



THE PHILIPPINE ICCA PROJECT

**Strengthening National Systems to Improve Governance and Management
of Indigenous Peoples and Local Communities and Conserved Areas and Territories**

**PROCEEDINGS
of the Stakeholders' Consultation and Policy Dialogue
for the ICCA Bill and the E-NIPAS Bill**

**University Hotel, University of the Philippines
Diliman, Quezon City
March 20-21, 2017**

**DAY ONE
MORNING SESSION, MARCH 20, 2017**

Purpose of the Consultation

Before the program began, Giovanni Reyes, convener of the National Coalition of Indigenous Peoples' Organizations (KASAPI), and the Philippine ICCA Consortium (BUKLURAN), informed the members of KASAPI-BUKLURAN that this consultation was organized on the suggestion of Representative Teodoro Baguilat, Jr. The aim of the consultation was to clarify the manner in which overlapping Protected Areas (PAs), Ancestral Domains, and Indigenous Communities Conserved Areas and Territories (ICCAs) would be governed.

Indigenous leaders from ICCAs all over the country, representatives from civil society organizations (CSOs) and government agencies were in attendance.

The CSOs present were Tebtebba Foundation, Non-Timber Forest Products (NTFP), Ugnayang pang-Aghamtao (UGAT), the Asian NGO Coalition (ANGOC)/ International Land Coalition (ILC), a co-sponsor of the Consultation and Policy Dialogue.

The government representatives present were from the Department on Environment and Natural Resources' Biodiversity Management Bureau (DENR-BMB), and the National Commission on Indigenous Peoples (NCIP).

Opening Remarks and Rationale

The day began with prayers led by indigenous leaders Sannol Casim from Balabac Island, Palawan, Datu Johnny Guina from Mt. Kalatungan National Park, Bukidnon, and Manuel Ebenga, Jr. from the Egongot Key Biodiversity Area (KBA), Aurora. The national anthem was led by Teresa Gaspar from Mt. Taungay, Kalinga.

Datu Makalipay Rico, from Mts. Mahagkot, Kiluntudan and Tagibo Ancestral Domains, Agusan del Sur, and chairperson of BUKLURAN gave the opening remarks. He told the gathering about his father's passing in March, which prevented him from attending previous meetings on the ICCA Bill. He said that among the Manobo and Higaonon, the elders leave behind dying wishes which must be honored.

Before he died, Datu Rico's father said to him, "Continue to stand up for self-determination, protect the Ancestral Domains, do not let our culture and beliefs disappear."

Datu Rico shook his head as he confided that this was a heavy responsibility. He went on to say, "We recognize that we are part of the Philippine state. We are not trying to separate ourselves, as long as our cultures, beliefs, and customary laws are respected. We are striving to indigenize the law... Inside the Ancestral Domains, there are no categories, no divisions. The Ancestral Domains is a whole. We are strong in our resolve because of our Ancestral Domains."

Datu Rico appealed to the government representatives: "Let us clarify and strengthen our links of communication and coordination."

Angel Uson of the Project Management Unit (PMU), explained the rationale for the consultation further. The need for the present consultation arose in the February 9, 2017 session of the Technical Working Group (TWG) for House Bill No. 115, hereafter referred to as the ICCA Bill. It was deemed necessary to consult indigenous peoples whose Ancestral Domains and ICCAs overlap either fully or partially with Protected Areas (PAs) under the National Integrated Protected Areas System (NIPAS), in order to find ways to resolve conflicting laws, policies, and stakeholders' expectations of the ICCA Bill. Specific provisions needed to be discussed. The consultation would address questions raised by the DENR, the NCIP, and indigenous peoples on their respective roles in governance, coordination, and leadership.

Uson raised some key questions for the stakeholders to consider: What is the role of the Protected Areas Management Board (PAMB) and the NCIP in areas where ICCAs or Ancestral Domains and Protected Areas overlap? What are the recommendations of indigenous peoples on the roles of the DENR and the NCIP in such situations? Who will govern and manage the overlapping areas? What forms of governance will be applied?

She added that this would not be the last consultation. “There will be more discussions..., until we can be sure that the ICCA Bill is truly a bill for indigenous peoples.”

She ended by thanking the indigenous leaders who sacrificed their time and willingly took the long journey to participate in the consultation.

Outline of the Process

Attorney Jun Quicho of the Small Grants Programme 5/Global Environment Facility (SGP5/GEF) Project served as facilitator for the policy review. He emphasized that the ICCA Bill and Senate Bill No. 32, or the Expanded National Integrated Protected Areas System Bill (ENIPAS Bill) must be in agreement over the treatment of ICCAs and Ancestral Domains in PAs. The ENIPAS Bill is currently a priority in the Upper House, thus there was some urgency to the consultation. He urged the gathering to arrive at a consensus, not a compromise, in order to make a stronger, unified stand. He also reminded the indigenous leaders to consider the non-negotiables, as well as the points that could be agreed upon by all stakeholders.

He outlined the sequence of discussions and small group workshops as follows:

1. Law and policy review.
2. Plenary discussion on the policies.
3. Workshop: What are the policy problems/issues we need to discuss?
4. Plenary discussion on the problems identified.
5. Workshop: The search for solutions.
6. Plenary discussion: Developing provisions out of the suggested solutions.
7. Workshop: Are the drafted provisions satisfactory?
8. Plenary discussion: Arriving at a consensus on the provisions.
9. Workshop: Defining the roles for DENR, NCIP, local government units (LGUs), other government agencies, non-government organizations, the private sector, and the academe.
10. Plenary: Dialogue with the government agencies and CSOs present.

Policy Review

After explaining the sequence of workshops and discussions, Quicho reviewed sections of international policies and provisions of national laws that are relevant to the ICCA Bill, and which uphold the rights of indigenous peoples:

- **Article II, Section 22 of the Philippine Constitution of 1987** states that “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”
- **Article XII, Section 5 of the Philippine Constitution** states 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. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.”
- **Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** states that “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”
 - **Article 26 (2) of the UNDRIP** states that “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”
 - **The Indigenous Peoples’ Rights Act (IPRA) of 1997** recognizes the Right to Ancestral Domains and Land, the Right of Self-Governance and Self-Determination, the Right to Cultural Integrity, and social justice. Quicho highlighted Section 58 of the IPRA.
 - **Section 58 of the IPRA, on “Environmental Considerations,”** states that “Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full cooperation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect, and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent. Provided, that the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer. Provided, further, that no ICCs/IPs shall be displaced or relocated for the purpose enumerated in this section without the written consent of the specific persons authorized to give this consent.”
 - **Section 11 of the National Integrated Protected Areas System (NIPAS)** states that “A Protected Area Management Board for each of the established protected area shall be created and shall be composed of the following: The Regional Executive Director under whose jurisdiction the protected area is located; one (1) representative from the autonomous regional government, if applicable; the Provincial Development Officer; one (1) representative from the municipal government; one (1) representative from each barangay covering the protected area; one (1) representative from each tribal community, if applicable; and, at least three (3) representatives from non-government organizations/local community organizations, and if necessary, one (1) representative from other departments or national government agencies involved in protected area management.”

- **Section 13 of the NIPAS**, on “**Ancestral Lands and Rights Over Them**,” states that, “Ancestral lands and customary rights and interest arising shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, that the DENR shall have so power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, That all rules and regulations, whether adversely affecting said communities or not, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community.”
- **The Convention on Biological Diversity, Aichi Target 18**, states that, “By 2020, the traditional knowledge, innovations, and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.”

Quicho identified the following sections of the ICCA Bill as relevant to the consultation:

- **Section 6, on the Protection and Privileges of ICCAs**, which states that, “ICCAs are hereby declared as no go zone for mining and other destructive forms of natural resource exploration, development and utilization. These activities shall likewise not be allowed outside ICCAs if it will adversely impact the ICCA.”
- **Chapter III on Registration and Mainstreaming of ICCAs**, particularly **Section 10 on the National ICCA Registry**, which states that, “To ensure the availability of official information on ICCAs, there is hereby established a centralized information management system to be known as the National ICCA Registry. The National ICCA Registry shall contain records of all pertinent information voluntarily submitted by the concerned ICC/IP regarding their respective ICCA.”
- **Chapter III, Section 11 on Implementing Arrangements and Operational Structures**, which states that, “The NCIP and the DENR, in consultation and cooperation with ICCs/IPs, shall lead in the establishment of the National ICCA Registry and shall be jointly responsible for its management and maintenance: Provided, that all information and data in the National ICCA Registry shall be owned by the ICC/IP providing such information and data as part of their community intellectual property rights.”
- **Chapter III, Section 13 on Inclusion in the Protected Area Management System**, which states that, “In cases where ICCAs overlap with Protected Areas, the ICCAs shall be recognized and included in the management systems of protected area and KBAs. IKSPs and Customary Laws of ICCs/IPs duly documented shall be recognized and respected. ICCA plans and conservation practices shall be harmonized into the Protected Area Management Plan of the protected area.”

- **Chapter III, Section 14 on the Procedure for formal recognition and listing of ICCAs**, which states that, “Within six (6) months from the effectivity of this Act, the NCIP and the DENR, in consultation with the ICCs/IPs, shall jointly issue the procedural rules and regulations for the recording and listing of ICCAs in the National ICCA Registry. The procedure shall provide guidelines for the documentation and mapping of ICCAs, documentation of Indigenous Knowledge Systems and Practices (IKSP) for biodiversity and conservation management by the ICCs/IPs themselves or with the assistance of government and non-government entities at the option of the ICC/IP. It shall also provide for the incorporation of the ICCA in the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP).”
- **Chapter IV on the Role of Government Agencies**, particularly **Section 15 on the Role of the DENR**, which states that “The DENR shall be the primary government agency responsible for the full implementation of this Act and shall provide technical assistance to requesting ICCs/IPs biodiversity assessments and survey, mapping of the ICCA. Upon the formal request of the concerned ICC/IP, the DENR shall provide technical assistance for the international recognition of ICCAs through their listing or registration with the ICCA Registry, the World ICCA Database, or other similar global platforms or networks, among others. The DENR shall likewise provide information on the location of KBAs identified in the Philippine Biodiversity Conservation Priority Setting Program and its iterations or updates.”
- **Section 16 on the Role of the NCIP**, which states that, “The NCIP shall protect and promote the interest and well-being of the ICCs/IPs in the context of biodiversity conservation and climate change mitigation and adaptation. The NCIP shall convene periodic national and subnational conventions of ICCs/IPs, government agencies, private sector and civil society to review, assess, as well as propose policies or plans to further promote ICCAs. It shall also ensure that ICCA concerns and issues are included and addressed in the ADSDPP of the concerned ICCs/IPs.”
- **Chapter V on Incentives**, particularly **Section 19 on Incentive Schemes**, which states that, “The DENR, in coordination with the NCIP, shall develop sustainable livelihood opportunities for ICCs/IPs particularly those consistent with traditional practices and resource use that contribute to the sustainable development and proper management of the ICCAs. In all cases, the interests and well-being of the ICC/IP concerned shall be paramount.”

The following key sections of the ENIPAS Bill were highlighted:

- **Section 13.1 on the Recognition of Indigenous Peoples and Local Communities Conserved Areas and Territories**, in the Senate Bill states that, “– (A) Pursuant to Sections 7(B), 9 (A), and 58 of Republic Act No. 8371, otherwise known as the “Indigenous Peoples and Indigenous Communities Conserved Areas (ICCAs) and Territories within the protected area shall be recognized and respected. The PAMB and PASU shall assist ICCs/IPs concerned in the documentation and registration of ICCAs, and the community preparation

of Community Conservation Plans. The identified ICCAs and the Community Conservation Plans shall be harmonized with the Protected Area Management Plan and Zoning. The Protected Areas Management Plan (PAMP) shall include a component on ICCAs. The documentation and mapping of ICCAs shall be undertaken in the preparation, modification, or revision of the PAMP. The PAMB shall likewise consider ICCA issues and concerns in all management planning and the decision making processes. The PAMP and the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) shall be harmonized to ensure the protection of biodiversity, sustainable use of natural resources, and to maintain cultural integrity.”

- The provision suggested by the DENR-BMB, **Section 14.1 on Ancestral Lands and Rights**, which adds an amendment on ICCAs in PAs and overlapping ICCAs and PAs. “SEC. 14. Ancestral Lands and Rights. – Ancestral lands and customary rights and interests shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern the activities to be conducted within ancestral lands within the protected areas: Provided, That the DENR shall not, at any time, evict indigenous communities from their present occupancy, or resettle them to another area without their consent: Provided, however, That all rules and regulations, whether or not adversely affecting said communities, shall be subjected to notice and hearing to be participated in by members of concerned indigenous community.

ICCAs THAT OVERLAP WITH PROTECTED AREAS SHALL BE RECOGNIZED AND RESPECTED. IN AREAS WITH PARTIAL OVERLAP, A MECHANISM FOR COORDINATION AND COMPLEMENTATION BETWEEN THE INDIGENOUS TRADITIONAL LEADERSHIP AND GOVERNANCE STRUCTURES AND THE NCIP, DENR, THE PAMB, AND THE PASU SHALL BE CREATED. THE NCIP, DENR, AND PAMB SHALL PROVIDE FULL AND EFFECTIVE FINANCIAL AND TECHNICAL ASSISTANCE, CAPACITY BUILDING AND/OR ENHANCEMENT TO REQUESTING ICCS/IPS IN THE IDENTIFICATION, DOCUMENTATION, SURVEY AND MAPPING, RECOGNITION OF ICCAS, BIODIVERSITY ASSESSMENT, PREPARATION OF COMMUNITY CONSERVATION PLANS, INTERFACING OF THE CCP IN THE ADSDPP, THE INTERFACING OF THE ADSDPP INTO THE PROTECTED AREA MANAGEMENT PLAN, AND THE COMPREHENSIVE LAND USE PLAN/S OF THE CONCERNED LGU/S. THEY SHALL ALSO PROVIDE FINANCIAL AND TECHNICAL SUPPORT FOR THE RECOGNITION OF ICCAS THROUGH THEIR LISTING OR REGISTRATION WITH THE NATIONAL ICCA REGISTRY AND SIMILAR GLOBAL PLATFORMS OR NETWORKS, AMONG OTHERS, UPON THE FORMAL REQUEST OF THE CONCERNED ICCS/IPS. FURTHERMORE, THEY SHALL TAKE INTO ACCOUNT ICCA ISSUES AND CONCERNS IN ALL MANAGEMENT PLANNING AND DECISION-MAKING PROCESSES.

IN AREAS WITH FULL AREA OVERLAP, A PROCESS SHALL BE ESTABLISHED FOR ICCS/IPS TO DECIDE WHAT THE BEST

GOVERNANCE MECHANISM IS OVER THE AREA. A MECHANISM FOR COORDINATION AND COMPLEMENTATION BETWEEN THE INDIGENOUS TRADITIONAL LEADERSHIP AND GOVERNANCE STRUCTURE, THE NCIP AND THE DENR SHALL BE CREATED.”

Indigenous Leaders Respond to the Policy Review

Eight indigenous leaders responded to the law and policy review, and spoke about their experiences in protecting their Ancestral Domains and ICCAs.

Datu Ed Banda, from the Mt. Apo National Park, Davao, spoke of the importance of settling conflict around the boundaries of neighboring ancestral domains, and shared the successes of their efforts on Mt. Apo. He also noted contradictions in the implementation of the NIPAS. He questioned the ease with which banana plantations, business interests, and land grabbers were able to encroach on the protected area. To him it appeared that the NIPAS law was not effective in keeping encroachers out of protected areas. Ironically, he said, peasant settlers inside protected areas question indigenous peoples, who are in fact within their ancestral domains. In Datu Banda’s view, there should be no overlap: NIPAS in protected areas, indigenous governance in ICCAs.

Salvador Dimain, called “Ka Badong” by his friends, from Subic Bay National Park, Zambales said he was striving on his own to study the laws and that he finds that there are too many contradictions. He expressed hope that the ICCA Bill would become a law, to resolve the contradictions. Ka Badong expressed anxiety over the fate of the ICCA Bill.

Datu Makalipay Rico was adamant that indigenous self-governance and customary laws must be recognized before mechanisms can even be discussed. Referring to the history of incursions into indigenous territories, he pointed out that the current land laws of the Philippines continue to be based on the Regalian Doctrine. This is a significant point he raised, for the enactment of IPRA should have rendered invalid the basis for the continuing imposition of the Regalian Doctrine on indigenous territories.

Datu Rico concluded, “We respect them, the support groups, the government, NGOs, but I will not accept that we – that traditional governance – should overlap with NIPAS. NIPAS entered our territory. Because Mt. Apo is there and you can’t move the mountain. You can’t transfer Mt. Apo to Manila, can you?”

Datu Johnny Guina stressed the need for partnership between indigenous peoples, the DENR, and the NCIP.

“While it is true that indigenous peoples were there first, and that customary law was there first and that it continues to be practiced to this day, where will we go when mining and other investors want to enter [the Ancestral Domain]? The NCIP and DENR should

be with us... If we have no allies, if illegal logging or mining want to enter, just one gunshot and we'll have lost.”

His reference to gunshot alluded to the threat of violence that hovers over the lives and lands of indigenous peoples, especially in areas where external interests encroach on Ancestral Domains. He also spoke of the phenomenon of “tribal dealers” – indigenous leaders who accept money and yield to business interests in the Ancestral Domain, regardless of the wishes of the rest of the community.

Lagtum Pasag, from the Mts. Iglit-Baco National Park, Mindoro, asserted that indigenous peoples, the environment, and ancestral domains are intertwined and cannot be separated from each other.

“When we say nature, indigenous people, Mangyan, it is like saying Mindoro, tamaraw, Mangyan...”

He pointedly asked why so many sectors are interested when it comes to the environment, but when land is grabbed from indigenous peoples, no one comes to their aid. He described the situation in Mindoro in which migrants take over indigenous lands. Left with no recourse, indigenous groups move into the forest where they are accosted by the DENR for practicing traditional slash-and-burn agriculture. Pasag also alluded to ecological services when he spoke of how waters flowing from their ancestral domains benefits all those in the lowlands. He concluded by saying that protecting the environment and securing tenure for indigenous peoples should advance together.

Manuel Ebenga, Jr. shared their experience in crafting a document called the Exercise of Priority Rights (EPR) for their ancestral domains. With the EPR in place, he said, investors who have interests in ancestral domains must first approach indigenous peoples for permission, and not attempt to fix an agreement with LGUs. He suggested that the EPR is a good thing for other indigenous groups to have. He said further that indigenous peoples must not allow their traditions and customary laws to disappear, and that it is the latter that should prevail in protecting the environment.

Teresa Gaspar shared her observations as a leader who has spent decades of her life advocating for indigenous peoples’ rights. She pointed out that while Section 13 of NIPAS and Section 58 of IPRA recognize indigenous rights in conserving their ancestral domains, indigenous peoples themselves are left out when it comes to the implementation of these laws.

“We pushed for the IPRA to become a law. We knew that this law was for us. But now that the law is being implemented, where are we? We are no longer part of implementation. The NCIP is in charge. But who fought for the IPRA? Who defended it in 1997? We did.”

She specified Section 11 of the ICCA Bill as particularly contentious for her, because it identifies DENR and NCIP as the government agencies in charge of the National ICCA Registry. She called on the support groups and government representatives present to see to it that indigenous peoples would not be excluded from the implementation processes that will be put in place by the ICCA Bill.

Workshop 1: Identifying problematic and/or missing provisions.

The indigenous leaders were divided into three groups. Quicho asked them to consider the following key questions regarding the ICCA Bill. The workshop groups discussed the questions among themselves for a 20-30-minute period.

- Which provisions are problematic?
- What provisions are lacking?

Participants wrote their responses on metacards. When they reconvened in a plenary session, the metacards were placed on the board for all to see. They identified the following sections of the ICCA Bill as needing revision or further discussion:

Section 6 on the Protection and Privileges of ICCAs. Section 6 declares ICCAs as no go zones for mining and other destructive forms of natural resource exploitation, development and utilization.

- It was recommended that other destructive activities be mentioned, such as road construction and quarries.
- Consent, or Free and Prior Informed Consent (FPIC) was also raised as a point to be considered in relation to protection, privileges, and prohibited acts.
- It was recommended that the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) be included in Section 6 as the plan that will be followed in ICCAs.

Section 8 on ICCAs in Key Biodiversity Areas. Section 8 states that ICCAs within or encompassing KBAs shall be managed in a manner consistent with conservation of biodiversity.

- An insertion was recommended: “indigenous cultural communities/indigenous peoples have the right to maintain, manage, and develop ICCAs.”

Section 11 on Implementing Arrangements and Operational Structures. Section 11 states that the NCIP and DENR shall lead in the establishment, management, and maintenance of the National ICCA Registry, in consultation with indigenous cultural communities.

- Again the indigenous leaders recommended that the ADSDPP and/or the Comprehensive Development Plan (CDP) should have precedence over NIPAS in cases where Ancestral Domains and ICCAs overlap with PAs. A key question raised was, how can this be asserted and implemented?
- Quicho suggested that it was necessary to discuss further and clarify the roles of DENR and NCIP in ICCAs.

Sections 12 on Inclusion in the Comprehensive Land Use Plans and Forest Land Use Plans, and Section 13 on Inclusion in the Protected Areas Management System. For both Sections 12 and 13, indigenous leaders made it clear that they wished for indigenous governance and customary laws to prevail and be applied in overlapping areas.

- They said that indigenous communities should be the lead decision-makers in Ancestral Domains and ICCAs.
- The leaders wanted Native Title to be recognized and respected inside PAs.
- Some of the leaders felt that there should be no overlap whatsoever between ICCAs and protected areas. They wanted ICCAs to be removed completely from the jurisdiction of the PAMB.
- Still others asserted that the DENR, the PAMB, and the Protected Area Superintendents (PASU) should stand united behind the ICCA Bill.

Section 16 on the Role of the NCIP. Aside from the NCIP's mandate to protect and promote indigenous peoples' rights, this section states that the NCIP shall convene periodic national and subnational multi-sectoral conventions to assess and promote policies and plans on ICCAs.

- The indigenous leaders said that the NCIP's role should include technical assistance when needed, or as requested by the ICCs/IPs.
- They also said that the NCIP is a key partner.
- Quicho flagged this as a matter needing further clarification.

Section 21 on Prohibited Acts. Section 21 describes activities that are prohibited inside ICCAs. Revisions to this section later included a lengthy, detailed list of prohibited acts.

- Some indigenous leaders wanted unauthorized hunting and gathering expressly prohibited.
- It was also suggested that data manipulation in the National ICCA Registry should be specified here.
- It should be noted here that in previous meetings of the Technical Working Group, Rep. Baguilat and others suggested that it would be better not to include a very detailed list as this may later prove to be to the disadvantage of the indigenous communities themselves.

Quicho and the indigenous stakeholders analyzed the range and content of the workshop output together. The stakeholders shared Quicho's observation that there is no clear governance structure in the present version of the ICCA Bill.

Quicho asked the indigenous leaders to clarify their position on the relationship between customary laws and state laws. Did they want precedence for customary laws, or harmonization of state laws and indigenous governance? Is there a middle ground? He suggested that the stakeholders revisit Section 58 of IPRA. Pasag described an instance in which they would prefer for customary law to have precedence: when there is a violation inside protected areas, the DENR takes the case to court. Instead, he said it would be better to take the case to the indigenous community first. He explained that court cases create enemies, while customary laws and methods of adjudication seek to maintain

harmonious relationships among families and within the community. He suggested that violations should only be taken to court if customary law or the community is unable to settle the matter.

Quicho raised several other questions related to the workshop output: What will the relationships be between indigenous cultural communities, the DENR, the NCIP, and other government agencies? What about with LGUs? Who will be the decision-makers? If indigenous peoples are the decision-makers in ICCAs, what is government's role? Will the form and purpose of the PAMB change in areas where ICCAs overlap with Ancestral Domains? Will there still be a PAMB?

It was pointed out in the discussion that indigenous participation in PAMBs is marked by inequity. This is an experience shared across many PAs in the country. It is usually the case that indigenous members are outnumbered and therefore outvoted. Discussions in board meetings are conducted in a manner that are difficult for some indigenous members to understand. It is interesting to note that this goes against the principle of FPIC that asserts that information should be presented to indigenous communities in a language and manner that is understandable to them. Finally, it is often difficult and expensive for indigenous members to travel to PAMB meetings.

The morning session was adjourned with workshop questions, which were to be discussed in the same small groups during the lunch break.

DAY ONE

AFTERNOON SESSION, MARCH 20, 2017

The following questions were discussed over lunch, in workshop groups:

- How is an ICCA related to a PA?
- What form of governance will prevail in an ICCA?
- Who will be the decision-makers?
- What has precedence? Is there a middle ground? (State laws, indigenous laws, ADSDPP, or Protected Area Management Plan (PAMP)?)
- How can it be assured that ADSDPPs, customary law, and indigenous governance will have precedence in ICCAs?

Workshop 2: The search for solutions.

Quicho gathered the workshop groups' metacards and categorized them into three emerging models of ICCA-PA relationships.

One model envisioned independent ICCAs. Stakeholders wanted their ICCAs to be independent community conservation areas, totally separate from protected areas. The ICCA would therefore be removed from the area and jurisdiction of the PA. In this

model, indigenous cultural communities would be the sole decision makers on matters relating to the ICCA.

Another model accepted the overlapping areas of PAs and ICCAs. Harmonization was seen as the key in cases of overlap. The ICCA would remain inside the PA, but indigenous peoples would be the decision-makers inside the ICCA, with the DENR and the NCIP as partners providing technical assistance as requested by the indigenous cultural community. Indigenous cultural communities, the DENR, and the NCIP would have their respective roles and responsibilities.

The third model described the ICCA-PA relationship as complementary and co-equal, but not subsumed, meaning, as above, ICCAs do not have to be removed or separated from the space of PAs in cases of overlap, but indigenous governance and decision-making should prevail over NIPAS and the PAMB in ICCAs. The key point in this model is that the government agencies involved should recognize indigenous leaders and indigenous governance as their equals.

The participants validated Quicho's classification into these three models. Several clarifications and illustrative points were made during the plenary discussion.

Sammy Balinhawang, from Imugan, Sta. Fe, Nueva Vizcaya, pointed out that disestablishment of a Protected Area requires a congressional act. He said that this would be a long, disadvantageous process for indigenous communities. Instead of insisting on a spatial separation of boundaries, he suggested a "special arrangement" in which the indigenous cultural community would be the management body for the ICCA, and traditional governance would prevail inside the ICCA. He described the relationship with the PAMB as "a dance."

It was agreed by the body that it was not necessary or practical to declare the ICCA as a separate territory from the area of the PA. In summary, the ICCA and PA can continue to share geographical space. However, they would have separate governance structures. PAMBs will manage PAs, and indigenous cultural communities will govern ICCAs.

Datu Johnny Guina shared another example of cooperation from the Mt. Kalatungan ICCA. A group of outsiders was caught collecting rattan seeds inside the PA. Datu Guina contacted the PASU to ask what should be done about the offenders. He and the PASU agreed that the community should apply their customary laws and collect penalties first. If the offenders did not yield to the demands of the indigenous cultural community, then the DENR would take up a formal case against them. The offenders negotiated with the community and ended up paying a monetary fine, and giving the community a pig and seven chickens.

Datu Guina quoted the PASU as saying, "The DENR wants protection. The tribe wants protection, too. Let's bring the two together, but you lead. I will respect the tribe's laws." The Mt. Kalatungan ICCA is a case that shows how the PASU and the indigenous

cultural community can work together. Clearly, much of the success of the ICCA-PA relationship in Mt. Kalatungan's case is hinged on the PASU's attitude towards, and relationship with the indigenous cultural community. The PASU of Mt. Kalatungan was also instrumental in creating dialogue between the indigenous cultural community, the LGU, and the different bureaus and levels of DENR. Whenever there was a project being proposed, the DENR took it to the indigenous cultural community first. The DENR also shared periodic reports with the indigenous cultural community. Quicho reminded the body that this will not be the case everywhere else, and that it was necessary to write this relationship into the law.

Quicho asked the body whether they felt that the new provisions suggested by DENR for E-NIPAS was to their satisfaction, and whether it encapsulated the ICCA-PA relationship they envisioned. Gaspar asserted that further safeguards are needed, because the implementation of laws recognizing indigenous peoples' rights has thus far produced mostly undesirable results for the indigenous themselves. Datu Banda added that the ICCA Bill should be thoroughly discussed with the indigenous cultural communities on the ground. If they know the law, they themselves will implement it. In line with implementation, Pasag suggested that there should be indigenous representatives in the office managing the National Registry of ICCAs. He also suggested that an indigenous board or council for the ICCA be formed with one representative from the DENR.

In summary, it was agreed in this session that in areas where there is geographical overlap, ICCAs would remain part of PAs, but within ICCAs, customary laws would have primary application, and the PAMB would play a supplementary role only. Quicho added that in defining the relationships and roles of the DENR and the NCIP, it would also be necessary to set in the law the limits of what government agencies could do in ICCAs. He closed this session and passed on the facilitator's role to Dave de Vera of PAFID. At this point Quicho's planned format of workshops and plenary sessions was no longer followed. This was done in order to respond to the directions the discussion had taken so far. This was also decided in order to give way to the Policy Dialogue with representatives from government agencies and CSOs.

Revisiting Section 58 of the IPRA.

De Vera re-emphasized the importance and power of Section 58 of IPRA, quoting the section in full once again, and stressing the following excerpts:

“... The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect, and conserve such areas with the **full and effective assistance** of government agencies...

“The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent...”

Section 58 of the IPRA establishes that it is indigenous peoples who have the primary responsibility to manage their Ancestral Domains. It is a strong, legal basis for the ICCA Bill, and it establishes the precedence of customary laws. It is clear that indigenous peoples are given primary responsibility, but what remains unclear is the nature of the relationship between ICCs/IPs and government agencies. De Vera pointed out that “full and effective assistance of government agencies” needed defining. He asked the indigenous leaders to share their thoughts on the meaning of “full and effective participation” for government agencies.

Dimain said that the NCIP should deliver the promise of the IPRA.

Datu Banda suggested that the NCIP can be of help when it comes to conflict resolution among indigenous peoples, especially concerning boundaries of Ancestral Domains. On the other hand, he said the DENR can give technical assistance on conservation. Datu Banda added that other government agencies may also have something to contribute. The provisions of the ICCA Bill should include other government agencies.

Gaspar said that “full and effective assistance” means that they come in when indigenous peoples need them. It is indigenous peoples that will determine the cooperation with government agencies, not the other way around.

Datu Rico shared the observation that government agencies interfere with small local issues, but when it comes to larger issues, such as being caught in the crossfire between the military and the National Peoples’ Army, no one cares to help. Examples such as this one emphasized the need to define indigenous cultural communities’ relationships with the DENR, the NCIP, and other government agencies.

At this point, the representatives of government agencies and CSOs were asked to come forward, to share their thoughts on the process so far, and to contribute to the discussion on “full and effective participation” for government agencies.

Policy Dialogue.

The following representatives of government agencies participated in the dialogue:

- NCIP: Legal Officer Attorney Arthur Herman, and Chief Administrative Officer Rey Dingal.
- DENR-BMB: Assistant Director Dr. Antonio Manila.

The following CSOs participated:

- Tebtebba Foundation: Florence Daguta and Attorney Jing Corpuz
- Asian NGO Coalition (ANGOC) and International Land Coalition (ILC): Marian Naungayan
- Legal Resources Center – Kasama sa Kalikasan (LRC-KSK): Attorney Pochoy Labog
- UGAT: Ponciano Bennagen

De Vera asked the government and CSO representatives to share their interpretations of “full and effective participation” in Section 58 of the IPRA.

Herman was the first to speak. He pointed out that the NCIP is not the only agency that needs to be involved in protecting indigenous peoples’ rights and asserting Section 58 of the IPRA. He said that the DENR, the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Land Registry Authority (LRA), the Department of Justice (DoJ), the National Commission on Culture and the Arts (NCCA), and the National Museum are just a few of the government agencies that have a presence in Ancestral Domains.

“Every government agency has its own ‘bible’... That is what they follow, their bible... So when I saw the ICCA with DENR as its primary agency, I thought this was a good thing. Do you know why? So we can place the contents of our bible in their bible... Our bible already has customary law in it – your customary laws. We have the IPRA... Government agencies have to work together to make Section 58 a reality,” he said.

Herman said that the work has begun and he made mention of the joint circular involving the DENR, NCIP, and LRA, officially known as Joint Administrative Order No. 1 of 2012 (JAO 2012-01). However, he noted that its scope was limited to land conflicts. He said they hoped to expand its scope to cover indigenous peoples’ intellectual property rights as well.

Dingal spoke about the Joint DENR-NCIP Memorandum Circular No. 1, series of 2007 (JMC 2007-01), on the management of overlapping PAs and/or their buffer zones and Ancestral Domains or Lands. He pointed out that Section 10 gives power to indigenous peoples to manage and govern areas inside PAs through a harmonized plan. He recommended revisiting JMC 2007-01, particularly the formation of technical working groups at the national, regional, and provincial levels of government (Sec. 9, JMC 2007-01), in line with the implementation of Section 58 of the IPRA.

Manila added that Section 10 of JMC 2007-01 establishes the management authority for areas with overlap. He pointed out the need to study and define the different forms of overlap: partial or full, large or small. For example, the entire province of Batanes is a PA.

He said, “We recognize and respect the ICCs and IPs... but we ask that if rights and privileges are given, there should also be corresponding obligations.”

Manila also shared his observation that in PAMB meetings, even if indigenous people are present as members, they hardly speak up. Other sectors dominate the discussions and decision-making. His observation corroborated further what some indigenous leaders mentioned earlier. He reiterated that JMC 2007-01 and perhaps additional DENR-NCIP joint circular memoranda could help clarify the management of overlapping areas.

Daguta of Tebtebba remarked that there could be countless plans, but all uncoordinated. She said that unity and consensus were necessary. She observed that it's unclear how the new bill will be implemented from the level of the PAMB down to the barangay. Daguta also shared stories told to her by indigenous cultural communities, about how their plans are modified by government agencies, against the will or cultural values of the communities implementing the plans.

Labog of LRC-KSK stressed that when the IPRA was challenged, the Regalian Doctrine was successfully debunked in the courts. Ancestral Domains and Lands have never been in the public domain to begin with. They have always been held as private or communal property. It is the responsibility of government agencies to support and uphold this.

Naungayan of ILC expressed support for the assertion that indigenous peoples' rights and governance should prevail in their territories. She said that "full and effective participation" of the government should be determined by indigenous peoples themselves.

De Vera summarized the foregoing discussion into three main points. Firstly, there is clear recognition from the DENR, the NCIP, and supporting CSOs that the primary responsibility of governing and managing ICCAs belongs to indigenous cultural communities. Secondly, the recognition of this responsibility has been going through a long process. One thing needing further study and clarification are the different forms of overlap, so as not to make the mistake of applying one formula to all cases. Nevertheless, the ultimate direction that everyone agreed upon was harmonization.

De Vera sought clarification on whether any policy recommendations came from of the TWG (established under JMC 2007-01) in the last ten years. Manila replied that there were none yet.

Addressing the indigenous leaders, De Vera asked, "Given what they have said, what can you recommend to them? Would you recommend continuing the process that has been started, since JMC 2007-01 is already in place? Or do you have questions and other recommendations on what should be discussed in this process? Let's open the floor for free discussion."

Datu Rico said that the conversation should be extended down to the regions, provinces, and communities. Even if these discussions take place in the upper levels of government agencies, when indigenous people approach regional and provincial offices such as the Provincial Environment and Natural Resources Office (PENRO) and the Community Environment and Natural Resources Office (CENRO) of the DENR, and the NCIP, the government officials are unaware of new policy developments, or unwilling to support them.

Describing harmonizing plans between NCIP and DENR in Mindanao, he quipped: "So do you know what happened? Nothing happened."

Datu Rico was a member of the NEWCAPP group, so he has been part of this process from its early days. He said that the focus now should be to bring the conversation down to the communities as well.

He added that there seem to be two opposing views on Ancestral Domains among leaders, indigenous or otherwise: “One view sees Ancestral Domains as something for the next generations. Others see Ancestral Domains as business opportunities.” In this regard, he also recommended that there be a “levelling-off” among leaders. He said that even if IPRA has been in existence for twenty years now, there are still many who do not understand the law’s purpose. Politicians in particular refuse to understand or cooperate with indigenous peoples.

Datu Banda expressed his agreement with, and support for the statements and recommendations of Datu Rico and Daguta, respectively. He also spoke up about how JAO 2012-01 adversely affects the Ancestral Domain claims of indigenous peoples across the nation. He said that JAO 2012-01 has blocked the processing of indigenous peoples’ land claims.

“This was an inter-agency agreement, but as Florence (Daguta) said, everyone has different plans. We need better inter-agency planning so that our problems can be addressed.”

Gaspar spoke of their experience with the NCIP in Mt. Taungay, Kalinga, where it appeared that it was the NCIP pressuring the indigenous cultural community to open their doors to a geothermal project, even though the community had made it clear that they did not want the project.

She addressed the representatives of DENR and NCIP thusly: “Here is an opportunity for indigenous peoples and government agencies to come together, to speak as allies instead of enemies. Let’s work together to protect ICCAs and to meet the goals of the bill. ICCAs are the heart of indigenous peoples. We have rights but in our experience with IPRA, when it comes to implementation we are not involved, we are not protected or supported by the NCIP.”

She apologized to the NCIP for hurtful things that were said about the agency’s non-performance and said that now is the time to work together. She added, “Now is the time to work together for the environment. If the environment is destroyed, all our lives will be destroyed too.”

Datu Rio Besto, from the Mt. Kalatungan National Park said that he wanted to share more on their experience: “... We weren’t even told that our Ancestral Domain had been declared a PA. It was (former) President Arroyo who said the process of titling our Domain should push through... No one informed us that our beloved mountain was now a protected area... What’s worse, when land grabbers entered our domain, we approached

NCIP in the provincial and regional offices to help us deal with the problem, and they left us to our own devices. The indigenous community and the land grabbers shot at each other with guns. That should not have happened. That was wrong. Again we asked for help, but still nothing happened. It hasn't been resolved..."

Datu Besto also supported the call for better communication on laws and policies at the local level. He said that government officials in provincial and regional offices sometimes claim that they are not aware of the new laws and policies, and therefore do not act on them. Finally, he expressed thanks for the continuous inclusion of indigenous representatives in the processes around the ICCA Bill.

De Vera invited the panelists to respond.

Herman began by admitting that indeed, JMC 2007-01 was not transmitted properly to local levels. JMC 2007-01 has mechanisms for the TWG at the regional level. Ideally, he said, the provincial committees should be the first responders when indigenous peoples bring issues before the TWG. If they are unable to resolve the problem at the provincial level, then it can be raised to the regional level, and so on. He assured the body that the government agencies concerned were looking at ways to communicate the circular better. He repeated the point that representation and participation in the PAMB often does not favor indigenous peoples.

Finally, Herman asserted that there was a need to define traditional resource use clearly. He pointed out that there have been several arrests in Mindoro involving indigenous persons who cut down trees. He said the DENR has been aggressively filing cases against violators. However, the NCIP holds that the tree cutting was meant for traditional resource use, but they are unable to say exactly what constitutes traditional resource use in different areas or indigenous cultural communities.

De Vera drew out questions for the indigenous leaders to consider: "In the PAMB, we need to address the question of how many indigenous members, or what forms of indigenous participation, would make it a fair and equitable management board? Secondly, what are the details and forms of traditional resource use?" He suggested that the body would be able to come up with recommendations on these two matters.

Manila assured everyone that both the IPRA and NIPAS mention participatory approaches to governance. He said that convergence initiatives already existed among government agencies, and transmitting information at national and local levels should not be difficult. Under NIPAS, he stressed that there are different zones inside PAs, and various categories of PAs. For example, indigenous *kaingin* systems are not prohibited in Mt. Iglit-Baco, which is now recognized as a key biodiversity area, not just a PA.

Pasag countered that what Manila said about the decriminalization of indigenous *kaingin* systems is not being implemented. He repeated that the challenge now is true and effective participation.

He said, “When it comes to conservation, we feel supported. We have many allies... We are supported by international laws and national laws. But when it comes to indigenous peoples’ land, when land grabbers take our land, we are left to deal with it alone... When a land grabber comes, indigenous peoples retreat to the forest. In the forest, the DENR says its illegal for indigenous peoples to be there. Land that belongs to us is titled by DENR, or placed under Certificate of Land Ownership Awards (CLOA) by DAR, but the NCIP has stopped working on our Ancestral Domain titles... We are told it’s because of JAO 2012-01. What has power now, our Republic Act, or the JAO? We are asking the NCIP to answer us so we have something take home with us... If we fight for our land, we might be accused of being rebels.”

Corpuz of Tebtebba said that lawyers such as herself and Labog were willing to file a case against JAO 2012-01, if a community would just approach them. She concurred that the JAO has curtailed the implementation of IPRA and the protection of indigenous peoples’ rights. In order for the lawyers to build a formal case, they needed to work with a community that had the registration of their Certificate of Ancestral Domain Title blocked because of JAO 2012-01.

She also reiterated the point that Section 58 of IPRA is a valid underlying philosophy for indigenous peoples’ self-governance and self-determination in ecologically critical areas. It is indeed indigenous peoples’ decision-making processes that must prevail, but a role is likewise envisioned for government. She said, “We should ask indigenous peoples what this role would be. What is the extent of ‘full and effective assistance’ from the government?”

Herman confirmed that JAO 2012-01 poses a challenge to the titling of Ancestral Domains with the the LRA. He said that the source of the problem is within the IPRA itself: Section 56, which states that property rights existing within ancestral domains prior to the effectivity of the IPRA would be recognized. The LRA will not certify or register overlapping property rights. Sections 10 and 12 of JAO 2012-01 are based on the problem raised by Section 56 of the IPRA.

Dingal added that several meetings on the matter have been held, and there are those within the NCIP itself who are not in favor of JAO 2012-01. Herman added that they have received many complaints against JAO 2012-01, including petitions to scrap the joint administrative order. His view, however, was that even if JAO 2012-01 is rescinded, Section 56 of the IPRA will still pose problems for the registration of indigenous peoples’ land titles.

At this point, Ponciano Bennagen of UGAT gave valuable input on indigenous participation in three processes: creating the law, interpreting the law, and implementing the law. In the past, it was enough to get a law approved in congress. Now, he said, the process is slowing down because the beneficiaries for laws are speaking up, but when it

comes to interpretation they disappear, and when it comes to implementation, they end up being left out.

“The lesson learned is that stakeholders should be involved from the very beginning, in creating the law. We are witnessing this now with the ICCA Bill... But what is participation, really? Is your participation now sufficient, or should more stakeholders be included in the conversation? In order to widen participation, support is needed. Travel costs alone pose a problem. Language is a problem. All the documents are in English.”

Bennagen raised some key questions for the indigenous leaders to consider in their support for the ICCA Bill. He pointed out that the IPRA was victorious because certain indigenous peoples’ organizations persisted. It also helped a great deal that the bill, at the time, had a champion in the Upper House in the person of the late Senator Juan Flavio.

When it comes to interpretation, a strong public opinion can have influence on the process. “How do we strengthen public opinion?” he asked. “We need to put pressure on those who interpret the law.”

He asserted that the discussion on “full participation” is a problem of interpretation. How does one interpret “full participation”? He pointed out that there are more than ten sections of the IPRA that assert indigenous participation.

He added, “We are weakest with our laws when it comes to interpretation.” He shared a story from Wao, Lanao del Sur, where he went in 2013 to learn more about how they implemented their Forest Land Use Plan (FLUP). He asked the mayor what contributed to the success of the FLUP, and the response he got was “political will.” However, Bennagen noted that many speak of political will but do not meet with success. He pressed on, asking the mayor where his determination to implement the law came from. The mayor told him about his childhood memories drinking from, swimming, and fishing in the river, now destroyed by logging.

Bennagen shared his realization that sometimes what makes the difference in the successful implementation of a law is not political will, but a deep personal source of memory (of a good past) and desire (for a better future). He added that rule-making, rule-interpretation, and rule-implementation are a deeply emotional and political process.

Bennagen went on to recommend systematic capacity-building, for indigenous peoples to deepen their participation, and for government agencies to understand the heart of IPRA. As an example of misunderstanding, he pointed out that the Hanunuo Mangyan system of *kaingin*, or swiddening, enjoys world renown as an integrative and sustainable form of shifting agriculture, and yet in the Philippines the DENR criminalizes all forms of *kaingin*. He described how *kaingin* became unsustainable when Christian influence turned Mangyan cosmology into mere superstition. Instead of protecting trees because they were inhabited by spirits, it became permissible to cut them down, because indigenous beliefs were reduced to “superstition.” He appealed to the indigenous leaders

to consider the changes that have come into their communities and asked them to keep an eye on their history, because that is the source of their strength and the basis of their land claims.

Finally, he noted that different government agencies each have funding for indigenous peoples. He suggested that the possibility of pooling these together for the NCIP be studied carefully.

Echoing Datu Guina, Bennagen said, "... What is your common ground and common interest? Protection. You have a common ground to come together and talk about it. Even before IPRA and NIPAS, these were already protected areas of the indigenous peoples. There is a challenge for us in academe, NGOs, and GOs to understand that history of protection of land... For the indigenous peoples, for you to be able to negotiate, you have to have a clear understanding of how to participate... In order to negotiate well, there are things you need to study, skills that need to be developed."

De Vera rounded up the discussion and stressed three key points. First, it is clear that there is consensus: indigenous peoples are the primary actors when it comes to protecting their territories. This is based not just on law, but also on history. Indigenous ways of caring for the environment predate laws establishing systems of conservation. Second, everyone agreed that the need to protect the environment now is urgent. It is in everyone's interest to get involved and protect the environment. Third, it was recognized in the foregoing discussion that all of the stakeholders present had a role to play. What exactly that role is for different sectors, particularly for government agencies, has yet to be clearly defined.

De Vera revisited several other issues that needed follow up. He mentioned the matter of JAO 2012-01, and encouraged the indigenous leaders whose ancestral domains are affected to continue the discussion with Labog and Corpuz. While it is clear that indigenous peoples have the right to protect their territories, the question of governance remains to be settled. Who will govern, particularly in overlapping areas? Who will lead? Who will be given precedence? In this light, De Vera asked the body to consider whether it would be useful to continue the process begun with JMC 2007-01. He echoed Bennagen on the need for indigenous cultural communities to raise the bar for their own capacities to understand the documents and processes, to negotiate, and to participate fully.

Finally, he said, "... The places that give life to us all are found in the land of indigenous peoples... Aside from the risk of losing the environment that supports our life, we also stand to lose ways of life that are intertwined with nature. We need to act fast, before it is all gone."

De Vera ended the consultation with the following questions, for discussion the next day:

- What do you think about JMC 2007-01? Will it help the current processes of the ICCA Bill?
- What is our own interpretation of the full and effective participation of government?
- How do we define overlap?
- What kind of relationship do we want between indigenous peoples and government agencies in ICCAs?

DAY TWO MORNING SESSION, MARCH 20, 2017

Refocusing on the ICCA Bill.

The second day of the consultation was devoted to further discussion on the ICCA Bill and action planning, exclusively for BUKLURAN. Eizel Hilario-Patiño of the PMU asked for feedback on the previous day's discussions.

Datu Banda observed that yesterday's discussion strayed to so many subjects, the ICCA Bill got buried under other issues. He asserted that they ought to keep the focus on the ICCA Bill on the second day. He affirmed the importance of Section 58 of the IPRA, and the recognition that it is customary laws and indigenous governance that should have precedence in ICCAs – not Western methods, or academic recommendations. He also pointed out that it was necessary to face the reality of some communities being advanced in their advocacies and in their work to protect their territories, while others are only just beginning. Datu Banda raised the concern of how to ensure that it is the ADSDPP that is given precedence and implemented in Ancestral Domains.

In support of Datu Banda's statement, Pasag compared the NIPAS to a house built by the DENR for indigenous peoples. Because the house was not built by the indigenous peoples, it didn't suit their needs and it was found to be unacceptable. The difference with the ICCA Bill is that it includes indigenous peoples in the process of house building. Pasag recommended that indigenous peoples should be part of the office of the National Registry. In relation to this, Reyes also suggested that the ICCA registry establish regional offices, where they will be closer to the indigenous cultural communities that own the ICCAs.

Dimain commented on the language in the provisions. He recommended that aside from the "recognition" of customary laws and IKSPs, customary laws should also be "prioritized". Hilario-Patiño added that beyond recognition and prioritization, customary laws should be applied or implemented.

On Revising or Drafting Provisions.

She asked the gathering whether they should prepare a statement issuing from BUKLURAN, formalizing the move to ask trusted NGO partners to help with drafting

revisions and additional provisions proposed for the ICCA Bill. The body agreed that the minutes of the BUKLURAN meeting would suffice, and a statement was not necessary.

The following point on drafting provisions was approved by the body **for immediate action: The recommended revisions and additional provisions would be drafted by a committee of style composed of trusted lawyers and NGO partners.** The committee of style would be entrusted with the task of selecting strong wording that favors indigenous peoples.

Additional recommendations were made on specific provisions. To reduce repetition, these are enumerated below, with the final remarks that were raised and approved by BUKLURAN.

Defining Relationships, Assistance, and Limits.

In the discussion leading up to specific provisions, several themes emerged: the ICCA-PA relationship, governance and “full and effective assistance” of government agencies within the ICCA, the limits of government agencies’ participation and powers in ICCAs, and finally, the treatment of traditional resource use in the ICCA Bill.

On the ICCA-PA relationship, the body agreed that the ICCA is a protected area owned and governed by indigenous cultural communities and their customary laws. It is not a Protected Area as defined in the NIPAS, even when there are full or partial geographical overlaps.

On the question of “full and effective assistance” of government agencies (as stated in Section 58 of the IPRA), the body agreed that provisions dealing with this in the ICCA Bill should conform to the BUKLURAN Manila Declaration on ICCAs of 2012. The Manila Declaration identifies a role for government in ICCAs, and outlines “basic activities in the involvement and participation” of the government.

On setting the limits of government agencies’ “full and effective assistance” in ICCAs, it was suggested that technical assistance can be done by agencies with the appropriate expertise. However, they said, documentation of ICCAs and within ICCAs should be carried out by agencies trusted by the community, to ensure that their words and meaning are not altered or misrepresented by the documenters. It was also suggested that government agencies’ activities should undergo FPIC processes. While recognizing that the DENR and NCIP are their partners and that there are things that can be accomplished only in partnership, the indigenous leaders said that they would want to be able to determine the parameters under which government agencies may work or implement projects inside ICCAs. Furthermore, they would prefer to create their own plans and decide on the assistance they will need, rather than have government agencies dictate these.

A question was raised in the consultation, echoing concerns from DENR-BMB Director Theresa Mundita Lim. Director Lim actively adheres to the Convention on Biological

Diversity's (CBD) recognition of traditional governance. However, she wanted to know, when should the DENR step in to fulfill its constitutional mandate? What if, for example, indigenous land is sold? The sale of indigenous land is a problematic phenomenon seen across the country, and is sometimes related to the activities of so-called "tribal dealers".

BUKLURAN leaders asserted that customary law would be sufficient. However, recognizing that they are participating in crafting a law with implications on other communities besides their own, they also put forward certain safeguards. First, it was suggested that the sale of any land within the ICCA should be expressly prohibited in the ICCA Bill. Second, there should be trainings and capacity-building for indigenous cultural communities with ICCAs. The purpose of the trainings would be to ensure the capacity of the community to protect the ICCA.

Finally, in the discussion on traditional resource use, two things became clear. First, current laws and policies criminalize traditional resource use, such that court cases are filed against indigenous persons using resources in their own territories. The implementation of laws and policies demonstrates a lack of understanding and respect for indigenous resource use. Second, the ICCA Bill can and should rectify this. The body suggested that it be written into the bill that an indigenous person taking natural resources in the ICCA for family use should not be penalized, unless he/she is violating customary law. Additionally, if it is for family use, and not for sale or business, it should not be necessary to get permits from the DENR. This should be provided for in the law with the recognition that customary laws and traditional resource use will differ from one indigenous cultural community to another.

After a short break, De Vera facilitated a three-part discussion on JMC 2007-01, specific provisions of the ICCA Bill, and action planning respectively.

On Joint Memorandum Circular 2007-01.

De Vera referred back to the policy dialogue of the first day. He reminded the body that the representatives from DENR and NCIP were considering reviving the TWG created in JMC 2007-01, in order to study the issue of overlapping Ancestral Domains and PAs. He asked the indigenous leaders for their thoughts on this proposal. The following questions were raised: What has the TWG of JMC 2007-01 accomplished so far? Who are the members of the TWG? Where do we come in? Where is our participation?

The Legal Officer of NCIP himself admitted during the policy dialogue that JMC 2007-01 was not properly communicated to the regions and provinces. In addition, no studies or policy recommendations came out of the ten-year existence of the circular. One indigenous leader remarked that they had never heard of it in their community. The body considered whether it would be worth giving it a few more months or years, to see if it could produce results. However, it was also pointed out that the ICCA Bill already accomplishes what JMC 2007-01 set out to do in the first place. In contrast to the former, they have become far more involved in the ICCA Bill.

Consensus was reached that there is no need to revive JMC 2007-01. The indigenous leaders strongly affirmed that the ICCA Bill is the solution to the problems JMC 2007-01 was meant to address. The ICCA Bill supports the NCIP's mandate by strengthening the IPRA. It gives the law teeth. At the same time, it strengthens cooperation for conservation between indigenous peoples and the DENR, in harmony with the new ENIPAS Bill and the revised provision (Section 14) proposed by the DENR-BMB. **The indigenous stakeholders, through BUKLURAN, planned to submit a letter to the NCIP commission en banc, petitioning for the commission to rescind JMC 2007-01, so that the participatory processes unfolding under the ICCA Bill may continue.**

On Government Participation and Assistance in ICCAs.

The foundations for the precedence of indigenous governance in ICCAs are culture, history, territory, and the law, particularly Section 58 of IPRA. The indigenous leaders cited the place names they have for different parts of their ICCAs and Ancestral Domains, their long history of occupation of their territory, and their generations' worth of experience working with the environment and protecting it.

The body agreed that **full and effective participation or assistance from government agencies must take place on terms set by indigenous peoples, in consonance with their culture, and in a manner that does not threaten or harm the indigenous community, for as long as the community agrees or arranges to pursue such partnership.** They asserted that self-determination and self-governance would be operationalized in plans created by indigenous cultural communities themselves.

De Vera raised the question of cooperation with LGUs, such as the barangay. It became clear from the responses of the indigenous leaders that the situation differs from place to place. In Kalinga, Gaspar said that the LGU follows the directives of the elders, and members of the LGU are indigenous too. In Mts. Iglit-Baco, Mindoro, Pasag said that the relationships are complicated because there are four different indigenous groups in the area, and in at least one case, the barangay chairperson is a Visayan migrant who does not respect indigenous life ways. The body agreed that the structures for indigenous governance and the full and effective participation of state agencies will have to fit the conditions in each place.

Cooperation between indigenous communities and government agencies must be based on mutual respect and common interests. The ICCA Bill is a bill that protects both people and the environment. It operationalizes the common interests of indigenous peoples and the DENR: protection of the Philippine environment for the benefit of present and future generations. The ICCA Bill responds to the urgent need to protect the little remaining forest cover of the Philippines.

DAY TWO AFTERNOON SESSION, MARCH 20, 2017

Advocacy Planning.

In the afternoon, BUKLURAN devoted some time to discuss their advocacy plan. The following targets were set:

- The goal is for the ICCA Bill to be passed into law.
- The participants resolved to communicate proactively with DENR and NCIP partners.
- They also resolved to strengthen the campaign in the Senate where, so far, no direct communication between the stakeholders and the senators has taken place. The body discussed who their possible champions were in the Senate.
- The group called for the revival of a plan to hold a Senate Forum, in cooperation with the Green Bills Network.
- One of the aims they identified was to have a hearing scheduled for the ICCA Bill in the Upper House.
- The indigenous leaders resolved to continue to contribute to the clarifying and strengthening of the bill, and to be involved in all future negotiations.
- They also resolved to ensure that information on the bill is thoroughly disseminated.
- It was resolved that they would actively campaign for the indigenous governance of ICCAs to be part of the ENIPAS Bill. In particular, they resolved to push for the inclusion of the revised Section 14 of the ENIPAS Bill, as drafted by DENR-BMB.
- The point was raised that funding would be crucial to support the action plan.

The following actions were agreed upon:

- A formal report on the proceedings and agreements reached in the consultation would be submitted to Rep. Baguilat, Senator Loren Legarda, the secretary of the DENR, and the chairperson of the NCIP.
- A resolution from BUKLURAN adopting the proceedings as their own and as truly reflective of the foregoing discussions will be attached to the report.
- New or revised provisions for the ICCA Bill will also be submitted to key persons, along with the formal report and the BUKLURAN resolution mentioned above. Support groups and lawyers will be tapped to assist with drafting the provisions according to the body's recommendations.
- A letter would be delivered to the concerned government agencies, recommending that JMC 2007-01 be set aside for the moment so that all efforts can be focused on the ICCA Bill.
- Small delegations would be formed to deliver the letter to the key persons and offices mentioned above. The delegates would be selected according to who would have the best possible impact on the recipient.

Proposed Revisions to the ICCA Bill.

Hilario-Patiño rounded up the last two days' discussion and went over the key ICCA Bill provisions that were discussed, ensuring that the points raised by the indigenous stakeholders were covered and accepted by the body.

Section 2 on the Declaration of Policy. This provision identifies the national laws and international policies and conventions that support the establishment of ICCAs. This provision should be revised to include Section 58 of the IPRA as the legal and philosophical basis for ICCAs and the ICCA Bill. It should also include the principles of self-governance and cultural sensitivity. Self-governance was identified by the body as non-negotiable. It was reiterated that the precedence of indigenous governance in ICCAs is based on culture, history, territory, and the law, particularly Section 58 of IPRA.

Section 3, the Guiding Principles. This provision should reiterate the rights of indigenous peoples to self-determination and self-governance in their territories. Such sovereignty has been in place since time immemorial. Furthermore, Section 3 should recognize that the forms of indigenous governance will vary from site to site, depending on the culture of the indigenous communities in each place.

Section 4, the Definition of Terms. This section should define customary laws, traditional governance, and traditional resource use. The question was raised on whether the definitions should follow those already found in IPRA, or whether the IPRA definitions needed expanding. This point was earmarked for further study by the group drafting the new provisions.

Section 6, the Protection and Privileges of ICCAs. Some of the indigenous leaders wanted specific mention of other destructive activities, besides mining. However, during one of the TWG sessions in Congress, Rep. Baguilat had said that he wanted to study further the implications of having a very detailed list of violations in the bill. Other supporters of the ICCA Bill warned that it may not be strategic to have a bill so detailed that the indigenous communities will find they have painted themselves into a corner.

Section 7, on Zones. This section was considered weak. Zoning in ICCAs needs to be done according to indigenous forms of zoning.

Section 8, on Key Biodiversity Areas, needs to be discussed further.

Section 10, the National ICCA Registry. The participation of indigenous peoples needs to be strengthened in this and other sections. Indigenous peoples should have the lead. It was recommended that regional offices be established for the registry, so that it would be closer to the communities who own the ICCAs. It was also suggested, however, that the latter be saved for the Implementing Rules and Regulations. This was flagged for further study by the group drafting the new provisions.

Section 13, Inclusion in the Protected Area Management System. This section should be clearer about recognition and respect for indigenous ownership over Ancestral

Domains. Indigenous governance will have precedence, no matter the form of overlap between Ancestral Domains, ICCAs, and PAs. The language should be strengthened, making explicit the recognition, prioritization, and application of customary law.

New Provision/Insertion. A new provision should be written on ICCA governance, recognizing the primacy of customary law, while describing NIPAS as supplementary. Self-governance of indigenous peoples would be the main principle, regardless of the forms of overlap between PAs and ICCAs. Indigenous peoples, through their council of elders, will be the decision-makers. Traditional conflict resolution will be applied when needed, prior to any formal court cases being filed by the DENR.

Sections 15, 16, and 17 on the roles of government agencies. Based on Section 58 of the IPRA, the “full and effective assistance” of the DENR, the NCIP, and other government agencies, should depend upon the needs and requests or plans of the indigenous cultural community. It was reiterated that government incursions into ICCAs must take place on terms set by indigenous peoples, in consonance with their culture, and in a manner that does not threaten or harm the indigenous community, for as long as the community agrees, or arranges to pursue such partnership. It was recommended that the group drafting the provision also refer to the Manila Declaration.

Section 19, Incentives Scheme. This section was flagged for further study to be undertaken by the group drafting the new provisions. The indigenous leaders acknowledged that DENR is a key partner for conservation. However, they asserted that it should be the indigenous peoples themselves to recommend alternative, sustainable livelihoods, and not the government agencies. They pointed out that it is the indigenous cultural community rooted in the ICCA that would have knowledge and experience on what would be feasible and sustainable in their territory. It was suggested that the ADSDPP could be the basis for identifying sustainable livelihoods.

Section 21, Prohibited Acts. In consonance with the remarks on Section 6, this may be better left as a general provision, given that the other offenses are already covered by FPIC.

The body accepted the foregoing discussion on new provisions as representative of their inputs to the ICCA Bill. Looking forward, it was added that when the ICCA Bill is enacted, the indigenous leaders will see to it that they participate in the drafting of the Implementing Rules and Regulations.

Finally, it is worth noting that the indigenous leaders now refer to HB 115 as “our ICCA Bill,” signifying a remarkable sense of ownership among its stakeholders.

END