



**INDIGENOUS PEOPLE'S
DEVELOPMENT
UNDER
THE PHILIPPINE MINING ACT OF 1995**

**Dr. Elmer B. Billedo
Assistant Director
Mines and Geosciences Bureau**

**National Consultation with the
UN Special Rapporteur on the
Rights of Indigenous Peoples,
Ms. Victoria Tauli-Corpuz**

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A. Legal Framework

Philippine Constitution (1987)

Article XII, Section 2: “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. With the exception of agricultural lands, all other natural resources shall shall not be alienated. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements xxx ”

Article XII, Section 5: “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.”

Mining Act (1995)

Section 4: “Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.”

Section 16: “No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.”

Section 17. Royalty Payments for Indigenous Cultural Communities.
-“In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well-being of the indigenous cultural community.”

Indigenous Peoples Rights Act (“IPRA”) (1997)

Section 3(g)- “Free and Prior Informed Consent shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community ”

Section 59: “All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. xxx”

Provided, further, that no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease or production sharing agreement while there is a pending lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, that the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.”

B. DENR-NCIP Policy Engagements

1. Joint DENR-NCIP Memorandum Circular No. 2003-1, October 31, 2003 **in re:** *Harmonization of the Implementation of the Indigenous Peoples Rights Act (IPRA) and Environment and Natural Resources (ENR) Laws and Policies.*
 - clarifies the jurisdiction, authority and responsibilities of the NCIP and DENR in the management, protection, utilization and rehabilitation of the environment and natural resources within ancestral domains;
 - strengthens all on-going policy harmonization efforts of the DENR and NCIP;
 - recognizes and support related initiatives of the NCIP, ICCs/IPs, DENR, LGUs, other concerned agencies and the civil society.
 - harmonizes efforts of the DENR and NCIP that expands up to the regional and provincial levels through the creation of Technical Working Groups.
 - provides review of contentious policy issuances.

B. DENR-NCIP Policy Engagements (contd.)

2. JOINT DENR-NCIP MEMORANDUM CIRCULAR NO. 01-07 , May 9, 2007 in re: *Management of Overlapping Protected Areas and/or their Buffer Zones and Ancestral Domains/Lands*

- covers overlapping protected areas, established pursuant to the NIPAS Act and ancestral domains/lands as defined under the IPRA.
- aims to clarify the management, authority and responsibilities of the NCIP and DENR in the management of overlapping protected areas and/or their buffer zones and ancestral domain/lands.
- provides for -
 - ✓ delineation of boundaries of the protected areas and/or their buffer zones which overlap with the ancestral domains/lands or vice versa.
 - ✓ detailed resources assessment or inventory as inputs in the preparation of the management plan and for monitoring of the biological resources of the protected area.

B. DENR-NCIP Policy Engagements (contd.)

3. JOINT DAR-DENR-LRA-NCIP ADMINISTRATIVE ORDER NO. 01-12, January 25, 2013 in re: *Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Land Registration Authority (LRA) and the National Commission on Indigenous Peoples (NCIP) in Order to Address Jurisdictional and Operational Issues Between and Among the Agencies*
 - addresses issues of overlapping jurisdiction, and operational issues and conflicting claims by and among the agencies concerned.

C. IP's Social and Community Development

1. As the recipient of the royalty payment of 1% of the gross output of the mineral, exclusively manage and utilize by them.

Said royalty shall form part of a Trust Fund for the socioeconomic well-being of the ICCs in accordance with the management plan formulated by the same in the ancestral land or domain area.

2. As the main beneficiary under the Social Development and Management Program (SDMP).

- SDMP is a tool for the development and implementation of community programs, projects and activities for the host and neighboring communities of a mining project/area.

- A 5-year plan geared towards the development of a responsible, self-reliant and resource-based communities capable of developing, implementing and managing development programs, projects and activities.



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C. IP's Social and Community Development (contd.)

- To implement the SDMP, mining companies shall allot a 1.5% of the operating cost annually which shall be divided into:

75% for the development of host and neighboring community

10% for the development of mining technology and geosciences

15% for the institutionalization of public awareness and education on mining and geosciences.



D. Other IP's Rights

- Relocation/Community Built-up.
- Right to secure mining rights over the ancestral land.



B'laan in SMI Tampakan



Thank you..