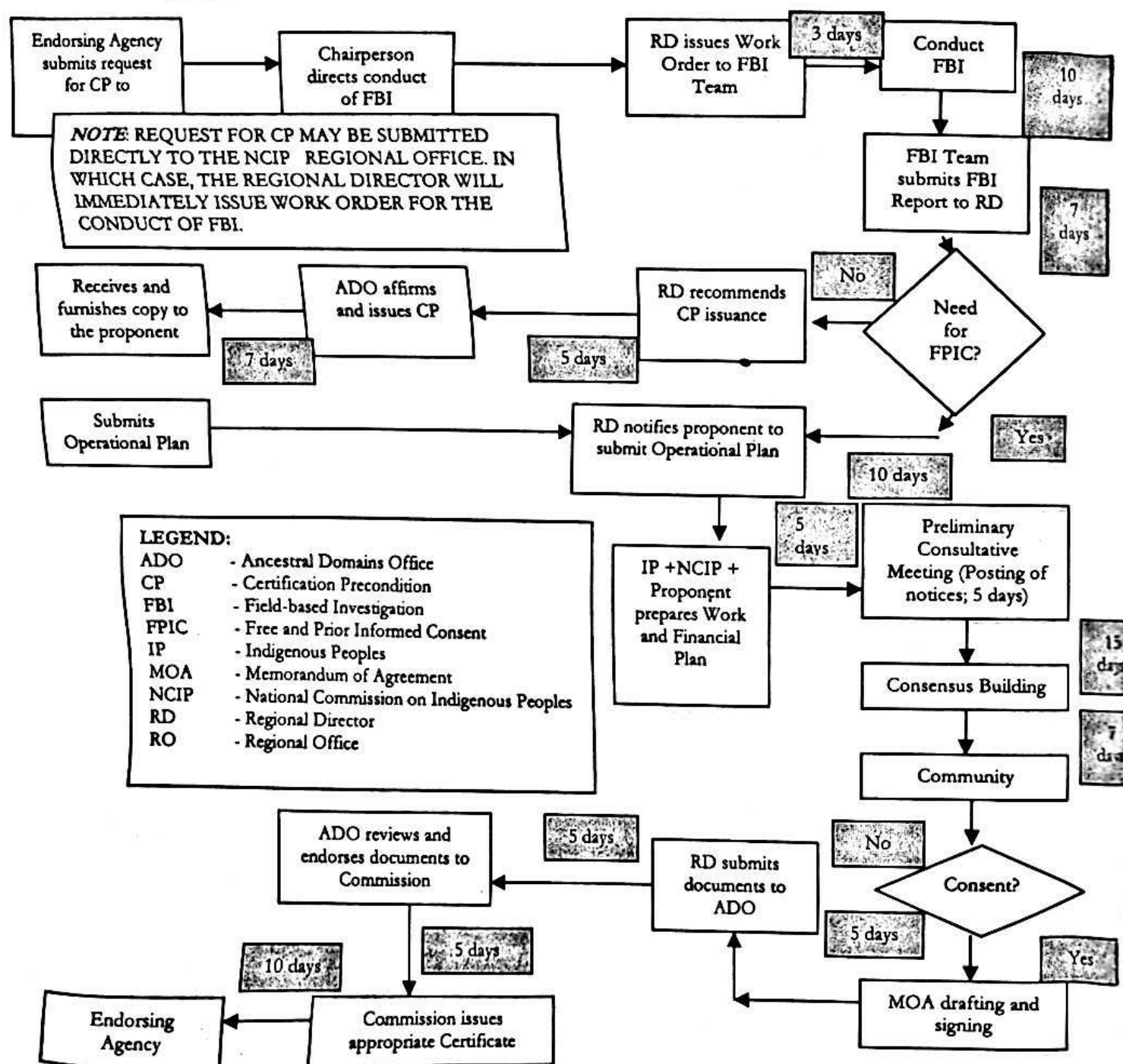
The FPIC process consists of core activities, such as the following:

- *Field-based investigation (FBI)*. The FBI is the first step in the process required for the issuance of Certification Precondition. It refers to the on-site inspection and investigation to ascertain whether or not the site applied for concession, license or lease, or production-sharing agreement falls within an ancestral domain. If the FBI report requires the FPIC of affected ICCs/IPs, the proponent submits a project operation action plan and deposits payments and fees for applications for Certification Precondition and FPIC certification.
- *Mandatory activities in the conduct of the FPIC*. Sec. 14 of the said Order provides that the FPIC process shall include the following mandatory activities:

1. *Notices:* Posting of Notices by the NCIP in conspicuous places in and around the area of the concerned ICC/IP community about the preliminary consultative meeting.
 2. *Validation of the List of Elders/Leaders.* NCIP shall convene the Council of Elders/leaders for the purpose of validating the authenticity of the names of elders/leaders as appearing in the list.
 3. *Preliminary Consultative Meetings.* Meetings shall be held to be participated in by the identified Council of Elders, representatives from the proponent, NCIP, and collaborating NGOs and civil society operating in the concerned area.
 4. *Consensus Building.* Elders/leaders shall conduct their own consultation meetings with the members of their community using traditional consensus building processes in order to further discern the merits and demerits of the proposal as presented on the preliminary consultative meeting. Only NCIP is allowed during this period to document the community proceedings.
 5. *Community Assembly.* NCIP shall cause the assembly of all the members of the community as represented by the household heads to decide whether to accept or reject the proposal, through a majority of votes for or against the project.
- *Memorandum of Agreement (MOA).* If the FPIC process results in the approval of the proposed project, the decision shall be translated in the form of a MOA between the proponent and the ICCs/IPs, incorporating the agreements and conditions discussed in the process. The NCIP, represented by the Chairman, shall sign as the third party. Thereafter, a Certification Precondition with FPIC and MOA is issued by the NCIP.

The ICCs/IPs' are also expressly granted the right to stop or suspend any project that has not satisfied the requirement of the FPIC process.

Figure 1 shows the FBI-FPIC procedural flow under NCIP Resolution No. 075, Series of 2004.



III. IMPLEMENTING FPIC: THE ROLE OF THE NCIP

The NCIP was created by virtue of the IPRA as the primary government agency responsible for the formulation and implementation of plans, programs and policies to recognize, protect and promote the rights of ICCs/IPs as well as the recognition of their ancestral domains and their rights thereto based on customs, traditions and institutions. It also serves the primary agency through which the ICCs/IPs can seek assistance from the government and through which such assistance can be channeled. The NCIP is an independent agency under the Office of the President and is composed of 7 Commissioners representing ethnogeographic areas. The Commissioners are appointed by the President and hold office for a period of three years, subject to reappointment for another term. One of the Commissioners acts as Chairperson.

The NCIP is composed of different offices, namely: 1) Ancestral Domains Office (ADO); 2) Office on Policy, Planning and Research; 3) Office of Education, Culture and Health; 4) Office on Socio-Economic Services and Special Concerns; 5) Office of Empowerment and Human Rights; 6) Administrative Office, and 7) Legal Affairs Office. In addition to the aforementioned offices the NCIP has Regional and Field Offices, and may create additional offices as it deems necessary in accordance with existing rules and regulations. There is also the Office of the Executive Director which serves as the secretariat of the NCIP. A consultative body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs. The ADO is responsible for the identification, delineation and recognition of ancestral lands and domains. It also issues certification prior to the grant of any license, lease or permit for the use of natural resources with ancestral domains, upon the FPIC of concerned ICCs/IPs.¹²

In September 2004, however, President Arroyo issued Executive Order (EO) No. 364 transforming the Department of Agrarian Reform

¹² Rep. Act No. 8371, §46 (1997).

(DAR) into the Department of Land Reform (DLR) responsible for all land reform in the country, including agrarian reform, urban land reform, and ancestral domain reform. This placed NCIP under the supervision and control of the DLR and the NCIP Chairperson as ex-officio Undersecretary for Ancestral Domain Reform. In October 2004, the Order was amended by EO 379 putting the NCIP as an attached agency of the DLR.

One of the current major programs of the NCIP is the enforcement and enhancement of the human rights of ICCs/IPs, under which procedures for the FPIC play a significant part. Its 12 Milestone Agenda supports full implementation of the FPIC and the review of NCIP Administrative Order (AO) No. 3, Series of 1998 as amended by NCIP AO No. 3, Series of 2002 as an instrument to empower ICCs/ IPs and recognize their right to self-determination.

ICCs/IPs have long been disenfranchised, displaced and marginalized by development programs and projects undertaken within their territories without their consent. The concept of FPIC reinforces their right to manage, develop, and use their own land and resources.

Issuance of Certification Precondition and Compliance Certificate with FPIC

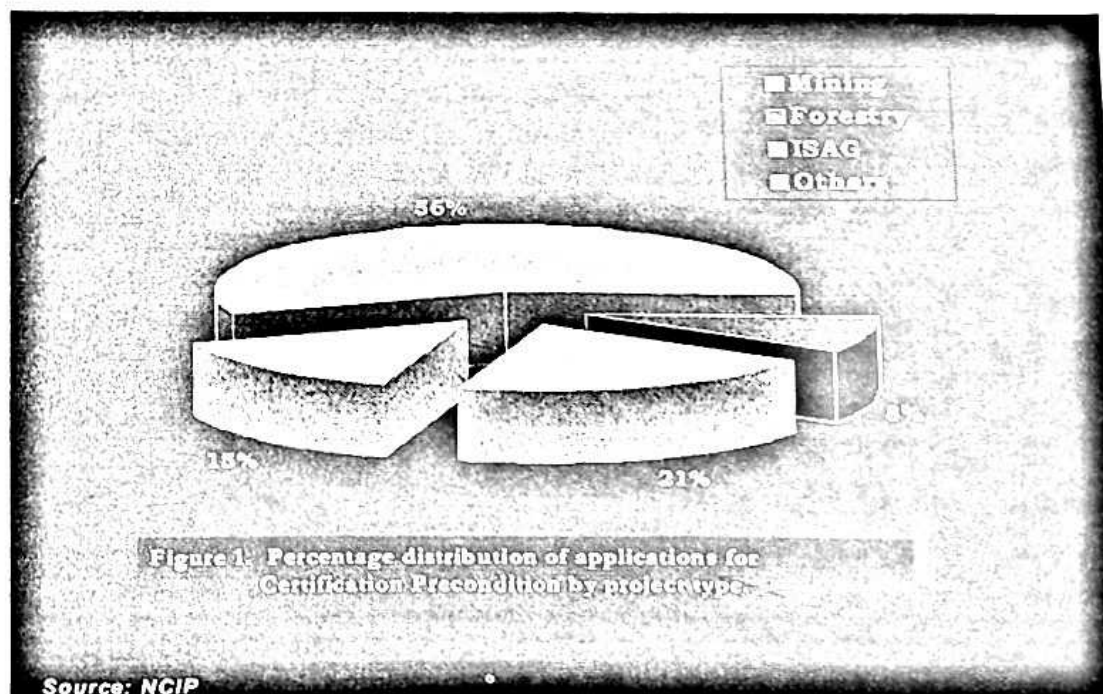
The NCIP, through the ADO, has since 2001 up to 15 March 2005 received a total of 762 applications for CP (Table 1). These include applications for projects on mining (56%), industrial sand and gravel (21%), forestry (8%) and others (15%). Other projects include infrastructure, research, and other similar projects (Fig. 1).

Table 1. List of applications for certification precondition as of 15 March 2005.

Region	No. of applications*	Nature of Application				Certification Issued		Status of Application		
		Mining	Forestry	ISAG	Others	Non-Overlap	FPIC Compliance	FBI	FPIC	Others
CAR	14	4	2	6	2	1	3	0	3	7
1	58	35	0	19	4	15	1	3	3	36
2	70	46	11	6	7	14	0	20	9	27
3	57	25	2	29	1	27	0	5	4	21
4	116	78	13	6	19	27	3	28	7	51
5	74	64	1	2	7	32	0	14	5	23
6 and 7	193	98	10	56	29	82	0	61	4	46
9	10	4	1	2	3	2	0	4	0	4
10	29	12	9	1	7	8	0	12	7	2
11	36	11	11	2	12	7	3	4	8	14
12	83	34	2	31	16	11	1	22	14	35
13	22	16	2	0	4	4	4	8	4	2
Grand Total	762	427	64	160	111	230	15	81	168	268

Covering CY 2001 to 15 March 2005

Source: NCIP



By December 2005, a total of 23 Compliance Certificates (or Certificate of Compliance to FPIC Process and Certification that the community has given its consent) has been issued by the NCIP for various projects throughout the Philippines (Table 2). These include 13 mining-related projects, 2 water diversion projects, 1 livelihood and resource management project, 1 bioprospecting project, 1 forest management project, 1 agrarian reform project, 2 mini-hydro power plant project, 1 biodiversity project and 1 banana plantation project. Figure 3 shows the location of 15 projects issued a Certification Precondition with FPIC (Fig. 3).

The Private Enterprise Development for Asia (PEDCA) also reports conducting a FPIC process in 2003 for its research project in Balbalasang-Balbalan National Park in the Province of Kalinga on capacity assessment for the preservation and maintenance of biodiversity-related knowledge of indigenous and local communities. In its final report to the DENR-Protected Areas and Wildlife Bureau (PAWB), it stated that "the 2 FPICs issued are among the first 5 to be issued under NCIP AO No. 3, Series of 2002" (PEDCA, undated). Moreover, the requisite MOA was waived. There is, however, no record of any Certification Precondition or Compliance Certificate issued for this project in the list provided by the NCIP. It is not clear if the FPIC process conducted by the proponent was acceptable to NCIP despite the assistance provided by the NCIP Kalinga Service Center or if the process was deemed completed or if records remained at the regional office.

Table 2. List of compliance certificates (Certificate of Compliance to FPIC Process and Certification that the Community has given its Consent) issued by NCIP as of 31 December 2005.

ADO Control Number	Applicant/Proponent	Tribe	Location	Area (Hectares)	IP Population	Type	Date Issued
CCRI-04-01-001	NASUDI Farmers' Irrigators Association Inc.	Itneg/Tinguian	Nueva Era & Banna, Ilocos Norte	100.0000	IP Pop.: 525 Household Heads = 110	Construction of water impounding and diversion dam	01/30/04
CCRXIII-04-01-	JCG Resources, Inc.	Mamanua	Alegria, Tubod &	3,288.7676	IP Pop.: 161 Household	MPSA	01/30/04

002			Mainit, Surigao del Norte		Heads = 56		
CCRXI- 04-02- 003	Asiaticus Management Corporation (AMCOR)	Mandaya- Manobo	Brgy. Macambol & Cabuaya, Mati, Davao Oriental	16.0000		EXPA	02/20/04
CCRXI- 04-02- 004	Natural Resources Management Development Corporation (NRMDC)	Mandaya, Mansaka	Mabatas, Monkayo, Compostela Valley Province	8,100.0000		Construction of tailings dam	02/16/04
CCR13- 04-02- 005	Minimax Exploration Corporation	Mamanua	Tapian, Mainit, Surigao del Norte	14,164.0000	Household Heads = 2	EXPA	02/16/04
CCCAR- 04-04- 006	Luzon Hydro Corporation	Ibaloi	Brgy. Kayapa, Bakun, Benguet	3,800.000	IP Pop.: 229	Kayapa Diversion Project (Water System)	04/27/04
CCCAR- 04-07- 007	Wolfand Resources, Inc.	Guilayon	Magnao, Tabuk, Kalinga	499.0580	526	Exploration project	07/16/04
CCR XIII -04-08- 008	Philsaga Mining Corporation	Manobo	Brgy. Bayugan III, Wasian and Sta. Cruz, Municipality of Rosario & Brgy. Consuelo, San Andres and Imelda, Bunawan, all of Agusan del Sur	3,555.4630	Household Heads = 394	Exploration and Mining Operation	08/06/04
CCR XI- 04-08- 009	APEX Mining Company	Mamanua	Maco, Compostela Valley Province	5,022.0000	Direct: 450 Impact: 1,075	Mining Operation	08/06/04
CCR IV- 04-09- 010	Coral Bay Nickel Corporation	Palaweno	Rio Tuba, Bataraza, Palawan		8,112	Hydro- metallurgical Processing Plant	09/03/04
CCR IV- 04-09-	Rio Tuba Mining	Palaweno	Rio Tuba, Bataraza,	13.0000		MPSA	09/08/04

012	Corporation		Palawan				
CCCAR-04-0911	Northern Luzon Exploration and Mining Co., Inc.	Ibaloi	Sitio Camp 6, Tuba, Benguet	400.0000	595 Families	EPA	09/08/04
CCRU-04-12-013	Daguma Agro-Minerals, Inc.	Manobo Blit	Brgy. Ned, Lake Sebu, South Cotabato	7,000.00		Coal exploration	12/20/04
CCRIV-05-01-014	University of Rizal System	Dumagat and Remontados	Tanay, Rizal			Livelihood and Resource Management Project	1/21/05
CCRIV-05-01-015	SEMCO Exploration and Mining Corp.	Pakwan-Manobo	Pakwan, Lanuza	10,201.0479		Exploration	1/21/05
CCRXI-05-06-016	La Fortuna Mahogany Inc.	Mandaya	Baganga, Campawan, Malibago, Cateel, Davao Oriental	10,872	206 HHs	IFMA	6/18/05
CCRIII-05-06-017	UP-Michigan	Ayta	Kanawan Reservation, Morong, Bataan	165	53 HHs 226 Individuals	Biodiversity and drug discover	6/18/05
CCRV-05-08-018	Project Local Office-Banaba Agrarian Reform Community (ARCDP2)	Balaba Tribal Council	Polangui, Albay	2,923 kms., 6 meters	19,354 HHP, 3,734 No. of H.	ARCDP2	8/17/05
CCRXI-05-10-019	Hydro Electric Development Corporation (HEDCOR)	Bagobo-Tagabawa	So. Tudaya, Brgy. Sibulan, Sta. Cruz, Davao del Sur			Installation of mini-Hydro Power Plant	10/24/05
CCRIV-05-10-020	Palawan State University		So. Kayasan, Tagabinet, Puerto Princesa City, Palawan			Biodiversity project	10/24/05
CCRIV-05-11-021	Berong Nickel Corporation (BNC)		Brgy. Berong, Municipality of Quezon, Palawan			Nickle Exploration	11/08/05
CCR XII-05-11-	Upland Banana Plantation	T'boli	Mun. of T'boli,			Banana plantation	11/30/05

022	(UBC-AMS)		Province of So. Cotabato				
CCCAR- 05-11- 023	Cordillera Power Corporation (CPC)	Ibaloi and Kankaney	Kapangan, Benguet Province			Construction of 30 megawatt mini-hydro power plant	11/30/05

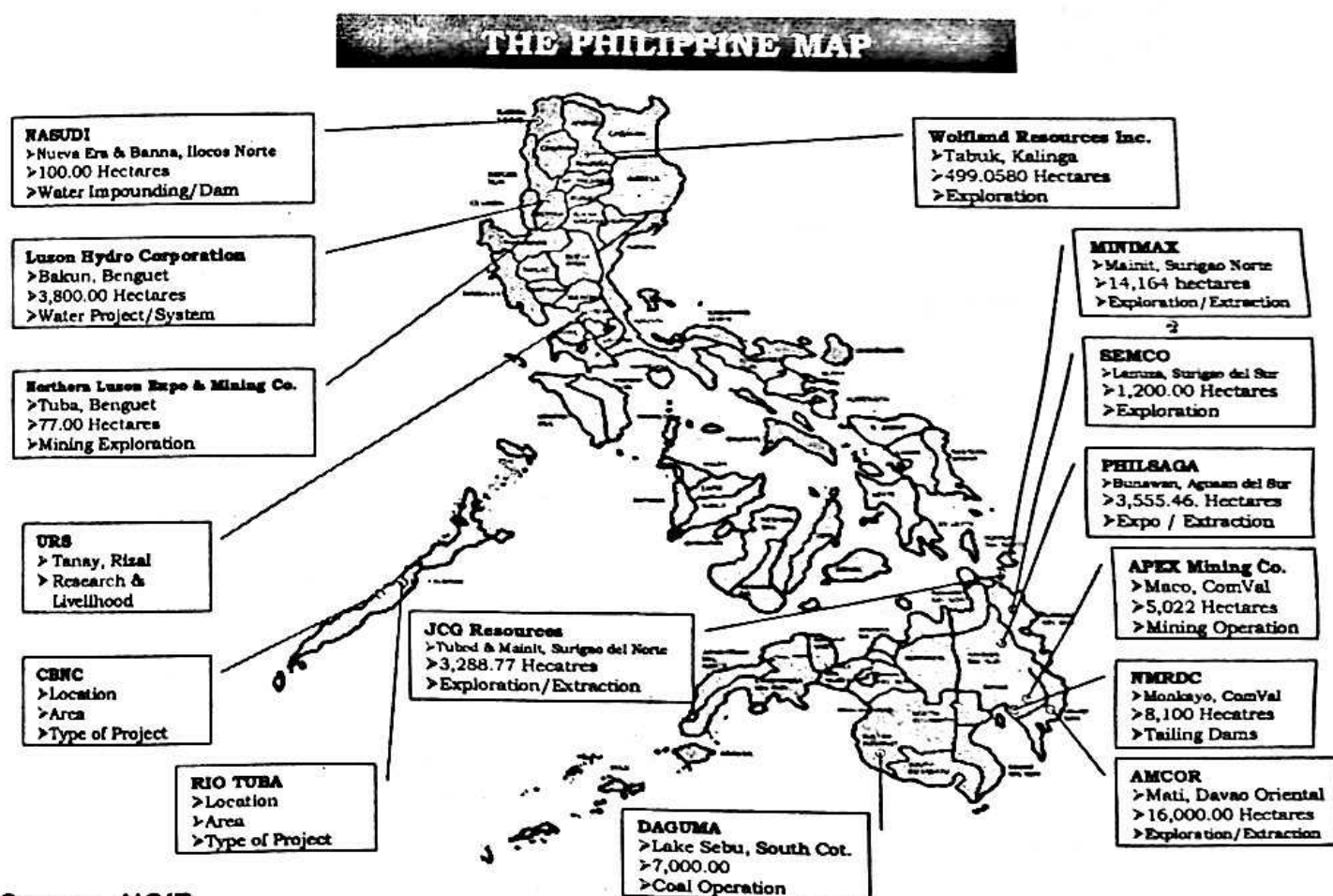
Source: Resource Management Division, ADO, NCIP, 2005

Legend: MPSA - Mineral Production Sharing Agreement

EXPA - Exploration Permit Agreement

IFMA - Integrated Forestry Management Agreement

Figure 2. Map showing locations of 15 projects issued a Certification Precondition with FPIC.



Source: NCIP

IV. IMPLEMENTATION ISSUES: OBSTACLES AND CHALLENGES

Since the enactment of IPRA in 1997 and issuance of specific guidelines on the conduct of the FPIC process in 1998 and 2002, it was only starting in 2004 that the NCIP and some ICCs/ IPs issued the appropriate certificates allowing certain projects in ancestral domains. Since then, several issues and concerns, and development challenges have emerged.

An assessment of the FPIC process was undertaken through case studies commissioned by Tebtebba Foundation (Indigenous Peoples International Center for Policy Research and Education) in 6 study sites and projects throughout the Philippines (Table 3). The study looked at the actual experiences of indigenous peoples in the process of giving their consent to the projects and how this has impacted on their rights as indigenous peoples.

Table 3. Sites and projects in Tebtebba Foundation-commissioned case studies on the implementation of the FPIC process.

Site	Indigenous People	Company	Project
Camp 6, Tuba, Benguet, Cordillera	Ibaloy	Northern Luzon Exploration, subsidiary of Philex Mining Corp.	Mining exploration
Kayapa, Bakun, Benguet, Cordillera	Ibaloy	Luzon Hydro Corporation, subsidiary of HEDCor/Aboitiz	Diversion of rivers
Tabuk, Kalinga, Cordillera	Guilayon	Wolfland Resources	Mining exploration
Bataraza, Palawan Southern Tagalog	Tagbanua	Coral Bay Nickel Mining Corporation, transformed from Rio Tuba Nickel Mining Corporation	Hydrometallurgical processing plant and quarrying
Siocon, Zamboanga del Norte, Western Mindanao	Subanen	Toronto Ventures, Inc., as surviving entity from purchase of MPSA of Benguet Corp.	MPSA

Victoria, Mindoro Oriental, Southern Tagalog	Mangyan	Crew Development Corporation, survivor entity from purchase of Mindex ASA	MPSA
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Source: See, B. and R. Bacani, undated.

The findings and recommendations from these studies were presented during a FPIC National Workshop held in Baguio City, Philippines from 13-15 April 2005.¹³ Among others, initial findings indicate the need to address concerns related to the following:

- *Conduct and time frame of the FPIC.* Current regulations mandate a specific time frame for the conduct of the entire FPIC process. This effectively puts the burden on the ICCs/IPs to act on any application expeditiously and frustrates traditional or indigenous decision-making processes. The time element is considered critical since the FPIC process involves community participation and the rhythm of life in the community needs to be considered. In some cases, elders and members live in distant, remote areas, or are engaged in seasonal livelihood activities such that attending a consultative meeting or a community assembly may not be a priority.

In the Bakun study, the decision-making exercises were conducted in the town center, far from the villages and the community had to opt to fast-track the process as it coincided with the planting season. In the case of the Subanen, it took about 3 days just to deliberate on the lineage of 30 members of the NCIP-formed Council of Elders. In the other case studies, the time element in traditional decision-making was not considered. Information on the IPRA was disseminated along side the presentation of the project by the proponent, after which the community was asked to make decisions. The study therefore recommends that the time frame for the different stages in the FPIC process should be flexible and in accord with the customary practices and community realities (e.g. distance from venue of community assembly, season, etc.).

- *Representation in community meetings and assemblies.* In all cases, representation and the role of the NCIP were raised as issues. It is important that

¹³ Tebtebba Foundation, *Free Prior and Informed Consent (FPIC) Process: Emerging issues and recommendations*, available at <http://www.tebtebba.org>.

communities identify their leaders in accordance with the customary basis for leadership, i.e. genealogical study, and validated by the NCIP.

The Bataraza and Mindoro case studies looked into the role of the NCIP in the formation of an indigenous organization apart from the existing organization with the assistance of the project proponent. This has put into question the legitimacy of the consent givers. The strategy by the proponents to "wine and dine" the consent givers with the knowledge of NCIP personnel outside of the community's area has also reportedly impaired the process. In the Kalinga case, the signing of the FPIC was done in the NCIP Provincial Office. This lack of cultural sensitivity needs to be addressed by ensuring that all transactions are done within the community with the participation of those clearly affected by the development project.

In the Tuba case, the matter of whose consent should be sought was raised- a CALT holder whose members do not reside in the proposed project area versus the community directly affected by the development project. In the case of the Subanons, the issue of representation by those claiming prior rights over those of the community was also raised. From a strictly legal angle, the proponent claimed that its rights under the MPS predate any right of the Subanons under their CADC/CADT.

Another area where the issue of representation needs to be clarified is the role of indigenous leaders who have also assumed positions in government. In areas where community leaders or members occupy various positions or are composed of mixed populations, whose consent should be sought?

- *Traditional or indigenous form of decision-making practices.* In most of the case studies, the indigenous decision-making processes, including the institutional structure, appear to be intact and functional. Consensual decision-making is facilitated by the leaders. The Pala'wans have their *Panglima*, the Mangyans have their "pamunuan", and the Ibalays have their *tongtong*. In all these decision-making processes, the elements of democratic participation, full disclosure of information, decision by consensus facilitated by the elders are practiced so that there is communal ownership of the decisions. In some cases, however, this indigenous form of decision-making process has been eroded due to incomplete or no

information and manipulation. Critical stages of the FPIC process were done in resorts, NCIP offices and other venues outside of the communities of the Mangyans, Pala'wans, Guilayons, Ibalays and Subanons.

- *Information, Education and Communication (IEC).* Most ICCs/IPs are not aware of the IPRA, the FPIC and the FPIC process itself. This lack of knowledge and understanding seems to be shared not only among ICCs/IPs and but also among some NCIP personnel as well. Knowledge is power and the lack of it has provided an avenue for alleged manipulation of the process by interest groups, including some NCIP personnel.

Information is critical in any decision-making process and should be provided to the concerned ICCs/IPs in a timely manner and in a language understandable by them. In the Guilayon case, the consultative meeting became a venue to validate the list of elders/leaders, IEC on IPRA, FPIC and the project. There were no written project documents from which informed questions could be asked. In all cases, information on the projects was only provided during the meetings. In most cases, it was unclear whether the consultation process was just an information drive or consultation per se.

The experience of the Private Enterprise Development Corporation of Asia (PEDCA) in getting the FPIC of concerned ICCs/IPs Indigenous in Mt. Balbalasang-Balbalan, Kalinga Province for its project on Capacity Assessment for the Preservation and Maintenance of Biodiversity-related Knowledge of Indigenous and Local Communities indicated the need to strengthen and upgrade the communications infrastructure and system between the NCIP Central Office and its regional, provincial and service centers. It also recommended the need to generate more awareness on the FPIC process particularly among the ICCs/IPs themselves, and the use of audiovisual equipment to document the grant of FPIC in cases where the approval is done verbally.

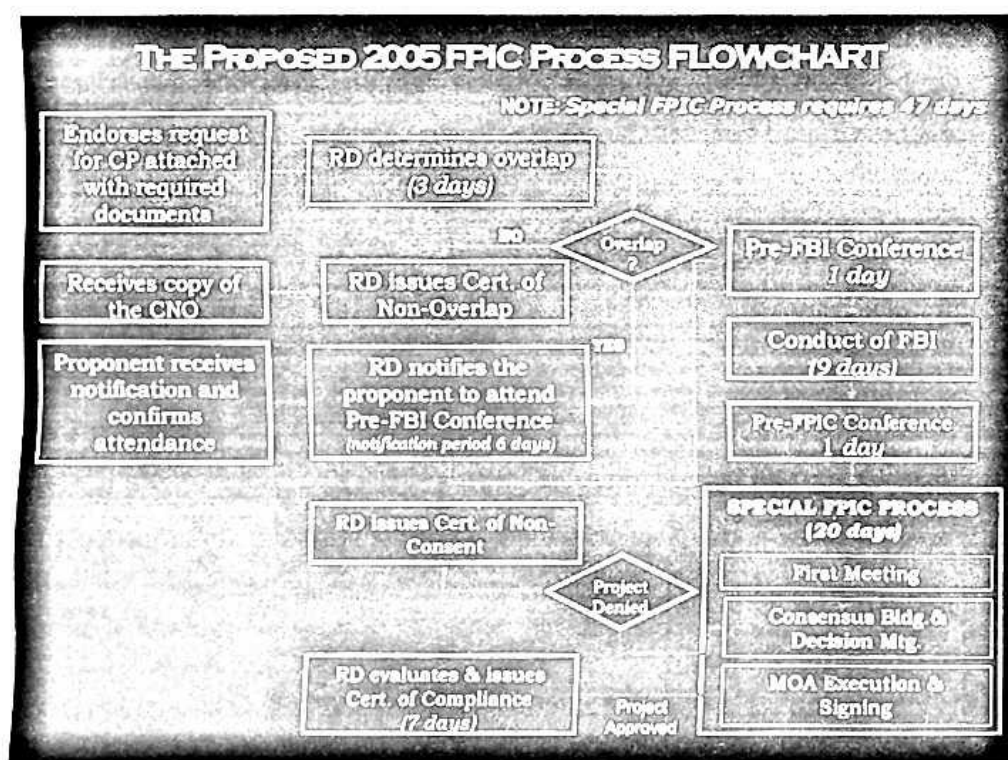
REVISING THE FPIC PROCESS

In 2004, Executive Order No. 270 was issued revitalizing mining in the Philippines and calling for the formulation of a Minerals Action Plan

(MAP). Based on this plan, the permitting procedures of government agencies were targeted for streamlining. The MAP reflects an agreement with the NCIP to reduce the FPIC processing time and to decentralize to the NCIP Regional Offices the issuance of CP. Thereafter, NCIP proposed another revision of the FPIC guidelines.

The Commissioners of the NCIP are in the process of discussing the final revision to the FPIC guidelines. Initial drafts of the proposed new guidelines, however, indicate a drastic amendment of the FPIC process. Foremost of this is the classification of the FPIC process into special and regular FPIC process for particular projects as a means to reduce the period for the conduct of the FPIC (Fig. 4 and 5).

Figure 4. Proposed special FPIC process. (Source: NCIP)

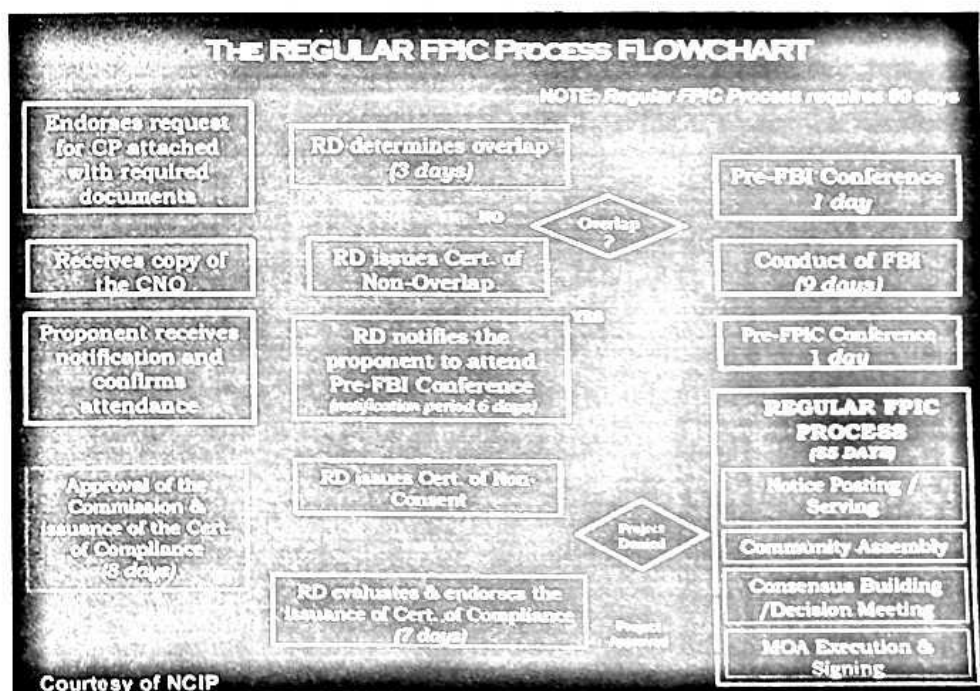


Projects that fall under the Special FPIC process requiring a 47-day processing time include: (a) mining and energy exploration; (2) feasibility

studies; (3) public works and other projects for basic services; (4) NCIP projects; (5) programs/projects/activities (PPA) impinging on spiritual or religious traditions & customs; (6) entry of migrants; (7) access to religious and cultural sites, archeological explorations; (8) PPA not requiring any permit; (9) small-scale exploitation and use of land, water and natural resources; and (10) occupation of military or paramilitary forces, except hot pursuit operations. The special FPIC process requires the participation of the Council of Elders/leaders only.

On the other hand, projects that fall under the Regular FPIC process requiring 90-days processing time include: (1) use of land, water and natural resources; (2) PPA that will displace people; (3) management of protected and environmentally critical areas; (4) industrial land use and ecotourism; (5) large scale agricultural and forestry management; (6) PPA that will affect air space, waters and land; and, (7) Such other activities not requiring ECC. The regular FPIC process requires the participation of ICC/IP members and the Council of Elders/leaders.

Figure 5. Proposed regular FPIC process. *Source: NCIP*



Multi-stakeholder consultations have been conducted to discuss the proposed new guidelines. The general contention is that there is no legal basis for the classification of the FPIC process into special and regular. The IPRA also particularly defines FPIC as the consensus of *all* members of the ICCs/IPs and not just the Council of Elders/leaders. Several advocates have criticized the proposed guidelines in that, among others, it ignored the accessibility and information constraints obtaining in communities. Advocates argue that imposing an unrealistic time limit on the FPIC process provides project proponents with legal basis to put undue pressure on the communities to speed up the process. This ultimately strengthens the already dominant position of the proponents and further weakens and marginalizes the community's position. The draft guidelines likewise provide for the simultaneous conduct of the EIA and FPIC processes and the removal of certain safeguards, such as the posting of a performance bond to answer for consequential damages to the community.

Several fora have been held on the proposed revisions. The results of the Tebtebba Foundation-commissioned case studies were presented in roundtable discussion-cum-validation session in April 2005 and in a national forum in May 2005 with some NCIP Commissioners present. Comments on the draft FPIC guidelines have also been provided by the Legal Rights and Natural Resources Center- Kasama sa Kalikasan/friends of the Earth-Philippines. These comments should be seriously studied and considered by the NCIP in its revision of the draft guidelines.

To date, initial feedback from the NCIP reveals that the draft guidelines have been revised and have taken into consideration some of the comments provided. It no longer classifies the FPIC into special and regular cases. Instead, reduction in processing time has been confined to administration matters under the control of NCIP.

The current draft is currently under *en banc* deliberation by the Commission. Attempts have been made to get a copy of the draft from the NCIP but they have denied access pending deliberation by the Commission. This difficulty in accessing information from the NCIP has also been repeatedly experienced by the researchers of the Tebtebba Foundation-commissioned case studies.

HARMONIZING IPRA, ENVIRONMENT AND NATURAL RESOURCES (ENR) POLICIES AND LOCAL GOVERNMENT POLICIES

Efforts are still underway to address conflicts arising from the interpretation of the provisions of the IPRA and its application in the implementation of ENR programs and projects. There is clearly a need to clarify jurisdiction, authority and responsibilities in the management, protection, utilization and rehabilitation of the environment and natural resources within ancestral domains. Policy dialogues continue to be conducted between NCIP and DENR, Department of Land Reform (DLR) and the Department of the Interior and Local Governments (DILG) to address these conflicts.

V. IMPLEMENTING FPIC: THE EXPERIENCE OF THE CALAMIAN TAGBANUAS

In 2005, WRI commissioned the ELAC to conduct a case study on the experience of the Calamian Tagbanua¹⁴ on FPIC in Coron Island, Palawan. Coron Island is home to the Calamian Tagbanuas.

Coron Island covers 7,320 hectares and is bounded by Mindoro Strait in the east, Municipality of Busuanga in the west, Apo West Pass in the north and Cuyo West Pass in the south. It is one of the three main islands comprising the Calamianes Group of Islands in the province of Palawan.

The island is characterized by three (3) vegetative ecosystems: beach, limestone and mangrove forests. Karst limestone cliffs form a rugged terrain of mountains and narrow valleys covering about 75% of the island while the beach and mangrove forests line the shores. It is part of the Palawan Faunal Region and an integral part of the Indo-Australian archipelago which scientists have considered to be the center of the "coral triangle". Wildlife seen in the island includes the Philippine macaque, wild pigs, porcupines, anteaters, lizards, skunks, hornbill and various parrot

¹⁴ Refers to the indigenous inhabitants of Coron Island, which is also how their language is called. They use the word Calamian to separate it from the Tagbanuas of mainland Palawan. Calamian Tagbanua thus refers to Tagbanuas found in the northernmost section of Palawan.

species. Rare and endangered species like sea turtles and dugong (*Dugong dugon*), have also been sighted. The island is also an important source of supply of edible birds' nests *Collocalia troglodytes*. Floral endemism is high and about 25% of the island is covered by forest species such as *taluto* (*Pterocymbium tinctorium*), *ipil* (*Instsia bijua*), *amugis* (*Koordersiodendron pinnatum*) and *dungon* (*Tarrietia sylvatica*).¹⁵ It is considered a priority protected area under the DENR-National Integrated Protected Area System Project (NIPAP) funded by the European Union because of its biodiversity potential.

Coron Island is known for its famous lakes, among them the Kayangan Lake which has been named as the cleanest lake in the country from 1997 to 1999 and Luluyuwan Lake (also known as Barracuda Lake) which is believed to have barracudas dwelling in the area. Lake Cabugao is the largest lake and it is where the highest point can be found. Only Kayangan and Luluyuwan Lakes are open for tourism but with certain restrictions. The Calamian Tagbanuas consider these lakes sacred and believe that spirits dwell in the area. They seek permission from the elders and or *bapaylan* (shaman) who give them *ulipatbat* (words of permission) to utter while within the lakes to avoid harm. Some of the beaches where their ancestors are buried and the *panyaan*, areas where the *panlalabyut* or a giant human-like octopus resides, are also restricted from visitors.

Coron Island is under the political jurisdiction of the Municipality of Coron which comprises of two (2) barangays: Barangays Banuang Daan (4,100 hectares) and Cabugao (5,262 hectares). Cabugao has an island sitio, Delian. The study area is composed of the 2 barangays which are accessible by pumpboat from Coron town, part of the larger Busuanga Island. Barangay Banuang Daan is composed of 6 sitios with a total population of 546 while Cabugao has 7 sitios with a total population of 1,696. As of 2004, a total of 426 households occupy the island.¹⁶ These villages have facilities like a day care center, health center, elementary school, barangay hall, churches and basketball court. There is no electricity in the island, although some of the sitios have generators that operate from 7 to 11 in the evening.

¹⁵ DENR-NIPAP. 2000. Coron Island Protected Area General Management Plan (Volume 1).

¹⁶ Municipal Briefing Folio, 2005

Many migrants, mostly Visayans, stay in Sitio Dalusan of Banuang Daan for fishing activities during the months of April to October. At present, it is estimated that some 40 migrant families are in Sitio Dalusan. These migrant fishers are permitted to fish provided they use legal fishing methods. In Barangay Cabugao, during the months of November to May, Cuyonins from Barangay Turda stay to buy birds' nest from the Calamian Tagbanua community. In Delian Island, Barangay Cabugao, most of the approximately more than 300 families are Visayans, with only 6 families belonging to the Calamian Tagbanua community.¹⁷

The Calamian Tagbanuas are generally sea-faring people. Their life revolves around the *apuyuk* (lakes), *tal* (corals), *teeb surublien* (ancestral waters), and *leyang* (caves), and other fishing and marine-related activities. The mainland Tagbanuas are characteristically shifting cultivators. During *kamian*, (northeast monsoon), the most important source of cash is the edible bird's nest. For those who have no caves, the northeast monsoon is the time to plant rice, sweet potato, cassava or harvest cashew fruit. During *Aba×at* (southwest monsoon), most of them are engaged in fishing. They do fishing by groups into *Talung Dakulo* (big reef), *Talung Gesye* (small reef) and *Nataktakan* reefs. The Calamian Tagbanuas are inherently unselfish and share their fish catch with other community members when the catch exceeds what a family needs. They also engage in the barter system.

The Calamian Tagbanuas have been on the island since time immemorial and consider the land (*tanek and surublien*) and a portion of the sea (*teeb surublien*) as their ancestral domain.

CORON ISLAND ANCESTRAL DOMAIN CLAIM AND TITLE

The Calamian Tagbanuas secured their Certificate of Ancestral Domain Claim (CADC) through perseverance and unity. In the 1970s, their clan caves were sequestered from them because they did not pay the excessive taxes imposed. Those who were not able to pay had their clan

¹⁷ Rodolfo Aguilar, pers. comm.

caves auctioned.¹⁸ By mid 1980s, migrants from the Visayas region started to populate most of Delian Island and 6 families of the Calamian Tagbanua were left in the island. In the late 1980s, another tax was imposed on them by the Municipal Assessor's office. These experiences made the Calamian Tagbanua realize that they might lose their ancestral home.

In order to regain control of their ancestral territory, Chairman Aguilar applied for a Certificate of Forest Stewardship Agreement (CFSA), a contract with the Department of Environment and Natural Resources (DENR) to allow them to extract logs in a limited volume in exchange for the protection of the forest from illegal activities. The CFSA, awarded in 1990, covered a land area of some 7,748 hectares. The grant of a CFSA to the Tagbanua Foundation of Coron Island (TFCI)¹⁹ encouraged the Calamian Tagbanua of other barangays to also form community organizations.

The CFSA, however, did not cover traditional fishing grounds. In 1992, the Strategic Environmental Plan for Palawan Act (SEP Law or Republic Act No. 7611) was passed allowing the opportunity to re-claim traditional fishing grounds. The Act provided an expanded definition of ancestral domains to include coastal zones and other submerged areas. In that same year, the National Integrated Protected Areas System Act (NIPAS Act or RA 7586) was passed and Coron Island was selected as one of the priority protected areas.

In 1993, DENR made an unprecedented move when it issued DENR Administrative Order (DAO) 02 recognizing the inherited rights of the ICCs/IPs. DAO 02 provided for the recognition and awarding of a CADC, a powerful legal tenurial instrument that granted preferential rights to the tribal communities on extraction, exploitation, management and protection of a delineated ancestral territory. It also defined a process on how ancestral domain perimeters would be delineated and subsequently demarcated.

¹⁸ Dalabajan, D., *The Healing of a Tagbanua Ancestral Homeland*, in *HOPE TAKES ROOTS: COMMUNITY-BASED COASTAL RESOURCES MANAGEMENT STORIES FROM SOUTHEAST ASIA* (E.M. Ferrer, L.P. dela Cruz and G.R. Newkirk eds., CBCRM Resource Center and Coastal Resources Research Network), 2001, at 159-193.

¹⁹ Formed in 1985, the TFCI is also known as *pundasyon* and is composed of 10 officers representing communities of Banuang Daan and Cabugao.

In February 1993, the TFCI applied for the issuance of their CADC with the Community Environment and Natural Resources Office (CENRO). This development influenced the formation of Saragpunta, a federation of Calamian Tagbanua. Saragpunta comes from the word *saragpun* meaning gathering of people, and consists of several community organizations from Barangays Tara, Malawig, Turda, Buenavista, Marcilla, Bulalacao, Camanga and Napaskud, all from the municipality of Coron, Barangay Biong of Culion and Barangay Calautit of Busuanga ²⁰.

In 1996, DENR issued DAO 34 providing the guidelines for the management of ancestral domain claims. This became an avenue for the Calamian Tagbanua to formulate their Ancestral Domain Management Plan; including the codification of their customary laws, beliefs and practices since time immemorial.

When the IPRA law was passed in 1997, the TFCI pursued their application for a CADC. Despite opposition from local officials and other groups, TFCI made progress in its CADC application with the support of non-government organizations such as Conservation International (CI), Philippine Association for Intercultural Development (PAFID) and Environmental Legal Assistance Center (ELAC).

On June 6, 1998, the Tagbanuas received CADC No. RO-CADC-134 covering some 22,284 hectares comprising both land and water. This was the first CADC covering ancestral waters.²¹ The CADC was later converted into a Certificate of Ancestral Domain Title (CADT) on 19 February 2004. The area covered by the ancestral title increased with the addition of 2,236.75 hectares as a result of an error in computation in the last survey. Thus, the CADT covers 24,520.75674 hectares, 7,320.0516 hectares of which are ancestral lands while 16,958 hectares are ancestral waters.

²⁰ Philippine Association for Intercultural Development (PAFID), *Mapping the Ancestral Lands and Waters of the Calamian Tagbanua of Coron, Northern Palawan* p. 44-63, in *MAPPING THE EARTH, MAPPING LIFE* (Bennagen, P.L., and A.G. Royo eds., LRC-KSK/Friends of the Earth-Philippines), 2000, at 152.

²¹ *Id.*, Yasmin Arquiza, *Native Titles Spark Indigenous Revival*, Philippine Center for Investigative Journalism, available at <http://www.pcij.org/stories/2001/cadt.html> (last visited Jan. 23, 2007).

RESOURCE USE AND MANAGEMENT PRACTICES OF THE ANCESTRAL DOMAIN

The Calamian Tagbanuas' resource use and management system is operational within the context of the *panyaan* (sacred water) and the *amlaran* (sacred land), which are considered restricted areas, the observance of customary laws and practices governing resource access and use, and the role of the elders in the observance of customary laws, including the imposition of sanctions and penalties as a means of control and discipline.²²

Tourism

As stated in the Ancestral Domain Management Plan, the current focus of TFCI's management is Kayangan Lake, a famous tourist destination in Coron. A Kayangan Lake Tourism Management Plan was formulated in 1998 through the initiatives of the local government unit (LGU) of Coron, national agencies, civil society groups, TFCI and other key stakeholders.

Since 2001, the TFCI has been collecting entrance fees for the use of Kayangan Lake, Barracuda Lake and adjacent beaches.²³ The TFCI tour package in Coron Island includes a visit to Kayangan Lake and the beaches (Php 375/person inclusive of entrance and boat ride); diving at the Barracuda lake and beaches (fee is inclusive of entrance and boat ride and exclusive of diving equipment) It is largely run by volunteers from the ICCs/IPs who serve as rangers, guides and boatmen. The peak season for tourists are the months of November, December, March, April and May. Entrance fees and visitor regulation are meant to protect the: (a) fragile habitat of the swiftlets that dwell on the cliffs around Coron Island; (b) fish breeding areas or sanctuaries; and, (c) areas considered sacred to the Calamian Tagbanuas. The TFCI also puts priority in maintaining the

²² La Viña, A., *Community-Based Approaches to Marine and Coastal Resources Management in the Philippines: A Policy Perspective* (2001) 106-113, in .Torrell M. and Salamanca A. eds., *INSTITUTIONAL ISSUES AND PERSPECTIVES IN THE MANAGEMENT OF FISHERIES AND COASTAL RESOURCES IN SOUTH EAST ASIA*, 91.

²³ Conservation International-Philippines, *Estimation of the Opportunity Cost of Tourism in the Kayangan Lake, Coron Island, Northern Palawan*.

cleanliness and sanctity of the place and has set up a Code of Ethics to guide visitors in Kayangan Lake.

The entrance fees are also used for the area's upkeep, operation and maintenance patrol boats, and compensation for volunteers who monitor and ferry visitors to and from Coron town. While TFCI has its own tour package, other private operators are also allowed to bring in their own tourist-visitors for as long as the entrance fees are paid. Entrance fees to Kayangan Lake are Php200/person for non-Calamianes residents and foreign tourists and Php10/person for residents of the Calamianes. Entrance fees to other areas such as Barracuda Lake and Coron Island beaches are Php75/person.²⁴

The poverty experienced by the Calamian Tagbanua and the influence of migrants surrounding the Calamianes Group of Islands are key factors that affect their relationship with one another. The elders acknowledge that there exists conflict within the community pertaining to the management of Kayangan Lake and other related issues. They recognize that efforts need to be undertaken to address these conflicts, which range from lack of transparency and participation in the plans and programs to perceived inequitable distribution of proceeds from tourism revenues.

Fisheries

The Calamian Tagbanuas harvest more from the sea than from the forest, hence their strong clamor for recognition of their claim over ancestral waters as an integral part of their ancestral domain. Both land and sea are essential for their daily subsistence and the preservation of their way of life. While they consider the marine resources as part of their ancestral domain, they believe that the sea is a communal property and is not for their exclusive use.²⁵

They observe customary laws and practices in regards to fisheries resource use and management, and respect for *panyaan* (sacred areas) and

²⁴ *Id.*

²⁵ La Viña, *supra* note 22.

imbakan tungian (fish sanctuary). Access and use of resources in sacred areas may only be given to a Tagbanua by the elders and the community *albularyo* (medicine man). In these areas, an individual must adhere to strict observance of behavior and silence to avoid disturbing or offending the spirits. Fishing or gathering of resources by Tagbanuas and non-Tagbanuas is prohibited in these areas to protect them from the wrath of the spirits inhabiting the sacred areas. These areas are also considered crucial to the sustainability of their natural resources, their ancestral domain, and the survival of present and future generations of their people.

The Calamian Tagbanuas practice subsistence fishing, getting only what they need for the day since electricity is absent on the island. Only a few families are involved in commercial fishing. However, migrants from Luzon and Visayas are also in the area engaged in commercial fishing, and use destructive fishing techniques. These techniques have posed serious challenges to the traditional management practices of the Calamian Tagbanua.

Other uses

Besides fishing, the Calamian Tagbanuas have traditionally used their ancestral waters for salt-making, as a treating agent, for medical applications, for navigation and recreation. Salt-making has long been stopped since it is sold almost everywhere. Seawater is used as a treating agent to remove poison from *kurut*, one of their edible wild tubers, before it can be eaten. *Kurut* is soaked in saltwater for days and then removed from the sea, dried and soaked again until it is ready to be cooked and eaten. Nipa and bamboo are similarly treated to prevent the infestation of *bukbuk* (wood boring insects) and to make them last. These are used as roofing materials, although steel roof are now also used by some.

The Calamian Tagbanuas also use seawater for medical purposes. Seawater mixed with leaves of guava is used to hasten the drying of wounds. To counter drowsiness and vomiting, steam from boiled seawater is inhaled while enclosed in a blanket. Other uses of the ancestral waters include navigation and recreation, such as swimming.

Their resource management also covers the cliffs of the island down to the valleys, lakes, rivers as well as the mangroves. Forest resources are communally owned and no individual is allowed to own even a portion of the forests. Everyone in the community is allowed access to these resources for as long as these rights are not abused. Cutting trees near streams, springs, wells and the coast is prohibited. They recognize the value of these resources as watersheds which ensure irrigation of their crops and prevent soil erosion. They also recognize the value of the mangrove ecosystem to their marine environment.²⁶

IMPLEMENTING FPIC: BENEFITS AND CHALLENGES

Benefits

The elders and leaders of Coron Island practice FPIC. The acceptance or rejection of any development program, project or policy is determined by the Council of Elders (*mame'pet*) and leaders representing the whole ancestral domain. In their culture, such decision is recognized and respected.

While majority of the members of the community, especially in Banuang Daan, are unaware of the intricacies of the FPIC process as well as their acquisition of the CADT, they consider this as a major achievement since their homeland is now legally secured. According to those interviewed, the benefit of having a CADC and/or CADT is the protection of the resources within their domain. The protection of the bird's nest habitat will ensure adequate swiftlet population and sustainable source of nests. Other protection activities such as the establishment of fish sanctuaries would allow the regeneration of degraded fishing areas and depleted fish population.

The exercise of FPIC has enabled the community to regulate or restrict the entry of visitors and tourists to Coron Island. The fact that the entrance fees are being paid by visitors and tourists shows that the community has succeeded in asserting their right to manage, develop and protect their ancestral territory.

²⁶ *Id.*

The local government has also given their trust to the Calamian Tagbanuas to manage Kayangan Lake and the beaches in the island following the award of their CADC, and subsequently their CADT. While it has discontinued its allocations for the maintenance of Kayangan lake, it continues to provide funds for social services.

The Coron Island experience has also encouraged other ICCs/IPs to exercise FPIC even without any CADC or CADT. In Barangay Buenavista, Coron, the Council of Elders and leaders together with the community vehemently opposed the proposal of a business group and the LGU to establish a shipyard within their ancestral domain. Moreover, the barangay officials, majority of whom are Tagbanuas, enacted a resolution prohibiting any major development that would degrade the environment and their cultural integrity.

The study illustrates that the exercise of FPIC is an important and fundamental tool to ensure that the community benefits from the resources within their ancestral territory. Among others, it has given them a new tool to protect their environment and to obtain a bigger share of the economic benefits of their natural resources.

Challenges

The Calamian Tagbanua community faces internal and external challenges. Internally, they need to address the conflict between the Council of Elders leaders and members, particularly in Banuang Daan. According to Ernesto Aguilar, the Council of Elders must inform and update them on the projects and programs being implemented in the island. It is the perspective of the Calamian Tagbanuas of Banuang Daan that the issuance of the CADC and CADT has resulted in the animosity between and among them. While they acknowledge and value the decisions made by the Council of Elders, they complained about the lack of transparency and non-participation of the community in any decision making relating to projects and or programs taking place in the area.

As mentioned by Punong Barangay Rogildo Aguilar and Barangay Kagawad Herminia Aguilar of Banuang Daan, their barangay did not benefit from the income of Kayangan Lake and other ecotourism sites within Coron Island.²⁷ They believe that there is mismanagement of the Kayangan Lake project. The barangay officials have expressed a desire to enact a resolution not to allow or permit TFCI to implement any further projects in Banuang Daan. Other community members lament that Coron Island continues to suffer from illegal fishing practices of cyanide and dynamite, and declining fishery resources. Addressing the internal conflict requires organized efforts and resources but these have to be started.

An external challenge is the seeming apathy of the LGU. Although the Municipal Tourism Officer and Budget Officer of Coron have indicated that the LGU has given its trust to the Calamian Tagbanuas to manage Kayangan Lake and the beaches in the island following the award of their CADC, and subsequently their CADT, former Coron Mayor Alberto G. Enriquez asserts that the lakes and white beaches should be excluded from the CADC/CADT. The LGU wanted Coron to be developed as a major tourism destination under the Tourism Master Plan project being undertaken by the Department of Tourism (DOT). Mayor Enriquez felt that the CADC/CADT will complicate the efforts of the LGU to pursue its own plans for Coron Island and affect progress and development in the municipality. It was noted that the LGU made a total allotment of Php147,000 ranging from an annual budget of Php 5,000 in 1977 to Php 70,000 in 1992 for the maintenance of Kayangan Lake and other white beaches and tourists spots.²⁸

Though the FPIC process is being practiced by the ICCs/IPs of Coron Island, the same is not sometimes recognized and respected by other local government officials and private individuals, hence continuous information dissemination by the NCIP is important.

²⁷ The benefit mentioned is the tangible entity and/or their share in terms of cash.

²⁸ Validation Report: Ancestral Domain Claim of the Indigenous Cultural Community of Barangay Cabugao and Banuang Daan, Coron Island, Coron, Palawan. In National Commission on Indigenous Peoples, ADO Report on the Conversion of R4 CADC into CADT of Tagbanua Tribes in Coron, Province of Palawan with an area of 24,256.76 Hectares.

The community is faced with another challenge – fulfilling the NCIP requirement as regards the conversion of their ADMP to the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). It is noted though that the task of refining and enhancing their management plan will move the community to another level of involvement and commitment to their ancestral homeland.

FINDINGS AND RECOMMENDATIONS

Findings

The study on the application of FPIC among the Calamian Tagbanuas of Coron Island provides an example of an ICC/IP's search for collective maturity in confronting present day realities that challenge their age-old methods of interacting among each other and towards outsiders, and prove their capacity to exercise responsibility over their CADC/CADT.

The case study shows that participation is a key issue for ICCs/IPs, particularly as their history has been one of exclusion from decision making in development activities and from governance bodies. Community participation and involvement is crucial in the FPIC process in order to ensure unity among them in the exercise of their rights. The study also demonstrates that the FPIC, as a tool for governance, delivered positive benefits to the community on one hand but also posed difficult challenges to their unity.

The FPIC has allowed the Calamian Tagbanuas to strengthen their legal rights to their ancestral domain. Their awareness of their own rights as a community has reached a point where the exploitation by outsiders that used to happen in the past had been controlled. No longer is there a threat of outsiders being able to force them out of their own land, a fate that has befallen many indigenous communities in the past and even at present in parts of the country.

The FPIC has also empowered them to a point where they can now challenge traditional government systems centered on formal political structures and decision making processes. The LGU of Coron for its part

found itself coping with an empowered community and ended up not being able to impose its own plans on how, for instance, Kayangan Lake should be tapped for tourism purposes.

The FPIC also provided benefits to the Calamian Tagbanuas by protecting the swiftlet population and habitats, coral reefs, and sanctuaries, which are the lifeblood of their economic activities and cultural heritage.

Recommendations

While the realization of the CADT and the FPIC implementation has become a milestone in their struggle for recognition and self-determination, the significance of a very strong community organization and leaders is essential in the process. The study proposes the following courses of action to strengthen the FPIC as a tool for governance:

- (1) One is to conduct a systematic information and education campaign to increase awareness on the CADC/CADT issue both among the Tagbanua population and the other stakeholders of Coron. Efficient awareness activities or trainings on indigenous peoples' rights should be undertaken for the LGUs, other government agencies, and other non-IP stakeholders should be conducted. The experience of the Tagbanuas of Coron in securing recognition over their ancestral domain has been characterized by adversarial struggles with the LGU and even with the private sector, the latter being less supportive or apathetic to the Tagbanua's objectives. While the CADC/CADT instruments empower the communities to protect their culture and contribute to overall national growth, there are, as in the case of Coron, prevailing misconceptions over the value of such policies. These awareness activities can even highlight, for instance, the value of building a partnership between the LGU, ICCs/IPs and other stakeholders in addressing the rampant illegal fishing activities in the Coron.

Increasing local awareness of the FPIC tool will help minimize conflict and misunderstanding among the stakeholders. There is also a need to document the accomplishments and/or failures of the ICCs/IPs on its approaches and methods on FPIC. Support should be provided for the elaboration of a guidebook on FPIC.

- (2) Another proposal is to undertake an assessment of the capacity of the Tagbanua community in dispensing management responsibility over their ancestral domain and implementing a capacity building program to address the gaps in their management capacity. The assessment process will elevate their capability in managing their ancestral domain specifically on the aspect of tourism (e.g. the management of Kayangan Lake and beaches) and minimizing the illegal and destructive activities which threaten the coastal/marine resources within the domain.

The local capacity of the community in meeting the rigorous requirements and responsibilities attendant to the grant of CADC/CADT should be strengthened. The CADC/CADT systems require technical capacity and organizational and managerial skills on the part of the community to be able to deliver on the responsibilities imposed on them by law. In the case of Coron Island, the seeming weakness in the capacity of leaders and groups tasked with specific responsibilities has caused conflicts and deep internal struggles within the community. Building the capacity of the communities requires effort, but it will also generate greater benefits. Training indigenous peoples on their rights increases their awareness of their claims and enhances their participation in policy and political processes.

Indigenous peoples' organizations should also be supported so they have sufficient capacity and funding to monitor the FPIC implementation and to ensure their participation.

- (3) Another proposal is to develop and introduce a more deliberate and immediate conflict resolution mechanism within the community and integral to the FPIC process, in order for them to gain a common appreciation of priority concerns and projects in the community. The conflict resolution process will foster the openness of the leaders and members of the community and strengthen their partnership with the LGUs, national government agencies.

There is need for more in-depth discussions and dialogues among them and between the TFCI to resolve organizational conflicts as well as with the governments, intergovernmental bodies and the broader society to develop further perspectives on the development of indigenous peoples. The recognition of the indigenous peoples' claims for individual and collective rights is crucial for a just and sustainable solution to the need for

equity. The LGUs and other government agencies should contribute to the ongoing process of discussing and defining indigenous peoples' rights and implement existing instruments for the recognition of such rights.

- (4) The government should also develop and adopt policies that will increase the share of these communities from the extraction of their natural resources.

VI. CONCLUSION

FPIC is an important tool for the empowerment of indigenous peoples. It definitely protects indigenous peoples from physical intrusion by giving them a seat in the negotiating table at the very least. It has potential for helping communities benefit economically from their resources, and it can be a tool for good natural resources and environmental management.

But there are implementation issues - from the side of the government and from the community as well. A continuing major concern is the manner by which provincial and local officials and national agencies have pursued or promoted major development projects, such as commercial mining, in areas being claimed as ancestral domains. While most officials have assisted development project proponents in securing clearances from the barangay, municipal and provincial officials, the manner by which the FPIC process has been facilitated leaves rooms for improvement and full commitment to the rights accorded to the ICCs/IPs under IPRA. Much more needs to be done to implement the IPRA and the FPIC process appropriately. One reason for this is the ignorance or lack of knowledge of many local officials on the IPRA law, particularly, the Certification Precondition and FPIC requirements. Another concern is the involvement of some NCIP personnel in securing the approval/consent of indigenous communities with regard to development projects.

The same ignorance or lack of knowledge of the IPRA and the FPIC process confronts ICCs/IPs. There is a need to strengthen their overall capacity, particularly in making them fully aware and understand their rights under IPRA so that they are empowered enough to confront and constructively interact with major development issues obtaining in their ancestral domain. There is also a need to strengthen their capacity in terms

of resource management as this would be critical to attaining an equitable distribution of benefits among community members.

The Calamian Tagbanuas' CADT over Coron Island and the implementation of the FPIC process has become a model of ICC/IP empowerment in Palawan. This has provided them the decision-making authority over access and use of their land and resources. While FPIC has been good for the community and for the environment, it has also created challenges to the Calamian Tagbanuas in their relationship with each other and in dealing with outside stakeholders and in their relationship with others. This can help serve as a management model for guidance to other ICCs/IPs in the country.

There is no retreat from FPIC, especially since it is now emerging as an international norm. The better way forward is to address these issues, concerns and challenges to fully achieve their right to self-governance and empowerment.

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