

## The Philippine Indigenous People and their Customary Laws

1. 1. The Philippine Indigenous Peoples and Their Customary Laws Estrella F. Catarata Executive Director Philippine Network of Food Security Programmes Inc.
2. Topic Outline • The Indigenous Peoples (IP) • Who are They in the Philippines ? • What are Customary Laws • The Free, Prior and Informed Consent (FPIC) • How are These Violated? • Case Presentations • IP Agenda and Calls Property of: Philippine Network of Food Security Programmes (PNFSP)
3. Demographic Profile of Indigenous Peoples ∞ The National Commission on Indigenous Peoples (NCIP) estimates the population of indigenous peoples (IPs) in the Philippines to be around 12 million. ∞ IPs roughly constitute 13% of the total population of the Philippines. ∞ 61 % of indigenous peoples is found in Mindanao, 33 % in Luzon, and 6 % in Visayas. Property of: Philippine Network of Food Security Programmes (PNFSP)
4. Geographic Distribution: ♣ Indigenous peoples are spread out in more than 100 ethno-linguistic groups located in 65 of the country's provinces. ♣ Lumad peoples comprise the majority among IP groups in the country followed by the Cordillera peoples. Other distinct IP groups include the Caraballo Tribes, the Mangyan, the Negrito/Aeta, the Palawan Hilltribes, and the groups in the Visayas. ♣ The Bangsamoro – Muslims in Mindanao were used to be “lumads” who were “Islamized” in the 13th century ; 13 ethnolinguistic groups; Islam distinguished the Moros from other IP's and also served as ideological foundation to effectively resist foreign intrusion Property of: Philippine Network of Food Security Programmes (PNFSP)
5. Igorots Palawan groups Mangyans Aetas Caraballo groups Dumagats Ati & Tumanduk Lumads Bangsamoro Property of: Philippine Network of Food Security Programmes (PNFSP)
6. Definition of Indigenous Peoples • Indigenous peoples were referred to as “national minorities” by the 1973 Philippine Constitution and as “national cultural minorities” by the 1987 Constitution. • With the passage of the Indigenous Peoples Rights Act in 1997, they are now referred to as indigenous peoples (IPs) or indigenous cultural communities (ICCs). Property of: Philippine Network of Food Security Programmes (PNFSP)
7. PRA Definition of IPs: “A group of people or homogeneous societies identified by self-ascription and ascription by others, who have continually lived as organized communities on community 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. ...” Property of: Philippine Network of Food Security Programmes (PNFSP)
8. • Land is life. It is the “territorial base that is indispensable as the living space for the community and its sources of food and other needs” (Ibid). • It is their abode since time immemorial • It is the material basis of their collective identity and survival as indigenous peoples Ancestral land and indigenous peoples Land is embedded on the existence of the indigenous people, which is directly related to their culture and immediate environment (Fernandez V: 1983 in Montillo-Burton: 2003). Property of: Philippine Network of Food Security Programmes (PNFSP)
  9. “All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.” The Regalian Doctrine in the 1987 Constitution: Ancestral domain to the indigenous peoples is a holistic concept encompassing not only the land but including its resources: the rivers, forests, the flora and fauna, the minerals underneath and the air above. It is not a commodity to be sold or exchanged but a resource to be nurtured for future generations. Property of: Philippine Network of Food Security Programmes (PNFSP)
  10. Contradictory land systems ANCESTRAL LAND • Extreme diversity & flexibility in forms of ownership: from communal to semi- communal to private • Rights to land derived from inheritance, labor, actual improvements • Ownership and rights regulated through customary laws, which the communities themselves evolved • Viewed as collective legacy, to be maintained across many generations • Source of life and livelihood for its occupants STATE SYSTEM OF LAND OWNERSHIP • Highly rigid forms of ownership: basically, either public or private • Rights to land granted by state and/or sale • Ownership and rights defined by national laws, which are beyond the direct control of communities • Viewed as investment to generate profit, or as disposable property • Just one of several factors of production Source: Jill Carino TFIP Property of: Philippine Network of Food Security Programmes (PNFSP)
  11. Customary Laws • “The laws, practices, customs of indigenous and local communities which are an intrinsic and central part of the way of life of these communities. Customary laws are embedded in the culture and values of a community or society; they govern acceptable standard of behaviour and are actively enforced by members of the community.” • Generally, customary laws are not written , but are transmitted through oral tradition and practice. Since time immemorial, indigenous peoples have regulated their societies by internal social-political and cultural religious structures and processes. These informal

and flexible rules and functions or customs and traditions were passed on from one generation to the next, eventually evolving into customary laws that are enforced by the community. (Customary Laws and FPIC, TFIP 2013) Property of: Philippine Network of Food Security Programmes (PNFSP)

12. Free Prior and Informed Consent • “FPIC is the consensus of all members of the ICC’s/IP’s to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of an activity, in a language and process understandable to the community” (IPRA section 3).  
• FPIC is “an inherent right of the IP’s in the exercise of right to self determination. At the same time, it is a tool provided by various legal instruments at the national and international levels which can be used as a defense mechanism in the face of threats to land, life and resources” (Customary Laws and FPIC, TFIP 2013). Property of: Philippine Network of Food Security Programmes (PNFSP)
13. Case Studies (TFIP 2013) 1. Palaw-an of Sofronio Espanola, Southern Palawan  
→ total land area of 47,391 hectares - Mt. Mantalingahan range and wide plains traversed by numerous rivers → IP’s comprised more than 25% of the population – Bisaya and Muslims → Customary laws (Sara et Palaw-an) form part of cultural heritage – primary importance to harmony and balance with the self, society and nature practiced community consensus means united decision of the whole - voice of every member is valued, regardless of gender and age. Prime leadership figure are the traditional leaders who govern collectively  
→ Tradition leaders facilitate a meeting (ukuman) to deliberate cases with whole community involved where complaints and problems are heard; venue to deliberate a decision; . Property of: Philippine Network of Food Security Programmes (PNFSP)
14. Palaw-an of Sofronio Espanola, Southern Palawan ..... → however, encroachment of settlers and imposition of various state policies fragmented Palaw an territories and weakened traditional structures – basic political unit called “rurungan” → traditional leaders were appointed as chieftains by OSCC without following customary laws, traditional governance became adulterated and Palaw-an rarely had a voice in local decision making process → this triggered land grabbing and violence; in late 90’s Olympic Mines and Dev’t entered and operated Palawan Hill Cement → In 2005, Platinum Group Metals Corp. Bought mining rights from OMD facilitated by NCIP and LGU through the conduct of so-called “FPIC” → In 2007, MPSA permit was issued to Citinickel Mining Corp. This was questioned by many IP leaders however, Citinickel said no need for FPIC since consultation with LGU’s have been done and they offered a MOA highlighting a 1% share of communities from mining revenue which NCIP and LGU’s upheld → then another widespread

LUC for oil palm plantations followed again without FPIC which covered 8000 hectares which areas are supposedly declared as “protected key biodiversity area” Property of: Philippine Network of Food Security Programmes (PNFSP)

- 15.2. Case Study: Iraya Mangyan of Abra de Ilog, Mindoro Occidental • Iraya IP’s inhabit the inner mountains and low lying areas of northern municipalities in Mindoro • Ancestors were former coastal dwellers who were displaced due to historical invasions of pirates, pasture ranchers, land lords, logging activities and population mobility of landless peasant settlers • Iraya have become nomadic semi-communal communities, forest hunters, knowledgeable in medicinal plants and spiritual healing • Traditional governance is collective and kinship – based – leaders are elders representing families/clans • Guiding principle of life is wholeness or unity or “kausunan” and to maintain this, respect and concern for others over oneself is fundamental Property of: Philippine Network of Food Security Programmes (PNFSP)
16. The Iraya – Mangyan in Mindoro • Asking permission is a basic courtesy in order to prevent inflicting harm • Cases affecting majority require permission from the community through the elders facilitating community consultation • Community Consensus is the clear unity of community in decision making process • Conflict came during 1950’s when government ordered the Iraya’s to settle into “barrios” • To cope, elders agreed to establish boundaries through rivers as delineation markers to ensure space for every clan • Dynamics and interactions were disrupted as they were under political jurisdiction of local barangay units Property of: Philippine Network of Food Security Programmes (PNFSP)
- 17.2. Case Study: Iraya Mangyan of Abra de Ilog, Mindoro Occidental • Despite having Iraya officials representing them in municipal meetings, communities and their elders were no longer consulted – customary laws and leadership values were undermined - eclipsed by hierarchical structures and bureaucratic relationships • Some community leaders became susceptible to dictates and influence of LGU’s, NCIP and corporate interests • Since then, Abra de Ilog became mining prospect of Agusan Petroleum and Mineral Corp. owned by SMC • In 2008, APMC secured FTAA – covering largest exploration permits for gold, silver, copper and zinc covering 53,952 hectares which covers 63% of Abra de Ilog area encompassing 8 barangays • NCIP and APMC undertook actions to obtain FPIC of Iraya marked by deception, threats, bribery, use of signatures in attendance sheet to show consent and promises of money for projects and CADT processing • The signing of MOA between APMC and few Iraya elders was held in Batangas by transporting them into a ship and forcing them to sign • This resulted to disunity in which, those who signed MOA later revoked their signatures and exposed the anomalies of the FPIC process by

NCIP • Despite anomalies and dissent by Iraya, NCIP released Compliance Certificate of FPIC to Abra de Ilog's mayor officer • Formation of municipal and inter tribal organizations of Iraya and other Mangyan group followed to protest mining • Currently APMC is renewing its FTAA and FPIC process may follow..... Property of: Philippine Network of Food Security Programmes (PNFSP)

18.3. Case Study: Higaonon Tribe of Opol, Misamis Oriental • Engage mainly in agriculture – rice, corn and coconuts • Ancestors since pre colonial times – animal hunting, gathering honey and small agriculture • Higaonon – people of the living mountains • Customary law is promoting peace and unity • Displacement started in 1952 when government leased the area to a certain Captain and made a cattle pasture ground • In 1978, Paras family leased another area through the government for cattle ranch Property of: Philippine Network of Food Security Programmes (PNFSP)

19. The Higaonon tribe in Opol, Misamis Oriental • Then in 1991, came group of migrant farmers who were granted CBFMA in 2000 • So Higaonons tried to reclaim their land by applying Ancestral Domain claim in 2002 which still under process by NCIP • In 2010, A Brown Coy (BRN) started to develop the old Paras cattle ranch into Oil Palm Plantation • No FPIC, they pursue the conversion • In 2011, tribal leaders and indigenous villagers formed their organization, “Pangalasag” – indigenous shield to protect them from the long experience of being deprived of their land rights and entry of oil palm plantations Property of: Philippine Network of Food Security Programmes (PNFSP)

20.4. Case Study: Kankanaey, Applai and Bontok Peoples of Sagada and Bontoc, Mountain Province • Strongly practiced their respective customary laws and beliefs in the process of giving or withholding consent • Decision by consensus: one person opposing is enough to thoroughly discuss the merits of public good vis individual rights – person should be convinced that her right is not disregarded/should be properly compensated. • In accordance with customary practice called “asug” – collective convincing of a person to consider public benefit in exchange for individual right that she has relinquished • First case: SMART was eventually given consent to put up telecom tower but “it was not free nor was it informed” • Elders were “bribed” • SMART did not disclose the prevailing rates for land rent for telecom towers so people kept on asking for increase in land rental • Second tower by Globe with consent from owner of lot but no community consent • So, IP residents submitted a petition due to absence of ECC and FPIC • Third tower by Globe in Bontoc put up in 2006 had no ECC and FPIC. • IP's submitted a petition to DENR and NCIP • In 2008, Globe dismantled their tower Property of: Philippine Network of Food Security Programmes (PNFSP)

21. Some extractive industries on indigenous peoples' lands:
  - Western Mining Corporation/ Sagittarius Mines/Tampakan Group of Companies (Australia-Phils) – affecting 100,000 hectares of land in Tampakan and Columbio towns, Sultan Kudarat Province on ancestral lands of B'laan indigenous group;
  - Climax-Arimco Mining (Australia) – affecting 32 villages of Ifugao, indigenous groups in Nueva Vizcaya and Quirino Provinces, North-Central Luzon;
  - Pending large scale mining applications covering 1.2 million hectares of indigenous peoples' lands in the Cordillera Region
  - Toronto Ventures Incorporated - threatening to displace Subanen indigenous peoples in Mt. Canatuan in Siocon, Zamboanga del Norte.
  - Alcantara & Sons (ALSON), a huge plywood company and logging concessionaire operating an Industrial Forestry Management Agreement (IFMA) covering 29,000 has. of Atamanobo ancestral lands
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22. The presence of large scale mining operations, mega dams, logging operations and agro-fuel plantations within indigenous peoples' domain has an adverse impact on the IP communities food and livelihood system. Extractive industries through Mining Act of 1995
   
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23. human rights concerns
  - Despite IPRA as a legal safeguard, military operations have accompanied the implementation of mining, logging, and energy projects because of the people's opposition to them. Army troops are regularly deployed in the territories of the Agtas, Aetas, Mangyans, Lumads, and Igorots
  - As of latest, 34 recorded extra judicial killings since 2010
  - 15 SLAPPS (Strategic Lawsuits Against Public Participation) against IP leaders and advocates
  - San Roque Dam construction in the Cordillera
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24. Way Forward
  - Respect and protect Customary Laws and indigenous values as a means to assert right to land and self determination
  - Advocacy campaigns to engage LGU's/LGA's and other CSO's on IP issues and concerns
  - Policy proposals and reforms recognizing customary laws and community protocols in FPIC. The Indigenous Peoples Right to FPIC and self – determination
  - advocate against large scale destructive mining and widespread land use conversion and revoke permits and agreements where there is no genuine FPIC or FPIC is violated
  - multi-stakeholder dialogues at the municipal, district and provincial levels where there are issues pertaining to mining, land use conversion, destructive projects
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25. “ The ultimate solution to the plight of the indigenous peoples in the Philippines is the recognition of their collective right to self-determination. Self-Determination means the right of indigenous peoples to freely determine

their political status and freely pursue their economic, social and cultural development. For as long as the indigenous peoples' lives are threatened, their struggles to defend their land and resources will continue, until their rights to equality and self-determination are fully recognized and respected." Jill Carino, Philippine TFIP Convenor Property of: Philippine Network of Food Security Programmes (PNFSP)

26. "You ask us if we own the land. And mock us, 'Where is your title?' Such arrogance of owning the land when you shall be owned by it. How can you own that which will outlive you?" Property of: Philippine Network of Food Security Programmes (PNFSP)

27. Sources and References: • Philippine Task Force on Indigenous Peoples – composed of ---- members • Ms. Jill Carino, State of Indigenous Peoples in the Philippines • Mr. Tyron Beyer, Indigenous Knowledge Systems and Food Security • Customary Laws and Free Prior and Informed Consent TFIP 2013 • National Commission on Indigenous Peoples (NCIP) – • IPRA (Indigenous People's Right Act) • [www.engagemedia.org](http://www.engagemedia.org) • [www.pinoyweekly.org](http://www.pinoyweekly.org) • [inquire@humanrightphilippines.net](mailto:inquire@humanrightphilippines.net) • [www.nordis.net](http://www.nordis.net) • Rural Missionaries of the Philippines (NMR) • UCCP – IDPIP Property of: Philippine Network of Food Security Programmes (PNFSP)

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